

**Skanska USA Bldg., Inc. v Commerce & Indus. Ins.
Co.**

2026 NY Slip Op 31098(U)

March 19, 2026

Supreme Court, New York County

Docket Number: Index No. 650664/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

SKANSKA USA BUILDING, INC.,

Plaintiff,

- v -

COMMERCE AND INDUSTRY INSURANCE COMPANY,

Defendant.

-----X

INDEX NO. 650664/2022

MOTION DATE 03/17/2026

MOTION SEQ. NO. 007 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 193, 196

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 154, 155, 156, 157, 158, 159, 160, 161, 162, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 194, 195, 199

were read on this motion to/for DISCOVERY.

Motion Sequence Numbers 007 and 008 are consolidated for disposition. Defendant’s motion (MS007) for partial summary judgment is granted as described below and plaintiff’s cross-motion for summary judgment is denied. Defendant’s motion (MS008) for discovery and plaintiff’s cross-motion for discovery are moot.

Background

In this insurance action, plaintiff contends that defendant breached its obligation to indemnify it under an insurance policy that defendant issued to plaintiff and by failing to settle a lawsuit commenced in 2013 that is still pending(!) in New York County. Plaintiff asserts causes of action for breach of contract arising out of the failure to settle and for declaratory relief that

defendant is obligated to indemnify it for any judgment or settlement in this underlying case (hereinafter, the “All Craft” action).

In the All Craft action, the plaintiff there (All Craft) is a contractor and alleges that it was hired by plaintiff as a subcontractor to do construction work at the UN headquarters in Manhattan. All Craft claims that it was tasked with “reworking” interior wooden doors and wood panels and that it was directed to salvage these materials. The doors and wood panels were transported to All Craft’s facility on Long Island. All Craft claims that while doing the refurbishing, it encountered asbestos and it incurred significant damages stemming from this discovery, including the cost to remediate its facility and to dispose of the materials. Another plaintiff in the All Craft action, Donaldson, contends it suffered damages because it shared office space in All Craft’s facility. Donaldson is apparently a related entity to All Craft.

Defendant, an insurer, contends that the policy it issued to plaintiff provided coverage for pollution incidents, such as liability to third parties like guests or employees of the UN. It would also cover something like a hazardous spill that occurred during construction at the UN job site. It argues that the policy was never designed to cover incidents at off-site facilities owned by plaintiff or facilities owned by one of plaintiff’s contractors. Defendant points to the “Owned Property” exclusion. It demands that this court therefore dismiss plaintiff’s request for declaratory relief and grant its counterclaim for declaratory relief in its favor. Defendant also insists that the Court dismiss plaintiff’s first cause of action for bad faith liability, based on the failure to settle the All Craft action and dismiss plaintiffs’ demand for consequential damages.

In opposition, plaintiff argues that defendant offers unreasonable interpretations of the applicable policy and that exclusions should be construed narrowly. Plaintiff contends that it obtained the policy to protect itself and its subcontractors for work done in connection with the

UN project and for the type of liability that arose here. Plaintiff emphasizes that the policy requires defendant to pay all sums that plaintiff becomes legally obligated to pay arising out of property damage or environmental damage from pollution. Plaintiff argues that although defendant has advanced defense costs, defendant has refused to authorize settlement. It argues that there were settlement demands in the neighborhood of \$2 million, both well within the \$50 million policy limit, that defendant refused to accept.

Discussion

The initial and central part of this motion is whether the “Owned Property” exclusion in the pollution policy issued by defendant justifies defendant’s position that it need not provide coverage to plaintiff for the asbestos found while All Craft was working on the doors at its facility.

“Generally, the courts bear the responsibility of determining the rights or obligations of parties under insurance contracts based on the specific language of the policies. Well-established principles governing the interpretation of insurance contracts provide that the unambiguous provisions of an insurance policy, as with any written contract, must be afforded their plain and ordinary meaning, and that the interpretation of such provisions is a question of law for the court” (*Gilbane Bldg. Co./TDX Const. Corp. v St. Paul Fire and Mar. Ins. Co.*, 143 AD3d 146, 151 [1st Dept 2016], *affd sub nom. Gilbane Bldg. Co./TDX Constr. Corp. v St. Paul Fire and Mar. Ins. Co.*, 31 NY3d 131 [2018] [internal quotations and citations omitted]).

Here, the relevant exclusion states that:

“This Policy does not provide coverage and the Company will not pay any Claims, Claim Expenses or Loss: . . .

Based upon or arising from or in connection with any real property or facility which is, or was at any time, owned, operated or rented by a Named Insured or by any entity that:

1. wholly or partly owns, operates, manages, or otherwise controls a Named Insured; or
2. is wholly or partly owned, operated, managed or otherwise controlled by a Named Insured.

However, this Exclusion does not apply to the job site at which Covered Operations are being performed and which is indicated on the Project Endorsement attached to this Policy.” (NYSCEF Doc. No. 142 at 6-7).

Here, there is no dispute that the potential liability against plaintiff arises out of All Craft’s work at its facility on Long Island, not at the UN job site. That means that this exclusion clearly applies as the actions described in the All Craft action happened at a facility operated and managed by All Craft and the work was ordered by plaintiff. To reiterate, All Craft was a subcontractor hired by plaintiff for the UN job. All Craft alleges in the underlying case that its facility was damaged and contaminated by presence of the asbestos.

Moreover, the Court finds that the exception to this exclusion (the last line) does not apply. There is no dispute that All Craft’s facility is not listed on the “Project Endorsement” attached to the policy. That endorsement lists a number of locations but does not include All Craft’s facility (*see* NYSCEF Doc. No. 143 at 31 of 33). Plaintiff’s insistence that the locations listed in the endorsement are not the full extent of this exception is without merit. A plain reading of this exception is that it must be indicated on the endorsement and the Long Island facility is not listed. There is no basis to extend the reach of this exception to encompass the premises in question.

Because the Court finds that there was no coverage, the Court is compelled to find that there is no viable cause of action for bad faith liability (*Zurich Ins. Co. v Texasgulf, Inc.*, 233 AD2d 180 [1st Dept 1996] [“a claim of bad faith must be predicated on the existence of coverage of the loss in question”]).

The Court also dismisses plaintiff's claim for consequence damages. "Consequential damages are damages that do not directly flow from a breach of contract" (*Lola Roberts Beauty Salon, Inc. v Leading Ins. Group Ins. Co., Ltd.*, 160 AD3d 824, 825 [2d Dept 2018]). Plaintiff simply did not show how it suffered any damages separate and apart from its claim that defendant failed to provide it coverage under the insurance contract. There is no dispute that defendant has paid for defense costs for plaintiff in the All Craft action and plaintiff did not adequately explain how it could recover legal fees incurred in this case. Plaintiff's vague reference to "reputational injury" based on the ongoing All Craft action is not a basis for consequential damages and plaintiff did not submit any binding caselaw that supports this theory.

Discovery Motion

The Court finds that defendant's discovery motion is moot in light of the Court granting defendant's motion for partial summary judgment. The requested discovery no longer appears necessary. Similarly, plaintiff's cross-motion for discovery is also moot.

Summary

Quite simply, the defendant did not issue a policy with tentacles to cover every workshop of every subcontractor involved on this job: it issued a limited policy to cover pollution damage and limited coverage to specifically enumerated locations.

The only remaining claim is defendant's second counterclaim, which is the subject of a recently filed motion by plaintiff (*see* NYSCEF Doc. No. 207). The Court observes that it recently permitted plaintiff leave to amend its complaint to add a claim for breach of the covenant of good faith and fair dealing against defendant related to the failure to settle (NYSCEF

Doc. No. 201). Now that the Court has found that no coverage exists, this claim is severed and dismissed.

Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is granted and plaintiff’s causes of action are dismissed; and it is further

DECLARED that plaintiff is not entitled to indemnification or further defense in the underlying action now consolidated under index number 156897/2013 with respect to the policy at issue in this matter; and it is further

ORDERED that the second counterclaim remains.

Given the current procedural posture, the Court directs that a note of issue be filed on or before April 8, 2026. The upcoming discovery conference (NYSCEF Doc. No. 198) is cancelled.

3/19/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE