

286 A.D.2d 626, 730 N.Y.S.2d 231, 2001 N.Y. Slip Op. 07164  
(Cite as: **286 A.D.2d 626**)

**C**

Supreme Court, Appellate Division,  
First Department, New York.

TRAVELERS INDEMNITY COMPANY, et al.,  
Plaintiffs-Respondents,

v.

AMERICAN AND FOREIGN INSURANCE  
COMPANY, etc., Defendant-Appellant.  
Sept. 20, 2001.

Timothy J. Keane, for Plaintiffs-Respondents.

[Frederick B. Simpson](#), for Defendant-Appellant.

[United States Fidelity & Guar. Co. v. CNA Ins. Cos.](#), 208 A.D.2d 1163, 1165, 618 N.Y.S.2d 465).

[SULLIVAN](#), P.J., [MAZZARELLI](#), [ELLERIN](#),  
[WALLACH](#) and [LERNER](#), JJ., concur.

N.Y.A.D. 1 Dept. 2001.

Travelers Indemn. Co. v. American and Foreign  
Ins. Co.

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Order and judgment (one paper), Supreme Court, New York County (Franklin Weissberg, J.), entered July 6, 2000, which granted plaintiffs' motion for summary judgment and declared that defendant must indemnify its insured for payment of any amount above plaintiff insurer's primary policy limit and within the limits of defendant's policy necessary to satisfy a judgment in the underlying action, and declared that the policy limits of defendant's excess policy must be exhausted before plaintiff insurer will be obligated under its excess policy, unanimously affirmed, with costs.

The excess insurance policy issued by plaintiff insurer is expressly excess as against all other coverage, including other excess coverage. Defendant's policy is expressly excess only as against primary coverage. The motion court therefore properly concluded that defendant cannot seek contribution from plaintiff via its excess policy (*see, State Farm Fire & Cas. Co. v. LiMauro*, 65 N.Y.2d 369, 375-376, 492 N.Y.S.2d 534, 482 N.E.2d 13). In reaching this conclusion, the motion court properly declined to give evidentiary weight to the insurance procurement provisions of the subcontract between plaintiff general contractor and the injured party's employer, since it is the policy provisions that control and not the provisions of the subcontract (*see,*

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**KEYCITE**

**C** [Travelers Indemn. Co. v. American and Foreign Ins. Co.](#), 286 A.D.2d 626, 730 N.Y.S.2d 231, 2001 N.Y. Slip Op. 07164 (N.Y.A.D. 1 Dept., Sep 20, 2001) (NO. 4693)

**History**

**Direct History**

=> [1 Travelers Indemn. Co. v. American and Foreign Ins. Co.](#), 286 A.D.2d 626, 730 N.Y.S.2d 231, 2001 N.Y. Slip Op. 07164 (N.Y.A.D. 1 Dept. Sep 20, 2001) (NO. 4693)

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Westlaw has no direct history for this case

Intermediate Court

KeyCited Case

 [Travelers Indemn. Co. v. American and Foreign](#)

[Ins. Co.](#)

730 N.Y.S.2d 231

N.Y.A.D. 1 Dept. Sep 20, 2001

Trial  
Intermediate Court

Trial  
Intermediate Court

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**Citing References****Positive Cases (U.S.A.)****★★★ Cited**

- H** 1 Bovis Lend Lease LMB, Inc. v. Great American Ins. Co., 855 N.Y.S.2d 459, 464+, 53 A.D.3d 140, 145+, 2008 N.Y. Slip Op. 03150, 03150+ (N.Y.A.D. 1 Dept. Apr 10, 2008) (NO. 1973, 602739/03, 590088/05)
- 2 Time Warner Cable of New York City v. New Hampshire Ins. Co., 866 N.Y.S.2d 96+, 19 Misc.3d 1141(A), 1141(A)+, 2008 N.Y. Slip Op. 51093(U), 51093(U)+ (N.Y.Sup. May 27, 2008) (Table, text in WESTLAW, NO. 100502-2008)
- 3 Time Warner Cable of New York City v. New Hampshire Ins. Co., 2008 WL 2328932, \*2328932+, 2008 N.Y. Slip Op. 31454(U), 31454(U)+ (Trial Order) (N.Y.Sup. May 27, 2008) **Memorandum Decision** (NO. 0100502/2008)
- H** 4 Rockrose Corp v. Commercial Underwriters Ins. Co., 2003 WL 25668494, \*25668494 (Trial Order) (N.Y.Sup. Apr 10, 2003) (NO. 111630/00)
- C** 5 U.S. Liability Ins. Co. v. Mountain Valley Indemnity Co., 371 F.Supp.2d 554, 558 (S.D.N.Y. May 23, 2005) (NO. 04 CIV. 0502CSH)

**★ Mentioned**

- C** 6 Liberty Mut. Ins. Co. v. Hartford Ins. Co. of Midwest, 811 N.Y.S.2d 716, 721, 25 A.D.3d 658, 662, 2006 N.Y. Slip Op. 00483, 00483 (N.Y.A.D. 2 Dept. Jan 24, 2006) (NO. 2004-07291, 2004-08525, 1949/03)

**Secondary Sources (U.S.A.)**

- 7 NEW YORK COUNTY SUPREME COURT Insurer Denied Dismissal of Company's Complaint For Defense, Indemnification of Underlying Action, 6/12/2008 N.Y. L.J. 26, col. 1, 26, col. 1+ (2008)
- 8 DECISION OF THE DAY Appellate Division Bovis Lend Lease LMB Inc., plaintiffs-respondents v. Great American Insurance Co., defendants-appellants Decided April 10, 2008 Before Tom, J.P., Friedman, Gonzalez, Kavanagh, JJ Do, 4/18/2008 N.Y. L.J. 26, col. 1, 26, col. 1+ (2008)
- 9 DECISION OF INTEREST Southern District Insurers' Policies Took Precedence Over Truck Lease; Defendant Liable for Settlement's Unpaid Remainder, 6/2/2005 N.Y. L.J. 23, col. 1, 23, col. 1 (2005)

10 DELUCA V. FASHION MALL PARTNERS L.P, 5/2/2002 N.Y. L.J. 21, col. 5, 21, col. 5 (2002)

## Court Documents

### Appellate Court Documents (U.S.A.)

#### Appellate Briefs

- 11 BP AIR CONDITIONING CORP, Plaintiff-Respondent, v. ONE BEACON INSURANCE GROUP, Defendant-Appellant., 2007 WL 2086596, \*2086596+ (Appellate Brief) (N.Y. Feb 16, 2007) **Brief for Defendant-Appellant** ★ ★
- 12 BOVIS LEND LEASE LMB, INC. and National Union Fire Insurance Company of Pittsburgh, PA., Plaintiffs-Respondents, v. GARITO CONTRACTING, INC. and Twin City Fire Insurance Company (pertaining to an underlying action entitled John Armentano et al. v. Broadway Mall Properties, Inc. et al.), Defendants-Appellants., 2007 WL 2747061, \*2747061+ (Appellate Brief) (N.Y.A.D. 1 Dept. 2007) **Appellate Brief for Defendant-Appellant Twin City Fire Insurance Company** (NO. 443) ★ ★ ★
- 13 BOVIS LEND LEASE LMB INC. and National Union Fire Insurance Company of Pittsburgh, P.A., Plaintiffs-Respondents, v. GARITO CONTRACTING, INC., and Twin City Fire Insurance Company (pertaining to an Underlying action entitled John Armentano et ano v. Broadway Mall Properties, Inc. et al), Defendants-Appellants., 2006 WL 4779300, \*4779300+ (Appellate Brief) (N.Y.A.D. 1 Dept. Oct 24, 2006) **Brief for Plaintiffs-Respondents** (NO. 443) ★ ★
- 14 HRH CONSTRUCTION INTERIORS, INC. and National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Plaintiffs-Respondents, v. ROYAL SURPLUS LINES INSURANCE COMPANY and Royal Insurance Company of America, Defendants-Appellants, ROYAL SURPLUS LINES INSURANCE COMPANY and Royal Insurance Company of America, Third-Party Plaintiffs, v. HILLSIDE IRON WORKS, Third-Party Defendant., 2005 WL 5526120, \*5526120+ (Appellate Brief) (N.Y.A.D. 1 Dept. Jan 13, 2005) **Reply Brief for Defendants-Appellants** (NO. 5493) ★ ★
- 15 HRH CONSTRUCTION INTERIORS, INC. and National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Plaintiffs-Respondents, v. ROYAL SURPLUS LINES INSURANCE COMPANY and Royal Insurance Company of America, Defendants-Appellants, ROYAL SURPLUS LINES INSURANCE COMPANY and Royal Insurance Company of America, Third-Party Plaintiffs, v. HILLSIDE IRON WORKS, Third-Party Defendant., 2004 WL 5330077, \*5330077+ (Appellate Brief) (N.Y.A.D. 1 Dept. Dec 03, 2004) **Brief for Defendants-Appellants** (NO. 5493) ★ ★
- 16 AIU INSURANCE COMPANY, Plaintiff-Respondent, v. VALLEY FORGE INSURANCE COMPANY, Defendant-Appellant. VALLEY FORGE INSURANCE COMPANY, Third-Party Plaintiff-Appellant, v. GRANITE STATE INSURANCE COMPANY, AIG Claims Services, Inc. and AIG Technical Services, Inc., Third-Party Defendants-Respondents., 2003 WL 25583716, \*25583716+ (Appellate Brief) (N.Y.A.D. 1 Dept. 2003) **Brief for Plaintiff-Respondent** (NO. 423) ★ ★
- 17 Angel OSORIO, Plaintiff, v. KENART REALTY INC. and Madison 45 Company and Pizza-Del, Inc. d/b/a Eurostar Cafe and Pizza Del, 45th St. Bake Corp. d/b/a Eurostar Cafe and Equistar En-

- terprises, Inc., Defendants; The American Alliance Insurance Company and Madison 45 Company, Third-Party Plaintiffs-Appellants-Respondents, v. The Tower Insurance Company, Third-Party Defendant-Respondent-Appellant, Angel Osorio and, 2007 WL 4701305, \*4701305 (Appellate Brief) (N.Y.A.D. 2 Dept. May 04, 2007) **Reply Brief for Third-Party Defendant-Respondent-Appellant** (NO. 2006-04706) ★ ★
- 18 Raymond C. WRONKA, Plaintiff, v. GEM COMMUNITY MANAGEMENT and Hillside Village Condominium Association, Defendants; Gem Community Management and Hillside Village Condominium Association, Third-Party Plaintiffs Respondents-Appellants, v. Farm Family Casualty Insurance Company, Third-Party Defendant Appellant-Respondent., 2005 WL 6125594, \*6125594 (Appellate Brief) (N.Y.A.D. 2 Dept. 2005) **Reply Brief of Third-Party Defendant-Appellant-Respondent** (NO. 2005-11030, 2006-03591) " ★ ★
- 19 ROYAL SUN ALLIANCE INSURANCE COMPANY, Plaintiff-Appellant, v. TRAVELERS INSURANCE COMPANY and Structure Tone, Inc., Defendants-Respondents, Starlex, LLC., Defendant., 2004 WL 3560735, \*3560735+ (Appellate Brief) (N.Y.A.D. 2 Dept. Jun 15, 2004) **Reply Brief for Plaintiff-Appellant** (NO. 2003-09889) ★ ★
- 20 ROYAL SUN ALLIANCE INSURANCE COMPANY, Plaintiff-Appellant, v. TRAVELERS INSURANCE COMPANY and Structure Tone, Inc., Defendants-Respondents, Starlex, LLC., Defendant., 2004 WL 3560734, \*3560734+ (Appellate Brief) (N.Y.A.D. 2 Dept. Jun 01, 2004) **Brief for Defendant-Respondent Travelers Insurance Company** (NO. 2003-09889) ★ ★
- 21 ROYAL SUN ALLIANCE INSURANCE COMPANY, Plaintiff-Appellant, v. TRAVELERS INSURANCE COMPANY and Structure Tone, Inc., Defendants-Respondents, Starlex, LLC., Defendant., 2004 WL 3560732, \*3560732+ (Appellate Brief) (N.Y.A.D. 2 Dept. Apr 27, 2004) **Brief for Plaintiff-Appellant** (NO. 2003-09889) " ★ ★ ★
- 22 DAVID CHRISTA CONSTRUCTION, INC., Plaintiff-Respondent, v. AMERICAN HOME ASSURANCE COMPANY, Defendant-Appellant. And ONE BEACON INSURANCE COMPANY, Daniel Roosa, Sara Roosa and Spring Lake Excavating, Inc., Defendants-Respondents., 2007 WL 5102403, \*5102403+ (Appellate Brief) (N.Y.A.D. 4 Dept. May 15, 2007) **Brief for Plaintiff-Respondent David Christa Construction, Inc.** (NO. 635, 06-00271) ★ ★
- 23 HARLEYSVILLE INSURANCE COMPANY, Plaintiff-Appellant, v. TRAVELERS INSURANCE COMPANY, Savarino Construction Services, Inc., Defendants-Respondents., 2006 WL 4704791, \*4704791+ (Appellate Brief) (N.Y.A.D. 4 Dept. Jul 20, 2006) **Reply Brief for Plaintiff-Appellant Harleysville Insurance Company** (NO. 1535, 06-01767) ★ ★

#### Trial Court Documents (U.S.A.)

##### Trial Motions, Memoranda and Affidavits

- 24 AMERICAN INTERSTATE INSURANCE COMPANY, Plaintiff, v. Kristina SMITH, Individually, and on behalf of Tiera Michelle Hamilton, a minor, and Birdie Hamilton and Russell Hamilton, as Administrators for the Estate of Shane Ray Hamilton, Marshall Jordan, Jr., and Cooper Logging, Inc., Defendant., 2007 WL 4606295, \*4606295 (Trial Motion, Memorandum and Affidavit) (S.D.Ga. Nov 08, 2007) **Reply Brief in Support of Motion for Summary Judgment** (NO. CV-107-045) ★
- 25 UNITED STATES FIRE INSURANCE COMPANY and Gilman Construction Co., Inc., Plaintiff,

- v. WORCESTER INSURANCE COMPANY, Defendants., 2006 WL 4756025, \*4756025 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Oct 31, 2006) **Affirmation in Opposition** (NO. 601713/05) ★ ★
- 26 BOVIS LEND LEASE LMB, INC, Dormitory Authority of the State of New York, the City of New York, and Illinois National Insurance Company, Plaintiff(s), v. GREAT AMERICAN INSURANCE COMPANY, QBE Insurance Corporation, Liberty Insurance Underwriters, Inc. United National Insurance Corp. Westchester Fire Insurance Company (pertaining to an underlying construction accident involving Joao Goncalves), Defendant(s); United National Insurance Corp., Third-Party Plaintiff, v., 2006 WL 6130858, \*6130858 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Apr 06, 2006) **Memorandum of Law in Opposition to Liberty Insurance Company's Cross-Motion for Summary Judgment** (NO. 602739/03, 05590088) ★ ★
- 27 BOVIS LEND LEASE LMB, INC, Dormitory Authority of the State of New York, The City of New York, and Illinois National Insurance Company, Plaintiff(s), v. GREAT AMERICAN INSURANCE COMPANY, QBE Insurance Corporation, Liberty Insurance Underwriters, Inc. United National Insurance Corp. Westchester Fire Insurance Company (pertaining to an underlying construction accident involving Joao Goncalves), Defendant(s); United National Insurance Corp., Third-Party Plaintiff, v., 2006 WL 6130860, \*6130860 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Apr 06, 2006) **Memorandum of Law in Reply on United's Motion for Summary Judgment** (NO. 602739/03, 05590088) ★ ★
- 28 BOVIS LEND LEASE LMB, INC., The Trustees of Columbia University in the City of New York, and National Union Fire Insurance Company of Pittsburgh, PA., Plaintiffs, v. ROYAL SURPLUS LINES INSURANCE COMPANY (pertaining to an underlying action entitled Dennis Winter and Pam Winter v. Bovis Lend Lease Lmb, Inc., et ano.), Defendant., 2004 WL 5707944, \*5707944 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Mar 01, 2004) **Reply Memorandum of Law in Further Support of Royal's Motion for Summary Judgment and in Opposition to Plaintiffs' Purported Cross-Motion** (NO. 106637-2003) ★ ★
- 29 HRH CONSTRUCTION INTERIORS, INC. and National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Plaintiffs, v. ROYAL SURPLUS LINES INSURANCE COMPANY and Royal Insurance Company of America, Defendants. Royal Surplus Lines Insurance Company and Royal Insurance Company of America, Third-Party Plaintiffs, v. Hillside Iron Works, Third-Party Defendants., 2003 WL 25576697, \*25576697 (Trial Motion, Memorandum and Affidavit) (N.Y.Sup. Sep 09, 2003) **Reply Affirmation of Robert M. Leff in Further Support of Defendants' Cross-Motion for Summary Judgment** (NO. 122243/01) ★ ★