

**Bovis Lend Lease LMB, Inc. v St. Paul Fire & Mar.
Ins. Co.**

2011 NY Slip Op 30763(U)

March 31, 2011

Supreme Court, New York County

Docket Number: 108564/06

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 35

Index Number : 108564/2006
BOVIS LEND LEASE LMB
vs.
TRAVELERS INSURANCE
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 11/18/10
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-3
4-8
9-10

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ^{and city of NY} this motion is decided in accordance with the annexed memorandum decision, order declaration and judgment.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 3/31/11

JANE S. SOLOMON 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 STATE OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----x
BOVIS LEND LEASE LMB, INC., J.C. PENNEY
CORPORATION, INC., NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA, and
ZURICH AMERICAN INSURANCE COMPANY,

Plaintiffs,

Index No. 108564/06

-against-

Motion Sequence
Numbers 002 and 003

ST. PAUL FIRE & MARINE INSURANCE COMPANY
(related to an underlying action entitled
94-11 59th Avenue Corp. v Macerich Queens
Expansion LLC aka Macerich Company, et al),

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk
and notice of entry cannot be based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Defendant,
-----x

SOLOMON, J.:

This action involves an insurance coverage dispute arising
in connection with a property damage claim. The plaintiffs are
Bovis Lend Lease LMB, Inc. (Bovis), J.C. Penney Corporation, Inc.
(JCP), as well as their insurers, National Union Fire Insurance
Company of Pittsburgh, PA and Zurich American Insurance Company
(collectively, Plaintiffs). The defendant is St. Paul Fire &
Marine Insurance Company (St. Paul), which issued insurance
policies to Ruttura & Sons Construction Co., Inc. (Ruttura) and
Underpinning and Foundation Constructors, Inc. (Underpinning),
the relevant non-parties to the instant action.

Plaintiffs seek summary judgment and a declaration that St.
Paul is obligated to defend and indemnify Bovis and JCP in
connection with the property damage claim asserted by 94-11 59th

Avenue Corporation (94-11) in an underlying lawsuit,¹ in accordance with the terms of the insurance policies St. Paul issued to Ruttura and Underpinning (motion sequence number 002). St. Paul's motion seeks dismissal of Plaintiffs' amended complaint, and a declaration that it is not obligated to defend and indemnify Bovis and JCP in the underlying lawsuit (motion sequence number 003).

The motions are consolidated for disposition. For the reasons stated, Plaintiffs' motion is denied, and St. Paul's motion is granted.

Background

In the underlying action, 94-11 seeks compensation for damages to its building, sustained between early 2003 and late 2004 as a result of construction work on a JCP store located at the Queens Center Mall in Elmhurst, Queens, New York (the Project) (see, Sabillon Affirmation, Exhibit A [the 94-11 Complaint]). In January 2006, Bovis and JCP commenced a third-party action against Ruttura, a subcontractor on the Project (Sabillon Aff., ¶ 5, Exhibit B [the Third-Party Complaint]).

The pertinent documentary evidence is as follows. Pursuant to a construction management agreement dated as of March 5, 2003, JCP, as owner, retained Bovis for the Project (Sabillon Aff., ¶

¹ The underlying lawsuit is entitled *94-11 59th Avenue Corporation v Macerich Queens Expansion LLC et al.* (Sup. Court, Queens County, index number 11275/05).

6, Exhibit C). By an agreement dated January 22, 2003, Bovis subcontracted excavation, foundation and pile driving work to Ruttura (Sabillon Aff., ¶ 7, Exhibit D [the Bovis-Ruttura Subcontract]). Ruttura in turn subcontracted pile driving work to Underpinning (Sabillon Aff., ¶ 8, Exhibit E [the Ruttura-Underpinning Subcontract, dated March 10, 2003]).

Ruttura obtained commercial general liability insurance coverage under insurance policies issued by St. Paul for the years 2002-2003, 2003-2004 and 2004-2005 (Sabillon Aff., Exhibits 1-3 [the Ruttura Policies]). In accordance with the policy endorsements, St. Paul agreed to provide coverage to an "additional protected person," which was defined as "any Person or Organization who requires that you [Ruttura] add them as an additional protected person in written or oral contract with you" (*id.*, Exhibits 4-6 [the Ruttura Policy Endorsements]). St. Paul also issued to Underpinning both a commercial general liability insurance policy (Sabillon Aff., Exhibit 7 [the Underpinning Policy]) and an excess liability policy (Sabillon Aff., Exhibit 8 [the Underpinning Excess Policy]) for the period of August 31, 2002 to August 31, 2003.

Soon after construction began, the manager of 94-11 wrote to Macerich Company (Macerich),² advising that vibrations from the

² Macerich, JCP, Underpinning, among others, are defendants named in the related underlying action commenced by 94-11.

excavation work had damaged 94-11's building; enclosed with the letter were an inspection report and a notice of violation by the New York City Department of Buildings (Sabillon Aff., ¶ 15, Exhibit G). Macerich wrote back, stating that although it had done excavation work in the area recently, the vibrations complained of were caused by JCP and Bovis; by letter dated June 10, 2003, Macerich sent 94-11's correspondence to JCP, which, in turn, forwarded it to Bovis (Sabillon Aff., ¶ 16, Exhibit H). By letter dated June 19, 2003, Bovis forwarded the material to Ruttura and demanded that Ruttura indemnify Bovis and JCP with respect to 94-11's claim (Sabillon Aff., ¶ 17, Exhibit I). Ruttura faxed the documentation to Underpinning (Sabillon Aff., ¶ 18, Exhibit J). Upon receiving it, Underpinning notified its insurance broker, Allied, of the claim, and on July 28, 2003, Allied faxed it to St. Paul (Sabillon Aff. ¶ 23, Exhibit O). By letter to Ruttura dated August 26, 2003, copied to Bovis, St. Paul acknowledge receipt (Sabillon Aff., ¶ 24, Exhibit P). By letter dated September 17, 2003, St. Paul asked Bovis for any vibration studies that were conducted at the Queens Center Mall, in connection with Underpinning's pile driving operations (Sabillon Aff., ¶ 26, Exhibit S). It appears that this chain of notification pertains only to the Underpinning Policy (see *infra*, 13-17).

Subsequent to the receipt of 94-11's summons and complaint

(dated May 11, 2005) filed in the Queens County Supreme Court, AIG Claim Services (AIGCS), on behalf of Bovis/JCP, notified St. Paul by letter dated July 7, 2005 of the 94-11 action, and demanded that Bovis/JCP be defended and indemnified according to the insurance policies issued by St. Paul to Underpinning (*id.*, ¶ 27, Exhibit T). By letter dated November 8, 2005, AIGCS, on behalf of Bovis, wrote to Ruttura demanding that Ruttura defend and indemnify Bovis/JCP as additional insureds under the Ruttura Policies. On November 29, 2005, Allied, on behalf of Ruttura, forwarded the AIGCS letter and documentation to St. Paul (Kokalas Affirmation, Exhibit L; Jacks Affidavit, ¶ 6). By reply letter dated December 1, 2005, St. Paul advised AIGCS that St. Paul would disclaim coverage as to Plaintiffs under the Ruttura Policies due to, *inter alia*, their failure to comply with the notice provisions of the Ruttura Policies (Jacks Affidavit, ¶ 7, Exhibit M).

As a result, Plaintiffs brought this action on June 20, 2006 for a declaration that St. Paul is obligated to defend and indemnify Plaintiffs against 94-11's claims (Sabillon Affirmation, ¶ 29, Exhibit U [Plaintiffs' Supplemental Summons and Amended Complaint]).

Discussion

As a threshold matter, St. Paul argues that Plaintiffs' motion for summary judgment must be denied because it is

supported only by an attorney's affirmation, i.e., the Sabillon Affirmation, and not by an affidavit from an individual with personal knowledge of the facts and contracts at issue (St. Paul's Opposition Brief, at 8). The argument is unpersuasive. Contrary to St. Paul's assertion, a plaintiff can establish "a prima facie case through the affirmation of its attorney based upon documentary evidence" (*Eldon Group America, Inc. v Equiptex Indus. Prods. Corp.*, 236 AD2d 329, 329 [1st Dept 1997][citations omitted]; see also *Prudential Sec. v Rovello*, 262 AD2d 172, 172 [1st Dept 1999], citing *Zuckerman v City of New York*, 49 NY2d 557, 563 [1980]).

Accordingly, Plaintiffs' motion for summary judgment cannot be defeated simply because they submitted only an attorney's affirmation in support. Instead, the sufficiency of the documentary evidence annexed to the Sabillon Affirmation will be analyzed to determine whether Plaintiffs are entitled to summary judgment.

The Bovis-Ruttura Subcontract and The Ruttura Policies

Plaintiffs assert that Bovis and JCP should be defended and indemnified by St. Paul pursuant to the terms of the Ruttura Policies. It is axiomatic that a court must first look to the language of the insurance policy before determining a coverage dispute (*Raymond Corp. v National Union Fire Ins. Co.*, 5 NY3d

157, 162 [2005]). Unambiguous provisions of an insurance contract should be interpreted according to their plain and ordinary meaning (*Teichman v Community Hosp. Of W. Suffolk*, 87 NY2d 514, 520 [1996]), and "the interpretation of such provisions is a question of law for the court" (*Mazzuocolo v Cinelli*, 245 AD2d 245, 246 [1st Dept 1997]).

The Bovis-Ruttura Subcontract provided, in relevant part, that "Subcontractor [Ruttura] shall obtain and maintain ... at least the insurance coverage specified in Exhibit C attached hereto," and that Ruttura shall furnish to Bovis a certificate of insurance that shall "name Contractor [Bovis], Owner [JCP], and any other parties ... as additional insureds under the policies required in Exhibit C" (Bovis-Ruttura Subcontract, Article 11). In turn, Exhibit C to the Subcontract specified that Ruttura shall provide insurance as follows: "Commercial General Liability with a combined single limit ... of at least \$5,000,000 per occurrence ... endorsement naming [JCP] and [Bovis] and any other entity required in the Owner/Contractor Agreement as Additional Insureds" (Sabillon Aff., Exhibit C, ¶ 2). Pursuant to policy endorsements, St. Paul agreed to provide insurance coverage to an "additional protected person," which was defined as "any Person or Organization who requires that you [Ruttura] add them as an additional protected person in written or oral contract with you." Also, the Subcontract required Ruttura to indemnify Bovis

and JCP from liabilities (Bovis-Ruttura Subcontract, Article 12). Based on the foregoing unambiguous provisions of the Bovis-Ruttura Subcontract and the Ruttura Policies, St. Paul is obligated to defend and indemnify Bovis and JCP, as additional insureds, against the property damage claim of 94-11, unless St. Paul is contractually or otherwise legally entitled to disclaim insurance coverage.

Though not specifically disputing that Bovis and JCP are additional insureds, St. Paul argues that it is not required to extend coverage to Bovis and JCP because they did not comply with the notice provisions of the Ruttura Policies, which stated, in part, that "if an accident or incident happens that may involve liability protection provided in this policy, [Ruttura] or any other protected person involved must ... tell us [St. Paul] ... what happened as soon as possible" (Jacks Affidavit, ¶ 3 [citing policy provisions and referencing Exhibits A-2, B and C-2 annexed thereto][emphasis added]). The provisions further stated that: "Do this even though no demand for damages has been made against you or any other protected person, but you or another protected person is aware of having done something that may later result in a demand for damages." (*Id.* [emphasis added]). In view of these provisions, St. Paul contends that, although Bovis and JCP were aware of 94-11's claim in June 2003, they did not notify St. Paul of the claim until November 2005, when St. Paul received the

letter sent by AIGCS to Ruttura, which constituted "the first tender or request for coverage by or on behalf of [Bovis/JCP] as claimed additional insureds" (*id.*, ¶ 6). Apparently, Ruttura received AIGCS' letter and sent it to Allied, Ruttura's insurance broker, which, in turn, forwarded the letter to St. Paul (*id.*).

Under the notice provisions, it is clear that St. Paul may be given notice either by the insured (Ruttura) or the additional insureds (Bovis/JCP). "Even if the insurance policy were construed as specifying that only the named insured ... was required to provide notice of occurrences ... the duty to give reasonable notice as a condition of recovery is implied in all insurance contracts ... and is applicable to an additional insured" (*Structure Tone v Burgess Steel Prods. Corp.*, 249 AD2d 144, 145 [1st Dept 1998] [internal citations omitted]; see also *City of New York v St. Paul Fire and Marine Ins. Co.*, 21 AD3d 978, 981 [2d Dept 2005] ["fact that insurer may have received notice of the claim from the primary insured ... does not excuse additional insured's failure to provide notice"]).

In this case, it is undisputed that Ruttura's broker gave notice of 94-11's claim to St. Paul almost 30 months after 94-11 first notified Plaintiffs of its claim (*2130 Williamsbridge Corp. v Interstate Indemn. Co.*, 55 AD3d 371 [1st Dept 2008] [seven month delay was unreasonably late]; *Ocean Partners, LLC v North River Ins. Co.*, 25 AD3d 514 [1st Dept 2006] [28 month delay was

unreasonably late]; *Natural Stone Indus., Inc. v Utica Natl. Assur. Co.*, 38 AD3d 862 [2d Dept 2007][notice given six months after was deemed late]). Plaintiffs also fail to explain why they waited six months from receipt of 94-11's summons and complaint to notify St. Paul of that lawsuit. Where there is no excuse or mitigating factor, relatively short time periods of delay are deemed unreasonable as a matter of law (see, e.g., *Deso v London & Lancashire Indem. Co.*, 3 NY2d 127 [1957][51 days]; *Goodwin Bowler Assoc. v Eastern Mut. Ins. Co.*, 259 AD2d 381 [1st Dept 1999][two months]).

On the other hand, courts have noted that, even where an additional insured or coinsured has an independent obligation to give notice to the insurer, notice from the insured could be deemed notice by the additional insured or coinsured, if their interests are not adverse in the underlying action (23-08-18 *Jackson Realty Assoc. v Nationwide Mut. Ins. Co.*, 53 AD3d 541, 543 [2d Dept 2008][notice to insurer by an insured would be deemed notice on behalf coinsured only when they were united in interest]; *Travelers Ins. Co. v Volmar Constr. Co.*, 300 AD2d 40, 44 [1st Dept 2002][same]). In view of Plaintiffs' third-party action against Ruttura in the underlying action, they are adverse (Sabillon Aff., Exhibit B [third-party complaint]).

Plaintiffs also argue that St. Paul had notice of 94-11's claim as early as August 2003, when it received notice from

Underpinning. This argument does not advance their claim because notice given in connection with the Underpinning Policy is not sufficient to provide notice under the Ruttura Policies (see, *Sorbara Constr. Corp. v AIU Ins. Co.*, 11 NY3d 805, 806 [2008]).

Notwithstanding the foregoing, Plaintiffs contend that since St. Paul has been defending Ruttura, but not Plaintiffs, in the underlying action, St. Paul should be estopped from providing "disparate treatment" to the insured and the additional insureds, when both purportedly were late in giving notice (Plaintiffs' Brief, at 12-13). Here, Plaintiffs rely on *City of New York v Investors Ins. Co. of America* (287 AD2d 394 [1st Dept 2001]), where the court stated that "having covered this same claim on behalf of the City's co-insured, defendant Alliance for Progress, Investors is now equitably estopped from denying coverage to the City" (*id.* at 395).

Plaintiffs' reliance on *City of New York* is misplaced. The ruling was based on *National Cas. Co. v State Ins. Fund* (227 AD2d 115 [1st Dept 1996]), a decision dealing with the anti-subrogation rule, which prohibits an insurer from seeking subrogation against its insured for a claim arising from the very risk for which the insured is covered. However, the instant case does not involve the anti-subrogation rule. Thus, the "equitable estoppel" doctrine mentioned in the court's short decision is not relevant. Indeed, the words "disparate treatment," as used by

Plaintiffs to support their contention, do not appear in the decision.

Notably, the same argument was made in *Bovis Lend Lease LMB, Inc. v Travelers Prop. Cas. Co. of Am.* (78 AD3d 405 [1st Dept 2010]). A copy of the Bovis appellate brief from that action is annexed as "Exhibit 1" to the Kokalas Reply Affirmation, dated November 30, 2010 (the Bovis Appellate Brief). In that case, Bovis was the construction manager for the City of New York, and Bovis and the City were named as additional insureds under an insurance policy issued by Travelers to its insured, Enclos Corp., the subcontractor. Travelers agreed to defend the City, but not Bovis, in an underlying action where both Bovis and the City provided late notice of the claim. After the trial court declared that Travelers had no duty to defend Bovis against the underlying claim, Bovis appealed, arguing that Travelers should be estopped from engaging in disparate treatment of its insureds, and cited to *City of New York, supra*, for support (Bovis Appellate Brief, at 18-20). The trial court's decision was affirmed, the appellate court stated that Bovis was required to give its own timely notice, and that its failure to do so vitiated coverage (*Bovis*, 78 AD3d at 405-406). Because, in its decision, the appellate court did not address the "disparate treatment" argument, it impliedly rejected the argument in favor of the long-established principle that the additional insureds or

coinsureds have independent notice obligations, and the failure to do so timely relieves the insurer of its obligation under the insurance contract.

Here, because the undisputed facts reflect Plaintiffs failure to timely notify St. Paul of 94-11's claim, and without any justifiable excuse having been advanced, summary judgment should be granted to St. Paul dismissing Plaintiffs' complaint, and declaring in St. Paul's favor that it has no obligation to defend or indemnify Plaintiffs under the Ruttura Policies.

The Ruttura-Underpinning Subcontract and The Underpinning Policy

Plaintiffs argue that the Ruttura-Underpinning Subcontract incorporated by reference the terms and provisions of the Bovis-Ruttura Subcontract, including those for insurance procurement and indemnification, so that Underpinning was required to procure insurance for Bovis/JCP as additional insureds under its policy with St. Paul. Bovis/JCP further contend that, as additional insureds under the Underpinning Policy, they are entitled to a defense and indemnification from St. Paul in the 94-11 lawsuit.

A review of the Ruttura-Underpinning Subcontract, however, does not support Plaintiffs' assertion that Underpinning had contractually agreed to provide insurance coverage for Bovis/JCP. First, unlike the Bovis-Ruttura Subcontract that unambiguously required Ruttura to procure insurance in favor of Bovis/JCP

pursuant to the specified terms in its "Exhibit C", the Ruttura-Underpinning Subcontract did not specify the required terms or limits of liability. Specifically, even though section 9.2.2 of the Subcontract stated that the "Subcontractor [Underpinning] shall maintain at least the limits of liability in a company satisfactory to the Contractor [Ruttura] as set forth in Exhibit ___", no exhibit addresses the insurance coverage; the Subcontract only set forth the scope of work for the Project. Moreover, the Subcontract stated that Underpinning was only required to "purchase and maintain insurance that will protect it [i.e., Underpinning] from claims arising out of its operations under this Agreement ..." (Ruttura-Underpinning Subcontract, § 9.2.1). Based on the foregoing, it is clear that Underpinning was not required to procure insurance coverage for Bovis/JCP.

Plaintiffs nonetheless argue that the Ruttura-Underpinning Subcontract contained other provisions that required Underpinning to obtain insurance for Bovis/JCP, pointing to the following: (1) section 2.3 of the Subcontract, stating that "Contractor [Ruttura] shall make available to Subcontractor [Underpinning] ... copies of the Subcontract Documents to which the Subcontractor will be bound," and the Subcontract Documents included, inter alia, "this Agreement, the Owner-Contractor agreement [the CM Agreement]"; (2) section 3.1 stated that "Subcontractor [Underpinning] hereby assumes towards the

Contractor [Ruttura] all the same obligations, rights ... that the Contractor [Ruttura] assumes toward the Owner [Bovis]"; and (3) Article 11 of the Bovis-Ruttura Subcontract required Ruttura to procure insurance for Bovis/JCP, as specified in its Exhibit C. Plaintiffs contend that since Ruttura was obligated to obtain insurance for Bovis/JCP pursuant to its subcontract with Bovis, that obligation was incorporated by reference into the Ruttura-Underpinning Subcontract (Sabillon Reply Affirmation, ¶¶ 5-8).

This argument is unpersuasive. First, section 2.3 of the Ruttura-Underpinning Subcontract pertained only to the scope of work to be performed, as the caption for Article 2 of the Subcontract (Scope of Work) indicated. Next, the obligations noted in section 3.1 only "apply to the work of the Subcontractor [Underpinning]," as indicated in the sentence preceding the one quoted by Plaintiffs. There is no implicit or explicit reference to the obligation of obtaining insurance coverage. Indeed, the law is clear in New York that "incorporation clauses in a construction subcontract, incorporating prime contract clauses by reference into a subcontract, bind a subcontractor only as to the prime contract provisions relating to the scope, quality, character and manner of the work to be performed" (*Bussanich v 310 E. 55th St. Tenants*, 282 AD2d 243, 244 [1st Dept 2001]). Parties who claim themselves to be insureds have the burden of proving that they are covered by the insurance policy, but

Plaintiffs have not met that burden (*see, Tribeca Broadway Assoc. v Mount Vernon Fire Ins. Co.*, 5 AD3d 198, 200 [1st Dept 2004]; and *Moleon v Kreisler Borg Florman Gen. Constr. Co.*, 304 AD2d 337, 339 [1st Dept 2003]).

Plaintiffs last contend that the certificate of insurance issued by Underpinning's insurance broker, Allied, served as "further evidence of Underpinning's intent to incorporate the insurance procurement provisions of the Bovis-Ruttura subcontract" (Sabillon Reply Affirmation, ¶ 9). This contention is without merit. Notably, the referenced certificate of insurance contains, in bold letters, the following disclaimer: "THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW." It also is noteworthy that the insurance policy referenced in the certificate was for the policy period of 8/31/03-8/31/04, but Plaintiffs seek coverage pursuant to the Underpinning Policy for the period 8/31/02-8/31/03. In any event, an informational certificate of insurance confers no rights on the holder, even if it purports to name such holder as an additional insured, when the insurance policy itself made no provision for coverage (*Moleon v Kreisler Borg Florman Gen. Constr. Co.*, 304 AD2d at 339; and *see ALIB, Inc. v Atlantic Cas. Ins. Co.*, 52 AD3d 419 [1st Dept 2008]).

Based on the foregoing, Plaintiffs are not entitled to recover from St. Paul on account of the Underpinning Policy.

Accordingly, it hereby is

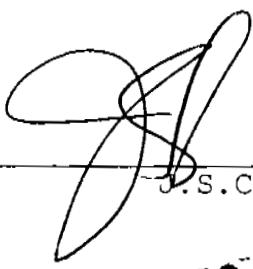
ORDERED that plaintiffs' motion for summary judgment (motion sequence number 002) declaring that St. Paul Fire and Marine Insurance Company (St. Paul) is obligated to defend, indemnify and reimburse plaintiffs in connection with the underlying lawsuit according to the terms of the applicable insurance policies issued by St. Paul is denied; and it is further

ORDERED that St. Paul's motion for summary judgment (motion sequence number 003) is granted and the complaint of plaintiffs is dismissed with costs and disbursements to plaintiffs as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it is further

ADJUDGED AND DECLARED that St. Paul has no obligation to defend, indemnify or reimburse plaintiffs in connection with the underlying lawsuit according to the terms of the applicable insurance policies issued by St. Paul.

Dated: March 31, 2011

ENTER:



J.S.C.

JANE S. SOLORON

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B). 17