Titan Indus. Servs. Corp v Navigators Ins. Co.
2026 NY Slip Op 31104(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 653882/2019
Judge: Kathleen Waterman-Marshall

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31**

Justice

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TITAN INDUSTRIAL SERVICES CORP, SCOTTSDALE INSURANCE COMPANY

Plaintiff,

- v -

NAVIGATORS INSURANCE COMPANY,

Defendant.

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INDEX NO. 653882/2019

MOTION DATE 04/23/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138

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

Upon the foregoing documents, the motion by plaintiffs Titan Industrial Services Corp. ("Titan") and Scottsdale Insurance Company ("Scottsdale") for summary and declaratory judgment on its claim for indemnification from defendant Navigators Insurance Company ("Navigators") is denied. Upon the same record, the cross-motion of Navigators to dismiss the action is granted.

Background

This is a declaratory judgment insurance action arising out of an underlying Labor Law action commenced by Jan Markowski ("Mr. Markowski") in Kings County Supreme Court and, ultimately, the settlement of that action by Titan and Scottsdale after a summary judgment decision ("the Markowski settlement").

I. Underlying Labor Law Action

The owner of certain property in Manhattan hired a general contractor to perform construction work at the premises. That general contractor retained Titan as a demolition subcontractor. Titan, in turn, retained Castle Sanitation Corporation ("Castle") to perform debris removal via a Master Subcontract Agreement (the "Subcontract"). Mr. Markowski was an employee of Castle and was injured while emptying containers of debris when a container rolled down a loading dock and struck him in the back.

Mr. Markowski commenced a Labor Law action in Kings County against the property owner and its agent, the general contractor, and Titan. The building owner and general contractor commenced a third-party action against Castle. Titan commenced a second third-party action against Castle, alleging, *inter alia*, that Castle owed it indemnification pursuant to the Subcontract. The Kings County Supreme Court denied plaintiff summary judgment and dismissed all of plaintiff's claims except for his common law and Labor Law § 200 claims against Titan (*Markwoski v Dolp 113*

Properties II LLC, 2021 NY Slip Op 31006[U] [Sup. Ct., Kings Cty. March 23, 2021] [Jimenez-Salta, J.]). The Kings County Supreme Court also dismissed both third-party actions against Castle (*id*.). Following that decision, Titan settled the Labor Law action for $2 million.

II. Declaratory Judgment Action

Titan and Scottsdale commenced the instant declaratory judgment action against Navigators alleging that under the Subcontract, Navigators – as insurer of Castle as primary insured, and of Titan as an additional insured – owed Titan both a duty to defend and a duty to indemnify in the underlying Labor Law action.

Prior to the administrative transfer of this matter to Part 31, Navigators moved for summary judgment dismissing this action, and Titan and Scottsdale cross-moved for summary judgment declaring that Navigators had a duty to defend and indemnify Titan in the Markowski Labor Law action. The justice previously assigned to this matter granted Navigator's motion to dismiss and denied Titan's and Scottsdale's cross-motion, finding that Navigators had no duty to defend or indemnify Titan. Titan appealed and the Appellate Division, First Department modified the prior jurist's decision, finding that Navigators had a duty to defend Titan, as an additional insured, in the Labor Law action and failed to timely provide written disclaimer of coverage to Titan in accordance with Insurance Law § 3420(d)(2). The Appellate Division, First Department, however, found that Titan and Scottsdale were not entitled, at that stage, to a declaration that Navigators owed a duty to indemnify. Instead, it held that the issue of indemnification would abide conclusion of the Labor Law litigation.

Now that the Labor Law action has been resolved by way of Titan's settlement, Titan and Scottsdale seek a declaration that Navigators has a primary duty to indemnify Titan in the Labor Law action pursuant to the Subcontract and Navigators' policy issued to Castle. Navigators, by way of cross-motion, seeks summary judgment dismissing the complaint and for a declaration that it has no duty to indemnify Titan or reimburse Scottsdale the $2 million settlement.

Discussion

The standard by which the Court analyzes the instant motions is well established. On a motion for summary judgment, the burden rests with the moving party to make a prima facie showing they are entitled to judgment as a matter of law and demonstrate the absence of any material issues of fact (*Friends of Thayer Lake, LLC v Brown*, 27 NY3d 1039 [2016]). Once met, the burden shifts to the opposing party to submit admissible evidence to create a question of fact requiring trial (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75 [1st Dept 2013]).

The duty to indemnify requires that the loss be covered by the insurance policy, which is "determined by the actual basis for the insured's liability to a third person" (*Servidone Const. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]). Stated differently, the duty to indemnify turns on whether the facts establish that the loss is covered by the insurance policy (*Atlantic Mut. Ins. Co. v Terk Tech. Corp.*, 309 AD2d 22, 28 [1st Dept 2003]). It is well established that where an insurer has improperly refused to defend an action, it remains liable for a reasonable settlement made without its consent (*Isadore Rosen & Sons v Security Mut. Ins. Co. of N.Y.*, 31 NY2d 342, 347 [1972]; *Matter of Empire State Sur. Co.*, 214 NY 553, 563-64 [1915]).

It is undisputed that the Subcontract between Titan and Castle required Castle to purchase insurance coverage naming Titan as an additional insured. It is further undisputed that Castle

obtained such coverage for liability "caused in whole or in part by" Castle's "acts and omissions" performed in furtherance of its work for Titan (Navigator's policy Section II). Thus, the outcome of the instant motion – and the penultimate determination as to whether Navigator must indemnify Titan and Scottsdale for the Markowski settlement – turns on whether Mr. Markowski was caused to be injured, in whole or in part, as the result of the acts or omissions of Castle.

"Caused in whole or in part" requires proximate causation (*Burlington Ins. Co. v NYC Tr. Auth.*, 29 NY3d 313, 322 and 324 [2017]), and is not synonymous with "arising out of" (*id*. at 324). Therefore, Titan and Scottsdale's reliance on *Hunter Roberts Constr. Group, LLC v Arch Ins. Co.* (75 AD3d 404, 408 [1st Dept 2010]) for the proposition that because Mr. Markowski was injured while performing work for Castle, the injury "arises out of" Castle's work for Titan sufficient to trigger coverage and indemnification, is misplaced as it does not compare materially similar terms (*Burlington Ins. Co.*, 29 NY3d at 324). Stated differently, "arising out of" is broad, requiring only some connection, while "caused in whole or in part" is narrow, requiring proximate causation (*id*.). Thus, indemnification under Navigators' policy, which insured Titan as an additional insured for the acts and omissions caused in whole or in part by Castle, is not triggered merely because Mr. Markowski was injured while working for Castle.

Nor is indemnification triggered by Titan's settlement of the underlying Labor Law action. The Kings County Supreme Court's Decision and Order on summary judgment in the underlying Labor Law action, issued prior to settlement, dismissed Titan's third-party action against Castle and the majority of plaintiff's claims; it left only a Labor Law § 200/common law claim against Titan and reserved resolution of that claim for the jury (*Markwoski v Dolp 113 Properties II LLC*, 2021 NY Slip Op 31006[U] [Sup. Ct., Kings Cty. March 23, 2021] [Jimenez-Salta, J.]). As the underlying Labor Law matter settled before trial, a jury never passed upon proximate cause of plaintiff's Labor Law § 200/common law claim. Where there has been "no adjudication and no agreement that the loss fell within the ambit of the policy coverage" a trial on causation within the declaratory judgment action trial is ordinarily appropriate (*Servidone Const. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]).

However, given the Kings County Supreme Court's Decision, there was only one possible proximate cause of plaintiff's injuries: Titan, as it was the sole remaining defendant and the third-party actions had been dismissed. Notably, the Kings County Supreme Court found that the Subcontract's indemnification clause between Titan and Castle was unenforceable as indemnifying Titan for its own negligence. It further found that Titan was responsible for securing and propelling the debris container that struck plaintiff. The Kings County Supreme Court's antepenultimate sentence summarizes proximate causation of the underlying Labor Law action: "the only way a defendant will be liable to plaintiff is if Titan is found negligent for the manner in which its employees caused the subject container to strike plaintiff." Having not appealed that decision, the determination that Titan was the only defendant possibly responsible for plaintiff's injuries is the final word on proximate causation, law of the case, and controlling on this declaratory judgment action. Additionally, the "Schedule" of Navigator's policy expressly provides that it does not cover the additional insured's, in this case Titan's, own negligence (Endorsement 13 ["No coverage is afforded under this policy for any jury, damage or other loss arising out of a scheduled additional insured's own liability, sole negligence or willful or deliberate misconduct"]). Titan and Scottsdale cite no authority granting indemnification to a party after that party was found, via summary judgment, to be the sole potentially liable party and where that party's contractual indemnification action was dismissed as seeking to indemnify its own negligence.

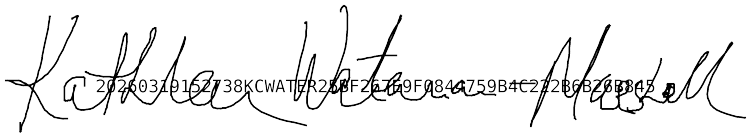
For these reasons, Titan's and Scottsdale's motion must be denied as seeking indemnification for Titan's own negligence – a condition expressly excluded from additional insured coverage – which the Kings County Supreme Court determined was the only possible proximate cause of plaintiff's injuries, and Navigator's cross-motion must be granted. Titan and Scottsdale's argument that this Court must nevertheless determine Castle's liability for the underlying action, and attribute at least 1% liability to Castle, is without merit and the cases relied on by them are inapposite. In *Singh v NYC Tr. Auth.* (17 AD3d 262 [1st Dept 2005]) and *Starr Indemnity & Liability Co. v Excelsior Ins. Co.* (516 F. Supp 3d 337 [SDNY 2021]), issues of fact existed as to whether the party seeking indemnification was doing so for its own negligence, or liability had not been attributed to a sole defendant. Here, there are no issues of fact as to whether Titan is seeking indemnification for its own negligence; the Kings County Supreme Court expressly found that Titan was so seeking and dismissed the third-party action seeking contractual indemnification upon that ground. As determination of negligence and the availability of contractual indemnification was determined by the Kings County Supreme Court, to the extent of finding Titan the only potentially liable party and dismissing the contractual indemnification action, Titan and Scottsdale's reliance on authority where there was no determination of negligence is inapposite (*see e.g. WDF Inc. v Harleysville Ins. Co. of N.Y.*, 193 AD3d 667 [1st Dept 2021]).

In any event, Titan and Scottsdale have not cited any new facts, other than Titan's settlement, since the Appellate Division, First Department found that the record was "not sufficient to establish Navigators will ultimately have to indemnify Titan" (223 AD3d at 428). Nor have Titan or Scottsdale submitted any proof of Mr. Markowski's injuries or other evidence that would establish their $2 million settlement was reasonable, as is their burden (*see generally*, *Asonia Assoc. Ltd. Partnership v Public Serv. Mut. Ins. Co.*, 277 AD2d 98 [1st Dept 2000]).

Accordingly, it is

ORDERED that the motion by Titan Industrial Services Corp. and Scottsdale Insurance Company for a declaration that Navigators Insurance Company owes indemnification and reimbursement for the $2 million settlement of the matter *Markwoski v Dolp 113 Properties II LLC* (Kings County Index No. 500950/2017) is denied; and it is further

ORDERED that the motion by Navigators Insurance Company to dismiss the action is granted.



3/19/2026
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**