

Insurers' Duty to Defend Does Not Require Coverage for Counterclaims in Massachusetts

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SUMMARY

In a win for insurers, the Massachusetts Supreme Judicial Court ("SJC") ruled on June 22, 2017 that a duty to defend does not require insurers to fund an insured's counterclaim, even if it is "inextricably intertwined" with a covered defense. See *Mount Vernon Fire Insurance Company v. Visionaid, Inc.*, No. SJC-12142, 2017 WL 2703949 (Mass. June 22, 2017). The Massachusetts SJC ruled on questions certified by the United States Court of Appeals for the First Circuit. Massachusetts now falls in line with the majority of other jurisdictions that do not obligate an insurer to fund an insured's counterclaims, even if the counterclaim bolsters a defense. A minority of jurisdictions require an insurer to fund an insured's counterclaim when it is "inextricably intertwined" and necessary to the defense strategically.

The Massachusetts SJC took the position that the "plain meaning of the word 'defend' is clear," and therefore the insurance policy at issue only obligated the insurer to defend against claims made during a policy period. The Court read the policy language relating to a duty to defend as clear and unambiguous, and therefore did "not consider policy arguments in interpreting the plain language" more broadly. The Court quoted another recent decision for policy reasons against requiring an insured's counterclaims because, "an insured would have every incentive – and little disincentive – to file suit, knowing that it could reap the benefits of success – however unlikely – while transferring the costs of an otherwise predictably unsuccessful suit onto its insurer." *Barletta Heavy Div., Inc. vs. Travelers Ins. Co.*, No. 12-11193-DPW (D. Mass. Oct. 25, 2013).

The two-Justice dissent and minority view requiring a duty to defend "inextricably intertwined" counterclaims was not followed because such a proposition is not written into the insurance contract and would result in extensive litigation to determine which counterclaims are sufficiently intertwined to determine an insurer's duty to fund a counterclaim.

The Massachusetts SJC suggested that if insureds seek coverage for intertwined counterclaims, such coverage should be clearly written into their insurance contracts. Rather, the Court ruled that "[i]mposing such requirements where none was included explicitly is far beyond interpreting the language of the [insurance] contract."

Author Robert Goodman wrote an article for the Defense Research Institute, (“DRI”) analyzing the *Mount Vernon Fire Insurance Company* case and the manner in which other jurisdictions determine whether an insurer has a duty to defend counterclaims. That article may be found here [<http://bit.ly/2rUaJPq>].

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