

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CERTAIN UNDERWRITERS AT LLOYD'S  
LONDON, subscribing to the policy attached  
to Certificate no. BP/15-0489,

Plaintiff,

**ORDER ADOPTING R&R**

-against-  
EBE OF NY, INC., doing business as Vapor  
Smoke Shop and JAMES WRENN,

16-CV-6938(DRH)(ARL)

Defendants.

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Presently before the Court is the Report and Recommendation of Magistrate Judge Arlene R. Lindsay, dated February 20, 2018, ("R&R"), recommending the motion of plaintiff for a default judgment against defendant EBE of NY, Inc., be denied at this time and be considered when the motion for summary judgment against defendant James Wrenn is considered.

Plaintiff has filed objections to the Report. The principal objections is that "the basis of [plaintiff's] motion for default judgment against EBE - EBE has been served in this action and has failed to interpose a timely answer - is separate and distinct from [plaintiff's] motion as against Wrenn on the merits of the claim as to liability." Pl.'s March 6, 2018 Ltr. at 1-2.

Having reviewed this matter de novo, the Court concludes that it is appropriate to deny the motion without prejudice at this time and consider it when the motion for summary judgment against defendant James Wrenn is considered. The Court rejects plaintiff's contention that the two motions are separate and distinct as to liability. The basis for the claim against EBE is that there is no coverage under the policy's Designated Premises Limitation Endorsement and Products Completed Operations Hazard Exclusion. (Pl.'s Mem. In Supp. of Default Judgment (DE 14-14) at 4. Plaintiff's memorandum in support of the motion against Wrenn opens with the

following statement:

The grounds in support of this motion for summary judgment are similar to those in Underwriters' motion for default judgment against defendant EBE of NY, Inc. d/b/a Vapor Smoke Shop ("EBE"), which is currently pending before this Court. Simply stated, no coverage exists under the insurance policy Underwriters issued to EBE for bodily injury that occurs away from the policy's designated premises located at 2059 Hempstead Turnpike, East Meadow, NY. Because the bodily injuries at issue in the underlying litigation occurred approximately seven miles away from those designated premises, there is no coverage under the policy.

(Pl.'s Mem. in Supp. of Motion for Summary Judgment against James Wrenn (DE 22-14) at 1.)

Given the referenced exclusion is the pivotal issue in both motions, it is proper for the motions to be considered together. Accordingly,

**IT IS HEREBY ORDERED** that the plaintiff's motion for a default judgment against defendant EBE of NY, Inc. is denied at this time without prejudice and will be considered when the motion for summary judgment against defendant James Wrenn is considered.

Dated: Central Islip, New York  
March 14, 2018

/s/ Denis R. Hurley  
Denis R. Hurley  
United States District Judge