

Duty to defend - when is it triggered?

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< Previous

[Atlanta adopts Plain Numbers to improve policy readability](#)

Next >

[Date of incident or date of coverage decision – when does the cause of action commence?](#)

In the recent case of [Main St Am Assurance Co v Merchants Mutual Insurance Company](#), the New York appeal court considered when a duty to defend was triggered under a policy wording.

The facts

The case concerned an injury to a sub-contractor on a construction project. The sub-contractor benefitted from insurance that had been taken out with the Defendant.

The policy included cover for 'liability for bodily injury...caused in whole or in part by the [policyholder's] acts or omissions'. However, the claim against the contractor alleged violation of labor laws, but not negligence. Accordingly, insurers argued they had no duty to defend the claim as it did not satisfy the policy's insuring clause.

Decision

The court adopted a purposive approach and held that insurers were obliged to defend the claim. In reaching that decision, the court held that the insurer's duty to defend would be triggered if the complaint suggests a "reasonable possibility" that the claims may fall within the scope of the policy. Even though the underlying complaint did not specifically allege negligence, it did suggest a reasonable possibility that negligence was a proximate cause of the sub-contractor's injuries, thereby potentially bringing the claim within the ambit of policy.

Accordingly, the court held that insurers did have a duty to defend the contractor, despite the fact the complaint did not actually allege that the subcontractor had been negligent.

This decision confirms that the court may take a purposive approach when considering an insurer's duty to defend, rather than strictly following the pleaded cause of action.

Contents

[The Word, November 2022](#)



[An update on articles in previous editions of the Word](#)



['You get what you pay for' – the meaning of 'professional services' in D&C policies](#)



['Final judgment' or 'final adjudication' - what's the difference?](#)



[Atlanta adopts Plain Numbers to improve policy readability](#)



[Duty to defend - when is it triggered?](#)



[Date of incident or date of coverage decision – when does the cause of action commence?](#)



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