

**Yoda, LLC v National Union Fire Ins. Co. of
Pittsburgh, P.A.**

2010 NY Slip Op 32552(U)

September 14, 2010

Supreme Court, New York County

Docket Number: 115498/06

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

Index Number : 115498/2006
YODA, LLC
VS.
NATIONAL UNION FIRE
SEQUENCE NUMBER : 013
RENEWAL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

FILED
SEP 15 2010
NEW YORK
COUNTY CLERK'S OFFICE

PAPERS NUMBERED

1, 2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *to argue by plaintiff*
is granted in accordance with the attached
memorandum decision

Dated: 9/14/10


HON. DORIS LING-COHAN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 36

-----x
YODA, LLC, RIVERHEAD POOH, LLC, and
UNITED NATIONAL INSURANCE COMPANY,

Plaintiffs,

Index No.: 115498/06

-against-

DECISION

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA., HAN SOO LEE, and
SOON OK JANG,

Motions Seq. No.: 013

Defendants.

FILED
SEP 15 2010
NEW YORK
COUNTY CLERKS OFFICE

-----x
DORIS LING-COHAN, J.:

Plaintiffs Yoda, LLC (Yoda), Riverhead PooH, LLC (Riverhead) and United National Insurance Company's (United) motion pursuant to CPLR 2221 to reargue their prior cross-motion for summary judgment which resulted in the issuance of this court's order dated July 6, 2010 is granted. Upon reargument, this court's July 6, 2010 decision/order is amended as indicated below.

For the reasons stated by plaintiffs in support of the within motion, the portion of the July 6, 2010 decision/order contained on page 17, which reads as follows, is deemed deleted from the decision/order:

"[f]urthermore, the underlying personal injury lawsuit has been remanded for a new trial, which has yet to take place. In the absence of a jury finding in the

underlying action, any claim of an entitlement to indemnification would be premature.' *Bovis Lend Lease LMB Inc. v Garito Contracting, Inc.*, 65 AD3d 872, 875 (1st Dept 2009); *Crespo v City of New York*, 303 AD2d 166 (1st Dept 2003)".

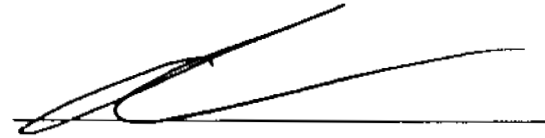
As such, it is

ORDERED that plaintiffs Yoda, LLC (Yoda), Riverhead Pooh, LLC (Riverhead) and United National Insurance Company's (United) motion pursuant to CPLR 2221 to reargue is granted to the extent indicated above; and it is further

ORDERED that the attached amended decision with the above paragraph deleted shall be entered by the Clerk.

ORDERED that within 30 days of entry of this order, plaintiffs shall serve a copy upon defendants, with notice of entry.

Dated: 9/14/10



Doris Ling-Cohan, J.S.C.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 36

-----x
YODA, LLC, RIVERHEAD POOH, LLC, and
UNITED NATIONAL INSURANCE COMPANY,

Plaintiffs,

Index No.: 115498/06

-against-

AMENDED DECISION

NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA., HAN SOO LEE, and
SOON OK JANG,

Motions Seq. No.: 012

Defendants.

-----x
DORIS LING-COHAN, J.:

BACKGROUND

Defendant National Union Fire Insurance Company of Pittsburgh, Pa. (National Union)¹ moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint as against it. Plaintiffs Yoda, LLC (Yoda), Riverhead Pooh, LLC (Riverhead) and United National Insurance Company (United) move, pursuant to CPLR 3212, for a declaration that National Union is obligated to indemnify them in the underlying personal injury action entitled *Lee v Yoda*, Index No. 113585/03, pending in this court, and further seek a declaration that National Union is the second line

¹ National Union is one of the companies that comes under the umbrella of AIG. In their papers, plaintiffs refer to National Union as AIG, but, for the purposes of this decision, and to maintain uniformity with the previous decisions rendered in this action, the defendant insurer is referred to as National Union.

of available coverage, after the primary policy issued by First Specialty Insurance Company (First).

On December 2, 2002, defendant Han Soo Lee (Lee) was allegedly injured while working at a construction site owned by Riverhead, on which Yoda was the general contractor. Queens Stainless was the subcontractor that employed Lee on the site.

In 2003, Lee and his wife, defendant Soon Ok Jang (together, the Lees), instituted the underlying personal injury action, and, after a jury trial, the Lees obtained a judgment against Yoda and Riverhead in the amount of \$1,323,277.93. Motion, Ex. 6. This judgment was subsequently reversed and remanded for a new trial, which has yet to take place.

Yoda and Riverhead have sought defense and indemnity from four different liability insurers, summarized as follows:

1. United issued a primary commercial general liability insurance policy to Yoda for the period in question, providing primary layer coverage up to \$1 million per occurrence. Motion, Ex. 7. Coverage is extended to Yoda, as the primary insured, and to Riverhead as an additional insured. *Id.* American Guarantee issued an excess layer coverage umbrella policy which covered both Yoda and Riverhead for the period in question. Motion, Ex. 8.
2. First issued a primary commercial general liability

insurance policy to Queens Stainless for the period in question, with primary layer coverage of \$1 million per occurrence.

Motion, Ex. 9. Neither Yoda nor Riverhead is listed as an insured or as an additional insured under this policy; however, the policy states that it provides coverage for Queens Stainless for all contracts whereby Queens Stainless is obligated to indemnify another entity. National Union issued an excess layer umbrella policy to Queens Stainless for the period in question, providing for \$2 million in excess layer coverage. Motion, Ex. 10. Neither Yoda, nor Riverhead, is listed as an insured or as an additional insured under the National Union policy, but the policy states that it provides excess coverage for all entities insured under the First policy with Queens Stainless.

Specifically, the National Union policy states, in pertinent part:

"A. We will pay on behalf of the Insured those sums in excess of the total applicable limits of Scheduled Underlying Insurance that the Insured becomes legally obligated to pay as damages provided the damages would be covered by Scheduled Underlying Insurance, except for exhaustion of the total applicable limits of Scheduled Underlying Insurance by the payment of Loss.
B. Coverage A shall follow the terms, definitions, conditions and exclusions of Scheduled Underlying Insurance, subject to the Policy Period, Limits of Insurance, premium and all other terms, definitions, conditions and exclusions of this policy. If any provisions of Scheduled Underlying Insurance conflict with any provisions of this policy, the provisions of this policy will apply.

Further, the First policy extends coverage only to Queens

Stainless, and contains an exclusion which precludes coverage for bodily injury claims for which Queens Stainless is held liable by reason of its assumption of liability in a contract or agreement, except for an insured contract. Motion, Ex. 9.

In 2003, Yoda and Riverhead provided a notice of claim to United, as their primary insurer, and to American Guarantee, as their excess layer umbrella insurer. Motion, Exs. 2, 4, 11 and 12. Neither United, nor American Guarantee, have declined coverage for this claim, and there is no dispute that they provide coverage to Yoda and Riverhead for the Lee claim. United provided defense for Yoda and Riverhead for the Lee lawsuit.

Pursuant to the subcontract between Yoda and Queens Stainless, Queens Stainless agreed to defend and indemnify Yoda and Riverhead in connection with any claims arising out of its work, and further agreed to purchase three types of insurance in connection with the project: workers' compensation, comprehensive general commercial liability, and umbrella liability. There is no evidence that Queens Stainless ever directly advised National Union of these contract obligations. Queens Stainless was never sued in the Lee claim, but was eventually sued by Yoda and Riverhead in a separate action, which was dismissed and not re-instituted until June of 2009.

On July 15, 2003, the law firm providing defense for Yoda and Riverhead sent a letter to Queens Stainless, First (Queens

Stainless' primary insurer) and National Union (Queens Stainless' excess umbrella insurer), tendering the defense and indemnification of the Lee lawsuit. Motion, Ex. 18. Attached to this letter was a "certificate of insurance," indicating that Yoda and Riverhead were additional insureds under the two Queens Stainless policies. *Id.* The "certificate of insurance" had been prepared by Queens Stainless' insurance broker, the Young Insurance Agency (Young), and stated that the certificate had been issued for informational purposes only, that it conferred no rights on the holder, and that it did not alter the terms of the insurance policies themselves. *Id.*

Plaintiffs contend that, pursuant to its contractual obligations, Queens Stainless undertook all of the appropriate procedures to have Yoda and Riverhead added to its policies as additional insureds. Queens Stainless contacted Young, its insurance broker, to see that Yoda and Riverhead were included as additional insureds on its policies. Young contacted Buckingham Badler Associates (BBA), the insurance agent who helped Young set up the policy with First, requesting that Yoda and Riverhead be added as additional insureds under the First policy. *Aff. of Young Choi*, ¶ 7. Young states that he contacted BBA because it was his understanding that BBA was an agent of National Union and could bind Yoda and Riverhead as additional insureds. *Id.*, ¶ 8. Young says that, after several telephone conversations with BBA,

as well as four faxes that he sent to BBA requesting that Yoda and Riverhead be added to the Queens Stainless policy as additional insureds, he was assured that Yoda and Riverhead were included as additional insureds. *Id.*, ¶ 9 and Ex. B. Young further states that, based on these telephone conversations, he issued the certificate of insurance naming Yoda and Riverhead as additional insureds, and, that after the underlying personal injury action was commenced, he notified BBA requesting that Queens Stainless' insurers defend and indemnify Yoda and Riverhead. *Id.*, ¶ 10-12.

BBA has testified that it took the appropriate steps to see that Yoda and Riverhead were added as additional insureds under the First and National Union policies. Motion, Ex. 46. However, even though in a business record dated June 23, 2006, the BBA adjuster working on the claim stated that BBA still did not have an endorsement on file for these additional insureds, according to the testimony of BBA's representative, BBA was not concerned about this because National Union never asks about additional insured endorsements because they follow automatically from the primary policy, in this case, the First policy. Reply Aff., Ex. 81.

It is noted that on the BBA website, BBA states that National Union is one of the insurance companies that it represents, and the National Union website states that BBA

represents it with regard to commercial general insurance and umbrella policies. Cross motion, Ex. E.

National Union asserts that the certificate was in error, because it never listed Yoda or Riverhead as additional insureds under its policy with Queens Stainless. Further, National Union maintains that there is no evidence that Queens Stainless itself ever notified First or National Union about the first Lee action.

The initial lawsuit filed by the Lees was abandoned in July, 2003, and a second action against Yoda, Riverhead and other defendants was filed on or about July 25, 2003. Queens Stainless was not sued in either action.

On or about June 23, 2003, defense counsel wrote directly to Queens Stainless, tendering the defense and indemnification of Yoda to Queens Stainless pursuant to their contractual insurance obligations. Cross Motion, Ex. G.

On July 15, 2003, defense counsel again tendered the defense and indemnity to Queens Stainless and to Queens Stainless' insurers, First and National Union. This letter contained a copy of the certificate of insurance. Cross Motion, Ex. H.

On August 18, 2003, the law firm defending the second action instituted by the Lees again sent a tender letter to Queens Stainless, First and National Union, informing them that the Lees had instituted a second lawsuit. Motion, Ex. 21.

Plaintiffs state that National Union never responded to any

of these tender letters. According to Holly Weatherby, National Union's adjuster, neither Queens Stainless, nor National Union, accepted the second tender. Weatherby Aff., ¶ 8. First accepted the tender and agreed to the defense and indemnification of Yoda and Riverhead in the second Lee suit, even though, allegedly, neither Yoda nor Riverhead were insureds or additional insureds under the First policy. First took over the defense from United.

However, even though National Union did not accept the tender letter, it did set up a claims file to monitor the status of the case. Cross Motion, Exs. K and L. It is noted that plaintiffs allege that Weatherby orally agreed, in a telephone conversation, that National Union was covering the Lee claim, but Weatherby denies this assertion, and states that, based on the allegedly incorrect certificate of insurance, she indicated that she thought that National Union was an excess carrier for the occurrence, whose coverage would not be triggered until the primary insurance was exhausted. *Id.*, ¶¶ 8-9. In the National Union case file on this matter, a note is included indicating that the National Union policy would attach at the \$1 million dollar mark, the cap on the First policy. Cross Motion, Ex. L.

United contends that, based on a telephone conversation with Weatherby, Weatherby indicated that National Union accepted the tender letter, an assertion Weatherby denies. *Id.*, ¶ 16. However, on September 12, 2003, National Union assigned the claim

to one of its examiners. Cross Motion, Ex. C. According to the National Union manager who set up the file and assigned the case, the file was created so that National Union could promptly evaluate coverage. Cross Motion, Ex. K.² The manager also stated, in his deposition, that a coverage position letter should have been sent out promptly in 2003. *Id.* at 160-161.

The case file was subsequently assigned to various National Union adjusters, and a case file note, dated September 9, 2004, states that First had accepted the tender from Yoda and Riverhead pursuant to Queens Stainless' contractual indemnity agreement and the additional insured status of those parties. Cross Motion, Ex. R.

The National Union case file indicates that, on August 19, 2005, Weatherby sent a request to National Union's Reinsurance Claims Unit for information regarding reinsurance available under the National Union policy issued to Queens Stainless, indicating that National Union's exposure was \$2 million, and, on August 23, 2005, Weatherby received a response that the first \$2 million was net. Cross Motion, Ex. Q. Plaintiffs assert that these case file notes indicate National Union's understanding that it would be responsible to indemnify Yoda and Riverhead after the First policy was exhausted.

² This file indicates that there might be an exclusion based on the employer's negligence, but this exclusion was subsequently denied by the Appellate Division, 50 AD3d 492 (1st Dept 2008).

National Union maintains that the first report that it received regarding the underlying personal injury action was dated October 12, 2005, sent by defense counsel in the underlying Lee lawsuit, addressed to First, with copies sent to National Union and United. Over the next six months, National Union continued to monitor the course of the Lee lawsuit and continued to receive copies of written reports sent by defense counsel. In November, 2005, the National Union adjuster, Yara Mouded (Mouded), requested copies from defense counsel of the Yoda and Riverhead insurance policies to determine whether Yoda and/or Riverhead had their own insurance covering the occurrence. Mouded Aff., ¶ 11. Eventually, on January 30, 2006, Mouded was informed, allegedly falsely, that neither Yoda nor Riverhead, had excess insurance coverage. *Id.*, ¶¶ 20-22.

On January 4, 2006, Mouded sent a report to her supervisors that concluded as follows:

"[t]his is what we know for sure: the [National Union] excess policy comes before Yoda's United primary policy. Our excess policy is follow form to our insured's primary policy with Specialty lines and Yoda and Riverhead Pooh are likely insureds under our policy therefore, it appears that the coverage tower is as follows: 1) Our insured's \$1M primary; then 2) then either: our insured's \$2M [National Union] excess policy, or Riverhead Pooh's primary (if they have one), then 3) our [insured's] \$2M [National Union] excess policy, or Riverhead Pooh's primary, then 4) Yoda's primary [with] United National."

Cross Motion, Ex, HH.

On April 4, 2006, a mediation was held on the underlying

claim. National Union attended the mediation session, but, according to Mouded, prior to the mediation, she and the First adjuster agreed that First would not have to attend the mediation; that Mouded would attend the mediation; that First would offer its \$1 million dollar cap at the mediation to settle the underlying claim; and that Mouded was authorized by First to make the offer on First's behalf. *Id.*, ¶¶ 23-24. Mouded also stated that this authorization was for the mediation session only, and that, at no time, did she, nor National Union, ever accept a tender of the defense or indemnification of the Lee claim. *Id.*, ¶ 23.

At the mediation, First's offer was rejected, and the mediation ended. *Id.*, ¶ 24. On April 14, 2006, Mouded received a telephone call from Lee's counsel, which, Mouded says, was for the purpose of trying to settle the Lee claim. *Id.*, ¶ 25. Three days later, Mouded received a letter from one of Lee's attorneys who indicated in the letter that Mouded had represented that National Union would pay its policy limits before United would have to pay anything. Motion, Ex. 56. Mouded responded in a letter denying that National Union had made any representation regarding the priority of coverage. Motion, Ex. 57.

Allegedly, in June of 2006, Mouded, for the first time, discovered that neither Yoda, nor Riverhead, was an additional insured under the First or National Union policies issued to

Queens Stainless. Mouded Aff., ¶ 28. Mouded spoke to First's adjuster about her discovery, and sent follow-up letters on this issue to First and the other parties involved in the case. *Id.*, ¶¶ 28, 29 and 30; Motion, Exs. 59 and 79.

In October, 2006, Yoda and Riverhead commenced a suit against Queens Stainless, which action was eventually discontinued. Motion, Exs. 60 and 61. When Queens Stainless was sued, it sent a written notice of claim to National Union, dated November 16, 2006. Motion, Ex. 20. National Union asserts that this notice of claim was the first notice provided to it by Queens Stainless regarding the Lee matter. Mouded Aff., ¶ 33.

On December 1, 2006, National Union issued a disclaimer letter to Queens Stainless in response to the November 16, 2006, notice of claim. Motion, Ex. 63. Copies of the disclaimer were sent to Yoda, Riverhead and United's counsel. Motion, Ex. 63.

In October, 2006, Yoda, Riverhead, and United commenced the instant insurance coverage action against National Union and the Lees. The complaint seeks a declaratory judgment that National Union is obligated to cover the Lee claim, asserting: (1) that the Lee claim is a covered event; (2) that no exclusion applies to the occurrence; (3) that National Union has a statutory duty, pursuant to Insurance Law § 3420 (d) to issue a disclaimer letter in a timely manner, which it failed to do; and (4) that National Union should be equitably estopped from declining coverage

because the disclaimer was untimely.

In late 2006, National Union moved to dismiss this action, which was initially denied and plaintiffs' cross motion for summary judgment was granted. *Yoda v. National Union Fire Ins. Co. of Pittsburgh, P.A.*, 14 Misc 3d 1201(A), 2006 WL 3615293 (Sup. Court, New York County 2006). The Appellate Division, First Department, modified such order, ruling that the granting of summary judgment was premature, as discovery had yet to be conducted. *Yoda v. National Union Fire Ins. Co. of Pittsburgh, P.A.*, 50 AD3d 492 (1st Dept 2008). A second round of dispositive motions took place in mid-2008, in which National Union sought partial summary judgment, which were denied and affirmed by the Appellate Division, holding that all discovery should be completed before proceeding to summary judgment. *Yoda v. National Union Fire Ins. Co. of Pittsburgh, P.A.*, 63 AD3d 424 (1st Dept 2009). The instant motions were filed at the termination of all discovery.

In June 2009, Yoda and Riverhead filed a second suit against Queens Stainless, mirroring the allegations that appeared in the first, discontinued, litigation against Queens Stainless. Motion, Ex. 60. Queens Stainless did not notify National Union of this second suit, which, allegedly, National Union found out about from a third party. On October 26, 2009, National Union issued a disclaimer letter to Queens Stainless in connection with

this second suit against it, based on the employer's liability exclusion appearing in the policy and breach of the policy's timely notice provision. Motion, Ex. 72.

In March of 2007, First moved, in the Lee lawsuit, to have United and National Union declared obligated to defend Yoda and Riverhead. Motion, Ex. 75. This motion was denied on March 13, 2008. Motion, Ex. 44. First is continuing to defend in the Lee lawsuit, which is expected to go to trial for the second time sometime in 2010.

National Union's primary contention herein is that it is not liable for the indemnification of any liability incurred by Yoda or Riverhead in the underlying personal injury action because neither was named as an insured or as an additional insured under either its policy with Queens Stainless or the First policy with Queens Stainless. In opposition, plaintiffs assert that, because National Union participated in the underlying action for years, both monitoring its progress and attending the mediation, it is estopped from denying coverage.

DISCUSSION

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case [internal quotation marks and citation omitted]." *Santiago v Filstein*, 35 AD3d 184, 185-186

(1st Dept 2006). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006); see *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied. See *Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 (1978). Applying such principles herein, National Union's motion and plaintiffs' cross motion are each denied.

The crux of National Union's argument is that it is not required to defend or indemnify Yoda and/or Riverhead because neither one is named as an additional insured on its excess insurance policy with Queens Stainless, and because their names being on the certificate of insurance is insufficient to render National Union liable.

As a general rule,

"[a] certificate of insurance listing the plaintiff[s] as an additional insured [is] insufficient to alter the language of the policy itself, especially since the certificate recited that it was for informational purposes only, that it conferred no rights upon the holder, and that it did not amend, alter, or extend the coverage afforded by the policy."

School Construction Consultants, Inc. v ARA Plumbing & Heating Corp., 63 AD3d 1029, 1030 (2d Dept 2009). However, whereas a certificate of insurance standing alone is not conclusive proof of coverage, it is evidence of a carrier's intent to provide

coverage, and, along with other factors, may be sufficient to bind the insurer. See *Kermanshah Oriental Rugs, Inc. v Gollender*, 47 AD3d 438 (1st Dept 2008). For example, if the insurance broker can be shown to have the authority to bind the carrier, the insurer may be estopped from denying coverage. *Tribeca Broadway Associates, LLC v Mount Vernon Fire Insurance Co.*, 5 AD3d 198 (1st Dept 2004). Also, whereas an equitable estoppel cannot be used to create coverage where none exists (*Federated Department Stores, Inc. v Twin City Fire Insurance Co.*, 28 AD3d 32 [1st Dept 2006]), if the insurer was in a position to know that the claimants were not covered by the policy in question, but participated in the underlying action, it may be estopped from denying coverage. See *Utica Mutual Insurance Co. v 215 W. 91st Street Corp.*, 283 AD2d 421 (2d Dept 2001).

Subsequent to the submission of the instant motion papers, National Union, with leave of court, submitted a recent Second Department decision, which, it contends, reinforces its position. The court disagrees.

The case provided by National Union is *Essex Insurance Company v Michael Cunningham Carpentry*, 2010 WL 2200712, 2010 NY Slip Op 04732 (2d Dept 2010). In that case, the Court found for the insurance company, after stating that the defendant was neither an insured, nor an additional insured under the subject

policy. However, that court was not presented with the additional facts present in the case at bar, which have been addressed by the Appellate Division, First Department, in considering the parties' previous motions, in which it stated:

"there are questions concerning, for instance, the parties' intentions, the terms of the subcontract, and National Union's delay in disclaiming while monitoring the underlying Labor Law litigation, which preclude a determination as a matter of law that Yoda and Riverhead were not additional insureds, even in the absence of an explicit listing of their names on the umbrella policy."

Yoda, LLC v National Union Fire Insurance Company of Pittsburgh, Pa., 50 AD3d 492, 492 (1st Dept 2008). Therefore, the instant matter presents facts that were either not addressed or not present in the *Essex Insurance Company* case..

Moreover, even though discovery in this action is now complete, the same questions still remain unanswered with respect to the parties' intentions and beliefs, and whether BBA had the authority, express or apparent, to bind National Union, thereby making Yoda and Riverhead additional insureds under the Queens Stainless policy. Therefore, because material questions of fact exist, the court is precluded from granting summary judgment.

CONCLUSION

Based on the foregoing, it is

ORDERED that defendant National Union Fire Insurance Company of Pittsburgh, Pa.'s motion for summary judgment is denied; and it is further

ORDERED that plaintiffs' cross motion is denied; and it is further

ORDERED that within 30 days of entry of this order, plaintiffs shall serve a copy upon defendants, with notice of entry.

Dated: 9/14/10



Doris Ling-Cohan, J.S.C.

J:\Summary Judgment\Yoda.amended.wpd

FILED
SEP 15 2010
NEW YORK
COUNTY CLERK'S OFFICE