SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Certain Underwriters at Lloyd's, London v. Southwest Marine and General Insurance Company

Certain Underwriters, 2026 NY Slip Op 02329 (Supreme Court of the State of New York Appellate Division First Department 2026) · No. Case No. 2025-02496; Appeal No. 6399; Index No. 651449/24 · Decided April 16, 2026

SUMMARY

The Appellate Division, First Department affirmed an order granting partial summary judgment requiring Southwest Marine and General Insurance Company to defend Arsenal Scaffold Inc. as an additional insured on a primary and noncontributory basis and reimburse defense costs. The court held that the insurer had actual knowledge of facts establishing a reasonable possibility of coverage, despite its named insured not being a defendant in the underlying action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Higgitt, J.; Rosado, J.; O'Neill Levy, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	April 16, 2026
DOCKET	Case No. 2025-02496; Appeal No. 6399; Index No. 651449/24
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting plaintiff's motion for partial summary judgment declaring that defendant had a duty to defend Arsenal Scaffold Inc. as an additional insured on a primary and noncontributory basis and to reimburse defense costs, and denying defendant's cross-motion for summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Southwest Marine and General Insurance Company v. Certain Underwriters at Lloyd's, London

TOPICS

duty to defend · declaratory relief insurance · insurance coverage · construction law · appellate procedure

PRACTICE AREAS

insurance coverage · construction law · appellate procedure

QUESTIONS PRESENTED

1. Whether the insurer had a duty to defend Arsenal Scaffold Inc. as an additional insured in the underlying construction-injury action.
2. Whether the insurer could disregard facts known to it that created a reasonable possibility of coverage merely because its named insured was not a defendant in the underlying action.
3. Whether plaintiff was entitled to reimbursement of defense costs and a declaration that the defense obligation was primary and noncontributory.

HOLDINGS

1. The insurer had a duty to defend Arsenal because it had actual knowledge of facts establishing a reasonable possibility of coverage.
2. Plaintiff was entitled to partial summary judgment declaring that defendant must defend Arsenal on a primary and noncontributory basis and reimburse plaintiff for all costs incurred in defending Arsenal.

KEY QUOTATIONS

> *"The record amply supports the court's conclusion that defendant "has actual knowledge of facts establishing a reasonable possibility of coverage," thereby requiring it to provide a defense"* ([*1])

> *"While defendant's named insured is not a defendant in the underlying action, defendant cannot simply ignore the facts known to it that create a reasonable possibility of coverage"* ([*1])

FACTUAL BACKGROUND

The underlying plaintiffs alleged that they were seriously injured after falling from an elevated height at a construction site while working on a scaffold. Defendant's named insured, JGR Services Inc., contracted with Arsenal Scaffold Inc. to perform work at the site and was the only identified party performing work there on Arsenal's behalf. A third-party complaint also alleged that JGR's negligence caused the underlying plaintiffs' injuries.

PROCEDURAL HISTORY

Plaintiff commenced a declaratory insurance action concerning defendant's duty to defend Arsenal Scaffold Inc. in an underlying construction-injury action. Supreme Court, New York County, granted plaintiff partial summary judgment and denied defendant's cross-motion. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Frontier Insulation Contrs. v. Merchants Mut. Ins. Co., 91 N.Y.2d 169, 175 (1997)
- Live Nation Mktg., Inc. v. Greenwich Ins. Co., 188 A.D.3d 422, 423 (1st Dep't 2020)
- Sumner Bldrs. Corp. v. Rutgers Cas. Ins. Co., 101 A.D.3d 417, 418-419 (1st Dep't 2012)

OPINION

PER CURIAM.

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In the underlying action, the plaintiffs each allege that they were "caused to be seriously injured when" they fell "from an elevated height at" the construction site, and subsequently claimed to have been injured while working on a scaffold. Defendant's named insured, JGR Services Inc., contracted with Arsenal to perform work at the site, and is the only party identified that performed work there on behalf of Arsenal.

In a third-party complaint, JGR is also alleged to have caused the underlying plaintiffs' injuries as a result of its negligence.</p> <p>The court properly granted plaintiff's motion for partial summary judgment declaring that defendant had a duty to defend Arsenal in the underlying action as an additional insured.

The record amply supports the court's conclusion that defendant "has actual knowledge of facts establishing a reasonable possibility of coverage," thereby requiring it to provide a defense (<i>Frontier Insulation Contrs. v Merchants Mut. Ins. Co.</i>, 91 NY2d 169, 175 [1997] [internal quotation marks omitted]; <i>see</i> <i>Live Nation Mktg., Inc. v Greenwich Ins.

Co.</i>, 188 AD3d 422, 423 [1st Dept 2020]). While defendant's named insured is not a defendant in the underlying action, defendant cannot simply ignore the facts known to it that create a reasonable possibility of coverage (<i>see Sumner Bldrs. Corp. v Rutgers Cas. Ins. Co.</i>, 101 AD3d 417, 418-419 [1st Dept 2012]).</p> <p>We have considered defendant's remaining arguments and find them unavailing.</p><p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: April 16, 2026</p> </div>

PER CURIAM.

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