

November 21, 2019

Illinois – Supreme Court Addresses Trigger For Malicious Prosecution

BY: Brian C. Bassett

In *Sanders v. Illinois Union Insurance Company*, the Illinois Supreme Court held Illinois Union and Starr Indemnity & Liability Company were not required to indemnify the city for damages under their policies when coverage for the underlying malicious prosecution claim was triggered by the initial wrongful prosecution of Sanders in 1994, more than a decade before their policies were issued. In 1994, the Chicago Heights police department doctored evidence which resulted in the conviction of Sanders. In 2011, his conviction was overturned and the appellate court affirmed the judgment in May 2012. Sanders was retried in August of 2013, which resulted in a mistrial, and July of 2014, which resulted in an acquittal. A federal civil rights lawsuit was filed against Chicago Heights in January 2013 with an amended claim for malicious prosecution added after Sanders was acquitted in July 2014. Sanders won a judgment of \$15 million, and Chicago Heights sought coverage from Illinois Union and Starr for the underlying federal civil rights lawsuit.

From November 2011 to November 2014, Illinois Union provided primary insurance to Chicago Heights, and Starr provided excess coverage. The policies provided that Illinois Union and Starr would indemnify Chicago Heights for damages which Chicago Heights became legally obligate to pay because of a claim arising out of the “offense of malicious prosecution” that happened during the policy period and took place during the policy period. The court focused on the interpretation of the word “offense” to determine when the malicious prosecution occurred. Taking into consideration the straightforward meaning of the term “offense” and the contractual language requiring that the offense must happen and take place during the policy period, the court concluded that the word offense in the policy refers to the wrongful conduct underlying the malicious prosecution. Here, that would be the original lawsuit based on doctored evidence. The court cited to multiple cases finding that malicious prosecution does not happen or take place upon exoneration because it is based on the actions of the prosecutors in bringing the original unfounded claim. The court went on to explain that the “occurrence-based” nature of the policy weighed heavily on its interpretation because the intent of the parties would be disregarded if liability could be shifted to a policy period in which no acts or omissions giving rise to the claim actually occurred.

The court was not persuaded by the additional arguments that all the elements of the tort of malicious prosecution must be satisfied, including the acquittal, before an offense has occurred, or that the retrials in 2013 and 2014 were separate triggers for coverage. The policy language foreclosed both of those arguments. First, the language of the policies did not require elements of a tort to be satisfied to constitute an occurrence. The court additionally clarified that a federal determination that exoneration was “the occurrence” for insurance coverage of a malicious prosecution claim was simply a prediction of Illinois law that does not reflect the current Illinois approach to determining when coverage is triggered for malicious prosecution under an occurrence-based insurance policy. Second, the language of the policy also indicated that “all damages arising out of substantially the same *Personal Injury* regardless of frequency, repetition, the number or kind of offenses ... will be considered as arising out of one *Occurrence*.” The personal injury – the lawsuit based on fabricated evidence – was the same in the 2013 and 2014 retrials. Because the triggering event, the original lawsuit based on doctored evidence from the Chicago Heights police department, occurred in 1994, the Illinois Union and Starr policies were not triggered and Illinois Union and Starr had no duty to indemnify the city for the federal civil rights judgment.