SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JULIO RODRIGUEZ, III **PART** IAS MOTION 62

Justice

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WESCO INSURANCE COMPANY,

Plaintiff,

- v -

HELLAS GLASS WORKS CORP., 56TH REALTY, LLC,MANHATTAN ARTS AND ANTIQUES CENTER, MASSACHUSETTS BAY INSURANCE COMPANY AND, GRANITE STATE INSURANCE COMPANY

Defendant.

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INDEX NO. 155214/2018

MOTION DATE 07/25/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61

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

The instant action pertains to an insurance coverage dispute related to a pending action in this court, *Aleksandr Shiryayev v Manhattan Arts and Antiques Center, et al.*, Index No. 151900/2015 ("the underlying action"). Plaintiff Wesco Insurance Company ("Wesco") commenced this insurance coverage action seeking 1) a declaration that Wesco has no duty to defend or indemnify defendant Hellas Glass Works Corp. ("Hellas") in the underlying action; 2) an award of damages against defendant Massachusetts Bay Insurance Company ("MBIC") in the amount of the costs plaintiff Wesco has incurred defending defendant Hellas in the underlying action, plus interest; and 3) an award of damages against defendant Granite State Insurance Company ("Granite") for defendant Granite's alleged failure to reimburse plaintiff Wesco for defense costs in the underlying action pursuant to a cost-sharing agreement between plaintiff Wesco and defendant Granite.

Plaintiff Wesco now moves pursuant to CPLR 3212 for summary judgment seeking 1) a declaration that Wesco has no duty to defend or indemnify defendant Hellas in the underlying action; 2) a declaration that defendant MBIC must reimburse plaintiff Wesco for one-third of plaintiff Wesco's costs defending defendant Hellas in the underlying action for as long as defendant Granite State Insurance Company continues to contribute, and one-half thereafter; and 3) setting this matter down for a hearing to determine the amount of defense costs to which plaintiff Wesco is entitled to recover against defendant MBIC.[1] Defendant MBIC opposes the motion.

[1] Plaintiff Wesco's moving papers argued for a default judgment against defendant Hellas; however, upon oral argument before this court on July 25, 2019, plaintiff Wesco formally withdrew that application.

Additionally, defendant MBIC cross-moves pursuant to CPLR 3212 for summary judgment 1) declaring that defendant MBIC has no obligation to defend or indemnify defendant Hellas in the underlying action; and 2) declaring that defendant Wesco is obligated to defend and indemnify defendant Hellas in the underlying action. Plaintiff Wesco opposes the cross-motion.

Applicable Law – Summary Judgment Standard and the Duties to Defend and Indemnify

The proponent of a motion for summary judgment must tender sufficient evidence to show its entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). The moving party must make a *prima facie* showing of entitlement to judgment by demonstrating the absence of any material issues of fact (*Pullman v. Silverman*, 28 NY3d 1060 [2016]). The papers will be scrutinized in a light most favorable to the non-moving party (*Assaf v Ropog Cab Corp.*, 153 AD2d 520 [1st Dept 1989]). Once the proponent of a summary judgment motion makes such a *prima facie* showing, "the burden shifts to the opposing party to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so" (*Friedman v Pesach*, 160 AD2d 460 [1st Dept 1990]).

"An insurer may obtain a declaration absolving it of its duty to defend only when a comparison of the policy and the underlying complaint on its face shows that, as a matter of law, 'there is no possible factual or legal basis on which the insurer might eventually be held to be obligated to indemnify the insured under any provision of the insurance policy'" (*Greenwich Ins. Co. v City of New York*, 122 AD3d 471 [1st Dept 2014] *citing Servidone Constr. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]). "The primary obligation of an insurer is to provide its insured with a defense" (*Recant v Harwood*, 222 AD2d 372, 373 [1st Dept 1995]), which is "an obligation that is incurred if facts alleged in the complaint fall within the scope of coverage intended by the parties at the time the contract was made" (*Greenwich* at 417 [internal citations and quotation marks omitted]). Alternatively, a duty to defend an insured may arise from facts known to the insurer which suggest a reasonable possibility of coverage (*M & M Realty of New York, LLC v Burlington Insurance Company*, 170 AD3d 407, 408 [1st Dept 2019] ["the allegations of the underlying complaint *and the known facts* suggest a reasonable possibility of coverage"] [emphasis added]); *see Fitzpatrick v American Honda Motor Co.*, 78 NY2d 61, 67-68 [1991]).

"An insurer's obligation to defend is broader than its obligation to pay" (*Sturges Mfg. Co. v Utica Mut. Ins. Co.*, 37 NY2d 69, 72 [1975]). "If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or baseless the suit may be" (*BP Air Conditioning Corp. v One Beacon Ins. Group*, 33 AD3d 116 [1st Dept 2006] *citing Ruder & Finn Inc. v Seaboard Sur. Co.*, 52 NY2d 663, 670 [1981]). Furthermore, "[i]f any of the claims against [an] insured arguably arise from covered events, the insurer is required to defend the entire action" (*Town of Massena v Healthcare Underwriters Mut. Ins. Co.*, 98 NY2d 435, 443 [2002] *citing Frontier Insulation Contrs. v Merchants Mut. Ins. Co.*, 91 NY2d 169, 175 [1997]).

"By contrast, the duty to indemnify requires a determination of liability" (*Recant* at 373 *citing Muhlstock & Co. v American Home Assur. Co.*, 117 AD2d 117, 122 [1st Dept 1986]).

Facts

The underlying plaintiff is an employee of defendant Hellas. As is relevant to the parties' sought declaratory relief *vis-à-vis* a duty to defend defendant Hellas in the underlying action, the underlying plaintiff's complaint alleged that plaintiff's co-worker was caused to trip and fall upon a dangerous condition. The accident caused injury to the underlying plaintiff when, upon the trip and fall, plaintiff's co-worker "drop[ped] a pane of glass that Plaintiff and his co-worker were carrying" (Gershweir aff, Ex B, underlying complaint, at ¶ 45). The underlying plaintiff alleged that the occurrence was "caused by the negligence of the defendants [Manhattan Arts and Antiques Center, 56th Realty, LLC, and the City of New York] ... in the ownership, operation, management, maintenance and control of the aforesaid premises and the sidewalk and tree well abutting thereto" (*id.* at ¶ 46).

In the underlying action, defendants Manhattan Arts and Antiques Center ("Antiques") and 56th Realty, LLC ("Realty") served a third-party complaint upon defendant Hellas asserting claims for 1) common-law indemnification; 2) contractual indemnification and defense; 3) contribution; and 4) breach of contract to procure insurance coverage (*id.*, Ex C, underlying third-party complaint). The underlying third-party complaint alleged *inter alia* that plaintiff's injuries were caused "by reason of the carelessness, recklessness and negligence and/or acts or omissions or commissions of [Hellas]" (*id.* at ¶ 12), that Hellas "performed construction work and/or services at 1050 2nd Avenue ... and/or the property adjacent thereto, including the sidewalk ... and the tree well in front and adjacent to 1050 2nd Avenue" (*id.* at ¶ 13), that "due to the work of third-party defendant, Hellas, they launched an instrumentality of harm" (*id.* at ¶ 16), and that Hellas

> "agreed to procure and maintain insurance coverage, whereby defendants/third-party plaintiffs would be named as an insured and have and receive coverage with respect to, among other things, claims such as those asserted by the plaintiff herein, including claims arising from work for which third-party defendant, Hellas, has responsibility under the contract, and/or work actually performed by third-party, Hellas, and/or its agents, servants and/or employees" (*id.* at ¶ 29).

Significantly, the underlying complaint and third-party complaint make no mention of an automobile of any kind or performance of any type of loading or unloading. Rather, the underlying third-party complaint alleged that defendant Hellas is liable, amongst other claims, under a theory of contractual indemnification.

Plaintiff Wesco's claims administrator, AmTrust North America, Inc., in its letter to defendant Hellas dated March 30, 2016 (Wilson aff, Ex 4), acknowledged that "Aleksandr Shiryayev, your employee, alleges he sustained injuries on October 10, 2014 when a panel of glass he was unloading from your 2006 GMC Savana fell onto him at 1050 2nd Avenue, New York, New York" (*id.* at 2).

In the underlying action, the current note of issue deadline is June 28, 2020. As of May 20, 2019, none of the underlying defendants' depositions had occurred (*see* Note of Issue filed in underlying action dated May 20, 2019, at 4 [Index No. 151900/2015; NYSCEF Doc No. 32] ["Depositions of all Defendants are outstanding."]).

The instant motion by plaintiff Wesco was filed on January 7, 2019, and defendant MBIC's cross-motion was filed on March 15, 2019.

Parties' Positions

Plaintiff Wesco argues that it is entitled to summary judgment because the alleged loss does not arise out of the use of an auto. Moreover, Wesco argues, plaintiff's testimony in the underlying action reveals that the cause of the alleged accident was a trip and fall over a tree well's small, approximately one-foot-high fence. The alleged cause being independent and wholly unrelated to a covered auto, plaintiff Wesco asserts that it is therefore not required to provide defense to Hellas in the underlying action (*see Cosmopolitan Mut. Ins. Co. v Baltimore & Ohio R.R. Co.*, 18 AD2d 460 [1st Dept 1963]; *ABC, Inc. v Countywide Ins.*, 308 AD2d 309, 310 [1st Dept 2003]).

In opposition to plaintiff Wesco's motion, defendant MBIC argues that because the accident arose out of the process of unloading and delivering glass, plaintiff Wesco is obligated to provide coverage to defendant Hellas.

Additionally, defendant MBIC cross-moves for summary, declaratory judgment that it has no duty to defend defendant Hellas because 1) the MBIC policy contains an auto exclusion and 2) the MBIC policy contains an employer's liability exclusion for bodily injury to an insured's employee.

Plaintiff Wesco, in reply on its motion and in opposition to defendant MBIC's cross-motion, attempts to distinguish MBIC's relied-upon caselaw and ultimately argues that the underlying complaints support its proposition that, under the circumstances herein, plaintiff Wesco's auto policy does not create an obligation to defend defendant Hellas. Plaintiff Wesco further argues that because the underlying plaintiff alleges that the accident arose out of negligence distinct from the loading and unloading process, defendant MBIC has a duty to defend defendant Hellas under its general liability policy.

In reply on its cross-motion, defendant MBIC further argues that its policy is excess to plaintiff Wesco's primary auto policy, and thus plaintiff Wesco is responsible for the entire defense obligation through said primary coverage.

Insurance Policies at Issue

Plaintiff Wesco's policy covers "all sums an 'insured' legally must pay as damages because of 'bodily injury' ... to which this insurance applies, caused by an 'accident' and resulting from the ownership, maintenance or use of a covered 'auto'" (Wilson aff, Ex 1, Wesco policy at 28).

Plaintiff Wesco's policy contains an employer's liability exclusion which states, in relevant part:

> "This insurance does not apply to: '[b]odily injury' to an 'employee' of the 'insured' arising out of and in the course of: (1) [e]mployment by the 'insured'; or

> (2) [p]erforming the duties related to the conduct of the 'insured's' business. But this exclusion does not apply to 'bodily injury' to domestic 'employees' not entitled to workers' compensation benefits or to liability assumed by the 'insured' under an 'insured contract'" (*id.* at 39).

"Insured contract" is defined, in relevant part, as "[t]hat part of any other contract or agreement pertaining to your business ... under which you assume the tort liability of another to pay for 'bodily injury'... to a third party" (*id.* at 37).

Additionally, plaintiff Wesco's policy, through its "New York Changes in Business Auto ... Coverage Form" endorsement, modifies the "Business Auto Coverage Form" to remove the "Handling of Property Exclusion" (*id.* at 39-40).[2]

Defendant MBIC's policy covers "sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' ... to which this insurance applies'" (Troisi aff, Ex A, MBIC policy at 136)—that is, bodily injury not excluded (*see id.* at section I subsection 1.b; *see also* Troisi aff, Ex D, letter dated March 15, 2016 [acknowledging that claim at issue was covered "occurrence" involving covered "bodily injury" but referring to exclusions]). In support of its contention that its policy does not cover the allegations in the underlying *Shiryayev* action, defendant MBIC relies on two exclusions contained in its policy.

First, defendant MBIC relies upon the policy's auto exclusion, which states, in relevant part:

> "This insurance does not apply to: ... 'Bodily injury' ... arising out of the ownership, maintenance, use or entrustment to other of any ... 'auto' ... owned or operated by or rented or loaned to any insured. Use includes operation and 'loading or unloading'" (Troisi aff, Ex A, MBIC policy at 139).

"Loading or unloading" is defined as

> "the handling of property: a. [a]fter it is moved from the place where it is accepted for movement into or onto an ... 'auto'; b. [w]hile it is in or on an ... 'auto'; or c. [w]hile it is being moved from an ... 'auto' to the place where it is finally delivered; but 'loading or unloading' does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the ... 'auto'" (*id.* at 149).

Second, defendant MBIC relies upon the policy's employer's liability exclusion, which states, in relevant part:

> "This insurance does not apply to: ... e. Employer's Liability[.] 'Bodily injury' to: (1) [a]n 'employee' of the insured arising out of and in the course of: (a)

[2] "'Bodily injury' or property damage' resulting from the handling of property: a. [b]efore it is moved from the place where it is accepted by the 'insured' for movement into or onto the covered 'auto'; or b. [a]fter it is moved from the covered 'auto' to the place where it is finally delivered by the 'insured'" (*id.* at 30).

> [e]mployment by the insured; or (b) [p]erforming duties related to the conduct of the insured's business .... This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury. This exclusion does not apply to liability assumed by the insured under an 'insured contract'" (*id.* at 137).

"Insured contract" is defined, in relevant part, as, "[t]hat part of any other contract or agreement pertaining to your business ... under which you assume the tort liability of another party to pay for 'bodily injury' ... to a third person or organization" (*id.* at 148).

Parties' Claimed Employer's Liability Exclusion

As is pertinent to the employer's liability exclusions here, the facts are that 1) underlying plaintiff Aleksandr Shiryayev was undisputedly an employee of defendant Hellas, 2) both policies contain an exclusion for bodily injury to the insured's employees, 3) both policies' employee exclusions have an "insured contracts" exception, 4) "insured contracts" are defined as those under which the insured assumes the tort liability of another party to pay for bodily injury to a third party, and 5) the underlying third-party complaint makes a claim for contractual indemnification (Gershweir aff, Ex C, underlying third-party complaint at ¶ 20)[3] as well as the existence of "a written agreement/purchase order" (*id.* at ¶ 14).

Accordingly, this court finds that, "[l]iberally construed, the claim [for contractual indemnification] is within the embrace of the policy" (*BP Air Conditioning Corp. v One Beacon Ins. Group*, 33 AD3d 116 [1st Dept 2006]) and falls within the "insured contract" exception to the employer's liability exclusions. This court therefore further finds that plaintiff Wesco and defendant MBIC improperly rely upon the employer's liability exclusion here. Finally, the court finds that the employer's liability exclusion contained in each policy does not provide a basis for plaintiff Wesco or defendant MBIC to disclaim coverage for the underlying third-party complaint's asserted contractual indemnification claim.

Because "the insurer is required to defend the entire action" (*Town of Massena v Healthcare Underwriters Mut. Ins. Co.*, 98 NY2d 435, 443 [2002] *citing Frontier Insulation Contrs. v Merchants Mut. Ins. Co.*, 91 NY2d 169, 175 [1997]) "[i]f any of the claims against [an] insured arguably arise from covered events" (*id.*), plaintiff Wesco and defendant MBIC are obligated to defend defendant Hellas in the underlying action unless there is some other basis for disclaiming coverage.

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[3] "TWENTIETH: Prior to the alleged accident described in the complaint, third-party defendant, Hellas, executed an agreement and/or contract for construction work and/or services, by virtue of which third-party defendant agreed and became obliged to defend defendants/third-party plaintiffs, indemnify it and/or hold them harmless with respect to, among other things, claims such as those asserted by the plaintiff herein, including claims arising from work for which third-party defendant, Hellas, had responsibility under the agreement, and/or work actually performed by third-party defendant, Hellas, and/or its agents, servants and/or employees."

"Arising out of" "Use" of an "Auto" – "Loading or Unloading"

As noted *supra*, the touchstones of duty to defend analysis are the operative complaint in which allegations against the insured are made (*see Greenwich Ins. Co. v City of New York*, 122 AD3d 471 [1st Dept 2014] [duty to defend obligation "is incurred if facts alleged in the complaint fall within the scope of coverage intended by the parties at the time the contract was made"]) and other facts known to the insurer (*M & M Realty of New York, LLC v Burlington Insurance Company*, 170 AD3d 407, 408 [1st Dept 2019]; *see Fitzpatrick v American Honda Motor Co.*, 78 NY 2d 61, 67-68 [1991] ["wooden application of the 'four corners of the complaint' rule would render the duty to defend narrower than the duty to indemnify—clearly an unacceptable result"]).

Here, because the insured, defendant Hellas, is named in the underlying action as a third-party defendant only, the operative complaint is the third-party complaint (Gershweir aff, Ex C, underlying third-party complaint). However, as the third-party complaint incorporates plaintiff Shiryayev's complaint (*see e.g. id.* at ¶¶ 9-10),[4] it is appropriate to include plaintiff Shiryayev's pleading in this analysis as well.

The third-party complaint and plaintiff Shiryayev's complaint are utterly silent as to the involvement of an "auto" in the alleged occurrence (*id.*; Gershweir aff, Ex B, underlying complaint). Similarly, the two pleadings do not explicitly describe any process of "loading" or "unloading". Rather, the third-party complaint alleges that defendant Hellas "performed construction work and/or services" at the accident location (Gershweir aff, Ex C, underlying third-party complaint at ¶ 13) and that defendant Hellas is liable to defendants/third-party plaintiffs Antiques and Realty *inter alia* by virtue of contractually assumed indemnification (*id.* at ¶¶ 19-24).

Although the operative pleadings do not allege that the accident occurred during a process of loading or unloading an auto, the record also contains plaintiff's 50-h hearing testimony and deposition testimony in which plaintiff describes the occurrence (Gershweir aff, Ex D, plaintiff's deposition transcript; Kandler aff, Ex C, plaintiff's 50-h transcript). Moreover, plaintiff Wesco's claims administrator, AmTrust North America, Inc., noted its knowledge of the facts surrounding the claim in its letter dated March 30, 2016 (Wilson aff, Ex 4), specifically that "Aleksandr Shiryayev, your employee, alleges he sustained injuries on October 10, 2014 when a panel of glass he was unloading from your 2006 GMC Savana fell onto him at 1050 2nd Avenue, New York, New York" (*id.*). Consequently, the court finds that facts derived from outside the four corners of the operative complaints, specifically, that the accident occurred close in time to the process of unloading and close in proximity to a covered auto, indicate that the claim "arguably arise[s] from covered events" (*Town of Massena v Healthcare Underwriters Mut. Ins. Co.*, 98 NY2d 435, 443 [2002]) under plaintiff Wesco's auto policy.

[4] "Ninth: The plaintiff commenced an action against defendants/third-party plaintiffs by the filing of a Summons and Complaint on or about the date of February 25, 2015; a copy of said complaint is attached hereto as Exhibit 'A' and is incorporated herein by reference.

Tenth: The principal action arises out of an alleged incident, described more fully in the complaint, in which, Aleksandr Shiryayev, allegedly was caused to sustain injuries on or about October 10, 2014."

Furthermore, this court finds that defendant MBIC has failed to establish that its relied-upon exclusions absolve defendant MBIC of its duty to defend defendant Hellas in the underlying *Shiryayev* action. As noted *supra*, defendant MBIC cannot effectively rely on the employee's liability exclusion in this instance due to allegations regarding contractually assumed indemnification (Gershwier aff, Ex C, underlying third-party complaint at ¶¶ 19-24). Moreover, this court finds defendant MBIC's argument on the issue of whether underlying plaintiff Shiryayev's alleged accident occurred during excluded "loading or unloading" unavailing because, despite defendant MBIC's citation to deposition testimony in the underlying action, no facts have yet been found in that matter.

Ultimately, the parties' applications upon the instant motion and cross-motion are for this court to find facts in the underlying matter and are therefore misplaced (*see Allstate Ins. Co. v. Zuk*, 78 NY2d 41, 45 [1991] [party seeking declaration of no duty to defend or indemnify must establish that there is "no *possible* factual or legal basis on which it might eventually be obligated to indemnify its insured under any policy provision"] [emphasis added]).

For example, with respect to plaintiff Wesco's motion, there are facts that "suggest a reasonable possibility of coverage" (*M & M Realty of New York, LLC v Burlington Insurance Company*, 170 AD3d 407, 408 [1st Dept 2019]), including that "unloading" took place at some time before or during the occurrence. A necessary element of plaintiff Wesco's argument, which relies primarily on *Cosmopolitan Mut. Ins. Co. v Baltimore & Ohio R. R. Co.*, 18 AD2d 460 (1st Dept 1963), is a single or set of established facts—facts that are undisputed or otherwise have been found—that the proximate cause of the alleged accident was something *other than* the "unloading" process (*see id.* at 464 ["according to *the stipulated facts*, the cause of the accident was the defective flooring of the receiving platform or pier"] [emphasis added]). In contrast, here, as of May 20, 2019,[5] none of the defendants' depositions had occurred in the underlying action (*see* Note of Issue filed in underlying action dated May 20, 2019, at 4 [Index No. 151900/2015; NYSCEF Doc No. 32] ["Depositions of all Defendants are outstanding."]). At this juncture, when discovery is incomplete and no dispositive motions are yet submitted in the underlying action, plaintiff Wesco's motion must be denied as premature.

Similarly, this court finds that, due to the lack of fact finding in the underlying action as well as the allegations contained in the third-party complaint, defendant MBIC has failed to carry its heavy burden of establishing that, "as a matter of law, 'there is no possible factual or legal basis on which [defendant MBIC] might eventually be held to be obligated to indemnify the insured under any provision of the insurance policy'" (*Greenwich Ins. Co. v City of New York*, 122 AD3d 471 [1st Dept 2014] *citing Servidone Constr. Corp. v Security Ins. Co. of Hartford*, 64 NY2d 419, 424 [1985]). It remains possible, given that discovery is ongoing in the underlying action, that the occurrence did not arise out of the act of loading or unloading, but rather was caused entirely by other means (*cf. Country-Wide Ins. Co. v Excelsior Ins. Co.*, 147 AD3d 407, 409 [1st Dept 2017] [where insurer sought reimbursement after settling claim on behalf of insured]).

[5] The Note of Issue in the underlying action was originally filed on May 20, 2019; it has since been stricken so that the depositions of all defendants may be held. Plaintiff Wesco's motion was filed on January 7, 2019, and defendant MBIC's cross-motion was filed on March 15, 2019.

Finally, defendant MBIC's argument that its policy is excess to plaintiff Wesco's policy, made for the first time in reply, cannot properly be considered (*see Fischer v Crossard Realty Co., Inc.*, 63 AD3d 540 [1st Dept 2009] [argument "improperly raised for the first time in its reply papers"] *citing Azzopardi v American Blower Corp.*, 192 AD2d 453, 454 [1st Dept 1993]). Defendant MBIC's requested declaration that its policy is excess to plaintiff Wesco's policy is therefore denied.

Upon the foregoing, including a review of the aforementioned papers submitted by the parties herein, it is

Accordingly, ORDERED that plaintiff Wesco Insurance Company's motion is granted in part and only to the extent that plaintiff Wesco Insurance Company seeks a declaration that defendant Massachusetts Bay Insurance Company is obligated to share equally in the defense costs of defendant Hellas Glass Works Corp. in the underlying action; and it is further

ORDERED that defendant Massachusetts Bay Insurance Company is obligated to share equally with plaintiff Wesco Insurance Company the defense costs of defendant Hellas Glass Works Corp. in the underlying action; and it is further

ORDERED that plaintiff Wesco Insurance Company's motion is denied as to its application for a hearing on previous defense costs, with leave to renew upon failure of the parties to agree as to the amount owed only after a good-faith attempt to determine said amount; and it is further

ORDERED that plaintiff Wesco Insurance Company's motion is otherwise denied; and it is further

ORDERED that defendant Massachusetts Bay Insurance Company's cross-motion for summary judgment and declaratory judgment is denied in its entirety; and it is further

ORDERED that plaintiff Wesco Insurance Company shall serve a copy of this order with notice of entry upon all parties within 20 days.

Any argument or requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected. This constitutes the decision and order of the court.

September 23, 2019

HON. JULIO RODRIGUEZ III, JSC

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