



A Growing Trend: New York Courts Are Enforcing the Duty to Defend – and Colleges Should Take Note

Blogs

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Tuition-and-fee class actions, abuse and Title IX suits, campus construction injuries, and employment claims have become an all-too-common reality for colleges and universities.

The institution's first move is usually to tender the matter to its insurer.

Increasingly, the carrier's response is to deny a defense by pointing to a policy exclusion. A recent decision from the New York Supreme Court, Appellate Division, First Department, *Hofstra University v. United Educators*, 250 A.D.3d 478, 257 N.Y.S.3d 59 (1st Dep't June 9, 2026), shows why institutions should not take that denial at face value. And *Hofstra* is not an outlier: it is the latest in a line of recent New York decisions in which courts have construed the duty to defend broadly and required carriers to defend their insureds.

For higher-education risk managers and general counsel, the trend is worth understanding, because it can mean a fully funded defense the institution might otherwise have written off.

What *Hofstra* Decided

After a group of students filed a putative class action against Hofstra University seeking, among other things, reimbursement of tuition and fees, Hofstra tendered the claim to its insurer, United Educators. The carrier denied coverage in reliance on a policy exclusion providing that it was not liable for any loss "related to or arising out of . . . any demand for the return of funds." Because the students' complaint largely sought a return of tuition, the carrier moved to dismiss Hofstra's declaratory-judgment action, arguing the exclusion disposed of the entire dispute.

The Appellate Division, First Department, unanimously affirmed the denial of that motion, a mixed result in substance. The carrier won on interpretation: the court held that the plain meaning of "funds" includes tuition

and fees, reinforced by the policies' express exclusion of "the value of tuition or scholarships" from covered damages, so the exclusion barred the reimbursement claims. The court also rejected Hofstra's argument that so broad an exclusion made the coverage illusory, reasoning that the policies still covered other losses.

But the carrier lost on what matters most. Looking past the "return of funds" headline, the court examined everything the underlying complaints sought — not just reimbursement, but compensatory, punitive, and/or statutory damages; injunctive relief; restitution; and other relief. Because the record did not establish that the only available damages were a return of money, dismissal on the exclusion was premature. The court also turned aside the carrier's argument that the damages were uninsurable "wrongfully acquired funds" as a matter of public policy. And it reaffirmed the governing rule: the duty to defend "is triggered whenever the underlying claims raise the possibility of coverage." Because the suits sought relief beyond tuition and fees, that threshold was met.

Hofstra Reflects a Broader Trend

The First Department's holding in Hofstra reflects a larger trend: courts reaffirming that a carrier's duty to defend its insured is "exceedingly broad," and is triggered whenever the allegations suggest a "reasonable possibility of coverage." This standard is not itself new; New York courts have used these terms for decades. What the recent decisions show is how consistently courts are applying it against carriers.

A carrier that wants out must show, as a matter of law, that there is *no* possible basis for coverage, and when it relies on an exclusion, it bears a "heavy burden" to show the allegations fall "solely and entirely" within that exclusion, subject to no other reasonable interpretation.

Recent decisions across New York's courts have enforced that standard against carriers:

- Ambiguous exclusions are construed against the carrier. In *Marcus & Cinelli, LLP v. Aspen American Insurance Company*, 158 F.4th 333 (2d Cir. 2025) (applying New York law), the Second Circuit directed judgment for the insured on the duty to defend because the policy's "misappropriation" exclusion was, at best, ambiguous, and the carrier, which bore the burden, could not show the exclusion applied "subject to no other reasonable interpretation." This is the same move Hofstra made: a carrier cannot use a debatable exclusion to escape a defense.
- A suit that mixes excluded and covered allegations still triggers a defense. In *Mscichowski v. MLMIC Insurance Company*, 227 A.D.3d 1372, 210 N.Y.S.3d 870 (4th Dep't 2024), the Fourth Department held the carrier had to defend even though the underlying suit centered on alleged sexual abuse, because the complaint also alleged improper professional care potentially within coverage, and the carrier failed its "heavy burden" of showing every claim fell within the sexual-assault exclusion. For institutions facing abuse or Title IX-adjacent suits bundled with negligence or professional-services theories, this is directly on point.
- Campus premises and construction claims trigger a defense. In *Kedex Properties, LLC v. Trisura Specialty Insurance Company*, 247 A.D.3d 863 (2d Dep't 2026), the Second Department held a property owner's CGL



carrier had to defend a worker's scaffold-fall claim because the injury was an "occurrence" and the carrier could not show the allegations fell solely within its exclusions.

- Additional-insured status is enforced even on a thin complaint. In *Berkley Insurance Company v. Farm Family Insurance Company*, 251 A.D.3d 631 (2d Dep't 2026), the court required a subcontractor's carrier to defend a general contractor as an additional insured, looking to deposition testimony to confirm potential coverage even though the complaint lacked specific allegations. Federal courts applying New York law agree: in *Travelers Indemnity Company of Connecticut v. Selective Fire and Casualty Insurance Company*, 664 F. Supp. 3d 427 (S.D.N.Y. 2023), the court held a carrier's extrinsic evidence could not "eliminate the possibility" of coverage, so the defense obligation stood. Colleges that require vendors, contractors, and event operators to name them as additional insureds should know these endorsements carry real defense protection.

Taken together, these decisions describe a consistent judicial posture. New York courts are resolving duty-to-defend disputes in the insured's favor wherever any part of the underlying claim is potentially covered, and they are skeptical of carriers that invoke a single exclusion to deny an entire defense. *Hofstra* demonstrates that the trend continues with equal force in the higher-education setting.

Why This Matters for Colleges and Universities

The practical significance is substantial. Defense costs in a class action or multi-plaintiff suit can rival or exceed any ultimate liability. An institution that accepts a carrier's exclusion-based denial at face value may be leaving a fully funded defense on the table. The lesson of *Hofstra* and the cases alongside it is that a denial premised on one exclusion is rarely the end of the analysis; the right question is whether anything in the underlying complaint is potentially covered.

Higher-education suits are especially likely to clear that low bar. They routinely bundle multiple theories and forms of relief — statutory damages, injunctive relief, restitution, negligence, and professional-services claims alongside the headline demand. Under the reasoning in *Hofstra* and *Mscichowski*, that bundling is exactly what keeps a carrier in the case and obligates it to fund the defense.

Key Takeaways and Next Steps for Colleges and Universities

- Do not treat an exclusion-based denial as the final word. If a carrier cites one exclusion to deny a defense, scrutinize whether the underlying complaint also pleads claims or relief the exclusion does not reach. Under the current trend, the carrier may still be required to provide a defense.
- Read the complaint, including the prayer for relief, through a coverage lens. The types of damages and remedies sought, not just the plaintiffs' primary theory, can sometimes trigger the duty to defend.
- Tender broadly and promptly. It is critically important that institutions tender their claims to carriers as soon as possible. Oftentimes, carriers rely on delayed notice as grounds for denying a defense or coverage. Also, frame the tender around every category of relief and every theory pleaded, so the possibility of coverage is squarely presented.



- Leverage additional-insured protections. Where the institution is an additional insured on a vendor's, contractor's, or event operator's policy, recent decisions enforce the defense obligation even on a sparse complaint.
- Recognize the limits. *Hofstra* does not mean that the carrier will always be on the hook to provide a defense. Each case is decided on its own facts, and if a claim fits squarely within an exclusion, the carrier's denial may be upheld.
- Consider a declaratory-judgment action. Where a carrier denies a defense based on an exclusion, a coverage suit can be an effective tool to enforce the duty to defend, and the current case law gives institutions strong footing.

Looking Ahead

Hofstra is a First Department decision, but it sits within a broader body of recent New York authority — spanning the Appellate Division, the Second Circuit, and the federal district courts — that construes the duty to defend broadly and enforces it against carriers. For colleges and universities facing tuition, abuse, premises, construction, or employment claims, the message is consistent: the coverage analysis should not stop at the most prominent exclusion. Institutions that evaluate every category of relief and every theory in the underlying complaint, and tender accordingly, are best positioned to secure the defense their policies provide.

Archer attorneys regularly advise policyholders on insurance coverage disputes, including the enforcement of a carrier's duty to defend. We will continue to track coverage developments and share updates here.

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