

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 652471/2011

RLI INSURANCE COMPANY

vs

NAVIGATORS INSURANCE COMPANY

Sequence Number : 006

CONSOLIDATION/JOINT TRIAL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____


Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the
accompanying decision and order*

HON. MELISSA A. CRANE
J.S.C.

Dated: 1/12/2018

 J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

----- X

RLI Insurance Company

Index No. 652471/2011

v.

Navigators Insurance Co. et al

Defendants.

----- X

MELISSA A. CRANE, J.

This is an insurance coverage dispute that presents the question: when does the primary insurer's duty to defend end? Given the current procedural posture of the underlying case, the policy language at issue, and the reasonable expectations of the insured, the court holds that the primary insurer's duty to defend ends at the conclusion of the litigation or upon settlement.

The facts of the underlying case involve a terrible tragedy. On the morning of February 13, 2008, Julie Simon and her husband Charlie were driving to a new office building in Nassau County to hang wallpaper. Julie was driving.

When they were unable to enter the building through the front entrance, Julie drove the vehicle through an opening in a fence onto the upper deck of a parking garage that was still under construction, adjacent to the building. When the vehicle was about halfway between the opening gate in the fence and the leading edge of the parking deck, Julie lost control of the car. The vehicle slid on ice until it reached the edge of the incomplete parking deck, broke through the steel cable guardrail system that was intended to protect individual workers, and fell approximately 32 feet to the lower level

of the garage. Charles was injured when he jumped out of the vehicle before it fell. Julie fell with the vehicle and died at the scene.

Charles subsequently commenced suit in 2009 against, among others, Granite Building 2, LLC (Granite) the defendant Lalezarian Properties, LLC (hereinafter Lalezarian), the property manager, Kulka Construction Corp. and Kulka Contracting, LLC (hereinafter together the Kulka defendants), the construction manager, Canatal Industries, Inc. (hereinafter Canatal), the structural steel subcontractor, MCLO Structural Steel Corp. (hereinafter MCLO), the installer of the structural steel, and FXR Construction, Inc., doing business as DEV Construction (hereinafter FXR), the concrete subcontractor. The venue of this action was Nassau County.

On September 8, 2011, RLI Insurance Company (RLI) filed this action (Action No. 1) against various insurance companies seeking additional insured coverage on behalf of its named insured, Granite. Various parties to this action also asserted cross claims, including against the proponent of this motion, State National Insurance Company (State National).

While Action No. 1 proceeded through initial motion practice, the Appellate Division, Second Department issued a decision in the underlying action that defendant MCLO was free of liability (See *Simon v Granite Bldg.*, 114 AD3d 474 (February 13, 2014)). As a result, the court in Action No. 1 extinguished defendant Arch Insurance Company's duty to defend.

On April 2, 2015, Scottsdale Insurance Company (Scottsdale) filed Action No. 2 in which it sought a declaration that it had no duty to defend or indemnify Granite or Kulka Contracting in the underlying case, and that the Scottsdale policy was excess over

policies that RLI, Navigators, State National and The Insurance Company of the State of Pennsylvania had issued.

In June 2015, the underlying action was tried before a jury. On June 16, 2015, the jury returned a verdict of \$9,435,000. The jury apportioned fault: 60% to Granite, 30% to Kulka and 10% to FXR. On April 22, 2016, the trial court in the underlying action reduced the jury verdict to \$4,967,500. Subsequently, the parties in the underlying action stipulated to reduce damages further. On May 24, 2016, Granite appealed the order in the underlying action that had denied its motion for a judgment notwithstanding the verdict. This appeal is pending. After the jury's award, on August 19, 2016, State National tendered its policy limits of \$1,000,000, as well as 195,913.46 representing its share of interest and costs, to plaintiff's counsel in the underlying action. On March 17, 2017, the court in the underlying action entered judgment in favor of plaintiff. Granite claims it is also pressing an appeal of that judgment, based upon the trial court's failure to apply the "storm in progress" doctrine. (Keane Aff., 11/18/2016, at ¶ 6).

There is no opposition to that part of State National's motion to consolidate Action No. 1 with Action No. 2, for joint discovery and trial. Moreover, to consolidate these cases has great merit. Both involve insurance for the same underlying accident. Consequently, judicial economy and the risk of inconsistent decisions favor consolidation. It is also cheaper for the parties to litigate these issues one time, before one court. Accordingly, the court grants the motion to consolidate.

State National also seeks summary judgment in its favor and a declaration that it has no further obligation to pay statutory interest or costs and no further obligation to defend or indemnify Granite or any other defendant in the underlying action. It is

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