

## NDNY Unable to Resolve Ambiguity in Umbrella Policies and Sets Trial



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On remand from the Second Circuit, the Northern District of New York was asked to determine whether Utica Mutual Insurance Co. (the cedent) had a defense obligation under its umbrella policies. If it did, then Utica would be entitled to recover defense costs from Clearwater Insurance Co. (the reinsurer).

The umbrella policies required Utica to defend any occurrence “not covered by the policies listed in the schedule of underlying insurance ... but covered by the terms and conditions of this policy.” Both parties argued different interpretations of the meaning of “not covered by.” Finding the language ambiguous, and having not been provided extrinsic evidence allowing the court to resolve the ambiguity as a matter of law, summary judgment was denied and the case set for trial.

[Utica Mut. Ins. Co. v. Clearwater Ins. Co.](#), No. 6:13-cv-01178 (N.D.N.Y. July 25, 2019).

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