

## SDNY Allows Insurer To Rely On Extrinsic Evidence to Withdraw From Duty to Defend



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In an August 1, 2024 ruling in the action *Ironshore Specialty Insurance Company v. Color Techniques, Inc.*, a federal district court denied the insured's motion for judgment on the pleadings and ruled that CMG's client was permitted to rely on extrinsic evidence to prove that the claims against the insured were not covered. The court also recognized the distinction between products and operations coverage and rejected the insured's contention that a litany of boilerplate allegations against the insured-talc supplier in underlying asbestos complaints all fell within the "your work" insuring agreement. The decision reinforces that insurers may rely on extrinsic evidence to terminate their defense obligation where that evidence is unrelated to the merits and conclusively demonstrates that the claim is outside the coverage grant.

In *Color Techniques*, the insured was sued in numerous cases by plaintiffs who are alleged to have developed mesothelioma and other injuries due to use of and exposure to products that contained asbestos. CMG's client initially defended the insured under reservation of rights until evidence extrinsic to the merits of the asbestos actions demonstrated that the claims against the insured were limited to injury arising out of their "product", rather than their "work". The policy's products coverage contains an asbestos exclusion that bars coverage. CMG initiated a declaratory judgment action seeking to withdraw from the defense on the basis of this extrinsic evidence.

The insured filed a motion for judgment on the pleadings arguing that the boilerplate allegations in the underlying asbestos actions fit within the policy's operations coverage for "your work" and that the insurer could not rely on extrinsic evidence to prove otherwise because the evidence went to the merits of the case. The court rejected the insured's interpretation of the policy, holding that the coverage for "your work" was not so broad as to encompass every allegation relating to the manufacture of a talc product. Instead, only injuries caused by, for example, the insured's work as a contractor or installer, would fit within the operations coverage grant in the policy. Accordingly, the court held that although an insurer's duty to defend is typically determined by comparing the terms of the insurance policy to the allegations within the "four corners" of the complaint, the Second Circuit has articulated a narrow exception in which extrinsic evidence that is unrelated to the merits of the underlying action may be used to terminate the duty to defend. Based on that law, the Court held that the insurer would be able to rely on extrinsic evidence to clarify the pleadings and demonstrate that no claim based on the insured's operations or work existed.

This decision is an important acknowledgment of the scope of the extrinsic evidence exception to the traditional "four corners" rule and highlights the axiom that an insurer's duty to defend is not an interminable one. It is also an important decision that gives effect to the different coverages contained within a particular insurance policy and clearly delineates between products and operations insurance.

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