

King & Country LLC v State Natl. Ins. Co., Inc.

2025 NY Slip Op 34433(U)

November 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 525286/21

Judge: Peter P. Sweeney

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At an IAS Term, Part 73 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 17TH ay of November, 2025.

P R E S E N T:

HON. PETER P. SWEENEY,
Justice.

-----X
KING & COUNTRY LLC and BAYSIDE BUILDERS,
INC.,

Plaintiffs,

-against-

Index No.: 525286/21

STATE NATIONAL INSURANCE COMPANY, INC.,
individually and as the parent company of UNITED
SPECIALTY INSURANCE COMPANY, HUDSON
INSURANCE COMPANY, RLI INSURANCE
COMPANY, individually and as the parent company of
MT. HAWLEY ISNURANCE COMPANY, SEGUNDO
PINTO GUANO and RODRIGO POALACIN,

Defendants.

-----X

The following papers read herein:
Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

Document Nos.:
57-58, 64, 82, 84-85, 94, 104,
106-107, 119, 120-121, 136,

140-144 _____

Opposing Affidavits/Answer (Affirmations) _____

167, 169, 171, 174, 177,
179,183, 198, 203, 204, 209,
210, 211, 226, 231-232, 236-
238, 240-242, 244-246 _____

Upon the foregoing papers, defendants United Specialty Insurance Company (USIC) and State National Insurance Company, Inc. (State National), move for an order, pursuant to CPLR 3212, declaring that: (1) State National has no obligation to defend or

indemnify anyone in this matter; (2) USIC has no obligation to defend or indemnify plaintiff's King & Country LLC (King & Country) and Bayside Builders Inc. (Bayside) in the actions filed against them by defendant Segundo Pinto Guano (*Guano v King & Country LLC*, Sup Ct, Kings County, index No. 508813/21) (Guano Action) and defendant Rodrigo Poalacin (*Poalacin v King & Country, LLC*, Sup Ct, Kings County, index No. 508814/21) (Poalacin Action) (collectively referred to as the Underlying Actions) (motion sequence number 2).

Defendant Mt. Hawley Insurance Company (Mt. Hawley) moves for an order, pursuant to CPLR 3212, declaring that it has no duty to indemnify plaintiffs in the Underlying Actions (motion sequence number 3).

Defendant Rodrigo Poalacin moves for an order, pursuant to 3212, granting him summary judgment finding that USIC, Mt. Hawley and defendant Hudson Insurance Company (Hudson) have a duty to defend and indemnify King & Country and Bayside in the Poalacin Action (motion sequence number 4).

Hudson moves for an order, pursuant to CPLR 3212, declaring that it has no duty to defend and indemnify plaintiffs under the policies it issued to them with respect to the Underlying Actions and dismissing the complaint (motion sequence number 5).

Plaintiffs move for an order, pursuant to CPLR 3212, declaring that the defendant insurers must defend and indemnify them with respect to the Poalacin Action (motion sequence number 6).

USIC and State National's motion (motion sequence number 2) is granted only to the extent that the complaint is dismissed as against State National and it is declared that

State National has no duty to defend or indemnify plaintiffs with respect to the Underlying Actions. The motion is otherwise denied.

Mt. Hawley's motion (motion sequence number 3) is granted, the complaint is dismissed as against it, and it is declared that Mt. Hawley has no duty to defend or indemnify plaintiffs with respect to the Underlying Actions.

Poalacin's motion (motion sequence number 4) is denied.

Hudson's motion (motion sequence number 5) is granted, the complaint is dismissed as against Hudson, and it is declared that Hudson has no duty to defend or indemnify plaintiffs in the Underlying Actions under either of its policies.

Plaintiffs' motion (motion sequence 6) is denied.

Background

In this declaratory judgment action (CPLR 3001), plaintiffs request that the court enter a judgment declaring: (1) that USIC has a duty to defend and indemnify them with respect to the claims asserted in the Underlying Action; (2) that USIC's policy is primary to the coverage provided under Hudson's policy and to coverage provided under Mt. Hawley's policy; (3) and that Hudson's policy and Mt. Hawley's policy are each applicable excess policies to USIC's policy. King & Country was the owner/developer of a four-story, three-unit condo building that it had constructed in Brooklyn (Project Site). Bayside was the general contractor for this project. Non-party Maspath Masonry & Concrete Corp. (Maspath) was hired to perform concrete work on the project and both Segundo Pinto Guano and Rodrigo Poalacin, the plaintiffs in the Underlying Actions, were employed by Maspath. Both Guano and Poalacin commenced their respective actions against King &

Country and Bayside in April 2021 and, in each action, they alleged that they suffered injuries in March 2021 as the result of negligence and Labor Law violations. Of note, upon the application of Guano, the Guano Action was dismissed by an order (Knipel, J.) dated June 27, 2024 (NY St Cts Elec Filing [NYSCEF] Doc No. 133).¹

It is undisputed that at the time of the accidents at issue in the Underlying Actions, both King & Country and Bayside were insureds under a general liability policy issued by USIC that specifically limited coverage to the construction project at the Project Site (NYSCEF Doc No. 66, policy endorsement #21 at 51) and an excess policy issued by Mt. Hawley that similarly limited coverage to the Project Site (NYSCEF Doc No. 89, policy endorsement at 51). In addition, Bayside was an insured and King & Country was an additional insured under a general liability policy (NYSCEF Doc No. 137) and an excess policy (NYSCEF Doc No. 138) issued by Hudson. Each of the insurers have disclaimed coverage and deny that they have any obligation to defend or indemnify plaintiffs with respect to the underlying actions.

Discussion

USIC's Policy

USIC disclaimed coverage with respect to the Underlying Actions by way of separate letters (NYSEF Doc Nos. 62 and 63). In each of these letters, USIC asserted that plaintiffs had violated the policy's "Hiring Warranty" which provides that, "[w]ith respect

¹ Although this order obtained by Guano would likely be deemed to be a voluntary discontinuance without prejudice to the commencement of a new action (CPLR 3217 [b], [c]), any new action by Guano would, at this point in time, be subject to dismissal on statute of limitations grounds (CPLR 214 [5]; CPLR 3211 [a] [5]; *Islam v 495 McDonald Ave., LLC*, 216 AD3d 751, 753 [2d Dept 2023]).

to the designated project covered hereunder, it is understood and agreed that all contractors at the project site are hired through or engaged by the General Contractor (Bayside Builders Inc)” (NYSCEF Doc. No 66 at 52). USIC asserted that the Hiring Warranty was violated because Maspath, the employer of both Guano and Poalacin, was hired by King & Country, not Bayside, as was required by the Warranty. Based on this violation of the hiring warranty, USIC asserted that the policy did not provide coverage for the accidents or the lawsuits and denied that it had any obligation to indemnify King & Country or Bayside for the Underlying Actions. Nevertheless, USIC stated that it would provide a “courtesy” defense to King & Country and Bayside in those actions.

This court initially rejects plaintiffs’ assertions that the disclaimer letters fail to comply with Insurance Law § 3420 (d) (2). Plaintiffs’ assertion that the letters for King & Country were mailed to the wrong address fails to show any impropriety since the address to which it was mailed was the address identified as belonging to King & Country in the policy (NYSCEF Doc No. 66 at 2) and was the address provided by King & Country on the insurance application form submitted to USIC (NYSCEF Doc No. 72 at 1) (*see Meade v Finger Lakes-Seneca Coop. Ins. Co.*, 184 AD2d 952, 953 [3d Dept 1992]; *see also Rayham v Multiplan, Inc.*, 153 AD3d 865, 867 [2d Dept 2017]). There is no dispute that Bayside received the disclaimer letters at its address and that Bayside’s principal provided copies of the letters to Eli Fernald, King & Country’s managing member (NYSCEF Doc No. 157 at 79). The mistake with respect to the dates on each letter (July 9, 2020 instead of July 9, 2021) and other obvious mistakes with the letters are simply immaterial and

insufficient to demonstrate that the letters failed to provide adequate notice for purposes of Insurance Law § 3420 (d) (2).²

The court also rejects plaintiffs' arguments that waiver and estoppel bar USIC's disclaimer. Namely, since the disclaimer letters clearly and unequivocally articulated USIC's grounds for denying coverage, USIC's provision of the "courtesy" defense to plaintiffs in the Underlying Actions is not a ground for finding any waiver or estoppel on the part of USIC (*see United Specialty Ins. Co. v JD Commercial Builders Inc.*, 2020 WL 4901761[U], *5 [SDNY 2020]; *see also Certain Underwriters at Lloyd's v Itzhak Nissanoff Inc.*, 239 AD3d 478, 479 [1st Dept 2025]; *DeSantis Bros. v Allstate Ins. Co.*, 244 AD2d 183, 183-184 [1st Dept 1997], *lv denied* 91 NY2d 808 [1998]).

On the record here, the court also finds that plaintiffs have failed to demonstrate an ambiguity with respect to the Hiring Warranty that would preclude its application here. Contrary to plaintiffs' contention, since the ordinary meanings of "hired" or "engaged" are clear, the failure to define them does not create an ambiguity (*see Consolidated Rest. Operations, Inc. v Westport Ins. Corp.*, 205 AD3d 76, 81 [1st Dept 2022], *affd* 41 NY3d 415 [2024]; *Hansard v Federal Ins. Co.*, 147 AD3d 734, 737 [2d Dept 2017], *lv denied* 29 NY3d 906 [2017]).³ Even if an ambiguity could be found, Fernald, a managing member of King & Country - - and the person who negotiated the obtaining of insurance on behalf of King & Country with his broker - - testified at his deposition that he was informed the

² The court notes that plaintiffs do not claim that the disclaimers were untimely.

³ There is no real dispute that by identifying the endorsement at issue as a "Hiring Warranty" the provision constitutes a warranty within the meaning of Insurance Law § 3106 (a) (*see Triple Diamond Café, Inc. v Those Certain Underwriters at Lloyd's London*, 124 AD3d 763, 765 [2d Dept 2015]; *Slattery Skanska Inc. v American Home Assur. Co.*, 67 AD3d 1, 13 [1st Dept 2009]).

policy from USIC would contain a hiring warranty and that he understood that this warranty required that all contracts would be executed by Bayside (NYSCEF Doc No. 157 at 57 lines 18-25; 58 lines 2-4). Given this testimony, the only reasonable view of the evidence resolves any ambiguity in favor of USIC (*see Demetrio v Stewart Tit. Ins. Co.*, 124 AD3d 824, 826-827 [2d Dept 2015], *lv denied* 25 NY3d 906 [2015]; *see also Hobish v AXA Equit. Life Ins. Co.*, 43 NY3d 442, 450-451 [2025]).⁴

Plaintiffs are correct that the Hiring Warranty, by using the words “hired” or “engaged,” did not require a written contract. The absence of a written contract requirement, however, has no bearing on USIC’s showing that that it was Town & Country, not Bayside, that hired Maspath. USIC demonstrated this by submitting the written agreement between Town & Country and Maspath, executed by Fernald on behalf of Town & Country. Plaintiffs, nevertheless, contend that the contract’s identification of Town & Country as the contracting party was a mistake. Fernald, in his deposition testimony (NYSCEF Doc No. 157, at 87-88) and affirmation (NYSCEF Doc No. 142 at ¶¶ 7-9), and Donald Larosa, Bayside’s vice president, in an affirmation (NYSCEF Doc No. 143 at ¶¶ 12-15), assert that Fernald was authorized to sign contracts on Bayside’s behalf, that they each intended that the contract to be with Bayside, and that the insertion of “Town &

⁴ The court additionally notes that, although not specifically raised by plaintiffs, the language in the Hiring Warranty stating that all subcontractors “are hired or engaged” by Bayside Builders could be read as a statement deeming that all contractors hired for the project were hired by Bayside Builders regardless of who actually hired them. This reading of the provision may create an ambiguity, but, given that such a reading would serve no obvious purpose in the context of the entire insurance contract, it arguably is not a reasonable reading of the provision (*see Keller-Goldman v Goldman*, 149 AD3d 422, 426 [1st Dept 2017], *affd* 31 NY3d 1123 [2018]; *Matter of Lipper Holdings v Trident Holdings*, 1 AD3d 170, 170 [1st Dept 2003]). In any event, given Fernald’s testimony showing that plaintiffs understood that provision required that Bayside execute the contracts, the only reasonable view of the evidence resolves the ambiguity in favor of the insurer (*see Demetrio*, 124 AD3d at 826-827]; *see also Hobish*, 43 NY3d at 450-451).

Country” into the contract was a mistake. That Town & Country may have been identified as the contracting party by mistake, however, does not alter the binding nature of the contract as written (*see Wu v Uber Tech., Inc.*, 43 NY3d 288, 298-299 [2024]; *Rabizadeh v 165 E 66, LLC*, 238 AD3d 575, 576 [1st Dept 2025] [Allegation of a scrivener’s error failed to overcome the “heavy presumption that a deliberately prepared and executed written instrument manifest[s] the true intention of the parties” (internal quotation marks omitted)]; *Marcella v Glowacki*, 233 AD3d 1137, 1139-1140 [3d Dept 2024]; *Hershkowitz v Levy*, 190 AD3d 835, 837 [2d Dept 2021]). Plaintiffs have submitted no evidence that at any relevant time that there was a reformation, novation or modification of the contract with Maspath to correct the mistake regarding the contracting parties (*see e.g.* 22A NY Jur 2d, Contracts §§ 459 [novation], 475 [modification]). Accordingly, plaintiffs have failed to demonstrate the existence of a factual issue regarding the violation of the Hiring Warranty.

The violation of a warranty, in and of itself, however, is an insufficient basis to deny coverage. Insurance Law § 3106 (b) provides that, “[a] breach of warranty shall not avoid an insurance contract or defeat recovery thereunder unless such breach materially increases the risk of loss, damage or injury within the coverage of the contract.” “Ordinarily, the question of the materiality of a . . . breach of warranty is a question of fact for the jury” and “[i]t is only where the evidence concerning the materiality is clear and substantially uncontradicted that the question is a matter of law for the court to decide” (*Continental Ins. Co. v RLI Ins. Co.*, 161 AD2d 385, 387 [1st Dept 1990] [internal citations omitted]; *see Anjay Corp. v Those Certain Underwriters at Lloyd’s of London Subscribing to Certificate*

No. HN01AAF4393, 33 AD3d 323, 324 [1st Dept 2006]). It is the insurer who bears the burden of showing the materiality of the breach of warranty (*see Anjay Corp.*, 33 AD3d at 324).

Here, USIC, in moving for summary judgment, fails to point to evidentiary proof showing that the breach materially increased the risk of loss. The conclusory assertions of USIC's counsel do not demonstrate the increased risk and, contrary to the assertion of USIC's counsel, the occurrence of the accidents at issue in the Underlying Actions does not, in and of themselves, demonstrate that the hiring of Maspath by King & Country as opposed to Bayside increased the risk. The cases cited by USIC are distinguishable since the increased risk associated with the breach of a warranties in those cases was readily apparent (*see Triple Diamond Café, Inc. v Those Certain Underwriters at Lloyd's London*, 124 AD3d 763, 765 [2d Dept 2015] [fire alarm not set in fire loss case]; *Star City Sportswear v Yasuda Fire & Mar. Ins. Co. of Am.*, 1 AD3d 58, 62 [1st Dept 2003] [absence of armed guards in a robbery case], *aff'd* 2 NY3d 789 [2004]; *J.A.V. Petroleum Inc. v Norguard Ins. Co.*, 2018 WL 10676901[U], *7 [EDNY 2018] [absence of fire alarm and smoke detectors in a fire loss case]).⁵

On the other hand, plaintiffs, in moving, have also failed to demonstrate, *prima facie*, the absence of an increased risk arising from King & Country's hiring of Maspath. Fernald and Larosa, in their affirmations, each assert that, despite the fact that the contract signed by Fernald was in King & Country's name, Bayside had vetted Maspeth as it had

⁵ Other arguments/evidence relating to why USIC considered the warranty to be important does not establish the materiality of this particular breach to the loss (*see Anjay*, 33 AD3d at 324).

the other contractors hired by Bayside, that Bayside acted as general contractor on the project, and that Bayside was the party supervising the project on a day-to-day basis (NYSCEF Doc No. 142, Fernald aff. at ¶¶ 8, 10-11; NYSCEF Doc No. 143, Larosa aff. at ¶¶ 12-15). Neither Fernald nor Larosa, however, provide any detail about the vetting of Maspeth or about Bayside's supervision of the project or of Maspeth. In the absence of such detail, this court cannot find as a matter of law that Bayside's lack of actual contractual privity with Maspeth did not materially increase the risk of loss for the project (*see J. Katz Creations v St. Paul Fire & Mar. Ins. Co.*, 80 AD2d 790, 790 [1st Dept 1981]; *cf. First Fed. Sav. & Loan Assn. of Niagara County v Nichols*, 33 AD2d 259, 262-263 [4th Dept 1970]; *United States Fire Ins. Co. v PKFinans International Corp.*, 904 F2d 169, 170-171 [2d Cir 1990]).

Accordingly, in view of these factual issues, the portions of plaintiffs, USIC and Poalacin's motions addressed to coverage under USIC's policy must be denied.

On the other hand, State National has demonstrated its prima facie entitlement to summary judgment dismissing the complaint and a declaration in its favor through evidence showing that USIC issued the policy at issue and that, although State National is the parent company of USIC, it does not exercise complete dominion or control over USIC such that it may be held liable for USIC's torts (*see Neill v Cinema de Lux*, 198 AD3d 974, 975 [2d Dept 2021]; *Weinstein v Klocke of Am., Inc.*, 151 AD3d 1110, 1113 [2d Dept 2017]). Since the other parties to the action have not opposed this portion of USIC and State National's motion, State National is entitled to summary judgment dismissing the

complaint as against it and a declaration that it has no duty to defend or indemnify plaintiffs with regard to the underlying actions.

Mt. Hawley's Policy

In its disclaimer letters addressed to plaintiffs, each dated July 8, 2021, Mt. Hawley informed plaintiffs that, in view of the contract showing that Maspath was hired by King & Country, it was disclaiming coverage based on an endorsement to its policy that required that all contractors for the project were to be hired by the General Contractor and based on the Hiring Warranty contained in USIC's policy.

As is relevant here, the endorsement in Mt. Hawley's policy, identified as a "DESIGNATED PREMISES AND/OR PROJECTS LIMITATION" (Projects Limitation Endorsement), provided that:

"As respects premises owned, maintained or used by the insured or projects performed by or on behalf of the insured, this insurance *applies only* to bodily injury, property damage, personal injury and advertising injury arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule below and operations necessary or incidental to those premises; or
2. The project shown on the Schedule (emphasis added)" (NYSCEF Doc No. 89, at 12).

In this "schedule" under the heading "Premises" the endorsement states "Owner/General Contractor's Interest Only" but is otherwise blank. Under a heading "Project," the endorsement provides that:

"Ground-up construction of a Four Story Condo project to be occupied by 3 condo units, project located at 96 King Street, Brooklyn, NY. No demo involved on the project. Project term is 24 months and the estimated cost is \$2,900,000. *All work to be performed through the GC (Bayside Builders, Inc). There is*

no coverage for Bodily Injury or Property Damage arising out of the work or actions of any contractor not hired by the GC. Coverage ceases upon occupancy, certificate of occupancy or policy expiration, whichever comes first. Premium is fully earned at policy inception. No return premium if project is completed or cancelled before policy expiration (emphasis added)” (NYSCEF Doc No. 89, at 12).

Since the Projects Limitation Endorsement did not identify a premises under the “Premises” heading, the policy effectively only provides coverage for the “Project” as identified in the schedule (*see Capitol Indem. Corp. v Ashanti*, 28 FSupp 3d 877, 881-883 [D Minn 2014]; *Western Heritage Ins. Co. v Darrah*, 2010 WL 4780955[U], *3-4 [MD Pa 2010]; *see also Contessa v White Pine Ins. Co.*, 2024 WL 4221699[U], *5 [MD Fl 2024]; *cf. Evanston Ins. Co. v Enterprise Plan B, Inc.*, --- FSupp 3d ---, 2025 WL 2838814, *5 [ND Cal 2025], *appeal dismissed* 2025 WL 1123852 [11th Cir 2025]). This provision, among other things, unequivocally requires that Bayside be the entity that hires the contractors for the project as a condition of coverage. As discussed above with respect to USIC’s Hiring Warranty, the use of the word “hired” in Mt. Hawley’s endorsement does not create any ambiguity and, although the use of the word “hired” does not suggest that a written contract is required, Mt. Hawley has demonstrated that it was Town & Country, not Bayside, that hired Maspath through the submission of the written agreement between Town & Country and Maspath signed by Fernald. As discussed above, plaintiffs’ assertion that the insertion of King & Country into the contract was the result of a mistake or scrivener’s error fails to demonstrate that that agreement should not be considered binding (*see Wu*, 43 NY3d at 288-299; *Rabizadeh*, 238 AD3d at 576; *Marcella*, 233 AD3d at 1139-1140; *Hershkowitz*, 190 AD3d at 837).

In contrast to the Hiring Warranty in USIC's policy, the hiring requirement in the Projects Limitations Endorsement is a condition of coverage and is not a warranty or exclusion given the purpose of the endorsement as whole and the emphasized language in quotes from endorsement (*see Wesco Ins. Co. v SR Delco C.S.M. Inc.*, 226 AD3d 630, 631 [1st Dept 2024]; *Black Bull Contr., LLC v Indian Harbor Ins. Co.*, 135 AD3d 401, 403-404 [1st Dept 2016]; *United Specialty Ins. Co. v Z&J Mgt., LLC*, 2025 WL 992904[U], *12-16 [EDNY 2025], *magistrate's report and recommendation adopted* 2025 WL 991194 [EDNY 2025]; *Illinois Union Ins. Co. v Midwood Lumber & Millwork, Inc.*, 2014 WL 639420[U], *7-8 [EDNY 2014]; *cf. Matter of Worcester Ins. Co. v Bettenhauser*, 95 NY2d 185, 188-190 [2000]). As such, the materiality requirement of Insurance Law § 3106 (b) and the notice requirements of Insurance Law § 3420 (d) are inapplicable (*Wesco Ins. Co.*, 226 AD3d at 631; *Black Bull Contr., LLC*, 135 AD3d at 403-404; *Illinois Union Ins. Co.*, 2014 WL 639420[U], *7-8). Since the other parties have failed to demonstrate the existence of factual issues warranting denial of the motion, Mt. Hawley is entitled to summary judgment dismissing the complaint and a declaration that it has no duty to indemnify plaintiffs with respect to the Underlying Actions.⁶ For these same reasons, plaintiffs and Poalacin's summary judgment motions must be denied with respect Mt. Hawley.

Hudson's Policies

In its disclaimer letters relating to the Underlying Actions, each dated July 8, 2021, Hudson informed Bayside that it determined no coverage was provided under its general

⁶ While Mt. Hawley also disclaimed based on USIC's Hiring Warranty, the factual issues noted with respect to USIC's motion would require denial of Mt. Hawley's motion to the extent its disclaimer is premised on USIC's Hiring Warranty.

liability and excess policies based on its dedicated insurance program exclusion contained in an endorsement to the general liability policy.⁷ As is relevant here, the endorsement modifies the exclusions to the policy by providing that:

“This insurance does not apply to:

Dedicated Insurance Program(s)

‘bodily injury’, ‘property damage’, or ‘personal and advertising injury’ arising out of either your ongoing operations or operations included within the ‘products-completed operations hazard’ at any project(s) which is, or was subject to a ‘dedicated insurance program’.

This exclusion applies whether or not the ‘dedicated insurance program’:

1. provides coverage identical to that provided by this Coverage Part;
2. provides coverage to one or more contractors;
3. provides multiple lines of coverage;
4. has limits adequate to cover all claims; or
5. remains in effect” (NYSCEF Doc No. 137, at 69).

The provision also amended the policy to define “dedicated insurance program” as follows:

“‘Dedicated insurance program’ means wrap-up program(s), owner controlled insurance program(s) (OCIP), contractor controlled insurance programs(s) (CCIP), or other job(s) or project specific policy / program(s) whether provided by you, or any other person or entity for which you are an insured” (NYSCEF Doc No. 137, at 69).

Whatever the nature of USIC’s general liability policy and Mt. Hawley’s excess policy, they each undoubtedly constitute a “project specific policy” within the endorsement’s definition of “dedicated insurance policies.”

⁷ Hudson’s excess policy provided that any exclusions contained in its underlying general liability applied to its excess policy (NYSCEF Doc No. 138, at 9).

Neither plaintiffs nor Poalacin raise any arguments that USIC and Mt. Hawley's policies should not be deemed dedicated insurance policies within the meaning of the endorsement.⁸ Plaintiffs and Poalacin argue, however, that the exclusion should not apply in the event that USIC and Mt. Hawley are found to have properly disclaimed coverage. This argument, however, disregards the plain language of the exclusion that applies to any "bodily injury . . . at any project(s) which is, or was subject to a 'dedicated insurance program.'" Nothing in this "project . . . subject to" such a program language suggests that a disclaimer of coverage would render the exclusion inapplicable (*see Golden State Glazing, Inc. v Hudson Excess Ins. Co.*, 2025 WL 2994729[U], *3 [CD Cal 2025]; *see also Skanska USA Bldg. Inc. v Harleystown Ins. Co. of N.Y.*, 215 AD3d 464, 465 [1st Dept 2023] [the exclusion applied to insured contractor at a project even though that insured was not enrolled in wrap-up insurance program]; *Structure Tone, Inc. v National Cas. Co.*, 2014 NY Slip Op 30484[U], *13 [Sup Ct, New York County 2014], *affd as modified* 130 AD3d 405 [2015]; *Soule v Woodward Design + Build, LLC*, 382 So3d 1052, 1060-1061 [La App 4 Cir 2023]). Such a reading of the provision is also shown by the endorsements' language providing that the exclusion applies regardless of whether or not the program "provides coverage identical to that provided by this Coverage Part . . . [or] remains in effect" (*see Golden State Glazing, Inc.*, 2025 WL 2994729[U], *3).

Accordingly, Hudson could properly disclaim coverage based on the dedicated insurance program exclusion, and, since the other parties have failed to demonstrate the

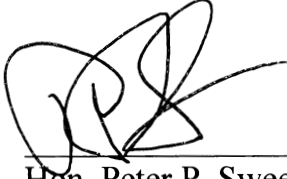
⁸ Because Hudson promptly disclaimed coverage and withdrew its defense after it learned of USIC and Mt. Hawley's policies, this court rejects plaintiffs' assertion that Hudson waived reliance on the dedicated insurance program exclusion based on its initial appointment of counsel to represent King & Country and Bayside.

existence of factual issues warranting denial of the motion, Hudson is entitled to summary judgment dismissing the complaint and a declaration that it has no duty to defend or indemnify plaintiffs with respect to the Underlying Actions. For these same reasons, plaintiffs and Poalacin's summary judgment motions must be denied with respect to Hudson.

This constitutes the decision and order of the court.

SETTLE JUDGMENT ON NOTICE WITHIN 30 DAYS.

ENTER,



Hon. Peter P. Sweeney

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2025 NOV 19 A 11: 04