Insurer Cannot Intervene In Tort Action

Generally, insurers cannot intervene in underlying tort actions against their insureds to litigate coverage issues. *See Cromer v. Sefton*, 471 N.E.2d 700 (Ind. Ct. App. 1984). Coverage issues between an insurer and the insured are new matters that do not concern or involve the primary plaintiff. *Id*. at 704. "To permit intervention by the insurer to litigate coverage in the principal tort case against its insured would distract the trier and literally force the plaintiff to become embroiled in a matter in which she does not yet have an interest." *Id*.

Furthermore, where an underlying tort action raises the possibility of a conflict between the insurer and the insured's interests, the insurer may not control the insured's defense. *See Snodgrass v. Baize*, 405 N.E.2d 48, 53 (Ind. 1980). For example, where the insured would favor a finding of negligent conduct in the underlying action, thereby triggering coverage, and the insurer would favor a finding of intentional conduct thereby excluding coverage, the insurer may not control the defense due to the possibility of prejudice to the insured. *Id*.

In *Snodgrass*, the Indiana Supreme Court determined that an insurer is not estopped from trying coverage issues in a supplemental proceeding where it did not control the defense of the insured in the underlying suit and where it would have had a conflict with the insured in the defense of the underlying suit. Of course, if an insurer provides its own counsel for the insured's defense, thereby controlling the defense, it will be estopped from retrying issues determined by trier of fact in the underlying action. Therefore, where a jury makes a finding of fact in the underlying tort action, the insurer is not bound by that finding in a supplemental proceeding to determine coverage.

Where an insurer defends its insured under a reservation of rights in the underlying tort action, it will not be estopped from raising coverage issues in a supplement proceeding regarding coverage. *See State Farm Mutual Automobile Ins. Co. v. Glasgow*, 478 N.E.2d 918, 923 (Ind. Ct. App. 1985).