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ALERT

Utah Supreme Court: Extrinsic Evidence Relevant to Applicability of I v. I Exclusion

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The Supreme Court of Utah has held that, under Utah law, a court may consider extrinsic evidence to determine an insurer's duty to defend where the insurance policy conditions the duty to defend on information outside the underlying complaint. *Equine Assisted Growth & Learning Assoc. v. Carolina Cas. Ins. Co.*, 2011 WL 3652331 (Utah Aug. 19, 2011). In doing so, the court upheld an appellate court decision in which the court of appeals determined that the trial court erred in not considering extrinsic evidence when it determined that an insurer had no duty to defend based on a policy exclusion.

A former CEO and trustee of an association filed a lawsuit against the association's board of trustees after his employment was terminated. The former CEO captioned the complaint to identify the association as the plaintiff and signed the complaint as the "President and CEO" of the association, despite having no authority to sue on behalf of the association. He voluntarily dismissed the litigation after the association, in defending the lawsuit on behalf of itself and the board of trustees, demonstrated that he had no standing to sue on behalf of the association.

The association sought coverage for its defense expenses under a nonprofit organization liability policy. The insurer denied coverage based on an exclusion for "any Claim made against an Insured . . . by, on behalf of, or in the right of the Insured Entity" (the "Insured v. Insured Exclusion"). The association argued that extrinsic evidence was admissible to determine whether the underlying complaint had actually been filed "by, on behalf of, or in the right of" the association as required by the exclusion. The Supreme Court of Utah agreed with the association that whether a court may consider extrinsic evidence depends on the policy terms that define the scope

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of the duty to defend. Thus, the Court stated that "when policy terms define the scope of the duty to defend in reference to something other than the allegations in the complaint, a court may look beyond the text of the complaint to determine whether the duty has been triggered." In this case, the Court concluded that an analysis limited to the policy and underlying complaint failed to answer whether the claim was brought "by, on behalf of, or in the right of" the association when the complaint was incorrectly captioned. The Court rejected the insurer's argument that any rule other than an "eight corners" analysis would be unworkable and noted that the insurer could have drafted the exclusion in a way in which the matter would have fallen within the "eight corners" rule had it wished to do so.