Pace Univ. v Clear Blue Ins. Co.

2026 NY Slip Op 30613(U)

February 18, 2026

Supreme Court, New York County

Docket Number: Index No. 656383/2022

Judge: Phaedra F. Perry-Bond

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND **PART** 35
Justice

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PACE UNIVERSITY,

Plaintiff,

- v -

CLEAR BLUE INSURANCE COMPANY, NYCAN BUILDERS, LLC,

Defendant.

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INDEX NO. 656383/2022

MOTION DATE 02/05/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

CLEAR BLUE INSURANCE COMPANY, NYCAN BUILDERS, LLC

Plaintiff,

-against-

FALLS LAKE INSURANCE COMPANY, PRINCETON EXCESS & SURPLUS LINES INSUREANCE COMPANY, MT. HAWLEY INSURANCE COMPANY

Defendant.

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Third-Party
Index No. 595640/2022

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79

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

Upon the foregoing documents, Defendants/Third-Party Plaintiffs Clear Blue Insurance Company ("Clear Blue") and NYCAN Builders, LLC's ("NYCAN") (collectively "Third-Party Plaintiffs") motion for summary judgment seeking a declaration that Third-Party Defendants Princeton Excess & Surplus Lines Insurance Company ("Princeton"), Mt. Hawley Insurance Company ("Mt. Hawley"), and Falls Lake Insurance Company ("Falls Lake") (collectively "Third-Party Defendants") have an obligation to defend and indemnify Plaintiff Pace University ("Pace") and NYCAN in an underlying action captioned *Jonathan Ramirez v Pace University*, Index No.

710093/2017, in Queens County Supreme Court (the "Ramirez action"), and that the Third-Party Defendants cannot rely on any exclusions or conditions to preclude coverage for the Ramirez Action, is granted in part and denied in part.[1]

I. Background

On November 8, 2016, Pace contracted NYCAN to serve as a construction manager on a construction project at One Pace Plaza, New York, New York (the "Premises") (NYSCEF Doc. 33). That contract required NYCAN to procure a commercial general liability insurance policy in the amount of $1,000,000 per occurrence with a $2,000,000 in the aggregate, and Pace was required to be named an additional insured. Clear Blue issued a commercial general liability policy to NYCAN providing coverage in the amount of $1,000,000 per occurrence and $2,000,000 in the aggregate (NYSCEF Doc. 42). NYCAN subsequently subcontracted certain drywall work at the Premises to Chelsea Construction Group, LLC ("Chelsea") (NYSCEF Doc. 35). NYCAN's contract with Chelsea required Chelsea to procure a commercial general liability insurance policy in the amount of $1,000,000 per occurrence with a $2,000,000 in the aggregate with Umbrella insurance in an amount of no less than $5,000,000, with those policies naming Pace and NYCAN as additional insureds on a primary and non-contributory basis.

Falls Lake issued a primary general liability policy to Chelsea in the amount of $1,000,000 per occurrence and $2,000,000 in the aggregate (NYSCEF Doc. 43). Princeton issued a commercial excess policy to Chelsea with policy limits in the amount of $1,000,000 per occurrence and $2,000,000 in the aggregate (NYSCEF Doc. 44). Mt. Hawley issued an excess umbrella policy to Chelsea with limits of $5,000,000 per occurrence and in the aggregate (NYSCEF Doc. 45).

[1] Pursuant to stipulation dated March 26, 2025, the motion was withdrawn as to Falls Lake (NYSCEF Doc. 79).

This declaratory judgment action between Pace, NYCAN, and NYCAN and Chelsea's insurers stems from an underlying lawsuit brought by Jonathan Ramirez for personal injuries sustained after he fell from a scaffold while working for Chelsea at Pace (NYSCEF Doc. 52). As a result of Mr. Ramirez's lawsuit, Clear Blue tendered a request for indemnification and additional insured coverage for Pace and NYCAN to Chelsea and its insurers (NYSCEF Doc. 46). Falls Lake accepted the tender, acknowledged its policy would serve as primary and non-contributory to other policies, and provided defense counsel for NYCAN and Pace (NYSCEF Doc. 47). Princeton and Mt. Hawley responded with a reservation of rights but never disclaimed coverage (NYSCEF Docs. 48 and 50).

Meanwhile, in the Ramirez Action, Pace filed a second third-party Complaint against Chelsea on January 11, 2022, seeking contractual indemnification and contribution from Chelsea and alleging breach of contract for failure to procure insurance. On January 12, 2022, NYCAN filed a third-third party complaint against Chelsea seeking contractual indemnification and contribution for Ramirez's injuries. On May 23, 2022, Hon. Allan B. Weiss granted Mr. Ramirez summary judgment on his Labor Law § 240(1) claim but made no determination as to the other claims asserted, including Labor Law § 200 and the third-party claims for indemnification (NYSCEF Doc. 52).[2] The Second Department affirmed Justice Weiss's decision on appeal (*see Ramirez v Pace Univ.*, 230 AD3d 811 [2d Dept 2024]).

According to information from the New York State Unified Court System's WebCivil Supreme Appearance detail for the Ramirez Action, a trial on the third-party claims has been adjourned several times but is currently scheduled for jury selection on March 10, 2026. According

[2] The motion before Justice Weiss only sought relief as to Plaintiff's Labor Law § 240(1) claim.

to the NYSCEF docket in the Ramirez Action, there appears to remain *sub judice* a motion by NYCAN for summary judgment on its contractual indemnification claim against Chelsea.

In this action, Pace seeks a declaration that it is entitled to defense and indemnification in the Ramirez Action as an additional insured on Clear Blue's policy issued to NYCAN. Third-Party Plaintiffs filed a Third-Party Action against Third-Party Defendants seeking a declaration that Falls Lake, Princeton, and Mt. Hawley must each provide defense and indemnification to NYCAN & Pace prior to defense and indemnification being triggered under Clear Blue's policy, and seeking a declaration that Third-Party Defendants may not rely on any exclusions or conditions to preclude coverage. In this motion, Third-Party Plaintiffs move for summary judgment against Third-Party Defendants on the Third-Party Complaint. Mt. Hawley and Princeton oppose, and the motion was withdrawn as to Fall Lakes.

II. Discussion

A. Duty to Indemnify

Third-Party Plaintiffs' motion for summary judgment seeking a declaration that Mt. Hawley and Princeton have a duty to indemnify Pace and NYCAN in the Ramirez Action on a primary and non-contributory basis is denied, without prejudice, and with leave to renew after there has been a finding in the Ramirez Action that Chelsea's acts or omissions proximately caused Ramirez's injuries. Where, as here, the issue of whether an insured proximately caused an accident has not yet been determined in an underlying action, any determination in a declaratory action as to the insurer's duty to indemnify an additional insured based on the primary insured's purported responsibility for the occurrence is premature (*see Citizens Ins. Co. of America v American Insurance Co.*, 187 AD3d 461 [1st Dept 2020]; *see also Lexington Ins. Co. v Kiska Dev. Group*

LLC, 182 AD3d 462, 464 [1st Dept 2020] citing *Mt. Hawley Ins. Co. v American States Ins. Co.*, 168 AD3d 558, 559 [1st Dept 2019]).

The purpose of a declaratory judgment action is not to make legal determinations that are within the province of the trial court or jury presiding over the underlying action giving rise to the coverage dispute. Third-Party Plaintiffs improperly ask this Court to determine Chelsea is a proximate cause of the accident despite there being a jury trial and motions scheduled in the Ramirez Action to make this determination. This declaratory judgment action is distinct from the precedent Third-Party Plaintiffs rely upon where motions for summary judgment are brought post-settlement of the underlying personal injury actions. If this Court were to grant Third-Party Plaintiffs' request to issue rulings on liability that are currently being litigated before the trial court in the Ramirez Action, declaratory judgment actions would become venues to determine liability in wholly separate underlying actions, risking the possibility of inconsistent determinations or verdicts. The issue of proximate cause must be explicitly determined by the Court in the Ramirez Action[3] or the parties must settle the Ramirez Action without prejudice to this Court determining issues of proximate cause and contractual indemnification as it relates to this coverage action prior to Third-Party Plaintiffs seeking a declaration as to indemnification here.

Issues on the current record before the Court are further compounded as Third-Party Plaintiffs ask this Court to issue a determination that Chelsea was a proximate cause of Ramirez's injuries even though they do not submit any deposition testimony from a representative of Chelsea. Moreover, while Third-Party Plaintiffs provide deposition transcripts of Ramirez and NYCAN taken in the Ramirez Action, Chelsea was not a party to the lawsuit at the time those depositions

[3] Third-Party Plaintiffs claim the Court in the Ramirez Action "implicitly" found Chelsea was a proximate cause – but declaratory judgment actions cannot become a venue to litigate what was "implicitly" found as to liability – especially where the issues of liability remain open and are the subject of pending motions and a trial in the underlying action.

were conducted, making it inappropriate to use those transcripts for a finding on this motion as to whether Chelsea was a proximate cause of Ramirez's accident.

Third-Party Plaintiffs' reliance on *Liberty Ins. Corp. v. NY Marine & Gen'l Ins. Co.*, 2023 WL 2597052 (SDNY 2023) is misplaced because in that case, the parties in the declaratory judgment action stipulated prior to a bench trial that the United States District Judge had the authority to make determinations as to proximate cause after a bench trial (*see also Liberty Ins. Co. v Hudson excess Ins. Co.*, 147 F.4th 249, 259 [2d Cir. 2025]). This is inapposite to the facts here, where there is no such stipulation, and the case is at the summary judgment stage as opposed to a determination being made post-bench trial. Therefore, the motion seeking a declaration as to the duty to indemnify is denied without prejudice and with leave to renew pending the settlement of the Ramirez Action or further determinations as to contractual indemnification and proximate cause in the Ramirez Action.

B. Priority of Coverage

For the same reason, any determination as to indemnification is premature, it is also premature to decide priority of coverage with respect to the Clear Blue policy and the Mt. Hawley and Princeton policies. Third-Party Plaintiffs premise their priority of coverage argument under the assumption that NYCAN is entitled to contractual indemnification from Chelsea, and therefore any liability and damages will pass through Third-Party Plaintiffs directly to Third-Party Defendants. Third-Party Plaintiffs' reliance on *Arch Ins. Co. v Nationwide Prop. & Cas. Ins. Co.*, 175 AD3d 437 (1st Dept 2019) is misplaced as the decision issued by Justice Ostrager in that case as to priority of coverage and pass-through liability came after the underlying personal injury action had settled and after a bench trial in the insurance coverage action, where testimony was taken from the parties and evidence was presented. Again, this is inapposite to the procedural

posture of this case. Therefore, the motion with respect to priority of coverage is denied, without prejudice, with leave to renew.[4]

C. Duty to Defend

The motion for summary judgment seeking a declaration that Mt. Hawley and Princeton have a duty to defend NYCAN is denied. Unlike a primary insurer, an excess carrier has no obligation to participate in the defense of an insured (*see Purdue Frederick Co. v Steadfast Ins. Co.*, 40 AD3d 285, 286 [1st Dept 2007] citing *General Motors Acceptance Corp. v Nationwide Ins. Co.*, 4 NY3d 451, 456 [2005]). As held by the Court of Appeals, the primary insurer has the primary duty to defend on behalf of its insured and generally must do so without entitlement to contribution from an excess insurer (*Fieldston Property Owners Ass'n, Inc. v Hermitage Ins. Co., Inc.*, 16 NY3d 257, 265 [2011] citing *Firemen's Ins. Co. of Washington, D.C. v Federal Ins. Co.*, 233 AD2d 193 [1st Dept 1996]).

Mt. Hawley is an umbrella excess policy for Chelsea with Falls Lake's policy serving as a primary policy and Princeton serving as a second-tier excess policy. The Mt. Hawley policy explicitly states it "shall not be obligated to assume charge of or participate in the settlement or defense of any claim made, or suit brought, or proceeding instituted against the insured" (NYSCEF Doc. 45 at MXU 151 [02/05]). Therefore, the motion for summary judgment with respect to Mt. Hawley's duty to defend is denied (*see also AVR-Powell C Dev. Corp. v American States Ins. Co.*, 210 AD3d 403, 403-404 [1st Dept 2022]).[5]

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[4] This issue would become academic if the fact finder in the Ramirez Action finds Chelsea owes NYCAN contractual indemnification as Mt. Hawley concedes in its brief that if NYCAN prevails on its contractual indemnification claim, NYCAN can execute judgement against Chelsea without regard to the rules of priority of coverage (*see* NYSCEF Doc. 65 at p. 13).

[5] While Mt. Hawley may not have a duty to assume the charge of Pace and NYCAN's defense, it may ultimately be liable to reimburse the costs of defense under the duty to indemnify (*see Port Auth. of N.Y. & N.J. v Brickman Group Ltd., LLC*, 181 AD3d 1, 21 [1st Dept 2019]).

Princeton's policy does not have similar language expressly denying its obligation to assume an insured or additional insured's defense, but it is still an excess policy which is not triggered until the underlying insurance – namely the Falls Lake policy, is exhausted (*see Structure Tone, Inc. v Merchants Preferred Insurance Co.*, 237 AD3d 452 [1st Dept 2025]). Because there has not yet been any showing that the Falls Lake policy has been exhausted, the motion for summary judgment seeking a declaration that Princeton has a duty to defend is denied at this time.[6]

D. Exclusions

The branch of the motion seeking a declaration that Mt. Hawley and Princeton cannot rely on certain exclusions noted in their reservation of rights letters is granted in part and denied in part. Princeton does not oppose the branch of the motion arguing that Princeton cannot rely on certain policy exclusions, therefore this branch of Third-Party Plaintiffs' motion is granted. Mt. Hawley only opposes the propriety of the contractual liability exclusion, therefore the other exclusions previously asserted by Mt. Hawley are deemed abandoned.

The motion for summary judgment with respect to the contractual liability exclusion is granted. Although under Insurance Law §3420(d) the timeliness of a disclaim is ordinarily "a question of fact, dependent on all of the circumstances of a case that make it reasonable, or unreasonable, for an insurer to investigate coverage" (*Bovis Lend Lease LMB, Inc. v Royal Surplus Lines Ins. Co.*, 27 AD3d 84, 88 [1st Dept 2005]) this is not the fact where, as here, the basis for the disclaimer was or should have been readily apparent before the onset of the delay (*First Financial Ins. Co. v Jetco Contracting Corp.*, 1 NY3d 64, 69 [2003]).

[6] Assuming, *arguendo*, that NYCAN is granted judgment on its contractual indemnification claims against Chelsea, then Princeton will be next in line after Falls Lake to provide a defense and the issue of priority and the duty to defend may become moot (*see Indemnity Ins. Co. of North America v St. Paul Mercury Ins. Co.*, 74 AD3d 21, 25-26 [1st Dept 2010]).

Mt. Hawley included the contractual liability exclusion in its reservation of rights letter sent to Third-Party Plaintiffs in 2018 and asserts it does not yet have a basis for disclaiming coverage on that basis as there has not yet been any finding of contractual liability against its insured Chelsea. The record is devoid of any formal disclaimer citing the contractual liability exclusion.

It does not matter whether Pace or NYCAN would be considered additional insureds under the Mt. Hawley policy in order for Mt. Hawley to ascertain whether it could disclaim at least a portion of damages potentially covered under the contractual liability exclusion (*see Endurance Am. Specialty Ins. Co. v Utica First Ins. Co.*, 132 AD3d 434, 436 [1st Dept 2015]). Years of litigation passed after Mt. Hawley's initial reservation of rights letter without any disclaimer. At the latest, once Mt. Hawley knew that liability under Labor Law § 240(1) was granted, that Pace was asserting contractual indemnification claims against NYCAN, and that its insured was named a Third-Party Defendant subject to contractual indemnification claims from Pace and NYCAN, it had a duty under Insurance Law §3420(d) to promptly disclaim under the contractual liability exclusion (*see GPH Partners, LLC v American Home Assur. Co.*, 87 AD3d 843, 843-844 [1st Dept 2011]). There is no basis for Mt. Hawley's argument that it was required to await a ruling on contractual liability prior to issuing its disclaimer, which is wholly contrary to Insurance Law §3420(d)'s requirement that insures expedite the disclaimer process (*see, e.g. City of New York v Greenwich Ins. Co.*, 95 AD3d 732 [1st Dept 2012]). Therefore, the delay in disclaiming based on the contractual liability exclusion was unreasonable as a matter of law (*see also Titan Industrial Services Corp. v Navigators Ins. Co.*, 223 aD3d 426 [1st Dept 2024]; *JT Magen v Hartford Frie Ins. Co.*, 64 AD3d 266 [1st Dept 2009]).

E. Pace

Third-Party Plaintiffs' motion which seeks relief on behalf of Pace is denied as procedurally improper. The argument that Pace was required to have a written contract with Chelsea to be entitled to coverage is without merit (*see Catlin Ins. Co. v Colony Ins. Co.*, 237 AD3d 638 [1st Dept 2025]). Pace, as the owner, was required to be named an additional insured pursuant to the NYCAN and Chelsea contract (*see* NYSCEF Doc. 69). Therefore, the additional insured endorsement which lists an additional insured as "any person or organization you are required to add as an additional insured under a written contract or agreement" includes Pace.

However, Pace has not asserted claims against Mt. Hawley or Princeton and Third-Party Plaintiffs' request for affirmative relief on behalf of a non-party to the third-party action is improper (*see, e.g. 191 Chrystie LLC v Ledoux*, 82 AD3d 681, 682 [1st Dept 2011] [declaratory relief granted to non-party was improper]). Moreover, the same determinations as to priority of coverage, the duty to defend, and the duty to indemnify made with respect to NYCAN also apply to Pace – namely that it is premature to make such rulings given pending issues before the trial court in the Ramirez Action.

Accordingly, it is hereby,

ORDERED that Third-Party Plaintiffs' motion for summary judgment is withdrawn as to Falls Lake pursuant to the parties' stipulation (NYSCEF Doc. 79); and it is further

ORDERED and ADJUDGED that Third-Party Plaintiffs' motion for summary judgment against Princeton and Mt. Hawley is granted to the extent that Princeton and Mt. Hawley may not rely on any exclusions to preclude coverage in the Ramirez Action; and it is further

ORDERED that Third-Party Plaintiffs' motion for summary judgment seeking a declaration that Princeton and Mt. Hawley have a duty to indemnify NYCAN and take priority of

coverage over Clear Blue Insurance Company's policy is denied, without prejudice, with leave to renew; and it is further

ORDERED that Third-Party Plaintiffs' motion for summary judgment seeking a declaration that Princeton has a duty to defend NYCAN is denied, without prejudice; and it is further

ORDERED that Third-Party Plaintiffs' motion for summary judgment seeking a declaration that Third-Party Defendant Mt. Hawley Insurance Company has a duty to defend NYCAN is denied with prejudice; and it is further

ORDERED that Third-Party Plaintiffs' motion for summary judgment seeking affirmative relief on behalf of the Plaintiff Pace University is denied; and it is further

ORDERED that within ten days of entry, counsel for Third-Party Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/18/26
DATE

HON. PHAEDRA F. PERRY-BOND, J.S.C.

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