

**Hudson Meridian Constr. Group, LLC v Travelers
Cas. Ins. Co. of Am.**

2026 NY Slip Op 31200(U)

March 25, 2026

Supreme Court, New York County

Docket Number: Index No. 655507/2021

Judge: Sabrina Kraus

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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. SABRINA KRAUS PART 57M

Justice

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HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, 21
CLARK STREET PROPERTY OWNER, LLC,
WATERMARK RETIREMENT COMMUNITIES, LLC, 21
CLARK STREET SENIOR HOUSING, LLC

INDEX NO. 655507/2021

MOTION DATE 01/30/2026

MOTION SEQ. NO. 008

Plaintiffs,

- v -

TRAVELERS CASUALTY INSURANCE COMPANY OF
AMERICA, ASMIR & DENIS CONSTRUCTION, INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 1, 135, 147, 148, 177, 179, 217, 224, 227, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252

were read on this motion to/for VACATE (NOTE OF ISSUE).

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Hudson Meridian Construction Group, LLC (“Hudson”) commenced this action against Travelers Casualty Insurance Company of America (“Travelers”) and Asmir & Denis Construction, Inc. (“A&D”) seeking a declaratory judgment and contractual indemnification for damages arising out of a related personal injury action (NYSCEF Doc No. 1; *see also* Index No. 500227/2021 [the “Related Action”]).

On March 29, 2023, the Court granted Hudson’s motion to amend the complaint to add additional plaintiffs 21 Clark Street Property Owner, LLC; 21 Clark Street Senior Housing, LLC; and Watermark Retirement Communities, LLC (NYSCEF Doc No. 135).

On April 18, 2023, and April 24, 2023, Travelers and A&D respectively filed their answers to Plaintiff’s amended complaint (NYSCEF Doc Nos. 147, 148).

On April 16, 2024, the Court issued a discovery order after holding a preliminary conference providing that the Plaintiff would be produced for a deposition on or before September 30, 2024, Travelers would be produced for a deposition on or before October 25, 2024, and A&D would be produced for a deposition on or before November 15, 2024 (NYSCEF Doc No. 177).

On October 15, 2024, the Court issued a discovery order after holding a status conference noting that party depositions had not taken place. The new dates would be for Plaintiff to be produced for a deposition on or before January 30, 2025, Travelers on or before February 6, 2025, and A&D on or before February 27, 2025 (NYSCEF Doc No. 179).

On March 17, 2025, the Court issued another discovery order after a status conference in which the Court noted that the parties had not yet complied with the Court's April 16, 2024, discovery order by failing to produce their clients for depositions (NYSCEF Doc No. 217).

On September 18, 2025, the Court issued another discovery order after a status conference in which the Court noted that Plaintiffs had not yet complied with the Court's March 17, 2025, discovery order by producing defense billing within thirty (30) days of that hearing and by complying with A&D's August 17, 2022, discovery demands (NYSCEF Doc No. 220).

On October 8, 2025, the Court issued a decision ordering the completion of discovery within ninety (90) days of the order and directing the filing of the note of issue by January 12, 2026 (NYSCEF Doc No. 224).

On January 12, 2026, Plaintiffs filed their note of issue (NYSCEF Doc No. 227).

PENDING MOTION

On February 27, 2026, Asmir & Denis Construction, Inc. ("A&D") moved for an order (1) vacating the note of issue pursuant to CPLR § 3402 and 22 NYCRR § 202.21(e), (2)

extending the parties' time to complete pretrial discovery, which includes party and nonparty depositions, and (3) extending the time to move for summary judgment until 120 days after the completion of all outstanding discovery (NYSCEF Doc No. 230 [mot. seq. 008] [filed January 30, 2026]).

DISCUSSION

22 NYCRR § 202.21(e) provides:

Within 20 days after service of a note of issue and certificate of readiness, any party to the action or special proceeding may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial, and the court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect After such period . . . no such motion shall be allowed except for good cause shown. At any time, the court on its own motion may vacate a note of issue if it appears that a material fact in the certificate of readiness is incorrect, or that the certificate of readiness fails to comply with the requirements of this section in some material respect. If the motion to vacate a note of issue is granted, a copy of the order vacating the note of issue shall be served upon the clerk of the trial court.

It is enough for a certificate of readiness to incorrectly claim that “discovery has been completed” for vacatur of the note of issue to be appropriate (*Savino v Lewittes*, 160 AD2d 176, 177 [1st Dept 1990]; see also *Vargas v Villa Josefa Realty Corp.*, 28 AD3d 389, 390–91 [1st Dept 2006]). However, a court will not vacate a note of issue where the record shows that the movant did not “diligently seek discovery” (see *Taylor v Enterprise FM Trust*, 214 AD3d 493, 494 [1st Dept 2023]). Further, when a party fails to avail themselves of opportunities to obtain discovery prior to the deadlines set forth in a court’s compliance conference order, that party waives “any right . . . to additional discovery” (see *Colon v Yen Ru Jin*, 45 AD3d 359, 360 [1st Dept 2007] [*denying vacatur of the note of issue*]).

A&D’s contention that the note of issue should be vacated to conduct party and nonparty depositions is wholly without merit as A&D repeatedly failed to avail itself of several

opportunities to conduct depositions in violation with the Court's conference orders as outlined above. A&D thus waived its right to this additional discovery.

A&D's additional argument that Plaintiffs failed to respond to its discovery demands dated August 17, 2022, is now moot as Plaintiffs represent in opposition that they have now complied with such demands (NYSCEF Doc No. 241, at 15; NYSCEF Doc No. 245). Even assuming Plaintiffs' responses were inadequate, A&D did not "diligently seek discovery" as the appropriate course of action would have been to resolve the issue with Plaintiffs' counsel prior to the filing of note of issue, conference the issue with the Court when the conflict could not be resolved among counsel, and, if necessary, move for the appropriate relief should Plaintiff's responses still be inappropriate (*see Taylor*, 214 AD3d at 494). A&D had nearly four years to do so and cannot now ask for note of issue to be vacated.

Accordingly, the Court denies A&D's motion to vacate the note of issue, and the Court also denies A&D's request to extend the time to file dispositive motions.

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of A&D (mot. seq. 008) is denied in its entirety; and it is further

ORDERED that, within twenty (20) days from entry of this order, Plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



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3/25/2026

DATE

SABRINA KRAUS, 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