[* 1]

SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS PART 58
Justice

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff,

-v-

ILLINOIS UNION INSURANCE COMPANY and EVEREST NATIONAL INSURANCE COMPANY,

Defendants.

INDEX NO. 105872/11

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL NO.

The following papers, numbered 1 to _____ were read on this motion for _____.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits– Exhibits....	1-4
Answering Affidavits Exhibits	5-9
Replying Affidavits	10-12

CROSS-MOTION: ✓ YES _____ NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

FILED

MAY 10 2012

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 5/2/12

DONNA M. MILLS, J.S.C.

J.S.C.

Check one: ____ FINAL DISPOSITION ✓ NON-FINAL DISPOSITION

[* 2]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

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CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff,

- against- Index No.: 105872/11

ILLINOIS UNION INSURANCE COMPANY and,
EVEREST NATIONAL INSURANCE COMPANY,

Defendants.

----------x

Mills, J.:

In this action, for declaratory and other relief, plaintiff Citizens Insurance Company of America (Citizens) seeks to recover from defendants insurance proceeds that Citizens paid out on behalf of its insureds, nonparties Northside Realty, LLC and Northside Enterprises (together, Northside). Defendant Illinois Union Insurance Company (ILU) also insured Northside, as an additional insured, but under a commercial general liability policy (the Policy) that was issued to ILU's named insured, nonparty Blue Diamond Group Corp. (Blue Diamond).

In this motion, sequence number 001, ILU moves, pursuant to CPLR 3211 (a) (1), (7) and (c), to dismiss the action, and for a declaration that ILU properly applied a $100,000 sub-limit endorsement (Endorsement or Sub-Limit) in the Policy. Citizens opposes the motion, and cross-moves for summary judgment in its favor, for a declaration, pursuant to CPLR 3001, that ILU owed a duty to defend and indemnify Northside up to the Policy's full $1,000,000 occurrence limit, that ILU's application of the $100,000 Sub-Limit to coverage owed Northside was invalid, untimely, improper and unenforceable under New York law, that Citizens paid more than its equitable share of the loss when it made a $315,000 indemnity payment on Northside's behalf to settle a personal injury action, and that ILU must reimburse Citizens for that payment.

Background

Northside is the owner of premises upon which construction was performed with Blue Diamond as the contractor. Out of this construction arose a personal injury lawsuit by Francisco Garcia (the Garcia Action), an employee of Blue Diamond's subcontractor, SNG Brick & Stone, Inc. (SNG).[1] The Garcia Action settled. ILU paid out $100,000, the Policy's stated Sub-Limit, on behalf of Northside, toward the $415,000 total settlement in the Garcia Action. Citizens, as Northside's excess insurer, paid out $315,000, and seeks to recover those funds here. Subcontractor SNG was insured by defendant Everest National Insurance Company (Everest).[2]

As discussed below, Everest also opposes the motion. As against Everest, in the complaint, Citizens seeks a declaration that Northside qualified as an additional insured on the Everest Policy, but has not moved for relief concerning this claim.

The parties are in agreement on the facts. On October 10, 2008, Citizens tendered the defense and indemnity of Northside for the Garcia Action to Blue Diamond. ILU accepted tender and assigned counsel for Northside, which defended Northside through settlement of the action. As previously noted, ILU paid out $100,000 toward the settlement, applying the Policy's $100,000 Sub-Limit. ILU asserts that it applied the Policy's Sub-Limit because, on November 3, 2008, Everest's third-party administrator denied coverage to Blue Diamond as an additional insured on the Everest/SNG policy.

There is no dispute that, prior to June 22, 2009, ILU never advised Citizens or Northside that it was ILU's position that the Sub-Limit applied in the Garcia Action. On June 22, 2009, an ILU representative advised Citizens of ILU's position that the Sub-Limit applied. By letter dated January 10, 2011, to ILU, Citizens asserted that the Sub-Limit applied only to the named insured.

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[1]The Garcia Action is captioned *Garcia v Blue Diamond Construction Corp.* (Sup Ct, Kings County 2008, index No. 26125/08).

[2]The court notes that there have been no cross claims asserted here, and Supreme Court Records On-Line does not reveal that either defendant has interposed an answer, and only the summons and complaint have been submitted by the parties. Neither defendant states that it seeks to assert a cross claim.

Blue Diamond, but not to the Policy's additional insured, Northside (*see* Citizens Cx-Mot., Exh J).

Also in 2009, Blue Diamond, and one of the Northside entities, commenced an action against Everest in Kings County Supreme Court (the Kings County Action). In the Kings County Action, among other things, Blue Diamond and Northside seek a declaration that Everest is obligated to defend and indemnify them in connection with the Garcia Action, as additional insureds under the Everest/SNG policy.[3] The Kings County Action results from Everest's denial of coverage to Northside and Blue Diamond, on the ground that they are not additional insureds on the Everest policy issued for subcontractor SNG (the Everest/SNG policy).

In the Kings County Action, by decision and order dated October 21, 2010, the Honorable Wayne P. Saitta denied Everest's motion for summary judgment dismissing Blue Diamond's claim that it was an additional insured on the Everest/SNG policy, with leave to renew after additional discovery of Everest. The deadline for the note of issue in the Kings County Action was set for December 2011.

In this action, the Policy's limits of liability are $1,000,000 per occurrence, and $2,000,000 general aggregate. The parties do not dispute that this coverage is primary for Northside, and that Northside is an additional insured on the Policy for coverage concerning the Garcia Action, and Blue Diamond the named insured.[4] Citizens and ILU dispute the application of the Policy's $100,000 Sub-Limit to Northside. They also dispute whether or not ILU was required to disclaim based on its application of the Sub-Limit.

The Endorsement provides:

[3]The Kings County Action is entitled *Blue Diamond Group Corp. v SNG Brick and Stone, Inc.* (Sup Ct, Kings County, index No. 11277/09, Saitta, J.]).

[4]The Policy states that the words "you" and "your" to refer to the "Named Insured shown in the Declarations" (ILU Mov. Aff., Exh. A, Commercial General Liability Coverage Form, at 1) and that the word "'insured' means any person or organization qualifying as such under Section II - Who Is An Insured" (*id.*). The "Policy Declarations" provide that the named insured is Blue Diamond.

[* 5]

"SUB-LIMIT ENDORSEMENT - LOSS ARISING FROM WORK OF A CONTRACTOR, SUBCONTRACTOR OF ANY TIER, OR SUPPLIER, RELATED TO CONSTRUCTION WORK

The following conditions are added to Section IV - Commercial General Liability Conditions

Prior to any loss, including without limitation, "bodily injury" to any employee, agent or principal of the Named Insured's contractor's, subcontractors of any tier or any supplier of labor, goods or services arising out of work performed on behalf of the Named Insured by a contractor or subcontractor of any tier, or out of labor, goods or provided in connection therewith, directly or indirectly related to any form of construction work:

1) There must be a written contract between the Named Insured and it's [*sic*] contractor or subcontractor of any tier, signed by both parties, requiring the Named Insured's contractor and/or subcontractor of any tier to indemnify and hold harmless the Named Insured to the fullest extent permitted by applicable law including, but not limited to, any claim, suit, cost or expense arising out of any "bodily injury" to any employee, agent or principal of the contractor, subcontractor of any tier and/or supplier of labor, goods or services, regardless of whether the Named Insured is partially negligent and excluding only liability caused by the Named Insured's sole and exclusive negligence.

2) The Named Insured's contractor and/or subcontractor of any tier must have in force commercial general liability insurance that:

a. affords coverage for the Named Insured as an additional insured, including coverage for the Named Insured's independent negligence; and

b. includes contractual liability coverage for the benefit of the contractor and/or subcontractor of any tier for indemnification and/or contribution of claims to the fullest extent permissible by applicable law in the event of a loss, including but not limited to, any claim, suit, cost or expense arising out of any "bodily injury" to any employee, agent or principal of the contractor, subcontractor of any tier and/or any supplier of labor, goods or services.

If at the time of loss, any of the above conditions are not met, the

following sub-limit will be imposed on any such loss:

Each Occurrence Limit $100,000

This limit is a part of and not in addition to the Limit of Liability shown on the Declarations"

(ILU Mov. Aff., Exh. A). The Policy also contains a "Separation of Insured" provision that states:

"Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought"

(ILU Mov. Aff., Exh. A, Commercial General Liability Coverage Form, at 12] [the Separation of Insureds provision]).

Analysis

On a motion addressed to the pleadings, the court may grant the motion and dismiss the complaint where no legally cognizable cause of action has been stated within the four corners of the complaint (*Scott v Bell Atl. Corp.*, 282 AD2d 180, 183 [1st Dept 2001], *affd as mod sub nom Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314 [2002]; CPLR 3211 [a] [7]). A motion to dismiss based upon documentary evidence may be granted "where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (*Goshen*, 98 NY2d at 326; *see* CPLR 3211 [a] [1]).

CPLR 3211 (c) allows a court to treat a motion as one for summary judgment, but before doing so it must, generally, give notice to the parties that this is the court's intention (CPLR 3211 [c]). Exceptions to the notice requirement are found: "(1) where the action in question involves no issues of fact but only issues of law which are fully appreciated and argued by both sides; (2)

where a request for summary judgment pursuant to CPLR 3211 (c) is specifically made by both sides; and (3) where both sides deliberately lay bare their proof and make it clear that they are charting a summary judgment course" (*Shah v Shah*, 215 AD2d 287, 289 [1st Dept 1995]).

ILU moved pursuant to CPLR 3211 (c), in response to which Citizens moved for summary judgment. Everest opposes the motion only on the ground that it believes that, as a matter of law, a fact issue has been raised by the October 21, 2010 order in the Kings County Action that would affect the outcome here. Thus, these parties have charted a summary judgment course, as they argue based on issues of law.

It is well established that summary judgment may be granted when no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden is upon the moving party to make a prima facie showing of entitlement to summary judgment as a matter of law, by presenting evidence in admissible form demonstrating the absence of any issue of material facts (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]). Failure to make that showing requires denial of the motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062, 1062 [1993]). Where a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Giuffrida*, 100 NY2d at 81).

The parties dispute whether: (1) ILU properly applied the Policy's $100,000 Sub-Limit to Northside; (2) ILU is estopped from denying coverage under Insurance Law § 3420 (d) and common-law estoppel; and/or (3) denial of the motion is in order because of the October 2010 order issued in the Kings County Action. To begin with the first issue, in order for ILU to prevail on this motion, the court must determine that the Endorsement applies to Northside, and that its conditions were not met. Conversely, for Citizens to prevail, the court must determine that the Endorsement does not apply to Northside. Citizens argues that the $100,000 Sub-Limit applies only to the named insured under the Policy, Blue Diamond, and not to the additional

insured, Northside, because it refers solely and repeatedly to terms that must be met by the named insured. ILU argues that the Endorsement applies to all insureds under the Policy, including Northside.

In construing the Endorsement, ILU argues that its plain language demonstrates that it applies. ILU further argues that, as a matter of law, an additional insured is entitled to only the same coverage as the named insured, and that a court must employ the same standard for analyzing coverage for both, and therefore apply the same Sub-Limit maximum to any insured. ILU contends that this action should be dismissed because it defended and contributed the full, applicable, $100,000, Policy limit of liability to settle the Garcia Action on behalf of Northside.

Citizens disagrees with ILU's contention that the Policy provides the same coverage to each insured, as a matter of law, arguing that under New York law, each additional insured is treated as if it has a separate policy of its own. Citizens states that the language of the Endorsement refers to conditions that must be satisfied by the named insured, without reference to the additional insured coverage owed, and sets forth conditions which do not apply to "all insureds" or "any insured" or "an insured." Citizens argues that had ILU meant the Sub-Limit to apply equally to both named and additional insureds, it could have used appropriate language to so indicate, instead of making the Sub-Limit terms applicable only to the "named insured." Citizens maintains that Northside, interpreting the policy as would a reasonable person in business, would not expect the Sub-Limit to have any effect on its coverage, and that Blue Diamond's failure to meet the Sub-Limit's conditions should not have affected Northside's entitlement to full coverage under the Policy.

In determining a dispute over insurance coverage, courts first look to the language of the policy (*Raymond Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 5 NY3d 157, 162 [2005]), as courts are charged with determining the rights and obligations of parties under insurance contracts using that language (*see Sanabria v American Home Assur. Co.*, 68 NY2d

866 [1986]). "As with the construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court" (*Vigilant Ins. Co. v Bear Stearns Cos., Inc.*, 10 NY3d 170, 177 [2008] [citation and quotation marks omitted]). "If the plain language of the policy is determinative, [a court] cannot rewrite the agreement by disregarding that language" (*Fieldston Prop. Owners Assn., Inc. v Hermitage Ins. Co., Inc.*, 16 NY3d 257, 264 [2011]). Where there is more than one insured on a policy, "each individual additional insured although not named as an insured in the policy must be treated as if separately covered by the policy and indeed as if [t]he (additional insured) had a separate policy of [its] own" (*Greaves v Public Serv. Mut. Ins. Co.*, 5 NY2d 120, 124 [1959]; *Lufthansa Cargo, AG v New York Mar. & Gen. Ins. Co.*, 40 AD3d 444, 445 [1st Dept 2007] [where coverage to named insured voided based on its material misrepresentations, additional insured remained entitled to coverage]).

The Sub-Limit and its intended application are unambiguous, as its plain language provides that it applies to all losses of a specific type if certain contracts were not entered and certain insurance obtained by contractors and subcontractors. Specifically, the Endorsement limits liability under the Policy to $100,000 for bodily injury to employees of subcontractors working on behalf of Blue Diamond on construction projects, if the listed conditions are not met. One of the conditions is that the subcontractor have in force commercial general liability insurance that affords coverage for Blue Diamond as an additional insured. It is undisputed that the claim in the Garcia Action was of a loss concerning an employee of Blue Diamond's subcontractor, SNG, relating to construction work, and thus, one that fell within the scope of the Endorsement.

Citizens' argument that ILU could have easily written the Sub-Limit to apply equally to a named insured and an additional insured, by using terms such as "any insured" or "an insured," instead of "named insured," is unpersuasive, as it not does not change the plain meaning of the

Endorsement as a whole, which applies to all losses of the nature specified. Citizens' argument that a reasonable business person would not expect the terms of the Sub-Limit, which apply only to, and must be met by, a "named insured," to have any effect on the coverage due an additional insured coverage is also unpersuasive, as the Endorsement is unambiguous. Therefore, a person in business, and Northside, as an additional, and separate (*Greaves*, 5 NY2d at 124), insured, could have understood that the Policy's Sub-Limit applies to any losses arising from bodily injury to Blue Diamond's subcontractor's employee during construction, in the event that the subcontractor failed to name Blue Diamond as an additional insured to the subcontractor's policy. That the named insureds' subcontractors were required to obtain the insurance does not change the result.

ILU contends that the Endorsement applied in the Garcia Action because Blue Diamond was not an additional insured on subcontractor SNG's policy, as Everest denied coverage to Blue Diamond on that ground in 2008. Citizens does not dispute this point. In fact, none of the parties in this action challenges that, in 2008, Everest disclaimed on the Everest/SNG policy as to Blue Diamond (and Northside), on the ground that Blue Diamond was not an additional insured on the Everest/SNG policy. They also do not dispute that coverage under the Everest/SNG policy was not provided to Blue Diamond then, or since.

Everest opposes summary judgment, arguing that ILU is not entitled to judgment in this action because Everest's motion for summary judgment in the Kings County Action, seeking a declaration that it was not obligated to defend and indemnify Blue Diamond and Northside, was denied. Everest argues that this precludes resolution here as to whether or not Blue Diamond was an additional insured on the Everest/SNG policy. ILU disagrees that this is an issue in this case, arguing that this action presents the single issue of whether or not ILU properly applied the Sub-Limit. ILU notes that Citizens seeks a declaration that the Sub-Limit is unenforceable, and that ILU owed a duty to indemnify Northside up to $1,000,000, contending solely that ILU

improperly applied the Sub-Limit to Northside based on the Policy's language. In other words, ILU points out that Citizens is not seeking relief based on the contention that Blue Diamond was an additional insured under the Everest/SNG policy.

In the Kings County Action, Justice Saitta did not determine whether or not Blue Diamond was, or was not, an additional insured on the Everest/SNG policy. In fact, he merely decided that, on the record that was before him in that case, the issue could not be determined, as a matter of law, and that additional discovery was warranted. In this action, Everest does not contend that Blue Diamond was an additional insured on the Everest/SNG policy, or that admissible evidence exists demonstrating that this is the case, and no party in this action states that it seeks or requires additional discovery on that point. Everest's submissions demonstrate that, in a judicial action, the Kings County Action, Everest took the position and represented that Blue Diamond was not an insured on the Everest/SNG policy.[5] Everest takes the same position here (*see* Everest Op. Aff., ¶ 11).

Everest cites to *Bishop v Maurer* (73 AD3d 455, 455-456 [1st Dept 2010]). *Bishop* concerned a Surrogates' Court determination that certain real property was an estate asset, as opposed to a trust asset outside the estate. The First Department noted the intertwined nature of the Surrogates' Court proceeding with an action separately commenced by the appeal respondent, Maurer (the Action), in which Maurer alleged that the decedent breached a contractual obligation to transfer the real property to the trust. The First Department opined that

[5]Of the litigants in this action, only Everest is a party in the Kings County Action. The court has not considered ILU's supplemental submission of a stipulation of discontinuance, without prejudice, signed on behalf of Blue Diamond and Everest in the Kings County Action, which is only partially executed (CPLR 3217). Therefore, ILU's argument that this document, and the parties' stipulation withdrawing Everest's consolidation motion here, demonstrate that Blue Diamond's claim against Everest in the Kings County Action is "highly unlikely" to be determined in another court is disregarded (*see* ILU Sup. Memo. of Law, at 2). However, the Supreme Court's Records On-Line include a fully executed copy of the stipulation withdrawing Everest's consolidation cross motion, and the court has deemed that motion withdrawn.

summary judgment should not have been granted by the Surrogate because the determination in the Surrogates' Court proceeding that the real property was not a trust asset, would have rendered any result in Maurer's favor in the Action ineffectual. Here, Everest does not argue that the adjudication of this case will leave it similarly situated to Maurer in *Bishop*, or even address who or what entity will be prejudiced if this action is decided. The October 2010 order and decision in the Kings County Action does not, as a matter of law, raise a fact issue here, and Everest does not contend that other evidence does so.[6]

Citizens argues that ILU's disclaimer was untimely and improper and that ILU therefore may not rely on the Endorsement to limit coverage under the Policy. In support, Citizens cites to New York Insurance Law § 3420 (d) (2) (Section 3420) and the doctrine of common-law estoppel. Section 3420 provides:

> "If under a liability policy issued or delivered in this state, an insurer shall disclaim liability or deny coverage for death or bodily injury arising out of a motor vehicle accident or any other type of accident occurring within this state, it shall give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage to the insured and the injured person or any other claimant"

Pursuant to Section 3420 (d) (2), a insurer must provide a written disclaimer as soon as reasonably possible after first learning of the claimed grounds. Failure to comply renders late disclaimer ineffective (*JT Magen v Hartford Fire Ins. Co.*, 64 AD3d 266, 268-269 [1st Dept 2009]). However, Section 3420 (d) (2) does not apply under the circumstances here, as ILU "is not disclaiming liability or denying that insurance coverage is available for the underlying

[6]In light of the foregoing, the court need not reach the issue of the effect of the Separation of Insureds provision, which ILU states further bolsters its contentions. This provision "primarily highlights the named insured's separate rights and duties, as well as makes clear that the limits of the policy are to be shared by all of the insureds, i.e. that they are not each able to exhaust the limits of coverage but must share that limit equally; it does not negate bargained-for exclusions, or otherwise expand, or limit, coverage" (*DRK, LLC v Burlington Ins. Co.*, 74 AD3d 693, 694 [1st Dept 2010]).

action" (*see Santa v Capitol Specialty Ins., Ltd*, 33 Misc 3d 1218[A], 2011 NY Slip Op 51973[U], *3 [Sup Ct, NY County 2011] [regarding policy sub-limit]; *cf. Power Auth. of State of N.Y. v National Union Fire Ins. Co. of Pittsburgh*, 306 AD2d 139, 140 [1st Dept 2003] [timing requirements under Section 3420 inapplicable as exclusions not implicated]).

Plaintiff cites to *West 16th St. Tenants Corp. v Public Serv. Mut. Ins. Co.* (290 AD2d 278, 278 [1st Dept 2002] [30-day delay in disclaiming unreasonable]) and *First Fin. Ins. Co. v Jetco Contr. Corp.* (1 NY3d 64, 68 [2003] [48-day delay in disclaiming due to investigation into alternate sources of insurance too long]), which do not address the issue of whether disclaimer was required under the circumstances here. *Jefferson Ins. Co. of N.Y. v Travelers Indem. Co.* (92 NY2d 363, 371 [1998]), also cited by plaintiff, concerns the improper disclaimer of an exclusion, and not a sub-limit.

Citizens argues that, based on the doctrine of common-law estoppel, Northside was entitled to the full amount of the Policy as ILU hired counsel and defended Northside in the Garcia Action without properly or timely disclaiming. "An estoppel rests upon the word or deed of one party upon which another rightfully relies and so relying changes his position to his injury" (*Nassau Trust Co. v Montrose Concrete Prods. Corp.*, 56 NY2d 175, 184 [1982] [citation and quotation marks omitted]). "The party asserting estoppel must show with respect to himself: (1) lack of knowledge of the true facts; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change in his position" (*First Union Natl. Bank v Tecklenburg*, 2 AD3d 575, 577 [2d Dept 2003]). Citizens does not state any prejudice to the insured, as the Garcia Action was defended and settled without harm to Northside. Moreover, the full measure of insurance that was available under the Policy was paid by ILU on Northside's behalf. Therefore, estoppel does not lie.

In light of the foregoing, ILU has demonstrated that it is entitled to summary judgment in its favor and Citizens' motion must be denied. None of the parties has addressed Citizens' claim

against Everest, which will be severed and will continue.

Conclusion

Accordingly, it is hereby

ORDERED that the motion of Illinois Union Insurance Company for summary judgment dismissing the complaint is granted and the complaint is severed and dismissed as against said defendant, and the Clerk is directed to enter judgment in favor of said defendant, with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the cross motion of plaintiff Citizens Insurance Company of America is granted in part, to the extent that plaintiff seeks a declaration that it is an additional insured on the policy issued by Illinois Union Insurance Company and that coverage under that policy is primary while coverage under plaintiff's policy is excess; and it is further

ADJUDGED and DECLARED that concerning insurance coverage on behalf of Northside Realty, LLC and Northside Enterprises in the action captioned *Garcia v Blue Diamond Construction Corp.* (Sup Ct, Kings County 2008, index No. 26125/08) coverage provided under commercial general liability policy number G24006682001 issued by Illinois Union Insurance Company is primary and that provided under policy number ZBY-5948241-11 issued by Citizens Insurance Company of America is excess; and it is further

ADJUDGED and DECLARED that the full extent of Illinois Union Insurance Company's indemnity obligation on behalf of Northside Realty, LLC and Northside Enterprises pursuant to commercial general liability policy number G24006682001 for the action captioned *Garcia v Blue Diamond Construction Corp.* (Sup Ct, Kings County 2008, index No. 26125/08) was One Hundred Thousand Dollars ($100,000); and it is further

ORDERED that this action shall continue as against defendant Everest National Insurance Company.

Dated: 3/2/12 ENTER:

DONNA M. MILLS, J.S.C.