At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21st day of December, 2021.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY

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LENIN VARONA and ELIZABETH CARRASCO,

Plaintiffs,

-against-

Index No. 509734/17

STORY AVENUE EAST RESIDENTIAL, LLC, STORY AVENUE EAST RESIDENTIAL MANAGERS, LLC, STORY AVENUE HOLDCO, LLC, L&M STORY AVENUE MANAGERS, LLC, STORY AVENUE EAST AFFORDABLE LLC, STORY AVENUE EAST AFFORDABLE MANAGERS, LLC, HP LAFAYETTE BOYNTON HOUSING DEVELOPMENT FUND COMPANY, INC, and L&M BUILDERS GROUP INC.,

Defendants.

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STORY AVENUE EAST RESIDENTIAL, LLC, STORY AVENUE EAST RESIDENTIAL MANAGERS, LLC, STORY AVENUE HOLDCO, LLC, L&M STORY AVENUE MANAGERS, LLC, STORY AVENUE EAST AFFORDABLE LLC, STORY AVENUE EAST AFFORDABLE MANAGERS, LLC, HP LAFAYETTE BOYNTON HOUSING DEVELOPMENT FUND COMPANY, INC, and L&M BUILDERS GROUP INC.,

Third-Party Plaintiffs,

-against-

4MATIC CONSTRUCTION, CORP.,

Third-Party Defendants.

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STORY AVENUE EAST RESIDENTIAL, LLC, STORY AVENUE EAST RESIDENTIAL MANAGERS, LLC, STORY AVENUE HOLDCO, LLC, L&M STORY AVENUE MANAGERS, LLC, STORY AVENUE EAST AFFORDABLE LLC, STORY AVENUE EAST AFFORDABLE MANAGERS, LLC, HP LAFAYETTE BOYNTON HOUSING DEVELOPMENT FUND COMPANY,

INC, and L&M BUILDERS GROUP INC.,

Second Third-Party Plaintiffs,

-against-

PRO SAFETY SERVICES LLC and LIBROS MASONRY CORP.,

Second Third-Party Defendants.

STORY AVENUE EAST RESIDENTIAL, LLC, STORY AVENUE EAST RESIDENTIAL MANAGERS, LLC, STORY AVENUE HOLDCO, LLC, L&M STORY AVENUE MANAGERS, LLC, STORY AVENUE EAST AFFORDABLE LLC, STORY AVENUE EAST AFFORDABLE MANAGERS, LLC, HP LAFAYETTE BOYNTON HOUSING DEVELOPMENT FUND COMPANY, INC, and L&M BUILDERS GROUP INC.,

Third Third-Party Plaintiffs,

-against-

4MATIC CONSTRUCTION, CORP.,

Third Third-Party Defendants.

The following e-filed papers read herein:	NYSEF Doc. Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	216, 218, 297-297, 322-323, 354-355, 369-370, 384-385, 400 236, 279, 299, 347, 416, 417,418
Opposing Affidavits (Affirmations)	419, 420, 422, 423, 435, 447, 459, 478
Affidavits/ Affirmations in Reply	284, 466, 474, 485, 487, 491

Upon the foregoing papers, second third-party defendant Pro Safety Services LLC (Pro Safety) (Mot. Seq. 8) and second third-party defendant Libros Masonry Corp. (Libros) (Motion Seq. 11) move for an order: (1) pursuant to CPLR § 1010, dismissing or, alternatively, severing the second third-party action; or alternatively, (2) pursuant to Uniform Rules for Trial Courts (22 NYCRR) § 202.21 (e), vacating the note of issue and striking the matter from the trial calendar; or alternatively, (3) granting Pro Safety and Libros leave to move for summary judgment 60 days

after the completion of all discovery in the third-party action while this matter remains on the trial calendar.

Although it does not seek dismissal of the third third-party action, third third-party defendant 4Matic Construction Corp. (4Matic) otherwise moves for the same relief as Pro Safety and Libros with respect to the third third-party action (Motion Seq. 12).

In separate motions, plaintiff moves, pursuant to CPLR §§ 603 and 1010, to sever Libros and 4Matic from the action (Motion Seq. 10 and 13).

Finally, defendants/third-party plaintiffs/second third-party plaintiffs/third third-party plaintiffs Story Avenue East Residential, LLC, (Story Avenue Residential), Story Avenue East Residential Managers, LLC, Story Avenue Holdco, LLC, L&M Story Avenue Managers, LLC, Story Avenue East Affordable LLC, (Story Avenue East Affordable), Story Avenue East Affordable Managers, LLC, HP Lafayette Boynton Housing Development Fund Company, Inc., and L&M Builders Group Inc. (L&M Builders) (collectively referred to as defendants) move for an order, pursuant to CPLR § 3212, granting them summary judgment in their favor on their claim for contractual indemnification and on their claim for breach of agreement to procure insurance as against 4Matic and summary judgment dismissing the counterclaims asserted by 4Matic as against the defendants (motion sequence number 14).

In this action premised on common-law negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6), plaintiff Lenin Varona alleges that he suffered injuries on April 13, 2017 when a scaffold on which he was standing to perform work on a building under construction collapsed and caused him to fall to a concrete slab 18 to 20 feet below the scaffold. Story Avenue Residential and Story Avenue Affordable were owners of the premises at issue. L&M Builders was the general contractor for the construction project at issue, and it subcontracted with Pro Safety to perform site safety consultation services on the project and subcontracted with 4Matic, plaintiff's employer, to perform masonry and cement work on the project. 4Matic, in

turn, hired Libros as a sub-subcontractor. Libros' role in the project, however, is not clear from the motion papers before the court.[1]

Plaintiff commenced this action on May 16, 2017, with the filing of the summons and complaint. A preliminary conference order, dated January 12, 2018, required that any impleader actions be commenced within 90 days of the completion of examinations before trial. In May 2018, the defendants commenced a third-party action against 4Matic for contractual indemnification, common-law indemnification, contribution and breach of the insurance procurement provisions of their contract. After 4Matic ultimately answered the third-party complaint, defendants and 4Matic entered into a stipulation, dated September 3, 2019, discontinuing the third-party action without prejudice. Despite several orders directing that the depositions occur at an earlier date (*see* orders dated January 12, 2018 [Sherman, J.], September 26, 2018 [Schneier, J.H.O.], May 16, 2019 [Ash, J.], September 24, 2019 [Colon, J.]), plaintiff's deposition was not held until October 28, 2019, and the defendants' witness, Hugh Emanual, L&M Builder's project manager, was not deposed until November 11, 2019. As of a September 8, 2020 order (Knipel, J.), plaintiff still owed some discovery. The court, within that order, directed that authorizations and paper discovery be provided by October 9, 2020, that plaintiff's medical examination occur by November 9, 2020, and that the note of issue be filed by March 26, 2021. In an order, dated September 25, 2020, the court granted plaintiff's motion for partial summary judgment on his Labor Law § 240 (1) cause of action as against defendants. The defendants commenced a second third-party action and third third-party action on September 28, 2020 and plaintiff filed his note of issue on December 4, 2020. Plaintiffs Pro Safety, Libros, and 4Matic and the defendants then made their respective motions at issue here.

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[1] Counsel for 4Matic states that Libros was 4Matic's bricklaying subcontractor. 4Matric's contract with Libros, however, does not indicate the nature of Libros' work, and 4Matic's counsel points to no evidentiary proof that identifies Libros' role in the project.

Of note, the court, in an order dated July 13, 2021 (July 2021 order), granted the defendants' motion to reargue plaintiff's summary judgment motion to the extent that it vacated that part of the order that granted summary judgment on plaintiff's Labor Law § 240 (1) cause of action with respect to the defendants, except Story Avenue Residential, Story Avenue Affordable, and L&M Builders. In the July 2021 order, the court also awarded summary judgment in favor of the defendants, dismissing plaintiff's common-law negligence and Labor Law § 200 causes of action and plaintiff's Labor Law § 241(6) claims based on Industrial Code violations, except the claim under 12 NYCRR § 23-1.16.

Turning first to the motions by plaintiff and the second third-party and third third-party defendants, a court has the discretion to dismiss without prejudice or to sever a third-party action in order to avoid delay in the main action where discovery in the main action has been completed and the third-party defendants have not had an opportunity to obtain discovery (*see Whippoorwill Hills Homeowners Assn., Inc. v Toll at Whippoorwill, L.P.*, 91 AD3d 864, 865 [2d Dept 2012]; *Meczkowski v E.W. Howell Co., Inc.*, 63 AD3d 803, 804 [2d Dept 2009]; CPLR §§ 603 and 1010). Courts, however, remain reluctant to sever the third-party action where the determination of the third-party claims will involve factual and legal issues common with those in the main action because "a single trial [under such circumstances] is appropriate in the interest of judicial economy and to avoid the possibility of inconsistent verdicts" (*Herrera v Municipal Hous. Auth. of City of Yonkers*, 107 AD3d 949, 949 [2d Dept 2013]; *see Barrett v New York City Health & Hosps. Corp.*, 150 AD3d 949, 951 [2d Dept 2017]; *Boeke v Our Lady of Pompei School*, 73 AD3d 825, 826 [2d Dept 2010]). These policy concerns warrant a denial of a motion to sever even where the delay in commencing the third-party action was unjustified[2] as long as

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[2] Although there are cases holding that a defendant's knowingly and deliberately delaying the commencement of the third-party action will warrant the dismissal or severance of the third-party action (*see Soto v CBS Corp.*, 157 AD3d 740, 741 [2d Dept 2018]; *Skolnick v Max Connor, LLC*, 89 AD3d 443, 444 [1st Dept 2011]), this court finds that defendants' delay here, in and of itself, fails to show that they knowingly and deliberately delayed the commencement of the third-party actions.

prejudice to plaintiff and the third-party defendant can be avoided by insuring that the third-party defendant receives the requisite discovery and that this discovery is provided in an expedited manner such that there is no undue delay of the action (*see Range v Trustees of Columbia Univ. in the City of N.Y.*, 150 AD3d 515, 515 [1st Dept 2017]; *Herrera*, 107 AD3d at 949; *Boeke*, 73 AD3d at 826; *Jones v Board of Educ. of City of N.Y.*, 292 AD2d 500, 501 [2d Dept 2002]; *Klein v City of Long Beach*, 154 AD2d 346, 347 [2d Dept 1989]; *Pescatore v American Export Lines*, 131 AD2d 739, 739 [2d Dept 1987]; *Fries v Sid Tool Co., Inc.*, 90 AD2d 512, 512 [2d Dept 1982]; *cf. WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc.*, 193 AD3d 523, 523-524 [1st Dept 2021]).

Here, defendants have failed to provide any justification for their delay in commencing the third-party actions and their failure to do so within the time-period provided in the preliminary conference order. Nevertheless, plaintiff still owed some discovery and the note of issue still had not been filed prior to the shutdowns associated with the Covid-19 pandemic in mid-March 2020. The time from mid-March 2020 until the third-party actions were commenced in September 2020 is undoubtedly tolled by the executive orders issued in response to the pandemic (*see Brash v Richards*, 195 AD3d 582, 583-585 [2d Dept 2021]). Indeed, plaintiff still owed some discovery in September 2020, and the note of issue deadline provided by the September 8, 2020 order was March 26, 2021. Defendants thus had some basis to believe that the commencement of the third-party actions would not unreasonably delay the proceedings, since the action is scheduled on the Jury Coordinating Part's calendar on February 17, 2022 for a settlement conference, not for trial. Under these circumstances, any brief additional delay to allow the third-party defendants to conduct expedited discovery would not cause plaintiff any substantial prejudice (*see Klein*, 154 AD2d at 347). Further, in view of the overlapping factual and legal issues that remain between the action and the third-party actions

despite the various summary judgment determinations,[3] the court finds that denying severance serves the interest of judicial economy.

The parties are thus directed to work out an expedited discovery schedule, with discovery to be completed on or before April 11, 2022. The third-party actions were commenced only shortly before the filing of the note of issue and before any of the third-party defendants had an opportunity to obtain disclosure, the time to move for summary judgment relating to the third-party claims is extended to May 9, 2022 (*see Parker v LIJMC-Satellite Dialyses Facility*, 92 AD3d 740, 741-742 [2d Dept 2012]; *Bissell v Town of Amherst*, 56 AD3d 1144, 1146 [4th Dept 2008], *lv dismissed in part & lv denied in part* 12 NY3d 878 [2009]; *see also Rotante v Advance Tr. Co., Inc.*, 148 AD3d 423, 424-425 [1st Dept 2017]).

The court now turns to defendants' motion for summary judgment on their third-party claims against 4Matic. As an initial matter, as defendants made the motion a little more than two months after 4Matic joined issue, good cause is sufficiently demonstrated such that the court will consider the motion despite the fact that it was made more than 60 days after the filing of the note of issue (*see Parker*, 92 AD3d at 741-742; *Bissell*, 56 AD3d at 1146). Generally, a party seeking contractual indemnification demonstrates its prima facie entitlement to summary judgment on such a claim by showing that the terms of the agreement provide for indemnification under the circumstances of the case and that it is free from negligence (*see Anderson v United Parcel Serv., Inc.*, 194 AD3d 675, 678 [2d Dept 2021]; *Martinez v 281 Broadway Holdings, LLC*, 183 AD3d 716, 718 [2d Dept 2020]; *Bellreng v Sicoli & Massaro, Inc.*, 108 AD3d 1027, 1031 [4th Dept 2013]). "A party is entitled to full contractual indemnification provided that the intention to indemnify can be clearly implied from the

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[3] Although plaintiff has obtained summary judgment in his favor on the Labor Law § 240 (1) cause of action against some of the defendants, and defendants have obtained dismissal of the common-law negligence and Labor Law § 200 causes of action, a trial is still required with respect to liability on the Labor Law § 240 (1) cause of action against some of the defendants, liability on the Labor Law § 241 (6) cause of action and with respect to damages.

language and purposes of the entire agreement and the surrounding facts and circumstances" (*Cuellar v City of New York*, 139 AD3d 996, 998 [2d Dept 2016] [internal quotation marks omitted]; *see Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491-492 [1989]; *Dos Santos v Power Auth. of State of N.Y.*, 85 AD3d 718, 722 [2d Dept 2011], *lv denied* 20 NY3d 856 [2013]).

Since 4Matic was not a party to the action at the time the defendants moved to dismiss the common-law negligence and Labor Law § 200 causes of action, they are not bound to this court's July 5, 2021 order, wherein the court opined that the defendants were not negligent.[4] Nevertheless, just as they did in moving to dismiss plaintiff's claims, the defendants, through the submission of the deposition testimony of plaintiff, the deposition testimony of Hugh Emanual, L&M Builder's project manager, and an affidavit from 4Matic's project manager Louis Lazzinnaro,[5] have demonstrated that the accident did not arise from a dangerous property condition, but rather, was the result of the collapse of a defective scaffold erected by 4Matic. The defendants did not supervise or control the work at issue and were not involved in the construction of the scaffold. Therefore, they have demonstrated, prima facie, that they were not negligent (*see Batlle v NY Devs. & Mgt., Inc.*, 193 AD3d 562, 563 [1st Dept 2021]; *Marulanda v Vance Assoc., LLC*, 160 AD3d 711, 712-713 [2d Dept 2018]; *Shea v Bloomberg, L.P.*, 124 AD3d 621, 623 [2d Dept 2015]; *Gonzalez v Magestic Fine Custom Home*, 115 AD3d 796, 798 [2d Dept 2014]). Contrary to 4Matic's argument, Emanual's testimony regarding the authority of Pro Safety and L&M Builder to stop the work and regarding Pro Safety's inspection role fails to demonstrate the existence of factual issues precluding defendants' prima facie showing, as

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[4] The court notes that plaintiff has submitted opposition to defendants' motion. Plaintiff, however, is bound by the July 5, 2021 order, and it is not clear to this court how plaintiff has standing to challenge the defendants' right to indemnification from 4Matic. In any event, plaintiff's arguments that defendants have failed to demonstrate that they were not negligent are rejected for the reasons stated in the July 5, 2021 order and herein.

[5] Lazzinnaro, in his affidavit, represented that he was authorized to execute the affidavit on behalf of 4Matic. Lazzinnaro appended a copy of the contract between L&M Builders and 4Matic to his affidavit and was the person who executed the contract on 4Matic's behalf.

nothing in this testimony suggests that defendants exercised more than general supervisory authority over the 4Matic's work (*see Gonzalez*, 115 AD3d at 798; *Bink v F.C. Queens Place Assoc., LLC*, 27 AD3d 408, 409 [2d Dept 2006]; *see also Debennedetto v Chetrit*, 190 AD3d 933, 938 [2d Dept 2021]; *Goldfien v County of Suffolk*, 157 AD3d 937, 938 [2d Dept 2018]; *Messina v City of New York*, 147 AD3d 748, 749-750 [2d Dept 2017]).

The indemnification provision of L&M's contract with 4Matic (Contract) requires that 4Matic indemnify defendants[6] for:

> "all losses, claims . . . damages (including without limitation any personal injury, sickness, disease or death or damage or injury to, loss of or destruction of property, and the loss of use resulting therefrom, and damage to the Work and/or the work of others), expenses (including without limitation the deductible amount of any insurance, self-insured retention payments, attorneys' fees and disbursements, court costs, expert witness fees and expenses, and any resulting settlement, judgment, or award), liabilities (including without limitation any from, in connection with or relating to: (i) the performance (or non-performance) of the Work." (Contract § 12.2 [a]).

Since the aforementioned deposition testimony of plaintiff and Emanual and the affidavit of Lazzinnaro show that the accident arose out 4Matic's work on the project, defendants have demonstrated that they are entitled to indemnification under the terms of this broadly worded indemnification provision (*see Brown v Two Exch. Plaza Partners*, 76 NY2d 172, 178 [1990]; *Martinez*, 183 AD3d at 718; *Shea*, 124 AD3d at 621; *Bellreng*, 108 AD3d at 1031). Even if the supposition of 4Matic's counsel that 4Matic's subcontractor Libros bears some responsibility for the accident were correct, that would not alter 4Matic's contractual obligation to indemnify defendants since the contract expressly makes 4Matic responsible for all work, acts and omissions of its subcontractors for all purposes under the contract (see Contract § 14.1 [f]).

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[6] In addition to requiring indemnification on the behalf of the general contractor, owner and other entities, the indemnification provision covers "all Additional Insureds identified in **Exhibit B**" (Contract § 12.2 [a]) and each of the defendants is identified as an additional insured in Exhibit B to the contract.

Defendants' proof that they were not negligent is also sufficient to demonstrate, prima facie, that they are entitled to dismissal of 4Matic's claims for contribution and common-law indemnification against them (*see Debennedetto*, 190 AD3d at 938-939; *Cutler v Thomas*, 171 AD3d 860, 861-862 [2d Dept 2019]; *Kane v Peter M. Moore Constr. Co., Inc.*, 145 AD3d 864, 869 [2d Dept 2016]; *see also McCarthy v Turner Constr., Inc.*, 17 NY3d 369, 377-378 [2011]).

4Matic, in opposition, has failed to submit evidentiary proof demonstrating a factual issue warranting denial of the portions of the motion seeking contractual indemnification and dismissal of 4Matic's counterclaims for indemnification and contribution (*see Debennedetto*, 190 AD3d at 938-939; *Martinez*, 183 AD3d at 718; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

The court also rejects 4Matic's assertion that defendants' motion is premature because 4Matic has not had an opportunity to obtain discovery. 4Matic has failed to offer an evidentiary basis to suggest that discovery might lead to relevant evidence or that facts essential to justify its opposition to the motion are exclusively within the knowledge and control of defendants (*see Board of Mgrs. of the 23-33 Condominium v 210th Place Realty, LLC*, 185 AD3d 890, 891 [2d Dept 2020]; *Dunn v Covanta Niagara I, LLC*, 181 AD3d 1340, 1341 [4th Dept 2020]; *Newman v Regent Contr. Corp.*, 31 AD3d 1133, 1134-1135 [4th Dept 2020]).

Notably, in this respect, 4Matic has failed to explain how it expects to find favorable evidence through discovery where defendants' motion is largely based on the statements Lazzinnaro, 4Matic's project manager, made in his affidavit. Although Lazzinnaro states that he did not see the accident, he asserts that he was a supervisor at the site of the accident and was working only 20 feet from where plaintiff fell. Lazzinnaro states that he saw plaintiff on the scaffold before the accident, that he came to his assistance shortly after the accident, that defendants did not supervise or control the work of plaintiff or any of 4Matic's employees, that defendants did not provide tools or equipment used by 4Matic, that the scaffold was owned by 4Matic, and that it was not erected by defendants. Lazzinnaro was thus in a position to know if

the defendants were in anyway at fault for the happening of the accident. In light of this, 4Matic's failure to submit an affidavit from him, or any other 4Matic employee with knowledge of the accident, alleging that discovery would lead to evidence showing that the defendants were negligent, weighs against finding that the defendants' motion is premature despite the absence of discovery (*see VNB N.Y., LLC v Y.M. Intercontinental Gem Corp.*, 154 AD3d 903, 904-905 [2d Dept 2017]; *Ullmannglass v Oneida, Ltd.*, 121 AD3d 1371, 1373 [3d Dept 2014]; *Thelen LLP v Omni Contr. Co., Inc.*, 79 AD3d 605, 606 [1st Dept 2011], *lv denied* 17 NY3d 713 [2011]; *Hernandez v Yonkers Contr. Co.*, 292 AD2d 422, 424 [2d Dept 2002]; *Bank Leumi Trust Co. of N.Y. v Samalot/Edge Assoc.*, 202 AD3d 282, 283 [1st Dept 1994]).

Defendants, however, are not entitled to summary judgment in their favor on their cause of action for breach of the insurance procurement provisions of the contract. While the defendants have shown that their contract with 4Matic required 4Matic to obtain general liability and excess/umbrella insurance policies naming defendants as additional insureds, they have not demonstrated, prima facie, that 4Matic failed to obtain policies containing the agreed upon coverage. Namely, the only proof offered by defendants with respect to 4Matic's alleged failure to obtain the required coverage is the apparent failure of the claims administrator for 4Matic's excess carrier to respond to defendants' tender letters regarding coverage during the policy in effect from April 1, 2017 to April 1, 2018.[7] This failure to respond to the defendants' tender letters, in and of itself, however, does not show that that 4Matic failed to obtain the requisite coverage (*see Strong v St. Thomas Church of Irondequoit*, 151 AD3d 1887, 1889 [4th Dept 2017]; *Sicilia v City of New York*, 127 AD3d 628, 629 [1st Dept 2015]; *Arner v RREEF Am., LLC*, 121 AD3d 450, 451 [1st Dept 2014]; *Ginter v Flushing Terrace, LLC*, 121 AD3d 840, 844 [2d Dept 2014]). Defendants' motion in this respect must thus be denied regardless of the

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[7] The claims administrator for the excess carrier had previously acknowledged that defendants were additional insureds under the policy in effect from April 1, 2016 to April 1, 2017. The claims administrator for 4Matics general liability insurer has acknowledged that defendants are additional

sufficiency of 4Matic's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Ginter*, 121 AD3d at 844).

Based upon the foregoing, the motions by Pro Safety (Motion Seq. 8), Libros (Motion Seq. 11), 4Matic (Motion Seq. 12) and plaintiff (Motion Seq. 13) are granted only to the extent that: (1) the parties are directed to set up an expedited discovery schedule providing that all discovery relevant to the second third-party and third third-party actions is completed on or before March 11, 2022;[8] (2) the note of issue is not vacated and the case will remain on the trial calendar, and (3) the parties' time to move for summary judgment relating to the second third-party action and the third third-party action is extended until May 9, 2022. The motions by Pro Safety, Libros, 4Matic and plaintiff are otherwise denied. The denial of the portion of these motions requesting severance, including plaintiff's, Lenin Varona and Elizabeth Carrasco, motion to sever (Motion Seq. 10) the second third-party action against Libros is made without prejudice to renew in the event that the defendants unreasonably delay discovery.

The defendants' motion (Motion Seq. 14) is granted to the extent that 4Matic's counterclaims against the defendants are dismissed and the defendants are granted summary judgment in their favor on their contractual indemnification claim against 4Matic. The motion is denied with respect to the breach of insurance procurement claim.

This constitutes the decision and order of the court.

ENTER

HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice

insureds under the requisite general liability policy.

[8] The court reminds the parties that they have a settlement conference calendared in the Jury Coordinating Part on February 17, 2022 at 10:00 a.m.