



Briefs and Other Related Documents

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

Juan RUIZ, et al., plaintiffs,

v.

STATE WIDE INSULATION AND CONSTRUCTION CORP., defendant and third-party plaintiff-respondent-appellant.

Panicos Demetriades, third-party defendant-respondent-appellant;

Hermitage Insurance Company, third-party defendant-appellant-respondent.
(and another action).

Feb. 22, 2000.

Premises owners brought action against a construction corporation to recover damages for personal injuries and property damage allegedly sustained in a fire. The corporation asserted a third party complaint against an insured who was allegedly repairing the roof of the premises when the fire broke out, and against his insurer. The Supreme Court, Nassau County, [O'Connell, J.](#), denied cross motions for summary judgment on the third-party complaint and cross motions for a declaratory judgment as to the insurer's obligation to defend and indemnify the insured. On cross appeals, the Supreme Court, Appellate Division, held that premises owners' claim was beyond the scope of the activity covered by the insured's general commercial liability policy.

Affirmed as modified.

West Headnotes

[\[1\] Insurance](#) 2361

[217k2361 Most Cited Cases](#)

Claim by premises owners that they suffered injuries and property damage when a fire broke out while an insured was engaged in repairing their roof was beyond the scope of the activity covered by the insured's general commercial liability policy, and thus, the insurer had no duty to defend and indemnify, even

though a provision limiting coverage to "painting" operations was allegedly unsigned and not received by the insured.

[\[2\] Insurance](#) 1755

[217k1755 Most Cited Cases](#)

[\[2\] Insurance](#) 1839

[217k1839 Most Cited Cases](#)

[\[2\] Insurance](#) 1845(1)

[217k1845\(1\) Most Cited Cases](#)

Declarations page and accompanying endorsements were made part of a general commercial liability policy and were incorporated by reference into the policy regardless of whether the insured received actual delivery thereof.

**258 [Israelson & Gold](#), Plainview, N.Y. ([Jeffrey B. Gold](#) of counsel), for third-party defendant-appellant-respondent.

[Baxter & Smith, P.C.](#), Jericho, N.Y. ([Leonard M. Cascone](#) of counsel), for defendant third-party plaintiff-respondent-appellant.

[Glenn A. Reichelscheimer](#), Rego Park, N.Y., for third-party defendant-respondent-appellant.

CORNELIUS J. [O'BRIEN](#), J.P., [WILLIAM D. FRIEDMANN](#), [ANITA R. FLORIO](#) and [ROBERT W. SCHMIDT](#), JJ.

MEMORANDUM BY THE COURT.

*518 In an action to recover damages for personal injuries and property damage, etc., and a related subrogation action, (1) the third-party defendant Hermitage Insurance Company appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County ([O'Connell, J.](#)) dated June 3, 1998, as denied its cross motions for summary judgment dismissing the third-party complaint insofar as asserted against it, and for a judgment declaring that it is not obligated to defend and indemnify the third-party defendant Panicos Demetriades in the main action, (2) the third-party plaintiff State Wide Insulation and Construction Corp. cross-appeals, as limited by its brief, from so much of the same order as

denied its cross motions for summary judgment on its third-party complaint against the third-party defendants Hermitage Insurance Company and Panicos Demetriades, and (3) the third-party defendant Panicos Demetriades cross-appeals, as limited by his brief, from so much of the same order as denied his motion for summary judgment declaring that Hermitage Insurance Company was obligated to defend and indemnify him in the main action.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying the cross motions of Hermitage Insurance Company, and substituting therefor a provision granting those cross motions; as so modified, the order is affirmed, with one bill of costs to Hermitage Insurance Company payable by State Wide Insulation and Construction Corp. and Panicos Demetriades.

[1] The third-party defendant Hermitage Insurance Company (hereinafter Hermitage) issued a general commercial liability policy to the third-party defendant Panicos Demetriades. The *519 declarations page of the policy described Demetriades' business as "painting" and incorporated by reference an endorsement entitled "Classification Limitation" which limited the operations from which a claim could arise to those described in the schedule of insurance.

The plaintiffs allege that they sustained personal injuries and property damage when a fire broke out at their premises while the third-party defendant Panicos Demetriades was engaged in repairing their roof. Hermitage properly denied Demetriades' claim that it was obligated to defend and indemnify him on the ground that the claim was beyond the scope of the activity covered by his policy, which was limited to "painting". Demetriades asserts that the provision limiting coverage to "painting" operations was not in effect since it was unsigned and he never received it.

**259 [2] The declarations page and the accompanying endorsements were made part of the insurance policy and were incorporated by reference into the policy regardless of whether the insured received actual delivery thereof (see, [Hirshfeld v. Maryland Cas. Co.](#), 249 A.D.2d 274, 671 N.Y.S.2d 100). The terms of the policy are clear and unambiguous and their

construction may be determined as a matter of law (see, [Gelb v. Elroy Enters.](#), 170 A.D.2d 481, 566 N.Y.S.2d 68).

The parties' remaining contentions are without merit (see, [Benatovich v. Propis Agency](#), 224 A.D.2d 998, 637 N.Y.S.2d 551; [Galaska v. State Farm Mut. Auto. Ins. Co.](#), 177 A.D.2d 947, 577 N.Y.S.2d 988).

269 A.D.2d 518, 703 N.Y.S.2d 257, 2000 N.Y. Slip Op. 02009

Briefs and Other Related Documents ([Back to top](#))

- [1999 WL 33978890](#) (Appellate Brief) Third-Party Defendant-Appellant-Respondent Hermitage Insurance Company's Brief in Opposition to Third-Party Plaintiff-Respondent-Appellant State Wide Insulation and Construction Corp.'s Appeal and in Reply to State Wide's Opposition to Hermitage's Appeal (Aug. 12, 1999)
- [1999 WL 33978887](#) (Appellate Brief) Brief for Third-Party Defendant-Appellant-Respondent (Jun. 29, 1999)

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