



The Duty to Defend Under Connecticut Law

Insurers interpret mandate broadly to avoid bad-faith claims

By JEREMIAH M. WELCH

Most insurance policies that protect the policyholder from third party liability include what is commonly referred to as the “duty to defend.” The duty to defend refers to the insurer’s obligation to defend its insured from claims made against the insured for damages covered by the policy. (The insurer’s other principal duty is often referred to as the “duty to indemnify,” which means to pay damages covered by the policy.)

The duty to defend is important for several reasons. First, for many individuals and businesses, the cost of defending a lawsuit may simply be too much to bear. With the recent economic downturn, the ability to transfer this expense to an insurer can be a life-saver. Second, insurers are in the business of defending claims, and their expertise may facilitate a better result than the insured would have been able to manage on its own. Similarly, management of a lawsuit’s defense can interfere with a business’ operations or an individual’s life to the point of paralysis. The ability to transfer this to an insurer allows the insured to move forward with minimal distraction.

As an insured, it is important to recognize that your insurer’s duty to defend you does not mean that your insurer is obligated to do everything in its power to exonerate you from the claim against you. Most claims are settled, and most policies allow the insurer to settle your claim without your consent as long as the settlement will be paid exclusively by the insurer. In fact, most courts, including those in Connecticut, impose on the insurer the duty to accept reasonable settlements that can be paid exclusively within the limits of the applicable insurance policy. (*United Services*

Auto Association v. Glens Falls Insurance Co., 350 F. Supp. 869, 871 (D. Conn. 1972).)

The duty to defend applies to any claims covered by the policy. Like the vast majority of courts around the country, Connecticut courts interpret the duty to defend broadly. It is often said that the duty to defend is broader than the duty to indemnify. In practice, this means that where coverage is questionable, the insurer must defend. Connecticut courts have consistently held that the duty to defend applies where there is *any possibility of coverage*. (*Imperial Casualty & Indemnity Co. v. State*, 246 Conn. 313, 324 (1998).) Moreover, the insurer must continue to defend unless and until the facts demonstrate beyond any reasonable doubt that the claim in question is not covered. A question sometimes arises where a complaint alleges multiple causes of action, including some that are not covered. At least one Connecticut court has addressed this issue and concurs with the majority view that if any allegation is covered, the insurer must defend the *entire* action. (*Moore v. Continental Casualty Co.*, 256114, 1997 WL 614537 (Conn. Super. Ct. Sept. 26, 1997); affirmed, 52 Conn. App. 287 (Conn. App. Ct. 1999); affirmed, 252 Conn. 405 (2000).)

Four Corners Rule

Whether an insurer is obligated to defend a claim will ultimately turn on the allegations against the insured. Connecticut follows the “four corners” rule, meaning that if the allegations in the complaint “trigger” the duty to defend, the insurer must defend and cannot look outside the complaint for a basis to refuse the defense.

In practice, this generally refers to the idea that the insurer must retain counsel



and enter an appearance to defend the insured. If the allegations triggering coverage are disproved, for example by summary judgment, the insurer may terminate its defense obligation at that point.

When determining whether the duty to defend has been “triggered” by the allegations in a complaint, the insurer will consider whether the allegations, if proved, would result in damages covered by the policy. Next, an insurer will examine whether any of the policy’s exclusions apply. Last, the insurer will consider whether the insured has violated any of the policy conditions which would forfeit coverage.

Often, insurers will face a situation where, while a complaint’s allegations seem sufficient to trigger the duty to defend, there

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is reason to believe that further investigation and discovery will establish that the claim falls outside coverage. For example, a suit is filed against the insured but the insurer suspects the insured knew about the accident on which the suit is based prior to the policy period. In such a case the insurer will typically defend the insured subject to a “reservation of rights.”

The “reservation of rights,” which is typically contained in a letter from the insurer to the insured, simply advises the insured that the insurer may contest its obligation to defend or indemnify the insured on specified grounds based on facts yet to be determined. This reservation of rights is important because it notifies the insured of a conflict of interest between it and its insurer. It is important to note that while

the insurer typically supplies and pays the insured’s defense lawyer, under Connecticut law, the defense lawyer has a duty *only* to the insured. (*Metropolitan Life Insurance Co. v. Aetna Casualty & Surety Co.*, 249 Conn. 36, 63 (1999).) If defense is provided subject to a reservation of rights, both Connecticut case law and attorney ethics rules prevent the defense lawyer from acting to protect the insurer over the insured.

Under Connecticut case law, if an insurer wrongfully refuses to defend its insured, it will be liable not only to reimburse the insured for the costs spent defending itself, but also for any settlement or judgment paid on the claim. In other words, the insurer that fails to defend cannot contest the result. “Bad faith” typically describes an insurer’s breach of its fiduciary duty to

its policyholder. This requires more than a dispute about the meaning of a policy, or a disagreement about whether facts or allegations trigger coverage.

An insurer acts in bad faith when it puts its own interests ahead of its insured’s. Connecticut courts have recognized the independent tort cause of action for “bad faith” and the associated remedy of punitive damages, but appear to limit recoverable damages to the litigation costs associated with prosecution of the insured’s policy rights. (*Uberti v. Lincoln National Life Ins. Co.*, 144 F. Supp. 2d 90, 107 (D. Conn. 2001).)

The broad interpretation of the duty to defend and the potential consequences of mistakenly refusing that duty operate as strong incentives for Connecticut insurers to accept the duty to defend in most cases. ■