

Shulman and Rose in *The Recorder*: No Potential, No Coverage? Not So Fast: What Meta Got Wrong About Insurance

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Haynes Boone Partners [Robert Shulman](#) and [Cristen Rose](#) authored an article for *The Recorder* examining a recent decision from the Delaware Superior Court involving coverage litigation tied to claims against Meta Platforms and Instagram.

Read an excerpt below.

On Feb. 27, 2026, the Delaware Superior Court issued a memorandum opinion and order in *Hartford Casualty Insurance v. Instagram*, granting insurers' summary judgment motion and denying motions by Meta Platforms, Inc. and Instagram, LLC (collectively, "Meta") to stay or dismiss the coverage action. The Meta case addresses whether Meta's insurers have a duty to defend Meta in consolidated litigation in California. The underlying California litigation was brought by individuals, school districts, and state attorneys general alleging that Meta designed its platforms to exploit psychological vulnerabilities resulting in alleged addiction and other harms.

The Meta decision again brings to the forefront confusion regarding the impact of a resolution of the duty to defend in the insurance context. Meta represents a now all too common abstraction detached from the ultimate outcome of the underlying litigation with potentially large exposure—whether that ultimate outcome be settlement, judgment, or a defense verdict. Meta also illustrates the potential harm when policyholders allow the resolution of the duty to defend to spill over into the separate analysis that applies to the duty to indemnify or pay when not making clear that the two obligations do not intersect. Whether in a case management order or through some other mechanism, the coverage court must be educated early that resolution of the duty to defend does not resolve the duty to indemnify.

The duty to defend is governed by the allegations of the underlying complaint which is a snapshot in time at the outset of litigation. Because it arises at this early stage, it has no connection to the ultimate development and resolution of the underlying dispute. The duty to defend is considered broader than the duty to indemnify only because it is governed by the plaintiffs' pen, not proven facts. Importantly, broader does not mean that a failure to trigger the duty to defend precludes the duty to indemnify. Indeed, the duty to defend can attach even if the underlying allegations are fraudulent, false, or groundless. By contrast, the duty to indemnify is a separate, independent obligation determined by specific facts proven at trial or established in settlement. Excess policies pay defense costs based on actual facts proven, not allegations—a policyholder achieving a defense verdict may recover such costs regardless of a prior duty to defend ruling. In short, resolution of the duty to defend is neither intended to nor does it inform the ultimate outcome of the obligation to pay under an insurance policy.

To provide context for Meta, a word on the fundamental principle that general liability insurance covers "accidents" is needed. General liability insurance covers damages caused by an "occurrence," defined as an accident. In most jurisdictions, intentional conduct can lead to a

covered accident so long as the resulting harm was not intended. Under California law applicable to Meta, however, there may be no accident if the alleged resulting harm arose from intentional conduct and was not fortuitous. Under this standard, the language used in the underlying complaint may have an outsized impact on the potential for coverage. However, that pleading reality should not be extended to foreclose coverage for settlements, judgments, or payment of defense costs under excess policies that do not contain an “up front” duty to defend.

Although valuable, the duty to defend is only one of two distinct obligations under primary insurance policies, a small subset of an insurance program. That subset should not be allowed to impact the majority of the insurance program governed by a different analytical standard. Further, causation is a fundamental concept in insurance. If the underlying plaintiff cannot prove causation regardless of allegations of intentional conduct, for purposes of insurance there should be a covered accident. Meta fails to account for this very real possibility.

Because allegations in an underlying complaint are not evidence, they should not control the indemnity analysis. Any purported absence of the potential for coverage at the pleading stage does not foreclose the duty to indemnify if the facts ultimately established provide a basis for coverage. This principle protects policyholders from having their coverage rights determined by the strategic pleading choices of adverse parties.

To read the full article from *The Recorder*, click [here](#).