

Court Addresses When Duty to Defend Ends

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There are certain generally held principles regarding an insurer's duty to defend. One of these principles is that an insurer has a duty to defend its insured if the complaint states a claim that potentially falls within the policy's coverage. However, there is a lack of consistency regarding the point at which the insurers' duty to defend ends. When the only potentially covered claim has been dismissed, must the insurer continue to defend?

Certain jurisdictions, such as Hawaii and Minnesota, have held that an insurer's duty to defend continues through an appeals process, or until a final judgment has been entered, disposing of the entire case. *Commerce & Industry Insurance Company v. Bank of Hawaii*, 832 P.2d 733 (Haw. 1992); *Meadowbrook, Inc. v. Tower Insurance Company*, 559 N.W. 2d 411 (Minn. 1997).

Earlier this week, the U.S. District Court for the Eastern District of Pennsylvania took a different approach to this question in *Westminster American Insurance Company v. Spruce 1530*, No. 19-539, 2020 U.S. Dist. LEXIS 106534 (E.D. Pa. June 17, 2020) – holding that the trial court's dismissal of the only potentially covered claim was sufficient to terminate Westminster's duty to defend.

Spruce 1530 arose out of a property line dispute. In 2015, Spruce 1530 and Touraine, L.P., a neighboring landowner, filed lawsuits against each other alleging that the other had extended its building over the property line. At trial, it was determined that Spruce 1530 had improperly encroached on Touraine's property. Touraine then filed a second lawsuit against Spruce 1530, alleging that during the 2015 actions, Spruce 1530 had "pursued frivolous claims and engaged in abusive practices" in order to increase Touraine's litigation costs in an attempt to coerce Touraine to give up the rightful ownership of its property.

Touraine brought two counts against Spruce 1530; Count I was for wrongful use of civil proceedings under the Dragonetti Act, and Count II was for common-law abuse of process. Ultimately, the underlying court dismissed Count I, without opinion.

Westminster conceded that Count I would have been covered under its policy; however, it maintained that because Westminster was not notified of the action until after Count I had been dismissed, it has no duty to defend Spruce 1530 in the action. On dueling motions for summary judgment, the court addressed whether Westminster had an ongoing duty to defend Spruce 1530 in the action, following the dismissal of Count I.

Westminster asserted that it had no duty to defend Spruce 1530 in the action, as any obligation to defend was dismissed along with Count I. Spruce 1530, relying on *Bank of Hawaii* and *Meadowbrook*, argued that Westminster could not prove that the action would not result in a judgment covered by its policy, because dismissal of Count I was not by a final, non-appealable order and, as a result, could be modified, vacated, or reversed, and could continue to remain a factor in settlement negotiations.

The court noted that Pennsylvania courts have not yet addressed whether dismissal of a claim terminates an insurer's duty to defend. Relying on Pennsylvania's general rule that an insurer's duty to defend continues until the insurer can show that the lawsuit consists of only non-covered claims, the court determined that the dismissal of the only potentially covered claim was sufficient to terminate Westminster's duty to defend. The court concluded that although the dismissal was not procedurally "final", the dismissal of the claim was meant to "constitute a conclusive rejection" of recovery on that claim.

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