

THE SOUTHERN DISTRICT OF NEW
YORK
AWARDS LONDON FISCHER'S
INSURANCE COMPANY
CLIENT SUMMARY JUDGMENT ON
ADDITIONAL
INSURED COVERAGE AND DUTY TO
DEFEND



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Judge Jed S. Rakoff of the U.S. District Court for the Southern District of New York (“S.D.N.Y”) recently granted summary judgment to London Fischer’s insurance company client in a case involving additional insured (“AI”) coverage and the duty to defend. The Court’s decision examines the alternative ways an insurer’s duty to defend can be triggered under New York law.

This insurance coverage dispute arose out of an underlying personal injury action in which a pedestrian alleged that she was injured when she tripped on debris in a parking garage in the Bronx, New York. The parking garage was the subject of construction work. The underlying plaintiff sued the owners of the garage; the owners filed a third-party complaint against the general contractor, MDG; and MDG then filed a third-party complaint against its subcontractor for demolition work, AMB.

London Fischer’s client U.S. Specialty Insurance Company, (“USSIC”) insured MDG while American Empire Surplus Lines Insurance Company (“American Empire”) insured AMB. The subcontract between MDG and AMB required AMB to procure insurance and name MDG as an AI on a primary and non-contributory basis. MDG tendered its defense to American Empire, which denied the tender. USSIC proceeded to provide a defense to MDG in the Underlying Action and filed a Declaratory Judgment action against American Empire in the S.D.N.Y.

The American Empire policy provides AI coverage to MDG for bodily injury caused, in whole or in part, by AMB’s acts or omissions. In denying its duty to defend MDG, American Empire argued that AMB was not a direct defendant in the Underlying Action, MDG could not trigger coverage for itself by filing a third-party complaint against AMB, and evidence from the underlying action showed that AMB was not working in the accident area on the date of the accident and therefore could not be liable in the underlying action.

Applying New York law, the Court recognized that an insurer’s duty to defend can be triggered in three ways: (1) by the allegations in the underlying complaint, (2) by the allegations of a third-party complaint; or (3) by facts from the underlying action. The question in each case is whether the allegations or facts suggest a reasonable possibility of coverage (*i.e.*, a reasonable possibility that the named insured’s — in this case AMB’s — acts or omissions were a proximate cause of the alleged injuries.)

The Court noted that the underlying complaint alleged that the plaintiff was injured due to the negligence of the owners “by their agents, servants and/or employees.” As the Court recognized, an injured plaintiff is unlikely to be able to identify every entity which may have responsibility at a construction project. AMB was performing work for MDG, which was performing work for the owners, so the underlying plaintiff’s allegation that the “agents, servants and/or employees” of the owner were negligent was sufficient to trigger American Empire’s duty to defend MDG as an AI.

The Court also examined the third-party complaints against AMB. While American Empire argued that MDG’s third-party complaint against AMB was self-serving, the Court was able to avoid deciding whether that third-party complaint triggered coverage because there was a separate third-party complaint against AMB filed by the owners. The Court found that the owners’ third-

party complaint against AMB alleging that the injuries were caused by AMB's negligence triggered American Empire's duty to defend.

Finally, the Court held that, apart from the pleadings, evidence from the underlying action — in particular deposition testimony about the circumstances of the injury and evidence of AMB's obligation to ensure the safety of the work site — indicated a reasonable possibility that AMB was liable and thus triggered American Empire's duty to defend.

The SDNY's decision highlights multiple considerations in determining whether an insurer has a duty to defend an additional insured under New York law. Courts will examine the allegations of the underlying plaintiff's complaint, third-party complaint allegations, and evidence of liability from the underlying action.

Jan H. Duffalo and Molly Barth represented USSIC. The case is *U.S. Specialty Ins. Co. v. American Empire Surplus Lines Ins. Co.*, Case No. 25-cv-7415 (JSR). A copy of the Court's Opinion & Order, which is reported at 2025 U.S. Dist. LEXIS 223363 (S.D.N.Y. Nov. 12, 2025), is attached.