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Second Circuit Affirms The Broad Nature Of The Duty To Defend Under CGL Insurance Policies

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In a recent pro-policyholder insurance coverage decision, *Euchner-USA, Inc. v. Hartford Casualty Insurance Company*, 2014 WL 2576348 (2d Cir. June 10, 2014), the Second Circuit applied New York law and reminded insurance companies that the duty to defend is "exceedingly broad." An insurance company has the duty to defend a claim even if there is only a *possibility* of coverage in light of how the underlying complaint against the insured has been pleaded. Euchner sought coverage from its CGL insurer, Hartford Insurance, for an underlying action initiated by a former employee.

In the underlying action, the former employee alleged that she was sexually harassed and then coerced into accepting an independent sales position disqualifying her from receiving "employee" benefits. She later added an ERISA count alleging that Euchner "improperly and unlawfully" classified her as an independent contractor and, as a result, she was deprived of benefits under Euchner's 401(k) plan. Euchner's CGL policy excluded coverage for employment-related practices, but an endorsement added coverage for "employee benefits injury"—an "injury that arises out of any negligent act, error or omission in the 'administration' of your 'employee benefits programs.'" Hartford denied coverage because, among other things, it contended that the underlying action alleged only intentional wrongdoing, which was excluded under the policy. After Euchner filed a declaratory judgment action, the lower court granted Hartford's summary judgment on the grounds that the underlying action alleged only intentional wrongdoing. The Second Circuit vacated and remanded, citing New York law that an insurer's duty to defend is "exceedingly broad" and finding that the ERISA claims raised a *possibility* of negligence.

Reminding Hartford that "[a]n insurer will be called upon to provide a defense whenever the allegations of the complaint suggest . . . a reasonable possibility of coverage," the Court held that:

[A] reasonable possibility existed that some claims in the former employee's (amended) complaint *might implicate* the coverage extended by endorsement, and that Hartford therefore owed a duty to defend. ERISA claims raised a reasonable *possibility of negligence* on Euchner's part. It was alleged only that Euchner misclassified her position; *it was not alleged whether this misclassification was done intentionally or negligently*. The complaint contained allegations that bespeak malice; but none of [the] ERISA claims alleged that Euchner improperly classified her with the *purpose* of interfering with her retirement benefits.

In finding that Hartford owed Euchner a duty to defend, the Second Circuit cited the well-established rules that:

The duty to defend remains even though facts outside the four corners of the pleadings indicate that the claim may be meritless or not covered. If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or

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baseless the suit may be. Whether a complaint asserts additional claims falling outside the policy is immaterial. Any doubt as to whether the allegations state a claim within the coverage of the policy must be resolved in favor of the insured and against the carrier. When an insurer seeks to disclaim coverage on the [] basis of an exclusion . . . the insurer will be required to provide a defense unless it can demonstrate that the allegations of the complaint cast that pleading *solely and entirely* within the policy exclusions, and, further, that the allegations, in *toto*, are subject to no other interpretation.

This decision is a terrific reminder to policyholders that the duty to defend is broad. It also demonstrates that, unfortunately, policyholders have to be prepared to push back against insurance company denials of coverage to get the benefit of what they bargained for when buying the insurance policy in the first place.