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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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FEDERAL INSURANCE COMPANY,

Plaintiff,

-against-

Index No. 652275/2011

COMMERCE AND INDUSTRY INS. CO., et al.,

Defendants.

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TAUNUS CORPORATION, et al.,

Third-Party Plaintiffs,

-against-

ACE AMERICAN INSURANCE COMPANY, et al.,

Third-Party Defendants.

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LAWRENCE K. MARKS, J.

Defendant Select Insurance Company (Select) moves, pursuant to CPLR 3212(b), for an order granting partial summary judgment dismissing with prejudice all claims and cross-claims asserted against it relating to the commercial general liability insurance policies that it issued to third-party defendant Ambient Group, Inc. (Ambient) (the Select/Ambient policies), and declaring that Select owes no duty under those policies toward defendants/third-party plaintiffs Taunus Corp. n/k/a DB USA Corporation, Deutsche Bank Trust Company Americas, Deutsche Bank Trust Corp., DB Private Clients Corp., and DBAB Wall Street LLC (collectively, the Deutsche Bank entities). The Deutsche Bank entities cross-move to amend their objections and responses to Select's request for admissions.

BACKGROUND

Following the September 11, 2001 terrorist attacks on the World Trade Center, the Deutsche Bank entities, through their project manager, Tishman Interiors Corporation, hired a number of contractors, including Ambient, an environmental hygienist, to evaluate the damage to their buildings located at 130 Liberty Street and 4 Albany Street in Manhattan (the Deutsche Bank entities' buildings), and to assist in the buildings' demolition.

Pursuant to its November 15, 2001 contract for standard services with the Deutsche Bank entities (Deutsche Bank/Ambient contract), Ambient agreed to defend, indemnify and hold harmless the Deutsche Bank entities for tort claims asserted against them as a result of acts or omissions by Ambient (*see* Deutsche Bank/Ambient contract, standard services agr., § 11).

In addition, pursuant to that contract, Ambient agreed to procure insurance coverage for the benefit of the Deutsche Bank entities, and to have them listed as additional insureds under the policies (*see id.*, general terms & conditions, § 11). Ambient purchased the Select/Ambient policies – three consecutive insurance policies, consisting of an initial policy (first policy) and two renewal policies (second policy and third policy), in effect from August 30, 2001 through August 30, 2004.

The Select/Ambient policies provide, in relevant part, that, for an entity to qualify as an additional insured under those policies, Select must have a certificate of insurance "on file" that specifically names that entity as an additional insured (*see* first policy at S_A_00092; second policy at S_A_00140; third policy at S_A_00216). The record includes an Acord Certificate of Liability Insurance dated December 7, 2001, issued by C.A.M. Associates, Inc. (C.A.M.),

Ambient's insurance broker, and naming the Deutsche Bank entities as additional insureds under the first policy.

In the first amended complaint, plaintiff Federal Insurance Co. (Federal) seeks a judgment declaring that defendants are obligated to pay their pro rata share of the defense costs, fees and indemnity payments incurred by some, or all, of the Deutsche Bank entities in the underlying tort actions. The tort actions were commenced by workers (the 9/11 workers), who allegedly sustained personal injury from exposure to toxic material and contaminated air during the clean-up and demolition activities at the Deutsche Bank entities' buildings, following the 9/11 attacks (*see In re World Trade Ctr. Disaster Site Litig.*, Civil Action No. 21 MC 100 (SDNY); *In re World Trade Ctr. Disaster Site Litig. v Bankers Trust Co.*, Civil Action No. 21 MC 102 (SDNY); *In re Combined WTC & Lower Manhattan Disaster Site Litig.*, 21 MC 103 (SDNY) [collectively, *WTC Litigations*]).

In their answer, the Deutsche Bank entities deny all allegations of wrongdoing. In their cross-claims, they seek, among other things, a judgment declaring that, pursuant to the terms of the Select/Ambient policies, Select must pay its pro rata share of the defense costs incurred by some, or all, of the Deutsche Bank entities in the *WTC Litigations*.

In addition, other defendant insurers, including the Deutsche Bank entities' direct insurers, assert cross-claims against Select under the Select/Ambient policies for contribution, indemnification and/or a pro-rata allocation of the defense costs incurred, and/or indemnity payments made, in connection with the *WTC Litigations*.

Select now moves for partial summary judgment in its favor on all claims and cross-claims asserted against it arising out of the Select/Ambient policies, and for judicial declarations

that those policies impose no duty upon Select to defend or indemnify the Deutsche Bank entities in the *WTC Litigations*, and impose no duty upon Select a duty to contribute to payment of any defense and/or indemnity costs incurred, or to be incurred, by Federal or any cross-claimants on behalf of the Deutsche Bank entities in connection with the *WTC Litigations*.

Select contends that since this insurance coverage action began, none of the parties, nor their representatives, has produced any evidence that a certificate of insurance naming any of the Deutsche Bank entities as additional insureds under the Select/Ambient policies was submitted to Select during the relevant time period.

In opposition, the Deutsche Bank entities contend that the Select/Ambient policies' provisions regarding the conditions precedent to additional insured coverage are ambiguous, and that, therefore, they must be construed against Select. They also contend that, in any event, such coverage is available under the additional insured provision in the third policy, which differs significantly from that provision set forth in the first and second policies.

The Deutsche Bank entities also cross-move to amend their objections and responses to Select's request for admissions to reflect their discovery of an Acord Certificate of Liability Insurance naming the Deutsche Bank entities as additional insureds under the first policy.

In opposition, Federal contends that: the certificate of insurance confers additional insured coverage under the Select/Ambient policies to the Deutsche Bank entities; the undisputed record demonstrates that the certificate was provided to Select; the indemnity provision set forth in the Deutsche Bank/Ambient contract is valid and enforceable; and the Select/Ambient policies provide additional insured coverage for the Deutsche Bank entities in the *WTC Litigations*. Federal contends that, therefore, in contract and in equity, Select owes Federal an amount equal

to its pro rata share in the Deutsche Bank entities' defense of the *WTC Litigations* claims.

The Deutsche Bank entities and Federal adopt each other's contentions.

Defendant Chartis Specialty Insurance Company f/k/a American International Specialty Lines Insurance Company (AISLIC), another Deutsche Bank entities insurer, joins the Deutsche Bank entities and Federal in opposing Select's motion.

DISCUSSION

The party moving for summary judgment has the initial burden of coming forward with admissible evidence to support the motion, so as to warrant the court directing judgment in the movant's favor; the burden then shifts to the opposing party to demonstrate, by admissible evidence, the existence of any factual issue requiring a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980); *Sumitomo Mitsui Banking Corp. v. Credit Suisse*, 89 A.D.3d 561, 563 (1st Dep't 2011); CPLR 3212(b). It is well established that summary judgment is a drastic remedy, and should not be granted, where there exist genuine material issues of disputed fact. *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957).

"A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant evidence." *Bailey v. New York City Tr. Auth.*, 270 A.D.2d 156, 157 (1st Dep't 2000); *Curiale v. AIG Multi-Line Syndicate*, 204 A.D.2d 237, 237 (1st Dep't 1994); *see* CPLR 3212(f). "The 'mere hope' . . . that evidence sufficient to defeat such a motion may be uncovered during the discovery process is not enough." *Frierson v. Concourse Plaza Assoc.*, 189 A.D.2d 609, 610 (1st Dep't 1993), citing *Jones v. Gameray*, 153 A.D.2d 550, 551 (2d Dep't 1989).

The law regarding the interpretation and enforcement of insurance policies is well established and clear. Where the insurance policy provisions "are clear and unambiguous, they must be given their plain and ordinary meaning, and courts should refrain from rewriting the agreement . . . The policy must, of course, be construed in favor of the insured, and ambiguities, if any, are to be resolved in the insured's favor and against the insurer." *United States Fid. & Guar. Co. v. Annunziata*, 67 N.Y.2d 229, 232 (1986) (internal quotation marks and citations omitted); *Breed v. Insurance Co. of N. Am.*, 46 N.Y.2d 351, 355 (1978). An insurance policy should be read "in light of 'common speech' and the reasonable expectations of a businessperson." *Belt Painting Corp. v. TIG Ins. Co.*, 100 N.Y.2d 377, 383 (2003). "Where the [insurance policy] . . . is unambiguous, 'its interpretation is a matter of law and effect must be given to the intent of the parties as reflected by the express language of the agreement.'" *National Granite Tit. Ins. Agency v. Cadlerock Props. Joint Venture*, 5 A.D.3d 361, 362 (2d Dep't 2004) (citation omitted). However, where "the language in the insurance contract is ambiguous and susceptible of two reasonable interpretations, the parties may submit extrinsic evidence as an aid in construction, and the resolution of the ambiguity is for the trier of fact." *State of New York v. Home Indem. Co.*, 66 N.Y.2d 669, 671 (1985).

"[T]he party claiming insurance coverage bears the burden of proving entitlement, and . . . a party that is not named an insured or an additional insured on the face of the policy is not entitled to coverage." *Tribeca Broadway Assoc. v. Mount Vernon Fire Ins. Co.*, 5 A.D.3d 198, 200 (1st Dep't 2004), citing *Moleon v. Kreisler Borg Florman Gen. Constr. Co.*, 304 A.D.2d 337, 339 (1st Dep't 2003).

The Select/Ambient policies define Ambient as the named insured (*see* first policy at

S_A_00096; second policy at S_A_00172; third policy at S_A_00217). Those policies also include additional insured endorsements that limit coverage for an additional insured to liability arising out of Ambient's ongoing operations performed for the additional insured (*see* first policy at S_A_00092; second policy at S_A_00140; third policy at S_A_00216).

The Select/Ambient policies' additional insured endorsements also provide that, to qualify for coverage, the additional insured must have a certificate of insurance "on file" with Select.

The first policy's additional insured endorsement provides, in relevant part, as follows:

> ADDITIONAL INSURED ENDORSEMENT – OWNERS, LESSEES OR CONTRACTORS
>
> SCHEDULE:
>
> Any person or organization that is an owner of Real Property or Personal Property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the written request of such person or organization to you, wherein such request[] is made prior to commencement of operations, and **for which a certificate of insurance naming such person or organization as an additional insured is on file with the Company.**

(first policy at S_A_00092 (emphasis added)).

The additional insured endorsements of the second and third policies similarly provide, in relevant part, that:

> Any person or organization that is an owner of Real Property or Personal Property on which you are performing operations, or a contractor on whose behalf you are performing operations, and only at the specific written request of such person or organization to you, wherein such request is made prior to commencement of operations, and **for which a certificate of insurance naming such person or organization as an additional insured is on file with the Company.**

(second policy at S_A_00140 (emphasis added)); third policy at S_A_00216 (emphasis added)).

The third policy sets forth additional language not found in the additional insured endorsements in the first and second policies. That language provides, as follows:

> SECTION II - WHO IS AN INSURED is amended to include as an insured any person or organization for whom you are performing when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

(third policy at S_A_00216).

Contrary to the contentions of the Deutsche Bank entities and Federal, the clause "on file with the Company" appearing in all three additional insured endorsements is not ambiguous. When the Select/Ambient policies are read in their entirety, it is clear that the term "the Company" uniformly and exclusively refers to Select, and not to Ambient or the Deutsche Bank entities. "[I]t is settled that in construing an endorsement to an insurance policy, the endorsement and the policy must be read together, and the words of the policy remain in full force and effect except as altered by the words of the endorsement." *County of Columbia v. Continental Ins. Co.*, 83 N.Y.2d 618, 628 (1994). Here, for example, Select is referred to as "the company providing this insurance" (*see* first policy, commercial general liability coverage form, at S_A_00007; second policy at S_A_00104; third policy at S_A_00179). In addition, the named insured endorsement expressly identifies the "Company" as "Select Insurance Company" (*see* first policy at S_A_00095; second policy at S_A_00172; third policy at S_A_00250).

Nothing in any of the three Select/Ambient policies may be construed as defining "Company" as any entity or person other than Select. To hold otherwise would lead to the absurd result in which, for example, Ambient would be obligated to charge itself premiums, in exchange for waiving its right to seek recovery against an additional insured (*see* first policy, waiver of subrogation endorsement, at S_A_00079, S_A_00094).

Similarly, when given its common and ordinary meaning, "on file with" must mean, at minimum, that Select has received a copy of the certificate of insurance, in order for coverage to attach. Therefore, pursuant to the clear and unambiguous express terms of the additional insured endorsements of each of the three Select/Ambient policies, and relevant case law, the Deutsche Bank entities must demonstrate that a certificate of insurance naming them as additional insureds under each policy was on file with Select, in order to qualify for additional insured coverage under each policy.

The parties next dispute whether the record includes evidence demonstrating that such a certificate exists, and whether it was on file with Select. In their original responses, the Deutsche Bank entities admitted that they were not in possession, custody or control of certificates of insurance naming any or all of them as additional insureds under the Select/Ambient policies (*see* Deutsche Bank entities' Objections & Responses to Select Ins. Company's Request for Admissions, No. 1). They also admitted that they have never sent, delivered or provided any certificates of insurance to Select that name any or all of them as additional insureds under those policies; and they do not have in their possession, custody or control any documents evidencing that any such certificates are on file with, or were received by, Select (*see id.*, Nos. 2, 3). In their responses, the Deutsche Bank entities reserved the right to amend their admissions, as new

information was revealed by their continued investigation (*see id.* at 9).

Following service of those responses, the Deutsche Bank entities located a certificate of insurance naming them as additional insureds under the first policy. On April 30, 2014, less than 30 days after service of their response and three months prior to the filing of Select's motion, they forwarded copies of the certificate to all parties, including Select. Under the CPLR, "the court, at any time, may allow a party to amend or withdraw any admission on such terms as may be just." CPLR 3123(b).

The existence of, and information contained in, the certificate have no impact on the remainder of the Deutsche Bank entities' responses. The certificate does not include any reference to the second or third policies, nor does it include any indication that it was sent to, or received by, Select at any time. Significantly, and because the certificate, on its face, does not demonstrate that it was sent to, or received by, Select, it does not raise a triable issue regarding whether the certificate was received by Select. Similarly, because the certificate does not reference the second or third policies, it does not raise triable issues regarding whether additional insured coverage exists under those policies.

The affidavits submitted by Ambient fail to raise any triable issues regarding whether a certificate of insurance was issued under any of the three policies and sent to Select. Neither deponent is a person with knowledge about those issues. Dr. William A. Esposito, Ambient's president, attests merely that Ambient "routinely requested that its insurance broker, C.A.M. . . . take(s) steps necessary to ensure that Ambient's customers were named as additional insureds under insurance policies issued to Ambient" (William A. Esposito, July 14, 2014 aff, ¶ 6). Esposito, thus, testified merely to Ambient's routine in fulfilling its contractual obligations, and

did not mention the existence of the certificate of insurance upon which Ambient now relies. Similarly deficient is the affidavit by Robert H. Friedman, Esq., Ambient's local counsel in Florida, who located a copy of the December 7, 2001 certificate of insurance in Ambient's files. Friedman attests that he was advised by Nicholas DiLeo, then Ambient's broker at C.A.M., now deceased, that, in his "routine course of conduct," DiLeo would have issued a certificate of insurance as required by the Select/Ambient policies, and faxed the certificate to the additional insureds and to the insurance company (Robert H. Friedman, July 14, 2014 aff, ¶ 7).

While any "party opposing summary judgment may proffer hearsay evidence, . . . such proof may not be the sole factual basis for denying summary judgment." *Andron v. Libby*, 120 A.D.3d 1056, 1057 (1st Dep't 2014). Here, Friedman's hearsay testimony is not probative. The testimony concerns a general course of business conduct, rather than certain knowledge of what was done in this particular instance. Further, although the produced certificate of insurance bears a date stamp, which appears to be a fax stamp, there is no indication of the destination of the fax.

For these reasons, neither affidavit includes any statements or evidence tending to authenticate the produced certificate, or demonstrating that it, or certificates issued in conjunction with the second or third policies, had ever been sent to Select.

In addition, the record includes evidence that no certificate of insurance under any of the Select/Ambient policies for the Deutsche Bank entities was ever received by Select. David E. Nanzig, second vice president, Special Liability Group, Travelers Indem. Co. and Select's authorized representative, testified that a search of Select's corporate records relating to Ambient was conducted by individuals trained in the process of search protocol, and that he believed that all the relevant files had been located (*see* David E. Nanzig, Aug. 22, 2014 dep tr at 126, line 7,

to 128, line 11). He also testified that he was never aware of the existence of such a certificate of insurance for the Deutsche Bank entities, and that Select "most definitely [has] no such thing in the Ambient files" (*id.* at 69, lines 5-12).

Moreover, a certificate of insurance does not constitute conclusive proof of coverage. The certificate at issue here, as do most Acord certificates, provides in capital letters at the top that "[t]his 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." Identical disclaimer language in an Acord Certificate of Liability Insurance has been held insufficient, by itself, to establish a triable issue regarding the existence of additional insured coverage, inasmuch as such coverage is determined by the express policy terms. *See, e.g., Brunner v. United House of Prayer for All People of Church on rock of Apostolic Faith*, 292 A.D.2d 319, 322-323 (1st Dep't 2002); *Buccini v. 1568 Broadway Assoc.*, 250 A.D.2d 466, 470 (1st Dep't 1998); *Penske Truck Leasing Co. v. Home Ins. Co.*, 251 A.D.2d 478, 479 (2d Dep't 1998).

The Deutsche Bank entities' reliance on *Gotham Constr. Co. LLC v. United Natl. Ins. Co.*, 35 A.D.3d 289, 290 (1st Dep't 2006), *aff'g* 21 Misc3d 1142[A], 2006 NY Slip Op 52675[U] (Sup. Ct., NY County, 2006) is misplaced. In that case, the court found that the insurer had been unable to demonstrate as a matter of law that no certificate of insurance was on file with it because the insurer produced the insurer's underwriting file that included a copy of the certificate issued by the insured's broker. Here, there is no dispute that neither Ambient nor its broker, C.A.M., nor Select has a record of a certificate of insurance being issued to the Deutsche Bank entities under the second or third policies, and that there is no evidence that a certificate issued

under any of the three Select/Ambient policies was sent to, or received by, Select.

Inasmuch as there is no credible objective evidence in the record tending to demonstrate that the certificate of insurance issued under the first policy was ever sent to, or received by, Select or that any such certificates were issued under the second or third policies, no triable issues regarding whether such certificates were "on file" with Select have been raised.[1]

Contrary to Federal's contention, the Select/Ambient policies do not impose on Select a duty to defend the Deutsche Bank entities in the *WTC Litigations*, even assuming for purposes of this argument that some of the facts alleged in those actions fall within the scope of coverage for Ambient. Certainly, an additional named insured is entitled to the same protection as is a named insured, and the standard for determining whether it is entitled to a defense is the same standard applied to determine whether a named insured is entitled to a defense. *See BP A.C. Corp. v. One Beacon Ins. Group*, 8 N.Y.3d 708, 714-715 (2007). Here, however, as discussed at length above,

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[1] However, Select's contention that the doctrine of law of the case mandates summary judgment in its favor on claims arising out of the Select/Ambients policies is without merit. "The 'law of the case' doctrine is a rule of practice which provides that once an issue is judicially determined, either directly or by implication, it is not to be reconsidered by Judges or courts of co-ordinate jurisdiction in the course of the same litigation." *Holloway v. Cha Cha Laundry, Inc.*, 97 A.D.2d 385, 386 (1st Dep't 1983). Select relies upon the order dated September 30, 2013, in which this Court granted summary judgment in favor of third-party defendant Tower Insurance Co. of New York (Tower) and against the Deutsche Bank entities (the Tower Order). In the Tower Order, this Court determined that the Deutsche Bank entities were not additional insureds under an insurance policy issued by Tower to defendant Site Safety, LLC on the ground that there was no evidence that an additional insured endorsement naming any of the Deutsche Bank entities under that policy had been issued (*see* Tower Order at 15-18). This Court also held that the certificate of insurance issued by Site Safety's insurance broker did not, by itself, amend, extend or alter the coverage afforded by the policy. *Id.* While much of the case law cited in the Tower Order most certainly applies here, the final determination in that order was based upon facts unique to the Tower policy, Site Safety and the Deutsche Bank entities. Therefore, that decision is not dispositive of the coverage dispute under the Select/Ambient policies.

the Deutsche Bank entities cannot be found to be additional insureds under any of the three Select/Ambient policies because the record is devoid of any evidence that the certificate of insurance issued under the first policy was ever sent to, or received by, Select or that any such certificates were issued under the second or third policies.

Federal also contends that Select is obligated by the terms of the contractual liability provision[2] set forth in the Select/Ambient policies, when coupled with the indemnification provision found in the Deutsche Bank/Ambient contract, to provide the Deutsche Bank entities with a defense, and to contribute to any settlement or judgment against them, in the *WTC Litigations*.

Federal has failed to demonstrate any right, arising either individually or as the Deutsche Bank entities' subrogee or assignee, that might permit it to assert a claim for contractual liability coverage under any of the Select/Ambient policies. The Deutsche Bank entities are not named insureds, nor are they additional insureds, under those policies. "A party not named as an insured or additional insured on the face of the policy is not entitled to coverage." *Tower Ins. of N.Y. v. Amsterdam Apts., LLC*, 82 A.D.3d 465, 467 (1st Dep't 2011). Ambient is not a named party in the *WTC Litigations*. Accordingly, there exists no basis in law or fact to sustain a claim for equitable contribution under those policies against Select.

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[2] The Select/Ambient policies provide, in relevant part, that Select "will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies" (first policy at S_A_00007; second policy at S_A_000104; third policy at S_A_000179). Contractual liability is excluded from the scope of coverage under the policies unless the liability of the insured, Ambient, for damages is "[a]ssumed in a contract or agreement that is an 'insured contract', provided the 'bodily injury' or 'property damage' occurs subsequent to the execution of the contract or agreement." *Id.*

Inasmuch as the Deutsche Bank entities have failed to produce any admissible evidence tending to demonstrate that they are named insureds or additional insureds under the Select/Ambient policies, the branches of Select's motion for summary judgment and dismissal of all claims and cross-claims arising out of the terms of those policies are granted, and those claims and cross-claims are dismissed.

Finally, the Court notes that, in this action, Federal also seeks reimbursement from Select pursuant to the terms of a Select policy issued to Seasons Industrial Contracting Corporation. However, that policy is not relevant to, nor is it affected by, this motion and decision. Summary judgment may be granted "as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just." CPLR 3212(e).

The Court has considered the parties other arguments, and finds them unavailing.[3] Accordingly, it is

ORDERED that the motion is granted to the extent that partial summary judgment is granted in favor of defendant Select Insurance Company (Select) and against plaintiff Federal Insurance Company and defendants Taunus Corp. n/k/a DB USA Corporation, Deutsche Bank Trust Company Americas, Deutsche Bank Trust Corp., DB Private Clients Corp. and DBAB Wall Street LLC (the Deutsche Bank entities), and this Court declares that Select has no duty to defend or indemnify the Deutsche Bank entities in the *WTC Litigations* arising out of the

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[3] For example, contrary to Federal's contention, Select's failure to submit a Rule 19-a statement of undisputed facts, *see* Uniform Rules of Court § 202.70, does not constitute a material procedural defect requiring denial of Select's motion. Select's July 31, 2014 affirmation of Robert W. Mauriello, Esq., and the briefs, were a sufficient statement of the material facts, both disputed and not, at issue in this motion.

insurance policies issued by Select to third-party defendant Ambient Group, Inc., and all claims and cross-claims asserted against Select arising out of those policies are dismissed; and it is further

ORDERED that the cross-motion is granted only to the extent that the Deutsche Bank entities may amend their Objections and Responses to Select Insurance Company's Request for Admissions in accordance with this Decision and Order, if they still wish, to reflect that they have located a certificate of insurance that does not, by itself, provide proof of insurance coverage; and it is further

ORDERED that all other aspects of discovery remain closed; and it is further

ORDERED that the deadline for any post-Note of Issue motions, which has already been extended multiple times, remains as re-set at the last conference in this case.

This constitutes the Decision and Order of the Court.

Dated: April 14, 2015

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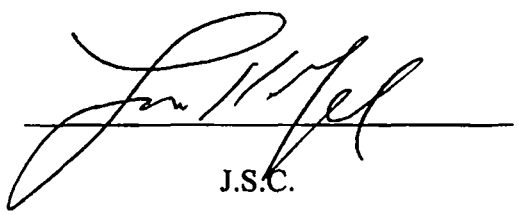

J.S.C.