Urena v Legacy Yards Tenants LP
2026 NY Slip Op 31949(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 152642/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

---X

URENA, CARLOS

Plaintiff,

- v -

LEGACY YARDS TENANTS LP et al

Defendant.

---X

INDEX NO. 152642/2021

MOTION DATE 06/09/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

LEGACY YARDS TENANTS LP

Plaintiff,

-against-

GUARDIAN SERVICE INDUSTRIES, INC.

Defendant.

---X

Third-Party
Index No. 596046/2024

The following e-filed documents, listed by NYSCEF document number (Motion 006) 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 165, 166, 170, 180, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 232, 233, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, defendants L'Oréal USA, Inc., L'Oréal USA, Inc. d/b/a Kiehl's Since 1851, Cosmair, Inc., Lancôme, Soft Sheen Products, Inc., and Soft Sheen-Carson LLC (collectively, "L'Oréal") move pursuant to CPLR § 3212 for summary judgment dismissing the complaint and cross-claims against them and for judgment on its cross-claims for common law and contractual indemnification against defendant Legacy Yards Tenants LP ("Legacy"). Legacy cross moves for summary judgment dismissing the complaint and cross-claims against it and for judgment on its cross-claims against L'Oréal. Plaintiff Carlos Urena ("Plaintiff") opposes both motions. For the reasons set forth herein, L'Oréal's motion is granted solely to the extent that: (1) summary judgment is awarded in favor of L'Oréal dismissing the complaint and all cross-claims

[* 1]

asserted against it; and (2) L'Oréal is awarded conditional summary judgment on its cross-claim for contractual indemnification. In all other respects, the motion is denied. Legacy's cross-motion is denied in its entirety.

BACKGROUND

In this personal injury action, plaintiff seeks to recover damages for injuries he purportedly incurred on January 21, 2020, when he slipped and fell on a folded box on the floor of the 27th floor of 10 Hudson Yards, otherwise known as 501 W. 30th Street, New York, New York, while delivering mail in the course of his employment as a mail clerk with non-party Eversource. On the date of the incident, L'Oréal leased and occupied several floors of 10 Hudson Yards ("Premises"), including a portion of the 27th floor, pursuant to a lease agreement with Legacy dated April 10, 2023 ("Lease") (NYSCEF Doc No. 147, lease).[1] Legacy is the owner of the Premises.

On March 16, 2021, Plaintiff commenced this action by filing a summons and complaint that interposes causes of action against Legacy, L'Oréal, and Jett Valley, LLC ("Jett") (NYSCEF Doc No. 1, summons and complaint). On May 6, 2021, L'Oréal filed an answer to the complaint with cross-claims for contribution and indemnification (NYSCEF Doc No. 18, answer). On May 21, 2021, Legacy filed an answer with cross-claims for indemnification and contribution against L'Oréal and Jett, and against L'Oréal for breach of contract for failure to procure insurance (NYSCEF Doc No. 21, answer). Jett has not appeared in the action. On April 22, 2022, Plaintiff filed a motion for entry of a default judgment against Jett, which was denied without prejudice due to insufficient proof of service of process (NYSCEF Doc No. 30, order, Hagler, J.).

A preliminary conference order was entered on March 4, 2022, and the parties proceeded with discovery. On October 17, 2024, while discovery was ongoing, Legacy commenced a third-party action against Guardian Service Industries ("Guardian"). On April 9, 2025, Plaintiff filed the note of issue and certificate of readiness, certifying that the matter was ready for trial (NYSCEF Doc No. 61). On April 29, 2025, L'Oréal and Legacy each filed motions to vacate the note of issue on the grounds that discovery was incomplete (Motion Seq. Nos. 003, 004) (NYSCEF Doc Nos. 63, 86). Plaintiff cross-moved in both motions to sever the third-party action on the grounds that it had been filed unreasonably late and/or was unduly prejudicial to the progress of Plaintiff's case (NYSCEF Doc Nos. 100, 104, notices of cross-motion). Both motions were referred to Justice Lisa Sokoloff for decision pursuant to an administrative directive (NYSCEF Doc No. 227, notice). Under her guidance, the parties entered into a so-ordered stipulation dated December 3, 2025, resolving the motions (NYSCEF Doc No. 231, stipulation). The so-ordered stipulation provides, inter alia, that the cross-motions to sever are denied, the note of issue is not vacated, and the case will remain on the trial calendar pending the completion of the outstanding discovery enumerated in the stipulation (*id.*). The so-ordered stipulation was memorialized in a decision and order dated March 2, 2026 (NYSCEF Doc No. 245).

While the motions to vacate the note of issue were pending, L'Oréal filed the instant motion pursuant to CPLR § 3212 for summary judgment to dismiss Plaintiff's complaint and Legacy's cross-claims as against L'Oréal, and for summary judgment on L'Oréal's cross-claims for common

[1] L'Oréal USA, Inc. is the lessee under the agreement. In keeping with the convention employed by the parties in their motion papers, the court will refer to the collective L'Oréal parties as the lessee.

law and contractual indemnification pursuant to the Lease (NYSCEF Doc No. 128, notice of motion). In support of its motion, L'Oréal argues that it is entitled to summary judgment because the condition that allegedly caused Plaintiff's injury was open and obvious and not inherently dangerous, L'Oréal had no duty to maintain the common area where Plaintiff's injury occurred, and L'Oréal did not cause or create or have notice of the condition (NYSCEF Doc No. 130, memo in support). L'Oréal also argues that it is entitled to summary judgment on its claims for common law and contractual indemnification, and to dismissal of Legacy's cross-claims, because there is no evidence that L'Oréal was negligent, L'Oréal had no duty with regard to the common area where the injury occurred, and Plaintiff's accident was caused by Legacy's negligence in connection with its operation and maintenance of the common area (*id.* at 16-22).

On September 25, 2025, Legacy filed a cross-motion pursuant to CPLR § 3212 for summary judgment to dismiss the complaint and L'Oréal's cross-claims as against it, and for summary judgment on its cross-claims against L'Oréal for common law indemnification, contribution, contractual indemnification and breach of contract for failure to procure insurance coverage (NYSCEF Doc No. 189, notice of cross-motion). Legacy argues that it is entitled to summary judgment to dismiss the complaint against it because it did not breach any duty owed to Plaintiff, did not cause or create the condition, and it lacked actual or constructive notice of the allegedly defective condition (*id.* at 5).[2]

Specifically, Legacy points to testimony from L'Oréal's witness that L'Oréal utilized the common area for garbage disposal and recycling, and removal of boxes from the area was a shared responsibility between L'Oréal's cleaning service providers and the mailroom contractors (*id.* at 7). Legacy also contends that it took sufficient measures to prevent the overflow of garbage from the common areas, which included providing daily maintenance and a facility contact for each tenant to address any issues (*id.*). Legacy joins L'Oréal in arguing that the condition was open and obvious, and not inherently dangerous (*id.* at 9), that Plaintiff was the sole proximate cause of his injuries (*id.* at 11), or, in the alternative, that L'Oréal was also a proximate cause of Plaintiff's accident because Legacy did not place the box, or the nearby garbage and recycling bins, in the subject area and did not receive a complaint or notice to remove any boxes or debris on the date of the accident (*id.*).

Legacy argues that it is entitled to summary judgment on its cross-claim for common law indemnification and dismissal of L'Oréal's cross-claim because L'Oréal was negligent rather than Legacy (*id.* at 13-14). With respect to contractual indemnification, Legacy points to a different provision of the Lease for the proposition that L'Oréal was responsible for maintaining the subject area, and, in turn, is contractually liable to indemnify Legacy (*id.* at 15).

Plaintiff opposes both the motion and cross-motion, arguing that each should be denied because material questions of fact exist as to whether the purportedly defective condition was open

[2] Legacy also argues that its cross-motion should be deemed timely filed pursuant to a July 11, 2025 so-ordered stipulation between the parties that adjourned the return date of the motion for summary judgment to "October 15, 2025, with all opposition/cross-motions to be filed by September 30, 2025, and reply papers to be filed by October 14, 2025" (NYSCEF Doc No. 180, so-ordered stipulation), and because the motion and cross-motion are based on the same facts and law, and seek the same relief (NYSCEF Doc No. 190, mem in support of cross-motion at 4). This issue was resolved by the December 3, 2025 so-ordered stipulation, which provides that "Legacy's cross motion for summary judgment [] is declared timely filed" (NYSCEF Doc No. (NYSCEF Doc No. 231, 245).

and obvious and inherently dangerous as a matter of law, whether Legacy or L'Oréal had a duty to maintain the area where the fall occurred, and who caused or created the condition or had actual or constructive notice thereof (NYSCEF Doc No. 224, plaintiff's memo in opp).

EVIDENTIARY RECORD

In support of its motion, L'Oréal submits copies of the pleadings and other filings in this action, the Lease and related agreements, certain insurance declarations, an affirmation from Sheikh Alli, Assistant Vice President of the General Services Division at L'Oréal USA, Inc., and transcripts of the depositions of Plaintiff, Stephanie Beckwith, General Manager for Legacy, and Mr. Alli (NYSCEF Doc Nos. 128-158). Legacy relies on many of the same documents, as well as an additional affidavit from Ms. Beckwith (NYSCEF Doc No. 192).

Plaintiff testified at a deposition that the accident occurred on January 21, 2020, at approximately 10:00 or 10:30 in the morning (NYSCEF Doc No. 154, plaintiff deposition tr at 16). At the time he was employed by Eversource as a mail clerk (*id.* at 14, ln 12). His duties included sorting and delivering packages to different floors throughout the Premises using a mail cart (*id*. at 14-15). On January 21, 2020, he took a freight elevator to the freight area of the 27th floor, where the incident occurred (*id*. at 16). He testified that when the elevator doors opened, there was a pallet full of boxes that made it hard for him to maneuver from there with the mail cart (*id*. at 18, ln 4-6). He walked approximately two or three feet, and then proceeded through the room by making a series of sharp turns and "angl[ing] the cart a certain way," which he testified was necessary "because of all the stuff that was on the ground and around" (*id*., ln 7-18). The "stuff" included "pallets of boxes and supplies; just boxes, paper, plastic," and he testified that "all around me there is just dumpsters, just cages full of supplies, boxes all over the floor and paper plastic stuff" (*id*. at 19, ln 3-4; 20, ln 20-21). He described the lighting in the room as "not too bright[,] a bit dim" (*id*. at 23, ln 12-13). When asked whether he could see where he was going, he responded "somewhat," but clarified that he "was able to see" (*id*., ln 10-16).

Plaintiff progressed approximately 15-20 feet across the room towards a set of double doors (*id*. at 21). He testified that the accident occurred at the double doors, as follows:

> When I reached arm's lengths from the doors with my right hand, I pulled the handle down. I pulled the door towards me. When I opened the door towards me, I put my right food behind and that is when I landed on a box and I slipped and I fall straight down. As I fall straight down, my right hand goes forward. The door slams on my hand.

(*id*. at 21, ln 4-11). Plaintiff clarified that he slipped on a medium sized box that was folded and had not been put together (*id*. at 22, ln 2-9).

Plaintiff testified that he worked for Eversource at the Premises for approximately three months and delivered mail to the 27th floor "almost like every three or four days" (*id*. 26, ln 13-14). There were pallets and boxes on the floor prior to the date of the incident (id., ln 19-21). Plaintiff also testified that he had made prior complaints to his supervisors about the condition of

the area where he fell, but was unsure if they had made complaints to Legacy or L'Oréal (*id*. at 17, ln 7-14).

Ms. Beckwith, General Manager for Legacy, described the freight elevator area as having a "[t]iled floor, freight elevator opening, two exits, double door exists into a tenant space" (NYSCEF Doc No. 155, Beckwith deposition tr at 17-18). In relevant part, Ms. Beckwith, who was not employed by Legacy on January 21, 2020, testified that Legacy had a contract with non-party ABM in early 2020 to maintain cleanliness at the Premises (*id*. at 12).[3] ABM's responsibilities included garbage and recycling duties, including scheduled trash removal nightly between 12:00 a.m. and 3:00 a.m. (*id*. at 28-29). If additional garbage or recycling duties were needed outside of the scheduled hours, Legacy "would ask the tenant to let us know if excess trash needed to be removed" (*id*. at 29). She was not aware if L'Oréal contacted Legacy on January 21, 2020 to remove boxes and debris from the freight elevator area on January 21, 2020 (*id*. at 30).

Ms. Beckwith testified that Legacy records Premises complaints in a work order system (*id*. at 19). If a Premises tenant has a complaint, they reach out to a facilities contact, who enters the complaint into a work order system (*id*.). Ms. Beckwith testified that she never conducted a search to see if there were any prior complaints regarding the 27th floor prior to her employment with Legacy, and she does not have any records of any complaints on the 27th floor from the date of the accident (*id*. at 19-20). She further testified that on January 21, 2020, Legacy did not perform regular inspections of tenant office space, but did perform inspections of "base Premises areas" (*id*. at 22, ln 24). When asked if Legacy "ever conduct[s] any inspections in the common areas to make sure that the cleaning services are performing the duties as delineated in the contract," Ms. Beckwith responded that ABM scheduled monthly inspections that were performed by a regional manager of ABM (*id*. at 32). The inspections involved a property coordinator or assistant general manager on Legacy's behalf (*id*. at 33). Legacy did not keep records of the inspection results (*id*.). If an inspection resulted in inadequate work being done by ABM, a work order request would be entered into the work order system (*id*.).

In an affidavit submitted in support of Legacy's cross-motion, Ms. Beckwith attests she that performed a search of all electronic and paper records maintained by Legacy and its management company Related Commercial Management for "any and all requests, made by L'Oréal or any other party, dated January 21, 2020, for garbage/debris removal from the common areas and/or freight elevator area of the 27th floor of the Subject Premises" (NYSCEF Doc No. 192, Beckwith aff ¶ 7). She further attests that she performed a second search for "any and all complaints, for the three months prior to and including January 21, 2020, regarding reported debris and/or overflowing garbage in the common areas and/or freight elevator area of the 27th floor of the Subject Premises" (*id*. ¶ 8). Both searches netted no results (*id*. ¶¶ 7-8).

Mr. Sheikh Alli testified on behalf of L'Oréal at a deposition that took place over two days (NYSCEF Doc No. 156, 157, Alli deposition tr [3/16/23] and [3/29/23]). At the time of the deposition, Mr. Alli was employed as an Assistant Vice President of the General Services Division of L'Oréal, having previously held the title of Director (*id*. at 16-17). His duties on behalf of

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[3] She identified Guardian as the previous contractor in charge of cleanliness at 10 Hudson Yards (NYSCEF Doc No. 75, tr at 13, ln 13).

L'Oréal include, *inter alia*, "oversight of most of the processes inside and outside of the [Premises]" (*id.*).

Mr. Alli described the freight area on the 27th floor as follows:

> It's a vestibule, essentially, and you get off the elevator, you enter into a vestibule on the 27th floor. You kind of go south to exit the freight vestibule if you're going to the L'Oréal space. . . . The 27th floor elevator or freight elevator vestibule is a shared space minus using it as a means to get off the elevator onto the floor. That's the only primary use per se of that space. It's not like it's a space that we do anything else beyond that within it.

(*id.* at 24-25).

Mr. Alli testified that Eversource is required to take the route through the freight elevator area when they deliver supplies or mail to L'Oréal (*id.* at 28, ln 8-13). Mr. Alli also provided the following relevant testimony:

> Q: When you would go to the freight elevator, what would be your purpose there?
>
> A: Minus the 27th floor, which once again is a shared floor, we don't use the vestibule of that elevator for anything. But in our other scenarios, we have -- the vestibule is used for, let's say for example, if there is a delivery, we have recess areas or designated racks where those are stored. If there's an emergency, the vestibule, freight elevator, is the primary means by which the first responders get into the Premises, so we have an obligation to keep those areas clear so we often would patrol them to be sure that they're free of anything that may be basically disruptions. So if we have for example, a medical emergency, we have a certain path of that space that is always cut clear so that people can get from the freight elevator to that door so that there is nothing obstructing that pathway.

(*id*. at 30-31).

On the second day of Mr. Alli's deposition, he testified regarding the procedure for garbage disposal on the 27th floor of the Premises occupied by L'Oréal (NYSCEF Doc No. 157, Alli deposition tr [3/29/23]). He testified that "[t]here are receptacles that are set up in the freight and the rubbish is essentially, the intervals that they are emptied, are put into those respective receptacles" (*id*. at 12-13). The receptacles are in the "vestibule area primarily," "maybe" 20 or more feet from the doors that exit the freight area (*id*. at 13, ln 5-11). He testified that there are three receptacles, bigger than a regular garbage can, "maybe . . . in excess of 15 by 15," and one of the receptacles is designated for boxes (*id*. at 14, ln 4-17). Mr. Alli described the receptacles or bins as "primarily for [L'Oréal] it's intended for storing of the rubbish and in the same token for our sustainability goals because we wanted to separate our rubbish and recycling into different streams" (*id*. at 48, ln 10-14). He could not say whether Intersection also put boxes in the freight area, but reiterated "like I said it's our bin which is intended for the purpose I just mentioned" (*id*. at 48, ln 18-25).

Mr. Alli also testified that the freight elevator and pathway must be kept clear for means of egress (*id*. at 15, ln 10; 17, ln 6; 35, ln 21). He indicated that "[t]here's an active hallway like I mentioned that is -- it's sort of an unspoken rule where that hallway is kept clear because the freight elevator and that pathway is the primary means of egress in the event of emergencies . . . [s]o the pathway is always clear of debris in order to get any emergency personnel in and out of the Premises" (*id*. at 15).

Mr. Alli also testified that L'Oréal has storage closets in the shared corridor space on the 27th floor and does not use the freight area for storage (*id*. 18-20). He did not have any recollection of receiving any complaints regarding the condition of the 27th floor (*id*. at 20, ln 14-15). ABM collected rubbish from L'Oréal's offices on an as-needed basis during regular rounds through the area (*id*. at 23, ln 11-16). He indicated that box removal from L'Oréal's offices was "a shared responsibility," and either ABM or the mailroom staff would bring boxes to the freight area (*id*. at 23). With respect to L'Oréal's custom or practice for discarding boxes in the office, he testified as follows:

> Yes, generally speaking you're required to flatten your boxes. Most people flatten the boxes and then take the larger box and put the flat boxes into them. The mailroom picks up boxes as they see them on the floor, empty boxes, flatten them, drop them into the dumpster. Cleaners do that as well, so it's done on, you know, I would say the word is multiple ends.

(*id*. at 26).

DISCUSSION

Pursuant to CPLR § 3212(b), a motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013] [internal quotation marks and citation omitted]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citation omitted]).

To maintain a cause of action in negligence, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Pasternack v Lab's Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). "The question

of whether a defendant owes a legally recognized duty of care to a plaintiff is the threshold question in any negligence action" (*On v BKO Exp. LLC*, 148 AD3d 50, 53 [1st Dept 2017]). "Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm" (*Lauer v City of New York*, 95 NY2d 95, 100 [2000]). Liability for a dangerous condition on property is generally predicated upon occupancy, ownership, control or a special use of such premises (*Balsam v Delma Eng'g Corp.*, 139 AD2d 292, 296 [1st Dept 1988]). "The existence of one or more of these elements is sufficient to give rise to a duty of care" (*id.* at 296).

A. Whether the Condition is Open and Obvious and Inherently Dangerous

With respect to the threshold question of duty, both L'Oréal and Legacy argue that they did not owe a duty of care to the Plaintiff because the condition that Plaintiff alleges caused him to fall was open and obvious and not inherently dangerous as a matter of law. L'Oréal argues that Plaintiff's familiarity with the area and testimony that he saw boxes, paper, and other hazards in the freight elevator area before he fell demonstrate that the condition was open and obvious as a matter of law (NYSCEF Doc No. 130, mem in support at 5-6). L'Oréal also cites to *Gonzalez v. Dong Yun Corp.* (110 AD3d 484 [1st Dept 2013]) and other case law for the proposition that cardboard on the floor is an open and obvious and not inherently dangerous condition (*id*. at 6). Legacy advances similar arguments in support of its cross-motion (NYSCEF Doc No. 190, mem in support at 9-10). In opposition, Plaintiff argues that material questions of fact exist regarding whether the condition was open and obvious and inherently dangerous and this fact specific inquiry should be reserved for the jury (NYSCEF Doc No. 217, mem in opp at 11-13).

In the case of premises liability, the duty of care to third parties includes both a duty to warn visitors of potential danger posed by a dangerous or defective condition on the property and a duty to maintain the property in a reasonably safe condition (*Westbrook v WR Activities-Cabrera Markets*, 5 AD3d 69, 71 [1st Dept 2004]). A defendant is relieved of the first duty to warn a visitor of danger if a hazard or dangerous condition on the premises is open and obvious (*id*. at 71). An open and obvious hazard is "so obvious that it would *necessarily* be noticed by any careful observer, so as to make any warning superfluous" (*id*. at 71). To establish that a condition is open and obvious as a matter of law, a defendant must prove that the hazard "could not reasonably be overlooked by anyone in the area whose eyes were open" (*Powers v 31 E 31 LLC*, 123 AD3d 421, 422 [1st Dept 2014], citing *Westbrook*, 5 AD3d at 72).

"While the issue of whether a hazard is latent or open and obvious is generally fact-specific and thus usually a jury question, a court may determine that a risk was open and obvious as a matter of law when the established facts compel that conclusion, and may do so on the basis of clear and undisputed evidence" (*Tagle v Jakob*, 97 NY2d 165, 169 [2001]). In this case, there are no photographs of the freight elevator area or the subject box in evidence, and only the Plaintiff offered firsthand testimony regarding the purportedly hazardous condition on the date of the incident. Therefore, the court must rely entirely on Plaintiff's testimony to determine whether the condition is open and obvious as a matter of law (*see cf. Tagle v Jakob*, 97 NY2d at 169-170 [photograph demonstrated that any observer reasonably using their senses would see purportedly defective condition]; *Boyd v New York City Hous. Auth.*, 105 AD3d 542, 543 ["The color

photographs in the record show that the gate was plainly observable and did not pose any danger to someone making reasonable use of his or her senses"] [internal quotation marks omitted]).

In relevant part, Plaintiff testified that the freight elevator area was cluttered with "dumpsters, just cages full of supplies, boxes all over the floor and paper plastic stuff" (NYSCEF Doc No. 154, plaintiff deposition tr at 19, ln 3-4; 20, ln 20-21). The clutter was so heavy that it was difficult for him to navigate through the room, and he had to push the mail cart in a series of sharp turns in order to traverse the space to the elevator (*id.*). Plaintiff walked in this manner to a set of double doors across the room, where he "reached arm's length[]" with his right hand, pulled the door handle down, and opened the door towards him (*id.* at 21, ln 3-7). Plaintiff testified that the lighting in the room was "dim" he could see "somewhat" as he traversed the room (*id.* at 23, ln 10-20). Plaintiff was not asked at his deposition whether he saw the particular box that caused him to fall before he slipped (*id.*).

Viewed in the light most favorable to the non-moving Plaintiff, as required on a motion for summary judgment, this evidence does not compel a determination that the condition was open and obvious because a jury could reasonably conclude that the crowded conditions in the room and dim lighting led Plaintiff to reasonably overlook the flattened box on which he purportedly slipped (*Powers v 31 E 31 LLC*, 123 AD3d at 6 ["Even visible hazards do not necessarily qualify as open and obvious because the nature or location of some hazards, while they are technically visible, make them likely to be overlooked"]). In any event, a finding that a hazardous condition is open and obvious "is never fatal to a plaintiff's negligence claim," and is relevant only to a plaintiff's comparative fault (*Saretsky v 85 Kenmare Realty Corp.*, 85 AD3d 89, 90 [1st Dept 2011]). Dismissal of the action is only appropriate where the defendant establishes that the condition is both open and obvious and not inherently dangerous as a matter of law (*see e.g.*, *Boyd v New York City Housing Authority*, 105 Ad3d 542, 543-544 [1st Dept 2013]).

"[W]hether a condition is not inherently dangerous, or constitutes a reasonably safe environment, depends on the totality of the specific facts of each case" (*Powers v 31 E 31 LLC*, 123 AD3d 421, 422 [1st Dept 2014]). L'Oréal and Legacy cite to *Gonzalez v. Dong Yun Corp.* (110 AD3d 484 [1st Dept 2013]) and similar cases for the proposition that a cardboard box on the floor is not an inherently dangerous condition. These cases are distinguishable because the *Gonzalez* Plaintiff testified she saw a supermarket employee unloading items from a cardboard box in the supermarket aisle before she tripped over the box and hurt her arm (110 AD3d at 484). The court noted in *Gonzalez* that there was no evidence that the box was obscured or left unattended (*id.*). The presence of an employee unloading items from an opened box would no doubt draw the attention of a passerby.

Conversely, the box that Plaintiff alleges caused him to fall was flattened and surrounded by other items. There is no indication in his testimony that Plaintiff saw the flattened box in his path before he fell. Plaintiff's testimony that it was difficult to maneuver the mail cart through the pallets and other items suggests that he was distracted or preoccupied as he passed through the room (NYSCEF Doc No. 154, plaintiff deposition tr at 18, ln 7-18). Even where a hazard is open and obvious, it "may be rendered a trap for the unwary where the condition is obscured or the plaintiff's attention is otherwise distracted" (*Mauriello v Port Auth. of NY and N.J.*, 8 AD3d 200 [1st Dept 2004]). The totality of the evidence presented here raises several material questions of

fact regarding whether condition was open and obvious and inherently dangerous as a matter of law. These questions must be resolved by a jury.

B. L'Oréal's Duty of Care

Separately, L'Oréal argues that it does not owe a duty to care to the Plaintiff because the injury occurred in a common area of the Premises that is not part of its leased premises (NYSCEF Doc No. 130, mem in support at 9). L'Oréal contends that terms of the Lease and the evidentiary record demonstrate the freight elevator area was a shared common space that was not under L'Oréal's control and was exclusively maintained by Legacy pursuant to the terms of the Lease (*id*. at 10). Plaintiff argues that genuine issues of fact exist regarding whether L'Oréal had a duty to maintain the freight elevator area and whether L'Oréal caused or created the hazardous condition (NYSCEF Doc No. 217, mem in opp at 11-13). Legacy argues that L'Oréal had a contractual duty to maintain the freight elevator area pursuant to the Lease because L'Oréal placed garbage bins in the area for its use and contracted with Plaintiff's employer Eversource, who frequently used the area for L'Oréal's benefit (NYSCEF Doc No. 190, mem in support and opposition ¶¶ 43, 47).

It is well established that a tenant owes a common law duty of reasonable care to maintain the leased premises in a reasonably safe condition (*Williams v. Esor Realty Co.*, 117 AD3d 480, 480 [1st Dept 2014]; *see also Parslow v Leake*, 117 AD3d 55, 60 [4th Dept 2014] ["a tenant, i.e., one who both occupies and controls the property, has a common-law duty to keep the premises it occupies in a reasonably safe condition, even when the landlord has explicitly agreed in the lease to maintain the premises"] [internal quotation omitted]). Because the common law duty arises from the tenant's occupancy and control of the leased space, this duty only extends to the demised premises and exists independently of any other obligation that may be imposed by the lease (*id.*). Liability to a third party may also arise in other circumstances, such as (i) where the tenant creates or exacerbates a harmful condition, (ii) where the plaintiff detrimentally relied on the tenant's continued performance of a duty, or (iii) where the tenant entirely displaced the owner's duty to maintain the premises safely (*Rothstein v 400 E. 54th St. Co.*, 51 AD3d 431, 432 [1st Dept 2008] [tenant entitled to summary judgment where it had no duty to maintain common area and no questions of fact existed regarding contractual duties], citing *Espinal v Mellville Snow Contrs.*, 98 NY2d 136, 139-140 [2002]). Plaintiff does not allege any detrimental reliance in this case.

In relevant part, the Lease between Legacy and L'Oréal defines the demise as "(i) a portion of the 23rd floor of the Premises [], (ii) the entire 24th through 32nd floors of the Premises and (iii) a portion of the 3rd floor of the Premises . . . as shown hatched on the plans annexed as Exhibit B-1" (NYSCEF Doc No. 147, lease § 1.01). The Floor Plans to the Lease, referenced in § 1.01 as Exhibit B-1, were not submitted into evidence on this motion. Still, a plan of the 27th floor is annexed to a Lease amendment that was submitted into evidence (NYSCEF Doc No. 148). The plan depicts the 27th floor, divided between two tenants with common areas in the middle (*id.*, exhibit A-1). The freight elevator area and connecting corridors are designated as common areas (*id.*). Sometime after the Lease date, L'Oréal surrendered a portion of the 27th floor and it was leased to non-party Intersection, who occupied a portion of the 27th floor on the date of Plaintiff's fall (NYSCEF Doc No. 149, Alli aff in support ¶ 5; NYSCEF Doc No. 156, Alli deposition tr [3/16/23] at 15, ln 20-21).

Section 1.05 (f) of the Lease provides that L'Oréal "shall have . . . the non-exclusive right to use in common with others . . . (i) the public areas of the Premises, including, without limitation, the common lobbies, corridors, stairways, elevators and loading docks" of the Premises (NYSCEF Doc No. 147, lease § 1.05 [f]). Section 3.01 of the Lease sets forth the services that Legacy shall provide to L'Oréal pursuant to the Lease, including "operation, maintenance and repair of the public and common areas of the Premises" (*id.* § 3.01 [n]). Section § 4.05 of the Lease, titled "Repairs," provides that Legacy "shall operate, maintain, repair, and replace, if necessary . . . all common and public service areas . . . including, without limitation, any common elevators, escalators, access areas and driveways, landscaped areas and corridors" (*id.* § 4.05 [b][ii], 8.18 [b]).

The Lease provisions referenced above, together with the floor map annexed to the Lease amendment and the testimonial evidence establishing that Intersection leased and occupied a portion of the 27th floor and had access to the area, demonstrate that the freight elevator area where Plaintiff fell constitutes a common area of the premises and not part of the demised premises leased to L'Oréal (NYSCEF Doc No. 147, lease § 1.05[f]; NYSCEF Doc No. 148, lease amendment, exhibit A-1). Legacy likewise concedes in its motion papers that Plaintiff's fall occurred in the common areas of the 27th floor (NYSCEF Doc No. 190, Legacy mem in support, passim). Accordingly, L'Oréal did not owe a common-law duty of reasonable care to maintain the freight elevator area, as that area was not exclusively occupied or controlled by L'Oréal (*see Rothstein*, 51 AD3d at 432 [lessee of a condominium commercial unit had no duty to maintain stairs that were part of the common elements but not part of the leased premises]; *see also Vivas v VNO Bruckner Plaza LLC*, 113 AD3d 401, 402 [1st Dept 2014] [commercial tenant not liable for accident occurring on sidewalk that was not part of the demised premises]).

L'Oréal also did not have a contractual duty to maintain the freight elevator area because it was designated as a common area that Legacy was exclusively obligated to maintain under the terms of the Lease (NYSCEF Doc No. 147, lease §§ § 3.01 [n], 4.05 [b][ii], 8.18 [b]). Although Mr. Alli testified that the walkway must be kept clear because it was a means of egress and the L'Oréal general services team or engineers "would walk through just to be sure," he also clarified that "I'm not saying that they go through to make it safe" (NYSCEF Doc No. 157, Alli deposition tr [3/29/23] at 16-17), and no such obligations are set forth in the Lease. Therefore, this is insufficient to give rise to a contractual duty to patrol or maintain the area (*see Rothstein*, 51 AD3d at 432 ["Nor were the common elements part of the premises [] leased to [the commercial tenant], who bore no contractual responsibility for maintaining the stairs, which were not for its exclusive benefit."]).

Mr. Alli also testified that L'Oréal had recess areas or designated racks and storage closets as a means of storage, and, therefore, did not store anything in the freight elevator area, although Intersection did store items in the area (NYSCEF Doc No. 156, Alli deposition tr [3/16/23] at 28, ln 8-13; (NYSCEF Doc No. 157, Alli deposition tr [3/29/23] at 18-19). He also testified that garbage and box removal from L'Oréal's offices was "a shared responsibility" of the Legacy's cleaning contractor ABM or the mailroom staff (NYSCEF Doc No. 157, Alli deposition tr [3/29/23] at 23), and that either ABM or mailroom staff would place the boxes into one of "three designated bins" in the freight elevator area that were "intended for storing of the rubbish and in

the same token for our sustainability goals because we wanted to separate our rubbish and recycling into different streams" (*id*. at 47-48).

Legacy and Plaintiff assert that L'Oréal had a duty to maintain the area because Eversource used the common area for L'Oréal's benefit and L'Oréal "installed" the bins used to store garbage and recycling. However, Legacy is exclusively obligated to maintain the area pursuant to the terms of the Lease, regardless of whether L'Oréal exercises its right to use the freight elevator area "in common with others" (NYSCEF Doc No. 147, lease §§ 1.05 [f], 3.01 [n]). Although L'Oréal and Eversource made use of the common area, such use was permitted under the terms of the Lease and there is no evidence in the record that L'Oréal exercised exclusive control over the area, thereby displacing Legacy's duty to maintain the freight elevator area (*cf. Martinez v 3801 Equity Co.*, 155 AD3d 445, 446 [1st Dept 2017).

Even if L'Oréal placed the bins in the freight elevator area, which is not clear from Mr. Alli's testimony, there is no allegation that the bins were defective or caused Plaintiff to fall, rather than the presence of a cardboard box on the ground near the bins (NYSCEF Doc No. 154, plaintiff deposition tr at 21-22; *O'Brien v Prestige Bay Plaza Dev. Corp.*, 103 AD3d 428, 429 [1st Dept 2013] ["Even if [Defendant] constructed the subject sidewalk after entering into the lease, there is no evidence that the construction was negligently performed, or that the defect that allegedly caused plaintiff's accident [], resulted from such construction[.]"). There also is no allegation that the bins were placed in an area not designated for garbage collection or storage. Regardless of what receptacles were utilized to store garbage and recycling between the nightly collection, Legacy had the exclusive duty of removing garbage and recycling and otherwise maintaining the common area.

This testimonial and documentary evidence submitted demonstrates that L'Oréal did not store items in the freight elevator area and was not responsible for removing garbage and boxes from its offices, storing garbage and boxes awaiting the scheduled pickup, or removing garbage and boxes from the freight area elevator for disposal. It did not have a common law or contractual duty to maintain the freight elevator area, and it did not exercise exclusive control over the area. These facts and circumstances do not lead to the conclusion that L'Oréal caused or created the purportedly dangerous condition. Therefore, L'Oréal did not owe a duty of care to Plaintiff.

Finally, Legacy and Plaintiff argue that L'Oréal was negligent because it failed to notify Legacy that garbage removal was required outside of the regular nightly collection, but Legacy's request that L'Oréal notify it of the need for garbage removal does not create a legal duty where one does not otherwise exist (*Lauer v City of New York*, 95 NY2d 95, 100 ["Without a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm"]). In any event, there is no evidence that L'Oréal had notice of the condition prior to Plaintiff's fall. Therefore, L'Oréal is entitled to summary judgment dismissing the complaint against it.

C. Legacy's Duty of Care

Legacy cross-moves for summary judgment to dismiss the complaint on the grounds that Legacy did not breach any duty owed to the Plaintiff because it did not create or have notice of the

condition (NYSCEF Doc No. 190, Legacy memo in support at 5). It is well established that an owner of real property has a nondelegable duty to maintain the property in a reasonably safe condition (*Mejia v New York City Transit Auth.*, 291 AD2d 225, 225-26 [1st Dept 2002]). "A defendant who moves for summary judgment in a slip-and-fall action has the initial burden of making a prima facie demonstration that it neither created the hazardous condition, nor had actual or constructive notice of its existence" (*Rodriguez v 705-7 E. 179th St. Hous. Dev. Fund Corp.*, 79 AD3d 518, 519 [1st Dept 2010]). "Once a defendant establishes prima facie entitlement to such relief as a matter of law, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect or notice thereof" (*id.*).

As an initial matter, there is no evidence in the record that Legacy caused or created the purportedly dangerous condition, nor has any party advanced this argument. With respect to notice, the testimony and affidavit of Ms. Beckwith demonstrate that Legacy did not receive any requests for garbage or debris removal from L'Oréal on the date of the fall, and there were no complaints regarding the freight elevator area for three months prior to Plaintiff's fall (NYSCEF Doc No. 192, Beckwith aff ¶¶ 7-8). This uncontroverted evidence is sufficient to establish that Legacy lacked actual notice of the condition (*Velocci v Stop & Shop*, 188 AD3d 436, 439 [1st Dept 2020] ["A defendant establishes that it lacked actual notice when it produces a witness who can testify that no complaints about the location were received before the accident, and there were no prior incidents in that area before the plaintiff fell"]).

Constructive notice is generally found "when the alleged dangerous condition is visible, apparent, and exists on defendant's premises for a sufficient period to afford the defendant an opportunity to discover and remedy it" (*Velocci*, 188 AD3d at 439). "[C]onstructive notice can also be established by evidence that a recurring dangerous condition existed in the area of the accident that was routinely left unaddressed by the defendant" (*id.*). "A defendant can meet its burden of showing that it lacked constructive notice by producing evidence of its maintenance activities on the day of the accident, and specifically showing that the alleged condition did not exist when the area was last inspected or cleaned before the plaintiff fell" (*id.*).

Here, Ms. Beckwith testified that Legacy contracted with ABM to maintain the cleanliness at the Premises, and ABM's responsibilities included collecting garbage and recycling from the freight elevator area nightly between 12:00 a.m. and 3:00 a.m. (NYSCEF Doc No. 155, Beckwith deposition tr at 12, 28-29). She also testified that Legacy asked tenants to notify Legacy if additional garbage or recycling removal was required outside of the scheduled hours (*id.* at 29, ln 13-16). Nevertheless, Ms. Beckwith was not employed by Legacy on the date of Plaintiff's fall and did not offer testimony regarding when the area was last inspected or whether the garbage removal schedule was followed on that day (*Henriquez*, 234 AD3d at 593). "Proof of a regular maintenance schedule does not suffice for purposes of showing that it was followed on the day of the accident" (*id.* [internal brackets omitted]; *cf. Pfeuffer v New York City Hous. Auth.*, 93 AD3d 470, 472 [1st Dept 2012] [Defendant entitled to summary judgment dismissing complaint where superintendent testified regarding caretaker's cleaning requirements and logbook did not indicate the existence of a hazardous condition on the date of incident]).

Ms. Beckwith also testified that there were monthly inspections of the common areas to ensure that the cleaning services were performed as delineated in Legacy's agreement with its

cleaning contractor, but Legacy did not keep records regarding these inspections. In the absence of such proof, Legacy has failed to establish that it lacked constructive notice of the condition and has not satisfied its burden on the motion (*id*.; s*ee also Reyes v Latin Am. Pentecostal Church of God Inc.*, 181 AD3d 459, 459 [1st Dept 2020] ["Defendant submitted no evidence to show when the bathroom was last cleaned and inspected prior to plaintiff's fall, and therefore failed to establish prima facie that it did not have constructive notice of the alleged dangerous condition"]). Plaintiff also testified that he complained about the condition of freight elevator area in the past, but there is an outstanding question of fact regarding whether these complaints were conveyed to Legacy prior to Plaintiff's fall. Therefore, Legacy's motion for summary judgment and to dismiss the complaint as against it is denied because there are outstanding questions of material fact regarding whether it had constructive notice of the condition.

D. Indemnification & Contribution

Both L'Oréal and Legacy move for summary judgment on their cross-claims for contribution and indemnity. Contribution and indemnity are equitable remedies grounded in traditional notions of fairness (*Mas v Two Bridges Associates by Nat. Kinney Corp.*, 75 NY2d at 689; *McDermott v City of New Yo*rk, 50 NY2d 211, 217 [1980]). In contribution, all tort-feasors responsible for plaintiff's loss share liability, and each tort-feasor pays its proportionate share of the loss (*Mas*, 50 NY2d at 689-690). Whereas L'Oréal has established its entitlement to summary judgment, neither party can prevail on its cross-claim for contribution (*see Coon v Hotel Gansevoort Grp., LLC*, 150 AD3d 519, 520 [1st Dept 2017]). Therefore, both cross-claims for contribution are dismissed.

The right to indemnity may be predicated on a common law right, based on the notion of what is fair and proper as between the parties, or an express contract (*id*.; *see also Chem. Bank v Stahl*, 272 AD2d 1, 19 [1st Dept 2000], citing *McDermott v City of New Yo*rk, 50 NY2d 211, 217 [1980]). A party asserting a claim for common law indemnification must prove that it was free from negligence and that the proposed indemnitor was guilty of some negligence that contributed to the causation of the accident (*Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021], citing *Correia v Professional Data Management, Inc.*, 259 AD2d 60, 65 [1st Dept 1999]; *Martins v Little 40 Worth Associates, Inc.*, 72 AD3d 483, 484 [1st Dept 2010]). "A party who is entitled to recover against another defendant or a third-party defendant on a theory of common-law indemnification may, as part of such recovery, seek reimbursement of attorneys' fees, costs, and disbursements incurred in connection with defending the suit brought by the injured party, but cannot recover any legal expenses incurred in its prosecution of the common-law indemnification cause of action or claim" (*Swan v Pier 1 Imports [U.S.], Inc.*, 173 AD3d 1105, 1106-1107 [2d Dept 2019]).

Common law indemnification claims cannot be maintained against a party that owed no duty to the plaintiff and against whom there can be no finding of negligence (*see Coon v Hotel Gansevoort Grp., LLC*, 50 AD3d 519, 520 [1st Dept 2017] [holding that a defendant which established that it owed no duty of care to the plaintiff was also entitled to summary judgment dismissing the cross-claims for contribution and indemnification asserted against it]; *see also Pasternack*, 27 NY3d at 825 ["In the absence of a duty, as a matter of law, there can be no

liability”]). Here, because it has been established that L’Oréal did not owe Plaintiff a duty of care, Legacy is not entitled to summary judgment on its cross-claim for common law indemnification.

Moreover, in light of the court’s conditional grant of summary judgment in favor of L’Oréal on its cross-claim for contractual indemnification, the cross-claim for common law indemnification is academic (*see infra* at 17; *Weidtman v. Tremont Renaissance Hous. Dev. Fund Co*., 224 AD3d 488, 491-492 [1st Dept 2024]; *Corleto v Henry Restoration Ltd*., 206 AD3d 525, 526 [1st Dept 2022]).

Although conceptually grounded in the same notions of equity and fairness as common law indemnification, the right to contractual indemnification depends entirely on the specific language of the agreement to indemnify (*Roldan v New York Univ.*, 81 AD3d 625, 628 [2d Dept 2011]). “When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed” (*Great N. Ins. Co. v Interior Const. Corp.*, 7 NY3d 412, 417 [2006], citing *Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491 [1989]). “The promise should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances” (*id*.). Thus, a party is “entitled to full contractual indemnification, provided that the intention to indemnify can be clearly implied from the language and purposes of the entire agreement and the surrounding facts and circumstances” (*Karwowski v 1407 Broadway Real Estate, LLC*, 160 AD3d 82, 87 [1st Dept 2018]).

The Lease between Legacy and L’Oréal contains the following indemnification provisions, excerpted in relevant part:

> **6.12 Nonliability and Indemnification.**
>
> (b) Subject to the provisions of Section 7.03, Tenant shall indemnify and hold harmless Landlord, all Superior Lessors, all Superior Mortgagees and the Condominium and each of their respective partners, members, directors, officers, shareholders, principals, board members, agents and employees (each, a “Landlord Indemnified Party”), from and against any and all claims arising from or in connection with (i) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created, in or about the Premises, (ii) any act, omission or negligence of Tenant or any person claiming through or under Tenant or any of their respective partners, directors, officers, agents, employees or contractors, (iii) any accident, injury or damage occurring in, at or upon the Premises (or outside the Premises if arising from or in connection with Tenant’s installations in, or use of, areas outside the Premises) . . . in each case, together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys’ fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence . . . or willful misconduct of any Landlord Indemnified Party. If any action or proceeding is brought against any Landlord Indemnified Party by reason of any such claim, Tenant, upon notice from such Landlord Indemnified Party shall

> resist and defend such action or proceeding by counsel reasonably satisfactory to such Landlord Indemnified Party, and counsel selected by Tenant's insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Landlord Indemnified Party.
>
> (c) Subject to the provisions of Section 7.03, Landlord shall indemnify and hold harmless Tenant and Tenant's partners, members, directors, officers, shareholders, principals, agents and employees (each, a "Tenant Indemnified Party"), from and against any and all claims arising from or in connection with (i) any negligence or willful misconduct of Landlord or its agents, servants or employees in connection with the operation or management of the common areas of the Building and (ii) any default by Landlord in the performance of any of Landlord's obligations under this Lease, in each case together with all costs, expenses and liabilities incurred in connection with each such claim or action or proceeding brought thereon, including, without limitation, all reasonable attorneys' fees and disbursements; provided, that the foregoing indemnity shall not apply to the extent such claim results from the negligence (other than negligence to which the release of liability and waiver of subrogation provided in Section 7.03 applies) or willful misconduct of any Tenant Indemnified Party. If any action or proceeding is brought against any Tenant Indemnified Party by reason of any such claim, Landlord, upon notice from such Tenant Indemnified Party, shall resist and defend such action or proceeding by counsel reasonably satisfactory to such Tenant Indemnified Party, and counsel selected by Landlord's insurance company to resist and defend such action or proceeding is, absent a conflict, hereby deemed to be satisfactory to such Tenant Indemnified Party.

(NYSCEF Doc No. 147, lease § 6.12).

Each of these sections contains an express intention to indemnify under the enumerated circumstances and is accompanied by provisions for insurance coverage and attorneys' fees and costs. Subsection (b) provides that Legacy is entitled to indemnification from L'Oréal "from and against any and all claims arising from or in connection with" (i) the conduct or management of the Premises or of any business therein, or any work or thing done, or any condition created, in or about the Premises, (ii) any act, omission or negligence of Tenant or any person claiming through or under Tenant or any of their respective partners, directors, officers, agents, employees or contractors, (iii) any accident, injury or damage occurring in, at or upon the Premises (or outside the Premises if arising from or in connection with Tenant's installations in, or use of, areas outside the Premises). The first and second provisions are not triggered because the injury did not occur within the demised Premises and L'Oréal was not negligent. The injury also does not arise from or in connection with L'Oréal's purported "installation" of the garbage and recycling bins or "use of" the common area because there is no allegation that the bins were defective or inadequate for the intended purpose, and the evidentiary record demonstrates that L'Oréal did not store items in the freight elevator area and was not responsible for removing garbage and boxes from its offices, storing garbage and boxes awaiting scheduled pickup, or removing garbage and boxes from the freight area elevator for disposal. Therefore, Legacy is not entitled to summary judgment on its cross-claim for contractual indemnification.

The indemnity provision in L'Oréal's favor is triggered upon a finding of "any negligence or willful misconduct of Landlord or its agents, servants or employees in connection with the operation or management of the common areas of the Building," or "any default by Landlord in the performance of any of Landlord's obligations under this Lease." The outstanding questions of fact regarding whether Legacy was negligent in the maintenance of the freight elevator area precludes a determination regarding whether either of these circumstances exist. Under these circumstances, an order of conditional summary judgment is appropriate (*see Ianotta v Tishman Speyer Properties, Inc.*, 46 AD3d 297, 300 [1st Dept 2007] [motion court correctly granted conditional summary judgment on cross-claim for contractual indemnification in the absence of any showing of actual negligence on movant's part, and where respondent assumed responsibility for the maintenance, repair, inspection and servicing of elevators, and agreed to indemnify movant for any injuries arising out of or resulting from the performance of that work]).

"A court may render a conditional judgment on the issue of contractual indemnity, pending determination of the primary action so that the indemnitee may obtain the earliest possible determination as to the extent to which they may expect to be reimbursed" (*Jamindar v Uniondale Union Free Sch. Dist.*, 90 AD3d 612, 616 [2d Dept 2011]). The court may grant a conditional order of contractual indemnification contingent on a finding of negligence and "the extent to which each party's negligence is determined to have contributed to the accident" (*Hughey v RHM-88, LLC*, 77 AD3d 520, 523 [1st Dept, 2010]; *see Burton v CW Equities, LLC*, 97 AD3d 462, [1st Dept, 2012]).Therefore, L'Oréal's motion for summary judgment on its cross-claim for contractual indemnification is conditionally granted, pending a determination on whether Legacy was negligent or failed to perform any obligations under the Lease in connection with Plaintiff's injuries.

Finally, Legacy's motion for summary judgment on its cross-claim for failure to procure insurance coverage is denied because L'Oréal has submitted proof of necessary coverage. To the extent not otherwise addressed herein, the court has considered all arguments raised by the parties and found them unpersuasive.

Accordingly, it is

ORDERED that L'Oréal's motion for summary judgment is granted in part to the extent that the complaint and all cross-claims and counterclaims are dismissed as against L'Oréal, and L'Oréal is granted summary judgment on its cross-claim against Legacy for contractual indemnification, conditioned on a determination regarding whether Plaintiff's claims arise from or in connection with any negligence of Legacy in connection with the operation or management of the common areas of the Premises or any default by Legacy in the performance of any of its obligations under this Lease; and is further

ORDERED that L'Oréal's motion for summary judgment is denied as to the remainder, and L'Oréal's cross-claim for common law indemnification is dismissed as moot; and it is further

ORDERED that Legacy's motion for summary judgment is denied in its entirety; and it is further

ORDERED that L'Oréal shall serve a copy of this decision and order, with notice of entry, upon the Clerk of the Court and the General Clerk's Office in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases; and it is further

ORDERED that, upon proof of such service, the Clerk of the Court shall enter judgment in favor of L'Oréal dismissing all claims and cross-claims asserted against L'Oréal in this action, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk shall amend the caption to reflect the dismissal of L'Oréal from this action; and it is further

ORDERED that a settlement conference will be held in this matter at 80 Centre Street, Room 308, New York, New York on June 4, 2026 at 10:00 a.m.; and it is further

ORDERED that counsel and all parties appearing at the upcoming settlement conference shall appear fully prepared to engage in meaningful and substantive settlement discussions; and it is further

ORDERED that, prior to the conference, counsel shall confer with their respective clients and adversaries regarding settlement positions and shall exchange a good-faith demand and responsive offer; and it is further

ORDERED that all appearing counsel shall be fully familiar with the facts and procedural posture of the case and shall appear with settlement authority or with immediate access to a person possessing such authority.

This constitutes the order and decision of the court.

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5/7/2026		HASA A. KINGO, J.S.C.
DATE		

CHECK ONE:	[ ] CASE DISPOSED			[X] NON-FINAL DISPOSITION		
	[ ] GRANTED	[ ] DENIED		[X] GRANTED IN PART	[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER			[ ] SUBMIT ORDER		
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