

<b>Colony Ins. Co. v International Contr. Servs., LLC</b>
2019 NY Slip Op 31661(U)
June 11, 2019
Supreme Court, New York County
Docket Number: 655528/2016
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM**

*Justice*

<p>COLONY INSURANCE COMPANY,  Plaintiff,  - v -  INTERNATIONAL CONTRACTORS SERVICES, LLC, THE CITY OF NEW YORK, A.H. HARRIS &amp; SONS, INC., MICHAEL FITZGERALD  Defendant.</p>	X	<p><b>INDEX NO.</b> <u>65528/2016</u></p> <p><b>MOTION DATE</b> <u>01/16/2019, 01/17/2019</u></p> <p><b>MOTION SEQ. NO.</b> <u>005 006</u></p>
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**DECISION AND ORDER**

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 160, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 198, 199, 200, 263, 264, 265, 266, 368, 369

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY  
DEMAND/FROM TRIAL CALENDAR.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 201, 202, 203, 267, 268, 269

were read on this motion to/for DISMISS.

**Motion Seq. No. 005**

In motion sequence no. 005, the City of New York (the **City**) moves, pursuant to CPLR 3126, to dismiss Colony Insurance Company's (**Colony**) complaint based on Colony's purported failure to comply with this court's discovery orders and respond to the City's discovery demands, or, in the alternative, an order precluding Colony from offering evidence at trial for failure to respond to the aforementioned discovery demands, or, in the second alternative, for an order, pursuant to CPLR 2204, vacating Colony's note of issue and certificate of readiness for trial and an order, pursuant to CPLR 3124, compelling Colony to respond to certain discovery demands and

produce witnesses for deposition. Colony cross-moves for a protective order striking the City's production demands as follows:

- (i) Internal Contractors Services LLC's Claim Handler File Notes, dated October 2, 2009 to June 5, 2016 of Colony claim handlers;
- (ii) E-mail dated April 6, 2010, from David Schlottman of International Contractors Services LLC to Sean O'Connor of Colony;
- (iii) E-mail dated March 29, 2010, from David Schlottman of International Contractors Services LLC to Sean O'Connor of Colony;
- (iv) E-mail dated September 8, 2009, from David Schlottman of International Contractors Services LLC to William Liddell of International Contractors Services and Frank Pulcini of Insurance Office of America, Inc.

With respect to motion sequence. 005, the City claims that pursuant to compliance conference orders dated 2/28/19, 5/23/18, and 10/17/18, Colony was required to provide its *entire* claims file and has failed to do so (all orders submitted under NYSCEF Doc. No. 131). The last compliance conference order dated 10/17/18, states:

Colony's deposition on or before 11/15/18, CNY [City] deposition on or before 11/26/18; AH Harris deposition on or before 12/7/18. CNY [City] to notify Colony within days of today's date as to anything missing from Colony's claim file disclosure. Failure to appear or otherwise comply with this order may result in preclusion. ... NOI is 12/27/18, no further extensions (NYSCEF Doc. Nos. 113, 131).

Colony's counsel claims that he produced the "entire" claims file and provided all the communications sought by the City, and claims that the City has not served Colony with any currently outstanding document demands (NYSCEF Doc. No. 165, ¶ 13-16)

This motion is granted solely to the extent that Colony will produce the above referenced materials within 3 weeks of the date hereof redacting any information that is not relevant to the issue of lack of cooperation that forms the basis for the denial of coverage (excluding attorney

client communications or privileged communications in connection with underlying action except communications by Baxter Smith as to attendance or other cooperation in connection with the underlying action). Except as limited in the preceding sentence, the cross-motion is otherwise denied.

### **Motion Seq. No. 006**

In motion sequence no. 006, A.H. Harris & Sons, Inc. (**A.H. Harris**) moves for substantially the same relief. Colony cross-moves for a protective order striking the notice of deposition for Theresa Anna Koziczowski, a Colony employee, on the grounds that it has already produced a witness for deposition, and striking all demands in A.H. Harris' Supplemental Request for Production dated December 10, 2018, which seeks production of electronic internal claim notes identified on Colony's Privilege Log dated May 21, 2018.

With respect to motion sequence no. 006, Colony argues that it already produced a witness: Cindi Skowronski, the Colony case claim manager. The additional deposition sought by A.H. Harris is of another adjuster, Ms. Kozickowski, who is based in Wisconsin. Colony claims that it offered to produce Ms. Kozickowski for deposition by phone or video conference (if A.H. Harris pays for the video conference), and provided that the deposition is limited to the following topics: (i) Koziczowski's interaction with Colony named International, and (ii) Colony's coverage disclaimer letter dated August 12, 2016, to International which Ms. Koziczowski authored on behalf of Colony.

This motion is granted to the extent that Colony will produce its electronic internal claims notes redacting any information that is not relevant to the issue of lack of cooperation that forms the basis for the denial of coverage within 3 weeks of the date of this order, and Ms. Kozickowski shall appear for a deposition by video or phone conference by July 31, 2019 and such deposition shall be held at A.H. Harris' expense. Except as provided for in the previous sentence, the cross motion is otherwise denied.

The parties may supplement there summary judgment motion with a sur-reply to the extent of any new information that results from the disclosure provided for herein. Such supplemental sur-reply shall be limited to a maximum of 10 pages and shall be due not later than August 10, 2019.

Oral Argument on the Summary Judgment Motion: September 11, 2019 @ 9:30 am.

  
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6/11/2019  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: