

Illinois Coverage Basics

Appeals in Illinois Coverage Litigation: What to Expect

The Illinois Constitution guarantees that parties in litigation have a right to appeal from all final judgments. However, the appellate process plays a more important role in coverage litigation than in most other civil cases. This issue of Illinois Coverage Basics explores the dynamics of the appellate process in coverage cases pending in the Illinois state courts.

How Appellate Procedure Affects Strategy in Coverage Cases

Appeals are of greater strategic importance in coverage cases than many other cases, because coverage disputes are usually resolved by rulings on dispositive motions (e.g., motions for summary judgment, motions for judgment on the pleadings, motions to dismiss). This means that most appeals from judgments in coverage cases are reviewed under a *de novo* standard of review on appeal. Under the *de novo* standard of review, no deference is given to the decision of the trial court; instead, the courts of review undertake a new and independent analysis of the issues decided by the trial court.

In practical terms, the *de novo* standard of review means that a party who receives an unfavorable ruling in the trial court can get a second “bite at the apple” in the Appellate Court. In fact, if the issue is important enough to warrant review by the Illinois Supreme Court, a litigant might even get a third “bite at the apple,” because the state Supreme Court also applies a *de novo* standard of review in such cases. By appealing, an unsuccessful litigant also gains the opportunity to present its position to several other judges. An issue that has been decided by *one* judge in the trial court could be reviewed by *three* justices in the Appellate Court and by *seven* justices in the state Supreme Court.

Thus, appeals in coverage litigation give the parties a second and perhaps a third chance to prevail. Those appeals present genuinely fresh opportunities for victory, because (a) the *de novo* standard of review requires the courts of review to undertake a completely independent analysis of the coverage issues, and (b) appeals in the state Appellate Court and Supreme Court are decided by panels of three or seven justices who are selected as the best judges in the state.

The First Level of Appellate Review: the Illinois Appellate Court

Appeals from final judgments are initially reviewed by the Illinois Appellate Court. Justices of the Appellate Court are elected to 10-year terms in political elections. At the expiration of their 10-year terms, Appellate Court justices run for “retention,” meaning that they stand unopposed in a “retention” election that will provide another 10-year term so long as they win at least 60% of the vote in the uncontested election. For all practical purposes, it is a job for life.

There are five geographically defined Appellate Court districts in Illinois. The First District has the same geographical borders as Cook County. The First District has 24 Appellate Court justices, while the rest of the state has a total of 30 justices.

Although there is anecdotal evidence and speculation concerning the philosophical differences among the five Appellate Court districts, the statistical outcomes are remarkably uniform among the districts. On a statewide basis, in civil cases the Illinois Appellate Court affirms approximately 71% of the cases, reverses or remands approximately 17% of the cases, and partially affirms or dismisses the remaining 12% of the cases.

The time line for deciding appeals is also fairly uniform among the Appellate Court districts, despite common belief to the contrary. Statewide, 60% of all civil appeals are decided within 6 months after the filing of the last brief in the Appellate Court, 32% are decided within 6-12 months, 6% are decided within 12-18 months, and about 2% are decided after 18 months.

The most important difference among the five districts relates to the judicial experience of the justices. At this time, in the First District 25% of the justices are rookies, having no more than one year's experience on the Appellate Court. Justices of the First District also generally come to the Appellate Court with far less civil litigation experience than the justices of the other districts. This is due largely to the specialization of the lower courts in Cook County. Most justices in the First District come from backgrounds in criminal court or other specialty courts in Cook County (e.g., housing court, domestic relations court, traffic court, etc.), whereas justices in the other districts usually have experience in courts of more general jurisdiction.

The Second Level of Appellate Review: the Illinois Supreme Court

There is no right to appeal civil judgments to the Illinois Supreme Court, but the Supreme Court can consent to hear any civil appeal. The Court agrees to hear approximately 7-9% of the civil cases in which its review is sought, amounting to 50 or so civil cases each year. There are seven justices on the Supreme Court and the entire Court hears all cases on its docket. The system for election and retention for Supreme Court justices is the same as for Appellate Court justices. Four of the current members of the Court were elected as Democrats; three were elected as Republicans. The terms of four of them will expire in 2010. Two will likely retire in 2010, but otherwise it appears that the membership of the Court will remain stable for the next 5-8 years.

Appeals are an inherent aspect of coverage litigation in Illinois. This impacts the ultimate cost and timeline of a coverage case. It also can have a dramatic impact on the outcome of a coverage case, because *de novo* review guarantees a second (and perhaps a third) evaluation of the coverage issues by a select panel of judges. The dynamics of coverage litigation in the courts of review are significantly different than appeals in jury cases and present unique opportunities.

* * *

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.