

## Court May Consider Extrinsic Evidence When Analyzing Duty to Defend Issues in Certain Circumstances

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In *Olson v. Farrar*, the Wisconsin Supreme Court held that in some cases a circuit court making a determination on whether an insurer owes a duty to defend may consider extrinsic evidence because the four-corners rule is satisfied once an insurer assumes the defense of its insured. Olson purchased a mobile home trailer and asked Farrar's assistance in moving it to a different location. Farrar hitched the mobile home trailer to his tractor, which stalled in transit. As a result, the mobile home trailer rolled backwards and crashed into Olson's vehicle. Olson sued, alleging Farrar was liable for the damage to Olson's mobile home trailer and vehicle.

Farrar's insurer initially agreed to provide a defense to Farrar, but, after it intervened and the circuit court bifurcated the coverage issues from the liability/damages issues, the insurer sought a declaration that it did not have a duty to defend or indemnify Farrar. Due to certain exclusions within the policy, there would be coverage only if three conditions were met: (a) the property damage "resulted from" a mobile home trailer; (b) the mobile home trailer was not attached to a "motor vehicle"; and (c) the damaged property was not "occupied by, used by, or in the care of" Farrar. Farrar opposed his insurer's motion and, in doing so, submitted an affidavit that recounted his version of the accident and contained information about his tractor. The circuit court concluded there was no coverage, and the court of appeals reversed.

The Wisconsin Supreme Court considered two issues: (1) whether the four-corners rule prevented the consideration of the extrinsic evidence Farrar presented; and (2) whether there was coverage under the policy. As to the first issue, the court held that the extrinsic evidence may be considered. It reasoned that the purpose of the four-corners rule—to ensure that insurers do not frustrate the expectations of their insureds by prematurely resolving coverage issues in their own favor—is served once the insurer elects to provide a defense pending a final determination on coverage. On the one hand, the court observed that there are times when the issue of coverage is strictly a matter of interpretation of the insurance policy. In such circumstances, circuit courts may not need to consider any extrinsic evidence to make a coverage determination; they can simply rely on the provisions of the policy and the allegations in the complaint. On the other hand, the supreme court also observed that there are times when the facts bearing on the issue of coverage are disputed and a coverage determination cannot be made until the factual disputes are resolved in the circuit court. On those latter occasions, a circuit court may consider extrinsic evidence relevant to the coverage issue when it makes a coverage determination.

As to whether there was coverage for the claim itself, the court reviewed the three issues listed above. The court concluded that the policy terms "results from" and "motor vehicle" were ambiguous. However, because there remained a factual dispute concerning the "occupied by, used by, or in the care of" exclusion, the supreme court remanded the case for resolution of the factual dispute.

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