

## Duty to Defend: What the Courts Say – STATE LIST



State	Duty to Defend
<b>Alabama</b>	<p>It is well established that the insurer's duty to defend is more extensive than its duty to pay. <i>Lawler Machine Foundry Co. v. Pacific Indemnity Ins. Co.</i></p> <p>"It is well settled `that [an] insurer's duty to defend is more extensive than its duty to [indemnify]."<i> United States Fid. Guar. Co. v. Armstrong</i></p> <p>Whether an insurance company owes its insured a duty to provide a defense in proceedings instituted against the insured is determined primarily by the allegations contained in the complaint. <i>United States Fid. Guar. Co. v. Armstrong</i></p> <p>[T]he duty to defend arises when the original complaint alleges a state of facts within the coverage of the policy. <i>Ladner Co. v. Southern Guaranty Ins. Co.</i></p> <p>If the allegations of the injured party's complaint show an accident or an occurrence within the coverage of the policy, then the insurer is obligated to defend, regardless of the ultimate liability of the insured. <i>Ladner Co. v. Southern Guar. Ins. Co.</i></p> <p>`[I]f there is any uncertainty as to whether the complaint alleges facts that would invoke the duty to defend, the insurer must investigate the facts surrounding the incident that gave rise to the complaint in order to determine whether it has a duty to defend the insured.' <i>Blackburn v. Fidelity Deposit Co. of Maryland</i></p> <p>When a complaint alleges both acts covered under the policy and acts not covered, the insurer is under a duty to at least defend the allegations covered by the policy. <i>Blackburn v. Fidelity Deposit Co. of Maryland</i></p>
<b>Alaska</b>	<p>An insurer's duty to defend and its obligation to indemnify are separate and distinct contractual elements. <i>Afcan v. Mutual Fire, Marine and Inland Ins. Co.</i></p> <p>Depending upon the nature of the claim against the insured, the insurer may have an obligation to defend although it has no ultimate liability under the policy. We believe that the language of the standard duty to defend clause creates a reasonable expectation on the part of the insured whenever a complaint states a cause of action within, or potentially within, the policy coverage. . . . Thus, even though facts extrinsic to the pleadings may show that there will be no ultimate liability under the policy, if the complaint on its face alleges facts which, standing alone, give rise to a possible finding of liability covered by the policy, the insured has the contractual right to a proper defense at the expense of the insurer. <i>Afcan v. Mutual Fire, Marine and Inland Ins. Co.</i></p>



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	The presence of other allegations in the complaint which are not within policy coverage does not relieve [the insurance carrier] of its duty to defend. <i>See Ferguson v. Birmingham Fire Ins. Co</i>
<b>Arizona</b>	<p>"The duty to defend . . . is not the same as the duty to indemnify. The duty to defend arises at the earliest stages of litigation and generally exists regardless of whether the insured is ultimately found liable." <i>INA Ins. Co. of N. Am. v. Valley Forge Ins. Co.</i></p> <p>("[T]he insurer would have the duty to defend a suit alleging facts that, if true, would give rise to coverage, even though there would ultimately be no obligation to indemnify if the facts giving rise to coverage were not established. Thus, pursuant to such policy language, the obligation to defend a suit may be broader than the obligation to indemnify.").</p> <p>In Arizona, "if any claim alleged in the complaint is within the policy's coverage, the insurer has a duty to defend the entire suit, because it is impossible to determine the basis upon which the plaintiff will recover (if any) until the action is completed." <i>W. Cas. Sur., 130 Ariz, at 79, 634 P.2d at 6; see also Scottsdale Ins. Co. v. Van Nguyen</i></p> <p>The scope of the duty to defend under an insurance policy can be broader than the scope of the duty to indemnify. The "insurance policy language controls the scope and extent of an insurer's duty to defend." <i>Cal Cas. Ins. Co. v. State Farm Mut. Auto. Ins. Co.</i></p>
<b>Arkansas</b>	<p>It is well settled in Arkansas that the duty to defend is broader than the duty to pay damages. <i>Home Indem. Co. v. City of Marianna</i></p> <p>In examining the duty to defend, this court has recognized the general rule that the allegations in the pleadings against the insured determine the insurer's duty to defend. <i>See Mattson v. St. Paul Title Co. of the South</i></p> <p>[T]he duty to defend is broader than the duty to indemnify. <i>See Commercial Union Ins. Co. of America v. Henshall, supra.</i></p> <p>[T]he duty to defend arises when there is a possibility that the injury or damage may fall within the policy coverage. <i>See Home Indemnity Co. v. City of Marianna</i></p> <p>Where there is no possibility that the damage alleged in the complaint may fall within the policy coverage, there would be no duty to defend. <i>See C.T. Drechsler, Annotation, Allegations in Third Person's Action Against Insured as Determining Liability Insurer's Duty to Defend</i></p> <p>There are occasions where an insurance company's duty to defend cannot be determined solely from the allegations of the complaint. <i>Commercial Union Ins. Co. of Am. v. Henshall.</i> Situations involving claims of self defense in response to allegations of assault and battery fall within this category of cases, because plaintiffs cannot be expected to allege in the complaint that they were assaulted by the insured while the insured was protecting life or property. <i>Smith v. St. Paul Guardian Ins. Co</i></p>

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<b>California</b>	<p>It is well settled that, in insurance contracts, "the duty to defend is broader than the duty to indemnify." <i>Horace Mann Ins. Co. v. Barbara B.</i></p> <p>An insurer is under a duty to defend any "suit which potentially seeks damages within the coverage of the policy." <i>Gray v. Zurich Ins. Co.</i></p> <p>Under California law, insurers have two primary duties to the insured: the duty to defend and the duty to indemnify. While an insurer is only required to indemnify its insured for claims that are actually covered under the policy, it has a broader duty to defend its insured against claims that are even potentially covered. <i>See Buss v. Superior Court</i></p>
<b>Colorado</b>	<p>It is well settled in Colorado that "a duty to defend exists when a complaint includes any allegations that, 'if sustained would impose a liability covered by the policy.'" <i>Cotter Corp. v. American Empire Surplus Lines Insurance Co.</i></p> <p>If an insurer believes that it can ultimately show that it had no obligation to defend, the appropriate course of action "is to provide a defense to the insured under a reservation of rights to seek reimbursement should the facts at trial prove that the incident resulting in liability was not covered by the policy, or to file a declaratory judgment action after the underlying case has been adjudicated." <i>Hecla Mining Co. v. New Hampshire Ins. Co.</i></p> <p>We attempted to balance the interests of both the insurers and the insureds by ensuring that the broad rule basing the duty to defend on the complaint will not require insurers to pay defense costs if coverage ultimately does not exist under the policies. Additionally, we created an incentive for insurers to defend by allowing them to subsequently seek reimbursement. Thus, we did not modify the general determination of the duty to defend, but instead merely attempted to create a remedy for insurers that provided defenses to insureds when coverage ultimately did not exist. (<i>Cotter</i>)</p>
<b>Connecticut</b>	<p>"Under Connecticut law, it is well established that a liability insurer has a duty to defend its insured if the pleadings" against the insured "allege a covered occurrence." <i>Ryan v. Nat'l Union Fire Ins. Co.</i></p> <p>"In determining whether a claim falls within the scope of an insurance policy, the Supreme Court of Connecticut 'construes broad policy language in favor of imposing a duty to defend on the insurer,' and 'requires a defense if an allegation of the complaint falls even possibly within the coverage.'" <i>Id</i></p> <p>"[A]n insurer's duty to defend is measured solely by whether the complaints against the insured allege facts that, if proven true, would present a claim within the scope of the policy's coverage. It is well settled that an insurer's duty to defend, being much broader in scope and application than its duty to indemnify, is determined by reference to the allegations contained in the [underlying] complaint." <i>Coregis Ins. Co. v. American Health Found.</i></p>

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	<p>"[T]he obligation of the insurer to defend does not depend on whether the injured party will successfully maintain a cause of action against the insured." <i>Middlesex Ins. Co. v. Mara</i></p> <p>"[W]hen an exclusion clause is relied upon to deny coverage, the insurer has the burden of demonstrating that the allegations of the underlying complaint cast that pleading solely and entirely within the policy exclusions, and, further, that the allegations, in toto, are subject to no other interpretation." <i>VT Mut. Ins. Co. v. Ciccone</i></p>
<b>Delaware</b>	<p>The duty to defend may be broader than the duty to ultimately indemnify. <i>Am. Ins. Grp. v. Risk Enter. Mgmt. (citing Charles E. Brohawn Bros., Inc. v. Emp'rs Comm. Union Ins. Co</i></p> <p>In assessing either of those duties, "a court typically looks to the allegations of the complaint to decide whether the third party's action against the insured states a claim covered by the policy, thereby triggering the duty to defend." <i>Pac. Ins. Co., 956 A.2d at 1254 (quoting Risk Enter. Mgmt.)</i></p> <p>"The test is whether the underlying complaint, read as a whole, alleges a risk within the coverage of the policy." <i>Pac. Ins. Co., 956 A.2d at 1254 (citing Cont'l Cos. Co. v. Alexis I. duPont Sch. Dist)</i></p> <p>In determining whether an insurer is bound to defend an action against an insured, we apply the following principles: (1) "where there is some doubt as to whether the complaint against the insured alleges a risk insured against, that doubt should be resolved in favor of the insured," (2) "any ambiguity in the pleadings should be resolved against the carrier," and (3) "if even one count or theory alleged in the complaint lies within the policy coverage, the duty to defend arises." <i>Pac. Ins. Co., 956 A.2d at 1254 (citing Cont'l Cos. Co. v. Alexis I. duPont Sch. Dist)</i></p>
<b>Florida</b>	<p>An insurer's duty to defend is broader than the duty to indemnify. <i>Lime Tree Vill. Cmty. Club Ass'n, Inc. v. State Farm Gen. Ins. Co.</i></p> <p>Whether an insurer has a duty to defend its insured "is determined solely by the claimant's complaint if suit has been filed." <i>Higgins v. State Farm Fire and Casualty Co.</i></p> <p>It is well settled that the insurer's duty to defend against a legal action is, triggered "when the complaint alleges facts that fairly and potentially bring the suit within policy coverage." <i>Jones v. Florida Ins. Guar. Ass'n, Inc.</i></p> <p>"Furthermore, the insurer must defend even if the allegations in the complaint are factually incorrect or meritless." <i>Id.</i> In fact, "when the actual facts are inconsistent with the allegations in the complaint, the allegations in the complaint control in determining the insurer's duty to defend." <i>Id.</i>, at 443. "Any doubts regarding the duty to defend must be resolved in favor of the insured." <i>Id.</i></p>

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	<p>However, the duty to defend does not continue indefinitely. Rather, an insurer must defend a claim only until it is certain that the claim is not covered by the policy at issue. <i>Nationwide Mut. Fire Ins. Co. v. Keen</i></p>
<b>Georgia</b>	<p>[W]hether an insurer has a duty to defend depends on the language of the policy as compared with the allegations of the complaint. <i>See Auto–Owners Ins. Co. v. State Farm Fire &amp; Cas. Co.</i></p> <p>“If the facts as alleged in the complaint even arguably bring the occurrence within the policy's coverage, the insurer has a duty to defend the action.” <i>BBL–McCarthy, LLC v. Baldwin Paving Co.</i></p> <p>An insurer's duty to defend turns on the language of the insurance contract and the allegations of the complaint asserted against the insured. <i>Canal Indem. Co. v. Chastain</i></p> <p>An insurer's duty to defend and its duty to indemnify are separate and independent obligations. <i>See Penn–America Ins. Co., supra.</i></p> <p>The breach of the duty to defend does not enlarge indemnity coverage beyond the parties' contract. <i>Colonial Oil Indus., supra.</i></p>
<b>Hawaii</b>	<p>An insurer's duty to defend is broad and "arises wherever there is the mere potential for coverage." <i>Tri-S Corp. v. Western World Ins. Co.</i></p> <p>"It is well settled that the duty to provide coverage and the duty to defend on the part of an insurer are separate and distinct." <i>Sentinel Ins. v. First Ins. of Hawaii</i></p> <p>"An insurer's duty to defend is independent of, and not limited by, its duty to pay." <i>Sentinel Ins. v. First Ins. of Hawaii</i></p> <p>It is well settled that the duty to provide coverage [ i.e., the duty to indemnify,] and the duty to defend on the part of an insurer are separate and distinct. Moreover, the parties' respective burdens of proof with respect to the duties to indemnify and to defend are also distinct.</p> <p>With respect to [an insurer's] prayer for a declaration that it has no duty to defend . . . pursuant to the polic[y, its] already heavy burden of proof as a movant for summary judgment [i]s significantly augmented. The obligation to defend is broader than the duty to pay claims and arises wherever there is the mere potential for coverage. In other words, the duty to defend rests primarily on the possibility that coverage exists. This possibility may be remote but if it exists, the insurer owes the insured a defense. All doubts as to whether a duty to defend exists are resolved against the insurer and in favor of the insured.</p>

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	<p>Accordingly, in connection with the issue of its duty to defend, [the insurer bears] the burden of proving that there [i]s no genuine issue of material fact with respect to whether a possibility exist[s] that [the insured] would incur liability for a claim covered by the polic[y]. 1In other words, [the insurer is] required to prove that it would be impossible for the [claimant] to prevail against [the insured] in the underlying lawsuit on a claim covered by the policies. Conversely, [the insured's] burden with respect to its motion for summary judgment [i]s comparatively light, because it ha[s] merely to prove that a possibility of coverage exist[s].</p> <p>With respect to [an insurer's] prayer for a declaration that it ha[s] no duty to indemnify [the insured] pursuant to the polic[y, it is] not required to disprove any possibility that its insured might be liable for a claim asserted in the underlying lawsuits. Rather, without reference to what the eventual outcome of the underlying lawsuits might actually be, [the insurer is] required only to establish the absence of a genuine issue of material fact regarding the question of coverage pursuant to the plain language of the insurance polic[y] and the consequent entitlement to the entry of judgment as a matter of law. <i>Dairy Rd. Partners v. Island Ins. Co., Ltd.,</i></p>
<b>Idaho</b>	<p>[I]f the insurer believes that the policy itself provides a basis, i.e., an exclusion for noncoverage, it may seek declaratory relief. However, this does not abrogate the necessity of defending the lawsuit until a determination of noncoverage is made. The insurer should not be allowed to "guess wrong" as to the potential for coverage. "[T]he provision for defense of suits is useless and meaningless unless it is offered when the suit arises." 7C. J. Appleman, <i>Insurance Law and Practice</i> § 4684 at 83; <i>Kootenai County v. Western Casualty and Surety Co.</i></p> <p>The duty to defend arises upon the filing of a complaint whose allegations, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured's policy. <i>Constr. Mgmt. Sys., Inc. v. Assurance Co. of Am., Union Warehouse Supply Co., Inc. v. Illinois R.B. Jones, Inc., Kootenai County v. W. Cas. and Sur. Co., and State of Idaho v. Bunker Hill Co.</i></p> <p>[W]here there is doubt as to whether a theory of recovery within the policy coverage has been pleaded in the underlying complaint, or which is potentially included in the underlying complaint, the insurer <b>must</b> defend regardless of potential defenses arising under the policy or potential defenses arising under the substantive law under which the claim is brought against the insured. It is a misconception of the duty to defend, however, if the insurer refuses to defend and seeks a determination of the duty while the underlying case progresses against the insured, and then if found obligated under its duty, the insurer merely steps in and defends and pays defense fees that have accumulated. The proper procedure for the insurer to take is to evaluate the claims and determine whether an arguable potential exists for a claim covered by the policy; if so, then the insurer must immediately step in and defend the suit. <i>Kootenai County</i></p>

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	<p>Thus, under Idaho law and [insurance policy wording], if the...complaint reveals any potential [insurance carrier] liability for negligent conduct, such allegations trigger [an insurer's] duty to defend. <i>Hoyle V. Utica Mutual Insurance Company</i></p> <p>Once it is concluded that an insurer owes its insured a duty to defend, the duty to defend and pay defense costs continues until such time as the insurer can show that the claim against the insured cannot be said to fall within the policy's scope of coverage. <i>C. Raymond Davis Sons, Inc. v. Liberty Mutual Insurance Co.</i></p>
<b>Illinois</b>	<p>It is well settled under the law of Illinois that [this] duty to defend extends to cases where the complaint alleges several causes of action or theories of recovery against an insured, one of which is within the coverage of the policy while others [might] not be. <i>Maryland Casualty Co. v. Peppers</i></p> <p>An insurer may not refuse the tendered defense of an action unless a comparison of the policy with the underlying complaint shows on its face that there is no potential for coverage. <i>Weed v. Ohio Farmer's Insurance Co.</i></p> <p>In making the comparison any ambiguous or equivocal expressions in the policy will be strictly construed against the insurer. <i>Pioneer Insurance Co. v. Alliance Insurance Co.</i></p> <p>It is well-settled that to decide whether an insurer has a duty to defend an action against the insured, a reviewing court must compare the allegations of the Underlying Complaint to the relevant portions of the Policy. <i>Outboard Marine Corp. v. Liberty Mutual Ins. Co.</i></p>
<b>Indiana</b>	<p>It is well-settled in Indiana that "an insurer's duty to defend is determined by the allegations of the complaint coupled with those facts known to or ascertainable by the insurer after a reasonable investigation." <i>Newnam Mfg., Inc. v. Transcontinental Ins. Co.</i></p> <p>It is also well-settled that "the insurer's duty to defend is broader than his contractual obligation to provide coverage, but this duty is not boundless." <i>West Bend, 598 F.3d at 921</i>. "Where an insurer's independent investigation of the facts underlying a complaint against its insured reveals a claim patently outside of the risks covered by a policy, the insurer may properly refuse to defend." <i>Id.</i> at 922 (citing <i>Liberty Mut. Ins. Co. v. Metzler</i>). Thus, when an exclusion precludes coverage, the insurer does not have a duty to defend. <i>West Bend, 598 F.3d at 922</i>.</p>
<b>Iowa</b>	<p>"The duty to defend is broader than the duty to indemnify." <i>First Newton Nat'l Bank v. Gen. Cas. Co.</i></p> <p>The duty to defend arises whenever there is potential or possible liability to indemnify the insured based on the facts appearing at the outset of the case. In other words, the duty to defend rests solely on whether the petition contains any allegations that arguably or potentially bring the action within the policy coverage. If any claim alleged against the insured can rationally be said to fall within such coverage, the insurer must defend the entire action. In case of doubt as to whether the petition alleges a claim that is covered by the policy, the doubt is resolved in favor of the insured. <i>Employers Mut. Cas. Co. v. Cedar Rapids Television Co.</i></p>

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	<p>An insurer's duty to defend is separate from its duty to indemnify; the duty to defend is broader than the duty to indemnify. The duty to defend arises "whenever there is potential or possible liability to indemnify the insured based on the facts appearing at the outset of the case." In other words, the duty to defend rests solely on whether the petition contains any allegations that arguably or potentially bring the action within the policy coverage. If any claim alleged against the insured can rationally be said to fall within such coverage, the insurer must defend the entire action. In case of doubt as to whether the petition alleges a claim that is covered by the policy, the doubt is resolved in favor of the insured. <i>A.Y. McDonald Indus., Inc. v. Insurance Co. of N. Am</i></p> <p>"[An insurer's] duty to defend arises whenever there is a potential or possible liability to pay based upon the facts at the outset of the case. "The "facts at the outset of the case" under this test have traditionally been those alleged in the petition in the suit against the insured. <i>McAndrews V. Farm Bureau Mut. Ins. Co.</i></p>
<b>Kansas</b>	<p>Concluding that when a petition alleges both acts that are covered and acts that are not, "these alleged facts give rise to the potential for liability, and the duty to defend arises"" <i>Bankwest V. Fidelity Deposit Co., Maryland</i></p> <p>As a general rule, the interpretation or construction and meaning and legal effect of written instruments are matters of law exclusively for the court and not questions of fact for determination by the jury. <i>Federal Land Bank of Wichita v. Krug</i></p> <p>Insurance policies are to be enforced as written so long as the terms do not conflict with pertinent statutes or public policy. Where terms are ambiguous, the policy shall be construed to mean what a reasonable person in the position of the insured would have understood them to mean. A policy is not ambiguous, however, unless there is genuine uncertainty as to which of two or more possible meanings is proper. <i>House v. American Fam. Mut. Ins. Co.</i></p> <p>Under the present code of civil procedure, an insurer must look beyond the effect of the pleadings and must consider any facts brought to its attention or any facts which it could reasonably discover in determining whether it has a duty to defend. If those facts give rise to a "potential of liability," even if remote, under the policy, the insurer bears a duty to defend. <i>MGM, Inc. v. Liberty Mut. Ins. Co.</i></p> <p>The duty to defend rests primarily on the possibility that coverage exists, and the possibility of coverage must be determined by a good faith analysis of all information the insurer may know or could have reasonably ascertained. If ambiguities in coverage, including exclusionary clauses, are judicially determined against the insurer, the ultimate result controls the insurer's duty to defend. <i>Spruill Motors, Inc. V. Universal Underwriters Ins. Co</i></p>

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<b>Kentucky</b>	<p>In Kentucky, an insurer has a duty to defend if there is an allegation which might come within the coverage terms of the insurance policy, but this duty ends once the insurer establishes that the liability is in fact not covered by the policy. <i>James Graham Brown Foundation., Inc. v. St. Paul Fire Marine Ins. Co.</i></p> <p>The allegations of the complaint cannot compel a defense if coverage does not exist. The obligation to defend arises out of the insurance contract, not from the allegations of the complaint against the insured." <i>Ky. Farm Bureau Ins. Co. v. Cann</i> (explaining that there is no duty to defend claims expressly excluded).</p> <p>As a general rule, the construction and legal effect of an insurance contract is a matter of law for the court. <i>Morganfield Nat'l Bank v. Damien Elder Sons</i></p> <p>[A]mbiguous language must be liberally construed so as to resolve all doubts in favor of the insured. <i>Wolford v. Wolford</i></p> <p>"[W]here not ambiguous, the ordinary meaning of the words chosen by the insurer is to be followed." <i>Brown</i> (above)</p> <p>The allegations of the complaint cannot compel a defense if coverage does not exist. The obligation to defend arises out of the insurance contract, not from the allegations of the complaint against the insured. <i>Cincinnati Ins. Co. v. Vance, Ky.</i></p>
<b>Louisiana</b>	<p>It is well-settled in Louisiana that an insurer's duty to defend suits filed against its insured is determined by a comparison of the allegations of the plaintiff's complaint and the terms of the policy, with the insurer having a duty to defend unless the allegations in the complaint unambiguously exclude coverage. <i>Jensen v. Snellings</i></p> <p>The insurer's duty to defend suits brought against its insured is determined by the allegations of the plaintiffs petition, with the insurer being obligated to furnish a defense unless the petition unambiguously excludes coverage. <i>Meloy v. Conoco, Inc</i></p> <p>With respect to an insurer's duty to defend its insured(s), it is well-settled that an insurer's duty to defend is much broader in scope than the insurer's duty to provide coverage. <i>Suire v. Lafayette City-Parish Consol. Government</i></p>
<b>Maine</b>	<p>[T]he legal analysis of an insurer's duty to defend involves solely a comparison of the allegations in the underlying complaint with the provisions of the insurance policy and is a question of law. <i>Penney v. Capitol City Transfer, Inc.,</i></p> <p>To determine whether an insurer has a duty to defend, we compare the allegations of the underlying complaint with the coverage provided in the insurance policy. <i>Commercial Union Ins. Co. v. Royal Ins. Co.</i></p> <p>Only the complaint and the policy are considered in determining whether the insurer has a duty to defend. <i>Elliott v. Hanover Ins. Co</i></p>

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	<p>This comparison test arises from our holding that the duty to defend is broader than the duty to indemnify. <i>York Ins. Group of Me. v. Lambert</i></p> <p>[A]n insurer must provide a defense if there is any potential that facts ultimately proved could result in coverage, <i>Penney</i></p> <p>The facts alleged in the complaint need not make out a claim that specifically and unequivocally falls within the coverage. <i>Union Mut. Fire Ins. Co. v. Inhabitants of Topsham</i></p> <p>"[W]here the events giving rise to the complaint may be shown at trial to fall within the policy's coverage," an insurer must provide the policyholder with a defense. <i>Auto Europe, LLC v. Conn. Indem. Co.</i>,</p>
<b>Maryland</b>	<p>[A]n insurer's duty to defend is distinct conceptually from its duty to indemnify, i.e., its obligation to pay a judgment. <i>See T.H.E. Ins. v. P.T.P. Inc. and BGE Home v. Owens</i></p> <p>[T]he duty to defend depends only upon the facts as alleged, and the duty to indemnify depends upon liability. <i>See Litz v. State Farm</i> Moreover, the duty to defend is broader than the duty to indemnify. <i>Id.</i> at 225, 695 A.2d at 569.</p> <p>An insurance company has a duty to defend its insured for all claims that are potentially covered under the policy. <i>See Brohawn v. TransAmerica Ins. Co.</i></p> <p>"The obligation of an insurer to defend its insured under a contract provision . . . is determined by the allegations in the tort actions. If the plaintiffs in the tort suits allege a claim covered by the policy, the insurer has a duty to defend. Even if a tort plaintiff does not allege facts which clearly bring the claim within or without the policy coverage, the insurer still must defend if there is a potentiality that the claim could be covered by the policy." <i>Brohawn v. TransAmerica Ins. Co.</i></p>
<b>Massachusetts</b>	<p>It is well established that "a liability insurer owes a broad duty to defend its insured against any claims that create a potential for indemnity" and that "the question of the initial duty of a liability insurer to defend third-party actions against the insured is decided by matching the third-party complaint with the policy provisions[.]" <i>Transamerica Ins. Co. v. KMS Patriots, L.P.</i></p> <p>"In delineating the duty to defend, Massachusetts courts say that `if the allegations of the complaint are `reasonably susceptible' of an interpretation that they state or adumbrate a claim covered by the policy terms, the insurer must undertake the defense.'" <i>Massamont, 2007 WL 1633817</i> (quoting <i>Sterilite Corp. v. Cont'l Cas. Co.</i></p>

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	Nevertheless, it also is true that "the obligation of the insurer to defend is based not only on the facts alleged in the complaint but also on the facts that are known or readily knowable by the insurer. <i>Transamerica Ins. Co.</i>
<b>Michigan</b>	<p>It is well-established that "an insurer has a duty to defend an insured and that such duty is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured even arguably come within the policy coverage." <i>Auto Club Group Ins Co v Burchell</i></p> <p>It is well established that "an insurer has a duty to defend an insured and that such duty is not limited to meritorious suits and may even extend to actions which are groundless, false, or fraudulent, so long as the allegations against the insured even arguably come within the policy coverage." <i>Auto Club Group Ins Co v Burchell</i></p> <p>"The duty to defend and indemnify is not based solely on the terminology used in the pleadings in the underlying action. The court must also focus on the cause of the injury to determine whether coverage exists." <i>Fitch v State Farm Fire and Cas Co</i></p>
<b>Minnesota</b>	<p>We note that, under Minnesota law, "[t]he duty to defend under an insurance policy is broader than the duty to indemnify." <i>St. Paul Fire Marine Insurance Co. v. Briggs</i> (citing <i>Brown v. State Automobile Casualty Underwriters</i>).</p> <p>It is well-settled, under Minnesota law, that the duty to defend and the duty to indemnify are two issues, not one. "The duty to defend is distinct from and broader in scope than the duty to indemnify especially where a claim is arguably within the terms of policy coverage." <i>Brown v. State Automobile Casualty Underwriters</i></p> <p>The duty to defend is established "if any part of the cause of action against the insured arguably falls within the scope of the coverage, either on the face of the complaint or from facts known to the insurer." <i>Senger v. Minnesota Lawyers Mutual Insurance Co.</i></p>
<b>Mississippi</b>	<p>Under Mississippi law, the determination of whether a liability insurance company has a duty to defend depends upon the language of the policy. The obligation of the insurer to defend is to be determined by analyzing the allegations of the complaint or declaration in the underlying action. <i>Sennett v. United States Fid. Guar. Co.</i>; <i>Delta Pride Catfish, Inc. v. Home Ins. Co.</i>; <i>State Farm Mut. Auto. Ins. Co. v. Taylor</i></p> <p>Mississippi federal courts have held that an insurer has a duty to defend when there is a basis for potential liability to the insured under the policy for the claims alleged against the insured. <i>See Merchants Co. v. American Motorists Ins</i></p> <p>It is well settled that "the duty to defend is broader than the insurer's duty to indemnify under its policy of insurance: the insurer has a duty to defend when there is any basis for potential liability under the policy." <i>Titan Indem. Co. v. Pope</i></p>
<b>Missouri</b>	[Insured] need only prove that one claim is covered to invoke United's duty to defend all claims. <i>Universal Underwriters Ins. Co. v. Lou Fusz Automotive Network, Inc.</i>



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## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>The insurer's duty to defend arises when there is a potential liability set forth in the complaint . . . [e]ven if some claims in the complaint are not covered, the presence of insured claims triggers a duty to defend</p> <p>It is well settled that, to extricate itself from a duty to defend its insured, an insurance company must prove that there is no possibility of coverage. <i>McCormack Baron Mgmt. Servs., Inc. v. Am. Guar. Liab. Ins. Co.</i></p> <p>(noting that the duty to defend is broader than the duty to indemnify). The insurer also bears the burden of proving the applicability of an insurance policy's exclusion. <i>Ballew, 203 S.W.3d at 792.</i></p>
<b>Montana</b>	<p>[When] the complaint clearly alleges facts that come within the coverage of the liability policy. This scenario requires the insurer to defend its insured with no need to look beyond the allegations in the complaint. (<i>See e.g. Atcheson v. Safeco Insurance Company</i>)</p> <p>[When] the complaint alleges facts that do not come within the coverage of the liability policy and the insurer has no knowledge of any other facts that could result in coverage. Under these circumstances, we have held that the insurer has no duty to defend its insured. (<i>See e.g. McAlear v. St. Paul Insurance Companies</i>)</p> <p>[When] the complaint alleges facts that come within the coverage of the liability policy, but the insurer knows of other actual facts that negate coverage. This scenario relieves the insurer of its duty to defend. (<i>See e.g. Burns v. Underwriters Adjusting Co.</i>)</p> <p>[W]hen the complaint does not present a claim which on its face is covered by the policy, but the insurer nonetheless has information that could give rise to a duty to defend and indemnify. This does not require an insurer to seek out such information — as we have previously held, insurers that look at facts beyond the allegations in the complaint do so at their own risk as they will be required to defend and/or indemnify based on the information discovered. <i>Farmers Union Mut. Ins. Co. v. Staples</i></p> <p>"[u]nless there exists an unequivocal demonstration that the claim against an insured does not fall within the insurance policy's coverage, an insurer has a duty to defend." <i>Staples</i>, citing <i>Insured Titles, Inc. v. McDonald</i></p> <p>"[t]he insurance company must look to the allegations of a complaint to determine if coverage exists under an insurance policy, thus giving rise to the insurer's duty to defend" and that "[t]he duty to defend arises when a complaint against an insured alleges facts, which if proven, would result in coverage." <i>Staples</i></p>
<b>Nebraska</b>	<p>Coverage under an insurance policy or contract is generally understood to consist of two separate and distinct obligations: the duty to defend any suit filed against the insured party and the duty to pay, on behalf of the insured, sums for which the insured shall become legally obligated to pay because of injury caused to a third party by acts of the insured. <i>Chief Indus. v. Great Northern Ins. Co.</i></p>



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## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>An insurer's duty to defend is broader than its duty to indemnify. <i>John Market Ford v. Auto-Owners Ins. Co.</i></p> <p>An insurer's duty to defend an action against the insured must, in the first instance, be measured by the allegations of the petition against the insured. <i>Millard Warehouse, Inc. v. Hartford Fire Ins. Co.</i></p> <p>In determining its duty to defend, an insurer must not only look to the petition or complaint filed against its insured, but must also investigate and ascertain the relevant facts from all available sources. <i>Neff Towing Serv. v. United States Fire Ins. Co.</i></p> <p>Although an insurer is obligated to defend all suits against the insured, even if groundless, false, or fraudulent, the insurer is not bound to defend a suit based on a claim outside the coverage of the policy. <i>Neff Towing Serv. v. United States Fire Ins. Co.</i></p> <p>An insurer is obligated to defend if (1) the allegations of the complaint, if true, would obligate the insurer to indemnify, or (2) a reasonable investigation of the actual facts by the insurer would or does disclose facts that would obligate the insurer to indemnify. <i>Mapes Indus. v. United States F G. Co.</i></p> <p>An insurer, therefore, bears a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy. <i>Allstate Ins. Co. v. Novak</i></p> <p>The burden to prove that an exclusionary clause in a policy applies rests on the insurer. <i>Farm Bureau Ins. Co. v. Witte</i></p> <p>If, according to the facts alleged in a pleading and ascertained by an insurer, the insurer has no potential liability to its insured under the insurance agreement, then the insurer may properly refuse to defend its insured. <i>Allied Mut. Ins. Co. v. State Farm Mut. Auto. Ins. Co.</i></p>
<b>Nevada</b>	<p>The duty to defend is broader than the duty to indemnify. <i>Horace Mann Ins. Co. v. Barbara B.</i></p> <p>There is no duty to defend "[w]here there is no potential for coverage." <i>Bidart v. American Title</i></p> <p>In other words, "[a]n insurer . . . bears a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy." <i>Gray v. Zurich Insurance Company</i></p> <p>Once the duty to defend arises, "this duty continues throughout the course of the litigation." <i>Home Sav. Ass'n v. Aetna Cas. Surety</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>If there is any doubt about whether the duty to defend arises, this doubt must be resolved in favor of the insured. <i>Aetna Cas. Sur. Co. v. Centennial Ins. Co.</i></p> <p>The purpose behind construing the duty to defend so broadly is to prevent an insurer from evading its obligation to provide a defense for an insured without at least investigating the facts behind a complaint. <i>See Helca Min. Co. v. New Hampshire Ins. Co.</i></p> <p>However, "the duty to defend is not absolute." <i>Aetna Cas. Sur. Co. v. Continental</i></p> <p>A potential for coverage only exists when there is arguable or possible coverage. <i>See Morton by Morton v. Safeco Ins. Co.</i></p> <p>Determining whether an insurer owes a duty to defend is achieved by comparing the allegations of the complaint with the terms of the policy. <i>See Helca Min. Co. v. New Hampshire Ins. Co.</i></p>
<b>New Hampshire</b>	<p>It is well established in New Hampshire law that if a complaint alleges a covered claim against the insured under any reasonable reading of the pleadings, the insurance company has a duty to defend. <i>State Farm Ins. Co. v. Bruns</i></p> <p>In determining whether a duty to defend exists based upon the sufficiency of the pleadings, we consider the reasonable expectations of the insured as to its rights under the policy. <i>See Town of Epping v. St. Paul Fire Marine Ins. Co.</i></p> <p>It is well-settled in New Hampshire that an insurer's obligation to defend its insured is determined by whether the cause of action against the insured alleges sufficient facts in the pleadings to bring it within the express terms of the policy. <i>Broom v. Continental Cos. Co.</i></p> <p>In considering whether a duty to defend exists based upon the sufficiency of the pleadings, we consider the reasonable expectations of the insured as to its rights under the policy. <i>Broom v. Continental Cos. Co.</i></p> <p>The interpretation of insurance policy language is a question of law, which we review de novo. <i>Hartley v. Elec. Ins. Co.</i></p>
<b>New Jersey</b>	<p>An insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled. <i>Kampf v. Franklin Life Ins. Co.; Scarfi v. Aetna Cas. Sur. Co.</i></p> <p>In considering the meaning of an insurance policy, we interpret the language "according to its plain and ordinary meaning." <i>Voorhees v. Preferred Mut. Ins. Co</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>If the terms are not clear, but instead are ambiguous, they are construed against the insurer and in favor of the insured, in order to give effect to the insured's reasonable expectations. <i>Doto v. Russo</i></p> <p>[W]hen considering ambiguities and construing a policy, courts cannot "write for the insured a better policy of insurance than the one purchased." <i>Walker Rogge, Inc. v. Chelsea Title Guar. Co.</i></p> <p>Exclusionary clauses are presumptively valid and are enforced if they are "specific, plain, clear, prominent, and not contrary to public policy." <i>Princeton Ins. Co. v. Chunmuang</i></p> <p>An insurer's duty to defend an action brought against its insured depends upon a comparison between the allegations set forth in the complainant's pleading and the language of the insurance policy. <i>Voorhees</i> (above); <i>Ohio Cas. Ins. Co. v. Flanagin</i>; and <i>L.C.S., Inc. v. Lexington Ins. Co.</i></p> <p>In making that comparison, it is the nature of the claim asserted, rather than the specific details of the incident or the litigation's possible outcome, that governs the insurer's obligation. <i>Flanagin</i></p> <p>Similarly, if a complaint includes multiple or alternative causes of action, the duty to defend will attach as long as any of them would be a covered claim and it continues until all of the covered claims have been resolved. <i>Voorhees, supra</i>; (citing <i>Mt. Hope Inn v. Travelers Indem. Co.</i>)</p>
<b>New Mexico</b>	<p>"The obligation of an insurer is a matter of contract law and must be determined by the terms of the insurance policy." <i>Miller v. Triad Adoption &amp; Counseling Servs., Inc.</i></p> <p>[A]n "insurance company is obligated to defend when the complaint filed by the claimant alleges facts potentially within the coverage of the policy." ("If the allegations of the complaint or the alleged facts tend to show that an occurrence comes within the coverage of the policy, the insurer has a duty to defend regardless of the ultimate liability of the insured."). <i>State Farm Fire &amp; Cas. Co. v. Price</i></p> <p>[T]here is a duty to defend when the facts in the complaint "are not stated with sufficient clarity so that it can be determined from the face of the complaint whether the action falls within the coverage of the policy." <i>Am. Emp'rs Ins. Co. v. Cont'l Cas. Co.</i></p> <p>"[A]ny doubt about whether the allegations are within policy coverage is resolved in the insured's favor." <i>Price</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>Third, "[i]f the duty to defend does not arise from the complaint on its face, the duty may arise if the insurer is notified of factual contentions or if the insurer could have discovered facts, through reasonable investigation, implicating a duty to defend." <i>Sw. Steel Coil, Inc. v. Redwood Fire &amp; Cas. Ins. Co.</i></p> <p>In New Mexico, "an insurance company is required to conduct such an investigation into the facts and circumstances underlying the complaint against its insured as is reasonable given the factual information provided by the insured or provided by the circumstances surrounding the claim in order to determine whether it has a duty to defend." <i>G &amp; G Servs., Inc. v. Agora Syndicate, Inc.</i></p> <p>("Where coverage under the policy is in some doubt, the proper remedy, under New Mexico law, is for the insurer to seek a court determination as to non-coverage of the primary action; mere unilateral determination that there is no duty to defend is not an acceptable remedy for the insurer." (internal quotation marks and citation omitted)). So an insurer may undertake its duty to defend and seek a declaratory judgment that the alleged insured is not covered by the policy, thereby relieving it of its duty to defend. See <i>Found. Reserve Ins. Co. v. Mullenix</i></p>
<b>New York</b>	<p>It is well settled that "[a]n insurer's duty to defend its insured is exceedingly broad," and "an insurer will be called upon to provide a defense whenever the allegations of the complaint suggest a reasonable possibility of coverage." <i>Regal Constr. Corp. v. Nat'l Union Fire Ins. Co.</i></p> <p>It is well-settled that the duty to defend and the duty to indemnify are separate and distinct questions of fact and law. See <i>Servidone Constr. Corp. v. Security Ins. Co.</i></p>
<b>North Carolina</b>	<p>"[G]enerally speaking, the insurer's duty to defend the insured is broader than its obligation to pay damages incurred by events covered by a particular policy." <i>Waste Management of Carolinas, Inc. v. Peerless Insurance Co.</i></p> <p>"An insurer's duty to defend is ordinarily measured by the facts as alleged in the pleadings; its duty to pay is measured by the facts ultimately determined at trial." <i>Waste Management of Carolinas, Inc. v. Peerless Insurance Co.</i> and <i>Builders Mut. Ins. Co. v. N. Main Constr., Ltd.</i></p> <p>Thus, the duty to defend is broader than the duty to indemnify in the sense that an unsubstantiated allegation requires an insurer to defend against it so long as the allegation is of a covered injury; however, even a meritorious allegation cannot obligate an insurer to defend if the alleged injury is not within, or is excluded from, the coverage provided by the insurance policy. <i>Waste Mgmt.</i></p>
<b>North Dakota</b>	<p>The duty to defend and the duty to indemnify are separate and distinct contractual elements. <i>Hanneman v. Continental W. Ins. Co.</i> and <i>Smith v. American Family Mut. Ins. Co.</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>An insurer's duty to defend is broader than the duty to indemnify, and is generally determined by the allegations of the injured claimant. <i>Farmers Union Mut. Ins. Co. v. Decker</i></p> <p>A liability insurer's obligation to defend its insured is ordinarily measured by the terms of the insurance policy and the pleading of the claimant who sues the insured. If the allegations of the claimant's complaint could support recovery upon a risk covered under the insurer's policy, a liability insurer has a duty to defend its insured. We have formulated the duty to defend to require a liability insurer to defend an underlying action against its insured if the allegations in the complaint give rise to potential liability or a possibility of coverage under the insurance policy. <i>Schultze v. Continental Ins. Co.</i></p> <p>When several claims are made against the insured in the underlying action, the insurer has a duty to defend the entire lawsuit if there is potential liability or a possibility of coverage for any one of the claims. <i>Schultze and Nodak Mut. Ins. Co. v. Heim</i></p> <p>Any doubt about whether a duty to defend exists must be resolved in favor of the insured. <i>Schultze and Heim</i></p>
<b>Ohio</b>	<p>It is established that an insurer's "duty to defend against a claim arises in a different manner from a duty to indemnify for any liability that results from that claim." <i>Elevators Mut. Ins. Co. v. Scassa</i> citing <i>W. Lyman Case &amp; Co. v. Natl. City Corp.</i></p> <p>"While a duty to defend arises if the allegations in the pleadings state a claim 'potentially and arguably' within the policy's coverage, * * * the duty to indemnify, on the other hand, arises only if liability in fact exists under the policy." <i>Elevators Mut.</i> quoting <i>Wedge Prods. v. Hartford Equity Sales Co.</i> (see also <i>Chemstress Consultant Co. v. Cincinnati Ins. Co.</i>)</p> <p>Interpretation of an insurance policy presents a question of law that we review de novo. <i>State Farm Fire and Cas. Co. v. Condon</i></p> <p>Where an insurance policy includes a duty to defend, the insurer is obligated to defend any claim that even potentially or arguably falls within the scope of coverage. <i>Willoughby Hills v. Cincinnati Ins. Co.</i></p> <p>An insurer may have a duty to defend even if the insurer is not ultimately liable on the underlying claim. See <i>W. Lyman Case &amp; Co. v. Natl. City Corp.</i>; and <i>Socony-Vacuum Oil Co. v. Continental Cas. Co.</i></p> <p>This broad duty to defend is not unlimited, however. "It is axiomatic that an insurance company is under no obligation to its insured, or to others harmed by the actions of an insured, unless the conduct alleged of the insured falls within the coverage of the policy." <i>Gearing v. Nationwide Ins. Co.</i></p>



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## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	[W]here the conduct alleged in a claim is indisputably <b>not</b> covered by a policy, there is no duty to defend. See <i>Allstate Ins. Co. v. Campbell and Wedge Prod. Inc. v. Hartford Equity Sales Co.</i>
<b>Oklahoma</b>	<p>"The defense duty is measured by the nature and kinds of risks covered by the policy as well as by the reasonable expectations of the insured. An insurer has a duty to defend an insured whenever it ascertains the presence of facts that give rise to the potential of liability under the policy. The insurer's defense duty is determined on the basis of information gleaned from the petition (and other pleadings), from the insured and from other sources available to the insurer at the time the defense is demanded (or tendered) rather than by the outcome of the third-party action. An insurer ordinarily has no duty to defend an insured absent a request to provide a defense, which act serves to trigger the insurer's performance under the contract." <i>First Bank of Turley v. Fidelity and Deposit Ins. Co. of Maryland</i></p> <p>An insurer's duty to defend claims against its insured is an <i>ex contractu</i> obligation. <i>Budget Rent A Car Systems, Inc. v. Taylor; Ticor Title Ins. Co. Of California v. American Resources, Ltd.; Presidential Hotel v. Canal Ins. Co.; Drake Ins. Co. Of New York v. Carroll County Sheriff's Dept.; Schiebout v. Citizens Ins. Co. Of America</i></p> <p>A liability insurance policy generally contains two basic duties — the duty to defend and the duty to indemnify its insured. The duty to defend relates to coverage, which is "a matter of contract interpretation as it relates to a set of facts," and not liability, which is "concerned with an analysis of the applicable law to the same set of facts." <i>First Ins. Co. of Hawaii, Inc. v. State of Hawaii</i></p> <p>The insurer's primary duty is to provide indemnity for loss or to pay a specified amount upon determinable contingencies. <i>Uptegraft v. Home Ins. Co., Okla.</i></p> <p>The duty to defend is separate from, and broader than, the duty to indemnify (<i>Tews Funeral Home, Inc. v. Ohio Cas. Ins. Co.; Maneikis v. St. Paul Ins. Co. of Illinois; Solo Cup Co. v. Federal Ins. Co.</i>), but the insurer's obligation is not unlimited. The defense duty is measured by the nature and kinds of risks covered (<i>Safeco Title Ins. Co. v. Moskopoulos; Hartford Fire Ins. Co. v. Karavan Enterprises, Inc.; Deseret Fed. Sav. Loan Ass'n v. U.S. Fidelity Guar. Co.</i>) by the policy as well as by the reasonable expectations of the insured. (<i>Conner v. TransAmerica Insurance Co.; Gray v. Zurich Ins. Co.; Centennial Ins. Co. v. Applied Health Care Systems, Inc.; Gardner v. Romano</i>)</p> <p>An insurer has a duty to defend an insured whenever it ascertains the presence of facts (<i>Texaco, Inc. v. Hartford Acc. and Indemnity</i>) that give rise to the potential of liability under the policy. (<i>APPLEMAN, INSURANCE LAW PRACTICE</i>)</p> <p>The insurer's defense duty is determined on the basis of information gleaned from the petition (and other pleadings), from the insured and from other sources available to the insurer (<i>Harrow Products, Inc. v. Liberty Mutual Ins. Co.; Allstate Ins. Co. v. Gilbert</i>) at the time</p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	the defense is demanded (or tendered) rather than by the outcome of the third-party action. ( <i>Montrose Chemical Corp. of Cal. v. Superior Court; Seaboard; Tews</i> )
<b>Oregon</b>	<p>It is well settled that an insurer's duty to defend is separate from and broader than its duty to indemnify. <i>GE Prop. Cas. Ins. Co. v. Portland Cmty. Coll.</i></p> <p>The duty to indemnify exists where the facts proven at trial establish the insured's liability is covered by the policy. <i>Ledford v. Gutoski</i></p> <p>On the other hand, the duty to defend is based on a possibility of coverage. Whether a duty to defend exists depends solely on two documents: the complaint and the insurance policy. <i>Id.</i></p> <p>("In evaluating whether an insurer has a duty to defend, the court looks only at the facts alleged in the complaint to determine whether they provide a basis for recovery that could be covered by the policy") (emphasis added). "The filing of the complaint, thus, triggers the duty to defend." <i>Schnitzer Inv. Corp. v. Certain Underwriters at Lloyd's of London</i></p>
<b>Pennsylvania</b>	<p>It is well settled in Pennsylvania that a carrier's duty to defend its insured, putative or otherwise, is governed by different principles than those that control the policy obligation to indemnify. <i>Gedeon v. State Farm Mutual Automobile Ins. Co.</i></p> <p>The insurer's duty to defend is triggered by the allegations in the personal injury or property damage complaint. When the facts set out in the pleading could come within the policy coverage, the duty to defend arises. <i>Cadwallader v. New Amsterdam Casualty Co.</i></p>
<b>Rhode Island</b>	<p>"[T]he duty to defend is broader in its scope than the duty of an insurer to indemnify." <i>Employers' Fire Ins. Co. v. Beals</i></p> <p>It is well settled that "if the allegations in the complaint fall within the risk insured against in the policy, the insurer is said to be duty-bound to provide a defense for the insured, regardless of the actual details of the injury or the ultimate grounds on which the insured's liability to the injured party may be predicated." <i>Employers' Fire Ins. Co. v. Beals</i></p> <p>"An insurance policy is contractual in nature," (<i>Papudesu v. Medical Malpractice Joint Underwriting Association of Rhode Island</i>) and we interpret insurance policy terms in accordance to the rules of construction that govern contracts. (<i>Town of Cumberland v. Rhode Island Interlocal Risk Management Trust, Inc.</i>). "[T]he existence of ambiguity <i>vel non</i> in a contract is an issue of law to be determined by the [C]ourt." (<i>Papudesu</i> quoting <i>Gorman v. Gorman</i>). "When a contract is unambiguous, we review its terms in a de novo manner." (<i>Papudesu</i>) Only when the insurance policy's terms are ambiguous will this Court depart from the literal language of the policy; and, upon such a determination, "the policy will be strictly construed in favor of the insured and against the insurer." (<i>Sjogren v. Metropolitan Property and Casualty Insurance Co.</i>)</p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>“In general, the duty to defend an insured in this jurisdiction is determined by applying the ‘pleadings test.’” <i>Peerless Insurance Co. v. Viegas</i> (quoting <i>The Employers' Fire Insurance Co. v. Beals</i>)</p> <p>“That [pleadings] test requires the trial court to look at the allegations contained in the complaint, and ‘if the pleadings recite facts bringing the injury complained of within the coverage of the insurance policy, the insurer must defend irrespective of the insured's ultimate liability to the plaintiff.” <i>Peerless Insurance Co. v. Viegas</i> (quoting <i>The Employers' Fire Insurance Co. v. Beals</i>)</p> <p>Court will not deviate from a policy's literal language unless we conclude it is ambiguous. <i>Sjogren v. Metropolitan Property and Casualty Insurance Co.</i></p> <p>In assessing the clarity of the relevant policy language, we view the policy in its entirety, affording its terms their "plain, ordinary and usual meaning." <i>Amica Mutual Insurance Co. v. Streicker</i></p>
<b>South Carolina</b>	<p>A liability insurance policy contains two insuring provisions of major significance: one, providing for the payment by the insurer of sums the insured shall become obligated to pay, the other providing, in substance, for the defense of any suit alleging bodily injury or property damage and seeking damages payable under the terms of the policy. The latter clause also provides, as a rule, that such a defense will be furnished even if any of the allegations of the suit are groundless, false or fraudulent. <i>Sloan Construction Company, Inc. v. Central National Insurance Company of Omaha</i></p> <p>The duty to defend is separate and distinct from the obligation to pay a judgment rendered against the insured. <i>American Casualty Co. v. Howard</i></p> <p>Although an insurer's duty to defend is separate and distinct from its obligation to pay a judgment, the two are in a sense interrelated. If the facts alleged in the complaint against an insured fail to bring a claim within policy coverage, an insurer has no duty to defend. Accordingly, the allegations of the complaint determine the insurers duty to defend. <i>S.C. Med. Malpractice Liab. Ins. Joint Underwriting Assn. v. Ferry</i></p> <p>"However, an insurer has no duty to defend an insured where the damage was caused for a reason unambiguously excluded under the policy." <i>B.L.G. Enterprises v. First Financial</i></p> <p>Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." <i>Diamond State Ins. Co. v. Homestead Indus., Inc.</i></p>
<b>South Dakota</b>	<p>An insurer's duty to defend and its duty to pay on a claim are severable and independent duties. The duty to defend is much broader than the duty to pay a judgment rendered against the insured. <i>Hawkeye-Security Ins. Co. v. Clifford</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>The insurer bears the burden of showing that it had no duty to defend its insured. To satisfy this burden, 'the insurer must show that the claim clearly falls outside of the policy coverage.' <i>North Star Mut. Ins. Co. v. Kneen; City of Fort Pierre v. United Fire and Cas. Co.; Bayer v. Employers Reinsurance Corp.; Hawkeye-Security</i></p> <p>'If, after considering the complaint, and when appropriate, other record evidence, doubt exists whether the claim against the insured arguably falls within the policy coverage, such doubts must be resolved in favor of the insured.' <i>City of Fort Pierre v. United Fire and Cas. Co. (citing Hawkeye-Security)</i></p> <p>If just one claim falls within the policy coverage, the insurer must defend "even though the pleadings are ambiguous or reveal other claims not covered in the policy, and notwithstanding that extraneous facts indicate the claim is false, groundless or even fraudulent." <i>Hawkeye-Security</i></p>
<b>Tennessee</b>	<p>Issues regarding an insurer's duty to defend are matters of law and may be resolved by summary judgment when there are no genuine issues as to any material fact. <i>Standard Fire Ins. Co. v. Chester-O'Donley Assocs., Inc.</i></p> <p>[W]hether a duty to defend arises depends solely on the allegations contained in the underlying complaint. <i>St. Paul Fire Marine Ins. Co. v. Torpoco (quoting Am. Policyholders' Ins. Co. v. Cumberland Cold Storage Co.)</i></p> <p>[T]he insurer has a duty to defend when the underlying complaint alleges damages that are within the risk covered by the insurance contract and for which there is a potential basis for recovery. <i>St. Paul Fire Marine Ins. Co. v. Torpoco</i></p> <p>The duty to defend arises if even one of the allegations is covered by the policy. See <i>Drexel Chem. Co. v. Bituminous Ins. Co.</i></p> <p>The duty to defend is broader than the duty to indemnify because the duty to defend is based on the facts alleged, while the duty to indemnify is based upon the facts found by the trier of fact. <i>Torpoco</i></p> <p>Any doubt as to whether the claimant has stated a cause of action within the coverage of the policy is resolved in favor of the insured. <i>Dempster Bros., Inc. v. U.S. Fid. Guar. Co.</i></p>
<b>Texas</b>	<p>If any allegation in the complaint is even potentially covered by the policy then the insurer has a duty to defend its insured. <i>Heyden Newport Chem. Corp. v. Southern Gen. Ins. Co</i></p> <p>It is well settled that once an insurer has breached its duty to defend, the insured is free to proceed as he sees fit; he may engage his own counsel and either settle or litigate, at his option. <i>Great American Indemnity Co. v. Corpus Christi</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
<b>Utah</b>	<p>[W]e interpret insurance policies as we do contracts: "if the language within the four corners of the contract is unambiguous, the parties' intentions are determined from the plain meaning of the contractual language." <i>Saleh v. Farmers Ins. Exch.</i></p> <p>When we engage in a duty-to-defend analysis, we focus on two documents: the insurance policy and the complaint. "An insurer's duty to defend is determined by comparing the language of the insurance policy with the allegations of the complaint." <i>Fire Ins. Exch. v. Estate of Therkelsen</i></p> <p>The test is whether the complaint alleges a risk within the coverage of the policy. <i>Fire Ins. Exch. v. Estate of Therkelsen</i></p> <p>The general rule is based on the proposition that "an insurer's duty to defend is broader than its duty to indemnify." <i>Sharon Steel v. Aetna Cas. and Surety</i></p> <p>[A]n insurer may have a duty to defend an insured even if, as here, the insurer is ultimately not liable to indemnify the insured. However, "[t]he duty to defend arises solely under contract," <i>Sharon Steel v. Aetna Cas. and Surety</i> (quoting <i>Ins. Co. of N. Am. v. Forty-Eight Insulations, Inc.</i>)</p>
<b>Vermont</b>	<p>We have often explained that an insurer's duty to defend is broader than its duty to indemnify. See <i>Garneau v. Curtis Bedell, Inc.</i></p> <p>Generally, the insurer's duty to defend is determined by comparing the allegations in the complaint of the underlying suit to the terms of coverage in the policy. See <i>Cooperative Fire Ins. Ass'n v. Gray</i>; <i>Commercial Union Ins. Co. v. City of Montpelier</i></p> <p>If any claims are potentially covered by the policy, the insurer has a duty to defend. See <i>Garneau</i></p> <p>Conversely, where there is no possibility that the insurer might be obligated to indemnify, there is no duty to defend. <i>Garneau v. Curtis Bedell, Inc.</i></p> <p>An insurance policy must be construed according to its terms and the evident intent of the parties as expressed in the policy language. <i>Sanders v. St. Paul Mercury Ins. Co.</i></p> <p>Disputed terms should be read according to their plain, ordinary and popular meaning. See <i>American Protection Ins. Co. v. McMahan</i></p>
<b>Virginia</b>	<p>[I]t is a well-established principle, consistently applied in this Commonwealth, that only the allegations in the complaint and the provisions of the insurance policy are to be considered in deciding whether there is a duty on the part of the insurer to defend and indemnify the insured. See <i>Brenner v. Lawyers Title Ins. Corp.</i>; <i>Reisen v. Aetna Life &amp; Cas. Co.</i>; <i>Travelers Indem. Co. v. Obenshain</i>; <i>Norman v. Ins. Co. of N. Am.</i>;</p>



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	<p>This principle is commonly known as the “eight corners rule” because the determination is made by comparing the “four corners” of the underlying complaint with the “four corners” of the policy, to determine whether the allegations in the underlying complaint come within the coverage provided by the policy. See <i>Copp v. Nationwide Mut. Ins. Co.</i>; <i>America Online, Inc. v. St. Paul Mercury Ins. Co.</i></p> <p>“[A]n insurer's duty to defend ... is broader than [the] obligation to pay, and arises whenever the complaint alleges facts and circumstances, some of which would, if proved, fall within the risk covered by the policy.” <i>Virginia Elec. &amp; Power Co. v. Northbrook Prop. &amp; Cas. Ins. Co.</i>; see also <i>Copp</i></p> <p>[I]f it appears clearly that the insurer would not be liable under its contract for any judgment based upon the allegations, it has no duty even to defend. <i>Travelers Indem. Co. v. Obenshain</i></p>
<b>Washington</b>	<p>It is well-established Washington law "that the duty to defend is different from and broader than the duty to indemnify." <i>Am. Best Food, Inc. v. Alea London, Ltd.</i></p> <p>While "[t]he duty to indemnify exists only if the policy actually covers the insured's liability[,] [t]he duty to defend is triggered if the insurance policy conceivably covers allegations in the complaint." <i>Id.</i> (citing <i>Woo v. Fireman's Fund Ins. Co.</i>). However, while the duty to defend is distinctly broader than the duty to indemnify, both are derivative of the same underlying concept: coverage under the applicable policy. "When the facts or the law affecting coverage is disputed, the insurer may defend under a reservation of rights until coverage is settled in a declaratory action." <i>Am. Best Food</i></p>
<b>West Virginia</b>	<p>With regard to the general principles of construing the provisions of an insurance policy, this Court has indicated that "[l]anguage in an insurance policy should be given its plain, ordinary meaning." <i>Soliva v. Shand, Morahan Co., Inc.</i></p> <p>"Where the provisions of an insurance policy contract are clear and unambiguous they are not subject to judicial construction or interpretation, but full effect will be given to the plain meaning intended." <i>Keffer v. Prudential Ins. Co.</i></p> <p>"Whenever the language of an insurance policy provision is reasonably susceptible of two different meanings or is of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning, it is ambiguous." <i>Prete v. Merchants Property Inn. Co.</i></p> <p>"[T]he mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." <i>Berkeley Co. Pub. Serv. v. Vitro Corp.</i></p>

## Duty to Defend: What the Courts Say – STATE LIST

State	Duty to Defend
	<p>If a court determines that a policy provision is ambiguous, "[i]t is well settled law in West Virginia that ambiguous terms in insurance contracts are to be strictly construed against the insurance company and in favor of the insured." <i>National Mut. Ins. Co. v. McMahon Sons</i></p> <p>"[I]ncluded in the consideration of whether the insurer has a duty to defend is whether the allegations in the complaint . . . are reasonably susceptible of an interpretation that the claim may be covered by the terms of the insurance policies." <i>Bruceton Bank v. U.S. Fid. and Guar. Ins.</i></p> <p>"Thus, the duty to defend an insured may be broader than the obligation to pay under a particular policy." <i>Tackett v. Am. Motorists Ins. Co.</i></p>
<b>Wisconsin</b>	<p>An insurer's duty to defend an insured is determined by comparing the allegations of the complaint to the terms of the insurance policy. (<i>Smith v. Katz</i> (citing <i>School Dist. of Shorewood v. Wausau Ins. Co.</i>)) "An insurer's duty to defend the insured in a third-party suit is predicated on allegations in a complaint which, if proven, would give rise to the possibility of recovery that falls under the terms and conditions of the insurance policy." (<i>School Dist. of Shorewood v. Wausau Ins. Co.</i>) The duty to defend is based solely on the allegations "contained within the four corners of the complaint," without resort to extrinsic facts or evidence. (<i>Atl. Mut. Ins. Co. v. Badger Med. Supply Co.</i>)</p> <p>When comparing the allegations of a complaint to the terms of an insurance policy, the allegations in the complaint are construed liberally. <i>Doyle v. Engelke</i></p> <p>The duty to defend is necessarily broader than the duty to indemnify because the duty to defend is triggered by arguable, as opposed to actual, coverage. <i>General Cas. Co. of Wis. v. Hills; Bruner v. Heritage Cos.</i></p> <p>In addition, a duty to defend is based upon the nature of the claim and not on the merits of the claim. "It is the nature of the claim alleged against the insured which is controlling even though the suit may be groundless, false or fraudulent." <i>Grieb v. Citizens Cas. Co.</i></p> <p>"[A]n insurer may have a clear duty to defend a claim that is utterly specious because, if it were meritorious, it would be covered." <i>Smith v. Katz</i></p> <p>[W]hen an insurance policy provides coverage for even one claim made in a lawsuit, the insurer is obligated to defend the entire suit. <i>Doyle v. Engelke; School Dist. of Shorewood v. Wausau Ins. Co.</i></p>
<b>Wyoming</b>	<p>[A]n insurer's duty to defend is broader than its duty to provide coverage. <i>Shoshone First Bank v. Pacific Employers Insurance Co.</i></p>



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	<p>The duty of the insurer to defend is more extensive than its duty to indemnify the insured. <i>First Wyoming Bank v. Continental Ins.</i></p> <p>Analysis of the duty to defend is not made based on the ultimate liability of the insurer to indemnify the insured or on the basis of whether the underlying action is groundless or unsuccessful. <i>Aetna Ins. Co. v. Lythgoe</i></p> <p>The insurer is obligated to afford a defense as long as the alleged claim rationally falls within the policy coverage. The obligation to defend is an independent consideration in liability insurance, and it is invoked by any claim alleged in the complaint that is potentially covered under the policy. <i>Shoshone First Bank v. Pacific Employers Insurance Co.</i></p> <p>If the policy potentially covers one or more claims, the insurer has a duty to defend all claims, and any doubts about coverage should be resolved against the insurer. <i>Alm v. Hartford Fire Insurance Company</i></p>