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

PRESENT: HON. ANIL C. SINGH SUPREME COURT JUSTICE Justice PART 61

CENTURY INDEMNITY CO

-v-

LIBERTY MUTUAL INS CO.

INDEX NO. 105491/10

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

Dated: 7/25/11

HON. ANIL C. SINGH J.S.C.
SUPREME COURT JUSTICE

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 61

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CENTURY INDEMNITY COMPANY, as successor to CCI INSURANCE COMPANY, as successor to INSURANCE COMPANY OF NORTH AMERICA, and TIG INSURANCE COMPANY, formerly known as INTERNATIONAL INSURANCE COMPANY, WITH RESPECT TO POLICIES NUMBERED 5220113076 AND 5220282357,

DECISION AND ORDER

Plaintiffs,

-against-

Index No. 105491/2010

LIBERTY MUTUAL INSURANCE COMPANY, WARREN PUMPS LLC, CERTAIN UNDERWRITERS OF LLOYD'S AND LONDON MARKET INSURANCE COMPANIES, GRANITE STATE INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY, SAFETY NATIONAL CASUALTY CORPORATION, FIRST STATE INSURANCE COMPANY, and THE CALIFORNIA INSURANCE COMMISSIONER, AS TRUSTEE FOR MISSION INSURANCE COMPANY,

Defendants.

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HON. ANIL C. SINGH, J.:

Motion sequence numbers 001, 003, 004, 006, 007, 008, 010, 011, and 012 are consolidated for disposition.

NATURE OF ACTION

In this action, plaintiffs Century Indemnity Company (Century Indemnity) and TIG Insurance Company (TIG) seek a declaration adjudicating defendant Liberty Mutual Insurance Company's (Liberty Mutual) obligations to pay defense costs and indemnify defendant Warren Pumps, LLC (Warren) for numerous underlying asbestos claims. Plaintiffs also seek contribution and/or indemnification from Liberty Mutual for amounts that plaintiffs may become obligated to

pay on behalf of Warren, in their capacity as excess insurers.

MOTIONS

In motion sequence number 001, Liberty Mutual moves to dismiss plaintiffs' amended complaint on the grounds that: (1) there are prior pending actions in Delaware and Massachusetts between substantially the same parties involving the same underlying issues (CPLR 3211 [a] [4]); (2) New York is an inconvenient forum (CPLR 327); and, (3) plaintiffs' claims in this action are barred under the doctrine of res judicata (CPLR 3211 [a] [5]), or, alternatively, are barred by the principles of equitable estoppel. In the alternative, Liberty Mutual moves to stay this action until the conclusion of the pending Delaware and Massachusetts actions. In motion sequence numbers 006 and 011, Liberty Mutual moves, on substantially the same grounds, (1) to dismiss the cross-claims asserted by, respectively, (a) defendants Lexington Insurance Company (Lexington), Granite State Insurance Company (Granite State), and First State Insurance Company (First State), and (b) defendants Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies (the London Market Insurers), or, alternatively, (2) to stay this action.

In motion sequence number 004, Warren moves to dismiss plaintiffs' amended complaint on the grounds that: (1) there is a prior pending action in Delaware between substantially the same parties involving the same underlying issues (CPLR 3211 [a] [4]); and (2) New York is an inconvenient forum (CPLR 327). Alternatively, Warren moves to stay this action pending resolution of the Delaware action (CPLR 2201). In motion sequence numbers 007 and 012, Warren moves, on substantially the same grounds, (1) to dismiss the cross-claims asserted by, respectively, (a) defendants Lexington, Granite State, and First State, and (b) defendants the

London Market Insurers, or (2) to stay this action.

Defendant Granite State cross-moves, pursuant to CPLR 3217 (b), to discontinue, without prejudice and without costs (1) its counterclaim against plaintiffs Century Indemnity and TIG, (2) its cross-claim against Warren and Liberty Mutual, and (3) its cross-claim against the London Market Insurers, Safety National Casualty Corporation (Safety National), and First State.

In motion sequence number 003, Safety National moves to stay this action pending arbitration.

In motion sequence numbers 008 and 010, Century Indemnity and Warren move, respectively, to place certain documents under seal, pursuant to 22 NYCRR § 216.1 (a).

BACKGROUND

Defendant Warren, a Delaware corporation that has its principal place of business in Warren, Massachusetts, is a manufacturer of industrial pumps. Warren purchased the Warren Pumps business in 1985 from Houdaille Industries, Inc. (Houdaille), a New York-based conglomerate, which had acquired the business in 1972 from Warren Pumps, Inc., an independent Massachusetts corporation located in Warren, Massachusetts. The Warren Pumps business has been in continuous operation since 1897.

Since 1987, Warren has been named as a defendant in numerous personal injury suits arising out of exposure to asbestos that was contained in, or used with, industrial pumps that were manufactured prior to 1985. Warren submitted these claims for defense and indemnification to Liberty Mutual, which had issued all of the primary and umbrella insurance policies covering Houdaille's various businesses, including Warren Pumps, between 1972 and 1986 (the Liberty-Houdaille policies). Liberty Mutual began defending and indemnifying

Warren against these asbestos claims.

In June 2005, Viking Pump, Inc. (Viking), another former Houdaille subsidiary engaged in the manufacture of industrial pumps, commenced suit against Liberty Mutual in the Delaware Chancery Court. Like Warren, Viking was facing numerous asbestos personal injury claims arising out of the manufacture or use of its pumps; these claims also were being defended and indemnified under the Liberty-Houdaille policies. Viking was concerned that these policies were being exhausted unfairly by payments made to settle the Warren asbestos claims, and sought a declaration of its rights to defense and indemnity under, and an equitable apportionment of, the Liberty-Houdaille policies. In November 2005, Viking filed an amended complaint adding Warren as a party to that suit.

In response to Viking's suit, Liberty Mutual, which had not previously disputed its obligations under the Liberty-Houdaille policies, asserted counterclaims against Viking and cross-claims against Warren, seeking a declaration of its obligations to defend and indemnify them under these policies. Liberty Mutual also sought a declaration of its obligations to defend and indemnify Warren under primary general liability policies that it allegedly had issued to Warren Pumps, Inc. between 1936 and 1969 (the Warren-Only policies).[1]

Shortly after the commencement of the Delaware action, in December 2005, Warren commenced its own action against Liberty Mutual, and certain excess insurers that had issued policies to Houdaille between 1972 and 1986 (the Houdaille Excess Insurers), in the Superior

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[1]The Warren-Only policies include general liability policies issued by Liberty Mutual to Warren Pumps, Inc. between 1966 and 1969, as well as "alleged" general liability policies issued by Liberty Mutual to Warren Pumps, Inc. between 1936 and 1965, the existence of which remains in dispute.

Court of the Commonwealth of Massachusetts.[2] In that action, Warren sought, inter alia, a declaration of its rights to defense and indemnification under the Liberty-Houdaille policies, the Warren-Only policies, and the Houdaille Excess policies. In May 2006, the Massachusetts court stayed the action in deference to the pending Delaware action.

Due to the complexity of the issues involved, the parties to the Delaware action agreed to resolve their claims in phases. In Phase I of the action, the Delaware court began by addressing the issue of whether Viking and Warren were entitled to exercise the rights of insureds under the Liberty-Houdaille and Warren-Only policies. In April 2007, the Delaware court determined that both Viking and Warren were entitled to such coverage under the Liberty-Houdaille policies, and that Warren also was entitled to such coverage under the Warren-Only policies *(see Viking Pump, Inc. v Liberty Mutual Ins. Co.*, 2007 WL 1207107 [Del Ch 2007]).

Shortly thereafter, in August 2007, Warren filed a third-party complaint joining the Houdaille Excess Insurers to the Delaware action. In Phase II of that action, the Delaware court began addressing the issue of whether Warren and Viking could exercise the rights of insureds under the Houdaille Excess policies and, if so, how the asbestos-related costs should be allocated among those policies.

Meanwhile, throughout the fall of 2007 and into 2008, as Phase II was proceeding, Viking, Warren, and Liberty Mutual engaged in settlement discussions. In May 2008, Liberty Mutual entered into a settlement with Viking. In November 2008, Liberty Mutual entered into a settlement with Warren that resolved all of Liberty Mutual's obligations to Warren under the

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[2]The Houdaille Excess Insurers include Century Indemnity and TIG, the plaintiffs in this action, as well as Lexington, Granite State, Safety National, First State, the London Market Insurers, and Mission Insurance Company, the other defendants in this action.

Liberty-Houdaille and Warren-Only policies (the Warren Settlement). Thereafter, Warren and Liberty Mutual submitted a Stipulated Order of Dismissal in the Delaware action, which the court granted on November 18, 2008, dismissing Liberty Mutual from the action. Warren and Liberty Mutual also filed a motion to dismiss the claims against Liberty Mutual in the Massachusetts action, which that court granted on December 18, 2008. Since that time, Liberty Mutual has not been a party to either of these actions.

In October 2009, the Delaware court issued its Phase II decision, determining that both Warren and Viking were entitled to coverage as insureds under the Houdaille Excess policies, and that Warren's and Viking's asbestos-related liabilities should be allocated among these policies using an "all sums" method of allocation (*see Viking Pump, Inc. v Century Indem. Co.*, 2009 WL 3297559 [Del Ch 2009]). Following this decision, which resolved all of the remaining equitable issues, the case was transferred from the Delaware Chancery Court to the Delaware Superior Court, where it remains pending.

In April 2010, plaintiffs commenced the instant action against Liberty Mutual, Warren, and six Houdaille Excess Insurers,[3] in which they request that this court determine whether Liberty Mutual entered into an inadequate settlement with Warren, thereby prejudicing their rights as Houdaille Excess insurers. Specifically, plaintiffs contend that Liberty Mutual improperly settled thirty-three years of primary insurance obligations under the Warren-Only policies for a nominal sum, leaving plaintiffs, and other excess insurances, to foot the bill for Warren's asbestos liabilities. In addition to their declaratory judgment cause of action, plaintiffs

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[3]According to plaintiffs' amended complaint, all defendants other than Liberty Mutual are named only as entities that "ought to be parties" under CPLR 1001 (a).

have asserted claims against Liberty Mutual for contribution, indemnification, and unjust enrichment.

Co-defendants Lexington, Granite State, First State, and the London Market Insurers also have asserted cross-claims against Liberty Mutual and Warren, seeking essentially the same relief. In addition, Granite State has asserted a counterclaim against plaintiffs, and a cross-claim against its co-defendant, Houdaille Excess Insurers, for similar relief.

DISCUSSION

Defendants Liberty Mutual and Warren now move to dismiss plaintiffs' amended complaint, and all of the cross-claims asserted against them, on the ground that there are prior pending actions in Delaware and Massachusetts that arise out of the same underlying facts, and involve substantially the same parties and issues as this action. Although Liberty Mutual is no longer a party to either the Delaware or Massachusetts actions, defendants argue that, under New York law, dismissal on the basis of a prior pending action does not require that the two actions share complete identity of the parties and causes of action, only that there be substantial identity among the parties and substantial similarity in the claims. Defendants argue that, here, although masked as a contribution action, plaintiffs are, in fact, seeking an adjudication of Liberty Mutual's coverage obligations to Warren under the Warren-Only policies, a principal issue in the Delaware litigation. Therefore, as the parties and claims in this action share a substantial similarity to the parties and claims in the Delaware action, dismissal of the amended complaint and the cross-claims is warranted.

Defendants argue that dismissal on the ground of forum non conveniens also is warranted, as this action lacks any substantial nexus to New York. Defendants contend that, of

the ten named parties to this action, only one is a resident of New York; that the central transaction underlying plaintiffs' causes of action occurred in Massachusetts, not New York; and, that two alternative fora are currently available to plaintiffs to litigate this dispute. Defendants argue further that, because the Delaware court already has devoted significant time and resources to the same issues, retaining jurisdiction of this action would unnecessarily burden the New York courts with duplicative litigation. Defendants argue that maintaining this action also would cause undue hardship to defendants, who would be required to litigate the same issues in multiple fora, incurring duplicative litigation expenses.

As a final ground for dismissal, Liberty Mutual argues that plaintiffs' claims and defendants' cross-claims are barred by the doctrine of res judicata, as these claims could have been raised in the Delaware or Massachusetts actions. Alternatively, Liberty Mutual argues that the failure of the Houdaille Excess Insurers to object to the Warren Settlement should estop them from now challenging its terms.

In opposition, plaintiffs argue that, although this case may arise from the Liberty Mutual's primary policies, it is not an insurance coverage action, but a contribution action between Houdaille's excess insurers and Liberty Mutual. Plaintiffs argue that the issues in this case are separate and distinct from the coverage issues being litigated in the Delaware and Massachusetts actions, as this is the only action where the issue of the Houdaille Excess Insurers' right of contribution and indemnification against Warren's primary insurer has been asserted. Plaintiffs also argue that this action is the only pending action arising from the Warren-Only policies and the Warren Settlement. Plaintiffs argue that dismissal based on a prior pending action is not warranted, in any event, because Liberty Mutual, the "principal" defendant in this action, is no

longer a party to either the Delaware or Massachusetts actions.

Plaintiffs argue that dismissal based on forum non conveniens also is not warranted, because a substantial nexus does exist between this action and New York. Specifically, plaintiffs contend that the underlying transaction – that is, the 1985 purchase agreement through which Warren purchased the Warren Pumps business from Houdaille and gained access to the Warren-Only policies – was funded and closed in New York. Plaintiffs argue that retaining jurisdiction of this action will not unduly burden New York courts, because the 1985 purchase agreement contained a New York choice of law provision; thus, New York law is almost certain to apply to this dispute. Plaintiffs argue additionally that this action presents no undue hardship to defendants, as it is no more burdensome to litigate a contribution claim in New York than in Delaware or Massachusetts, especially as both Liberty and Mutual employ national coverage counsel licensed in New York. Plaintiffs also note that defendants have failed to identify a single witness who must be brought to New York. Finally, plaintiffs argue that defendants' motions should be denied because, if this action is dismissed, Liberty Mutual likely would contest its reinstatement to the Delaware action, leaving Century without any forum to pursue its claims.

The co-defendants Lexington, First State, and the London Market Insurers have joined and essentially adopted plaintiffs' arguments in opposition. However, co-defendant Granite State has cross-moved to discontinue, without prejudice and costs, its cross-claim against Liberty Mutual and Warren, as well as its counterclaim against plaintiffs and its cross claim against the London Market Insurers, Safety National, and First State.

The cross-motion by Granite State, to voluntarily discontinue its cross-claims and counterclaim against plaintiff, is granted. The determination of a motion for leave to voluntarily

discontinue an action, pursuant to CPLR 3217(b), rests within the sound discretion of the court *(see Tucker v Tucker*, 55 NY2d 378, 383 [1982]). Our courts have held that, in the absence of special circumstances, such as prejudice to a substantial right of the defendant or other improper consequences, a motion for a voluntary discontinuance should be granted *(see Expedite Video Conferencing Servs., Inc. v Botello*, 67 AD3d 961 [2nd Dept 2009]). Here, there are no special circumstances to warrant the denial of this motion, as neither Liberty Mutual nor Warren oppose Granite State's request.

The motions by Liberty Mutual and Warren, to dismiss plaintiffs' amended complaint and all of the remaining cross-claims asserted against them, also are granted. It is well-established that New York courts are not compelled to retain jurisdiction over any case that has no substantial nexus to New York *(see Banco Ambrosiano v.Artoc Bank & Trust*, 62 NY2d 65 [1984]). CPLR 327(a) provides:

> When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action.

The party seeking to dismiss a complaint on the grounds of forum non conveniens bears the burden of demonstrating the "relevant private or public interest factors which militate against accepting the litigation" (*Stravalle v Land Cargo, Inc.*, 39 AD3d 735, 736 [2nd Dept 2007]).

Among the factors to be considered in deciding a motion to dismiss on forum non conveniens grounds are the burden on the New York courts, the potential hardship to the defendants, and the availability of an alternative forum in which plaintiffs may bring suit (*see Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984], *cert denied* 469 US 1108 [1985]).

The court also may consider the residency of the parties and where the transaction giving rise to the causes of action occurred (*id.*). No single factor is controlling, as the rule rests upon justice, fairness and convenience (*id.*). "'[F]orum non conveniens relief should be granted when it plainly appears that New York is an inconvenient forum and that another is available which will best serve the ends of justice and the convenience of the parties'" (*Economos v Zizikas*, 18 AD3d 392, 393 [1st Dept 2005], quoting *Blais v Deyo*, 92 AD2d 998, 999 [3rd Dept], *affd.* 60 NY2d 679 [1983]).

Here, the moving defendants have established that "although jurisdictionally sound, [this action] would be better adjudicated elsewhere" (*Pahlavi*, 62 NY2d at 479). First, defendants have established that retaining jurisdiction of this action would place an unnecessary burden on New York courts, as it is apparent that the claims asserted by plaintiffs in this action involve substantially the same parties, the same policies, and many of the same underlying claims as in the Delaware action, where there already has been substantial discovery, motion practice, and fact-finding. For example, issues pertaining to the existence and exhaustion of the Warren-Only policies were the subject of litigation between Warren and Liberty Mutual in the Delaware action until resolved in the Warren Settlement that plaintiffs now seek to challenge. The record reflects further that the Warren-Only policies remained the subject of extensive discovery in the Delaware action even after the Warren Settlement, and that the excess insurers still apparently consider the existence and exhaustion of these policies to remain an issue of fact for resolution by a jury in the Delaware action (*see* Hugh Scott Supplemental Affirm., Exh. 1 at 8).

Retaining jurisdiction of this action also would pose a potential hardship to defendants, all of whom would be required to retain counsel and bear the expense of litigating in an

additional forum. Such additional expense and inconvenience can hardly be justified where, as here, an alternative forum already exists where these claims could be tried without inconvenience to plaintiffs, who currently are parties to the comprehensive insurance coverage action pending in Delaware. Although Liberty Mutual was dismissed from the Delaware action after entering into the Warren Settlement, Liberty Mutual has now stated, in its reply memorandum, that it will not seek to preclude its joinder to either the Delaware or Massachusetts action, for the limited purpose of litigating plaintiffs' current claims.

Dismissal of the amended complaint and cross-claims based on forum non conveniens is further warranted as – according to plaintiffs amended complaint – neither plaintiffs nor Liberty Mutual are residents of New York. Indeed, only one named party, Granite State, has been identified as a New York resident. Further, the Warren-Only policies, the basis upon which plaintiffs assert their claims for contribution and indemnification, have no discernable connection to New York. At the time that Liberty Mutual is alleged to have issued these policies, Warren Pumps, Inc. was an independent Massachusetts corporation located in Warren, Massachusetts; thus, the transaction giving rise to these claims most likely occurred in Massachusetts.[4]

Given the totality of the circumstances presented in this case, the court is persuaded that defendants have met their burden of establishing that New York is an inconvenient forum, and that the interest of substantial justice would best be furthered by dismissing this action upon the condition that Liberty Mutual consents to joinder in the Delaware, or the Massachusetts, action for the limited purpose of litigating these claims.

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[4]While the Delaware court did determine that the Liberty-Houdaille policies (that is, the policies that Liberty issued to the New York conglomerate Houdaille) were issued in New York, the court made no finding with respect to the Warren-Only polices.

In light of this determination to dismiss the amended complaint and all cross-claims, the motion by defendant Safety National, to stay this action pending arbitration, is denied as moot.

In their final motions, plaintiff Century Indemnity and defendant Warren each seek an order directing that certain of the papers that they submitted on these motions be filed under seal, pursuant to 22 NYCRR 216.1 (a), which provides:

> Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

A party seeking to seal documents must address the specific documents sought to be sealed, and demonstrate "good cause" through compelling circumstances to justify secrecy (*see Mancheski v Gabelli Group Capital Partners*, 39 AD3d 499, 502 [2nd Dept 2007]). In making the determination to seal, the court must balance the interests of the public against the interests of the parties (*id.*). A finding of "good cause" presupposes a showing that public access to the records is likely to harm a significant interest of the movant, and that no alternative will sufficiently protect the threatened interest (*id.*).

Plaintiff Century Indemnity seeks an order sealing two submissions: (1) its Memorandum of Law in Opposition to Liberty Mutual's motion to dismiss and Warren's motions to dismiss the amended complaint, and (2) the Affirmation of Elizabeth Friedman in support of Century's opposition to Liberty Mutual's and Warren's motion to dismiss the amended complaint, with the exhibits attached thereto. Century Indemnity contends that sealing is warranted, because these documents contain confidential and sensitive information concerning the amount of insurance

actually available to Warren for the defense and settlement of the underlying asbestos claims; confidential communications between Warren and its insurers concerning the defense or settlement of such claims; confidential communications between Warren's excess insurers regarding an interim cost share agreement; confidential business information; and confidential settlement information, including a copy of the Warren Settlement, which expressly provides that it is to be kept confidential.

The court finds that Century has demonstrated good cause to seal these documents, as the documents contain sensitive and confidential information and communications concerning claims and issues that are actively under litigation in the Delaware action, and the disclosure of which could disadvantage certain of the litigants in that action if made known. It also appears that some of the information in these documents may be subject to a protective order in the Delaware action.

Defendant Warren seeks an order sealing six submissions: the Memorandum of Law that Warren submitted in support of its motion to dismiss the amended complaint; the Affirmation of Keith McKenna dated October 4, 2010, and exhibits attached thereto, that Warren submitted in support of its motion; the Reply Memorandum of Law that Warren submitted in further support of its motion to dismiss the amended complaint; the Supplemental Affirmation of Keith McKenna dated December 2010, and exhibits attached thereto, that Warren submitted in further support of its motion; the Reply Memorandum of Law that Warren submitted in support of its motion to dismiss the cross-claims; and, the Supplemental Affirmation of Keith McKenna, dated December 13, 2010, and exhibits attached thereto, that Warren submitted in further support of its motion to dismiss the cross-claims.

Warren argues that these documents should be sealed because they rely on court filings and other documents produced in the Delaware action, which contain or reference confidential and/or proprietary documents and information, some of which is subject to a protective order in that action. To date, however, Warren has submitted only redacted copies of these papers to this court, and has withheld all of the confidential and/or proprietary information to prevent disclosure to third parties until such time as this court granted its motion to seal. This court has since determined that unredacted versions of these documents were not necessary to assess the merits of Warren's motion; therefore, Warren's motion for an order to seal these submissions is denied. The redacted motion papers already filed with this court will sufficiently protect the interests of both Warren and the public.

Accordingly, it is

ORDERED that the motions by defendant Liberty Mutual Insurance Company (Mot. Seq. Nos. 001, 006, and 011) and defendant Warren Pumps, LLC (Mot. Seq. Nos. 004, 007, and 012), to dismiss the amended complaint and the cross-claims asserted against them on the ground that New York is an inconvenient forum is granted on condition that Liberty Mutual Insurance Company consents to joinder in the pending Delaware or Massachusetts action for the limited purpose of litigating these claims; and it is further

ORDERED the cross-motion by defendant Granite State Insurance Company, to discontinue its counterclaim and cross-claims without prejudice, pursuant to CPLR 3217 (b), is granted; and it is further

ORDERED that the motion by defendant Safety National Casualty Corporation (Mot. Seq. No. 003), to stay this action pending arbitration is denied, as moot; and it is further

ORDERED that the motion by plaintiff Century Indemnity Insurance Company (Mot. Seq. 008), to place certain documents under seal, is granted, under the terms set forth in the separate sealing ORDER; and it is further

ORDERED that the motion by defendant Warren Pumps, LLC (Mot. Seq. No. 010), to place certain documents under seal, is denied; and it is further

ORDERED that the County Clerk is directed to enter judgment accordingly

Dated: July 28, 2011

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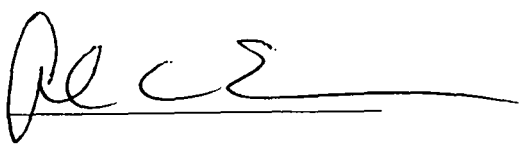

J.S.C.
HON. ANIL C. SINGH
SUPREME COURT JUSTICE