

SURVEY OF ILLINOIS LAW: INSURANCE LAW

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I. INTRODUCTION

This survey analyzes changes in Illinois insurance law enacted during the 2009 calendar year. Its purpose is to summarize key outcomes of binding precedent rather than focus on every change within the calendar year. This survey was written on behalf of the Illinois State Bar Association Insurance Law Council with the joint efforts of the Southern Illinois University Law Journal. This article is divided by the relevant topical practice areas it covers.

II. HEALTH INSURANCE FOR DEPENDENTS

Effective June 1, 2009, accident and health insurance policies or managed care plans delivered, issued, or renewed, that offer coverage for unmarried dependents must abide by the new Illinois law which extends the age of dependency under the policy to 26 for non-military dependents and 30 for military dependents.¹ Insurers are required to provide at least a 90 day enrollment period for dependents to elect coverage and cannot deny coverage to the dependent on the basis of pre-existing conditions or due to lack of enrollment in an educational institution.² After the enrollment period closes the dependent must qualify for coverage under the terms of the policy or plan. Policies or plans may restrict benefits to dependents on the basis of policy language.³

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1. 215 ILL. COMP. STAT. ANN. 5/356Z.12 (West 2010).
2. *Id.*
3. *Id.*

III. OCCURRENCES

A. Policy Interpretation

The case of *Insurance Corporation of Hanover v. Shelborne Associates* illustrates how policies are interpreted.⁴ Shelborne sent Travel 100 mass unsolicited fax advertisements.⁵ Travel 100 sought to recover from Shelborne, along with those in a class similarly situated, alleging three counts: 1) violation of the Telephone Consumer Protection Act of 1991 (“TCPA”) by unsolicited facsimile advertising and (by amended complaint) unsolicited intrusion into privacy and seclusion, 2) common law conversion, and 3) trespass to chattels.⁶

Shelborne tendered the lawsuit to Hanover, its general commercial liability insurer.⁷ Hanover moved for declaratory judgment to establish no coverage was owed to Shelborne.⁸ The trial court granted summary judgment in favor of Shelborne, finding that Hanover had a duty to defend Shelborne on counts two and three, conversion and trespass, finding potential coverage in the facts of the complaint.⁹ The court found that there was advertising injury in violation of TCPA, which pursuant to a 2005 Illinois Supreme Court decision held TCPA protects privacy in seclusion.¹⁰

Hanover appealed and claimed it had no duty to defend Shelborne under count one because of policy exclusions for prior publication and knowingly violating another’s rights.¹¹ They further claimed counts two and three were barred from coverage because there was not an “occurrence,” the policy excludes “expected or intended” damages, and trial court error in not considering the prematurity doctrine.¹²

It was undisputed there was property damage.¹³ Shelborne used Travel 100’s phone line during the fax transmittals and converted their toner and paper to print the transmittals.¹⁴ The policy applied if property damage was caused by an occurrence, defined as an accident, including repetitive

4. *Ins. Corp. of Hanover v. Shelborne Assoc.*, 389 Ill. App. 3d 795, 905 N.E.2d 976 (1st Dist. 2009).

5. *Id.* at 796, 905 N.E.2d at 979.

6. *Id.*

7. *Id.*

8. *Id.* at 797, 905 N.E.2d at 980.

9. *Id.*

10. *Id.* (citing *Valley Forge Ins. Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 356, 860 N.E.2d 307 (2006)).

11. *Shelborne*, 389 Ill. App. 3d at 797, 905 N.E.2d at 980.

12. *Id.* at 798, 905 N.E.2d at 980.

13. *Id.* at 800 905 N.E.2d at 982.

14. *Id.*

exposure.¹⁵ It excluded injury the insured expects or intends.¹⁶ Illinois courts have similarly defined an occurrence as an unintended event and focus the exclusion on the insured's intent.¹⁷

The facts set forth in the complaint were insufficient to determine Shelborne's intent, because Shelborne could have believed the faxes transmitted to Travel 100 were welcomed and hence negligently transmitted.¹⁸ If transmittal was negligent, the policy would have responded to defend the occurrence.¹⁹ Shelborne's intent was a question of fact and questions of fact are not appropriately determined in an action for declaratory judgment.²⁰ Hanover had a duty to defend Shelborne because the property damage alleged could fall within the terms of general commercial liability coverage.²¹ Hanover's duty to defend made further court analysis unnecessary.²²

B. Negligent Omission

The case of *Addison Insurance Company v. Fay* established rules of construction in determining an occurrence.²³ Two teenage boys were reported missing and three days later, their dead bodies were found stuck in an excavation pit of wet clay on Parrish's property.²⁴ Investigators concluded the boys were taking a shortcut home when they cut across Parrish's improperly secured land.²⁵ One boy became trapped in the pit and the other became trapped trying to save the first.²⁶ Expert testimony was inconclusive to the times of death, and each boy's family sought recovery against Parrish, whose insurer, Addison, responded.²⁷ Addison agreed to settle the deaths as one occurrence under the terms of the policy at the per occurrence limit of one million dollars.²⁸ Addison claimed the deaths were one occurrence rather than two occurrences because there was a sole negligent omission, failing to properly secure the property, and no intervening act between the deaths.²⁹ The

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 802, 905 N.E.2d at 984.

19. *Id.* at 803, 905 N.E.2d at 984.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446, 905 N.E.2d 747 (2009).

24. *Id.* at 448–49, 905 N.E.2d at 860.

25. *Id.* at 450, 905 N.E.2d at 861.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

boys' families sought recovery of the general aggregate limit, two million dollars, claiming two occurrences.³⁰ The court took to the task of determining what constitutes an occurrence with a negligent omission.³¹

Although the policy defined occurrence it did not define what constitutes a single occurrence.³² Relying on rules of construction, the court turned to the parties' intent and concluded that Parrish did not intend to expose himself to excess liability for multiple claims when purchasing the insurance policy.³³ The court rejected Addison's argument that one negligent omission is one occurrence and instead adopted a limiting test to determine the number of occurrences that result from a single negligent omission.³⁴ The time and space test limits an occurrence to events that an average person would think are so closely related in both time and space to be considered a single event.³⁵

The time and space between the boys' deaths was uncertain, but it was clear that one boy died trying to save the other.³⁶ The deaths of the two boys, however, could have been as short as a few seconds apart or as lengthy as several days apart.³⁷ Addison, thus, did not meet its burden of proof in establishing the deaths were one occurrence.³⁸ Each death was treated as a separate occurrence under the policy and Addison was liable for paying out the two million general aggregate.³⁹

C. Fraud Covered Under Bond

In *First State Bank of Monticello v. Ohio Casualty Insurance*, First State Bank purchased a fidelity bond from Ohio Casualty to insure itself, in part, against loss resulting directly from false pretenses committed on the bank's premises.⁴⁰ It was undisputed that James Stilwell and his agents perpetrated a fraudulent scheme against First State by taking money orders in exchange for checks drawn against a bank account with a negative balance.⁴¹ Ohio Casualty argued the fraud was not covered under the terms of the bond because it was

30. *Id.*

31. *Id.* at 455, 905 N.E.2d at 864.

32. *Id.*

33. *Id.* at 458, 905 N.E.2d at 865.

34. *Id.* at 459, 905 N.E.2d at 866.

35. *Id.* at 461, 905 N.E.2d at 867.

36. *Id.* at 462, 905 N.E.2d at 868.

37. *Id.*

38. *Id.*

39. *Id.* at 462-63, 905 N.E.2d at 868.

40. *First State Bank of Monticello v. Ohio Cas. Ins.*, 555 F.3d 564 (7th Cir. 2009).

41. *Id.* at 566.

not a direct loss, defined as actual depletion of funds.⁴² First State did not know they were defrauded until the checks were not honored.⁴³ The court rejected Ohio's argument, because the gap in time until the bank knew it was defrauded did not change the fact that the fraud occurred on the bank's premises and First State's funds were depleted at the moment money orders were exchanged for the bad checks.⁴⁴ Ohio raised tort claims, such as contribution, that were expressly rejected.⁴⁵ The court stated that in Illinois, bonds are interpreted as contract actions and it has been that way for the past century.⁴⁶ The court held that contract language must be given its plain and ordinary meaning and thus, First State's recovery was permitted under the language of the bond.⁴⁷

D. Life Insurance Reassignment

In *Stilwell v. American General Life Insurance Company*, American General insured Mr. James Stilwell's life with a 4 million dollar policy.⁴⁸ Named beneficiaries at policy issuance were his wife with a 60 percent interest and his four daughters with equal interests in the remaining 40 percent.⁴⁹ After issuance, to finance a family business, the rights to the 4 million were assigned to Janko, in accordance with a guarantee of their contract.⁵⁰ American General was notified of the assignment and recorded it and Janko then transferred its rights and obligations to Tuscola Furniture Group by an assignment and assumption agreement.⁵¹ On the release of assignment notice, a representative of Janko replaced the word "release" with his own words "[i]n favor of Tuscola Furniture Group, LLC," because he was concerned about the meaning of "release."⁵² The form was returned to American General, who recorded the notice as a release rather than a reassignment.⁵³

The Stilwells' contract with Janko was revised, lessening the guarantee needed and Mrs. Stilwell executed two new smaller assignments in favor of

42. *Id.* at 569.

43. *Id.*

44. *Id.* at 569–70.

45. *Id.* at 570.

46. *Id.*

47. *Id.* at 572.

48. *Stilwell v. Am. Gen. Life Ins. Co.*, 555 F.3d 572, 574 (7th Cir. 2009).

49. *Id.*

50. *Id.* at 574–75.

51. *Id.* at 575.

52. *Id.*

53. *Id.*

Tuscola.⁵⁴ Tuscola advised Mrs. Stilwell that both assignments were inadequate and thus, it would not release the existing assignments until the deficiencies in the later assignments were cured.⁵⁵

Mr. Stilwell died and American General's obligations under the policy were triggered.⁵⁶ American General originally did not pay out the reassignment to Tuscola because it classified the reassignment as a release.⁵⁷ Once American General was provided an explanation why the language in the notification agreement was altered, the assignment was properly classified and proceeds were paid to Tuscola.⁵⁸

Mrs. Stilwell had her bankruptcy discharged and then went after American General for policy proceeds, knowing all proceeds were already paid.⁵⁹ She argued American General breached the life insurance contract, and the crux of her breach argument was insufficient notice.⁶⁰ A provision of the life insurance policy required American General to be notified of an assignment and for the assignment to be recorded before American General would be bound to it.⁶¹ Mrs. Stilwell claimed since notice was not sent to American General for two weeks, and when sent, recorded as a release, the assignment was invalid.⁶² The court dismissed this reasoning, due to the fact that Illinois law deems an assignment as complete with manifestation of intent.⁶³ Notice does not have a bearing on whether an assignment exists, but rather, a notice provision of a policy is instead for the insurer's protection.⁶⁴ Accordingly, the insurer is the only one who can object to the notice, and therefore, the court did not find breach and found in favor of American General.⁶⁵

E. False Pretenses Under Business Protection Policy

In the case of *Joe Cotton Ford, Inc. v. Illinois Emcasco Insurance Company*, Joe Cotton Ford, Inc. ("Cotton"), a car dealership, entrusted its

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 576.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 577.

64. *Id.*

65. *Id.*

employee Ron Drendel to purchase and sell cars to benefit the dealership.⁶⁶ Drendel purchased over a million dollars worth of vehicles without entering them into Cotton's inventory, removed and sold the cars with their respective titles for his own benefit.⁶⁷

When Cotton learned of the fraudulent scheme, it sought financial recovery for its losses under a business protection insurance policy that it had purchased from Emcasco Insurance Company ("EIC").⁶⁸ EIC moved for summary judgment attempting to establish that the claims were not covered under the policy due to its "False Pretenses Exclusion," which provided no coverage for auto loss from voluntary parting due to trick or false pretenses.⁶⁹ The circuit court agreed and entered the order for summary judgment.⁷⁰

Cotton appealed arguing that there was a genuine issue of material fact, claiming it did not voluntarily part with the autos, whereas EIC claimed parting was voluntary.⁷¹ Illinois case law had not interpreted false pretenses exclusion language in an employee conversion case, so the appellate court turned to Minnesota's Supreme Court decision in *Bjorklund v. Aetna Casualty & Surety Company*⁷² as persuasive authority.⁷³ The exclusionary language of the policy in that case was very similar to the language in the EIC policy.⁷⁴

In *Bjorklund*, the court found the plain policy language, itself, sufficient for determination that the exclusion applied.⁷⁵ Factually distinguishable, Drendel had access to car titles in the course of his job with Cotton, unlike the employee in *Bjorklund*.⁷⁶ Even the dissent in *Bjorklund* noted it would have agreed with the majority's decision that the false pretenses exclusion is applicable, rather than find theft, if the employee had access to the car titles in the course of his job as found in the case at hand.⁷⁷ Citing *Nelson v. Pennsylvania Fire Insurance Company*,⁷⁸ the appellate court advised that "the language of the false pretenses exclusion applies whenever the insured, or

66. *Joe Cotton Ford, Inc. v. Ill. Emcasco Ins. Co.*, 389 Ill. App. 3d 718, 906 N.E.2d 1279 (1st Dist. 2009).

67. *Id.* at 719, 906 N.E.2d at 1280.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 720, 906 N.E.2d at 1282.

72. *Id.* at 721, 906 N.E.2d at 1283 (citing *Bjorklund v. Aetna Cas. & Surety Co.*, 306 N.W.2d 838 (Minn. 1981)).

73. *Cotton*, 389 Ill. App. 3d at 721, 906 N.E.2d at 1283.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 721–22, 906 N.E.2d at 1283.

78. *Id.* at 722, 906 N.E.2d at 1284 (citing *Nelson v. Penn. Fire Ins. Co.*, 154 Neb. 199, 201, 47 N.W.2d 432, 433 (Neb. 1951)).

anyone acting for the insured with express or implied authority to do so, voluntarily parts with possession of a vehicle covered thereby.”⁷⁹

Cotton expressly gave Drendel authority to part with possession of vehicles.⁸⁰ Even though Cotton’s trust was misplaced, it did not change the fact that the plain language of the false pretenses exclusion was applicable.⁸¹ The circuit court’s decision in favor of summary judgment for EIC was affirmed.⁸²

IV. DEFENSE

A. Duty to Defend

The First District dealt with a case where the question of a duty to defend arose.⁸³ Here, Olsak, a seventeen-year-old hockey player and Pecoraro, coach of Fremd High School Hockey Club (“Hockey Club”), engaged in a verbal altercation.⁸⁴ As Pecoraro walked away from Olsak, Olsak struck Pecoraro in his back with a hockey stick and then in the temple.⁸⁵ Pecoraro fell on the concrete floor, hit his head, and suffered permanent brain damage.⁸⁶ Pecoraro filed suit, and the complaint listed three counts: (i) assault and battery against Olsak; (ii) negligence by the Hockey Club and some of its individual board members, including manager, Ed Pudlo, who knew of Olsak’s propensity toward violence but failed to control him; and (iii) negligent parental supervision against Ed Pudlo.⁸⁷

Olsak filed an answer denying all counts of the complaint and asserted an affirmative defense of provocation, and he later added an additional affirmative defense of perceived imminent harm.⁸⁸ Country Mutual Insurance Company (“Country Mutual”) issued a homeowner’s policy to Olsak’s stepfather, Ed Pudlo, and a personal and professional umbrella liability policy to both Ed Pudlo and Olsak’s mother, Desiree Pudlo.⁸⁹ Olsak was an insured under both policies.⁹⁰ The homeowner’s policy provided payment on behalf

79. *Cotton*, 389 Ill. App. 3d at 722, 906 N.E.2d at 1284.

80. *Id.*

81. *Id.* at 723, 906 N.E.2d at 1284.

82. *Id.*

83. *Country Mutual Ins. Co. v. Olsak*, 391 Ill. App. 3d 295, 908 N.E.2d 1091 (1st Dist. 2009).

84. *Id.* at 296, 908 N.E.2d at 1094.

85. *Id.* at 297, 908 N.E.2d at 1094.

86. *Id.*

87. *Id.* at 297–98, 908 N.E.2d at 1095.

88. *Id.* at 298, 908 N.E.2d at 1095.

89. *Id.*

90. *Id.* at 299, 908 N.E.2d at 1096.

of its insured for bodily injury caused by an occurrence, defined as an accident.⁹¹ The umbrella policy indemnified its insured for “ultimate net loss in excess of the retained limit” because of personal injury.⁹² Personal injury was defined as assault and battery not for purpose of protecting self or others.⁹³ Both policies excluded coverage for the damages caused by intentional act.⁹⁴

Country Mutual hired counsel for Pudlo to represent him on Count I and additional, separate counsel to represent him on Count II, while Count III was dismissed with prejudice.⁹⁵ Country Mutual denied coverage to Olsak based on his intentional conduct alleged in the complaint and eventually filed a declaratory judgment action to declare it had no requirement to defend or indemnify Olsak.⁹⁶ Then, Country Mutual filed a motion for summary judgment on its complaint for declaratory judgment.⁹⁷ Pecoraro settled Count I with Olsak for \$5,000 plus Olsak’s rights to any potential claims he had against Country Mutual for denying him a defense.⁹⁸ Counsel amended Olsak’s affirmative defenses for the second time and counterclaimed, alleging Country Mutual acted in bad faith by relying on the original complaint when denying Olsak’s defense without ever speaking to Olsak, and left Olsak to represent himself or find alternate representation at his own expense.⁹⁹ Country Mutual filed “a motion to dismiss the second amended affirmative defenses, and a motion for summary judgment on the counterclaim.”¹⁰⁰ The trial court dismissed with prejudice the second amended affirmative defenses, granted Country Mutual summary judgment on its complaint and declared that Country Mutual had no duty to defend or indemnify Olsak.¹⁰¹ The trial court also granted Country Mutual summary judgment on Olsak’s counterclaim.¹⁰²

On appeal, the issue was whether the trial court erred in granting summary judgment on the complaint and counterclaim and dismissing the second amended affirmative defenses.¹⁰³ Defendants contended Country Mutual furthered its own interest and hindered Olsak’s interest by not

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 300, 908 N.E.2d at 1097.

99. *Id.*

100. *Id.* at 301, 908 N.E.2d at 1097.

101. *Id.*

102. *Id.*

103. *Id.* at 301, 908 N.E.2d at 1098.

providing him independent counsel.¹⁰⁴ The court cited *Murphy v. Urso*¹⁰⁵ and *Williams v. American Country Insurance Company*,¹⁰⁶ which both held, when interests are “diametrically opposed” the insurer is obligated to provide a “full and vigorous defense” to both parties.¹⁰⁷ Country Mutual contended this case was distinguishable because a duty to defend both parties never arose; they had a duty to defend only one party, Pudlo.¹⁰⁸ Intentional acts were not occurrences and were excluded under both policies, as it never had a duty to defend Olsak.¹⁰⁹ Since a duty to defend only one party arose, Country Mutual could not be charged with representing “diametrically opposed” interests.¹¹⁰

Country Mutual cited *Allstate Insurance Company v. Kovar*¹¹¹ for precedent that battery is not an occurrence.¹¹² The court said the case did not help Country Mutual, instead, it supported that a criminal conviction is “*only prima facie*, not conclusive, evidence of an insured’s intent.”¹¹³ Furthermore, in *Cowan v. Insurance Company of North America*,¹¹⁴ the court held in order for an insurance company to have no liability on the basis of policy exclusion, the intent to injure must be specifically demonstrated by the company.¹¹⁵ The court held Pudlo and Olsak each deserved “full and vigorous defense.”¹¹⁶

Pudlo and Olsak had a conflict of interest in defense strategy, and it was best for Pudlo to argue Olsak intentionally harmed Pecoraro by an isolated and unforeseeable criminal act that did not fall within a master-servant relationship.¹¹⁷ On the other hand, it was best for Olsak to argue his affirmative defenses that he unintentionally acted in self-defense after provocation and without proper supervision by the Hockey Club and its members.¹¹⁸ Country Mutual would have been unable to fully defend Pudlo

104. *Id.*

105. *Id.* at 303, 908 N.E.2d at 1099 (citing *Murphy v. Urso*, 88 Ill. 2d 444, 430 N.E.2d 1079 (1981)).

106. *Olsak*, 391 Ill. App. 3d at 303, 908 N.E.2d at 1099 (citing *Williams v. Am. Country Ins. Co.*, 359 Ill. App. 3d 128, 833 N.E.2d 971 (1st Dist. 2005)).

107. *Olsak*, 391 Ill. App. 3d at 303–04, 908 N.E.2d at 1100.

108. *Id.* at 304, 908 N.E.2d at 1100.

109. *Id.*

110. *Id.*

111. *Olsak*, 391 Ill. App. 3d at 306, 908 N.E.2d at 1102 (citing *Allstate Ins. Co. v. Kovar*, 363 Ill. App. 3d 493, 842 N.E.2d 1268 (2nd Dist. 2006)).

112. *Olsak*, 391 Ill. App. 3d at 303, 908 N.E.2d at 1100.

113. *Olsak*, 391 Ill. App. 3d at 307, 908 N.E.2d at 1103 (citing *Allstate Ins. Co. v. Carioto*, 194 Ill. App. 3d 767, 775, 551 N.E.2d 382, 387 (1st Dist. 1990)).

114. *Olsak*, 391 Ill. App. 3d at 305, 908 N.E.2d at 1101 (citing *Cowan v. Ins. Co. of Am.*, 22 Ill. App. 3d 883, 318 N.E.2d 315 (1st Dist. 1974)).

115. *Olsak*, 391 Ill. App. 3d at 306, 908 N.E.2d at 1102.

116. *Id.* at 304, 908 N.E.2d at 1101.

117. *Id.*

118. *Id.*

without harming Olsak, and vice versa, since each party's full defense would harm the other by supporting Pecoraro's allegations.¹¹⁹ The court stated, "[w]hen there is a conflict of interest between an insurer and the insured, instead of participating in the defense itself, the insurer must decline to defend and pay the costs of independent counsel for the insured."¹²⁰ After finding a conflict of interest existed, the appeals court remanded the case back to the trial court to determine if Olsak was prejudiced when Country Mutual did not provide him with a defense and held "the trial court erred when it granted summary judgment on Country Mutual's complaint and defendants' counterclaim and dismissed with prejudice the second amended affirmative defenses."¹²¹

B. No Duty to Defend

Another question of an obligation for an insurer to defend its insured arose before the Third District in 2009.¹²² On September 24, 2001, a defamation suit was filed against Yorkville National Bank ("Yorkville") an insured of West American Insurance Company ("West American") under a commercial general liability policy.¹²³ The policy's notice provision required Yorkville to notify West American in writing of any claim or suit as soon as practicable as well as record its specifics and date received.¹²⁴ On January 19, 2004, Yorkville provided West American written notice of the suit scheduled to commence on March 15, 2004.¹²⁵

West American filed a complaint for declaratory judgment in circuit court on March 9, 2004, contending it did not owe coverage to Yorkville because written notice was provided 27 months after suit was filed, eight weeks prior to trial, and after discovery ended, in breach of the policy provision requiring written notice as soon as practicable.¹²⁶ Yorkville alleged notice was orally provided on six occasions to its West American agent, constituting actual notice, and triggering West American's duty to defend.¹²⁷

119. *Id.* at 302, 908 N.E.2d at 1099.

120. *Olsak*, 391 Ill. App. 3d at 302, 908 N.E.2d at 1098 (citing *Ill. Masonic Med. Ctr. v. Turegum Ins. Co.*, 168 Ill. App. 3d 158, 163, 522 N.E.2d 611, 613 (1st Dist. 1988)).

121. *Olsak*, 391 Ill. App. 3d at 308, 908 N.E.2d at 1102.

122. *W. Am. Ins. Co. v. Yorkville Nat'l Bank*, 388 Ill. App. 3d 769, 902 N.E.2d 1275 (3d Dist. 2009).

123. *Id.* at 770-71, 902 N.E.2d at 1277.

124. *Id.* at 771, 902 N.E.2d at 1277.

125. *Id.*

126. *Id.*

127. *Id.*

The circuit court relied on the Illinois Supreme Court's decision in *Cincinnati v. West American Insurance Company*¹²⁸ and found West American bore the burden to follow-up, find out what the suit was about, and defend; it had actual notice.¹²⁹ Thus, knowledge of the suit was imputed to West American through their agent.¹³⁰ West American appealed and the appellate court reviewed the circuit court's application of *Cincinnati* and found the case misapplied.¹³¹ The court found that *Cincinnati* narrowly stands for the proposition that tender is not necessary when there is actual notice.¹³² The case did not examine an insurer's defenses nor did it address policy condition precedents.¹³³ The Illinois Supreme Court addressed both of these relevant issues in *Country Mutual Insurance Company v. Livorsi Marine, Inc.*¹³⁴ Although *Cincinnati* requires defense with actual notice, it does not waive the plain language contract provisions of the policy.¹³⁵ The policy required written notice in a practicable time and since 27 months was not practicable, the notice requirement was breached and the court did not address whether oral notice was actual notice.¹³⁶ The appellate court reversed the circuit court's decision and granted declaratory judgment in favor of West American.¹³⁷ The Illinois Supreme Court accepted this case on appeal.¹³⁸

V. CONCLUSION

Illinois courts have continued to enforce policies as written, using rules of policy construction to interpret unclear and ambiguous terms. Precedents and statutory guidance from the Illinois General Assembly assist with the interpretation of insurance policies and their terms in relation to Illinois public policy and law. The 2009 calendar year provided instructive case law in the area of Insurance Law.

128. *Id.* at 772, 902 N.E.2d at 1278 (citing *Cincinnati v. W. Am. Ins. Co.*, 183 Ill. 2d 317, 701 N.E.2d 499 (1988)).

129. *Yorkville*, 388 Ill. App. 3d at 772, 902 N.E.2d at 1278.

130. *Id.* at 773, 902 N.E.2d at 1279.

131. *Id.* at 774, 902 N.E.2d at 1279.

132. *Id.*

133. *Id.*

134. *Id.* (citing *Country Mut. Ins. Co. v. Livorsi Marine, Inc.*, 222 Ill. 2d 303, 856 N.E.2d 338 (2006)).

135. *Yorkville*, 388 Ill. App. 3d at 775, 902 N.E.2d at 1280.

136. *Id.*

137. *Id.* at 781, 902 N.E.2d at 1285.

138. *Id.*