

Wisconsin business lawyer Richard Kranitz comments on a recent Wisconsin decision regarding an insurer's duty to defend

In the West Bend Mutual Ins. Co. case, the Court noted that it must liberally construe the allegations, and resolve any ambiguity in favor of the insured

GRAFTON, WISCONSIN, UNITED STATES, March 15, 2019 /EINPresswire.com/ -- West Bend Mutual Insurance Co. v. Ixthus Medical Supply, Inc. is a case centered on the scope of commercial general liability coverage. [Richard A. Kranitz](#), in a newly published comment, reviews this case. The full comment will be published on his Blog at <https://richardkranitzblog.blogspot.com/>

Ixthus, a Wisconsin medical supply company had a commercial general liability insurance with West Bend. The policy included coverage for "personal and advertising injury". The policy, however, excluded knowing violations of rights of another and criminal acts.

"Abbott is a health care company that manufactures and sells blood glucose test strips in both the domestic and international markets For a variety of reasons, Abbott sells test strips for use in international markets at a much lower cost." "In November 2015, Abbott filed a lawsuit in New York federal court against Ixthus and over 100 other defendants asserting thirteen federal statutory and common law claims for relief based on its belief that the defendants were 'import[ing], advertis[ing] and subsequent[ly] distribut[ing]' boxes of Abbott's international test strips in the United States."

Ixthus notified West Bend of the lawsuit and West Bend subsequently denied Ixthus's claim for benefit under the policy. Trial court sided with West Bend, ruling that although the lawsuit by Abbott would ordinarily fall under West Bend's policy, the knowing violation exclusion applied and thus West Bend had no duty to defend. The court of appeals, however, disagreed. "The court of appeals concluded the knowing violation exclusion did not apply because several of the claims alleged in the complaint could be established without having to prove Ixthus's actions were intentional; therefore, the court of appeals held that the complaint asserted potentially covered claims not consumed by the knowing violation exclusion."



Richard A Kranitz, attorney & business coach in Grafton, Wisconsin

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Richard A. Kranitz

About Richard Kranitz

As an attorney, I did corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, I counseled their owners and executives in compensation planning, estate plans, and asset protection. Early in my career I gained experience as a law clerk to a federal judge and in 10 years of corporate litigation. Besides extensive legal experience, I am experienced in various phases of business in many industries:

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Attorney Profile Richard Kranitz

The Supreme Court started its inquiry by examining the policy itself. In doing so, the Court noted that “a court must liberally construe the allegations contained in the underlying complaint, assume all reasonable inferences from the allegations made in the complaint, and resolve any ambiguity in the policy terms in favor of the insured.” Because “[t]he purpose of the analysis is to determine whether the allegations in the complaint contain any claims, which if proven true, would be covered by the policy.” Thus, “[t]he duty to defend is ‘necessarily broader than the duty to indemnify because the duty to defend is triggered by arguable, as opposed to actual, coverage.’” The Court went on to explain that “[e]xclusions are narrowly or strictly construed against the insurer if their effect is uncertain.” Importantly, “[i]f the policy, considered in its entirety, provides coverage for at least one of the claims in the underlying suit, the insurer has a duty to defend its insured on all the claims alleged in the entire suit.”

The Supreme Court agreed with the court of appeals. “The knowing violation exclusion will preclude coverage at the duty-to-defend stage only when every claim alleged in the complaint requires the plaintiff to prove the insured acted with knowledge that its actions would violate the rights of another and would inflict ‘personal and advertising injury. If the complaint alleges any claims that can be proven without such a showing, the insurer will be required to provide a defense.’” (Internal quotation mark omitted). The Court then concluded that Abbott’s complaint against Ixthus contains several claims that has no dependence on knowing violation or constitute criminal acts. Therefore, the Court held that West Bend has a duty to defend Ixthus in the pending litigation.

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Richard A. Kranitz, business attorney

The case is *West Bend Mutual Insurance Co. v. Ixthus Medical Supply, Inc.*, 2019 WI 19.
About Richard A. Kranitz

[Richard Kranitz](#) is an experienced attorney and business consultant in the areas of corporate, securities and tax planning for corporations, partnerships, joint ventures, limited liability companies, multi-unit enterprises, and a variety of different non-profit entities. In addition, he has counseled their owners and executives in compensation planning, estate plans, and asset protection.

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Richard A. Kranitz

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