Illinois Court Holds That Coverage for Malicious Prosecution Claim Is Triggered When the Prosecution Is Commenced, Not When It Is Terminated

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Tuesday, September 23, 2014

An Illinois appellate court recently held in *St. Paul Fire and Marine Insurance Co. v. City of Zion* that coverage under a law enforcement liability policy for a malicious prosecution claim is triggered when the wrongful prosecution is commenced, not when it is terminated in favor of the accused. The court thereby joined the majority of courts that have addressed the issue.

As is often the case in malicious prosecution matters, the underlying facts are poignant and disturbing. On May 9, 2005, Jerry Hobbs III was charged with murdering his daughter and another child. He spent five years in jail awaiting trial. On August 4, 2010, after DNA evidence excluded Hobbs as the perpetrator, the charges were dismissed. Then, on December 1, 2010, Hobbs sued the City of Zion, its police officer Kevin Harris, and other defendants in federal court, alleging that the officers coerced him into falsely confessing to the murders, and claiming malicious persecution under Illinois law. The City sought coverage from St. Paul, which had issued it a series of policies for periods from December 1, 2006 to December 5, 2010. St. Paul brought an action in Illinois state court, seeking a
declaration that Hobbs’s allegations did not trigger coverage under its 2009-10 policy, because coverage was triggered when the wrongful prosecution was commenced in 2005, not when it was terminated. The trial court granted St. Paul summary judgment, the insureds appealed, and the Appellate Court of Illinois affirmed.

Central to the court’s analysis was the language of the St. Paul policy. The law enforcement liability section provided that St. Paul would “pay amounts any protected person is legally required to pay as damages for covered injury or damage” that (1) “results from law enforcement activities or operations by or for you,” (2) “happens while this agreement is in effect,” and (3) “is caused by a wrongful act that is committed while conducting law enforcement activities or operations.” Thus, the court noted, the policy did not require the offense of malicious prosecution to be committed during the policy term; rather, it provided coverage if the “injury” caused by the malicious prosecution “happen[ed]” during the policy term. Accordingly, the court focused on when Hobbs suffered his injury, rather than when his cause of action accrued.

This made all the difference. The insureds had argued that accrual of the malicious prosecution claim triggered coverage. Based on that assumption, they had argued that, because one of the elements of Hobbs’s malicious prosecution claim was the termination of the prosecution in his favor, the claim accrued and coverage was triggered when the prosecution was terminated, which happened in 2010. The court rejected that argument, concluding, based on the policy language, that coverage was triggered when Hobbs first suffered his injury, which occurred when he was charged in 2005 and began to suffer the resulting expense, shame, and loss of freedom. In so holding, the court rejected an earlier Illinois appellate decision, which had concluded that the trigger was final termination of the prosecution. That decision had been reversed on other grounds by the Illinois Supreme Court, and the court here faulted it (and some federal decisions that followed it) for not grounding its conclusion in the policy language. The court noted several decisions from other jurisdictions that, addressing policy language similar to that of the St. Paul policy, found the trigger to be the commencement of the prosecution, and not a later event. It added that it was expressing no opinion regarding the trigger that would apply if, for instance, the policy required the “offense” of malicious prosecution to be “committed” during the policy period rather than the “injury” to “happen” then.

Malicious prosecution claims are a fact of life for some policyholders, like the municipality here, and they may become more common as scientific testing leads to the exoneration of more defendants like Mr. Hobbs. Although it may be premature to say that a general rule regarding the trigger of coverage for such claims has crystalized, it is safe to say that courts will analyze it with reference to the policy language, which should be carefully considered when assessing a claim for coverage or determining whether the insured has an adequate coverage program.

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National Law Review, Volume IV, Number 266

Source URL: https://www.natlawreview.com/article/illinois-court-holds-coverage-
malicious-prosecution-claim-triggered-when-prosecution