

WHEN DOES A JUDGMENT BIND AN INSURER DENYING COVERAGE?

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© May 26, 1999

The law in Indiana is that an insurer that abandons its insured sued in a tort action is bound by any factual determination in that action when the insurer later attempts to deny coverage. However, the insurer is not bound by that judgment if it is not clear on which theory the judgment is based, if the insurer has paid independent counsel for the insured's defense under a sufficient reservation of rights, if the insurer has filed a declaratory judgment action (DJA) to determine coverage before final judgment in the underlying tort action, or under any combination of the above.

The first case to review is *Snodgrass v. Baize*, 405 N.E.2d 48 (Ind. Ct. App. 1980). The insurer paid the insured's own counsel to defend under a reservation of rights. The jury found the defendant negligent. Plaintiff filed proceedings supplemental and argued the insurer was bound by the judgment under the doctrine of collateral estoppel. The Court in *Snodgrass* held that the insurer was not bound because it had paid for but not controlled the defense, under a reservation of rights.

The next case to consider is *State Farm Mut. Auto. Ins. Co. v. Glasgow*, 478 N.E.2d 918 (Ind. Ct. App. 1985). Glasgow filed a small claim which generally alleged damage to her car but did not indicate a theory of recovery. State Farm refused to defend or pay for counsel claiming the damage was done intentionally. The order book entry recording the judgment simply found for Glasgow and did not refer to negligence.

Glasgow demanded in proceedings supplemental that State Farm pay the judgment. The Court of Appeals held that the judgment entry did not refer to negligence. Therefore, the issue of whether the wrong was done negligently or intentionally could still be litigated by State Farm.

The Court in *Glasgow* also states that a decision in a trial as to whether something was done negligently or intentionally is not binding on the insurer if the insurer gives prompt notice of the conflict of interest, and then either directly participates in the defense *or* reimburses the insured's personal attorney. In the alternative, the insurer can protect itself by filing a DJA before entry of final judgment in the underlying tort action. However, the insurer is bound by a determination in the underlying tort action if it does not either defend under a reservation of rights or file a DJA.

The Court of Appeals addressed this issue again in a slightly different setting in *Hawkins v. Auto-Owners (Mut.) Ins. Co.*, 579 N.E.2d 118 (Ind. Ct. App. 1991). Hawkins alleged a shooting was done negligently. The shooter was insured by Auto-Owners.

The Court in *Hawkins* held that the insurer can separately file a DJA while the underlying tort claim is pending. The insurer does not have to defend and wait until proceedings supplemental after judgment to litigate the issue of coverage. *Hawkins* also holds that an insurer with this type of conflict with its insured cannot have the same lawyer attempt to represent both the insurer and the insured.

The next relevant Indiana case to address this issue was *Liberty Mut. Ins. Co. v. Metzler*, 586 N.E.2d 897 (Ind. Ct. App. 1992). There, Plaintiffs filed a complaint against Metzler based on negligence. Plaintiffs got a judgment and demanded in proceedings supplemental that Liberty Mutual pay it.

Liberty Mutual raised two defenses. First, they argued that the wrongs were done intentionally. Second, they argued that Metzler was not an insured because he had specifically disobeyed his employer's rules against leaving a scheduled route for personal reasons.

The *Metzler* court found that Liberty Mutual could not argue in the proceedings supplemental that the wrongs were done intentionally because the judgment was specifically granted on the theory of

negligence, and because Liberty Mutual had not defended under a reservation of rights or filed a DJA. However, Liberty Mutual could still litigate whether or not Metzler had lost coverage by leaving his scheduled route, since that issue had not been decided in the underlying tort case.

The last case we will discuss on this topic is *Progressive Cas. Ins. Co. v. Morris*, 603 N.E.2d 1380 (Ind. Ct. App. 1992). Morris filed a complaint based on negligence against Progressive's insured. "Progressive took no action to appear and defend their insured, to appear under a reservation of right, or to file a declaratory judgment action." *Id.* at 1382

Morris got a default judgment, then demanded Progressive pay it in proceedings supplemental. Progressive argued that the damage was intentionally done. The Court of Appeals held that Progressive was bound by the default judgment entered on the theory of negligence. The *Progressive* Court based its decision on *Metzler*. The *Progressive* Court held that the insurer was bound because it had neither defended under a reservation of rights nor filed a DJA before the entry of final judgment.

Based on the above Indiana cases, an insurer that abandons its insured sued in a tort action is bound by any factual determination in that action when the insurer later attempts to deny coverage. However, the insurer is not bound by that judgment if it is not clear on which theory the judgment is based, if the insurer has paid independent counsel for the insured's defense under a sufficient reservation of rights, if the insurer has filed a declaratory judgment action to determine coverage before final judgment in the underlying tort action, or under any combination of the above.

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