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Policy Reformation/Agent E&O; SUM/Late Notice; Contractual/Common Law Indemnification; CGL/Late Notice; Political Risk Coverage/Arbitration; OCP Disclaimer; Replacement Cost;

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Policy Reformation/Agent E&O. Third Department affirms summary judgment in favor of insured who denied coverage for named insured's breach of cooperation. Action was brought by owner of the insured premises, who was listed on the policy as a loss payee. Owner claimed policy should be reformed to name it a lender loss payee, not subject to insurer's defenses against the named insured. Court found no basis for reforming policy based on mutual mistake where owner was not, in fact, a lender. Court finds that owner, however, sufficiently alleged a cause of action against agent-defendant for purposes of a motion to dismiss, based on alleged "special relationship" between owner and agent. *Herron v. Essex Ins. Co.*, 2006 WL 3091639 (3d Dept. November 2, 2006). SUM/Late Notice. Third Department affirms trial court's denial of a petition to stay arbitration for SUM coverage. Insurer disclaimed based on late notice of claim. Court rules that notice 2 months after insured learned of tortfeasor's 50/100/50 limits (4 ½ months after the accident) was sufficiently prompt as a matter of law. *Progressive Ins. Cos. v. House*, 2006 WL 3093178 (3d Dept. November 2, 2006). Contractual/Common Law Indemnification. After affirming denial of owner's motion for summary judgment on common law and contractual indemnification claims against construction manager, Second Department searches the record to dismiss the claims. Court finds construction manager exercised only general supervision, and had no control over work leading to the alleged accident. Court also finds owner failed to demonstrate breach of insurance procurement provision in contract. *Linkowski v. City of New York*, 2006 WL 3086845 (2d Dept. October 31, 2006). CGL/Late Notice. Court grants summary judgment to insurer, upholding late notice disclaimer where insured failed to provide notice for three months after service of suit, and eight days before a motion for default judgment in the underlying action. Insured produced no evidence to support its contention that it did not have notice of the suit until three months after service through the Department of State. Court also finds 13-day delay in issuing disclaimer was reasonable as a matter of law, although notes that the question would be closer if only basis for disclaiming was late notice. *1329 Realty LLC v. United States Liability Ins. Group*, 2006 WL 3150823 (E.D.N.Y. November 3, 2006). Political Risk Coverage/Arbitration. Court denies motions to overturn arbitration upholding disclaimer under a political risk policy. Insured lost value of certain licenses relating to natural gas distribution after Argentina devalued its currency. Arbitration panel found licenses to be an intangible asset outside the scope of coverage, and also found an exclusion for currency devaluation applied. Court rejected insured's arguments that arbitration decision was in manifest disregard of the law. *Sempra Energy v. National Union Fire Ins. Co.*, 2006 WL 3147155 (S.D.N.Y. October 31, 2006). OCP Disclaimer. Court rules that insured's motion in limine seeking to prevent insurer from offering evidence of insured's late notice under an OCP policy was an improper attempt to relitigate an argument presented and rejected by the court on a previous motion for summary judgment. Court also rejects insured's argument (made in the context issue preclusion) that insurer is obligated to issue an OCP disclaimer if it receives a tender by the named insured under a CGL policy where the OCP named insured is an additional insured under the CGL policy. Court characterizes the tender as "indirect," in contrast to situation where OCP insured itself tendered directly to insurer. *United States Underwriters Ins. Co. v. Falcon Construction Corp.*, 2006 WL 3146422 (S.D.N.Y. October 30, 2006). Replacement Cost. **DECISION OF INTEREST.** In dispute over valuation of World Trade Center, insureds argued that replacement cost under policies at issue included \$700 million in expenses to build replacement buildings that include the technological, structural, design, and political changes necessary to build a safe and acceptable replacement for the original WTC buildings. Insurers argued that replacement cost coverage is limited to cost of building the exact same buildings as they stood on the day of the September 11 attacks. The court agreed with the insurers, and grants summary judgment in their favor. Opinion includes an extended discussion of the law of replacement cost valuation. *SR International Business Ins. Co., Ltd. v. World Trade Center Properties, LLC*, 2006 WL 3073220 (S.D.N.Y. October 31, 2006).