2014 IL App (2d) 130803-U
No. 2-13-0803
Order filed June 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

AMERICAN ALTERNATIVE INSURANCE CO.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellant,	)	
v.	)	No. 12-MR-0862
LISLE-WOODRIDGE FIRE PROTECTION DISTRICT and CHICAGO METROPOLITAN FIRE PROTECTION CO., ADT SECURITY SERVICES, INC., ALARM DETECTION SERVICES, INC., D.M.C. SECURITY SYSTEMS, INC., ILLINOIS ALARM SYSTEMS, INC., and SMG SECURITY SYSTEMS, INC.,	)	Honorable Terrence M. Sheen, Judge, Presiding.
Defendants-Appellees.	)	

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Because, based on the allegations in the underlying federal lawsuit, the District's acts are potentially covered by the insurance policy's coverage provisions, plaintiff has a duty to defend the District. Similarly, because Chicago Metro is potentially an additional insured under the policy's coverage provisions, plaintiff has a duty to defend Chicago Metro. Thus, we affirmed the trial court.

¶ 2 In 2012, plaintiff, American Alternative Insurance Company, filed a declaratory judgment action against defendants, Lisle-Woodridge Fire Protection District (the District), Chicago Metropolitan Fire Prevention Company (Chicago Metro), ADT Security Services, Inc., Alarm Detection Services, Inc., D.M.C. Security Systems, Inc., Illinois Alarm Services, Inc., and SMG Security Systems, Inc. (collectively, the Alarm Companies). Plaintiff's complaint requested a finding that, pursuant to an insurance policy, it did not have a duty to defend the District or Chicago Metro in a related matter in federal court. The trial court entered an order granting Chicago Metro's motion for a judgment on the pleadings and finding that plaintiff had a duty to defend Chicago Metro. The trial court further granted the District's motion for summary judgment, finding that plaintiff had a duty to defend the District. On appeal, plaintiff contends that the trial court erred when it (1) found that the allegations in the federal lawsuit allege a "wrongful act," as defined in the insurance policy; (2) found that the allegations in the federal lawsuit allege Chicago Metro's vicarious liability for the District's acts, which satisfy the "additional insured" provision of the insurance policy; and (3) struck certain exhibits plaintiff had submitted in support of its motion for summary judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The pleadings reflect that plaintiff is an insurance company. The District was organized pursuant to the Illinois Fire Protection District Act (70 ILCS 705/1 *et seq.* (West 2008)), which permits the District to adopt a fire prevention code. Chicago Metro and the other Alarm Companies provide fire alarm systems and monitoring within the District.

¶ 5 In September 2009, the District adopted an ordinance (the 2009 ordinance) that required all commercial and multi-family homes to use radio transmitters, which transmitted alarm signals to a central monitoring board owned by the District. The 2009 ordinance further provided that

Chicago Metro would install and maintain all radio transmitters. The District would collect fees for its services. In effect, all commercial and multi-family buildings would become clients of the District, which contracted with Chicago Metro to provide and to service the signaling transmitters. This displaced other Alarm Companies that had been serving clients within the district for years.

¶ 6 Thereafter, the District sent out two notices intended to obtain full compliance with the 2009 ordinance from residential and commercial clients by having the clients drop the other Alarm Companies and sign up with the District. The first notice provided:

> "If you are under contract for monitoring with another vendor, our ordinance now supersedes those contracts and makes them null and void. You will be able to excuse yourself from these contracts *** ."

A subsequent notice provided:

> "In an effort to work collaboratively with the fire alarm vendors who are currently monitoring many of our fire alarms, the [District] has decided to allow you to let your current monitoring contract expire before you join our network. *** At your earliest convenience[,] please determine when your current monitoring contract will expire and notify us of the date ***. We will be contacting you shortly before the expiration date so you can move onto our network and cancel your existing contract upon its expiration ***."

¶ 7 According to the Alarm Companies, the actions by the District and Chicago Metro constitute a conspiracy to eliminate competition in the fire alarm services sector. On July 14, 2010, the Alarm Companies brought a lawsuit in federal court. Their original complaint contained eight counts. Count I alleged that the District and Chicago Metro violated their rights

under the contract clause of the United States Constitution. Count II alleged a violation of due process and equal protection. Count III alleged monopolization, attempt to monopolize, and conspiracy to monopolize in violation of § 2 of the Sherman Act (15 U.S.C. § 2). Count IV alleged conspiracy in restraint of trade in violation § 1 of the Sherman Act (15 U.S.C. § 1). Count V alleged attempted monopolization. Count VI alleged a violation of the commerce clause and sought an injunction barring enforcement of the 2009 ordinance. Count VII sought a declaratory judgment that the District lacked authority to adopt and to enforce the 2009 ordinance. Count VIII alleged tortuous interference with a contract and prospective economic advantage. The United States Court of Appeals for the Seventh Circuit has issued two separate opinions that resolved some of the issues raised by the original complaint.

¶ 8 Prior to the complaint in federal court being filed, plaintiff issued the District liability insurance, with the policy being effective from December 31, 2009, through December 31, 2010. Section I of the policy, titled "Coverages," provided:

"**Coverage A. Insuring Agreement – Liability for Monetary Damages**

1. We will pay those sums that the insured becomes legally obligated to pay as monetary damages arising out of an 'employment practices' offense, an offense in the 'administration' of your 'employee benefits plans', or other 'wrongful act' to which this insurance policy applies.

***

16. 'Wrongful act' means any actual or alleged error, act, omission, misstatement, misleading statement, neglect or breaches of fiduciary duty committed by you or on behalf of you in the performance of your operations, including misfeasance, malfeasance, or nonfeasance in the discharge of duties, individually or

> collectively that results directly but unexpectedly and unintentionally in damages to others."

Section II.o of the policy, entitled "Criminal Acts," provided:

> "Damages, loss or expense arising out of or contributed to by any fraudulent, dishonest, criminal or malicious act of the insured (except for 'sexual abuse'), or the willful violation of any statute, ordinance or regulation committed by or with the knowledge of the insured. However, we will defend the insured for covered civil action subject to the other terms of this coverage part until either a judgment or final adjudication establishes such an act."

The policy also provided a blanket additional insured provision:

> "2. In addition to you, each of the following is an insured:
>
> d. **Blanket Additional Insured.** Any person or organization liable for your 'employment practices' offenses, offenses arising out of the 'administration' of your 'employee benefits plans,' or other 'wrongful acts' committed or alleged to have been committed by you is an insured under this coverage part, but only to the extent of that liability."

¶ 9 In July 2012, the District adopted an additional ordinance (the 2012 ordinance) that repealed the 2009 ordinance. The 2012 ordinance provided that the District would not own any transmitters. Instead, property owners could contract with private companies for fire alarm transmission and monitoring and the necessary equipment. However, signals were still required to be transmitted over the District's network to the District's receiver.

¶ 10 In October 2012, the Alarm Companies filed a supplemental complaint in the federal litigation. The supplemental complaint contained the same factual basis as the original

complaint and also accounted for the 2012 ordinance. It contained the same allegations, although it did not allege a violation of the commerce clause.

¶ 11 In June 2012, plaintiff filed its complaint for a declaratory judgment. As amended, count I sought a declaratory judgment that plaintiff did not have a duty to defend the District in the federal litigation. Count II sought a declaration that Chicago Metro was not an insured. Count III sought a declaratory judgment that plaintiff did not have a duty to defend Chicago Metro in the federal litigation. Count IV sought a declaratory judgment that plaintiff did not have a duty to defend under the general liability coverage form. Count V sought a declaratory judgment that plaintiff did not have a duty to defend under the commercial umbrella policy. Count VI sought reimbursement of costs from Chicago Metro.

¶ 12 Plaintiff, the District, and Chicago Metro filed cross-dispositive motions, and the Alarm Companies filed briefs objecting to certain aspects of the District's and Chicago Metro's motions. Chicago Metro also objected to certain exhibits filed by plaintiff in support of plaintiff's motion for summary judgment.

¶ 13 In July 2013, the trial court entered an order providing that plaintiff had a duty to defend both the District and Chicago Metro in the federal litigation. The trial court found that the insurance policy's "wrongful act" provision "allows coverage for intentional acts, but the 'unexpectedly and unintentionally' language limits coverage to situations where the damages produced were not expected or intended." The trial court concluded that, while some of the Alarm Companies' allegations in federal court required intentional conduct to be established, "not all of the causes of action require them to plead and prove intent," and listed counts I and II of the original federal complaint as examples. The trial court further found that plaintiff had a duty to defend Chicago Metro. The trial court concluded that, in the federal litigation, "the

Alarm Companies attempt to hold Chicago Metro and the District jointly and severally liable[.] *** To do so, ***, they alleged that Chicago Metro and the District acted in concert with one another." The trial court found that, under the theory of "in concert" liability, Chicago Metro can be liable for the District's actions, and therefore, the policy's "additional insured" provision was implicated. Plaintiff timely appealed.

¶ 14 II. ANALYSIS

¶ 15 A. Duty to Defend the District

¶ 16 Plaintiff's first contention on appeal is that the trial court erred when it determined that plaintiff had a duty to defend the District and Chicago Metro pursuant to the policy agreement. In support of this contention, plaintiff argues that "there is no allegation in the underlying complaint [in federal court] that satisfies the 'unexpectedly and unintentionally' element within the definition of 'wrongful act.' " In its opening brief, plaintiff emphasizes that the underlying complaint is "littered with language alleging intentional conduct" and that "[t]here should be no doubt that the policy at issue *** does not cover insured entities for harms that it intended to inflict." (White br., 19, 21.) The District counters that the policy applies to "wrongful acts," and therefore, the question to be addressed is not whether its acts were intentional, but whether the District expected or intended those acts to result in "damages" to others. (District Blue br., p. 23.) In its reply brief, plaintiff appears to concede that whether coverage applies does *not* depend on whether the District's acts were intentional, but instead argues that "[a]ny argument that [the District] did not know that [its] business decision would result in a claim for damages is absurd." (Yellow br., 10.)

¶ 17 Pursuant to section 2-615(e) of the Code of Civil Procedure (the Code), any party "may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2012). A

judgment on the pleadings is proper where the pleadings do not disclose a genuine issue of material fact and the movant is therefore entitled to a judgment as a matter of law. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). A court will consider the facts apparent on the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record; our review is *de novo*. *Id.* Accordingly, this court is not required to defer to the trial court's reasoning. See, *e.g.*, *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 990 (2011).

¶ 18 A motion for summary judgment, although similar to a motion for a judgment on the pleadings (see *Intersport, Inc. v. National Collegiate Athletic Ass'n*, 381 Ill. App. 3d 312, 318 (2008)), is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). Where parties in an insurance coverage case file cross-motions for summary judgment, the parties acknowledge that no questions of material fact exist and the only issue is one of law regarding the construction of the applicable insurance policy. *American Family Mutual Insurance Co. v. Fisher Development, Inc.*, 391 Ill. App. 3d 521, 525 (2009). Our review of a trial court's determination to grant a motion for summary judgment is *de novo*. *Id.* Furthermore, we may affirm on any basis in the record, irrespective of whether the trial court relied on that ground or whether its reasoning was correct. *Allianz Insurance Co. v. Guidant Corp.*, 387 Ill. App. 3d 1008, 1026 (2008) (citing *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 641 (2002)).

¶ 19 "In construing an insurance policy, we must ascertain and give effect to the intentions of the parties, as expressed in the policy language." *West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 184 (2010). A court must construe the policy as a whole, taking

into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract. *Pekin Insurance Co. v. Precision Dose, Inc.*, 2012 IL App (2d) 110195, ¶ 31. Unambiguous words are given their plain, ordinary, and popular meanings; and we will narrowly read a policy provision purporting to exclude or limit coverage, applying such a provision only where its terms are clear, definite, and specific. *Burcham v. West Bend Mutual Insurance Co.*, 2011 IL App (2d) 101035, ¶ 11. An ambiguous policy provision will be construed liberally in favor of coverage. *Id.* (citing *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010)).

¶ 20 Further, an insurer's duty to defend is determined by comparing the allegations in the underlying complaint to the insurance policy's provisions, and an insurer's duty to defend arises even if only one of several theories of recovery is potentially within coverage under the policy. *Certain Underwriters at Lloyd's London v. Boeing Co.*, 385 Ill. App. 3d 23, 39 (2008). "If an underlying complaint alleges facts within or potentially within coverage, the insurer is obligated to defend its insured even if the allegations are groundless, false, or fraudulent." *Id.* An insurer's duty to defend an insured is broader than its duty to indemnify. *Hartford Fire Insurance Co. v. Whitehall Convalescent & Nursing Home, Inc.*, 321 Ill. App. 3d 879, 888 (2001). Thus, an insurer may be required to defend its insured even if it is not ultimately required to indemnify. *Zurich Insurance Co. v. Raymark Industries, Inc.*, 118 Ill. 2d 23, 52 (1987).

¶ 21 Finally, pursuant to the *Peppers* Doctrine, it is inappropriate for a court considering a declaratory judgment action to decide issues of ultimate fact that could bind the parties to the underlying litigation. *Allstate Insurance Co. v. Kovar*, 363 Ill. App. 3d 493, 501 (2006) (citing *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187, 197 (1976)). Put differently, a declaratory

judgment should not be used to force the parties to have a "dress rehearsal" of an important issue expected to be tried in the underlying action. *State Farm Fire & Casualty Co. v. Shelton*, 176 Ill. App. 3d 858, 865 (1989).

¶ 22 In its opening brief, plaintiff relies on *American Family Mutual Insurance Co. v. Guzik*, 406 Ill. App. 3d 245 (2010), to support its argument that the policy's coverage provisions do not apply to expected or intentional acts. In *Guzik*, the plaintiff insurance company filed a complaint for a declaratory judgment as to whether it owed insurance coverage to the insured under a homeowner's policy. The case related to an explosion that destroyed the insured's home and damaged neighboring homes. *Id.* at 245. The policy provided that the plaintiff would pay up to the coverage limit for compensatory damages that the insured was legally liable to pay as a result of bodily injury or property damage caused by an "occurrence" covered by the policy. *Id.* at 246. The policy defined an "occurrence" as an "accident" that resulted in bodily injury or property damage. *Id.* The policy's exclusionary clause further provided that coverage would be excluded for bodily injury or property damage that the insured intentionally caused, even if the actual bodily injury or property damage was different from what was expected or intended from the insured's standpoint. *Id.*

¶ 23 In 2006, an explosion occurred at the insured's home. A subsequent investigation concluded that the insured's "deliberate incendiary act of arson" caused the explosion and fire. *Id.* at 246-47. The plaintiff filed its complaint for a declaratory judgment and, after the parties filed cross-motions for summary judgment, the trial court concluded that the plaintiff owed the insured coverage under the policy. *Id.* at 247.

¶ 24 On appeal, the Third District reversed the trial court's determination. The reviewing court noted that the policy provided coverage for bodily injury or property damage caused by an

"occurrence," which the policy defined as an "accident." *Id.* at 248. The court concluded that the policy language was "unambiguous that coverage is only applicable to accidents" and that the insured intentionally caused the explosion and fire. *Id.* The court went on to note that the policy also provided that coverage would be excluded if the injury or property damage was "caused intentionally" by the insured, even if the injury or damage was different from what the insured intended or expected. Thus, the court concluded that "[t]he exclusion goes beyond excluding damage that is expected and expressly excludes damage that was unexpected if it resulted from an intentional act." *Id.*

¶ 25 *Guzik* is distinguishable from the circumstances in the present case. One the one hand, in *Guzik*, the disputed policy provision involved bodily injury or property damage resulting from an "occurrence"; unambiguously provided that an "occurrence" was defined as an "accident"; and injury or damage "caused intentionally" would be excluded from coverage. On the other hand, here, the policy defined a "wrongful act" as "any actual or alleged *** act *** committed by you or on behalf of you in the performance of your operations **** *that results* directly but unexpectedly and unintentionally in damages to others." If the parties intended to exclude intentional acts from coverage, as the parties in *Guzik* did, they could have included unambiguous language in the policy to reflect that intent. They did not do so. See *The John T. Doyle Trust v. Country Mutual Insurance Co.*, 2014 IL App (2d) 121238, ¶ 18 (noting that a presumption exists against provisions that could have easily been included into contracts but were not) (citing *Lee v. Allstate Life Insurance Co.*, 361 Ill. App. 3d 970, 979 (2005)). Thus, as we read the policy in question here, the plain and unambiguous language contemplates that "any" alleged act would be covered so long as the resulting damages were unexpected and unintentional.

¶ 26 Having concluded that the policy's language provides coverage for intentional acts, we turn to whether the District's actions, as alleged in the underlying complaint, "unexpectedly and unintentionally" resulted in damages to others. The District directs us to *Giamanco v. Giamanco*, 253 Ill. App. 3d 750 (1993), where this court distinguished "injury," "damage," and "damages." Specifically, we noted:

> "Although the words 'damage,' 'damages,' and 'injury' are sometimes treated loosely as synonymous, there is material distinction between them. 'Injury' is the illegal invasion of a legal right; 'damage' is the loss, hurt[,] or harm which results from the injury; and 'damages' are the recompense or compensation awarded for the damage suffered. *** The word 'damage' is to be distinguished from its plural 'damages,' which means the compensation in money for a loss or damage." *Id.* at 758.

Thus, the question we must determine is whether the District's actions "unexpectedly and unintentionally" gave rise to the Alarm Companies' damages.

¶ 27 In *Bay State Insurance Co. v. Wilson*, 96 Ill. 2d 487 (1983), our supreme court addressed "expected or intended" injuries in the context of an insurance policy. In *Bay State*, James Johnson shot Gerald Wilson in Johnson's home. *Id.* at 490. Thereafter, Wilson sued Johnson but the plaintiff refused to defend the action, claiming that the complaint alleged an intentional act, which was not covered under the policy. *Id.* Johnson's homeowner's insurance policy provided that "[t]he policy does not apply *** to bodily injury or property damage which is either *expected* or *intended* from the standpoint of the insured." (Emphasis in original.) *Id.* at 490-91. The plaintiff ultimately provided counsel to Johnson, with a reservation of rights. *Id.* Thereafter, Johnson died, and the administer of his estate assigned Johnson's claim against the plaintiff to Wilson. *Id.* at 491. Following a bench trial on the plaintiff's declaratory judgment

action, the trial court concluded that Johnson's primary intent was self defense and that he lacked the specific intent to harm Wilson. Therefore, the trial court concluded that the policy covered the shooting and ordered the plaintiff to pay Wilson a previously entered $100,000 judgment entered against Johnson. *Id.* at 491-92.

¶ 28 Our supreme court affirmed a determination by the appellate court to reverse the trial court's finding that the policy covered the shooting. The supreme court began its analysis by noting that the case did not present a situation where coverage could be extended because the injury was the unintended result of an intentional act. Rather, the case "manifests" an injury that was an "intended and expected result" of an intentional act. *Id.* at 493. The supreme court noted that the terms "intentional" and "expected" in insurance clauses were not treated as synonyms because if they were, no purpose would be served by including them in the same clause. *Id.* The supreme court concluded that "intent" required a greater degree of proof than establishing an "expectation." *Id.* at 494. In holding that the policy did not cover Johnson's shooting, the supreme court concluded, "[i]njuries which are of such a nature that they should have been *reasonably anticipated* by the insured are 'expected' injuries." (Emphasis added.) *Id.*

¶ 29 While we are cognizant of the differences between the circumstances present in *Bay State* from those present here, we find the supreme court's definitions of "intended" and "expected" injuries instructive in resolving this case. Pursuant to our supreme court's definition of "expected," the definition of "unexpected" necessarily must be injuries, or in this case, "damages" that should *not* have been reasonably anticipated by the insured. As noted, the policy here defined a wrongful act as "any *** alleged *** act *** that results directly but unexpectedly and unintentionally in damages to others." Thus, in light of the "unexpectedly" language contained in the policy here, the question we must consider is whether the District

should have reasonably anticipated that "damages" would have resulted from the allegations in the underlying complaint, *i.e.*, to pay any recompense.

¶ 30 In this case, the allegations in the federal lawsuit potentially come within the policy's coverage provisions, and therefore, plaintiff has a duty to defend the District. Counts III and IV of the Alarm Companies' complaint in the federal lawsuit allege violations of the Sherman Act, which requires the Alarm Companies to establish damages. See *In re Currency Conversion Fee Antitrust Litigation*, 264 F.R.D. 100, 114 (S.D.N.Y. 2010) (noting that the three required elements of an antitrust claim under the Sherman Act are (1) a violation of antitrust law; (2) injury and causation; and (3) damages). Likewise, the Alarm Companies will have to establish damages under count VIII of their federal complaint, which alleged tortuous interference with a contract. See *Complete Conference Coordinators, Inc. v. Kumon North America, Inc.*, 394 Ill. App. 3d 105, 109 (2009) (noting that damages is an element of tortuous interference with a contractual relationship). Thus, in order to find in plaintiff's favor in this case, we would have to conclude that, *as a matter of law*, not only did the District's acts in passing the ordinances result in damages, but those damages were either expected or intended, or both. We believe that such a ruling would be premature and the question of damages should be left to the trier of fact in the federal litigation. See *Shelton*, 176 Ill. App. 3d at 865 (holding that whether the insured expected or intended injuries should be resolved by the fact finder in the underlying lawsuit).

¶ 31 Nonetheless, although our holding is that any determination regarding damages on counts III, IV, and VIII of the Alarm Companies' federal complaint would be premature, we acknowledge that there is *potential* coverage for the District for these claims. See *Chandler v. Doherty*, 299 Ill. App. 3d 797, 802 (1998). That is, it is at least conceivable that, even if the Alarm Companies are able to establish damages in the federal litigation, those damages were

unexpected and unintended, and thus coming within policy's coverage provisions. Because there is the potential for coverage, plaintiff has a duty to defend the District. See *id.* ("noting that, "[u]nder established precedent in Illinois," an insurer has a duty to defend when there is a potential for coverage).

¶ 32 B. Chicago Metro as an Additional Insured

¶ 33 The second issue on appeal is whether Chicago Metro is an additional insured under the policy. Plaintiff argues that "Chicago Metro faced only the direct liability of an allegedly negligent party, not the vicarious liability of a blameless party who is legally responsible for the negligence of someone else." Chicago Metro counters that it can be liable for the ordinances being enacted only if plaintiff proves that the District enacted the ordinance "in concert with Chicago Metro."

¶ 34 "In determining whether an insurer must defend a party that is an additional insured ***, the court must compare the allegations of the underlying complaint against the party to the provisions of the policy, liberally construing both in favor of the additional insured party." *Pekin Insurance Co. v. Hallmark Homes,* L.L.C., 392 Ill. App. 3d 589, 593 (2009). Plaintiff is obligated to defend Chicago Metro if, based on the allegations in the federal complaint, Chicago Metro potentially falls within the policy's terms. See *id.* at 594.

¶ 35 Initially, we note that plaintiff argues that the trial court erred by not considering a copy of the federal district court's order denying Chicago Metro's motion for summary judgment. That order found, in part, that "Chicago Metro was not a passive player in the design and implementation of the scheme to create a District[-]owned wireless network." According to the District, this establishes that Chicago Metro was not an innocent bystander that was a lucky beneficiary of the District's action.

¶ 36 We find it unnecessary to resolve this issue because, even if Chicago Metro was not an "innocent bystander," the policy does not limit additional-insured coverage to such people or entities. As noted, when construing an insurance policy, "we must ascertain and give effect to the intentions of the parties, as expressed in the policy language." *West American Insurance Co*, 238 Ill. 2d at 184. The policy language provides:

> "Any *** organization liable for your *** 'wrongful acts' *** alleged to have been committed by you is an insured under this coverage part, but only to the extent of that liability."

¶ 37 In this case, we find this policy language unambiguous. Here, the underlying complaint makes multiple allegations that the District and Chicago Metro were acting in concert with each other. For example, paragraph 112 of the supplemental complaint alleged that "[t]he active participation of the District with Chicago Metro constitutes a conspiracy to monopolize" the fire monitoring and alarm market within the District. In Illinois, "[a] civil conspiracy giving rise to a cause of action *** involves a combination of two or more persons for the purpose of accomplishing, through concerted action, either an illegal object or a legal object by illegal means." *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App. 3d 340, 350 (2000). Thus, Chicago Metro's liability for the conspiracy is dependent on the District adopting the 2009 and 2012 ordinances. As a result, if the Alarm Companies prove their allegations in the federal lawsuit, Chicago Metro potentially could be "an organization liable for [the District's] 'wrongful acts' alleged to have been committed by [the District]," and would be an additional insured under the policy. Therefore, because we must construe the policy liberally in favor of Chicago Metro (*Hallmark Homes*, 392 Ill. App. 3d at 594) and, as noted above, an insurer's duty to defend is broader than its duty to indemnify, ***Whitehall Convalescent & Nursing Home, Inc.,*** 321 Ill.

App. 3d 879, 888 (2001), plaintiff has a duty to defend because, based on the allegations in the federal lawsuit, Chicago Metro could potentially be an additional insured under the policy.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 40 Affirmed.