| **Hudson Meridian Constr. Group, LLC v Utica Natl. Assur. Co.** |
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| 2015 NY Slip Op 30677(U) |
| April 27, 2015 |
| Supreme Court, New York County |
| Docket Number: 156318/13 |
| Judge: Barbara Jaffe |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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HUDSON MERIDIAN CONSTRUCTION GROUP, LLC,

Plaintiff,

-against-

UTICA NATIONAL ASSURANCE COMPANY, UTICA MUTUAL INSURANCE COMPANY, SCOTTSDALE INSURANCE COMPANY, INTERSTATE FIRE & CASUALTY COMPANY, ILLINOIS UNION INSURANCE COMPANY, CRYSTAL WINDOW & DOOR SYSTEMS, LTD., CRYSTAL CURTAIN WALL SYSTEMS CORP., KINGDOM ASSOCIATES INC., RESTOR TECHNOLOGIES, INC., ROVINI CONSTRUCTION CORP., and BAY RESTORATION CORP.,

Defendants.

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Index No. 156318/13

Mot. seq. no. 001

**DECISION AND ORDER**

BARBARA JAFFE, J.:

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By notice of motion, defendant Scottsdale Insurance Company moves pursuant to CPLR 3212 for an order summarily dismissing the complaint against it, and for a declaratory judgment that it has no duty to indemnify or defend plaintiff in an action for damages. Plaintiff opposes.

By notice of cross-motion, plaintiff moves pursuant to CPLR 3212 for an order granting summary judgment in its favor, and for a declaratory judgment that defendant Scottsdale Insurance Company owes it coverage under its policies with defendants Kingdom Associates, Inc. and Bay Restoration Corp. Defendants oppose.

## I. BACKGROUND AND PERTINENT FACTS

Sometime before November 2005, real estate developer 13th and 14th Realty LLC (Realty) hired plaintiff to serve as construction manager on a condominium construction project located at 421-433 East 13th Street in Manhattan. (NYSCEF 67). In 2008, the project was sufficiently completed for unit owners to move in. (NYSCEF 54).

In 2010, unit owners Giovanni Villamar and Julissa Cruz brought an action against Realty, claiming that beginning in 2008, their unit was damaged by water leaks and flooding. (NYSCEF 55). In 2011, the Condominium's Board of Directors commenced an action against Realty, plaintiff, and others (Board action), alleging as pertinent here, that beginning in 2008, shortly after unit owners moved in, they discovered numerous problems with the design and construction of the condominium, resulting in property damage. (NYSCEF 54). That same year, Realty commenced its own action against plaintiff and others, asserting that in 2007 and thereafter, defects in the design and construction of the condominium were discovered. (NYSCEF 56).

By order and decision dated December 1, 2014, I denied plaintiff's motion for an order granting it partial summary judgment, finding that plaintiff had not established its entitlement to an order declaring that Bay and other subcontractors were legally obligated to defend and indemnify it in the Board action. (*Bd. of Managers of the A Building Condominium v 13th & 14th*

*St. Realty, LLC, et al.*, Sup. Ct, NY County, Dec. 1, 2014, Jaffe, J., index No. 100061/11; NYCEF 1259).

A. Kingdom

On November 29, 2005, plaintiff entered into a written agreement with Kingdom, whereby Kingdom would perform excavation and foundation work on the condominium project. The parties thereby agreed, in relevant part, that Kingdom would procure commercial general liability insurance, indemnify plaintiff, and name plaintiff as an additional insured on any such policy. (NYSCEF 53, 75).

They also agreed that:

> [t]o the fullest extent permitted by law, [Kingdom] will defend, indemnify and save [plaintiff] . . . harmless from and against any and all claims, liens, judgments, damages, losses and expenses, including reasonable attorneys' fees and legal costs, arising in whole or in part and in any manner from the act, failure to act, omission, negligence, breach or default by [Kingdom] in connection with the performance of this Subcontract.

(NYSCEF 75).

Each year thereafter, Kingdom purchased general commercial liability coverage from Scottsdale. The policies for 2005 and 2006 contain no endorsement listing plaintiff as an additional insured. (NYSCEF 65, Tab 1). Although the policy for 2007 lists plaintiff as an additional insured, it applies to a different location. (NYSCEF 65, Tab 3).

The Kingdom policies contain a Supplementary Payments provision whereby Scottsdale is required to defend a lawsuit against its insured, and defend an indemnitee of the insured if the indemnitee is also named as a party to the lawsuit, and if certain conditions are met, including that: (1) the lawsuit against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract"; and (2) the

allegations in the lawsuit are such that no conflict appears to exist between the interests of the insured and the indemnitee. (NYSCEF 75). An "insured contract" is defined as the part of any other contract or agreement pertaining to the insured's business under which the insured assumed the tort liability of another party to pay for property damage to a third person or organization provided that the damage is caused, in whole or in part, by the insured. (*Id.*).

The policies exclude coverage for bodily injury or property for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement, except as to liability for damages assumed in a contract or agreement that is an "insured contract." Reasonable attorney fees and litigation expenses incurred by or for a party other than an insured are deemed damages because of bodily injury or property damage, provided that: (a) liability to such party for, or for the cost of, that party's defense has also been assumed in the same insured contract; and (b) such attorney fees and litigation expenses are for defense of that party against a civil proceeding in which damages to which this insurance applies are alleged. (*Id.*).

A certificate of liability insurance, dated December 9, 2005 and issued by Felix Insurance Planning Company, reflects that Kingdom is the insured, Scottsdale is one of the insurers, and plaintiff is the certificate holder and an additional insured. (NYSCEF 75). Plaintiff is also named as the certificate holder and an additional insured on an almost identical certificate of liability insurance dated September 11, 2006 (*Id.*). Both certificates contain a provision that no rights are conferred upon the certificate holder and that they do not amend, extend or alter the coverage as set forth in the applicable insurance policies. (*Id.*).

B. Bay

On October 4, 2006, plaintiff entered into a contract with Bay to provide roofing work on the condominium project. The contract contains no provision requiring Bay to add plaintiff as an additional insured in any insurance policy. (NYSCEF 53).

Bay likewise purchased annual coverage from Scottsdale. The policies for 2006, 2007, and 2008 contain blanket endorsements naming as an additional insured any person or organization whom Bay was required to add as an additional insured on an insurance policy under a "written contract." (NYSCEF 66, Tab 1). Although the contract between plaintiff and Bay does not require that plaintiff be named as an additional insured, plaintiff is so listed in the 2009 policy. (*Id.*, Tab 4).

Each policy Scottsdale issued to Bay also contains an endorsement, which provides, in capitalized letters, that "this endorsement changes the policy. Please read it carefully." It excludes from coverage property damage if it first occurred, began to occur, or is alleged to have occurred or been in the process of occurring, to any degree, in whole or in part, before the policy's inception date. (NYSCEF 66).

The 2009 policy, which lists plaintiff as an additional insured, also contains a "Completed Operations" endorsement that modifies coverage provided by the policy to the extent that the definition of an "insured" is amended to include plaintiff as an additional insured, but only with respect to liability for property damage caused by Bay's work performed for plaintiff and included in the "products-completed operations hazard." (NYSCEF 87). A "products-completed operations hazard" includes all property damage arising from the insured's work, except work that has not yet been completed. (*Id.*). The policies also contain insured contracts and

supplementary payments provisions identical to those in the Kingdom policies. (*Id.*).

## II. APPLICABLE LAW

A party seeking summary judgment must demonstrate, *prima facie*, that it is entitled to judgment as a matter of law by presenting sufficient evidence to negate any material issues of fact. (*Forrest v Jewish Guild for the Blind,* 3 NY3d 295, 314 [2004]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If the movant meets this burden, the opponent must offer evidence in admissible form to demonstrate the existence of factual issues that require a trial, as "mere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient." (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If the movant does not meet this burden, the motion must be denied, regardless of the sufficiency of the opposition. (*Winegrad*, 64 NY2d at 853).

The terms of an insurance contract must be afforded their "plain and ordinary meaning," and the interpretation of an insurance policy poses a question of law. (*U.S. Fidelity & Guar. Co. v Annunziata*, 67 NY2d 229 [1986]; *Broad Street, LLC v Gulf Ins. Co.*, 37 AD3d 126, 130 [1st Dept 2006]). A contract is ambiguous if the provisions in question are "fairly susceptible to different interpretations or may have two or more different meanings." (*Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.*, 60 AD3d 61, 66 [1st Dept 2008], *quoting NYC Off–Track Betting Corp. v Safe Factory Outlet, Inc.*, 28 AD3d 175, 177 [1st Dept 2006]). When ambiguity or conflict arises in a contract of insurance, the court must resolve the ambiguity against the insurer. (*69 W. 9 Owners Corp. v Admiral Indem. Co.*, 114 AD3d 469, 470 [1st Dept 2014]).

A named additional insured under an insurance policy is entitled to the protections given the primary insured. (*Pecker Iron Works of N.Y. v Traveler's Ins. Co.*, 99 NY2d 391, 393 [2003];

*BP Air Conditioning Corp. v One Beacon Ins. Grp.*, 33 AD3d 116, 139 [1st Dept 2006]). The party claiming additional insured coverage bears the burden of establishing entitlement to it, and is not entitled to coverage if it is "not named as an insured or additional insured on the face of the policy." (*Natl. Abatement Corp. v Natl. Union Fire Ins. Co. of Pittsburgh, Pa.*, 33 AD3d 570, 570 [1st Dept 2006]; *see also Sumner Builders Corp. v Rutgers Cas. Ins. Co.*, 101 AD3d 417, 417 [1st Dept 2012]).

An insurer's duty to defend an insured or an additional insured, is exceedingly broad, and is triggered by allegations in the complaint suggesting a reasonable possibility of coverage irrespective of the apparent lack of merit of the supporting allegations (*Stout v 1 E. 66th St. Corp.*, 90 AD3d 898 [2d Dept 2011]), although not where the underlying complaint contains "no possible factual or legal basis on which the insurer might eventually be held to be obligated to indemnify." (*Greenwich Ins. Co. v City of N.Y.*, 122 AD3d 470, 471 (1st Dept 2014), *quoting Servidone Constr. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]).

The insurer bears the burden of proving the applicability of an exclusion of coverage. (*Platek v Town of Hamburg*, 23 NY3d 688 [2015]). To rely on an exclusion to deny coverage, an insurer must demonstrate that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case. (*J.P. Morgan Securities Inc. v Vigilant Ins. Co.*, 126 AD3d 76 [1st Dept 2015]). However, as it is the insured's burden to establish coverage, where coverage depends entirely on the applicability of an exception to the exclusion, the insured bears the burden of demonstrating that the exception has been satisfied. (*Platek*, 23 NY3d 688).

## III. SCOTTSDALE'S MOTION

### A. Coverage under Kingdom's policies

#### 1. Contentions

In support of its motion, Scottsdale argues that plaintiff's omission from the 2005 and 2006 Kingdom policies conclusively proves that plaintiff is not an additional insured, and that the 2007 policy is irrelevant as it covers Kingdom's work at a different location. (NYSCEF 50, 67).

Plaintiff agrees that it is not covered under the 2007 policy, but asserts that although it is not named in the 2005 and 2006 policies as an additional insured, summary judgment is premature as discovery may lead to evidence showing that it was named as an additional insured in an endorsement issued after the commencement of the policy. It relies on Kingdom's contractual agreement to name it as an additional insured, the 2005 certificate of insurance that lists it as a named insured, and Scottsdale's failure to produce in discovery thus far a complete copy of the policies at issue. (NYSCEF 70).

In reply, Scottsdale denies that additional discovery is needed, and argues that the certificates of insurance do not provide coverage if the policy itself does not. It also maintains that the policies produced in discovery were certified as complete and that plaintiff has not established otherwise except by speculation. (NYSCEF 103).

Plaintiff insists that Scottsdale has not produced a complete version of the insurance policies at issue, and maintains that while a certificate of insurance does not provide coverage where none exists, it constitutes evidence of an insurer's intent to provide coverage and a sufficient basis on which to deny summary judgment pending discovery. (NYSCEF 110).

2. Analysis

While the 2005 and 2006 policies do not name plaintiff as an additional insured on their face, the 2005 and 2006 certificates of insurance, while not establishing coverage as a matter of law, raise an issue as to whether the policies contain additional insured endorsements listing plaintiff as an additional insured. And, given Kingdom's contractual agreement to procure insurance naming plaintiff as an additional insured, its having named plaintiff as an additional insured in the 2007 policy, albeit for a different location, and plaintiff's assertion that a full copy of the policies has not yet been produced, a summary disposition of this issue is premature. (*See eg Herrnsdorf v Bernard Janowitz Constr. Corp.*, 96 AD3d 1011 [2d Dept 2012] [certificate of insurance raised triable issue as to whether defendant was additional insured under policy]; *Horn Maintenance Corp. v Aetna Cas. & Sur. Co.*, 225 AD2d 443 [1st Dept 1996] [certificate of insurance may be sufficient to raise factual issue on motion for summary judgment, especially where additional factors exist favoring coverage]; *Morrison-Knudsen Co., Inc. v Continental Cas. Co.*, 181 AD2d 500 [1st Dept 1992] [certificate of insurance naming party as additional insured constituted evidence of insurer's agreement to insure party]; *Southwest Marine and Genl. Ins. Co. v Preferred Contr. Ins. Co.*, 2015 WL 1646680, 2015 NY Slip Op 30544[U] [Sup Ct, New York County] [summary judgment in action seeking declaration regarding whether parties were entitled to additional insured status inappropriate in light of certificate of insurance naming parties as additional insureds]).

Scottsdale has thus failed to establish its entitlement, at this juncture, to a judgment declaring that it has no duty to defend plaintiff under Kingdom's 2005 and 2006 policies.

B. Coverage under Bay's policies

1. Contentions

Scottsdale maintains that the additional insured blanket endorsements on three of the four Bay policies do not confer coverage to plaintiff absent an agreement whereby Bay must name plaintiff as an additional insured. Although the 2009 policy provides plaintiff with coverage as an additional insured, Scottsdale argues that any property damage caused by Bay falls within the continuing ongoing damage exclusion as it has been alleged in the various underlying actions that the damage was first discovered in 2007 and no later than 2008. (NYSCEF 50).

Plaintiff alleges that the continuing damage exclusion conflicts with another provision in the 2009 policy, rendering the exclusion ambiguous and therefore, inapplicable. It also maintains that although it is not named as an additional insured in the 2006, 2007, and 2008 policies, it is covered under two other provisions in the policies. (NYSCEF 70; *see infra*, IV.).

In reply, Scottsdale denies that there exists any conflict or ambiguity as it is undisputed that the alleged damages occurred before the policy's inception date of 2009. (NYSCEF 103). Plaintiff asserts, however, that whether the damages occurred before 2009 poses a question of fact to be resolved, and thus Scottsdale has not established that the continuing damage provision applies. (NYSCEF 110).

2. Analysis

While the Bay policies for 2006, 2007, and 2008 include blanket additional insured endorsements, there is no corresponding contract obliging Bay to seek additional insured status for plaintiff. Thus, plaintiff is not entitled to coverage under these endorsements. (*See AB Green Gansevoort, LLC v. Peter Scalamandre & Sons, Inc.*, 102 AD3d 425, 426 [1st Dept 2013] [as

policy provided that organization be added as additional insured if written agreement between it and insured so provides, absent such agreement, organization not entitled to coverage as additional insured]; *City of New York v Nova Cas. Co.*, 104 AD3d 410 [1st Dept 2013] [same]; *W. 64th St., LLC v Axis U.S. Ins.*, 63 AD3d 471 [1st Dept 2009] [same]).

Here, pursuant to the continuing ongoing damage exclusion, property damage that occurred or was set in motion to occur before the inception of the policy period is excluded from coverage. The completed operations endorsement modifies the policy to the extent that it adds plaintiff to "Section II – Who Is An Insured," and provides it, as a named insured, with products-completed operation hazard coverage, a general provision under the policy. (NYSCEF 66, Tab 4). The continuing ongoing damage and exclusion endorsement, on the other hand, limits the general provisions, including that extending coverage to a products-completed operation hazard. As such, it governs. (*See eg Muzak Corp. v Hotel Taft Corp.*, 1 NY2d 42 [1956] [where inconsistency exists between specific provision and general provision in contract, specific provision controls]; *DRK, LLC v Burlington Ins. Co.*, 74 AD3d 693 [1st Dept 2010], *lv denied* 16 NY3d 702 [2011] [finding no ambiguity in exclusionary provision despite plaintiff's claim that it conflicted with general provision; endorsement containing exclusion provided that it changed policy, and thus modified general provision to extent that two clauses placed in conflict, and as other provision was general while exclusion was specific, exclusion controlled]).

In the three underlying complaints here, it is alleged that the damages at issue occurred or began to occur at or before the time that the plaintiffs moved into their units in January 2008. Plaintiff offers no factual basis for finding that the damages at issue may not have occurred or were set in motion to occur until February 2009, the start date of the applicable policy naming

plaintiff as an additional insured. Scottsdale has thus met its burden to demonstrate that the damages at issue fall within the continuing ongoing damage exclusion. (*See Scottsdale Ins. Co. v LCB Constr. LLC*, 2012 WL 1038829 [ED NY 2012], *report and recommendation adopted* 2012 WL 1041455 [ED NY 2012] [as it was alleged in underlying complaint that damage occurred before start date of policy, clear and unambiguous language in continuing or ongoing damage exclusion rendered coverage unavailable]; *Am. Safety Indem. Co. v 612 Realty LLC*, 24 Misc 3d 1232[A], 2009 NY Slip Op 51704 [Sup Ct, New York County 2009] [insurer established that injuries occurred before start date of policy as complaint alleged exposure and injuries before policy began, and defendant did not raise triable issue by arguing that it was unclear when plaintiff in underlying claim would allege that injuries occurred]).

## IV. PLAINTIFF'S MOTION

### A. Contentions

Plaintiff argues that it should be covered under all of Kingdom's and Bay's policies by the exception to the contractual liability exclusion for insured contracts. Thus, it contends, because its separate indemnity agreements with Kingdom and Bay constitute insured contracts, it is covered under the policies. It alternatively claims entitlement to coverage under the supplementary payments provision based on the contention that although Bay and Kingdom are not named defendants in the underlying lawsuits, it is reasonably inferred that some of the claimed damages arose from their work on the project. (NYSCEF 70).

Scottsdale asserts that Bay's and Kingdom's agreements to indemnify plaintiff are irrelevant as it was not a party to those agreements. Rather, it claims that the only issue is whether it has a contractual duty to indemnify plaintiff. Scottsdale also argues that the

supplementary payments provision is inapplicable, given the conflict between plaintiff as the indemnitee and Bay and Kingdom as the insureds, and that the other requirements of that provision have not been satisfied. (NYSCEF 100, 103).

Kingdom contends that its obligation to indemnify plaintiff applies only if its liability arises from its operations, which it denies, and that plaintiff is not entitled to summary judgment absent proof that Kingdom's work caused any damage at issue. (NYSCEF 96).

Bay opposes on the ground that whether plaintiff is covered by the insured contracts provision cannot be determined until a finding is made that Bay must indemnify plaintiff which must await determination in the Board action. (NYSCEF 104).

In reply, plaintiff maintains that it is entitled to coverage under the insured contracts provision in both policies and that the case law cited by Scottsdale is inapplicable given the breadth of the provision. It also asserts that the supplementary payments provision applies absent any conflict between it and Bay and Kingdom, due to their obligation to indemnify it, and that there need not be a determination as to Bay's or Kingdom's liability as allegations that they may be held liable suffice. (NYSCEF 110).

B. Analysis

1. Insured contracts provision

An insured contracts exception in an insurance policy applies to parties named in the policy, and constitutes an exception to a general exclusion for losses arising from contractual liability. It provides coverage for the named insured for tort liability it assumed in a separate agreement, but does not expand coverage for unnamed parties, nor does it trigger the insurer's duty to defend parties not named in the policy. (*See Jefferson v Sinclair Ref. Co.*, 10 NY2d 422

[1961] [party had no right to sue insurance company although party with whom it had agreement had agreed to indemnify and save it harmless from claims and obtain insurance policy, which it did; party not named as insured or additional insured in policy and thus insurer only obligated to cover insured]; *see also Inner City Redevelopment Corp. v Thyssenkrupp El. Corp.*, 78 AD3d 613 [1st Dept 2010] [defendant's contractual obligation to indemnify plaintiff is separate and distinct from insurer's obligations under policy]). In other words, the exception provides coverage to the named insured to the extent that it has assumed tort liability for another in a separate contract.

There is no dispute here that the agreements between plaintiff and Bay and plaintiff and Kingdom constitute insured contracts as defined in the policies. However, Scottsdale agreed to provide coverage for Bay and Kingdom to the extent they owe a duty to indemnify plaintiff, but did not agree to provide coverage directly to plaintiff, unless plaintiff is an additional insured or the parties agreed that it would be an additional insured. (*See Hargob Realty Assocs., Inc. v Fireman's Fund Ins. Co.*, 73 AD3d 856, 858 [2d Dept 2010] [notwithstanding parties' written agreement by which insured agreed to indemnify plaintiff, as additional insured endorsement provided coverage to any entity that named insured was required by written contract to name as insured, and parties' agreement did not require insured to name plaintiff as additional insured under policy, defendant insurer entitled to judgment]; *Tribeca Broadway Assocs., LLC v Mt. Vernon Fire Ins. Co.*, 5 AD3d 198 [1st Dept 2004] [although insured's contract with plaintiff required it to hold harmless and indemnify plaintiff, plaintiff not listed as additional insured under policy and thus not entitled to coverage under insured's policy; insured contract provision in policy did not create "rights and obligations as between plaintiff and [the insurance] carrier"];

*compare Yoda, LLC v Ntl. Union Fire Ins. Co. of Pittsburgh, PA*, 88 AD3d 506 [1st Dept 2011] [in interpreting identical policy provision, coverage was not created as to alleged additional insured by insured contract provision as policy did not provide automatic additional insured coverage for parties indemnified under insured contract], *with Kassis v Ohio Cas. Ins. Co.*, 12 NY3d 595 [2009] [party covered under insured contract provision as lease between it and insured constituted an insured contract as defined in insurance policy, and policy's additional insured endorsement extended coverage to organization whom named insured was required to name as additional insured on policy under written contract]).

Plaintiff has thus failed to establish that it is entitled to coverage pursuant to the insured contracts provision of Bay's and Kingdom's policies.

2. Supplementary payments provision

The supplementary payments clause requires, as one of its conditions, a unity of interest between the insured and the indemnitee. Here, plaintiff and Bay and Kingdom are party-adversaries, and in the Board action, plaintiff alleged, in moving for partial summary judgment on its claims for a contractual defense and indemnification against Bay, among others, that any defect in or damage to the condominium was caused by Bay and other subcontractor's acts or omissions, rather than by plaintiff. (NYSCEF 548). There is thus no merit to plaintiff's argument that there is no conflict between it and Bay and Kingdom. (*See eg, United Nat. Ins. Co. v Scottsdale Ins. Co.*, 2011 WL 839397 [ED NY 2011], *affd* 457 Fed Appx 77 [2d Cir 2012] [supplementary payments provision contemplates situation in which plaintiff names both insured and indemnitee of insured as defendants, but as there insured was not named as defendant in underlying suit and was only named as third-party defendant in separate suit brought by

indemnitees, there was no commonality of interest, especially as indemnitee sought declaration that insurer must defend indemnitees in third-party action against insurer's own insured]).

Even if plaintiff were to fall within the provision, it would not necessarily confer insured status under the policy. (*See Hargob Realty Assocs., Inc.*, 73 AD3d at 858 [supplementary payments provision did not demonstrate intent by insurer to afford plaintiff coverage solely on basis that it is indemnitee of insured absent plaintiff's addition to policy as additional insured; "(plaintiff's) status as an indemnitee does not operate to confer upon it status as an additional insured, and it is, thus, not entitled to liability coverage under the subject policy pursuant to the supplementary payments provision"]).

## V. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendant Scottsdale Insurance Company's motion for a declaratory judgment is granted to the extent of dismissing plaintiff Hudson Meridian Construction Group LLC's claims for coverage under: (1) Bay Restoration's 2006-2010 policies; and (2) Kingdom Associates, Inc.'s 2007 policy, and is denied as premature as to Kingdom Associates, Inc.'s 2005 and 2006 policies pending further discovery; it is further

ADJUDGED and DECLARED, that defendant Scottsdale Insurance Company is not obliged to provide a defense to, and provide coverage for, the plaintiff Hudson Meridian Construction Group LLC under the 2006 to 2010 policies it issued to Bay Restoration, Corp. in the following actions: (1) *Board of Managers of the A Building Condominium, et al. v 13th and 14th Street Realty, LLC, et al.*, index No. 100061/2011, Supreme Court, New York County; (2) *Giovanni Villamar and Julissa Cruz v 13th and 14th Street Realty, LLC*, index No.

105759/2010, Supreme Court, New York County; and (3) *13th and 14th Street Realty LLC v Hudson Meridian Construction Group LLC, et al.*, index No. 651062/2011, Supreme Court, New York County; it is further

ADJUDGED and DECLARED, that defendant Scottsdale Insurance Company is not obliged to provide a defense to, and provide coverage for, the plaintiff Hudson Meridian Construction Group LLC under the 2007 policy it issued to Kingdom Associates, Inc. in the following actions: (1) *Board of Managers of the A Building Condominium, et al. v 13th and 14th Street Realty, LLC, et al.*, index No. 100061/2011, Supreme Court, New York County; (2) *Giovanni Villamar and Julissa Cruz v 13th and 14th Street Realty, LLC*, index No. 105759/2010, Supreme Court, New York County; and (3) *13th and 14th Street Realty LLC v Hudson Meridian Construction Group LLC, et al.*, index No. 651062/2011, Supreme Court, New York County; it is further

ORDERED, that the branch of defendant Scottsdale Insurance Company's motion which seeks dismissal of the complaint is granted to the extent that the fifth and sixth causes of action in the amended complaint are dismissed as to Kingdom Associates, Inc.'s 2007 policy, and the seventh and eighth causes of action are dismissed in their entirety, and the action will continue as to the remaining causes of action; and it is further

ORDERED, that plaintiff Hudson Meridian Construction Group LLC's cross motion for summary judgment is denied in its entirety.

ENTER:

Barbara Jaffe, JSC

DATED: April 27, 2015
New York, New York