

Policyholder Playbook Episode 20: To Trigger the Duty To Defend, Find One Covered Allegation

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Quick Overview of the Play – When faced with a lawsuit that may trigger an insurer’s duty to defend, ask whether there is a single allegation that potentially triggers coverage. If there is, your insurer is likely required to defend against the entire claim, even if there are parts of the claim that may trigger policy exclusions or may otherwise fall outside of coverage.

Most are familiar with the notion that an insurer’s duty to defend is broader than its duty to indemnify. Although true, that statement doesn’t describe the true breadth of the duty to defend—it is incredibly broad. Exemplifying as much, under the laws of many states, if at least one allegation in the underlying pleading is potentially covered, then the insurer has a duty to defend the entire case. See, e.g., *Zurich Am. v. Ocwen Fin.*, 990 F.3d 1073, 1078 (7th Cir. 2021) (Illinois law; holding that “[e]ven a single covered factual allegation would suffice to trigger Zurich’s duty to defend”); *Onyx Wealth v. Indian Harbor Ins.*, No. 13-cv-3426, 2016 WL 3658988, at *5 (N.D. Tex. Jan. 4, 2016) (Texas law; holding that “a single factual allegation for a covered claim is all that is needed for a duty to defend to be triggered”). Put differently, “[i]f a single allegation of a complaint is potentially covered by a policy, an insurer has an obligation to defend its insured against all claims until there is no possibility of recovery for a covered claim.” *CAT Internet v. Providence Wash.*, 153 F. Supp. 2d 755, 759 (E.D. Pa. 2001), *aff’d*, 333 F.3d 138 (3d Cir. 2003).

A recent Eleventh Circuit decision highlights the application of that rule. In *General Star National Insurance Co. v. MDLV LLC*, the policyholder-real estate company was sued by its client upon the client’s allegations that the policyholder’s employee made misrepresentations to induce a sale and that he later converted sale proceeds for his own use. No. 23-11064, 2024 WL 700425, at *1 (11th Cir. Feb. 21, 2024). The policyholder sought coverage for its defense against that lawsuit from its errors and omissions insurer. *Id.* at *2–3. The insurer denied coverage, citing an exclusion for damages arising out of disputes involving conversion and another for damages arising from guarantees or promises of future performance or valuation. *Id.* at *1.

The insurer’s tact is not uncommon—it simply asked, “what’s really going on here?” The insurer determined that since the claim generally arose out of allegations of misrepresented real estate values and conversion, there was no coverage. But that’s not how the duty to defend works. The Eleventh Circuit aptly noted that an insurer can only avoid its duty to defend by citing policy exclusions if “the complaint’s allegations fall solely and entirely within the policy exclusion[s] and are subject to no other reasonable interpretation.” *Id.* at *4. And that wasn’t the case.

The court noted that the complaint’s allegations did not fall entirely within the conversion exclusion because the complaint also contained allegations of negligent misrepresentations and negligent training. *Id.* at *8. Likewise, the court noted that the future-value exclusion did not bar coverage because the complaint did not solely allege that the employee “guaranteed” or “promised” a particular valuation; the complaint also contained allegations that the employee merely stated or predicted a future valuation, without actually expressing a guarantee or promise. Simply by finding

that a small set of allegations fell outside the scope of the subject exclusions, the Eleventh Circuit held the insurer had a duty to defend against the entire case. That's a concept all policyholder advocates must be mindful of—all it takes is one covered allegation.

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