

## State-by-State Survey

State	Duty to Defend	Declaratory Judgment	Consequences
<b>Alabama</b>	4 Corners – duty to investigate	?	Breach of duty to defend, not estoppel on coverage defenses
<b>Alaska</b>	Duty Investigate – no extrinsic facts to disclaim	?	Excess verdict
<b>Arizona</b>	All Extrinsic facts allowed	Allowed before or after underlying case resolved	
<b>Arkansas</b>	4 Corners – extrinsic facts in favor of coverage	?	Bound to settlements made by insured
<b>California</b>	4 Corners – extrinsic facts in favor of coverage	Allowed for determination of duty to defend and duty to indemnify	Bound to settlement made by insured, exposed to tort and contract damages
<b>Colorado</b>	4 Corners	Allowed after underlying case resolved, allowed to determine duty to defend if reasonable likelihood that excluded	Breach of duty to defend, not estoppel on coverage defenses, exposed to excess verdicts, tort and contract damages
<b>Connecticut</b>	4 Corners– extrinsic facts in favor of coverage	Allowed for determination of duty to defend and duty to indemnify	Breach of duty to defend results in estoppel of coverage defenses
<b>Delaware</b>	4 Corners	Allowed for determination of duty to defend and duty to indemnify even before resolution of underlying case	Breach of duty to defend, not estoppel to coverage defenses as to indemnification for loss
<b>D.C.</b>	4 Corners	Insurer should file declaratory judgment action to resolve coverage or settle then seek reimbursement from the insured	Breach of contract
<b>Florida</b>	4 corners	Allowed for determination of duty to defend and duty to indemnify	Breach of contract
<b>Georgia</b>	4 Corners– extrinsic facts in favor of coverage	If insured refuses to consent to defense under reservation of rights, Insurer must prevent prejudice to the insured and seek a declaratory judgment	Bound to settlements made by insured
<b>Hawaii</b>	Duty investigate extrinsic facts if possibility of coverage exists	DJ on Duty to Defend – must show that impossible for claimant to prevail against insured on any covered claim; DJ on Duty to Indemnify – must show absence of coverage under plain language of policy	
<b>Idaho</b>	4 Corners– extrinsic facts in favor of coverage	Allowed to file – but must defend pending a determination of no coverage	Contract damages only
<b>Illinois</b>	4 Corners– extrinsic facts in favor of coverage	Cannot simply deny – must seek declaratory judgment (within reasonable time) or defend under reservation of rights	If fail to defend or seek DJ – then estopped from asserting defenses to coverage

<b>Indiana</b>	All extrinsic facts allowed	Must seek declaratory judgment on duty to defend, or hire independent counsel to defend insured under reservation of rights	Cannot contest insured's liability in underlying suit
<b>Iowa</b>	Four corners ??	Allowed but not required	
<b>Kansas</b>	Duty to investigate extrinsic facts	Allowed	Exposed to excess verdict, bound to findings of liability in underlying case, may be estopped from raising coverage defenses
<b>Kentucky</b>	4 corners	Allowed to file, but not required to file	Breach of duty to defend, not estoppel on coverage defenses
<b>Louisiana</b>	4 corners	Allowed	
<b>Maine</b>	4 corners	Allowed after complaint filed	Breach of duty to defend, not estoppel on coverage defenses
<b>Maryland</b>	4 Corners– extrinsic facts in favor of coverage	Allowed, unless coverage issues are same as ultimate issue in underlying case	Breach of duty to defend, not estoppel on coverage defenses, but bound to findings of liability in underlying case. If breach duty to defend, owe attorneys fees on underlying case and DJ. Exposure to excess verdict
<b>Massachusetts</b>	Only Extrinsic facts in favor of coverage		Breach of duty to defend, results in actual breach of contract damages, bound to settlements made by insured
<b>Michigan</b>	Duty to investigate facts to bring within coverage	Allowed before or after resolution of underlying case	Breach of duty to defend results in foreseeable damages from breach, bound to settlements made by insured
<b>Minnesota</b>	Extrinsic facts allowed to bring within or deny coverage – no duty to investigate those facts	Allowed	Unsuccessful DJ action – results in insurer paying insured's costs to defend DJ
<b>Mississippi</b>	4 corners – duty to investigate	Not available	Breach of duty – damages causally related to the breach. Bad faith exposes insurer to excess verdict
<b>Missouri</b>	All extrinsic facts allowed	Allowed – treated as a refusal to defend	Breach of duty – must make insured whole
<b>Montana</b>	4 corners	Allowed only after defended insured and underlying case resolved ??	If unjustifiable refusal to defend – liable for defense costs, judgments, and estopped from using coverage defenses
<b>Nebraska</b>	Duty to investigate to bring within coverage	Allowed	If breach duty to defend – liable for damages causally related to breach
<b>Nevada</b>	4 Corners	Allowed before or after resolution of underlying case	
<b>New Hampshire</b>	4 corners – extrinsic facts in favor of coverage	Allowed	Breach duty to defend – defense costs, actual damages from breach
<b>New Jersey</b>	4 corners – extrinsic facts	Allowed, unless coverage	Breach duty to defend – defense

	in favor of coverage	issues are central to underlying case	costs, bound to reasonable settlements made by insured in good faith
<b>New Mexico</b>	Duty to investigate facts in favor of coverage	Not generally allowed, should be litigated in the primary lawsuit	Breach duty to defend – defense costs, (not attorney fees for defending DJ), bound to reasonable settlements made by insured
<b>New York</b>	4 corners – extrinsic facts in favor of coverage (but no duty investigate)	Allowed, unless coverage issues are central to underlying case	Breach of duty to defend – does not result in estoppel on coverage defenses, bound to reasonable settlements made by insured up to policy limits, liable for defense costs
<b>North Carolina</b>	Duty to investigate extrinsic facts in favor of coverage (no extrinsic facts to deny coverage)	Allowed	Breach of duty to defend – estoppel on coverage defenses if there was prejudice to the insured, liable for defense costs, bound to reasonable settlements made by insured
<b>North Dakota</b>	4 corners	Allowed only after resolution of the underlying case	Breach of duty to defend - estoppel on coverage defenses if there was prejudice to the insured, bound to reasonable settlements made by insured, tort damages allowed
<b>Ohio</b>	Duty to investigate – all extrinsic facts allowed	Allowed	Breach of duty to defend – does not result in estoppel on coverage defenses, bound to settlements made by insured absent fraud
<b>Oklahoma</b>	Duty to investigate - ?	Allowed only in federal court	Breach of duty to defend – liable for foreseeable damages, defense costs
<b>Oregon</b>	4 corners – may allow extrinsic facts in favor of coverage	Allowed, unless coverage issues are central to underlying case	Breach of duty to defend - estoppel on coverage defenses if there was prejudice to the insured, liable for causal damages,
<b>Pennsylvania</b>	4 corners – federal courts allow extrinsic evidence in favor of coverage	Allowed – insured entitled to fees in defending DJ when insurer acts in bad faith	Breach of duty to defend – liable for defense costs
<b>Rhode Island</b>	4 corners	Allowed, unless coverage issues are central to underlying case	Breach duty to defend – liable for defense costs, damages and/or settlement by insured
<b>South Carolina</b>	4 corners – may allow extrinsic facts in favor of coverage	Allowed but must also defend under reservation of rights – if lose pay insured’s fees for defending DJ	Breach duty to defend – liable for defense costs
<b>South Dakota</b>	4 corners	Not generally allowed, does not favor multiple suits	Breach duty to defend – liable for defense costs
<b>Tennessee</b>	4 corners – may allow extrinsic facts under certain circumstances	Allowed, but discretion to stay until underlying case resolved	Breach duty to defend – liable for defense costs, any judgment up to policy limits, unless bad faith

<b>Texas</b>	4 corners	Allowed	Breach duty to defend – liable for defense costs, any judgment up to policy limits
<b>Utah</b>	4 corners – extrinsic facts allowed	Allowed	Breach duty to defend – bound to judgment
<b>Vermont</b>	4 corners – may allow extrinsic facts	Allowed – insured must consent to defense under ROR, if do not consent then DJ is remedy. Only responsible for insured attorney fees in coverage action if bad faith	Breach duty to defend – liable for defense costs
<b>Virginia</b>	4 corners	Allowed only after resolution of the underlying case	Breach of duty to defend – compensatory damages, statutory damages for bad faith
<b>Washington</b>	Duty to investigate extrinsic facts in favor of coverage – can only deny coverage on extrinsic facts if complaint is ambiguous	Allowed – insured may recover attorneys fees in defense of coverage action	Breach of duty to defend – contract damages
<b>West Virginia</b>	4 corners	Allowed – if successful, the insured can recover attorneys fees in defense of coverage action	Breach duty to defend – liable for defense costs
<b>Wisconsin</b>	4 corners	Allowed	Breach of duty to defend – estopped from raising coverage defenses
<b>Wyoming</b>	4 corners	Declaratory judgment actions are generally disfavored – only allowed in certain circumstances	