

**Skanska USA Bldg., Inc. v Commerce & Indus. Ins.
Co.**

2026 NY Slip Op 30396(U)

February 2, 2026

Supreme Court, New York County

Docket Number: Index No. 650664/2022

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

SKANSKA USA BUILDING, INC.,
Plaintiff,

- v -

COMMERCE AND INDUSTRY INSURANCE COMPANY,
Defendant.

-----X

INDEX NO. 650664/2022
MOTION DATE 01/12/2026
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 133, 134, 135, 136, 137, 138, 152 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff’s motion for leave to file a second amended complaint is granted.

Background

In this case, plaintiff Skanska USA Building, Inc. (“Skanska”) claims breach of contract and seeks declaratory relief for alleged insurance coverage obligations owed to it by defendant Commerce and Industry Insurance Company (“Commerce”) relating to two underlying actions. Skanska seeks coverage under a \$50 million contractor’s pollution policy issued by Commerce for the renovation of multiple buildings at the United Nations Headquarters in Manhattan. During the construction project, there were allegations of asbestos contamination and lead exposure, and Skanska was sued by its subcontractors.

Here, Skanska moves to file a second amended complaint to remove claims relating to the first underlying lawsuit, *Jose B. Martinez, et al. v. Skanska USA Building, Inc., et al.*, index number 152302/2014, since that action was dismissed with prejudice. Secondly, Skanska seeks to add a cause of action against Commerce for breach of the covenant of good faith and fair

dealing, for Commerce's alleged refusal to settle this matter within policy limits regarding the second underlying lawsuit involving millwork subcontractor All Craft Fabricators, Inc. ("All Craft"), *All Craft Fabricators, Inc et al. v. ATC Associates Inc. et al.*, index number 156897/2013. In that lawsuit, All Craft alleges that its plant was damaged and contaminated by asbestos due to Skanska's negligence.

Commerce is providing representation to Skanska in the *All Craft* matter. Skanska discovered that on February 21, 2025, Commerce received a demand for \$2.2 million dollars to settle the *All Craft* action against Skanska, but that Commerce did not accept this demand. Then, on or about July 9, 2025, Commerce received another demand to settle the *All Craft* for \$2 million and Commerce again rejected the offer. Skanska therefore seeks to add a cause of action for breach of the covenant of good faith and fair dealing for Commerce's refusal to settle this matter within policy limits despite having had opportunities to do so.

In its opposition, Commerce first argues that removing the language in the first amended complaint regarding the Martinez matter is unnecessary, as the parties already agreed to discontinue those claims in a stipulation at NYSCEF Doc. No. 132.

With regard to adding a claim for "Breach of Implied Covenant of Good Faith and Fair Dealing – All Craft Action" – Commerce argues that this part of Skanska's motion should be denied as it is duplicative of the already asserted claim for breach of contract, lacks merit, and is calculated to delay summary judgment adjudication. Commerce argues that this motion should therefore be considered in tandem with the parties' summary judgment motions.

Commerce details that it has not settled the underlying matter, as there is a policy exclusion which removes coverage for property damage or other loss arising in connection with any site owned, rented, or managed by an insured. Commerce contends that the property damage

alleged in the underlying *All Craft* action arose from the release of asbestos fibers at a facility rented or managed by an insured – All Craft – and its parent company, Donaldson Interiors, Inc. So Commerce has agreed to defend Skanska in the *All Craft* Action but reserves its right to decline to indemnify.

Commerce also contends that Skanska has not adequately pled the elements to support a claim for bad faith. Commerce claims that Skanska has failed to plead that Commerce has exclusive control over the litigation and states that Skanska and the other insureds have participated in and directed their own defense and may settle the *All Craft* matter as they see fit, but whether Skanska is indemnified for any such settlement will be determined in this coverage litigation. Commerce further argues that Skanska has not adequately pled that it lost the opportunity to settle within policy limits when all serious doubts about its liability were removed, that it incurred damages in excess of the policy limit, or that Commerce’s coverage position is in gross disregard of Skanska’s interests.

In its reply, Skanska claims that it need only show that its amendment is palpably sufficient on its face and that Commerce’s allegation that it has not plead the elements of bad faith improperly asks the Court to delve into issues of credibility. It also responds to Commerce’s allegation regarding exclusive control by stating Commerce alone had the ability to settle the *All Craft* matter within policy limits and that “[b]y refusing to contribute a single dollar toward reasonable demands, [Commerce] exercised the only control that mattered: the exclusive right to unlock coverage dollars for settlement” (NYSCEF Doc. No. 152). Skanska also contends that it adequately pled the loss of settlement opportunity, that the damages are above the policy limit, and that Commerce grossly disregarded Skanska’s interests.

Discussion

As an initial matter, the Court does not find that it must consider the pending dispositive motions at the same time as the instant motion and declines to do so.

“On a motion for leave to amend, [a] plaintiff need not establish the merit of its proposed new allegations but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010] [internal citations omitted]). Here, the Court finds that Skanska has adequately shown that its claims are not palpably insufficient or clearly devoid of merit, and the Court therefore grants Skanska’s motion to amend.

Regarding the *Martinez* action, that is really just housekeeping, and the Court appreciates the clean-up. And Commerce does not substantively oppose Skanska removing the claims relating to this action. Commerce only claims that it is unnecessary to do so, as the parties already stipulated to discontinue those claims. The Court therefore grants the part of Skanska’s motion which seeks to amend the complaint to the extent that the amended complaint strikes the *Martinez* claims.

The Court also finds that Skanska has adequately pled its proposed addition of a claim for breach of the covenant of good faith and fair dealing regarding Commerce’s handling of the *All Craft* matter. The pleading is not perfect, but it is good enough. And it is not the Court’s role to make credibility and factual determinations at the pleading stage. Skanska has laid out a cognizable claim for breach of the covenant of good faith and fair dealing and Commerce can ascertain what the claims are from the pleading. The claims did not exist until Skanska discovered that Commerce declined to settle in February and July 2025, and so these claims could not have been asserted earlier. Given that timing, to say the amendment is just to drag out this case does not make sense; Skanska could not have brought the claim until it learned that

Commerce declined to settle within the policy limits (and then this motion was brought rather quickly). Commerce’s claims about the merits of this new cause of action is not a basis to deny the motion for leave to amend.

Accordingly, it is hereby

ORDERED that the Skanska’s motion to amend the complaint is granted in its entirety and the amended complaint in the proposed form annexed to the moving papers as NYSCEF Doc. No. 128 shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the Commerce shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that Skanska shall upload the proposed amended pleading as a separately e-filed document (it is now an exhibit) on or before February 9, 2026.

See NYSCEF Doc. No. 198 for instructions on the next conference.

2/2/2026
DATE


ARLENE P. BLUTH, 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