



News

Hinshaw Releases Second Edition of Duty to Defend: A Fifty-State Survey

September 18, 2023

Hinshaw & Culbertson LLP today announced the publication of the Second Edition of its *Duty to Defend: A Fifty-State Survey*. The guide—which is Volume III of the Hinshaw & Culbertson LLP *On The Law Series*—provides an overview of some of the most common issues presented with respect to the duty to defend, with chapters covering all 50 U.S. states. It is written specifically as a guidebook for insurance claims professionals and lawyers tasked with making decisions about responding to complaints tendered for a defense in the U.S. legal system.

[Download a PDF format copy of the guide](#)

The survey is presented in a question-and-answer format, seeking to provide answers for each of the following eleven questions:

1. What is the standard for determining whether an insurer has a duty to defend?
2. Under what circumstances will information not contained in the policy or underlying complaint be considered in determining whether an insurer has a duty to defend (extrinsic evidence)?
3. What constitutes a “suit”?
4. When does the duty to defend begin?
5. When does the duty to defend end?
6. Must an insurer defend a lawsuit if only some of the facts alleged or counts included in the underlying complaint are potentially covered (mixed claims)?
7. Under what circumstances may an insured select its own defense counsel to be paid by the insurer (independent counsel)?
8. When an insurer pays for the defense of a matter where only some of the claims alleged in an underlying case are covered by the policy, may the insurer recoup from the insured the costs allocable to claims that are not covered (right of recoupment)?
9. Does an insurer have an obligation to reimburse its insured for defense costs incurred by the insured prior to the time that the insured placed the insurer on notice of the claim (pre-tender defense costs)?
10. What are the consequences of a breach of the duty to defend?
11. Can an insured who prevails in coverage litigation recover from the insurer the attorneys’ fees and/or costs expended for the insured for litigating coverage without establishing common law or statutory bad faith (cost

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Scott Seaman and Pedro Hernandez—the co-chairs of Hinshaw's Global Insurance Services Practice Group—along with partner Paulette Sarp, served as lead authors of the Second Edition. Several other attorneys in Hinshaw's global Insurance Services Practice Group contributed to this publication. View a video message from Seaman announcing the publication of the new edition of *Duty to Defend: A Fifty-State Survey*.

Note, this guide does not contain legal advice or establish an attorney-client relationship. We remind everyone that decisions regarding the duty to defend require determination of the controlling law, review of the policy language, and consideration of the allegations of the underlying complaint and other relevant matters. Research and review of current law and consultation with counsel is recommended.