

Contract Indemnity and Duty to Defend vs. Insurance Duty to Defend

A New Hampshire court has issued a decision on the duty to defend arising from an indemnity obligation in a design contract, distinguishing between the duty to defend often invoked for insurance coverage, from a duty to defend expressed in a contractual indemnity, writes Stan Martin of **Commonsense Construction Law LLC**.

The court found that an engineering firm owed a duty to defend the New Hampshire town that had hired the firm to design a wastewater treatment plant, from claims arising from the design against the town made by the contractor.

Martin describes the case and the arguments made by the parties. He concludes: "An explicit contractual duty to defend against allegations of negligence or breach by the indemnitor may well be construed to require such a defense from the outset, even when parties are still arguing over ultimate liability. And an indemnitor who has not been in breach of its contract up to that point may yet breach its contract by refusing to defend when required.:"

Read the article.