Illinois Coverage Basics

More Signs of a Favorable Trend in Illinois Duty to Defend Rulings: More Courts are Willing to Look Past Frivolous Negligence Allegations to Defeat Duty to Defend

Plaintiffs' attorneys have traditionally had a great influence on whether liability insurers owe a duty to defend, because an insurer's duty to defend is determined primarily from the allegations of the plaintiff's complaint. An insurer's duty to defend is triggered if the plaintiff's complaint alleges a cause of action that is potentially covered by the insurance policy. Illinois plaintiffs' lawyers have made an art of pleading claims in terms that trigger the potential coverage of liability policies, regardless of whether the claims actually qualify for coverage.

The most common example of such abusive "pleading into coverage" occurs when plaintiffs' attorneys apply the label "negligence" to describe intentional torts. Although intentional torts are not covered by most liability policies, courts commonly hold that if a complaint describes an intentional tort as a negligent act, a responding insurer will have a duty to defend. As a result, with very little effort, plaintiffs' attorneys possess the power to involve insurers in intentional tort cases, even though no coverage truly exists.

Over the years, a few courts have been willing to look beyond fictitious allegations of negligence to focus on the true substance of intentional tort claims when deciding duty to defend issues. But the vast majority of courts have found a duty to defend whenever a complaint alleges negligence, regardless of the true nature of the claims. This may now be changing.

State Farm v. Young

The last issue of Illinois Coverage Basics reported State Farm Fire and Casualty Company v. Young, 2012 IL App (1st) 103736. In that case, the First District Appellate Court addressed a duty to defend issue under a complaint that described an intentional tort in terms of simple negligence. The Appellate Court held that although the claim was pleaded under a theory of negligence, the injuries were the natural and ordinary consequences of the defendant's intentional misconduct, which included beating the decedent, failing to seek emergency medical care for her and leaving her to die. Although the complaint clearly alleged "negligence," the Appellate Court found that the defendant's insurer did not owe a duty to defend.

American Country v. Chicago Carriage Cab Co.

In America Country Insurance Company v. Chicago Carriage Cab Company, 2012 IL App (1st) 110761, the First District Appellate Court was again called upon to decide a liability insurer's obligations in the context of a complaint that characterized intentional torts as mere

"negligence." In Chicago Carriage Cab, the plaintiff sued for injuries that he received in a robbery that occurred while he was a passenger in a taxi cab. The defendant was the lessee of the taxi, whom the plaintiff identified as the robber. Nevertheless, the complaint pleaded the plaintiff's claim in terms of ordinary negligence. The plaintiff obtained a verdict against the defendant on one of his negligence claims. Nevertheless, the Appellate Court held that the defendant's coverage was not triggered.

The Chicago Carriage Cab opinion reasoned:

> The salient question is whether what happened to [the plaintiff] that commenced with the use of the taxi qualifies as an "accident" under the terms of the policy … the scope of coverage under an auto liability policy must end at some point, and the perpetration of a crime in or about an auto represents a point well beyond the line that must reasonably be drawn.

Farmers Automobile Insurance Ass'n. v. Danner

Farmers Automobile Insurance Ass'n. v. Danner, 2012 IL App (4th) 110461 addressed a duty to defend issue against the backdrop of an epic battle between hostile neighbors. In the underlying case plaintiff Winkler sought damages for physical injuries that were allegedly caused by his neighbor, defendant Danner. In his first count, Winkler alleged that "Danner got into his pickup truck, drove it at a high rate of speed, steered his truck off the lane, and struck Winkler …" Danner then exited the vehicle and struck Winkler three times with a golf club, breaking three of Winkler's ribs. However, in a second count against Danner, Winkler alleged that the conduct which caused his injuries was simple negligence on the part of Danner. Interestingly, the plaintiff did not file the second count until after Danner's insurer (Farmers) had already filed a declaratory judgment action to dispute its duty to defend the first count.

Based on the allegations of negligence in Winkler's complaint, the trial court found that Danner's insurer owed a duty to defend. The Appellate Court disagreed. It held that a court is not required to consider each count in isolation and ignore the facts pleaded in other counts. It also ruled that a court deciding a duty to defend issue should give little weight to the legal labels used to characterize the conduct in the underlying allegations. Disregarding the plaintiff's references to negligence, the Appellate Court found that the conduct alleged in the complaint "can only be described as intentional." The Appellate Court rejected Winkler's efforts to "plead into coverage" as a "transparent attempt to trigger insurance coverage."

Observations

These recent duty to defend rulings do not reflect a change in the law, so much as an evolving change in attitude of some Illinois courts. Nevertheless, these opinions can be effectively cited to illustrate the proper analysis to be followed to determine duty to defend issues in cases involving intentional torts.

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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.