

**Time Warner Cable of N.Y. City v Hylan
Datacom & Elec., Inc.**

2007 NY Slip Op 30936(U)

April 13, 2007

Supreme Court, New York County

Docket Number: 0107798/2005

Judge: Doris Ling-Cohan

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: Hon. DORIS LING-COHAN, Justice

PART 36

TIME WARNER CABLE OF NEW YORK CITY, a division of TIME WARNER ENTERTAINMENT COMPANY, L.P.,

Plaintiff,

- v -

HYLAN DATACOM & ELECTRICAL, INC., individually and as successor in interest to TRINITY COMMUNICATIONS CORP., et al.,

Defendants.

INDEX NO. 107798/05
MOTION DATE
MOTION SEQ. NO. 002
MOTION CAL. NO.

The following papers, numbered 1 to 9 were read on this motion for summary judgment and cross motions for summary judgment.

FILED
APR 26 2007
NEW YORK
COUNTY CLERK'S OFFICE

Papers

| <u>Papers</u> | <u>Numbered</u> |
|--|-----------------|
| Notice of Motion/Order to Show Cause - Affidavits - Exhibits | 1,2 |
| Notice of Cross Motions - Affidavits - Exhibits | 3,4,5,6 |
| Answering Affidavits - Exhibits (Memo) | 7,8 |
| Replying Affidavits (Reply Memo) | 9 |

Cross Motions: Yes No

Upon the foregoing papers, it is ordered that the motion and cross motions are decided as set forth in the attached decision and order.

This constitutes the Decision and Order of the Court.

Dated: 4/19/07

ENTER: Doris Ling-Cohan, JSC

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if Appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS PART 36

-----X

TIME WARNER CABLE OF NEW YORK CITY,
a division of TIME WARNER ENTERTAINMENT
COMPANY, L.P.

Plaintiff,

DECISION AND ORDER

v.

Index. No. 107798/05

HYLAN DATACOM & ELECTRICAL INC.,
individually and as successor in interest to
TRINITY COMMUNICATIONS CORP.,
and TRINITY COMMUNICATIONS CORP.
individually, DIAMOND STATE
INSURANCE COMPANY and NEW
HAMPSHIRE INSURANCE COMPANY,
(pertaining to an underlying action entitled
*Concord Village Owners v. Trinity
Communications Corp. et al*),

Motion Seq. No. 002

Defendants.

-----X

DORIS LING-COHAN, J.S.C.:

Plaintiff, Time Warner Cable of New York City, a division of Time Warner Entertainment Company, L.P. (Time Warner), moves pursuant to CPLR 3212 for summary judgment in this action to obtain a declaratory judgment, among other things, that defendants New Hampshire Insurance Company (New Hampshire) and Diamond State Insurance Company (Diamond State) are obligated to defend and indemnify Time Warner against claims by Concord Village Owners in an underlying property damage action currently pending in this court entitled, *Concord Village Owners, Inc. v Trinity Communications Corp., et al.*, Index No. 106917/04 (the Concord Village action). New Hampshire and Diamond State have filed separate cross motions for summary judgment, pursuant to CPLR 3212, to obtain, among other things, declaratory judgments that they

are not obligated to defend and indemnify Time Warner in the Concord Village action.

BACKGROUND

In 1996, Time Warner, a cable television provider, entered into a "Cable Television System Construction Agreement" (the Agreement) with defendant, Trinity Communications Corp. (Trinity) wherein Trinity agreed to perform cable television construction services on behalf of Time Warner and to procure comprehensive general liability insurance naming Time Warner as an additional insured (Affirmation of Howard B. Altman, Esq. in Support of Time Warner Motion [Altman Aff. in Support], Ex. C [the Agreement]).

Pursuant to the Agreement, Trinity purchased a general liability policy from New Hampshire and an umbrella liability policy, providing excess coverage, from Diamond State. Both policies were in effect at the time of the accident, which occurred on November 19, 2002, and both policies provided coverage to Time Warner, as an additional insured.

The notice provision in the New Hampshire policy provides, in pertinent part:

"SECTION IV - COMMERCIAL GENERAL LIABILITY
CONDITIONS

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
 - a. You must see to it that we are notified as soon as practicable of an 'occurrence'¹ or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the 'occurrence' or offense took place;
 - (2) The names and addresses of any persons and witnesses; and

¹ "Occurrence' means an accident, including continuous or repeated exposure to substantially the same general harmful conditions" (New Hampshire policy, Sect. V [13]).

(3) The nature and location of any injury or damage arising out of the 'occurrence' or offense.

b. If a claim is made or a 'suit' is brought against any insured, you must:

(1) Immediately record the specifics of the claim or 'suit' and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or 'suit' as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or 'suit';

(3) Cooperate with us in the investigation or settlement of the claim or defense against the 'suit'; and ..."

(Altman Aff. in Support, Ex. D [the New Hampshire policy], Sect. IV [2]).

The New Hampshire policy provides that the words "you" and "your" refer to the named insured, Trinity, "and any other person or organization qualifying as a Named Insured under this policy" (New Hampshire policy, Commercial General Liability [CGL] Coverage Form, at 1). On the other hand, the word, "insured" refers, among other things, to an additional insured, such as Time Warner (*id.*).

The notice provision in the Diamond State policy is substantially similar to the notice provision in the New Hampshire policy (Altman Aff. in Support., Ex. E [Diamond State policy], Commercial Umbrella Liability Policy Form, Sect. V [Conditions], at 9).

Time Warner was the named insured under an insurance policy issued by Travelers

Property Casualty (Travelers), which included commercial general liability coverage (Altman Aff. in Support, Ex. J).

The Accident and the Underlying Concord Village Action

The accident involved in this matter occurred on or about November 19, 2002, when a crew from Trinity allegedly struck and ruptured a natural gas pipeline while excavating to install cable for Time Warner in Brooklyn, New York (Altman Aff. in Support, Ex. F [accident reports]). Concord Village Owners asserts that the accident resulted in property damage to its building, located at 225 Adams Street in Brooklyn (Altman Aff. in Support, Exs. A [Concord Village Owners Complaint] and B [Concord Village Owners Verified Bill of Particulars]). An inspector from Time Warner was present at the accident site on November 19, 2002, when the gas main was ruptured (Affidavit of Yoko Yamamoto, Esq. in Support of New Hampshire Cross Motion [Yamamoto Aff. in Support], Ex. I [Dep. of Danny Idiaquez on behalf of Trinity, at 103-104]). In a letter dated November 27, 2002, the insurance broker for Concord Village Owners notified Time Warner's insurance broker of the property damage claim by Concord Village Owners against Time Warner (Yamamoto Aff. in Support, Ex. J). In a letter dated July 29, 2003, Kenneth Grau, Esq., an attorney representing Concord Village Owners, advised Trinity and Time Warner that the accident had resulted in over \$875,000 in property damage to the building located at 225 Adams Street, demanded reimbursement from Trinity and Time Warner for this claim, and requested the parties to submit the claim to alternative dispute resolution within a specified period of time, to avoid further action by Concord Village (Yamamoto Aff. in Support, Ex. K). Mr. Grau sent copies of his letter to New Hampshire, Time Warner's insurance broker and Travelers (*id.*).

On or about May 5, 2004, Concord Village Owners commenced the underlying action, by

filing a summons and complaint against Trinity and Time Warner (Altman Aff. in Support, Ex. A [Concord Village Owners complaint]). The complaint alleged that, on November 19, 2002, Concord Village Owners sustained property damage to its building at 225 Adams Street in Brooklyn when defendants punctured a natural gas pipeline while digging a trench to install cable in the area (*id.*). Time Warner answered the Concord Village complaint on May 21, 2004, and, in that answer, Time Warner asserted cross claims against Trinity (Yamamoto Aff. in Support, Ex. L [Time Warner answer]).

In a letter dated May 18, 2004, Time Warner's insurer, St. Paul/Travelers², first provided notice, on behalf of Time Warner, to both New Hampshire and the claims administrator for Diamond State, of the underlying accident, the Concord Village Owners claim and the Concord Village Owners action (Altman Aff. in Support, at ¶ 12 and Ex. G). In this letter, St. Paul/Travelers enclosed the suit papers from the Concord Village Owners action and tendered the defense and indemnification of Time Warner in that action to New Hampshire and Diamond State (Altman Aff. in Support, Ex. G).

In or about June 6, 2005, Time Warner commenced this declaratory judgment action seeking, among other things, defense and indemnification in the Concord Village Owners action, as an additional insured under the New Hampshire and Diamond State policies (Altman Aff. in Support, Ex. I [Declaratory Judgment complaint]). New Hampshire served its answer, dated August 1, 2005, in which it asserted affirmative defenses disclaiming coverage on the grounds that Time Warner had not provided New Hampshire with timely notice of the underlying occurrence, the Concord Village Owners claim and the Concord Village Owners action (Altman

² St. Paul/Travelers is the successor to Travelers.

Aff. in Support, Ex. I [New Hampshire answer], affirmative defenses nos. 5,6 and 7). Diamond State served an answer dated July 7, 2005, in which it generally disclaimed liability under the excess policy (Altman Aff. in Support, Ex. I [Diamond State answer]).

DISCUSSION

1. Notice of Underlying Occurrence and Claim

As a preliminary matter, the court must determine whether Time Warner satisfied the conditions precedent to coverage, under both the New Hampshire and Diamond State policies, requiring timely notice of both the underlying occurrence or accident and the underlying claim by Concord Village Owners.

In support of its cross motion, New Hampshire asserts that it has no obligation to defend and indemnify Time Warner, because Time Warner failed to comply with the policy provisions requiring timely notice of the occurrence and claim. New Hampshire contends that Time Warner's delay in providing notice of the underlying occurrence and claim was unreasonable as a matter of law. New Hampshire further contends that Trinity's notice of the accident and the Concord Village claim does not constitute notice from Time Warner. Diamond State adopts and incorporates New Hampshire's argument that Time Warner failed to satisfy its independent duty to provide notice of the occurrence and claim.

In support of its motion and in opposition to the cross motions, Time Warner contends that, under the insurance policies issued by New Hampshire and Diamond State, only the named insured, Trinity, has the obligation to provide the carrier with timely notice of the underlying occurrence and claim. Time Warner further asserts that, as an additional insured under the New Hampshire and Diamond State policies, Time Warner was entitled to rely on Trinity's timely notice of the occurrence and the Concord Village Owners claim.

The Court of Appeals has held:

“Notice provisions in insurance policies afford the insurer an opportunity to protect itself ..., and the giving of notice is a condition to the insurer’s liability. ... Absent a valid excuse, a failure to satisfy the notice requirement vitiates the policy. . . [t]here may be circumstances, such as the lack of knowledge that an accident has occurred, that will explain or excuse delay in giving notice and show it to be reasonable. . . . But the insured has the burden of proof thereon”

(*Security Mut. Ins. Co. of N. Y. v Acker-Fitzsimons Corp.*, 31 NY2d 436, 440-441 [1972] [internal citations omitted and parenthetical supplied]; see also *American Home Assur. Co. v International Ins. Co.*, 90 NY2d 433, 442-443 [1997]). Moreover, excess insurers have the same vital interest in prompt notice as do primary insurers, and the *Security Mutual* rule applies to them, as well (*American Home Assur. Co. v International Ins. Co.*, 90 NY2d at 443). The insurer need not show prejudice to rely on late notice as a basis for disclaimer (see *American Home Assur. Co. v International Ins. Co.*, 90 NY2d at 440, 443; *Security Mut. Ins. Co. v Acker-Fitzsimons Corp.*, 31 NY2d at 440).

New York courts have found that even relatively short periods of unexcused delay in providing notice are unreasonable as a matter of law (*Goodwin Bowler Assoc., Ltd. v. Eastern Mut. Ins. Co.*, 259 AD2d 381 [1st Dept. 1999] [two month delay unreasonable]; *Power Auth. of State of N. Y. v Westinghouse Elec. Corp.*, 117 AD2d 336, 343 [1st Dept 1986] [53 day delay unreasonable as a matter of law]).

In determining whether notice has been given within a reasonable time under the primary policy, the courts look to when the insured became aware of the facts indicating that a claim, covered by the policy, could be made against the insured (see *Deso v. London & Lancashire Indem. Co.*, 3 NY2d 127, 130 [1957]). As to the excess insurer, the court will consider whether

the insured provided notice upon the happening of an occurrence reasonably likely to involve the excess policy (*Long Is. Light. Co. v. Allianz Underwriters Ins. Co.*, 24 AD3d 172, 173 [1st Dept. 2005], *lv dismissed* 6 NY3d 844 [2006]).

Time Warner admits that its insurer, St. Paul/Travelers, first notified New Hampshire and Diamond State's claims administrator of the underlying accident and the Concord Village Owners claim and action in a letter dated May 18, 2004, approximately 18 months after the occurrence (Altman Aff. in Support, Ex. G). However, it appears that Time Warner had notice of the accident almost immediately after it occurred, as an inspector from Time Warner was present at the accident site when the gas pipeline was ruptured on November 19, 2002 (Yamamoto Aff. in Support, Ex. I, at 103-104). Time Warner had notice of the property damage claim by Concord Village Owners, at the earliest on or about November 27, 2002, when Concord's insurance broker gave Time Warner's insurance broker notice of the Concord Village Owners claim against Time Warner (Yamamoto Aff. in Support, Ex. J). The July 29, 2003 letter by the attorney for Concord Village Owners, again, provided Time Warner with notice of the Concord Village Owners claim and can also be construed as a demand for payment of that claim, within the meaning of Section IV (2) (c) (1) of the New Hampshire policy. (Yamamoto Aff. in Support, Ex. K). Accordingly, Time Warner delayed for a period of approximately 18 months in providing New Hampshire with notice of the occurrence and with notice of the claim, based upon the November 27, 2002 letter from Concord Village's broker. Time Warner delayed for a period of approximately 10 months in providing New Hampshire with notice of the claim, based upon the July 29, 2003 letter from the attorney for Concord Village Owners. This Court finds that Time Warner's delays in providing New Hampshire with notice of the underlying occurrence and the Concord Village Owners claim were unreasonable as a matter of law (*see Goodwin Bowler*

Assoc., Ltd. v Eastern Mut. Ins. Co., 239 AD2d 381; *Power Auth. of State of N.Y. v Westinghouse Elec. Corp.*, 117 AD2d at 342-343).

Moreover, it does not appear that Time Warner provided notice of the occurrence and claim to Diamond State, the excess insurer, until May 18, 2004, at the earliest, even though Time Warner became aware that it was reasonably likely that the excess policy could be involved when it received the letter from the Concord Village Owners' attorney, on or about July 29, 2003 (Yamamoto Aff. in Support, Ex. K). Time Warner's failure to proffer any excuse for this 10 month delay, renders the delay unreasonable as a matter of law (*see Power Auth. of State of N.Y. v Westinghouse Elec. Corp.*, 117 AD2d at 343-343).

Time Warner's argument that Trinity's notice to New Hampshire of the occurrence and claim satisfied Time Warner's obligation to provide such notice is unavailing. Generally, an additional insured, like Time Warner, has an independent obligation to provide timely notice of an occurrence and claim to an insurer, and the additional insured cannot rely upon notice provided by the named insured, especially where, as in the instant case, the additional insured has taken a position adverse to the named insured with respect to the underlying claim and action (*see City of New York v St. Paul Fire and Marine Ins. Co.*, 21 AD3d 978, 981-982 [2d Dept 2005]; *Travelers Ins. Co. v Volmar Constr. Co.*, 300 AD2d 40, 42-44 [1st Dept 2002]; *Structure Tone, Inc. v Burgess Steel Prods. Corp.*, 249 AD2d 144, 145 [1st Dept 1998]; *American Mfrs. Mut. Ins. Co. v CMA Enters., Ltd.*, 246 AD2d 373 [1st Dept 1998]; *Delco Steel Fabricators, Inc. v American Home Assur. Co.*, 40 AD2d 647, 648 [1st Dept 1972], *affd* 31 NY2d 1014 [1973]; *City of New York v Welsbach Elec. Corp.*, 11 Misc 3d 1085 (A), 2006 NY Slip Op 50705 [U] [Sup Ct, New York County 2006]); *see also Nationwide Ins. Co. v Empire Ins. Co.*, 294 AD2d 546 [2d Dept 2002]; *National Union Fire Ins. Co. of Pittsburgh, Pa. v State Ins. Fund*, 266 AD2d 518 [2d

Dept 1999)).

For example, in *City of New York v. St. Paul Fire and Marine Ins. Co.* (21 AD3d at 981), the court held:

“As an additional insured under the . . . policy, the City had an independent duty to provide the excess insurer with timely notice of the claim against it and its demand for coverage. . . . The fact that an insurer may have received notice of the claim from the primary insured, or from another source, does not excuse the additional insured’s failure to provide notice. . . .” [citations omitted].

In *Structure Tone, Inc. v. Burgess Steel Prods, Corp.* (249 A.D.2d 144), the plaintiff sought a declaratory judgment that the insurer was obligated to defend and indemnify it as an additional insured. There, as here, the insurer disclaimed coverage based on late notice. The *Structure Tone* decision concluded that the insurer was not obligated to defend or indemnify the plaintiff, stating:

“With respect to the notice issues, although the subject insurance policy expressly required plaintiff, as additional insured, to timely forward all legal documents, plaintiff did not do so. . . . *Even if the insurance policy were construed as specifying that only the named insured . . . was required to provide notice of occurrences, demands and suits to [the insurer], the duty to give reasonable notice as a condition of recovery is implied in all insurance contracts and is applicable to an additional insured. . . .*” [Emphasis and parentheticals added; internal citations omitted]

(*id.* at 145).

The cases cited by Time Warner are distinguishable. Time Warner relies on *City of New York v. Continental Cas. Co.* (27 AD3d 28 [1st Dept 2005]) for the proposition that notice of the occurrence by the named insured constitutes notice on behalf of the additional insured. However, *City of New York v. Continental Cas. Co.* is inapposite, as the defendant insurer, which had issued a policy to the contractor (Welsbach), naming the City as an additional insured, did not contest

the City's argument that the obligation to give notice under the policy rested on Welsbach, the named insured. Instead, the insurer (Continental) based its disclaimer on the City's failure to immediately forward the suit papers, as required under the policy (*City of New York v Continental Cas. Co.*, 27 AD3d at 30). In that case, the City, as an additional insured, faxed the second third-party complaint to the named insured, Welsbach, and asked the named insured to forward the complaint and the City's request for defense and indemnification to the insurer. The City never forwarded the suit papers or demand directly to the insurer. Under the circumstances in that case, the Appellate Division analyzed the additional insured's duty to immediately forward the suit papers solely under the "failure-to-cooperate standard" (*id.* at 31). The Appellate Division concluded that, while the City had adopted a "lackadaisical attitude in forwarding the suit papers", its conduct did not rise to the level of willfulness required to establish failure to cooperate and, accordingly, the insurer was required to defend and indemnify the City (*City of New York v Continental Cas. Co.*, 27 AD3d at 31-32). The Appellate Division noted that the IAS court did not address the issue of whether the City, as an additional insured, was required to give the insurer notice of the accident (*id.* at 30-31). In view of the fact that the insurer contested its obligation to provide coverage to the City, as an additional insured, based solely on the City's failure to forward the suit papers, and did not challenge whether the City was obligated to provide notice of the occurrence, the court's statement that the City could rely upon the notice provided by the named insured, Welsbach, constituted *dicta* (*City of New York v Continental Cas. Co.*, 27 AD3d at 30-31; *see also City of New York v Welsbach Elec. Corp.*, 11 Misc 3d 1085(A), 2006 N.Y. Slip Op. 50705[U] ***3).

Time Warner also cites a line of decisions holding that timely notice by the named insured can constitute notice by the additional insured, under circumstances in which the named insured

and additional insured were united in interest, or had not asserted adverse positions in the underlying action (see *Ambrosio v Newburgh Enlarged City School Dist.*, 5 AD3d 410 [2d Dept 2004]; *Rose v State of N. Y.*, 265 AD2d 473 [2d Dept 1999]; *Rosen v City of New York*, 245 AD2d 202 [1st Dept 1997]; see also *New York Tel. Co. v Travelers Cas. and Sur. Co.*, 280 AD2d 268 [1st Dept. 2001]; *National Union Fire Ins. Co. of Pittsburgh v Insurance Co. of N. Am.*, 188 AD2d 259 [1st Dept 1992], *lv. denied* 81 N.Y.2d 709 [1993]). The instant case is distinguishable, as Time Warner, the additional insured, has asserted cross claims against Trinity, the named insured under the New Hampshire and Diamond State policies, in the Concord Village Owners action (see Yamamoto Aff. in Support, Ex. L). Under these circumstances, the named insured and the additional insured have asserted adverse positions and are not united in interest and, thus, each must provide independent notice of the occurrence and claim to the insurer (see, e.g. *Travelers Ins. Co. v Volmar Constr. Co.*, 300 AD2d at 44; *Structure Tone, Inc. v Burgess Steel Prods. Corp.*, 249 AD2d at 145; *Delco v. American Home Assur. Co.*, 40 AD.2d at 648). Accordingly, under the controlling case law, cited above, Trinity's notice of the underlying occurrence and the Concord Village Owners claim to New Hampshire and Diamond State does not constitute notice by Time Warner.

2. Delay in Disclaimer

Time Warner asserts that New Hampshire unreasonably delayed in disclaiming on the grounds of late notice of the occurrence and claim until service of its answer in the within declaratory judgment action, over 14 months after the May 18, 2004 letter by St. Paul/Travelers providing notice on behalf of Time Warner. Although an insurer's assertion of affirmative defenses in its answer in a declaratory judgment action can serve as a disclaimer (see *American Mfrs. Mut. Ins. Co. v CMA Enters., Ltd.*, 246 AD2d 373), New Hampshire's lengthy delay in

asserting the defense of late notice is unreasonable, in view of the fact that this defense was obvious from the May 18, 2004 letter. Nevertheless, New Hampshire is correct, that Insurance Law § 3420 (d), which requires an insurer to give a prompt written notice of disclaimer, is inapplicable to the instant case, as this case only involves a claim for property damage, rather than bodily injury or death (*see Fairmont Funding, Ltd. v Utica Mut. Ins. Co.*, 264 AD2d 581 [1st Dept 1999]; *Incorporated Vil. of Pleasantville v Calvert Ins. Co.*, 204 AD2d 689 [2d Dept 1994]; *Kamyr, Inc. v St. Paul Surplus Lines Ins. Co.*, 151 AD2d 62, 67 [3d Dept 1989]).

Under these circumstances, however, the insurer may be estopped from disclaiming coverage if the length of the delay in disclaiming is unreasonable and the insured can establish prejudice as a result of the delay (*see Fairmont Funding, Ltd. v Utica Mut Ins. Co.*, 264 AD2d 581; *Incorporated Vil. of Pleasantville v Calvert Ins. Co.*, 204 AD2d 689; *Kamyr, Inc. v St. Paul Surplus Lines Ins. Co.*, 152 AD2d at 67). New Hampshire asserts that Time Warner is not prejudiced by its delay in disclaiming coverage, as Time Warner is being defended in the Concord Village Owners action by a law firm retained by its insurer, St. Paul/Travelers. Time Warner contends, however, that it is prejudiced, as the Travelers policy has a deductible of \$1,000,000 per occurrence (Affirmation of Howard B. Altman, Esq. in Opp. to New Hampshire Motion , at ¶ 13). Under these circumstances, there is a triable issue of fact as to whether Time Warner is prejudiced by New Hampshire's delay in disclaiming coverage and, thus, summary judgment is denied at this time to Time Warner, as well as to New Hampshire and Diamond State.

In view of the fact that the issues of late notice and delay in disclaimer are dispositive of the motion and the cross motions, this Court will not address the parties' alternative arguments.

Accordingly, it is


ORDERED that plaintiff Time Warner's motion for summary judgment is denied; and it is further

ORDERED that the cross motions for summary judgment by defendants New Hampshire Insurance Company and Diamond State Insurance Company are denied; and it is further

ORDERED that, within 30 days of entry, plaintiff shall serve upon all parties to this action a copy of this decision and order, together with notice of entry.

This constitutes the decision and order of the Court.

DATE: 4/13/07



J.S.C.

H:\Supreme Court\Summary Judgment\Time Warner.Hylan - additional insured - notice.wpd

FILED
APR 26 2007
NEW YORK
COUNTY CLERK'S OFFICE