SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

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NAVIGATORS INSURANCE COMPANY,

Plaintiff,

-against-.

MERCHANTS MUTUAL INSURANCE COMPANY,

Defendant.

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DECISION, ORDER, and JUDGMENT

Index No.: 153709/15

Mot. Seq. 001

Kathryn E. Freed, J.S.C.

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UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

In this case, a dispute between two insurance companies, plaintiff, Navigators Insurance Company (Navigators), moves, pursuant to CPLR 3212, for a declaration that defendant, Merchants Mutual Insurance Company (Merchants), is obligated to defend and indemnify nonparties West 149th Street Apartments L.P. and West 149th St. GP, Inc. (hereinafter collectively West 149) and Aleem Construction, Inc. (Aleem), as additional insureds, on a primary and noncontributory basis, in an underlying personal injury action entitled *Franklin Molina v West 149th Street Apartments L.P.* (Sup Ct, NY County, Index No. 111228/11) (the underlying action). Navigators also seeks a monetary judgment for the costs and expenses that it has incurred in defending Aleem and West 149, as defendants in the underlying action, from February 5, 2013 through the present.

The named insured on the Merchants policy is nonparty Radiant Plumbing & Heating Corp. (Radiant Plumbing). Radiant Plumbing was the plumbing subcontractor for a building construction and renovation project in which Molina was injured. Aleem, a construction company, is the named insured on the Navigators policy. There is no dispute that Navigators has been representing Aleem and West 149, defendants in the underlying action. Radiant Plumbing is also a defendant in the underlying action, and Navigators asserts that Merchants insures Radiant Plumbing in connection with that action. As discussed below, Molina was granted summary judgment against West 149 Street Apartments, L.P. on his Labor Law 240 (1) claim in the underlying action, based on that entity's status as owner of the building project.

In the underlying action, Molina alleges that he was injured on March 28, 2011, while performing construction and/or renovation work, and asserts claims for negligence and various Labor Law violations. In his 2012 verified bill of particulars, Molina alleged that he was injured when he was struck by large pipes that had been improperly stored and stacked near the area where he was working. In his July 2, 2013 verified bill of particulars, Molina asserted that Radiant Plumbing created the dangerous condition that caused his injuries. West 149 and Aleem filed a third-party complaint for contribution and indemnification against Molina's employer, J & M Construction Company of NY Corp., in January 2012, and against Radiant Plumbing, on March 13, 2013. Molina served a supplemental bill of particulars on October 31, 2014, alleging that the pipes were not safely secured, and were unstable, resulting in his injury.

On February 5, 2013, and again thereafter, Aleem and West 149 tendered their defense and indemnification in the underlying action to Merchants, but Merchants did not accept the tenders. Navigators contends that Merchants has refused to defend Aleem and West 149 even

though they are additional insureds under the Merchants policy, as that policy's additional insured endorsement provides primary, noncontributory coverage to any person or organization where required by written contract. "In resolving insurance disputes, [courts] first look to the language of the applicable policies" (*Fieldston Prop. Owners Assn., Inc. v Hermitage Ins. Co.*, 16 NY3d 257, 264 [2011]), with the "insurance contract . . . interpreted by the same general rules that govern the construction of any written contract and enforced in accordance with the intent of the parties as expressed in the language employed in the policy" (*Throgs Neck Bagels v GA Ins. Co. of N.Y.*, 241 AD2d 66, 69 [1st Dept 1998]; *see also Cragg v Allstate Indem. Corp.*, 17 NY3d 118, 122 [2011] [interpretation is done "according to common speech and consistent with the reasonable expectations of the average insured"]). The extent of coverage in an insurance contract is controlled by the policy terms, and not by the terms of an insured's trade contract, although the policy may define the coverage by reference to a trade contract (*Bovis Lend Lease LMB, Inc. v Great Am. Ins. Co.*, 53 AD3d 140, 145 [1st Dept 2008]).

In support of its motion, Navigators provides a copy of the Merchants policy, a commercial lines policy for business owners with personal injury liability coverage. This policy contains an additional insured endorsement which states:

"ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

* * *

a. Any person or organization, when you and such person or organization have agreed in writing in a contract, agreement or permit that was executed prior to the 'bodily injury', . . . that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for 'bodily injury' . . . caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;
in performance of your ongoing operations for the additional insured. A person's or organization's status as an additional insured ends when your operations for that additional insured are completed

* * *

c. This insurance is primary if that is required by the contract, agreement or permit.

d. This insurance is non-contributory if that is required by the contract, agreement or permit"

(Gondiosa affirmation, exhibit A, exhibit K [endorsement MU 82 77 09 07]). Navigators also relies upon provisions, from the prime contract, a "Standard Form of Agreement Between Owner and Contractor," executed by Aleem and West 149th Street Apartments L.P., that state:

3.18.1 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner . . . from and against claims, damages, losses and expenses, including ... attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury . . . but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

* * *

5.3.1 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, . . . the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect.

* * *

11.1.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase . . . such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the

> Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable

(*id.*, exhibit A, exhibit F, at 10, 14, 20).

Navigators also cites to "Exhibit A" to the prime contract, titled "Schedule of Insurance Requirements," and to an amendment. Navigators contends that these documents require Aleem to obtain liability insurance naming West 149 as an additional insured on a primary and noncontributory basis.

Navigators contends that West 149 and Aleem qualify as additional insureds under the Merchants policy on a primary, noncontributory basis, because the subcontract between Aleem and Radiant Plumbing (the subcontract) incorporates obligations into the prime contract to provide this coverage. Navigators argues that the prime contract runs in favor of the owner for liability arising out of the work of Aleem and its subcontractors, and requires that these subcontractors assume the same obligations and responsibilities that Aleem assumed toward the owner under the prime contract. The two subcontract provisions upon which Navigators relies read as follows:

> ARTICLE 1
> * * *
>
> 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents"
>
> * * *

ARTICLE 2

* * *

> 2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under the Prime Contract, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under the Prime Contract, assumes toward the Owner and Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor, which the Owner, under the Prime Contract, has against the Contractor"

(*id.*, exhibit A, exhbit I).

Plaintiff, as "[t]he party claiming insurance coverage [,] bears the burden of proving entitlement" (*National Abatement Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 33 AD3d 570, 570 [1st Dept 2006]). The First Department has interpreted the additional insured provision in the Merchants policy as requiring the execution of a written agreement between the policy's named insured and the entity seeking coverage as an additional insured (*see AB Green Gansevoort, LLC v Peter Scalamandre & Sons, Inc.*, 102 AD3d 425, 426-427 [1st Dept 2013] [interpreting policy language "when you and such . . . organization have agreed in writing in a contract or agreement that such . . . organization be added as an additional insured on your policy" as requiring a written agreement between the named insured and the organization seeking additional insured coverage to add that organization as an additional insured]; *see also Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire & Mar. Ins. Co.*, 143 AD3d 146, 151-153 [1st Dept 2016]; *City of New York v Nova Cas. Co.*, 104 AD3d 410, 410 [1st Dept 2013]). Thus, for either of the West 149 entities to qualify as an additional insured under the Merchants policy, that

policy's named insured, Radiant Plumbing, must have had a written agreement with the entity, agreeing to add it as an additional insured (*id.*). However, plaintiff points to no such writing. The subcontract's incorporation by reference of prime contract provisions is not an agreement between Radiant Plumbing and a West 149 entity. Consequently, the Merchants policy's additional-insured provision does not include West 149 as an additional insured, and it is unnecessary to address Merchants' argument about the names of these entities.

In support of its contention that Aleem is entitled to additional insured coverage under the Merchants policy, Navigators relies on Article 13 of the subcontract, which provides that:

> "13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:
>
> The subcontractor shall maintain workers compensation, disability and liability insurance ($1,000,000 coverage) and name the General Contractor ( ), the Architect ( ), the owner ( ) and NYCHPD the lending institution as additional insured."

(Gondiosa affirmation, exhibit A, exhibit I). Merchants argues that a fact question arises as to coverage of Aleem, because of the blank space after "General Contractor" in Article 13, and because the subcontract does not state that Aleem was the general contractor, but indicates that Aleem is merely a contractor. In other words, Merchants argues that, since Aleem was not the general contractor, it is not covered as an additional insured.

In the underlying case, Molina was granted summary judgment against Aleem, for violation of Labor Law § 240 (1), based on Aleem's status as the general contractor. Even if this were not dispositive of this issue, the record contains testimony from Molina and Radiant Plumbing's president's that Aleem was the project's general contractor (Gondiosa affirmation, exhibit F at 10 [Sbeglia Tr.]). Merchants submits no evidence raising a factual issue on this

point. Consequently, Aleem was an organization with which Radiant Plumbing had a written agreement, the subcontract, that was executed prior to the incident[1] and that required Radiant Plumbing to name Aleem, the general contractor, as an additional insured.

Navigators argues that Merchants has a duty to defend Aleem as an additional insured. It is well known that:

> "[a]n insurer's duty to defend its insured is exceedingly broad. An insurer will be called upon to provide a defense whenever the allegations of the complaint suggest . . . a reasonable possibility of coverage. If [a] complaint contains any facts or allegations which bring the claim even potentially within the protection purchased, the insurer is obligated to defend. This standard applies equally to additional insureds and named insureds"

(*Regal Constr. Corp. v National Union Fire Ins. Co. of Pittsburgh, PA*, 15 NY3d 34, 37 [2010] [internal quotation marks and citations omitted]; *Sport Rock Intl., Inc. v American. Cas. Co. of Reading, Pa.*, 65 AD3d 12, 17 [1st Dept 2009]). In fact, "[a] declaration that an insurer is without obligation to defend a pending action could be made only if it could be concluded as a matter of law that there is no possible factual or legal basis on which [the insurer] might eventually be held to be obligated to indemnify [the insured] under any provision of the insurance policy" (*Bovis Lend Lease LMB Inc. v Garito Contr., Inc.*, 65 AD3d 872, 875 [1st Dept 2009] [internal quotation marks and citation omitted]). Molina sued Radiant Plumbing and Aleem, and alleged and testified that his accident was caused by Radiant Plumbing's storage of pipes. This is sufficient to trigger Merchants' duty to defend Aleem as of the date of tender.

Navigators also seeks a declaration that Merchants' obligations to defend and to indemnify Aleem are primary and noncontributory, and both sides dispute the meaning and

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[1] There is no dispute that the Merchants policy was executed prior to Molina's accident.

application of the respective policies' "other insurance" provisions. The "Other Insurance" provision in the Navigators policy states:

> "1. If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A and B of this Coverage Part, our obligations are limited as follows:
>
> a. Primary Insurance
>
> This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below.
>
> b. Excess Insurance
>
> (1) This insurance is excess over:
>
> * * *
>
> (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations . . . for which you have been added as an additional insured by attachment of an endorsement.
>
> (2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any 'suit' if any other insurer has a duty to defend the insured against that 'suit'. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers"

(Gondiosa affirmation, exhibit A, exhibit J at 11 [of 16]). The "other insurance" provision in the Merchants policy states:

> "1. If there is other insurance covering the same loss or damages, we will pay only for the amount of covered loss or damages in excess of the amount due from that other Insurance, whether you can collect it or not. . . .

> 2. Business Liability Coverage is excess over:
>
> * * *
>
> b. Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.
>
> 3. When this insurance is excess, we will have no duty under the Business Liability Coverage to defend any claim or 'suit' that any other Insurer has a duty to defend. If no other Insurer defends, we will undertake to do so; but we will be entitled to the Insured's rights against all those other insurers"

(*id.*, exhibit A, exhibit K [Businessowners Coverage Form at 42 [of 43]).

Navigators contends that the Merchants policy is primary and noncontributory because, through subcontract Article 1, § 1.1 and Article 2, § 2.1 (*supra*), the subcontract incorporates prime contract requirements for insurance coverage of this nature. Merchants argues that its policy is an excess policy, and that Aleem has not been added by endorsement.

"[I]ncorporation clauses in a construction subcontract, incorporating prime contract clauses by reference into a subcontract, bind a subcontractor only as to prime contract provisions relating to the scope, quality, character and manner of the work to be performed by the subcontractor" (*Adams v Boston Props. Ltd. Partnership*, 41 AD3d 112, 112 [1st Dept 2007] [internal quotation marks and citation omitted]; *Goncalves v 515 Park Ave. Condominium*, 39 AD3d 262, 262 [1st Dept 2007]; *Bussanich v 310 E. 55th St. Tenants*, 282 AD2d 243, 244 [1st Dept 2001]). Since the subcontract does not specifically reference the prime contract's insurance obligations, Radiant Plumbing is not bound thereto (*id.*).

Subcontract Article 2, § 2.1 requires that the subcontractor assume toward Aleem the contractual obligations that Aleem has to the owner and architect. However, this requirement is

qualified in that it includes only those obligations that apply to the Work of the subcontractor, which is defined in the subcontract as the material and services required to complete the portion of the actual plumbing work which the subcontractor was hired to do (Gondiosa affirmation, exhibit A, exhibit I [Article 8]). This is not an assumption of insurance requirements. Therefore, it is unnecessary to reach Merchants' argument regarding Aleem's obligations to the owner. While Navigators does not demonstrate that the primary and noncontributory insurance requirements were incorporated into the subcontract, this does not end the discussion concerning whether the additional insured coverage for Aleem was primary.

The additional insured section of the Merchants policy provides only that the underlying contract, in this case the subcontract, requires primary coverage, and not that the contract expressly use the word "primary." Article 13 of the subcontract required that Radiant Plumbing procure liability insurance coverage naming the general contractor as an additional insured, "a recognized term in insurance contracts," indicating the intention to provide the same coverage as to the named insured (*Pecker Iron Works of N.Y. v Traveler's Ins. Co.*, 290 AD2d 426, 427 [2d Dept 2002], *affd* 99 NY2d 391 [2003] [determining that the term "additional insured," as used in construction contracts, means additional insured on a primary basis]). The coverage required for an additional insured is presumed to be primary unless unambiguously stated otherwise (*id.*), and in construing the subcontract, the "reasonable expectation and purpose of the ordinary business [person] when making an ordinary business contract will be considered" (*B.P. Air Cond. Corp. v One Beacon Ins. Group*, 8 NY3d 708, 716 [2007] [internal quotation marks and citation omitted] [additional insured defense coverage is coextensive with the defense duty owed the named insured]). Merchants points to nothing to support a conclusion that the subcontract required the

procurement of excess liability insurance, and the reasonable interpretation of Article 13 of the subcontract, given the type of contract and the relationship of the parties thereto, is that primary insurance was required.

"Where the same risk is covered by two or more policies, each of which was sold to provide the same level of coverage (as is the case here), priority of coverage (or, alternatively, allocation of coverage) among the policies is determined by comparison of their respective 'other insurance' clauses" (*Sport Rock Intl., Inc.*, 65 AD3d at 18). As the coverage parts of both the Navigators and the Merchants policies provide insurance for bodily injury, and obligate the respective insurer to defend, a determination as to priority of coverage "turns on consideration of the purpose each policy was intended to serve as evidenced by both its stated coverage . . . as well as the wording of its provision concerning excess insurance" (*Bovis Lend Lease LMB, Inc.*, 53 AD3d at 148 [internal quotation marks and citation omitted]).

Merchants reads the Navigators' "other insurance" provision as providing for coverage that is primary, except when other primary insurance, such as where the insured has been added as an additional insured by attachment of an endorsement, is available. Merchants argues that, because Aleem has not been added to the Merchants policy as an additional insured by attachment of an endorsement, the Navigators policy is primary. However, as discussed above, Aleem's status as a general contractor is established, and Aleem was added, by endorsement, as an additional insured on the Merchants policy for defense purposes. The Merchants policy provides that its Business Liability Coverage is excess, over available insurance, for damages arising out of premises or operations for which Radiant Plumbing has been added as an

additional insured by attachment of an endorsement.[2] Therefore, between these two policies, the Merchants policy is primary and the Navigator policy is excess, for an accident caused, in whole or part, by Radiant Plumbing's conduct (*see Village of Brewster v Virginia Sur. Co. Inc.*, 70 AD3d 1239, 1243 [3d Dept 2010]).

Merchants also argues that its policy is excess because it provides that where "there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss in excess of the amount due from the other insurance." However, because the "other insurance" provisions of the Navigators and Merchants policies render the Navigators policy excess to the Merchants policy, there would be no amount due from Navigators prior to application of the Merchants policy.

Merchants further asserts that a declaration in this case is premature because Navigators has not submitted all involved insurance policies or responded to Merchants' discovery demands. Merchants also argues that the summary judgment decision in the underlying personal injury action establishes a factual issue as to whether the loss was caused, in whole or part, by Radiant Plumbing's acts or omissions, thus precluding the grant of an indemnification declaration here. Unlike the duty to defend, "the duty to pay is determined by the actual basis for the insured's liability to a third person" and is not measured by pleading allegations (*Servidone Constr. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]). Here, a declaration that the insurer has a duty to indemnify the general contractor requires a determination that the accident arose out of the subcontractor's performance of work under its contract with the general contractor (*79th*

[2] In addition, Aleem was the named insured on the Navigators policy, not an additional insured.

Realty Co. v X.L.O. Concrete Corp., 247 AD2d 256, 257 [1st Dept 1998]). To meet its moving burden to demonstrate that Molina's accident arose out of Radiant Plumbing's work, Navigators relies upon a decision and order rendered on summary judgment motions made in the underlying action. Navigators argues that, in that decision, the court granted Molina's summary judgment motion against Radiant Plumbing and determined that Radiant Plumbing had control over the pipes that fell on Molina. Merchants disputes Navigators' interpretation of the court's decision, and contends that the record demonstrates a factual issue regarding whether the incident arose out of Radiant Plumbing's work, or that of a demolition contractor that also worked at the building site with pipes. Merchants also contends that the additional insured coverage under the Merchants policy requires a showing of Radiant Plumbing's negligence.

As Navigators correctly argues, a determination of Radiant Plumbing's negligence is not required, as the First Department's

> "most recent precedents have construed additional insured endorsements containing substantially the same 'acts and omissions' language as do the endorsements at issue here as providing additional insured coverage where there is a causal link between the named insured's conduct and the injury, regardless of whether the named insured was negligent or otherwise at fault for causing the accident"

(*Burlington Ins. Co. v NYC Tr. Auth.*, 132 AD3d 127, 129 [1st Dept 2015], *lv dismissed*, 27 NY3d 1027 [2016], and *lv granted*, 27 NY3d 905 [2016]). However, in the underlying action, although Molina moved for summary judgment against Radiant Plumbing on his Labor Law § 240 (1) claim, the court did not grant that relief. While the court did grant Molina's motion against the general contractor and owner on the Labor Law § 240 (1) claim, the grant of this

relief did not require a determination of Radiant Plumbing's involvement.[3] The court's denial of Radiant Plumbing's motion to vacate the note of issue in the underlying action also was not a liability determination; thus, adjudication of the issue of indemnification under the Merchants policy in this case must await a determination in the underlying action."[4]

Merchants' request for an order prospectively precluding Navigators from being permitted to make another summary judgment motion in this case cannot be granted. First, Merchants did not seek affirmative relief in connection with this motion. Second, under certain circumstances, which need not be addressed until and unless such a motion is made, a second summary judgment motion may be permitted. While Merchants' request that Navigators be barred from bringing another summary judgment motion is not granted, this is not to be considered an adjudication granting Navigators permission to make such a motion.

Since summary judgment on the issue of indemnity is denied, this Court declines to address the parties' disputes concerning whether all of the relevant policies have been produced and Merchants' access to those policies, or other disclosure, through its defense of Radiant Plumbing in the underlying action.

Therefore, in light of the foregoing, it is hereby:

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[3] In its order in the underlying action, the court also granted Radiant Plumbing's summary judgment on its third-party complaint against the defaulting demolition company.

[4] In addition, in opposition, Radiant Plumbing submits the testimony of its president, Frank Sbeglia. While this is not intended as determinative of the summary judgment motion in the underlying case, viewed in a light most favorable to Merchants, and granting it the benefit of all reasonable favorable inferences that can be drawn therefrom, as required on this motion (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]), Sbeglia's testimony is that it was not the custom and practice of Radiant Plumbing to store its pipes in the manner Molina described, but that the demolition company working on the project did do so.

ORDERED that the motion is granted but only to the extent indicated below and is otherwise denied; and is further

ADJUDGED and DECLARED that defendant Merchants Mutual Insurance Company has a duty to defend Aleem Construction, Inc. in the underlying lawsuit, entitled *Franklin Molina v West 149th Street Apartments L.P.* (Sup Ct, NY County, index No. 111228/11), under policy No. BOP9093648, issued by defendant Merchants Mutual Insurance Company to Radiant Plumbing & Heating Corp.; and it is further

ADJUDGED and DECLARED that defendant Merchants Mutual Insurance Company is not obligated to defend or indemnify West 149th Street Apartments L.P. or West 149th St. GP, Inc. as additional insureds, under the aforementioned Merchants Mutual Insurance Company policy; and it is further

ORDERED that the issue of the amount of reasonable attorneys' fees incurred by plaintiff Navigators Insurance Company in defending Aleem Construction, Inc., and for which defendant Merchants Mutual Insurance Company is responsible from the date of tender on February 5, 2013, until the present, is referred to a Special Referee to hear and report with recommendations, except that, in the event of, and upon the filing of a stipulation of the parties, as permitted by CPLR § 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issue; and it is further

ORDERED that a final determination of the matter of defense costs incurred by Navigators Insurance Company is to be held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403, or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Special Referee Clerk (Room 119) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that a preliminary conference is to be conducted in this matter on May 23, 2017 at 80 Centre Street, New York, New York, Room 280, at 2:30 p.m.; and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: March 15, 2017

ENTER:

KATHRYN E. FREED, J.S.C.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT