

**American Home Assur. Co. v Port of Auth. of N.Y. & N.J.**

2019 NY Slip Op 32337(U)

August 1, 2019

Supreme Court, New York County

Docket Number: 651096/2012

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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AMERICAN HOME ASSURANCE COMPANY,

Plaintiff,

- v -

THE PORT OF AUTHORITY OF NEW YORK AND NEW  
 JERSEY ET AL., ALCOA INC., MARIO & DIBONO  
 PLASTERING CO., INC., TISHMAN REALTY &  
 CONSTRUCTION CO., INC., TISHMAN LIQUIDATING  
 CORPORATION, TEECO PROPERTIES L.P., TMLC  
 CORP., TISHMAN SPEYER PROPERTIES L.P.,  
 TISHMAN SPEYER PROPERTIES, INC., TISHMAN  
 CONSTRUCTION CORPORATION OF NEW YORK,  
 EQUITY HOLDINGS I CORP., TISHMAN REALTY &  
 CONSTRUCTION CO., INC., TTV REALTY HOLDINGS,  
 INC., TISHMAN CONSTRUCTION CORPORATION OF  
 MANHATTAN, TISHMAN CONSTRUCTION  
 CORPORATION,

Defendant.

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INDEX NO. 651096/2012

MOTION DATE 02/22/2018

MOTION SEQ. NO. 018

**DECISION + ORDER ON  
 MOTION FOR FINAL  
 JUDGMENT AND  
 SUMMARY JUDGMENT ON  
 ATTORNEYS' FEES**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1394, 1395, 1396, 1397, 1398, 1444, 1445, 1446, 1447

were read on this motion for

**FINAL JUDGMENT AND SUMMARY JUDGMENT  
 ON ATTORNEYS' FEES**

Upon the foregoing documents, prior orders of the Court and the Appellate Division in this action, and for the reasons stated by the Court on the record during the June 11, 2019 hearing on Defendants' Motion for Final Judgment and Summary Judgment on Attorneys' Fees (NYSCEF Doc. No. 1450, Tr. at, e.g., 57-71), it is hereby:

**ORDERED, ADJUDGED, and DECLARED** that the motion by Defendants The Port Authority of New York & New Jersey, Arconic Inc. (f/k/a Alcoa Inc.), and TTV

Realty Holdings, Inc. (f/k/a Tishman Realty & Construction Co., Inc.) (collectively, “Defendants”) for Final Judgment and Summary Judgment on Attorneys’ Fees (Mot. Seq. No. 018) is **GRANTED**; it is further

**ORDERED, ADJUDGED, and DECLARED** that Plaintiff American Home Assurance Company’s Complaint is **DISMISSED WITH PREJUDICE**, except as otherwise provided in the Declarations set forth below.

During the extensive summary judgment proceedings in this case, American Home’s sole argument with respect to exhaustion of insurance coverage was that the asbestos claims at issue constituted a “single occurrence.” In connection with the instant motion, American Home sought to advance for the first time an alternative argument that the asbestos claims can be combined, for insurance coverage purposes, into groupings *other than* as a single occurrence. The Court declined to consider that argument, which could have been (but was not) raised earlier in the litigation. The Court expresses no opinion as to the preclusive effect of its dismissal of American Home’s Complaint and the final judgment entered herein on any future litigation, which is an issue to be decided by the court(s) presiding over such litigation.

In a similar vein, the Court expresses no opinion as to the preclusive effect in future litigation of Defendants’ decision to seek a final judgment in this matter without pursuing its remaining counterclaims; and it is further

**ORDERED, ADJUDGED, and DECLARED**, consistent with prior orders of this Court and the Appellate Division, that:

1. Insurance coverage is triggered under the American Home Policy, Policy No. CGB 448 229 (the “Policy”), for asbestos-related personal injury claims allegedly arising from exposure to asbestos at the World Trade Center site during

the construction of the World Trade Center-Hudson Tubes Project (the “WTC Asbestos Claims”) because the injuries alleged by the underlying claimants arose out of construction of the World Trade Center and therefore American Home cannot obtain a declaration of no coverage for pending WTC Asbestos Claims;

2. American Home is obliged to provide a defense to the Port Authority in connection with the WTC Asbestos Claims;

3. WTC Asbestos Claims arising out of “spray-on fireproofing” (the “WTC Fireproofing Claims”) do not constitute a single occurrence under the Policy and New York law;

4. The Policy is not exhausted as a result of the WTC Asbestos Claims or the WTC Fireproofing Claims as those claims do not constitute one occurrence;

5. American Home has reserved its right to recoup expenses it incurred that are not covered by the Policy; and

6. American Home’s duty to defend under the Policy terminates upon exhaustion of the Policy’s liability limit; it is further

**ORDERED, ADJUDGED, and DECLARED** that, pursuant to *Mighty Midgets v. Centennial Insurance Co.*, 47 N.Y.2d 12 (1979), each Defendant is entitled to recover from American Home its reasonable attorneys’ fees, expenses, and costs incurred in defending against American Home’s Complaint, in an amount to be heard and determined by a Judicial Hearing Officer or Special Referee (“JHO”); it is further

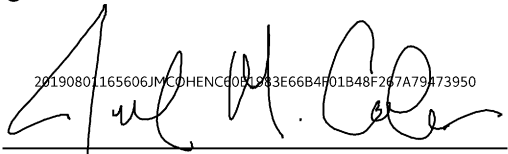
**ORDERED** that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646–386–3028 or [spref@courts.state.ny.us](mailto:spref@courts.state.ny.us)) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh) at the "Local Rules" link), shall assign this matter to an available JHO to determine as specified above. The powers of the JHO shall not be limited further than as set forth in the CPLR; it is further

**ORDERED** that Defendants' counsel shall serve a copy of this order with notice of entry on American Home's counsel within five days from the date of this Order and that counsel for Defendants shall, after thirty days from service of those papers, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at <http://www.nycourts.gov/courts/1jd/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; it is further

**ORDERED** that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR § 4318) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part; and it is further

**ORDERED** that, except as otherwise directed by the assigned JHO for good cause shown, the trial of the issue specified above shall proceed from day to day until completion.

This constitutes the Decision, Order, and Judgment of the Court.

  
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**JOEL M. COHEN, J.S.C.**

8/1/2019  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE