

# Cray • Huber

## **Illinois Coverage Basics**

### *Factors to Consider When Choosing Where to File Your Coverage Action: State Courts vs. Federal Courts in Illinois*

The Illinois estoppel rule has transformed the State of Illinois into a hotbed of coverage litigation during the past decade. The good news, if any good news can be found in the estoppel rule, is that insurers have significant discretion in deciding *where* to litigate their coverage actions. While in many jurisdictions insurers automatically choose federal court over state court, in Illinois the choice is not so simple. Making the right choice is important, because it may affect the cost, the speed and the outcome of the coverage case.

As in other states, in Illinois an insurer often has a choice between filing a coverage action in state court or in federal court. Typically, an opportunity for choosing between state and federal court exists if the federal court could exercise diversity jurisdiction over the dispute. Federal diversity jurisdiction exists if two conditions can be met: (1) if the insurer's state of incorporation and its principal place of business are in a different state than the state of the insured's citizenship, and (2) the amount in controversy is at least \$75,000. If both of these conditions are met, an insurer has the choice of filing suit in either state court or federal court.

#### **Factor #1: What Court Will Apply the Most Advantageous Substantive Law?**

A federal court may apply a different substantive rule of law than a state court would apply to the same case. When deciding whether to file a coverage action, careful consideration should be given to any substantive differences in the way that the federal courts and the state courts would decide the case. In diversity cases, the federal courts are supposed to determine how the Illinois Supreme Court would decide the merits and follow what the Illinois Supreme Court would do. However, when the Illinois Supreme Court has not decided a particular issue, the federal courts must predict how the Illinois Supreme Court would decide the issue. If the Illinois Supreme Court has not yet ruled on an issue, the federal courts are then required to give deference to the rulings of the Illinois Appellate Court.

However, if the rulings of the various Illinois Appellate Courts are in conflict, the federal courts can choose among the conflicting rulings. When making that choice, a federal court is not required to confine its analysis to the rulings of the particular Illinois Appellate District from which the case arises. For example, while a state court deciding a case arising in the First Appellate District is required to apply the decisions of the First District Appellate Court, a federal court deciding the same case could apply decisions any Illinois Appellate District.

To complicate matters, in all cases the federal district courts in Illinois are required to follow the rulings of the Seventh Circuit Court of Appeals. In a diversity case where there is no Illinois

Supreme Court decision on point, but the Seventh Circuit Court of Appeals has previously predicted how the Illinois Supreme Court would decide the issue, the federal district courts would likely follow the Seventh Circuit's prediction, even if that prediction conflicts with the way more recent Illinois Appellate Court rulings may have decided the operative issue.

In some coverage cases, the decision of whether to file suit in state or federal court may determine the outcome of the case, depending upon how the state and federal courts have previously ruled on a particular issue. One very important difference between the state and federal courts in Illinois is that the federal courts are far more likely to enforce the Illinois estoppel rule against insurers than the state courts. On the other hand, federal courts tend more often to follow the dictates of clear insurance policy language, even when a denial of coverage may result in dire consequences for an insured or a claimant. Consequently, the decision to file in state court or federal court should not be made until it is determined how the state and federal courts would decide the particular substantive issues that are important to the case.

### **Factor #2: What Court Will Apply the Most Advantageous Procedural Law?**

There are also very important differences in the procedural rules that apply in state and federal courts in Illinois. Unlike many states, Illinois state courts generally do not follow the Federal Rules of Civil Procedure. Notice pleading governs federal cases, but fact pleading governs cases in Illinois state court. Summary judgment is not available in state court where a question of fact can be found, but in federal court a question of fact is not always fatal to a summary judgment motion. Federal coverage actions tend to move to conclusion more quickly than cases on busy state court dockets, but that speed advantage is often achieved at the loss of flexibility in insurers' management and control of its coverage cases.

In addition, cases filed in the federal District Court for the Northern District of Illinois ordinarily cost more to litigate than cases filed in state court, due to the Northern District's "final pretrial order" requirement, which requires parties to fully disclose their cases in written form and essentially try their cases on paper before the summary judgment stage of a case is reached.

### **Other Factors.**

While it is commonly believed that the intellectual level of the federal judiciary is higher than the state court judiciary, the federal advantage may be offset in coverage cases in state court venues (such as Cook County) where a special Chancery Division is empanelled to handle all insurance coverage declaratory judgment actions. On the other hand, the efficacy and predictability of appeals is probably greater in federal court, where the Seventh Circuit Court of Appeals hears all appeals, as contrasted with appeals in state court, which may be decided by frequently changing panels of the Illinois Appellate Court.

Whether these variables are advantages or disadvantages will depend upon the particulars of the case at hand. A uniform practice of choosing federal court over state court in Illinois will not invariably produce optimal results for insurers.

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If you have questions or would like to discuss the implications of this report further, please feel free to contact James K. Horstman at Cray Huber Horstman Heil & VanAusdal LLC, 303 West Madison, Suite 2200, Chicago IL 60606; 312-332-8494; jkh@crayhuber.com.