

**Beth Israel Med. Ctr. v Compass Group USA Invs.,  
Inc.**

2025 NY Slip Op 34823(U)

December 12, 2025

Supreme Court, New York County

Docket Number: Index No. 653941/2021

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

-----X

BETH ISRAEL MEDICAL CENTER, HOSPITALS  
INSURANCE COMPANY, INC.,

Plaintiffs,

- v -

COMPASS GROUP USA INVESTMENTS, INC., COMPASS  
GROUP USA, INC., CROTHALL HEALTHCARE INC.

Defendants.

-----X

INDEX NO. 653941/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 43, 45, 46, 52

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 47, 48, 49, 50, 51

were read on this motion to/for SUMMARY JUDGMENT.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. Defendants' motion to dismiss (MS001) pursuant to CPLR 3211(a)(4) is granted and plaintiffs' motion for summary judgment (MS002) is denied as moot.

**Background**

This declaratory judgment action relates to an underlying personal injury lawsuit in which plaintiff Donald Warshaw contends he tripped and fell on a rubber mat or carpet at a property owned by Beth Israel Medical Center ("Beth Israel"). Beth Israel, one of the plaintiffs here, contends that it hired Crothall Healthcare Inc. ("Crothall") to provide housekeeping and other services at the subject premises and that Crothall is responsible for the rubber mat that caused the accident. Beth Israel demands insurance coverage as an additional insured under the policy issued by non-party National Union to defendants Compass Group USA Investments, Inc.

and Compass Group USA, Inc. It argues that Crothall is a “Compass Group entity” and is therefore entitled to coverage under this policy.

### **MS001**

Defendants seek to dismiss this case pursuant to CPLR 3211(a)(4) on the ground that there is a prior action pending, i.e. the underlying case commenced in 2016 and still pending in New York County. They point out that Beth Israel filed a third-party complaint in the underlying action that seeks a declaratory judgment for indemnification—the same relief demanded in this case. Defendants maintain that they raised this argument in their answer in this matter.

Defendants claim there is substantial identity of parties as well.

In opposition, plaintiffs contend that the underlying action is solely about negligence for personal injuries while this action concerns the request for declaratory relief. They argue that the plaintiffs are not the same as plaintiff Hospitals Insurance Company, Inc. is not a third-party plaintiff in the third-party complaint. Plaintiffs argue here they seek additional insured status from Crothall and the Compass defendants while the third-party complaint only seeks indemnification and contribution against Crothall.

In reply, defendants maintain that the third-party complaint against Crothall seeks contribution, common law indemnity, contractual indemnity, defense costs, legal fees and demands that Beth Israel be defended in the main complaint. They therefore insist that because the relief requested is identical their motion should be granted.

“Where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same, a court has broad discretion in determining whether an action should be dismissed pursuant to CPLR 3211(a)(4) on the ground that there is another action pending. The critical element is that both suits arise out of the same

subject matter or series of alleged wrongs” (*Scottsdale Ins. Co. v Indem. Ins. Corp. RRG*, 110 AD3d 783, 784, 974 NYS2d 476 [2d Dept 2013] [affirming dismissal on prior action pending grounds]).

The Court’s analysis begins with the third-party complaint in which Beth Israel alleges that there was a service contract between it and Crothall in which Crothall “agreed to indemnify, defend and hold harmless BETH ISRAEL MEDICAL CENTER and its directors, officers, agents and employees, with respect to any and all liabilities, losses, claims, suits, damages, taxes, charges and demands of any kind and nature by any party which BETH ISRAEL MEDICAL CENTER may incur or suffer as a result of any cause of action to the extent arising out of CROTHALL HEALTHCARE, INC.’s negligent acts or omission” (NYSCEF Doc. No. 22, ¶ 17).

The next paragraph states that “Upon information and belief, by the terms of said agreement and by operation of law, the defendant/third-party plaintiff is entitled to be protected, defended, indemnified, held harmless, and dismissed from the action and/or recover for said monetary damages along with reasonable attorneys’ fees incurred in the enforcement of the provisions of the agreement. Furthermore, by the reason of the foregoing, the defendant/third-party plaintiff is entitled to have judgment over and against the third-party defendant, CROTHALL HEALTHCARE, INC. for all or part of the judgment that plaintiff may recover against the defendant/third-party plaintiff” (*id.* ¶ 18).

In this Court’s view, this means that Beth Israel is seeking, essentially, the same relief in this case where plaintiffs want defense and indemnity from Crothall arising out of the personal injury alleged by plaintiff Warshaw. To be sure, the parties are not completely identical—but they are substantially similar. On this record, the inclusion of the Compass defendants appears to be a recognition that Crothall has coverage under a policy issued to these defendants. If the

failure to include the Compass defendants in the aforementioned third-party action is somehow an impediment to full recovery, that can be easily remedied by adding them to the underlying action. Notably, the insurance company that issued the policy under which Beth Israel now seeks coverage is not a party to this case or the underlying action.

But the fact remains that the relief sought is almost entirely identical and requires the same exact analysis about whether the service agreement entitles Beth Israel to defense and indemnity. Beth Israel specifically asks for reimbursement of its defense costs (legal fees) in the third-party complaint. And plaintiffs’ papers did not sufficiently address why there needs to be two separate actions that involve the exact same legal issue—whether, and to what extent, Beth Israel is entitled to contractual indemnity, including defense costs, in connection with the underlying personal injury action.

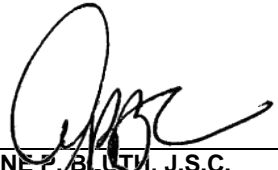
**MS002**

Because the Court is granting MS001, it renders MS002—a summary judgment motion—as moot.

Accordingly, it is hereby

ORDERED that defendants’ motion to dismiss pursuant to CPLR 3211(a)(4) is granted; and it is further

ORDERED that plaintiffs’ motion for summary judgment is denied as moot.

<u>12/12/2025</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE