St. John's Law Review

Volume 66, Winter 1992, Number 1 Article 12

New York Court of Appeals Holds that Court May Look Beyond Four Corners of Complaint to Determine Insurance Company's Duty to Defend

Steven M. Skolnick

harm. It is further suggested that a standing doctrine which requires the claimant to establish only "injury in fact" rather than "special injury" will be adequate to eliminate frivolous claims of environmental injury while ensuring that clear violations of SEQRA do not go unpoliced. New York claimants, especially those with economic interests at stake, who have suffered environmental harm but cannot demonstrate special injury, may not be able to challenge the agency action causing this harm. As a practical matter, environmental groups intending to challenge agency actions must be careful to identify members who have suffered special injury.[54]

Christopher P. Malloy

New York Court of Appeals holds that court may look beyond four corners of complaint to determine insurance company's duty to defend

Traditionally, when determining the sufficiency of pleadings on a motion to dismiss,[1] New York courts examine the allegations set forth within the "four corners of the complaint."[2] As long as allegations in the complaint state a valid cause of action, the motion to dismiss will fail.[3] Similarly, an insurer's obligation to de-

[54] Implementation of the Suffolk Lantz Plastics Law is expected to begin early in 1992. *See* John Barbanel, *Suffolk County's Ban on Plastics Loses Allies*, N.Y. TIMES, Dec. 31, 1991, at A1. The decision to implement the law was made despite requests from the New York State Department of Environmental Conservation to delay enforcement of the law pending a study of its potential impact on Long Island's garbage disposal pollutants. *Id.* Environmentalists and plastics industry representatives alike question whether the law will have a positive impact on Suffolk's solid waste disposal problems, and small business owners and supermarket chains are concerned about the law's potential adverse affects on the economy. *Id.*

[1] *See* CPLR 3211 (McKinney 1970 & Supp. 1991); *see also* SIEGEL §§ 257-258, at 387-89 (discussing motion to dismiss for failure to state cause of action); 4 WK&M ¶ 3211.29 (same).

[2] *See, e.g.*, Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275, 372 N.E.2d 17, 20, 401 N.Y.S.2d 182, 185 (1977) (stating that sole determining factor in deciding motion to dismiss is whether allegations in complaint state cause of action); Foley v. D'Agostino, 21 A.D.2d 60, 64-65, 248 N.Y.S.2d 121, 126-27 (1st Dep't 1964) (same).

[3] *See* Meyers & Sons Corp. v. Zurich Am. Ins. Group, 74 N.Y.2d 298, 302, 545 N.E.2d 1206, 1208, 546 N.Y.S.2d 818, 820 (1989); *Guggenheimer*, 43 N.Y.2d at 275, 372 N.E.2d at 20, 401 N.Y.S.2d at 185. In *Guggenheimer*, the Court of Appeals explained that "[i]nitially, the sole criterion [in determining whether a motion to dismiss should be granted] is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for

fend its insured arises whenever the pleadings allege the occurrence of a covered event,[4] regardless of facts known to the insurer that may render the claim meritless.[5] Conversely, insurers have ar-

---

dismissal will fail." *Id.* In Pace v. Perk, 81 A.D.2d 444, 449, 440 N.Y.S.2d 710, 714 (2d Dep't 1981), the Appellate Division, Second Department stated the following:

> [T]he court [in ruling on a motion to dismiss for failure to state a claim] must assume that its allegations are true, and must deem the complaint to allege whatever can be imputed from its statements by fair and reasonable intendment, however imperfectly, informally or illogically facts may be stated therein. In making its analysis, the court is not bound by the constructions and theories of the parties. The test of the sufficiency of a complaint is whether it gives sufficient notice of the transactions, [or] occurrences . . . intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments.

Id. (citations omitted).

[4] *See* Technicon Elecs. Corp. v. American Home Assurance Co., 74 N.Y.2d 66, 73, 542 N.E.2d 1048, 1050, 544 N.Y.S.2d 531, 533 (1989) ("If the complaint contains any facts or allegations which bring the claim even potentially within the protection purchased, the insurer is obligated to defend."). *See generally* 7C JOHN A. APPLEMAN, INSURANCE LAW AND PRACTICE §§ 4682-4683 (1979 & Supp. 1991) (discussing basic concepts of duty to defend); GEORGE J. COUCH, CYCLOPEDIA OF INSURANCE LAW §§ 51:42-51:43, at 452-58 (2d ed. 1982) (same); Deborah M. Neyens, Comment, *Expanding the Insurer's Duty to Defend in Iowa:* First Newton National Bank v. General Casualty Company of Wisconsin, 74 IOWA L. REV. 969, 971-73 (1989) (same).

New York courts have further stated that if any doubt exists as to whether the allegations state a claim under the policy, the doubt "must be resolved in favor of the insured." Sucrest Corp. v. Fisher Governor Co., 83 Misc. 2d 394, 402, 371 N.Y.S.2d 927, 937 (Sup. Ct. N.Y. County 1975).

[5] *See* Lee v. Aetna Casualty & Sur. Co., 178 F.2d 750, 751 (2d Cir. 1949). *See generally* Case Note, *An Insurer's Duty to Defend Its Insured and an Insurer's Liability for Wrongfully Declining to Defend Its Insured*—Lanoue v. Fireman's Fund American Insurance Cos., 6 WM. MITCHELL L. REV. 473, 476-77 (1980) (discussing general principles of insurer's duty to defend).

Liability policies generally provide that the insurer will defend any suit brought against the insured even if the suit is groundless, false, or fraudulent. *See* Ruder & Finn Inc. v. Seaboard Sur. Co., 52 N.Y.2d 663, 670, 422 N.E.2d 518, 521, 439 N.Y.S.2d 858, 861 (1981); Goldberg v. Lumber Mut. Casualty Ins. Co., 297 N.Y. 148, 151, 77 N.E.2d 131, 134 (1948); *see also* Case Note, *supra*, at 473 n.5 (duty to defend claim within coverage is standard feature of liability insurance policy). Thus, as stated by the Second Circuit in *Lee*, an "insurer will defend the suit, if the injured party states a claim [covered under the policy]; and it is *irrelevant* that the insurer may get information from the insured . . . which indicates, or even demonstrates, that the injury is not in fact 'covered.' " *Lee*, 178 F.2d at 751 (emphasis added).

Courts have confined their analysis to the allegations contained in the complaint because of the longstanding principle that an insurer's duty to defend is broader than its duty to indemnify. *See Ruder*, 52 N.Y.2d at 669, 422 N.E.2d at 521, 439 N.Y.S.2d at 861; *Goldberg*, 297 N.Y. at 154, 77 N.E.2d at 133. Consequently, even though an insurer may not ultimately be obligated to indemnify its insured because it is established at trial that the event falls outside the coverage of the insurance policy or because it is determined that the insured is not liable to the injured party, the insurer may still be obligated to defend the insured party. *See Ruder*, 52 N.Y.2d at 669-70, 422 N.E.2d at 521, 439 N.Y.S.2d at 861.

gued that a complaint must be dismissed when it fails to allege facts placing the event within the scope of coverage of the policy, notwithstanding facts known to the insurer that would indicate that the event is covered.[6] Courts in jurisdictions outside of New York, however, have held that an insurer has a duty to defend when it has knowledge of facts creating the possibility of coverage under the policy, regardless of whether the allegations set forth in the complaint state a valid cause of action.[7] Recently, in *Fitzpatrick v. American Honda Motor Co.*,[8] the New York Court of Appeals adopted this approach, concluding that an insurer cannot avoid its duty to defend "when it has actual knowledge of facts establishing a reasonable possibility of coverage."[9]

In *Fitzpatrick*, the plaintiff, Linda Fitzpatrick, sued for the wrongful death of her husband and named Frank Moramarco, in-

---

However, at least one court outside of New York has held that an insurer is relieved of its duty to defend when facts outside the complaint show that the alleged occurrence is not within the coverage of the policy. *See* Weis v. State Farm Mut. Auto. Ins. Co., 64 N.W.2d 366, 368 (Minn. 1954) ("where the owner himself . . . indicated that the incidents complained of were . . . intentional and deliberate . . . there was no coverage under the policy involved").

[6] *See, e.g.*, Loftin v. United States Fire Ins. Co., 127 S.E.2d 53, 59 (Ga. Ct. App. 1962) (insurer argued that "because [it was] . . . bound to defend a suit falsely alleging a claim covered by the policy, [it was therefore] excused from defending a suit alleging facts not covered, whether false or not"); LaRotunda v. Royal Globe Ins. Co., 408 N.E.2d 928, 934 (Ill. App. Ct. 1980) (insurer sought to deny defense because complaint alleged use of land as refuse dump, which brought activity within business use exclusion, even though insurer knew part of land was vacant and not used for business purposes); Lanoue v. Fireman's Fund Am. Ins. Cos., 278 N.W.2d 49, 50-52 (Minn. 1979) (insurer contended it had no duty to defend because complaint stated defendant furnished injured party with alcohol and policy excluded coverage for such an event, even though insurer knew injured party had in fact stolen alcohol).

[7] *See, e.g.*, *Loftin*, 127 S.E.2d at 59 (insurer obligated to defend when facts which are "known or ascertainable" by it are within coverage); *LaRotunda*, 408 N.E.2d at 934 (insurer estopped from denying coverage when facts known by it potentially bring claim within policy); *Lanoue*, 278 N.W.2d at 52 (facts outside complaint known by insurer may not be ignored). *But see* Ohio Casualty Ins. Co. v. Flanagin, 210 A.2d 221, 225 (N.J. 1965) (holding that duty to defend is based only on allegations in complaint without regard to knowledge of facts outside pleadings); Consolidated Underwriters v. Loyd W. Richardson Constr. Corp., 444 S.W.2d 781, 784 (Tex. Civ. App. 1969) (same).

[8] 78 N.Y.2d 61, 575 N.E.2d 90, 571 N.Y.S.2d 672 (1991).

[9] *Id.* at 67, 575 N.E.2d at 93, 571 N.Y.S.2d at 675. Lower New York courts had previously reached the same conclusion. *See* Spielfogel v. North River Ins. Co., 148 A.D.2d 696, 697, 539 N.Y.S.2d 444, 445 (2d Dep't 1989); Commercial Pipe & Supply Corp. v. Allstate Ins. Co., 36 A.D.2d 412, 415, 321 N.Y.S.2d 219, 221-22 (4th Dep't 1971), *aff'd*, 30 N.Y.2d 619, 282 N.E.2d 128, 331 N.Y.S.2d 42 (1972) (affirming because complaint established possibility of coverage; knowledge outside complaint was not discussed); Sucrest Corp. v. Fisher Governor Co., 83 Misc. 2d 394, 402-03, 371 N.Y.S.2d 927, 937 (Sup. Ct. N.Y. County 1975).

ter alia, as a defendant.[10] Moramarco was characterized in the complaint as an employee of Cherrywood Property Owners Association ("CPOA"), but was in fact an officer, shareholder and director of Cherrywood Landscaping, Inc. ("CLI"), an independent concern that had been retained by CPOA to do landscaping work on CPOA's property.[11] Pursuant to a liability insurance policy CLI had obtained through National Casualty Company ("National"), Moramarco requested that National provide the defense in the suit brought by Fitzpatrick, but National refused the request because Moramarco was not insured as an individual under the policy.[12] By its terms, the policy named as "insured persons" "any executive officer, director, or stockholder [of the named insured (i.e., CLI)] while acting within the scope of his duties."[13] Thereafter, Moramarco filed a third-party complaint against National seeking to compel a defense, and National moved to dismiss pursuant to CPLR 3211(a)(1) and (7).[14] The supreme court denied National's motion to dismiss,[15] and the appellate division reversed.[16]

The New York Court of Appeals again reversed, holding that National had a duty to defend based on its knowledge of facts outside the complaint establishing a reasonable possibility of coverage, even though the allegations in the Fitzpatrick complaint

---

[10] *Fitzpatrick*, 78 N.Y.2d at 63, 575 N.E.2d at 90, 571 N.Y.S.2d at 672. The complaint alleged that Moramarco had hired Fitzpatrick as an independent contractor and that Fitzpatrick was killed while using a three-wheel all-terrain vehicle owned by Moramarco. *Id.* at 63, 575 N.E.2d at 90-91, 571 N.Y.S.2d at 672-73.

[11] *Id.* at 63, 69, 575 N.E.2d at 91, 94, 571 N.Y.S.2d at 673, 676.

[12] *Id.* at 64, 575 N.E.2d at 91, 571 N.Y.S.2d at 673.

[13] *Id.* Moramarco informed National, in subsequent correspondence, that the vehicle "was 'owned for and . . . used exclusively for landscaping operations' and that the claims asserted against him in the main action all arose out of activities he undertook for CLI, the named insured." *Id.* The court also stated that Moramarco was an officer and/or shareholder of CLI, and had he been correctly identified in the complaint, he would have been covered. *Id.* at 69, 575 N.E.2d at 94, 571 N.Y.S.2d at 676.

[14] *Id.* at 64, 575 N.E.2d at 91, 571 N.Y.S.2d at 673. National contended that it had no duty to defend because the allegations in Fitzpatrick's complaint did not imply "that the claim against Moramarco arose in connection with his activities as an officer, shareholder or director of the insured CLI." *Id.* Moramarco submitted proof that the pleading was inaccurate and that the alleged occurrence was covered by the policy. *Id.*

[15] *Id.* The supreme court reasoned that the determination as to whether the allegations stated a covered event had to be decided at a plenary trial. *Id.* at 65, 575 N.E.2d at 91, 571 N.Y.S.2d at 673.

[16] *Id.* at 65, 575 N.E.2d at 91, 571 N.Y.S.2d at 673. The appellate division dismissed the complaint, holding that the "allegations in the complaint are the determinative factor in resolving whether the provisions of an insurance policy have been 'activated' in a particular action." *Id.*

failed to state a covered event under the policy.[17] Writing for the majority, Judge Titone explained that the rationale for application of the "four corners of the complaint" rule is that "the [insurer's] duty to defend is broader than [its] duty to indemnify,"[18] and that application of the four-corners approach in cases such as this would in fact "render the duty to defend *narrower* than the duty to indemnify."[19] The court further reasoned that implementation of this rule would lead to unjust results since it would provide the insurer with a windfall by allowing it to hide behind the complaint, thus denying an insured the benefit of the purchased protection.[20]

Dissenting, Judge Alexander asserted that National's argument should have been accepted because it was in accord with the long-established rule that the duty to defend is determined by the allegations set forth in the complaint.[21] Judge Alexander argued that by deviating from the traditional four-corners rule, the court had replaced "certainty with uncertainty" because an insurer will not know "what, if any, investigation it must make" to determine its obligation to defend.[22]

It is submitted that the Court of Appeals was correct in determining that National was obligated to defend Moramarco, notwithstanding Fitzpatrick's failure to characterize Moramarco as a specifically named insured in the complaint, because to hold otherwise would lead to unjust results. It is noted, however, that the court in *Fitzpatrick* left unanswered the critical question of when and to what extent an insurance company is now obligated to investigate a claim before denying a defense.

While it is true that the four-corners approach provides certainty for both the insured and the insurer,[23] application of this

---

[17] *Id.* at 70, 575 N.E.2d at 95, 571 N.Y.S.2d at 677.

[18] *Id.* at 65, 575 N.E.2d at 92, 571 N.Y.S.2d at 674.

[19] *Id.* at 66, 575 N.E.2d at 92, 571 N.Y.S.2d at 674 (emphasis added).

[20] *Id.* at 69-70, 575 N.E.2d at 94-95, 571 N.Y.S.2d at 676-77. The court also stated that its decision in this case was supported by New York's liberal pleading rules. *Id.* at 69, 575 N.E.2d at 94, 571 N.Y.S.2d at 676. CPLR 3025(a) provides that the pleadings may be amended to conform to the proof at any time, provided no prejudice is shown. *See* CPLR 3025(a) (McKinney 1991).

[21] *Fitzpatrick*, 78 N.Y.2d at 71, 575 N.E.2d at 95, 571 N.Y.S.2d at 677 (Alexander, J., dissenting). Judge Alexander argued that if courts are to hold that a duty to defend arises when the allegations state a cause of action, then the converse, that no duty exists when the claim fails to state a covered event, should also be true. *Id.* at 71-72, 575 N.E.2d at 96, 571 N.Y.S.2d at 678 (Alexander, J., dissenting).

[22] *Id.* at 73, 575 N.E.2d at 97, 571 N.Y.S.2d at 679 (Alexander, J., dissenting).

[23] *See, e.g.*, International Paper Co. v. Continental Casualty Co., 35 N.Y.2d 322, 326-27,

rule in situations where an insurer has knowledge of facts that would give rise to its duty to defend, yet which are not asserted in the complaint, would allow insurers to ignore their duty "at the expense of [the] insured."[24] Generally, these unalleged facts will surface at trial, and under the CPLR's liberal pleading rules,[25] the complaint can be amended to conform to these facts, thereby stating a covered claim.[26] Based on this rationale, as well as decisions from other jurisdictions,[27] it is proposed that the Court of Appeals arrived at a sound result.

However, Judge Alexander's dissent raised a critical question

---

320 N.E.2d 619, 621-22, 361 N.Y.S.2d 873, 876 (1974) (under four-corners-of-complaint rule, when allegations state cause of action covered under policy, insurer knows it will have to defend and insured understands it will receive defense).

[24] *Fitzpatrick*, 78 N.Y.2d at 69, 575 N.E.2d at 94, 571 N.Y.S.2d at 676. If the complaint is deemed controlling, the insurer could cloak itself behind the third party's complaint and thus improperly limit its duty to defend in circumstances where the insured has not pleaded facts evidencing coverage, but the insurer has notice of such facts. *See id.* at 66, 575 N.E.2d at 92, 571 N.Y.S.2d at 674; *see also* Associated Indem. Co. v. Insurance Co. of N. Am., 386 N.E.2d 529, 536 (Ill. App. Ct. 1979) (not looking beyond complaint will "allow the insurer to construct a formal fortress of the third party's pleadings and to retreat behind its walls, thereby successfully ignoring true but unpleaded facts within its knowledge that require it . . . to conduct the . . . insured's defense").

Under these circumstances, not only would application of the four-corners rule lessen the insurer's obligation to defend, it would also deny the insured's reasonable expectation of coverage. *See* Gray v. Zurich Ins. Co., 419 P.2d 168, 173 (Cal. 1966) (upholding request for defense when "insured could reasonably expect [and is legally entitled to] such protection"); Loftin v. United States Fire Ins. Co., 127 S.E.2d 53, 59 (Ga. Ct. App. 1962). In *Loftin*, the court discussed the insured's reasonable expectations of coverage in terms of the intent of the parties when it stated,

> [i]t would not be reasonable to say that it was the intention of the contracting parties, when the insured has given all notice and information required of him, that the assertions of a third party, a stranger to the contract, rather than the true facts, be allowed to determine the rights between the contracting parties . . . .

Id.; *see also* Case Note, *supra* note 5, at 482 n.38 (four-corners test cannot be applied when known facts outside pleadings contradict allegations and insured's reasonable expectations of coverage).

[25] *See* SIEGEL §§ 207-209, at 300-04 (noting that pleading under CPLR is liberal); *see also* Foley v. D'Agostino, 21 A.D.2d 60, 63, 248 N.Y.S.2d 121, 125 (1st Dep't 1964) (under CPLR pleadings give "notice" to court and parties).

[26] *See Fitzpatrick*, 78 N.Y.2d at 69-70, 575 N.E.2d at 94-95, 571 N.Y.S.2d at 676-77; CPLR 3025(c) (McKinney 1991) (permitting amendment to conform to evidence). Under this theory, the fact of Moramarco's position as an officer and/or stockholder of CLI would have emerged at trial, Fitzpatrick's complaint could have been amended, and National's true duty to defend would have been exposed. *See Fitzpatrick*, 78 N.Y.2d at 69-70, 575 N.E.2d at 94-95, 571 N.Y.S.2d at 676-77.

[27] *See Fitzpatrick*, 78 N.Y.2d at 66-67, 575 N.E.2d at 92-93, 571 N.Y.S.2d at 674-75 (surveying cases holding that insurer's knowledge of facts that potentially bring claim within policy's indemnification coverage gives rise to duty to defend).

as to what, if any, investigation insurers are now obligated to make.[28] The *Fitzpatrick* court expressly declined to resolve this issue, however, because the insured had notified National of the underlying facts, and therefore the court was not required to discuss the insurer's duty to investigate.[29]

Jurisdictions that have adopted this so-called "factual test"[30] in determining whether the insurer has a duty to defend have employed different standards to ascertain the extent of the insurer's duty to investigate.[31] It is submitted that New York courts should adopt a rule that would impose on insurers a duty to discover those facts that are reasonably ascertainable. Because most insurance policies already entitle the insurer to conduct an investigation whenever it deems necessary,[32] the proposed standard would not

---

[28] *Id.* at 73, 575 N.E.2d at 97, 571 N.Y.S.2d at 679 (Alexander, J., dissenting).

[29] *Id.* at 67 n.2, 575 N.E.2d at 93 n.2, 571 N.Y.S.2d at 675 n.2. The court stated, "there is nothing in this case, where the insurer was actually notified of the salient facts by both its insured and its own agent, that requires us to create a duty to investigate where none previously existed." *Id.*

[30] *See* David S. Garbett, *The Duty to Defend Clause in a Liability Insurance Policy: Should the Exclusive Pleading Test Be Replaced?*, 36 U. MIAMI L. REV. 235, 239 (1982) (defines "factual test" as rule whereby actual facts control duty to defend when complaint fails to accurately illustrate covered event).

[31] Some courts have held that the insurer's duty is based on those facts that are known by the insurer, *see* LaRotunda v. Royal Globe Ins. Co., 408 N.E.2d 928, 934 (Ill. App. Ct. 1980) (facts obtained by insurer's investigation can be considered knowledge); New Hampshire Ins. Co. v. Christy, 200 N.W.2d 834, 839 (Iowa 1972) (knowledge from facts of record); Lanoue v. Fireman's Fund Am. Ins. Cos., 278 N.W.2d 49, 52 (Minn. 1979) (unpleaded facts relayed to insurance agent by insured constitute knowledge), whereas other courts have held that an insurer is obligated to defend when facts are known or are reasonably ascertainable. *See* National Indem. Co. v. Flesher, 469 P.2d 360, 366 (Alaska 1970) (enunciating duty to investigate facts but denying coverage because reasonable investigation would not have exposed coverage); Loftin v. United States Fire Ins. Co., 127 S.E.2d 53, 59 (Ga. Ct. App. 1962) (predicating insurer's duty to defend on discovery of reasonably ascertainable facts); Shepard Marine Constr. Co. v. Maryland Casualty Co., 250 N.W.2d 541, 542 (Mich. Ct. App. 1976) (insurer must look beyond third party complaint). *See generally* APPLEMAN, *supra* note 4, § 4684.01, at 95 (discussing insurer's duty to investigate); Garbett, *supra* note 30, at 284-88 (same).

Those New York courts that employed the factual test adopted by the Court of Appeals in *Fitzpatrick* did so because the insurer had actual knowledge of unalleged facts; they did not impose any duty to investigate on the insurer. *See, e.g.*, Spielfogel v. North River Ins. Co., 148 A.D.2d 696, 697, 539 N.Y.S.2d 444, 445 (2d Dep't 1989) (knowledge came from plaintiff's deposition testimony); Commercial Pipe & Supply Corp. v. Allstate Ins. Co., 36 A.D.2d 412, 415, 321 N.Y.S.2d 219, 221 (4th Dep't 1971), *aff'd*, 30 N.Y.2d 619, 282 N.E.2d 128, 331 N.Y.S.2d 42 (1972) (facts inferred from allegations); Sucrest Corp. v. Fisher Governor Co., 83 Misc. 2d 394, 401, 371 N.Y.S.2d 927, 936 (Sup. Ct. N.Y. County 1975) (allegations of third-party complaint raised possibility of coverage).

[32] *See* APPLEMAN, *supra* note 4, § 4682, at 22 n.9 (general liability insurance policy states insurer "may make such investigation . . . of any claim or suit as it deems expedi-

be overly burdensome on insurers and would best protect the interests of the insured.[33]

When the occurrence of a covered event has been stated in the complaint, the four-corners approach ensures that an insurer's duty to defend is broader than its duty to indemnify. However, in circumstances where the allegations do not state the occurrence of a covered event, application of the four-corners approach would yield unjust results because an insurer could dodge its duty to defend despite the existence of facts evidencing the possibility of a duty to indemnify. Recognizing this risk, the New York Court of Appeals in *Fitzpatrick* properly adopted the factual test, which recognizes the duty to defend when an insurer has knowledge of facts evidencing the occurrence of a covered event. While the court's decision should be applauded, it must be recognized that its failure to address the extent to which an insurer must conduct a factual investigation will necessitate further consideration of this issue in the future.

Steven M. Skolnick

---

ent"); *see also* WARREN FREEDMAN, FREEDMAN'S RICHARDS ON INSURANCE § 5A:3, at 526 (6th ed. 1990) ("It is generally recognized that as long as there is 'potential' coverage of the claim . . . [t]he burden is on the insurer to conduct a reasonable investigation as to coverage . . . .").

[33] *See* Garbett, *supra* note 30, at 284 n.219 (imposition of duty to discover reasonably ascertainable facts would not be burdensome since most insurers will "investigate as a matter of course to determine the merits of the action against the insured and evaluate settlement prospects").