

**Greater N.Y. Mut. Ins. Co. v American Empire
Surplus Lines Ins. Co.**

2026 NY Slip Op 30066(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 655615/2019

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

INDEX NO. 655615/2019

GREATER NEW YORK MUTUAL INSURANCE COMPANY

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

AMERICAN EMPIRE SURPLUS LINES INSURANCE
COMPANY,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

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

Plaintiff's motion for summary judgment is decided as described below.

Background

This insurance dispute relates to an underlying lawsuit in Brooklyn, which apparently has now settled (NYSCEF Doc. No. 527 in Index Number 516702/2018). In that Brooklyn matter, an individual claimed he was injured while opening a window at his office—he claimed that the window fell on him because it was not properly secured.

Plaintiff insured the owner of the building while defendant insured the window contractor hired to clean the windows. It claims that the window contractor agreed in a contract with the owner to add the owner as an additional insured in the contractor's insurance policy. Plaintiff demands that defendant's policy applies as primary insurance before plaintiff's policy to the owner applies.

In opposition, defendant claims that this motion is premature and that there are issues of fact regarding whether the additional insured endorsements contained in the policy it issued to the window contractor are triggered, even for the duty to defend. Defendant claims that there is “an agreement allegedly requiring additional insured status” but that there will need to be an examination of the insurance contract and policy terms.

It stresses that the window contractor occasionally cleaned the window but that there is no testimony in the underlying action about when the contractor last did any window work. Defendant maintains that the complaint in the Brooklyn action does not make clear exactly how the accident occurred or whom might be to blame and so this motion should be denied.

In reply, plaintiff emphasizes that defendant admits plaintiff is entitled to additional insured status under defendant’s policy. It argues that the Court need only review the underlying complaint and that defendant is asking the Court to utilize the indemnification standard as opposed to the standard for the duty to defend.

Discussion

Before the Court, delves into the merits of this motion, it must acknowledge the elephant in the room: this motion was pending for more than five years before it was transferred to this part in late December 2025. This Court was horrified to see that this motion was ignored or forgotten and profusely apologizes, on behalf of the court system, for this tremendous delay.

Now to the merits. “It is well settled that an insurance company's duty to defend is broader than its duty to indemnify. Indeed, the duty to defend is “exceedingly broad” and an insurer will be called upon to provide a defense whenever the allegations of the complaint

suggest ... a reasonable possibility of coverage. If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or baseless the suit may be” (*Auto. Ins. Co. of Hartford v Cook*, 7 NY3d 131, 137 [2006]).

A review of the underlying complaint makes clear that defendant has a duty to defend plaintiff’s insured on a primary and non-contributory basis. The complaint specifically alleges that “[O]n or about April 19, 2018, the defendant, CONTINENTAL WINDOW, improperly secured the window in Suite 1836 of the premises” (NYSCEF Doc. No. 2 in Index No. 516702/2018). Then it contends that four days later, plaintiff was hurt while trying to open the window at the office when it fell on him (*id.* ¶ 3). That direct allegation about the window cleaners, i.e. defendant’s admitted insured, entitles plaintiff’s insured to additional insured status under the subject policy.

To be clear, defendant does not dispute the existence of the insurance policy issued to the window contractor or that there are additional insured provisions that directly apply to plaintiff’s insured. Instead, they insist that there needs to be discovery about precisely what happened in the four days between the window cleaning and when the accident happened. Unfortunately, that is not the proper analysis for the duty to defend, which only requires a reasonable possibility that the owner might be covered.

At this time, the Court denies the branches of the notice of motion that seek an order requiring defendant to pay interest on the reimbursement amount under Article 50 and to pay plaintiff’s costs in bringing this motion under Article 81 as there were no arguments raised about those demands in the moving papers.

Summary

Having granted plaintiff summary judgment, plaintiff is directed to file a note of issue so that there can be a trial on damages. That note of issue should be filed on or before January 26, 2026.

Accordingly, it is hereby

ORDERED and DECLARED that plaintiff’s motion is granted to the extent that defendant has a primary and noncontributory duty to defend 32-42 Broadway Owner, LLC and Cammeby’s Management Company, LLC in connection with the civil lawsuit filed on behalf of Glenn R. Kunz captioned *Kunz v. 32-42 Broadway Owner, LLC* et al. under index number 516702/2018 in the Supreme Court for the State of New York, County of Kings; and it is further

ORDERED that plaintiff shall file a note of issue for at trial on damages on or before January 26, 2026.

1/12/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: