

## Illinois Supreme Court Rules That For Purposes Of Policy Coverage, Offense Of Malicious Prosecution Occurs At Time Of Prosecution, Not Exoneration

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The Supreme Court of Illinois ruled that primary and excess liability insurers had no duty to indemnify a malicious prosecution claim, finding that the operative “occurrence” for triggering coverage was the original prosecution, not the later exoneration. *Sanders v. Illinois Union Ins. Co.*, 2019 WL 6199651 (Ill. Nov. 21, 2019).

Following his prosecution in 1994, Rodell Sanders spent 20 years in prison for crimes he did not commit. After his exoneration, he sued Chicago Heights for malicious prosecution. The City’s insurers disclaimed coverage on the basis that there was no “occurrence” during the policy period. The insurers argued that the operative event for coverage purposes was the 1994 prosecution, and that Sanders’ exoneration in 2014 did not trigger coverage under the 2011-2014 policy period.

An Illinois trial court granted the insurers’ motion to dismiss. The trial court acknowledged that a requisite element of malicious prosecution is exoneration, but reasoned that coverage under the policies turns on an “act and injury during the policy period, rather than the accrual of a completed cause of action.” A split appellate panel reversed. The appellate court reasoned that because the policy expressly covered the “offense” of malicious prosecution, the operative trigger for coverage was the “completed cause of action” (*i.e.*, exoneration).

The Illinois Supreme Court reversed, ruling that malicious prosecution occurs, for insurance coverage purposes, at the time of prosecution. The court explained that the prosecution itself was the operative “offensive conduct” and that nothing in the policy required all of the elements of the tort to be satisfied in order to trigger coverage. The court stated: “If we were to deem exoneration the trigger for coverage of a malicious prosecution claim, liability could be shifted to a policy period in which none of the acts or omissions giving rise to the claim occurred. That would violate the intent of the parties to an occurrence-based policy.”

As discussed in our [June 2019 Alert](#), the Fifth Circuit ruled that insurers were obligated to defend a suit arising out of wrongful imprisonment, notwithstanding that the arrests and convictions occurred before the relevant policies incepted. *Travelers Indem. Co. v. Mitchell*, 925 F.3d 236 (5th Cir. 2019). There, the court reasoned that injuries suffered by the underlying plaintiffs while incarcerated (and during the operative policy periods) triggered a duty to defend even though the wrongful causal acts (*i.e.*, arrest and conviction) occurred decades earlier. Importantly, the Fifth Circuit noted that the duty to defend was not triggered by the ongoing false imprisonment alone and that it was not

applying a “continuous trigger.” Rather, the court explained that the policies were triggered because the underlying complaint alleged bodily injuries during the policy periods that were distinct from the original convictions.

Authors and  
Contacts

Bryce Friedman  
Partner  
[bfriedman@stblaw.com](mailto:bfriedman@stblaw.com)  
[+1-212-455-2235](tel:+12124552235)

