Federal Ins. Co. v Mt. Hawley Ins. Co.
2026 NY Slip Op 30299(U)
January 23, 2026
Supreme Court, New York County
Docket Number: Index No. 654434/2024
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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FEDERAL INSURANCE COMPANY

Plaintiff,

- v -

MT. HAWLEY INSURANCE COMPANY,

Defendant.

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INDEX NO. 654434/2024

MOTION DATE 07/14/2025, 07/14/2025

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 54, 55

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 56

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

This case concerns the allocation of insurance coverage between two insurance companies for an underlying construction accident. It is undisputed that, in the underlying incident, the injured construction worker was performing interior work only and fell from a scaffold inside the premises (see Joint Statement of Undisputed Facts EDOC 19). For the reasons stated on the record, the court grants plaintiff's motion for summary judgment (Motion 1) and denies defendant's motion (motion 2).

As discussed, the exclusion upon which Mt Hawley relies is ambiguous or inapplicable.

By Endorsement, the Mt. Hawley Policy's Designated Ongoing Operations Exclusion precludes coverage for bodily injury arising out of :

> "Any exterior work or exterior project if the work or the project involves work above 2 stories or 30 feet whichever is closer to the ground, or any project that involves adding one or more stories to an existing structure, if performed by any insured or by any subcontractors on the insured's behalf. …"

It is undisputed that the injured worker was NOT performing work above 30 feet or two stories (see Joint Statement ¶ 19). However, other, uninjured workers did install HVAC component towers on the roof (Joint Statement ¶¶16-17).

This case is virtually indistinguishable from *ZZZ Carpentry, Inc. v Mt. Hawley Ins. Co.*, 225 AD3d 562 [1st Dep't 2024]). That case contained an exclusion for injury arising from "all exterior work or exterior work projects above ground floor." Mt Hawley had argued in *ZZZ*, as it does here, that the exclusion should be interpreted to mean that there would be no coverage if any exterior work was performed at all. However, the Appellate Division, First Department held the policy was ambiguous because "another reasonable interpretation of the policy is that there would still be coverage for bodily injury arising out of interior work, but no coverage would be provided for bodily injury only arising out of exterior work."

Here the same dual interpretation could apply. Namely, a reasonable interpretation is that there could still coverage for "bodily injury arising out of interior work" which is exactly what occurred. Accordingly, the court declares that the exclusion does not apply.

Mt Hawley argues that there needs to be a distinction between "work" and "project" and attempts to distinguish *ZZZ* because that case involved the word "work" and "**work** project." As explained on the record, this distinction is irrelevant. First, "work" and "work project" are not meaningfully different from "work" and "project." The Appellate Division in *ZZZ* did not focus on this distinction at all. Instead, it found that the exclusion could be taken to mean to exclude injury only arising from exterior work. That same interpretation could apply here.

Notably, Mt Hawley chose not to point out a more meaningful distinction between the exclusion in *ZZZ* and the one here—the inclusion of the word "involves." The use of the word "involves" after the use of the word "project" in the exclusion here could be interpreted to mean

that there is no coverage for bodily injury as long as the project "involves" exterior work anywhere. However, Mt. Hawley did not make this argument so the court will not consider it. Therefore, *ZZZ* applies and the exclusion does not (see also *Damon G. Douglas Co. v. Mt. Hawley Ins. Co.*, 193 A.D.3d 610, 612 [1st Dep't 2021] ["the policy at issue does not apply to bodily injury arising out of ongoing operations concerning the "exterior work over [two] stories." Although the construction of the building contemplated multiple floors, at the time of the accident, the injury did not arise out of exterior work over two stories"]).

Mt Hawley conceded that at least New York Health and Raquet, the tenant, would qualify as an additional insured under its policy. As the underlying case was a settlement without allocation, as explained on the record, Mt. Hawley is liable to plaintiff for its full policy limits.

Insurance policies contain within their own walls the method of allocation when more than one policy applies. For this reason, the court does not assess the underlying equities, or whether Federal had more insureds involved in the underlying case. The only question is which policy is excess to the other. Had Mt. Hawley wanted an allocation of the settlement per insured, it should have attended the settlement discussions in the underlying case.

Mt. Hawley concedes that the Mt. Hawley Policy is "primary and non-contributory" to the Federal Policy. (EDOC 56 pg 13). This means that Mt. Hawley's limits must be exhausted before the Federal policy is triggered. Those limits are $3M (see Mt. Hawley policy, EDOC 44).

Accordingly, it is

ORDERED THAT the court grants plaintiff Federal Insurance Company's motion for summary judgment; and it is further

ORDERED THAT the court denies Mt. Hawley's motion for summary judgment; and it is further

ORDERED THAT the court dismisses Federal's claim for unjust enrichment as duplicative; and it is further

ADJUDGED, DECREED AND DECLARAED THAT Mt. Hawley owes indemnity coverage for the Salazar Suit under the Mt. Hawley Policy and therefore must tender the Mt. Hawley Policy's full $3 million limits of coverage for the settlement of the underlying personal injury lawsuit; and it is further

ORDERED THAT the clerk is directed: (1) to enter judgment in favor of plaintiff Federal Insurance Company and against defendant Mt. Hawley Insurance Company in the amount of $3,000,000; (2) with prejudgment interest from May 19, 2022 as calculated by the clerk of the court, (3) to assess costs and disbursements as calculated by the clerk of the court and (4) to mark this case disposed.

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1/23/2026
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE

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