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New York Appellate Court Applies Broad Duty to Defend to Property Damage Case

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In the recent case of *New York Marine and Gen. Ins. Co. v. Eastman Cooke & Associates*, 153 N.Y.S.3d 840, 841 (N.Y. App. Div. 1st Dept. 2021), New York's first department affirmed a duty to defend under New York law. In the underlying action, the plaintiff alleged property damages due to prolonged construction work in a different unit of the subject property. The underlying plaintiff sued the owner of the subject property, which in turn sued Eastman Cooke, the general contractor at the premises. New York Marine denied coverage to Eastman Cooke, asserting that the underlying suit did not seek damages occurring during the New York Marine policy period, and commenced a declaratory judgment action.

The trial court held—and the First Department affirmed—that New York Marine has a duty to defend Eastman Cooke. Initially, the court found that the underlying suit alleged property damage as required for coverage, because there were allegations regarding loss of use of the property. The court also found that the underlying suit alleged damages occurring during the New York Marine policy period. Although the underlying complaint alleged that the underlying plaintiffs were reimbursed for damages occurring during the New York Marine policy period by another insurer, the court held that the evidence was that the payments only covered a certain part of the damages sought. Accordingly, because there was a reasonable possibility that some unreimbursed damages may fall within the New York Marine policy period.

The case illustrates the law on duty to defend in New York (and other jurisdictions) that unless an insurer demonstrates there is no possible factual or legal basis on which an insurer might be obligated to indemnify its insured, there is a duty to defend.

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