

MLCJR, LLC v PDP Group, Inc.

2025 NY Slip Op 32959(U)

July 23, 2025

Supreme Court, New York County

Docket Number: Index No. 657028/2022

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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MLCJR, LLC, COX OIL, LLC, COX OPERATING, L.L.C.,
COX OIL OFFSHORE, L.L.C., CEXXI, INC., COX
INVESTMENT PARTNERS LP, and ENERGY XXI GULF
COAST, INC.

INDEX NO. 657028/2022

MOTION DATE 09/17/2024

Plaintiffs,

MOTION SEQ. NO. 004

- v -

PDP GROUP, INC. D/B/A AMYNTA SURETY
SOLUTIONS, ASPEN AMERICA INSURANCE
COMPANY, and USFIC INSURANCE COMPANY,

**AMENDED
DECISION + ORDER ON
MOTION**

Defendants.

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351

were read on this motion to/for RENEWAL

In this commercial surety dispute, defendant and counterclaim plaintiff United States Fire Insurance Company (USFIC) moves pursuant to CPLR 2221(e) for leave to renew its prior motion for partial summary judgment on its counterclaim for specific performance of the collateral provision in the General Agreement of Indemnity (GAI), previously denied by this court's Decision and Order dated May 21, 2024. Plaintiffs oppose the motion. For the reasons set forth below, USFIC's motion to renew is granted, and upon renewal, the motion for partial summary judgment is granted.

Background

The court assumes familiarity with the background of this case, which was thoroughly detailed in the court's prior Decision and Order, dated May 21, 2024 (NYSCEF # 321, Prior Order).

By way of a brief background, USFIC is the surety on Performance Bond No. 612410290, a \$30 million instrument issued for the benefit of Devon Energy Production Company, L.P. to secure EPL Oil & Gas, LLC (EPL)'s Gulf-of-Mexico decommissioning obligations in connection with certain oil and gases leases known

as the East Bay Leases (NYSCEF # 238, Aguiar aff ¶¶ 13–17; # 241, Devon Bond). The Devon Bond was executed in connection with the East Bay Leases (*id.*). As part of this surety arraignment, plaintiffs and USFIC, by way of various assignments, entered into a General Agreement of Indemnity (GAI) in which, as relevant here, USFIC could demand collateral equal to undischarged liability (NYSCEF # 31, GAI ¶ 3; # 32, Riders).

EPL remains the bond's principal even after selling the East Bay leases in 2015 to Whitney Oil & Gas and Trimont Energy (together, Trimont) (NYSCEF # 238, Aguiar aff at ¶ 15; # 241, Devon Bond at 1). Section 7.08 of the Purchase and Sale Agreement obligated Trimont to procure a substitute surety bond acceptable to Devon in place of the Devon Bond, yet Trimont never obtained that replacement (NYSCEF # 84, PSA § 7.08; NYSCEF # 321, Prior Order at 4). After repeated requests for either a substitute bond or collateral were refused, USFIC issued a written Collateral Demand on June 2, 2022 for \$99,443,460, inclusive of the \$30 million Devon Bond exposure (*id.*). Plaintiffs refused to the demand and commenced this action on June 28, 2022, asserting declaratory and contract claims (NYSCEF # 1, Complaint at 17). After the court denied plaintiffs' motion for a preliminary injunction, USFIC asserted a counterclaim for breach and specific performance (*id.* at 5-6). Soon after, on January 30, 2023, USFIC moved for partial summary judgment on the Collateral Demand (NYSCEF # 110, Notice of Motion).

The Prior Order denied USFIC's first motion, holding that its \$99,443,460 million demand was not "reasonably related to any actual or imminent liability" because (i) no regulator or obligee had declared a default or asserted a claim against the Devon Bond, and (ii) the demand was calculated wholly from USFIC's undisclosed risk models, leaving the court unable to test its proportionality (NYSCEF # 321, Prior Order at 9-11). Invoking CPLR 3212(f) and *Voluto Ventures LLC v Jenkins & Gilchrist Parker Chapin LLP*, 44 AD3d 557 [1st Dept 2007], the court held that the information necessary to assess reasonableness lay solely within USFIC's control, and therefore denied summary judgment without prejudice to renew after discovery (*id.* at 7, 10-11).

USFIC now moves to renew its motion, pointing to several purportedly material developments after the Prior Order record closed on March 1, 2023, altered the facts of their case. Those factual developments are as follows:

First, EPL Oil & Gas, Cox Operating, Cox Oil Offshore and MLCJR (together, Cox Indemnitors) filed chapter 11 petitions, and their chief restructuring officer admitted the group's finances had been eroding since 2022 (NYSCEF # 238, Aguiar aff ¶¶ 25-26; NYSCEF # 288, USFIC's mol at 15). Furthermore, on October 11, 2024, the Texas Bankruptcy Court lifted the automatic stay, which enabled Devon to declare a default, and Devon did so on October 16, 2024 (Devon Notice), creating

a live claim on Bond 612410290 (NYSCEF # 341, Aguiar reply aff ¶¶ 5-9; # 342, Devon Order; # 343, Devon Notice). Meanwhile, Whitney/Trimont entered chapter 11 in Louisiana; failed to sell the bonded leases; and moved—without opposition—to abandon the federal acreage, thereby triggered a shutdown for lack of decommissioning funds by the Bureau of Safety and Environmental Enforcement (BSEE) (NYSCEF # 276, Supp Rule 19-a ¶¶ 7-11; NYSCEF # 249, Whitney and Trimont Petitions; # 251, Abandonment Motions at 7-8).

In making its motion, USFIC argues these developments eliminate the factual basis for the court's original denial and justify reconsideration NYSCEF # 288, USFIC's mol at 1-2). Together with newly produced cost curves and risk-projection data that link the \$30 million collateral figure to Devon's quantified decommissioning estimate, USFIC contends these facts remove the two defects the Court identified (no live claim and no proportionality proof) and therefore warrant renewal under CPLR 2221(e) (NYSCEF # 288, USFIC's mol at 2, 4-5).

With renewal thus justified, USFIC pivots to the merits, arguing that the same undisputed facts entitle it to summary judgment (*id.* at 4). Under the GAI, USFIC may, "in its sole discretion," demand collateral equal to any undischarged liability (NYSCEF # 31, GAI ¶ 3; # 32, Riders). USFIC maintains that, under controlling First Department precedent, such provisions are enforceable once default is declared and the surety faces confirmed regulatory exposure, with courts treating that exposure as irreparable harm (NYSCEF # 288, USFIC's mol at 19-21). And because all material facts are admitted in the Supplemental Rule 19-a Statement (NYSCEF # 276), USFIC contends that the CPLR 3212(f) concerns identified in the Prior Order have been cured and judgment should now enter compelling the Cox Indemnitors to post \$30 million in collateral.

Plaintiffs oppose renewal because USFIC's new evidence could not have altered the Prior Order because no claim or loss under the Devon Bond has arisen (NYSCEF # 326, Pltf's mol at 3-4). Therefore, the Collateral Demand remains speculative, making the surety-collateral cases USFIC cites inapposite and precluding judgment as a matter of law (*id.* at 12-14). Plaintiffs further contend that even if renewal were granted, summary judgment is premature under CPLR 3212(f) absent disclosure of the methodologies and data behind the \$30 million reserve demand (*id.* at 14). Moreover, multiple triable issues remain including timing and cost of abandonment, predecessor liability, the existence and balance of the Chase escrow trust, and conflicts in the Omohundro and Sanders affidavits— must be addressed through discovery under CPLR 3212(f), not by another dispositive motion (*id.* at 12-20).

USFIC, in reply, emphasizes that its renewed demand rests solely on post-March 2023 developments and is neither premature nor duplicative (NYSCEF # 351, USFIC's reply mol at 1-4, 8). First, that the October 11, 2024 stay-modification order and unopposed BSEE Abandonment Motions on September 16 and October 17, 2024 eliminate any timing uncertainty (*id.* at 1-2; NYSCEF # 345, Pipkin reply aff at 3-4). Second, that the BSEE's 30 CFR § 250.1704 cost estimates are binding, the Bond's "Abandonment and Clean-up Liabilities" definition covers all related facilities, and the \$15 million trust cap cannot satisfy the uncontested \$152.9 million estimate (NYSCEF # 241, Devon Bond at 2; # 276, Supp Rule 19-a ¶ 11). Third, that the Sanders Affidavit has been conclusively refuted by subsequent filings (NYSCEF # 351, USFIC's reply mol at 12-14). Reiterating that the GAI imposes an absolute duty to post collateral upon demand, USFIC maintains that, with these undisputed facts demonstrating the demand's reasonableness, the Court should compel specific performance and enter summary judgment as a matter of law (NYSCEF # 351, USFIC's reply mol at 4-5).

Discussion

CPLR 2221(e) governs renewal. A movant must present new facts that would change the determination and explain why those facts were previously unavailable (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]; *see American Audio Serv. Bur. Inc. v AT & T Corp.*, 33 AD3d 473, 476 [1st Dept. 2006]; *see Perretta v New York City Transit Auth.*, 230 AD3d 428, 431 [1st Dept 2024]. At the same time, it has been held that renewal "may sometimes encompass a new matter that was not available prior to the court's decision" (*Haenel v November & November*, 144 AD2d 298, 299 [1st Dept 1988] [internal citations omitted]).

USFIC's motion to renew is granted. In its motion, USFIC has supplied various post-motion factual developments that could not have been raised in its original motion summary judgment motion. For example, on May 14, 2023, the Cox Indemnitors filed Chapter 11 petitions in Texas, and their chief restructuring officer swore that the companies' finances had been deteriorating since 2022 (NYSCEF # 238, Aguiar aff ¶¶ 25-26; # 288, USFIC's mol at 15). On October 11, 2024, the Texas Bankruptcy Court entered a consensual order permitting Devon to issue the Devon Notice, identified as a condition precedent¹ to drawing on the bond (NYSCEF #341, Aguiar reply aff at ¶¶ 5-9; # 342, Devon Order). Devon issued that notice on October 16, 2024, thereby commencing a bond claim and turning USFIC's exposure from hypothetical to imminent (NYSCEF # 343, Devon Notice). Meanwhile, Trimont although had agreed to replace the bond, filed Chapter 11 in Louisiana (NYSCEF

¹ "In the event that Ocean determines in good faith that the Principal has defaulted in the performance of its obligations under the East Bay Agreement in respect of the Abandonment and Clean-up Liabilities, Ocean shall give written notice thereof to the Principal and the Sureties, specifying in reasonable detail the nature of the default alleged. If the Principal does not remedy the default within thirty (30) days from the date of such notice ... then a default ... shall be deemed to have occurred hereunder." (NYSCEF # 37, Devon Bond at 2, ¶ 2).

#249, Whitney and Trimont Petitions). However, when a court-supervised auction attracted no buyers they moved without opposition to abandon the federal East Bay leases (NYSCEF # 251, Abandonment Motions at 7-8), and the BSEE ordered for operations to shut down immediately due to insufficient decommissioning funds (NYSCEF # 276, Supp Rule 19-a ¶ 7-11).

None of these developments existed—or could, with due diligence, have been discovered when USFIC made its original motion. And each of these developments cuts to the core of the court’s earlier rationale, which rested on the absence of a live bond claim, the speculative nature of USFIC’s exposure, and the lack of proven insolvency. Collectively, they constitute “new facts ... that would change the prior determination” within the meaning of CPLR 2221(e)(2). Their post-decision timing likewise furnishes the requisite “reasonable justification” for the prior omission under CPLR 2221(e)(3). Renewal is therefore procedurally proper.

Because USFIC’s motion to renew has been granted, the court next considers whether these post-decision facts, which satisfy CPLR 2221(e), likewise eliminate any triable issue and warrant the entry of summary judgment in USFIC’s favor.

To prevail on its summary judgment motion under CPLR 3212, USFIC must “eliminate all material issues of fact” with admissible evidence (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and, where the remedy sought is specific performance of a collateral-security clause, the demand must be reasonable (*see BIB Constr. Co. v Fireman’s Ins. Co.*, 214 AD2d 521, 523 [1st Dept 1995]; *see also Westinghouse Elec. Corp. v NYC Tr. Auth.*, 82 NY2d 47, 54-55 [1993]).

The Prior Order frames “reasonableness” as an indispensable equitable check on even the most absolute collateral clauses: a demand will be enforced only if it bears a reasonable relationship to the surety’s potential exposure and is grounded in tangible, third-party liabilities rather than internal risk modeling (NYSCEF # 321, Prior Order at 6, 8-10). Drawing on *BIB Constr Co. v Fireman’s Ins Co.* and related authority,² the court explained that a surety must tether its figure to a declared bond default, regulator-verified cost estimates, filed claims, or other objective markers of loss; speculative reserves or worst-case projections do not suffice (*id.*). Applying that standard, the court denied USFIC’s motion without prejudice because (i) no default had been declared on the Devon Bond; (ii) exposure rested on USFIC’s internal projections rather than a live claim or regulator-verified liability; (iii) the insolvency of the Cox Indemnitors was unproven; and (iv) CPLR

² *Westinghouse Elec Corp v NYC Tr Auth*, 82 NY2d 47, 55 [1993]; *Safeco Ins Co of Am v MES Inc*, 2010 WL 4828103, *4 [ED NY Nov 22, 2010, No. 09-CV-3312 (ARR)(ALC)]; *RLI Ins Co v Pro-Metal Constr Inc*, 2019 WL 1368851, *4 [SD NY Mar 26, 2019, No. 18-cv-2762(AJN)]; and *Colonial Sur Co v Genesee Val Nurseries Inc*, 5 AD3d 1024, 1025 [4th Dept 2004].

3212(f) discovery might produce evidence bearing on the demand's reasonableness (NYSCEF # 321 at 7-10).

With the new factual developments identified by USFIC, those deficiencies outlined in the Prior Order have now been cured. The Texas Bankruptcy Court's October 11, 2024 stay-lift order (NYSCEF # 341, Aguiar reply aff at 2; NYSCEF # 342, Devon Order) and Devon's October 16 2024 Notice of Default (NYSCEF # 343, Devon Notice) establish a live bond claim; the Trimont Chapter 11 petitions (NYSCEF # 249, Whitney and Trimont Petitions), their failed auction and unopposed motions to abandon the East Bay leases (NYSCEF # 251, Abandonment Motions at 7-8), and the BSEE's ensuing shutdown directive (NYSCEF # 276, Supp Rule 19-a ¶¶ 7-11) confirm that neither the bond principal nor the replacement obligors can satisfy the decommissioning obligation; and the BSEE's \$152.9 million cost estimate (*id.* at ¶ 11) supplies an external, regulator-verified measure of exposure. Hence, the \$30 million Collateral Demand now rests on concrete, undisputed facts rather than internal projections, furnishing the very evidence of reasonableness that the court previously found lacking (*see BIB Constr. Co. v Fireman's Ins. Co.*, 214 AD2d 521, 523 [1st Dept 1995]). And in such circumstances where the undisputed facts establish that a Collateral Demand is reasonable, summary judgment is warranted (*see Safeco Ins Co of Am v MES Inc*, 2010 WL 4828103, *4 [ED NY Nov 22, 2010, No. 09-CV-3312 (ARR)(ALC)]). Accordingly, upon renewal, USFIC's motion is granted.

Conclusion

In view of the above, it is hereby

ORDERED that defendant United States Fire Insurance Company's motion to renew its prior motion for partial summary judgment (MS 002) is granted, and upon renewal, USFIC's motion for partial summary judgment is granted in its entirety as against Cox Oil, LLC, CEXXI, Inc., and Cox Investment Partners LP; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant United States Fire Insurance Company as against Cox Oil, LLC, CEXXI, Inc., and Cox Investment Partners LP, directing Cox Oil, LLC, CEXXI, Inc., and Cox Investment Partners LP to deposit collateral with USFIC in the amount of \$30,000,000.00, together with interest at the statutory rate accruing from the date of this Amended Decision and Order, as calculated by the Clerk of the Court, within ten (10) days of the entry of judgment; and it is further

ORDERED that defendant United States Fire Insurance Company shall have judgment against plaintiffs United States Fire Insurance Company as against Cox Oil, LLC, CEXXI, Inc., and Cox Investment Partners LP as to liability for

reasonable attorneys' fees and expenses incurred by plaintiff in connection with its motion, with an amount to be determined based on additional submissions, and this issue is hereby severed for an inquest before a Special Referee to determine the amount of fees and costs to be awarded; and it is further

ORDERED that defendant United States Fire Insurance Company shall submit a proposed judgment consistent with the Amended Decision and Order; and it is further

ORDERED that counsel for defendant United States Fire Insurance Company shall, within 30 days from the date of this order, serve a copy of this order with notice of entry, together with a completed Information Sheet, upon the Special Referee Clerk in the General Clerk's Office (Room 119), who is directed to place this matter on the calendar of the Special Referee's part; and it is further

ORDERED that such service upon the Special Referee Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that counsel for defendant United States Fire Insurance Company is directed to serve a copy of this order, together with notice of entry, upon defendants and the Clerk of the Court within 10 days of this order.

7/23/2025
DATE


MARGARET A. CHAN, 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