

**Certain Underwriters at Lloyd's, London v  
Bioenergy Dev. Group LLC**

2020 NY Slip Op 30500(U)

February 19, 2020

Supreme Court, New York County

Docket Number: 655792/2017

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 655792/2017

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON
SUBSCRIBING TO GCUBE POLICY NUMBER
BI154335601, RSA INSURANCE GROUP PLC
SUBSCRIBING TO PERSE POLICY NUMBER
BI154335601

MOTION DATE N/A

MOTION SEQ. NO. 009

Plaintiff,

- v -

DECISION + ORDER ON MOTION

BIOENERGY DEVELOPMENT GROUP LLC, AGRILEUM LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 329, 330, 331, 332, 333, 334, 335, 336

were read on this motion to/for MODIFY ORDER/JUDGMENT.

Upon the foregoing documents and for the reasons set forth on the record (2/19/2020), Bioenergy Development Group LLC and Agrileum LLC (the Defendants)'s motion to enter a proposed judgment in the form submitted by the Defendants is granted and the Plaintiffs' cross motion for clarification is granted to the extent set forth below.

The Relevant Facts and Circumstances

Pursuant to this Court's decision and order in Motion Sequences 007 and 008, which granted the Defendants' motion for summary judgment (Mtn. Seq. 007) and denied the Plaintiffs' motion for summary judgment (Mtn. Seq. 008), the court entered judgment in favor of Defendants and against the Plaintiffs as follows:

ORDERED that the Clerk is directed to enter judgment in favor of BioEnergy Development Group, LLC and Agrileum LLC and against Certain Underwriters at Lloyd's, London Subscribing to GCube Policy Number BI154335601 and RSA Insurance Group PLC Subscribing to PERse Policy Number BI154335601 in the amount of

(i) \$14,137,631, plus statutory interest of 9% from January 8, 2019 until the date of entry of judgment, plus statutory interest of 9% per annum from the date of entry of judgment, plus costs and disbursements as allocated by the Clerk; and

(ii) \$1,662,369, plus statutory interest of 9% from February 9, 2018 until the date of entry of judgment, plus statutory interest of 9% per annum from the date of entry of judgment, plus costs and disbursements as allocated by the Clerk

and the Defendants shall have execution thereof; and it is further

(NYSCEF Doc. Nos. 323, 324, at 13-14, the **Decision**).

## Discussion

### A. The Defendants' Motion for Entry of Their Proposed Judgment

On January 28, 2020, the Defendants subsequently moved by order to show cause to correct the Decision and enter judgment in the form proposed by the Defendants (*see* NYSCEF Doc. No. 331, the **Proposed Judgment**). Oral argument on this motion was scheduled for February 19, 2020. On February 14, 2020, the Plaintiffs filed a cross-motion for clarification and resettlement of the Decision.

The Defendants argue that its proposed judgment should be entered in place of the Decision to ensure that the Court's judgment is enforceable. The Defendants' proposed judgment purports to enter judgment against insurance companies that are not named as parties in this action, but are foreign entities that subscribe to are severally liable for their respective share of the policy limits of the two insurance policies at issue (NYSCEF Doc. No. 330, ¶¶ 4-5). The Plaintiffs did not

oppose the form of the Proposed Judgment on the prior motions for summary judgment and did not raise any objections in their papers opposing the Defendants' motion. Accordingly, the Defendants' motion to enter the Proposed Judgment is granted without opposition.

**B. The Plaintiffs' Cross-Motion to Clarify and Resettle the Decision**

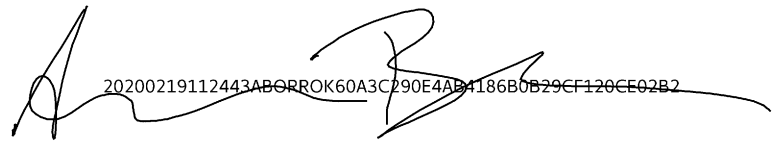
The Plaintiffs' cross-move to clarify the Decision as to whether their affirmative defenses to the Defendants' counterclaims survive. The Plaintiff's fifteenth affirmative defense was struck as a result of the Decision, which held that the Plaintiffs' failed to establish any material misrepresentation by the Defendants and in any event, could not raise such an argument after confirmation of the award (NYSCEF Doc. Nos. 323, 324, at 9-13).

The Plaintiff's first counterclaim for breach of the implied covenant of good faith, however, survives as it was reinstated by the First Department as of January 5, 2019 (NYSCEF Doc. No. 321) and was not subject to the parties' motions for summary judgment.

Accordingly, it is

ORDERED that the Defendants' motion to enter the Proposed Judgment is granted; and it is further

ORDERED that the Plaintiffs' motion to clarify and resettle the Decision is granted in accordance with the above decision.



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2/19/2020

DATE

ANDREW BORROK, J.S.C.

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