

AMENDED SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA
Justice

-----X PART 9
PROGRESSIVE NORTHEASTERN INSURANCE COMPANY,

Plaintiff,

INDEX NO. 12511/09

MOTION DATE: 4/22/10
SEQUENCE NO: 01,02

-against-

NEW HAMPSHIRE INSURANCE COMPANY, GRANITE
STATE INSURANCE COMPANY, JOANNE SANGIRARDI-GRAY
AND MICHAEL GRAY, GIAN VALZOVANO AND RALLYE
WESTBURY LLC,

Defendants.

-----X

Notice of Motion, Affirmation, & Exhibits.....	<u>1</u>
Affirmation in Opposition & Exhibits.....	<u>2</u>
Reply Affirmation.....	<u>3</u>

The following amended short form order reflects the "Reply" in the listing of papers which were considered in deciding this motion.

Motion by defendant New Hampshire Insurance Company and Granite State Insurance Company now known as AIG for an order dismissing the action against them or granting an order declaring that defendant New Hampshire Insurance Company has no duty to respond to claims arising from NY Supreme Court action [*Joanne Sangirardi-Gray and Michael Gray v. Gian Valzovano and Rallye Westbury, LLC*, Index #11471-2001] pursuant to its policy and granting an order declaring that defendant Granite State Insurance Company has no duty to defend or indemnify defendant Gian Valzovano with respect to the aforementioned action [*Joanne Sangirardi-Gray and Michael Gray v. Gian Valzovano and Rallye Westbury, LLC*, Index #11471-2001] and is entitled to recoup costs of defending defendant Gian Valzovano therein is denied in its entirety.

Motion by defendant's Joanne Sangirardi-Gray and Michael Gray for compliance with discovery demands has been withdrawn.

In this action, plaintiff Progressive Northeastern Insurance Company seeks a declaratory judgment as to their obligation to defend and insure a January 8, 2007 car accident where defendant Gian Valzovano was operating a "loaner-car" owned by defendant Rallye Westbury, LLC. The other car in the accident was owned and operated by defendant Joanne Sangirardi-Gray. The pending underlying Supreme Court action was commenced in July 2007 where in Joanne Sangirardi-Gray and Michael Gray seek damages for personal injuries and property damage against Valzovano and Rallye Westbury, LLC. Defendant Valzovano had a personal policy with Plaintiff and Plaintiff provided defendant Valzovano with a defense and coverage in excess of \$500,000.

Plaintiff's complaint alleges that AIG was the primary insurer of the loaner-car as well as driver Valzovano. During the course of the *Gray v. Valzovano* litigation, plaintiff alleges that AIG reduced their coverage from \$1,000,000 to \$25,000 and in this application AIG further seeks to remove themselves from any liability as to Valzovano in the underlying action.

Defendant's New Hampshire Insurance Company argues that the designation of New Hampshire Insurance Company as the insurer of the Rallye loaner car for this accident was an error and the action should be dismissed against them.

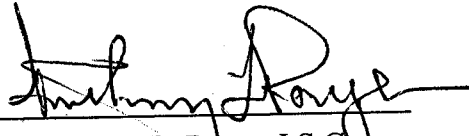
Defendant Granite argues that it represented Valzovano in the underlying action only because plaintiff Progressive denied primary coverage; and upon a reading of their policy for Rallye Westbury, they have no duty to defend or indemnify Valzovano for this accident as the primary insurer. Movant Granite also contends that Valzovano is not an "insured" as defined in their policy.

In opposition, plaintiff Progressive argues that coverage by AIG should continue for their failure to disclaim coverage in a timely manner pursuant to Insurance Law § 3420 (d). Plaintiff contends that litigation in the underlying action commenced in 2007 so movants are estopped from modifying or renouncing their acceptance of primary coverage.

It is undisputed that after certification for the underlying trial on 5/15/09, defendant AIG notified defendant Gian Valzovano for the first time that their coverage was being reduced to \$25,000. It is also undisputed that Progressive on 2/5/07 denied primary coverage and expressly stated "we will be excess over Rallye Motors policy". Defendant's Joanne Sangirardi-Gray and Michael Gray oppose this application arguing that they have litigated the underlying case in good faith and reliance on \$1,000,000 coverage by movants.

Movants have not demonstrated that this reduction in coverage and renunciation of defense for Valzovano was not a result of their counsel's failing to know the policy provisions as they relate to the underlying case for almost three years from the accident through litigation, trial certification and on the eve of trial.

Dated: October 25, 2010



Anthony L. Parga, J.S.C.

ENTERED
OCT 27 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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