

BRENDA J. FARRINGTON et al.

v.

FIRST FINANCIAL INSURANCE COMPANY

Submitted on Briefs January 28, 2000  
Decided March 30, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY,  
ALEXANDER, and CALKINS, JJ.

#### MEMORANDUM OF DECISION

First Financial Insurance Company appeals from a declaratory judgment entered in the Superior Court (Cumberland County, *Mills, J.*) finding that it has a duty to defend Brenda Farrington in a lawsuit brought by a third party. Farrington, in turn, cross-appeals the court's failure to award attorney fees incurred in obtaining the defense. Contrary to First Financial's contentions, the Superior Court did not err when it concluded that First Financial has a duty to defend Farrington. *See York Ins. Group of Me. v. Lambert*, 1999 ME 173, ¶ 4, 740 A.2d 984, 985; *Foundation for Blood Research v. St. Paul Marine & Fire Ins. Co.*, 1999 ME 87, ¶ 4, 730 A.2d 175, 177; *Northern Sec. Ins. Co., Inc. v. Dolley*, 669 A.2d 1320, 1322 (Me. 1996).

Because First Financial's duty to defend is clear, Farrington is entitled to attorney fees incurred in obtaining a defense from First Financial. *See*

*Maine Mut. Fire Ins. Co. v. Gervais*, 1999 ME 134, ¶ 8, 745 A.2d 360, 362-63. Although the court did not award such fees, the record is not clear as to whether the court intended to deny Farrington's request for those fees, or whether the matter of the fees was simply not addressed prior to the Rule 54(b) certification. Accordingly, on remand the court should award reasonable attorney fees incurred by Farrington in obtaining a defense.<sup>1</sup>

The entry is:

Judgment on counts 1 and 2 affirmed.  
Remanded for further proceedings consistent  
with this opinion.

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1. The court originally declined to award attorney fees at the same time that it declined to grant a request for certification pursuant to Rule 54(b), thereby deferring a decision on fees to the conclusion of the remaining matters. When the parties later filed a joint request for certification pursuant to Rule 54(b), the court was not asked to revisit the attorney fees claim.