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Illinois Coverage Basics

Recent Changes in Federal Pleading Standard May Have A Favorable Impact on Insurers' Duty to Defend

Illinois, like most states, is a "four corners" jurisdiction meaning that an insurer's duty to defend is supposed to be determined by comparing the allegations of the underlying complaint with the coverage terms of the insurance policy. However, *unlike* most states, Illinois state courts have never adopted the federal pleading rules. As a result, cases filed in federal courts located within Illinois are governed by the federal "notice pleading" standard, while cases filed in state courts in Illinois are governed by the state's very different "fact pleading" standard.

Whether a complaint is pleaded to satisfy a "notice pleading" standard or a "fact pleading" standard can have a dramatic impact on a duty to defend analysis. Under the traditional federal "notice pleading" standard, a complaint was not required to provide great factual specificity; only enough detail to allege "a short and plain statement" showing why the pleader is entitled to relief.

In contrast, a complaint governed by Illinois' "fact pleading" standard demands a much greater degree of factual specificity. Under the Illinois "fact pleading" standard, a complaint must allege specific facts which, if proved, would provide all the facts necessary to entitle the pleader to relief. In the Illinois state courts, complaints that could easily pass muster under the federal standard are routinely dismissed for failure to plead sufficient factual detail. As a result, the "fact pleading" standard of the Illinois state courts gives rise to complaints with far greater factual detail than is normally seen in federal court pleadings.

How the Pleading Standard Affects an Insurer's Defense Obligation

It can make a big difference whether a complaint is pleaded under a traditional federal-style "notice pleading" standard or the Illinois-style "fact pleading" standard. The basic duty to defend rule is that a liability insurer owes a duty to defend if the allegations of the underlying complaint raise even a potential for coverage. A complaint that is vague and lacking in factual detail may support a potential for coverage and trigger a duty to defend, precisely because the lack of specificity creates a doubt. On the other hand, detail and factual specificity is crucial for an insurer to limit its duty to defend and meaningfully reserve its rights.

Traditional notice pleading often deprives an insurer of the facts that it needs to enforce the applicable limits of coverage in response to a tender of defense. For purposes of sustaining an action for damages under a traditional notice pleading standard, a claimant need only plead "a short and plain statement" of the facts underlying the claim. The claimant has no reason to plead

more facts than are required under a notice pleading standard, particularly where more factual detail could discourage the involvement of an insurer.

In contrast to a fact-pleaded complaint, a notice-pleaded complaint may not allege the dates that are necessary for a definitive coverage determination. A fact-pleaded complaint may also not contain sufficient detail to accurately determine whether a particular defendant is an additional insured. It may also not provide enough factual detail to determine ownership or employer status; or the mechanism of the injury; or the state of mind of the alleged actor. The burden of proof for establishing the applicability of policy exclusions is on the insurer, and factual detail in the claimant's complaint is essential to support that burden. If the allegations are not precise enough to definitively limit the coverage, a liability insurer is left with no choice but to defend.

Illinois law does not generally favor insurers, but Illinois' "fact pleading" standard provides a significant advantage to liability insurers by requiring claimants to plead their complaints with factual specificity. In contrast, the more relaxed federal pleading standard has made it more difficult for liability insurers to enforce the limitations of their coverage in response to tenders of defense or notices of suit.

Evolution of the Federal Notice Pleading Standard

However, within the past few years, the United States Supreme Court has begun to push for greater detail in pleadings governed by the federal notice pleading standard. The Federal Rules of Civil Procedure were adopted in 1938 and first established a notice pleading standard for all civil complaints filed in federal courts. Under the traditional federal notice pleading standard, a complaint could not be dismissed for failure to state a claim unless it appeared beyond doubt that the plaintiff could prove no set of facts that would entitle him to relief. The Federal Rules go so far as to approve the use of half-page forms to be used as a substitute for complaints setting forth the particular facts of a case.

Now, the traditional federal pleading rule is beginning to change. In Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, ___ U.S. ____, 129 S.Ct. 1937 (2009), the Supreme Court held that a complaint must contain sufficient factual matter which, if accepted as true, will "state a claim to relief that is plausible on its face." Under the new "plausibility" pleading standard, mere recitals of the elements of a cause of action, supported only by conclusory statements, will not suffice; the cause of action must now be supported by sufficient specific factual allegations to show that the pleader is plausibly entitled to relief.

Twombly and Iqbal have pushed the federal notice pleading standard closer to the fact pleading standard that governs Illinois state cases. At this point, it remains uncertain as to how much factual detail will be required in federal court pleadings. However, it is clear that federal court pleadings must now contain significantly more factual detail than in the past, which will assist insurers to more accurately determine their duty to defend in cases filed in federal court.

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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.