

The Wisconsin Court Of Appeals Holds That An Insurer's Duty To Defend Ends After All At Least Arguably Covered Claims Are Dismissed

Jun 15 2012

Posted By: Heidi L. Vogt & Nicholas D. Castronovo

Practice Area: Insurance Coverage and Risk Management

In *Society Ins. v. Bodart*, 2012 WL 2036037 (Wis. Ct. App. June 7, 2012), the Wisconsin Court of Appeals held that an insurer did not have a duty to defend its insured after the only arguably covered claim in a lawsuit against the insured was dismissed, leaving only non-covered claims. The underlying lawsuit included five claims against the insured who submitted the claims to his insurer to defend. The insurer next brought a separate declaratory judgment action asking the trial court to determine whether the insurer had a duty to defend the insured. The trial court found the insurance policy provided at least arguable coverage for only one of the five claims. Therefore, the court ordered that the insurer had a duty to defend the entire action. After the court's order, the insurer assumed the defense and settled three of the five claims, including the one claim the court had concluded was at least arguably covered. Accordingly, the insurer withdrew its defense of the remaining two claims. The insured then filed a contempt motion arguing its insurer violated the court's duty to defend order and should defend the remaining two claims. The trial court denied the motion and this appeal followed.

In a case of first impression in Wisconsin, the issue before the court of appeals was whether the insurer had a continuing duty to defend its insured after the only arguably covered claim against its insured was dismissed, leaving only non-covered claims. After reviewing the insurance policy, case law from other jurisdictions, and treatises, the court of appeals held that an insurer's duty to defend ends after all at least arguably covered claims are settled and dismissed. The court also ruled that the insurer was not required to first seek the court's permission to withdraw after the only arguably covered claim was dismissed.

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.

