Duty to Defend Goes Too Far?

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Damon Tedford was being sued in regard to certain representations he made on a seller property information sheet by the person to whom he sold property in Ottawa. He submitted the claim to his insurer (TD Insurance -- The decision doesn't indicate the type of policy at play, but I assume it was under Tedford's home policy). TD refused to defend Tedford on the basis that there was no duty to defend.

In the action against Tedford, the plaintiff purchaser claimed both property damage and bodily injury based on negligent misrepresentation, breach of contract, and negligence. There was no question that Tedford's policy provided him with coverage for bodily injury claims which may be made against him. The plaintiff, at paragraph 28 of the amended Statement of Claim, sought damages for "bodily injury".

TD argued that the main thrust of the litigation and the primary claim of the plaintiff was one relating to economic loss. TD argued that the derivative action for bodily injury should not trigger its duty to defend.

Tedford then brought an Application against TD, seeking a declaration that his insurer owed him a duty to defend.

With very short reasons, the motions judge agreed with Tedford that TD had a duty to defend him. The judge referred to "ample authority" that an insured's duty to defend is indeed broader than its duty to indemnify. With respect to this claim, the judge referred to another Superior Court judge, who held in *Hanis v. UWO*:

> **If there is a duty on an Insurer to defend some, or only one, of the claims made against an Insured, a duty to defend the entire claim arises in most situations. This is so even where such causes of action are only potentially within the policy coverage...**

This decision is somewhat disturbing, as it could expose liability insurers to defence costs in matters where plaintiffs "throw in" boilerplate pleadings of bodily injury allegations, when the issue is really over economic loss.

See Tedford v. T.D. Insurance, 2011 ONSC 5500