At an IAS Term, Part 81 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 2nd day of October, 2018.

P R E S E N T:
HON. CARL J. LANDICINO, JSC

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720 MILLER AVE REALTY LLC,

Plaintiff,

- against -

NORGUARD INSURANCE COMPANY and BASS UNDERWRITERS, INC..,

Defendant(s).

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BASS UNDERWRITERS, INC.,

Third-Party Plaintiffs,

- against -

MGI BROKERAGE, INC.

Third-Party Defendants.

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Index No.: 507107/2017

DECISION & ORDER

(Motion Seq. #2 & #3)

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	1/2, 3/4,
Opposing Affidavits (Affirmations)	6, 7, 8
Reply Affidavits (Affirmations)	
Memorandum(s) of Law	5

After oral argument and upon review of the papers the Court finds as follows:

This action arises out of the alleged failure and refusal of Defendant NORGUARD INSURANCE COMPANY (hereinafter "Defendant Norguard") and its purported authorized agent

Defendant BASS UNDERWRITERS, INC., (hereinafter "Defendant Underwriters") to *inter alia*, indemnify the Plaintiff 720 MILLER AVE REALTY LLC, (hereinafter "Plaintiff") for property damage purportedly sustained at 720 Miller Avenue, Brooklyn, New York (hereinafter "Subject Premises") as a result of a fire. While the parties disagree on the exact date, it is undisputed that there was a business-owner insurance policy issued by Defendant Norguard relating to Plaintiff in November of 2015 (Policy No.: SEBP723351) (hereinafter "the Policy") and it was apparently extended for coverage to include the date the alleged loss took place, December 27, 2016. (Plaintiff Attorney Affirmation in Support) (Defendant Norguard Affirmation in Opposition). After filing the claim and receiving a denial letter (Plaintiff Exhibit B) from Defendant Norguard dated January 17, 2016, Plaintiff commenced the instant action by Summons and Complaint on April 10, 2017.

Plaintiff 720 MILLER AVE REALTY LLC (hereinafter "Plaintiff") seeks the following relief (motion sequence #2) as against Defendant NORGUARD INSURANCE COMPANY (hereinafter "Defendant Norguard"):

> "(1) granting summary judgment as against Defendants NORGUARD INSURANCE COMPANY...; or in the alternative (2) Striking Defendant Norguard's Answer for failing to provide Plaintiff 720 Miller Avenue Realty LLC, with adequate responses to its discovery demands, and for such other and further relief as this Court deems just and proper."

Additionally, Plaintiff by the same motion (motion sequence #2) sought the following relief against Defendant BASS UNDERWRITERS, INC. (hereinafter "Defendant Bass"): "(1) granting summary judgment as against Defendants....and BASS UNDERWRITERS, INC., ... and for such other and further relief as this Courts deems just and proper." However, by Stipulation dated March 9, 2018, Plaintiff withdrew the Motion for Summary Judgment as against Defendant Underwriters. Therefore, the remaining issues are Summary Judgment against Defendant Norguard and the alternative relief of striking its answer.

Plaintiff seeks to prove that after contacting its insurance broker, Third-Party Defendant MGI BROKERAGE, INC. (hereinafter "MGI"), in order to secure insurance for the Subject Premises, MGI contacted Defendant Underwriters to obtain a quote for same. Plaintiff contends that Defendant Underwriters is an insurance agent that is authorized to sell such insurance policies on behalf of Defendant Norguard. Plaintiff avers that during this period Defendant Underwriters sought more information. Specifically, this information purportedly related to the existence of a fire alarm system maintained at the Subject Premises. That information was allegedly exchanged via e-mail. Plaintiff contends that it was communicated that the Subject Premises did not contain a "[c]entral station fire alarm". Plaintiff further alleges that even with this information the policy was tendered by Defendant Underwriters to MGI for the Plaintiff on behalf of Defendant Norguard.

It is undisputed that the Policy contains a "Protective Safeguard Endorsement" which requires that the Plaintiff maintain an "Automatic Fire Alarm", however the Plaintiff avers that neither Plaintiff or MGI were aware of same and Plaintiff provides an e-mail exchange (Plaintiff Exhibit M) between Ben Lynch (an employee of Defendant Underwriters) and Lyle Hitt (Executive Vice President of Defendant Underwriters), that the protective endorsement and safeguard was issued by mistake and should have been removed. (Plaintiff Affirmation in Support; Plaintiff Exhibits C[1], D[2], E[3], and M)

Defendant Norguard, in opposition[4] to Plaintiff's Summary Judgment motion, contends that Defendant Norguard and Defendant Underwriters were never in communication concerning information regarding the subject Policy, that the renewal and original Policy included the language for the protective safeguard endorsement and that Defendant Norguard is not required, under the Policy to indemnify

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[1]Affidavit in Support of Moshe Friedman as the Principal/President of Plaintiff 720 Miller Ave Realty LLC dated January 25, 2018.

[2]Affidavit in Support of Abraham Gottlieb as the Chief Executive Officer of MGI Brokerage, Inc., involved in the "procurement of" the Policy, dated January 25, 2018.

[3]Email exchange with Policy Application attachment for quote, dated November 10, 2015.

[4]Opposition is included in the cross-motion (motion sequence #3) which will be addressed herein.

Plaintiff for said claim. Defendant Norguard contends that the Plaintiff's motion is premature as depositions of Plaintiff, MGI, and representatives of the Defendants have not occurred. Additionally, Defendant Norguard asserts that a discrepancy as to the facts surrounding the policy, information exchanged and the alleged existence of an agency relationship, is reflected by the Affidavits submitted. Specifically, Defendant Norguard contends that this conflict in and of itself is sufficient to deny Plaintiff's motion for summary judgment in its entirety as a matter of law.

"Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it 'should only be employed when there is no doubt as to the absence of triable issues of material fact.'" *Kolivas v. Kirchoff,* 14 AD3d 493 [2nd Dept, 2005], *citing Andre v. Pomeroy,* 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 320 N.E.2d 853 [1974]. The proponent for the summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate absence of any material issues of fact. *See Sheppard-Mobley v. King*, 10 AD3d 70, 74 [2nd Dept, 2004], *citing Alvarez v. Prospect Hospital*, 68 N.Y.2d320, 324, 508 N.Y.S.2d 923, 501 N.E.2d 572 [1986]; *Winegrad v. New York Univ. Med. Ctr.,* 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642 [1985].

Once a moving party has made a *prima facie* showing of its entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2nd Dept, 1989]. Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *See Demshick v. Cmty. Hous. Mgmt. Corp.*, 34 A.D.3d 518, 520, 824 N.Y.S.2d 166, 168 [2nd Dept, 2006]; *see Menzel v. Plotnick,* 202 A.D.2d 558, 558–559, 610 N.Y.S.2d 50 [2nd Dept, 1994].

"As a general rule, the construction of terms and conditions of an insurance policy that are clear and unambiguous presents a question of law to be determined by the court." *Commercial Union Ins. Co. v. Liberty Mut. Ins. Co.*, 36 A.D.3d 645, 645, 828 N.Y.S.2d 479, 480 [2nd Dept, 2007]. "Any ambiguity, however, must be construed against the insurer as the drafter of the policy." *NIACC, LLC v. Greenwich Ins. Co.*, 51 A.D.3d 883, 884, 857 N.Y.S.2d 723, 724 [2nd Dept, 2008]. It is undisputed between the

parties that the Protective Safeguard language is included. This dispute arises out of alleged facts and circumstances that occurred prior to the issuance of the policy and the relationship of the participating parties.

Generally, an agent/broker owes a common law duty to a client, upon a specific request, to "obtain requested coverage for their clients within a reasonable time or inform the client of the inability to do so..." but that the duty to advise, guide or direct the client in obtaining additional coverage does not continue. *Murphy v. Kuhn*, 90 N.Y.2d 266, 682 N.E.2d 972 (1997) see; *Hoffend & Sons, Inc. V. Rose & Kiernan, Inc.*, 7 N.Y.3d 152 (2d. Dept. 2006); *Hjemdahl-Monsen v. Faulkner*, 204 A.D.2d 516 (2d. Dept. 1994). Specifically, for a client to set forth a claim for breach of contract against an insurance broker or agent, the party must establish "that a specific request was made to the broker for the coverage that was not provided in the policy." *American Bldg. Supply Corp. v. Petrocelli Group, Inc.*, 19 N.Y3d 730, 979 N.E.2d 1181 (2012); *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 8 N.E.3d 823 (2014) The Court notes however, that if a special relationship between the client and the broker is found the broker may, even in the absence of a request from the client, be liable for a claim of negligence for failing to advise or direct the client in obtaining additional coverage. *Voss v. Netherlands Ins. Co.*, 22 N.Y.3d 728, 8 N.E.3d 823 (2014); see, *Hoffend & Sons, Inc. v. Rose & Kiernan, Inc.*, 7 N.Y3d 152, 851 N.E.2d 1149 (2006); *Joseph v. Interboro Ins. Co.*, 144 A.D.3d 1105 (2d Dept. 2016). The Plaintiff does not make an argument that there was a special relationship. However, Plaintiff maintains that Defendant Norguard (as the insurer) owed a duty to Plaintiff to provide coverage based on the information Plaintiff provided to MGI and MGI provided to Defendant Underwriter. Therefore Plaintiff contends that Defendant Norguard breached its duty to Plaintiff.

The parties do not contend that Plaintiff was not in contact with Defendant Norguard or Defendant Underwriters directly. The request for coverage on the Subject Premises was made by Plaintiff to MGI. Plaintiff's Exhibit D is the Affidavit of the Chief Executive Officer of MGI, Abraham Gottlieb. Mr. Gottlieb states that it was his "understanding that Defendant Underwriters was/is an authorized agent of Norguard with the authority/permission/ability to bind Norguard to insurance policies without prior approval from Norguard." (Plaintiff Exhibit D at ¶2) Additionally, Plaintiff's

Exhibit F (Defendant Underwriters' "More Specific Responses to Verified Bill of Particulars as to Affirmative Defenses") at Paragraph 3, provides in pertinent part that:

> "Bass is a wholesale agent and has no relationship with plaintiff, 720 Miller Ave Realty LLC; did not provide insurance advice, guidance or counsel and was acting as Norguard's agent, not 720 Miller Ave Realty LLC's agent. A necessary party, MGI Brokerage, was acting as 720 Miller Ave Realty LLC's agent, and, therefore, it had the duty to provide insurance advice, guidance and counsel to 720 Miller Ave Realty LLC."

Defendant Norguard, in opposition, provides the Affidavit of Ben Lynch (at page 6) who states that he is the Branch Manager of Defendant Underwriters. Mr. Lynch makes the representation that a "binder" was provided to MGI directly from Defendant Underwriters (by Mr. Lynch himself) and same is annexed as Exhibit 1 to the Affidavit. This "binder" which indicates a delivery date of November 23, 2015 (prior to the date the Policy was accepted) contains the Protective Safeguard Provision at issue. These affidavits provided by both Plaintiff and Defendant Norguard create an issue of fact as to the knowledge of Defendant Norguard prior to issuance of the Policy. Plaintiff has proffered e-mails by and among the Underwriters and Norguard employees, as noted above, that reflect purported knowledge that the Protective Safeguard was placed in the Policy in error. Specifically, the e-mails following the claim, indicate that the Defendant Underwriters wanted to find a way to delete the provisions from the policy before it "becomes a problem". (Plaintiff Exhibit M) The e-mails are dated from January 23, 2017 through January 25, 2017. (Plaintiff Exhibit M) The communication between the two Defendants is not proof in an of itself that there was communication during the initial Policy conversations or that Defendant Underwriters was, in fact, the direct agent of Defendant Norguard. The Court notes that Defendant Underwriters did in fact appear to have had prior knowledge that the Subject Premises did not have an "automatic central fire-alarm".

Absent proof of a "principal/agency relationship" or proof of degree of control and/or authority, the Court cannot find, that such relationship existed between Defendant Norguard and Defendant Underwriters in order to hold Defendant Norguard responsible under a vicarious liability theory. *Friedler v. Palyompis*, 12 A.D.3d 637 (2d Dept. 2004) The e-mail exchanges that Plaintiff includes are

unsworn statements and are inadmissible for purposes of a summary judgment motion. Additionally, even if there is a hearsay exception by which the e-mails may be admissible, no such authority or foundation was provided. *Toussaint v. Ferrara Bros. Cement Mixer*, 33 A.D.3d 991 (2d Dept. 2006); see, *Rodriguez v. Ryder Truck, Inc.*, 91 A.D.3d 935 (2d Dept. 2012); *Holloman v. City of New York*, 74 A.D.3d 750 (2d Dept. 2010)

The Court further notes that no depositions have been taken and material issues of fact remain. Many of the facts are within the knowledge of the respective parties and discovery must be completed to determine whether such issues can be resolved. Motions for summary judgement have been denied as premature when a party opposing summary judgment is entitled to further discovery and "when it appears that facts supporting the position of the opposing party exist but cannot be stated." *Family-Friendly Media, Inc. v. Recorder Television Network*, 74 A.D.3d 738, 739, 903 N.Y.S.2d 80, 81 [2nd Dept, 2010]; *see Aurora Loan Servs., LLC v. LaMattina & Assoc., Inc.*, 59 A.D.3d 578, 872 N.Y.S.2d 724 [2nd Dept, 2009]; *Juseinoski v. New York Hosp. Med. Ctr. of Queens,* 29 A.D.3d 636, 637, 815 N.Y.S.2d 183 [2nd Dept, 2006]. Moreover, "'where facts essential to justify opposition to a motion for summary judgment are exclusively within the knowledge and control of the movant, summary judgment may be denied.... This is especially so where the opposing party has not had a reasonable opportunity for disclosure prior to the making of the motion.'" *Juseinoski v. New York Hosp. Med. Ctr. of Queens*, 29 A.D.3d 636, 637, 815 N.Y.S.2d 183, 184-85 [2nd Dept, 2006], citing *Baron v. Incorporated Vil. of Freeport,* 143 A.D.2d 792, 792–793, 533 N.Y.S.2d 143 [2nd Dept, 1988].

Plaintiff has failed to establish as a matter of law that Defendant Norguard has breached its contract of insurance with Plaintiff as a consequence of its prior alleged knowledge that no central fire-alarm system was present at the Subject Premises. Plaintiff has failed to establish an agency relationship between Defendant Underwriters and Defendant Norguard. As such, Plaintiff's motion for summary judgment against Defendant Norguard is denied as premature.

As to the alternative relief, Plaintiff asks that the Court to strike Defendant Norguard's Answer for its purported failure to adequately respond to Plaintiff's discovery demands. CPLR §3126, in pertinent part provides the following:

> "If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such order with regard to the failure or refusal as are just, amount them:
>
> (3) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party." (CPLR §3126)

While actions should be decided and resolved based on the underlying merits, "where the conduct of the resisting party is shown to be willful and contumacious, the striking of a pleading is warranted." *Savin v. Brooklyn Marine Park Development Corp.*, 61 A.D.3d 954 (2d Dept. 2009); see, *Martin v. City of New York*, 46 A.D.3d 635 (2d Dept. 2007), *Bomzer v. Parke-Davis*, 41 A.D.3d 522 (2d Dept. 2007), *Goldstein v. Kingsbrook Jewish Medical Center*, 39 A.D.3d 816 (2d Dept. 2007) The Court can infer willful and contumacious conduct by repeated failure to comply with court-ordered discovery, coupled with the lack of adequate explanations that may explain the failure. *Duncan v. Hebb*, 47 A.D.3d 871 (2d Dept. 2008); see, *Allen v. Calleja*, 56 A.D.3d 497 (2d Dept. 2008), *Devito v. J & J Towing, Inc.*, 17 A.D.3d 624 (2d Dept. 2005), *Torres v. Martinez*, 250 A.D.2d 759 (2d Dept. 1998)

Plaintiff provides three documents as Exhibits R, S and T. Exhibit R is dated July 20, 2017 and is signed by a representative from Plaintiff and each Defendant but it is not ordered by the Hon. Martin Schneier, J.H.O. Exhibit R contains provisions for certain responses and depositions to occur on or before November 15, 2017. Exhibit S is an Order (On Consent) dated October 10, 2017, signed by the Hon. Martin Schneier, J.H.O., which resolved Plaintiff's motion to Compel Discovery (Motion Seq. #1). In that Order, Defendant Norguard agrees to serve responses to both the Plaintiff's Bill of Particulars and Notice of Demand and Inspection. That Order is also signed by Counsel for Plaintiff and Defendants. (Plaintiff Exhibit S) Exhibit T is an Order dated December 22, 2017, again On Consent, which indicates that Defendant Norguard will "supplement its previously served discovery responses by specifically responding to Plaintiff's deficiency e-mail dated 12/4/2017 by 1/22/18." (Plaintiff Exhibit T) This Order

is signed by the Hon. Donald S. Kurtz, J.S.C and by Counsel for the Plaintiff and the Defendants. That Order also contains the following language in bold: "Unjustified failure of any party to comply with the terms of this Order will result in the striking of a pleading." (Plaintiff Exhibit T) The Court notes that the e-mail addressed in the last referenced Order is attached to Plaintiff's motion as Exhibit U. Plaintiff provides an Affirmation of Good Faith with its motion papers indicating attempts to contact Defendant Norguard. However, that Affirmation is not specific in relation to times or dates. Additionally, no proof of the attempted contact, other than the e-mail (Exhibit U) are attached as exhibits to the motion.

The Court finds that the actions of Defendant Norguard do not rise to the level of conduct that would require or even allow the Court to strike Defendant Norguard's Answer. Defendant Norguard in opposition contends that they have provided all of the documents that are within their possession and have responded with a Supplemental Response to Plaintiff's Notice for Discovery and Inspection (Defendant Norguard Exhibit A). Plaintiff does not deny this contention. Plaintiff's request for the Court to Strike the Answer of Defendant Norguard is denied. The Court is given great discretion when determining whether or not to strike a pleading, as it is a drastic remedy that "frustrates the disclosure scheme of the CPLR [which] should not be disturbed absent an improvident exercise of discretion." Quoting, *Duncan v. Hebb*, 47 A.D.3d 871 (2d Dept. 2008); See, *Green v. Green*, 32 A.D.3d 898 (2d Dept. 2006), *Romeo v. Barrella*, 82 A.D.3d 1071 (2d Dept. 2011) Moreover, the Court has already denied Plaintiff's motion for summary judgment based on prematurity in that depositions have not occurred.

Defendant Norguard cross-moves (Motion Seq. #3)for leave to amend its Answer pursuant to CPLR §3025(b). CPLR §3025(b) provides as follows:

> "Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of the parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

Defendant Norguard includes the proposed Amended Answer (Exhibit C) and the original Answer (Exhibit D). The amendment includes the following additional cross-claim as against Defendant Underwriters:

> "AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANT BASS UNDERWRITERS, INC. PURSUANT TO CPLR §§ 1403 AND 3019(b) FOR INDEMNIFICATION AND CONTRIBUTION.
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> 30. That if Plaintiff was caused to sustain damages at the time and place set forth in the Plaintiff's complaint through any carelessness, recklessness, and/or negligence other than Plaintiff's own negligence, careless, and recklessness, the damages were sustained by reason of the primary carelessness, recklessness, and negligence and/or affirmative acts of omission or commission by the Defendant Bass Underwriters, Inc., their agents, servants, and/or derivative only.
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> 31. That by reason of the foregoing, the Defendant, Bass Underwriters, Inc., will be liable to this answering Defendant in the event judgment is recovered by the Plaintiff in the amount of the judgment or in an amount equal to the excess over and above this answering defendant's equitable share of the judgment. The equitable shares of any judgment recovered by Plaintiff are to be determined in accordance with the relative culpability of this answering Defendant and Defendant Bass Underwriters, Inc.."

Plaintiff does not oppose Norguard's cross-motion for leave to file an Amended Complaint. Defendant Underwriters does however oppose the motion. Defendant Underwriters avers that Norguard's motion is untimely and improper. Defendant Underwriters specifically asserts that 1) Norguard was aware of the underlying facts (as to the possible contribution and indemnification) due to the relationship of the parties, and 2) that the cross-claims should have been asserted by Norguard in its initial Answer. Defendant Underwriters also includes a Stipulation of the parties relating to the adjournment of Plaintiff's summary judgment motion (Motion Seq. #2)(Exhibit CC). That stipulation includes the following language: *"any papers untimely filed not be considered by the Court." (Italics added)."* The Court notes that Defendant Norguard's Motion (which contained opposition to Plaintiff's Summary Judgment Motion) was filed at a date later than that agreed upon in the Stipulation. Defendant

was to serve and file opposition by March 7, 2018. The Court notes that Defendant Underwriter's papers were not filed until April 9, 2018. The Stipulation states that opposition papers in relation to Plaintiff's motion sequence #2 would not be considered, not that Defendant Norguard could not cross-move. The fact that the cross-motion contained opposition to motion sequence #2 that may arguably be late pursuant to the stipulation, it does not render the cross-motion untimely. (Defendant Underwriter's Exhibit CC)

A party opposing an amendment has the burden of establishing that it would be prejudiced by same. *Coleman v. Worster*, 140 A.D.3d 1002 (2d Dept. 2016); see, *Sudit v. Labin*, 148 A.D.3d 1073 (2d Dept. 2017) Therefore, the issue is whether Defendant Underwriters would be prejudiced by the amendment. Defendant Underwriters has not established that it would be prejudiced by the amendments. Additionally, leave to amend pleadings should generally be freely granted "unless the proposed amendment is palpably insufficient or patently devoid of merit." *Lui v. Town of East Hampton*, 117 A.D.3d 689 (2d Dept. 2014); see, *Simon v. Granite Bldg. 2, LLC*, 114 A.D.3d 749 (2d Dept. 2014) *Gongolewsky v. Empire Ins. Co.*, 51 A.D.3d 720 (2d Dept. 2008) What is more, the cross-claim is one for indemnification and contribution, claims which Defendant Norguard could assert against Defendant Underwriters up to six-years after any judgment is issued against Norguard in this matter. See, CPLR §213(1); *Union Turnpike Associates, LLC v. Getty Realty Corp.*, 27 A.D.3d 725 (2d Dept. 2006); *Loscalzo v. Lupinacci*, 275 A.D.2d 349 (2d Dept. 2000) Accordingly, Defendant Norguard's cross-motion to file an Amended Answer is granted.

Defendant Underwriter's motion for a Court Ordered Discontinuance (Motion Seq. #4) is accordingly set down for further oral argument.

Based upon the foregoing, it is hereby ORDERED as follows:

The Plaintiff's motion for summary judgment as against Defendant Norguard is denied as premature.

Plaintiff's motion to strike Defendant Norguard's Answer, is denied.

Defendant Norguard's cross motion for leave to file an Amended Answer is granted. Defendant Norguard to file and serve a copy of the Amended Answer on all parties within 30 days of the date hereof.

All parties are to appear in this Part 81,Courtroom 738 on **Tuesday December 4, 2018 at 10:00a.m.** for a discovery conference. Parties shall be prepared to discuss, with specificity, the remaining outstanding discovery in this case. Parties shall also be prepared for further Oral Argument in relation to Defendant Underwriter's motion for a Court Ordered Discontinuance (Motion Seq. #4).

This constitutes the Decision and Order of this Court.

ENTER:

Carl J. Landicino J.S.C