

Wesco Ins. Co. v Utica First Ins. Co.

2026 NY Slip Op 30118(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 654708/2024

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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WESCO INSURANCE COMPANY
Plaintiff,

- v -

UTICA FIRST INSURANCE COMPANY,
Defendant.

INDEX NO. 654708/2024
MOTION DATE 08/14/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is granted, and the cross-motion is denied.

Background

Non-party Ana’s Opus Ltd. owns a property in Brooklyn that is split into two commercial units, Store 1 and Store 2. The latter unit is leased by Bendom Brooklyn Inc., who uses the space for a restaurant called Big Tiny. Ana’s and Bendom then entered into a new lease for both stores, with the agreement that Bendom would combine both units and expand Big Tiny. During the construction process, a project helper Marvin Sanchez was allegedly injured. Mr. Sanchez commenced a proceeding against Ana’s and Bendom in order to recover for his injuries (the “Underlying Action”).

Bendom had been issued a commercial general liability policy by Defendant, which included Ana’s as an additional insured. Plaintiff issued a commercial general liability policy to Ana’s, which includes a provision rendering the policy excess to other policies that include Ana’s as an additional insured. In August of 2023, Plaintiff sent a tender letter to Defendant requesting that they defend and indemnify Ana’s as an additional insured. This request was

denied, on the basis that 1) Defendant's policy did not extend to Store 2 and that this was where the accident took place; and 2) that Mr. Sanchez was an employee of Bendom and therefore fell under a coverage exclusion provision. As a result of Defendant's refusal to defend and indemnify, Plaintiff brought this proceeding seeking declaratory relief and reimbursement for sums paid in the Underlying Action.

Standard of Review

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

Discussion

This present motion for partial summary judgment is brought by Plaintiff, who seeks a declaration that Defendant must defend Ana's in the Underlying Action and reimburse Plaintiff for the sums incurred in defense to date. Defendant opposes and has cross-moved for summary judgment and a declaration in their favor stating that they have no duty to defend or indemnify. For the reasons that follow, the motion is granted, and the cross-motion is denied.

The Duty to Defend Was Triggered by the Pleadings in the Underlying Action And Extrinsic Facts Do Not Alter This Duty

Defendant's main arguments for why there is no duty to defend or indemnify here are that 1) the accident took place in Store 1, and there was additional insured coverage only for Store 2; and 2) Mr. Sanchez is likely an employee of either Bendom and/or Ana's and therefore is excluded from coverage. They base these arguments on depositions and other materials that have been discovered during the course of the Underlying Action. Plaintiff argues in response that the duty to defend arose based on the pleadings. They also argue that even if such a duty was not triggered, the expansion into Store 1 makes the accident location "in connection with" Store 2, and that Mr. Sanchez was not an employee. In the Underlying Action, Mr. Sanchez alleges that he was injured at the premises in question, but did not specify where on the premises the accident occurred. He also alleges that he was performing work as "an independent sub-contractor." These allegations, and the complaint in general in the Underlying Action, do not, however, provide grounds for defeating Defendant's obligation to defend. While Defendant points to extrinsic evidence that they argue tends towards relieving them of the duty to indemnify, this does not impact the original duty to defend that was triggered by the Underlying Action pleadings.

The general rule is that a "duty to defend exists whenever the allegations in the complaint in the underlying action, construed liberally, suggest a reasonable possibility of coverage, or where the insurer has actual knowledge of facts establishing such a reasonable possibility." *DMP Contr. Corp. v. Essex Ins. Co.*, 76 A.D.3d 844, 845 [1st Dept. 2010]. Furthermore, the "duty to defend is triggered by the allegations contained in the underlying complaint, and an insurer may be required to defend even though it is not ultimately required to indemnify once the litigation has run its course." *Wesco Ins. Co. v. Nunez Dental Servs., P.C.*, 225 A.D.3d 410, 410 – 11 [1st Dept. 2024]. The First Department in *Wesco* further held that extrinsic evidence that did not

“serve to clarify any alleged ambiguities in the underlying complaint” did not relieve the plaintiff there of their duty to defend. *Id.*, at 411.

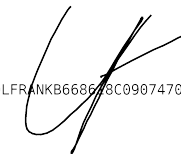
In *Greenwich*, an insurance company sought to be relieved of the duty to provide a defense in an underlying action on the grounds that the alleged injuries arose out of the specific actions of a non-covered defendant, contrary to what the original complaints had alleged. *Greenwich Ins. Co. v. City of New York*, 122 A.D.3d 470, 471 [1st Dept. 2014]. The First Department held that “[a]n insurer may obtain a declaration absolving it of its duty to defend only when a comparison of the policy and the underlying complaint on its face shows that, as a matter of law, there is no possible factual or legal basis” on which the insurer might ultimately be obliged to indemnify. *Id.* They further noted that even if there were unresolved questions of fact going to what party caused the injuries, because these were not issues that could be “determined as a matter of law by examination of the insurance contract”, they did not “afford a basis to relieve plaintiff of its duty to provide a defense.” *Id.*, at 472. This holding is consistent with First Department case law stating that insurers will have a duty to defend when pleadings allege a covered occurrence, “even if facts outside the four corners of those pleadings indicate that the claim may be meritless or not covered.” *Am. States Ins. Co. v. Graphic Arts Mut. Ins. Co.*, 193 A.D.3d 608, 609 [1st Dept. 2021]; *see also BP A.C. Corp. v. One Beacon Ins. Group*, 8 N.Y.3d 708, 714 [2007] (holding that a “duty to defend is triggered by the allegations contained in the underlying complaint” and that the “merits of the complaint are irrelevant”).

Here, Defendant’s duty to defend was triggered by the pleadings in the Underlying Action, which state merely that the accident occurred at an address that includes the covered property, and that the injured party was not an employee of Ana’s but rather an independent subcontractor. Regardless of the facts that have been or will in the future be discovered as the

Underlying Action proceeds, Defendant had a duty to defend that was triggered. Therefore, Plaintiff has met their burden on the motion for partial summary judgment and Defendant has not defeated that showing. Accordingly, it is hereby

ADJUDGED that the motion is granted, and the cross-motion is denied; and it is further ADJUDGED, ORDERED and DECLARED that defendant Utica First Insurance Company must defend Ana’s Opus Ltd. as an additional insured in the underlying lawsuit captioned *Marvin Mejia Sanchez v. Ana’s Opus Ltd., et al.* on a primary and non-contributory basis; and it is further

ADJUDGED, ORDERED and DECLARED that defendant Utica First Insurance Company must reimburse plaintiff Wesco Insurance Company for the sums it incurred in defending Ana’s in the *Sanchez* action in an amount to be determined at trial or other resolution of this matter.


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LYLE E. FRANK, J.S.C.

1/7/2026
DATE

CHECK ONE:

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<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: