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Illinois Coverage Basics

Illinois Supreme Court Abandons the "Four Corners" Rule as the Test for Determining a Duty to Defend

Illinois has traditionally been included among the states that follow the "four corners" rule for determining a liability insurer's duty to defend. The "four corners" rule requires that an insurer's duty to defend must be determined solely by a comparison of the terms of the insurance policy and the four corners of a complaint filed against an insured. This has been the standard prescribed by the Illinois Supreme Court for longer than anyone can remember.

Nevertheless, in recent years an expanded "four corners plus" rule has evolved in the opinions of some intermediate Appellate Courts of Illinois. Although the articulation of the expanded rule have differed from case to case, an emerging view in the Appellate Court has been that some materials outside the allegations of an underlying complaint may be considered when analyzing whether an insurer owes a duty to defend. The practical problems with the Appellate Court's expanded "four corners plus" rule were that the Appellate Court opinions did not agree on what materials outside the underlying complaint should be considered in the duty to defend analysis, and, importantly, the Illinois Supreme Court had remained silent on whether the expanded "four corners plus" rule was actually the law of Illinois.

But, on May 20, 2010, the Illinois Supreme Court issued its opinion in Pekin Insurance Company v. Wilson (No. 108799), which will forever change the duty to defend analysis in Illinois. While the Wilson opinion leaves many unanswered questions, it makes one point very clearly: Illinois is no longer a "four corners" jurisdiction. The rule endorsed by the Illinois Supreme Court now appears to be that a court analyzing an insurer's duty to defend must consider matters beyond the allegations of the underlying complaint, including any counterclaim filed by the insured. In short, the Illinois Supreme Court has adopted the intermediate Appellate Court's "four corners plus" rule, along with many of the vagaries that have accompanied that Appellate Court rule.

In the underlying case in Wilson, the insured was sued for assault and battery in a complaint that characterized the insured's acts alternatively as both intentional and negligent. He was insured under a commercial general liability policy issued by Pekin Insurance Company, subject to a coverage exclusion for bodily injury expected or intended from the standpoint of the insured. However, that exclusion contained an exception for injuries resulting from the insured's use of reasonable force for self-defense. In an effort to invoke the self-defense exception to the intentional acts exclusion, the insured filed a counterclaim in the underlying case in which he alleged that he had acted in self defense when he struck and injured the claimant.

Pekin Insurance Company filed a declaratory judgment action denying coverage for the claim, based upon the intentional acts exclusion of its policy. The insurer then filed a motion for

judgment on the pleadings on the issue, and the trial court granted judgment on the pleadings in Pekin's favor. However, on appeal the intermediate Appellate Court reversed the judgment, and the Illinois Supreme Court subsequently granted Pekin leave to appeal.

The Illinois Supreme Court focused on the following question in Wilson: "whether the duty to defend the insured may be triggered by the allegations of self-defense alleged in the insured's counterclaim … where the policy contains both an exclusion for intentional acts and a self-defense exception to that exclusion?" In addressing that question, the Court acknowledged that "a court *ordinarily* looks first to the allegations in the underlying complaint and compares those allegations to the relevant provisions of the insurance policy." However, the Court emphasized that this was only a *general* rule. The Court denied that the source of an insurer's duty to defend should be limited to the content of the claimant's complaint in all cases. Rather, the Court concluded that "a circuit court may, under certain circumstances, look beyond the underlying complaint in order to determine an insurer's duty to defend."

Unfortunately, the Illinois Supreme Court did not undertake an independent analysis of the question; it simply adopted the rationales of two intermediate Appellate Court cases, Fidelity & Casualty Company of New York v. Envirodyne Engineers, Inc., 122 Ill.App.3d 301, 461 N.E.2d 471 (1st Dist. 1983) and American Economy Insurance Company v. Holabird & Root, 382 Ill.App.3d 1017, 886 N.E.2d 1166 (1st Dist. 2008). In Envirodyne, the Appellate Court ruled over 25 years ago that an insurer filing a declaratory judgment action to resolve a duty to defend issue can properly rely on evidence outside an underlying complaint. However, the Wilson opinion ignored many more recent opinions that questioned and limited the scope of Envirodyne.

Yet, the most problematic aspect of the Illinois Supreme Court's Wilson opinion was its reliance on Holabird & Root. In 2008, Holabird & Root did hold that a court's duty to defend analysis may look to the allegations of a counterclaim to supplement the facts provided by the allegations of a claimant's complaint. However, the Supreme Court's analysis made no mention of the fact that two *more recent* Appellate Court opinions – including one from the same Division that wrote Holabird & Root – have held that a court's determination of a duty to defend issue may *not* consider extrinsic evidence provided by the insured or the allegations of a counterclaim filed by the insured. *See* National Fire Insurance of Hartford v. Walsh Construction Company, 392 Ill.App.3d 312, 909 N.E.2d 285 (1st Dist. 2009) and American Economy Insurance Company v. DePaul University, 383 Ill.App.3d 172, 890 N.E.2d 582 (1st Dist. 2008).

Thus, while we have a ruling from the Illinois Supreme Court that the "four corners" rule is no longer the law of Illinois, some doubt remains as to the scope of the new "four corners plus" rule approved by the Court in Wilson. A literal reading of Wilson would seem to suggest that an insured can manufacture a duty to defend in virtually any case, simply by filing a third-party complaint alleging some basis for potential coverage. This, undoubtedly, will be the subject of much future litigation.

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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.