



## Alerts

### Insured's Own Counterclaim Can Trigger Duty to Defend

October 18, 2010

*Insurance Coverage Alert*

By its recent decision in an insurance coverage case, *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 930 N.E.2d 1011 (Ill.2010), the Illinois Supreme Court arguably broadened the examination necessary to determine the defense obligation. Pekin Insurance Co., a commercial general liability insurer, brought a declaratory judgment action seeking a determination that it did not owe the insured a duty to defend in the underlying suit for assault, battery and intentional infliction of emotional distress. The Illinois Supreme Court held that there was potential for coverage with respect to the complaint, even though the Pekin CGL policy contained an exclusion for intentional acts, because there were allegations of self-defense in the insured's counterclaim.

The Illinois Supreme Court held that the determination of an insurer's duty to defend therefore need not be based solely upon allegations of the complaint in the underlying action, but may include considerations of other pleadings in the lawsuit including, in this case the policyholder's counterclaim alleging self-defense. The Court reasoned that if the trial court were to look solely to the complaint in the underlying action to determine coverage, declaratory proceedings would be little more than a useless exercise and failure to consider all of the pleadings would diminish the purpose of a declaratory judgment in settling and fixing the rights of the parties.

The Illinois Supreme Court quoted approvingly from the opinion in *America Economy Insurance v. Holabird and Root*, 382 Ill. App. 3d 1017, 320 Ill. Dec. 97, 886 N.E.2d 1166 (2008). The Illinois First District Appellate Court ruled in that case:

The trial court should be able to consider all the relevant facts contained in the pleadings, including a third-party complaint, to determine whether there is a duty to defend. After all, the trial court 'need not wear judicial blinders' and may look beyond the complaint at other evidence appropriate to a motion for Summary Judgment.

**Practice Note:** By holding that the insured's own counterclaim must be considered in determining an insurer's duty to defend, the Illinois Supreme Court has held that an insurer must look beyond the "four corners" of the complaint in the underlying action in determining the insurance coverage defense obligation.

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For further information, please contact [David A Grossbaum](#) or your regular [Hinshaw attorney](#).

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