

Virginia Law Governing The Duty To Defend

Perhaps the most cited case on an insurer's duty to defend under Virginia law points courts first to the allegations in the complaint. Lerner v. General Insurance Co. of America states "[A]n insurer's duty to defend is broader than its 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." 245 S.E.2d 249, 251, 219 Va. 101, 104 (1978).

The complaint, however, does not control in all cases. Later factual development can also create a duty to defend. "While the duty to defend is, in the first instance, to be determined by the allegations of the [complaint], yet if those allegations leave it in doubt whether the case alleged is covered by policy, the refusal of the insurance company to defend is at its own risk." Id., 245 S.E.2d at 251-252, 251 Va. at 104. "[I]f it turns out on development of the facts that the case is covered by the policy, the insurance company is necessarily liable for breach of the covenant to defend" Id. (citing London Guar. Co. v. White & Bros., 49 S.E.2d 254, 256, 188 Va. 195, 199-200 (1948)).