

**DeRosa v NYU Langone Hosps.**

2023 NY Slip Op 30889(U)

March 23, 2023

Supreme Court, New York County

Docket Number: Index No. 153572/2018

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 14

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MARIANNE DEROSA, AS BANKRUPTCY TRUSTEE OF  
RALPH FICO,

Plaintiff,

- v -

NYU LANGONE HOSPITALS, NYU LANGONE HEALTH  
SYSTEM, TURNER CONSTRUCTION COMPANY,

Defendant.

INDEX NO. 153572/2018

MOTION DATE 02/17/2023

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

-----X

NYU LANGONE HOSPITALS, NYU LANGONE HEALTH  
SYSTEM, TURNER CONSTRUCTION COMPANY

Third-Party Plaintiffs,

-against-

Third-Party  
Index No. 595716/2018

HARLEYSVILLE INSURANCE COMPANY OF NEW YORK  
and B&G INDUSTRIES, LTD. d/b/a B&G ELECTRICAL  
CONTRACTORS OF NEW YORK,

Third-Party Defendants.

-----X

B&G ELECTRICAL CONTRACTORS OF NEW YORK INC,  
i/s/h/a B&G INDUSTRIES, LTD. d/b/a B&G ELECTRICAL  
CONTRACTORS OF NEW YORK

Second Third-Party Plaintiffs,

-against-

HOLDEN & FLYNN UNIVERSAL CONTRACTORS, INC.

Second Third-Party Defendant.

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 137, 138, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 171, 172

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 139, 154, 168, 169, 170

were read on this motion to/for

SUMMARY JUDGMENT (AFTER JOINDER)

Motion sequence numbers 002 and 003 are consolidated for disposition.

The branch of defendant B&G's motion for summary judgment (MS002) dismissing plaintiff's claims under Labor Law § 240 and third-party plaintiff's claims for breach of contract are and violations of 12 NYCRR 231.7(e)(1) and (2) are granted.

B&G's motion for summary judgment (MS002) dismissing third-party plaintiff's Turner's and Langone's claims for contractual indemnification and contribution, and Turner's, Langone's and Holden & Flynn's claims for common law indemnification is denied.

The branch of third-party plaintiffs' motion for summary judgment (MS002) for contractual indemnification is granted only with respect to third-party plaintiff Turner.

Harleysville's motion for summary judgment (MS003) dismissing third-party plaintiff's complaint is granted.

Holden & Flynn's motion for summary judgment (MS002) dismissing B&G's second third-party complaint is denied.

## **Background**

In this Labor Law dispute, plaintiff, Ralph Fico was injured at a worksite in an unwitnessed accident. According to Fico, he tripped over a ladder that was propped up against the wall, in a dark room (a janitor's closet); according to the first person on the scene, Harry Harriendorf, who arrived when Fico was still on the floor and asking for an ambulance, the room was already lit up with a halogen lamp, indicating that Fico did not trip in a dark room.

More particularly, on August 17, 2017, Fico was tasked with setting up electrical and

lighting in a janitorial closet at defendant NYU Langone Medical Center (“Langone”). Langone hired co-defendant Turner Construction Company (“Turner”) to perform construction on the NYU Langone Science Building, and Turner contracted with Fico’s employer, B&G Electrical Contractors (“B&G”) to do electrical work. According to Fico, he entered the closet, saw that the electrical box was close to the ceiling, thus requiring a ladder, turned to his right to leave, and tripped over a large A-frame ladder that was propped against the wall of the closet. Due to the fall, he injured his left shoulder.

Although there were no witnesses to Fico’s accident, those who arrived at the scene immediately thereafter offered competing testimony about the scene of the accident. While Fico claims his accident happened immediately upon entering the dark closet, others, such as Harry Harriendorf, the safety manager for Turner who drafted the initial incident report, testified that a halogen lamp was set up and illuminated and there was evidence that Fico had started working at the electrical box that was located close to the ceiling, suggesting Fico tripped on a ladder he was using in a lighted room rather tripping in a dark room before he started any work.

After this case was filed, Langone and Turner filed a third-party complaint against B&G and its insurer, Harleysville Insurance. They allege that B&G failed to procure insurance and add Turner and Langone as additional insureds, and that Harleysville has a duty to defend and indemnify Turner and Langone. B&G filed a second third-party complaint alleging the ladder involved in Fico’s accident belonged to another contractor at the construction site, Holden & Flynn, and claiming Holden & Flynn should indemnify B&G.

### **B&G's Motion for Summary Judgment**

B&G moves for summary judgment, first claiming that plaintiff's Labor Law § 240(1) claim should be dismissed. B&G asserts that Fico was not on the ladder and did not fall off the ladder, thus § 240(1) is inapplicable to his claims. Next, B&G contends § 241(6) is also inapplicable as plaintiff failed to allege the Industrial Code violations with sufficient specificity. Furthermore, the Industrial Code violations that are alleged are inapplicable. B&G further asserts any claims for contribution and common-law indemnification should be dismissed. B&G contends it is not at fault for Fico's accident as it was Langone's and Turner's responsibility to maintain the safety of the job site, not B&G. Furthermore, B&G did not own the ladder and there is no evidence B&G was aware there was a ladder in the closet. Additionally, B&G claims indemnification claims should be dismissed because B&G, having no responsibility for the worksite and no knowledge of the existence of the ladder, is not at fault for Fico's accident. B&G also contends the breach of contract claim for failure to procure insurance should be dismissed, as B&G procured a policy that contained a blanket additional insured endorsement. According to B&G, nothing more was contractually required of it with regard to an insurance policy. Finally, B&G asserts it is entitled to contribution and common law indemnification against the owner of the ladder, Holden & Flynn. Because Holden & Flynn failed to appropriately store and secure its ladder in accordance with Turner's requirements, B&G is entitled to indemnification and contribution against Holden & Flynn.

In response, plaintiff contends there are material issues of fact contained in the depositions of the parties. Plaintiff claims Turner was negligent and violated Labor Law § 200 as Turner failed to enforce its strict policy on storing ladders, keeping unused ladders away from the worksite, and discarding any ladders that were not stored in the appropriate designated

locations. Plaintiff further contends that Turner and Langone violated Labor Law § 241(6) by failing to abide by administrative codes that require proper lighting and clear pathways at worksites.

In reply, B&G asserts that plaintiff failed to raise a material issue of fact in relation to dismissal of the Labor Law claims because he failed to specifically address how B&G could be liable for the accident. B&G contends that plaintiff did not oppose the portions of B&G's motion seeking to dismiss cross-claims and the third-party action against B&G, entitling B&G to summary judgment on the Labor Law claims because it is apparent plaintiff does not dispute B&G's lack of liability and lack of negligence. In further support of this contention, B&G asserts it is not liable for Fico's accident and any claims for common law indemnification and contribution are without merit. B&G also asserts that Holden & Flynn's negligence is a proximate cause of Fico's accident because Holden & Flynn's ladder never should have been in that closet and Holden & Flynn failed to keep track of and failed to return the ladder to its proper place. Therefore, B&G claims it is entitled to common law indemnification and contribution against Holden & Flynn. Finally, B&G contends plaintiff's complaint should be dismissed as it abandoned its claims for Labor Law § 240 and it failed to allege any applicable violations of § 241(6) because the Industrial Code sections do not refer to closets as passageways or ladders as tools.

### **Defendants/Third-Party Plaintiffs Cross-Motion for Summary Judgment**

Defendants Turner, Holden & Flynn, and Langone filed a document they labeled as a cross-motion. However, a cross-motion must be made against a party who has moved against the cross-movant. The instant "cross-motion" was filed on December sixth and the note of issue

was filed on June first. The problem is that they cross-moved against both the movant and plaintiff – a nonmoving party. Therefore, as it pertains to plaintiff, what these defendants did was make an untimely motion. Because mislabeling a late motion as a cross-motion does not magically transform it into a timely motion, the Court did not consider the branch of the motion against plaintiff.

Only these defendants' arguments against B&G and Harleysville (which did move against them) are considered by this Court. Defendants contend that B&G clearly and unambiguously contracted to hold defendants harmless against all claims arising out of the work B&G performed at the construction site and plaintiff was B&G's employee doing electrical work at the site at the time of the accident.

Furthermore, defendants argue that B&G had a contractual obligation to procure insurance protecting Turner and Langone and adding them as additional insureds on all insurance policies. Defendants allege that Fico was injured while working for B&G and that he did not trip over a ladder leaning against the wall in a dark closet. Rather, Fico tripped over a ladder that he was actively using in a room lit with a lamp. Defendants rely on incident reports and testimony of individuals who were on scene immediately after Fico's accident. Defendants claim the accident clearly arose out of work in connection with B&G, thus entitling defendants to indemnification and contribution from B&G.

Defendants further argue Holden & Flynn are entitled to summary judgment and dismissal of the second third-party complaint for contribution and common law indemnification. Defendants contend Holden & Flynn owed no duty to Fico and B&G, never performed work in the janitor's closet, never stored ladders in the closet, and was doing work on a different floor at the time.

In response, B&G disputes defendants' argument that Fico was actively using the ladder at the time of his accident. B&G contends the evidence indicates Fico was not using the ladder and tripped over it when it was leaning against the wall. B&G further argues it did not own the ladder, create the hazard of leaning it against the wall, and did not have notice of its placement. Further, B&G asserts the accident did not occur out of B&G's work at the site, ultimately entitling them to summary judgment.

In reply, defendants argue that B&G's factual analysis ignores the testimony offered by its own employees who specifically stated Fico was using the ladder to install electrical materials located well above his height. Because of this, defendants allege Fico's accident is the result of work he was performing for B&G, and B&G therefore owes a defense and indemnification to defendants pursuant to their contract. Defendants further claim that the contractual obligation to defend and indemnify does not include a negligence trigger, meaning a finding of negligence is not required and the coverage should have started the moment Fico filed his injury claim. Additionally, defendants argue that the second third-party complaint against Holden & Flynn should be dismissed because Holden & Flynn did not perform any work near the janitor's closet and instead were working on a different floor. Moreover, defendants contend Holden & Flynn did not improperly store the ladder because they were not using the ladder at the time, as evidenced by the incident report.

### **Harleysville's Summary Judgment Motion**

Harleysville brings a motion for summary judgment alleging that Langone and affiliated NYU Health entities are not additional insureds under the insurance policy issued to B&G. Harleysville argues its policy strictly limits additional insureds to those who are in contractual

privity with the covered entity (in this case, B&G). B&G did not contract with Langone or other NYU Health facilities, rather it contracted only with Turner. Additionally, Harleysville contends the Wrap-Up Exclusion contained in the insurance contract precludes coverage for Fico's claims against the third-party plaintiffs because the policy does not include coverage for bodily injury or property damage arising out of work performed, thus entitling Harleysville to summary judgment.

In response, defendants Langone and Turner argue the provision applies to both entities, not just Turner. Defendants insist B&G must indemnify both Turner and Langone because the indemnification agreement between B&G and Turner is broad and historically upheld by New York courts.

In reply, Harleysville maintains contractual privity is required for additional insured coverage, which is not present between B&G and Langone. It also reiterates that Fico's injuries are precluded under its Wrap-Up Exclusion against coverage for bodily injury and property damage.

## **Discussion**

To be entitled to the remedy of summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (*id.*). When deciding a summary judgment motion, the court views the alleged facts in the light

most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court's task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d'Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

### **B&G's Motion for Summary Judgment – Labor Law § 240(1)**

“Labor Law § 240(1), often called the ‘scaffold law,’ provides that all contractors and owners . . . shall furnish or erect, or cause to be furnished or erected . . . scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to construction workers employed on the premises” (*Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 499-500, 601 NYS2d 49 [1993] [internal citations omitted]). “Labor Law § 240(1) was designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person” (*id.* at 501).

Nobody claims that Fico fell off the ladder. Whether he tripped over the ladder while using it in a lighted area or while it was leaning against the wall in the dark, § 240(1) is not applicable as this statute contemplates injuries caused by falling from an elevated height. It relates to gravity-related injuries and there is no dispute that Fico did not suffer an elevation-related injury. Because Fico's injury was the result of tripping instead of falling, Labor Law § 240(1) is inapplicable to his claims. Therefore, the Court grants this branch of B&G's motion and severs and dismisses this claim

### **B&G's Motion for Summary Judgment – Labor Law § 241(6)**

“The duty to comply with the Commissioner's safety rules, which are set out in the Industrial Code (12 NYCRR), is nondelegable. In order to support a claim under section 241(6) . . . the particular provision relied upon by a plaintiff must mandate compliance with concrete specifications and not simply declare general safety standards or reiterate common-law principles” (*Misicki v Caradonna*, 12 NY3d 511, 515, 882 NYS2d 375 [2009]). “The regulation must also be applicable to the facts and be the proximate cause of the plaintiff's injury” (*Buckley v Columbia Grammar and Preparatory*, 44 AD3d 263, 271, 841 NYS2d 249 [1st Dept 2007]).

In opposition, plaintiff relies on three Industrial Code sections. These are 12 NYCRR 23-1.30 (improper illumination), 12 NYCRR 23-1.7(e)(1) (clear passageways in work areas), and 12 NYCRR 23-1.7(e)(2) (clear passageways of work areas of tools and debris). First, it is undisputed that the area where Fico's accident occurred is the one which he was told to perform his tasks, which renders the closet as a work area. Fico testified the closet was dark and there was no lighting (NYSCEF Doc. No. 95 at 96:9-11 [Fico Dep.]). Harriendorf, the first person on the scene after the accident, while Fico was still on the floor asking for an ambulance, claimed he

saw a four-foot halogen lamp that was turned on (NYSCEF Doc. No. 99 at 40:9-12 [Harriendorf Dep.]). It is up to the jury reach a determination about these conflicting accounts. Therefore, plaintiff's claims for 12 NYCRR 23-1.30 survive.

Next, the closet Fico was working in could not be considered a passageway for purposes of either 12 NYCRR 23-1.7(e)(1) or (2). Although the Code does not define passageway, "courts have interpreted the term to mean a defined walkway or pathway used to traverse between discrete areas as opposed to an open area," (*Prevost v One City Block LLC*, 155 AD3d 531, 535, 65 NYS3d 172 [1st Dept 2017]). Fico was working in a seven foot by seven-foot janitor's closet with only one door (NYSCEF Doc. No. 99 at 137:1-3 Harriendorf Dep.). No one was walking through the closet to get to another area to work and it did not (and certainly could not) operate as a corridor. There is nothing in the alleged facts to suggest the closet was a passageway of any kind. Therefore, the Court dismisses plaintiff's claims under Labor Law § 241(6) that are based upon violations of 12 NYCRR 23-1.7(e)(1) and (2).

### **B&G's Motion for Summary Judgment--Breach of Contract**

The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages." (*Markov v Katt*, 176 AD3d 401, 402-403, 109 NYS3d 295 [1st Dept 1995])

Pursuant to the contract between B&G and Turner, B&G was required to "name [Turner] and such other entities as may be reasonably requested as additional insureds under the policies of insurance," (NYSCEF Doc. No. 94 at 223). B&G claims it purchased insurance as required by the contract. B&G produced the insurance policy which allows for coverage of additional insureds (NYSCEF Doc. No. 106).

Defendants, in opposition, failed to raise a material issue of fact. Defendants failed to produce evidence to show that they requested any specific entity to be named as an additional insured. There was no requirement in the contract, letter, memo or email included in this record requesting that Langone be named as additional insured. B&G cannot be held in breach if there is no showing that it received a request to name Langone as an additional insured. Therefore, the Court grants this branch of B&G's motion for summary judgment.

### **Harleysville Motion for Summary Judgment (MS 003)**

The Court grants Harleysville's motion for summary judgment. B&G entered a contract with Turner to perform work at the science building for Langone. B&G did not contract with Langone or any other NYU Health entity. Harleysville issued a policy with strict parameters, stating a party may be added as an additional insured when "any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person be added as an additional insured on your policy," (NYSCEF Doc. No. 131). Thus, because B&G did not contract with Langone and there is no indication that anyone ever specifically asked that Langone be named as an additional insured on that policy, Langone is not covered under the Harleysville Policy. However, defendant Turner is covered.

### **Common Law Indemnification and Contribution**

"Common-law indemnification is predicated on vicarious liability, which necessitates that a party who has itself actually participated to some degree in the wrongdoing cannot receive the benefits of the doctrine" (*Edge Mgt. Consulting, Inc. v Blank*, 25 AD3d 364, 367 [1st Dept

2006] [internal quotations and citations omitted]). “[I]n the case of common-law indemnification, the one seeking indemnity must prove not only that it was not guilty of any negligence beyond the statutory liability but must also prove that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident” (*Correia*, 259 AD2d at 65).

***A. B&G’s Motion for Summary Judgment Dismissing Langone’s and Turner’s Indemnification and Contribution Claims***

The Court declines to grant the branch of B&G’s motion seeking summary judgment on defendants’ indemnification and contribution claims. First, according to Fico’s testimony, B&G assigned him the task that day to install lighting in the closet (NYSCEF Doc. No. 95 at 78:21-24 [Fico Dep.]). Fico claimed he would need a ladder to install the lighting in the ceiling but tripped on one leaning against the wall of the closet. In the post-incident summary, Turner’s representative concluded Fico had begun working on the electrical boxes, suggesting that Fico had indeed utilized the ladder while working (NYSCEF Doc. No. 103). Even if the ladder Fico tripped over was not the one he used to do the lighting installation, to allege his accident has nothing to do with B&G’s work is without merit. B&G had direct control over Fico’s tasks on the day of his accident and assigned him the task to install lighting that was near the ceiling in the closet. Because there are too many issues of fact – including how and why Fico fell - this Court cannot find, as a matter of law, that B&G was free of negligence.

***B. B&G’s Motion for Summary Judgment for Indemnification and Contribution from Third-Party Defendant Holden & Flynn***

Again, because there are too many unanswered questions about what happened on the date of the accident, the Court declines to grant this branch of B&G’s summary judgment motion.

B&G's own representative testified that he learned Fico was using a ladder that belonged to Holden & Flynn (NYSCEF Doc. No. 98 at 59:2-5 [Thorne Dep.]). How that ladder ended up in the janitor's closet, who was responsible for getting it there, and whether Fico was using it or not has not yet been determined. Turner's safety representative stated that Fico was working on Holden & Flynn's ladder, in a room illuminated by a halogen lamp, before his accident (NYSCEF Doc. No. 99 at 76:11-22 [Harriendorf Dep.]). Fico, however, claimed he never saw the ladder until after he tripped on it in a dark room (NYSCEF Doc. No. 95 at 108:14-16 [Fico Dep.]).

Moreover, despite recognizing the ladder belonged to Holden & Flynn, it is still a question of fact as to who placed the ladder in the closet where B&G was performing construction work (NYSCEF Doc. No. 100 at 35:5-17 [Barrett Dep.] [testifying that he did not know who placed the Holden & Flynn ladder in the closet]). Even if the ladder that injured Fico belonged to Holden & Flynn, this Court cannot decide an issue of negligence with competing testimony as to whether Fico was using the ladder and who stored the ladder in the closet.

***B. Defendants' Motion for Summary Judgment for Contractual Indemnification and Contribution from B&G***

The Court grants this branch of defendants' summary judgment motion but only as to defendant Turner. B&G entered a contractual agreement with Turner that stated B&G "hereby assumes the entire responsibility and liability for any and all actual or potential damage or injury of any kind or nature whatsoever. . . to all persons and entities, whether employees of [B&G]. . . or otherwise, or to all property," (NYSCEF Doc. No. 94 at 10). Fico was B&G's employee, who had an accident on the job, while doing or preparing to do electrical work that B&G assigned him to do in the closet. Fico brought a claim against parties, including Turner. B&G's contract

with Turner requires B&G to assume the entire responsibility and liability for potential damage or injury. (*See id.*).

There is no material issue of fact as to what the parties agreed, and there is no dispute this agreement exists. B&G would have this Court believe Fico's accident "had nothing to do with B&G's work," but it's clear Fico was employed by B&G, was injured within the scope of that employment, and now the contractual provisions to which B&G agreed are being utilized by the other party (NYSCEF Doc. No. 109 at 9).

***C. Defendant Holden & Flynn's Motion for Summary Judgment Dismissing B&G's Indemnification and Contribution claims***

The Court declines to grant this branch of defendants' summary judgment motion. As previously noted, the ladder was the property of Holden & Flynn, but there is an issue of fact as to how the ladder ended up in the janitorial closet. The jury may conclude that a Holden & Flynn employee did not feel like returning it to where it belonged so just stashed it in the closet, or the jury may conclude that Fico did not want to bother to check out a ladder so he just grabbed this one and brought it to the closet, or the jury may conclude something else. This Court cannot issue a decision on negligence as a matter of law on these papers. Therefore, the Court denies Holden & Flynn's motion for summary judgment for common law indemnification or contribution.

Accordingly, it is hereby

ORDERED that the branches of B&G's motion for summary judgment dismissing plaintiff's claims under Labor Law § 240(1), under Labor Law § 241(6) premised on violations of 12 NYCRR 23-1.7(e)(1) and (2), and defendants'/third-party plaintiffs' claims for breach of contract are granted; and it is further

ORDERED that the branches of B&G’s motion for summary judgment dismissing plaintiff’s claim under Labor Law § 241(6) for violation of 12 NYCRR 23-1.30, to dismiss defendants’/third-party plaintiffs’ Turner’s and Langone’s claims for contractual indemnification and contribution, and to dismiss defendants’/third-party plaintiffs’ Turner’s, Langone’s and Holden & Flynn’s claims for common law indemnification are denied; and it is further

ORDERED that the branch of defendants’/third-party plaintiffs’ Langone’s and Turner’s motion for summary judgment for contractual indemnification from B&G is granted only to the extent of indemnification for defendant Turner; and it is further

ORDERED that Harleysville’s motion for summary judgment dismissing third-party plaintiffs’ Langone’s and Turner’s complaint is granted; and it is further

ORDERED that Holden & Flynn’s motion for summary judgment dismissing B&G’s second third-party complaint is denied; and it is further

ORDERED that defendants’ cross-motion for summary judgment against plaintiff is denied as untimely.

3/23/2023		ARLENE P. BLUTH, J.S.C.
<b>DATE</b>		
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
APPLICATION:	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:		