NEW YORK SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

Hofstra University v. United Educators

Hofstra Univ., 2026 NY Slip Op 03631 (N.Y. 2026) · No. Index No. 653697/24; Appeal No. 6829; Case No. 2025-02023 · Decided June 9, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order interpreting an insurance-policy exclusion for losses arising from a demand for the return of funds to include tuition and fees paid by students. The court held that the exclusion barred reimbursement claims for tuition and fees but did not establish that all damages sought in related class actions were limited to such payments. Because the underlying complaints also sought other damages and relief, dismissal was premature and the insurer's duty to defend was triggered.

OPINION

PER CURIAM.

This decision is uncorrected and subject to revision before publication in the Official Reports. Hofstra University, et al., Plaintiffs-Appellants-Respondents, v United Educators, Defendant-Respondent-Appellant. Decided and Entered: June 09, 2026 Index No. 653697/24|Appeal No. 6829|Case No. 2025-02023| Before: Moulton, J.P., Friedman, Pitt-Burke, Rosado, Michael, JJ. Hunton Andrews Kurth LLP, New York (Michael S. Levine of counsel), for appellants-respondents.

Ansa Assuncao, LLP, White Plains (Ronald P. Schiller of counsel), for respondent-appellant. [*1] Order, Supreme Court, New York County (Lyle E. Frank, J.), entered March 7, 2025, which, to the extent appealed from, interpreted the term "funds" in the subject insurance policies to include sums paid by students in the form of tuition and fees for purposes of a policy exclusion, and denied defendant's motion to dismiss the amended complaint, unanimously affirmed, without costs.

In this insurance coverage dispute, exclusions paragraph 15(q) of the policies defendant issued to plaintiffs states that defendant is not liable for any loss "related to or arising out of... any demand for the return of funds."

The court correctly found that the plain meaning of the term "funds" is sufficiently clear on its face to include the sums paid by students in the form of tuition and fees (see Federal Ins. Co. v International Bus. Machs. Corp., 18 NY3d 642, 650 [2012]).

Moreover, the definition of damages under the policies explicitly excludes "the value of tuition or scholarships." Given that the policies remain enforceable with respect to other covered losses, they are not illusory (see Lend Lease [US] Constr. LMB Inc. v. Zurich Am. Ins. Co., 136 AD3d 52, 60 [1st Dept 2015], affd on other grounds 28 NY3d 675, 685 [2017] ["[A]n insurance policy is not illusory if it provides coverage for some acts; it is not illusory simply because of a potentially wide exclusion"] [internal quotation marks omitted]).

Accordingly, the funds exclusion provision of the policies bars claims for reimbursement of tuition and fees. However, while the return of funds is a significant portion of the relief requested in the underlying actions, a review of the underlying complaints indicates that the plaintiffs also seek damages beyond solely a return of tuition and fees.

The underlying class action complaints seek compensatory, punitive, and/or statutory damages; injunctive relief; restitution; and such other relief as the court deems just and proper. At this stage of the proceedings, dismissal based on the exclusion is premature, as the record does not establish that the only available damages consist of a return of money paid.

Defendant's argument that the damages sought in the underlying class action lawsuits are based on wrongfully acquired funds such that public policy bars plaintiffs' claims is unavailing (see J.P. Morgan Sec. Inc. v Vigilant Ins. Co., 21 NY3d 324, 335 [2013]). Furthermore, defendant's duty to defend under the terms of these policies is triggered whenever the underlying claims raise the possibility of coverage, which is the case here (see Fieldston Prop.

Owners Assn., Inc. v Hermitage Ins. Co., Inc., 16 NY3d 257, 264 [2011]). The class action suits seek damages beyond tuition and fees that fall under the scope of defendant's duty to defend. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 9, 2026

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