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Federal Court Reiterates Broad Duty to Defend in Additional Insured Cases

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In the recent case of *Travelers Indem. Co. of Am. v. Accredited Sur. & Cas. Co.*, No. 21-CV-7189 (FB) (JRC), 2024 U.S. Dist. LEXIS 44634 (E.D.N.Y. Mar. 13, 2024), the Federal District Court for the Eastern District of New York had occasion to consider an additional insured tender on behalf of a prime contractor, Archstone, to a subcontractor, Topline, who was named as a direct defendant in a New York labor law case. Even though Topline's carrier put forth evidence that Topline was not negligent, the court held, under New York's broad duty to defend, that Topline's carrier owed a duty to defend the prime contractor.

Initially, the court was satisfied that a purchase order, signed only by Topline and not Archstone, was binding on Topline. That purchase order specified that Topline agreed to name Archstone as an additional insured.

With respect to the duty to defend, the court found that it was enough that the underlying plaintiff alleged that all defendants, including Topline, were negligent in permitting a ladder that plaintiff was on to remain in a defective condition and in failing to foresee the existence of a hazard from the condition of the subject ladder.

Topline's carrier argued that Topline cannot be held liable in the underlying action, and cited cases to that effect. However, the court held that the merits of the case are irrelevant to the duty to defend. The court noted that, in certain cases, extrinsic evidence may defeat the duty to defend under New York law, but in this case, it could not conclude that there is "no possible factual or legal basis on which [Topline's insurer] might eventually be obligated to indemnify its insured under any policy provision," which is the standard for establishing a duty to defend does not exist. The court also dismissed Topline's carrier's argument that the injuries must have been proximately caused by Topline pursuant to the New York Court of Appeals' standard set in *Burlington Ins. Co. v. NYC Transit Auth.*, 29 N.Y.3d 313, 321, 57 N.Y.S.3d 85, 79 N.E.3d 477 (2017). The court stated that the allegations that Topline was negligent in the underlying complaint sufficed to establish the carrier's duty to defend.

Finally, as is the case in most additional insured situations, the court held that Topline's policy is primary to Archstone's. This is because the Archstone policy provides that it is excess to any other insurance available to Archstone as an additional insured.

This case illustrates the broad duty to defend in New York. Indeed, mere allegations of negligence against a named insured will likely trigger the duty.

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