

Case Alert



Massachusetts High Court Holds Insurers Have No Duty to Prosecute Counterclaims on Behalf of Their Insureds

The Massachusetts Supreme Court, responding to certified questions from the United States Court of Appeals for the First Circuit, held that an insurer who is providing a defense to its insured in a lawsuit has no duty to prosecute counterclaims on the insured's behalf when the policy language only provides that the insurer will have the "duty to defend any claim" brought against its insured.¹

In *Mount Vernon Ins. Co. v. Visionaid, Inc.*, manufacturer Visionaid was sued for age discrimination and wrongful termination by a former employee who alleged he was fired because of his advanced age. Visionaid contended that the employee was fired for non-discriminatory reasons, including misappropriation of company funds. Visionaid sought a defense from its insurer, Mount Vernon. The Mount Vernon policy² provided that Mount Vernon would defend Visionaid against "any claim" brought against Visionaid and would pay all associated "defense costs" up to the policy limits. The policy defined "claim" as "any proceeding initiated against [Visionaid]...seeking to hold [Visionaid] responsible for a wrongful act," and "defense costs" as "reasonable and necessary legal fees and expenses" that result "from the investigation, adjustment, defense, and appeal of a claim."

Mount Vernon provided a defense to Visionaid under a reservation of rights, disputing whether the policy would cover the wrongful termination claim. Visionaid intended to prosecute a counterclaim against its former employee for the allegedly misappropriated funds and informed Mount Vernon that it would exercise its rights to select independent counsel for its representation at Mount Vernon's expense. Mount Vernon withdrew its reservation of rights, but maintained that it did not owe a duty to prosecute or pay for the counterclaim.

Mount Vernon filed a declaratory judgment action in the United States District Court for the District of Massachusetts, seeking a declaration that it did not owe a duty to prosecute or pay for the counterclaim. Visionaid counterclaimed against Mount Vernon, seeking a declaration that Mount Vernon did owe a duty to prosecute the counterclaim. A judgment was entered in favor of Mount Vernon, and Visionaid appealed. On appeal, the First Circuit certified the following questions to the Massachusetts Supreme Court³:

1. "Whether, and under what circumstances, an insurer (through its appointed panel counsel) may owe a duty to its insured -- whether under the insurance contract or the Massachusetts 'in for one, in for all' rule -- to prosecute the insured's counterclaim(s) for damages, where the insurance contract provides that the insurer has a 'duty to defend any Claim,' i.e., 'any proceeding initiated against [the insured]?'"

¹ *Mount Vernon Ins. Co. v. Visionaid, Inc.*, Case No. SJC-12142 (Mass. June 22, 2017).

² The policy at issue was a claims made Employment Practices Liability insurance policy.

³ A third certified question was not addressed given the first two questions were answered in the negative.

2. “Whether, and under what circumstances, an insurer (through its appointed panel counsel) may owe a duty to its insured to fund the prosecution of the insured’s counterclaim(s) for damages, where the insurance contract requires the insurer to cover ‘Defense Costs,’ or the ‘reasonable and necessary legal fees and expenses incurred by [the insurer], or by any attorney designated by [the insurer] to defend [the insured], resulting from the investigation, adjustment, defense, and appeal of a Claim’?”

The Massachusetts Supreme Court answered the first question in the negative, finding that Mount Vernon was not required to prosecute an affirmative counterclaim under either the plain language of the policy or the common-law “in for one, in for all” doctrine. Under a similar rationale, the court also answered the second question in the negative, holding that the duty to pay defense costs had the same scope as the duty to defend and did not extend to paying the costs of prosecuting a counterclaim.

Relying on the plain meaning of “defend,” the Massachusetts Supreme Court reasoned that the duty to defend a lawsuit was limited to defeating the claims asserted against the insured. Finding that the language of the policy was unambiguous, the court rejected public policy arguments made by Visionaid. Visionaid also argued that the well-established rule that the insurer’s duty to defend the insured includes the duty to defend against all claims, both covered and uncovered, could be expanded to include the obligation to prosecute counterclaims. In rejecting this argument as well, the court held that although the “in for one, in for all” rule expanded the class of actions that an insurer is obligated to defend, it did not change the meaning of the word “defend” and, therefore could not be construed to cover the prosecution of counterclaims. The court also expressed concern that expanding the rule as suggested by Visionaid would lead to an increase in litigation, both in terms of counterclaims and in terms of coverage disputes between insurers and insureds.

In a vigorous dissent, Chief Justice Gants disagreed with the majority and concluded that “[w]here the insured’s defense is intertwined with a compulsory counterclaim, where any reasonable attorney defending that proceeding would bring such a compulsory counterclaim, and where the insured agrees that any damages awarded to the insured on that counterclaim would offset any award of damages...that the insurer is required to indemnify,...an insurer’s duty to defend the insured in ‘any proceeding’ includes the duty to prosecute such a compulsory counterclaim.”

It is important to note that whether an insurer must prosecute counterclaims on behalf of its insured will ultimately depend on the precise policy language and the governing law on this issue, which varies among jurisdictions. The Massachusetts court suggested that different policy language could lead to a different result, and therefore it is imperative for policyholders to carefully review their policy language and be familiar with the applicable choice of law to fully understand the scope of an insurer’s duty to defend.

For more information, please contact Jeffrey J. Vita at jjv@sdvlaw.com or 203.287.2103, or Hannah E. Austin at hea@sdvlaw.com or 239.316.7238.