

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

UNITED NATIONAL INSURANCE COMPANY

Index No.

Plaintiff(s),

*Summons*

*-against-*

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ZURICH-AMERICAN INSURANCE COMPANY, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

Date Index No. Purchased: July 28, 2015

Defendant(s).

To the above named Defendant(s)

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA  
ZURICH-AMERICAN INSURANCE COMPANY  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR 509, CPLR 503(c)  
which is County where the action arose and residence of defendant

Dated: New York, New York

July 28, 2015

Brad C. Westlye, Attorney at Law

by \_\_\_\_\_

Brad C. Westlye, Esq.

Attorneys for Plaintiff

UNITED NATIONAL INSURANCE COMPANY  
225 East 96th Street 6R  
New York, New York 10128  
(212) 831-7168  
bwestlye@westlyelaw.com

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

\_\_\_\_\_X

UNITED NATIONAL INSURANCE COMPANY,

Plaintiff,

Index No.:

-against-

COMPLAINT

TRAVELERS PROPERTY CASUALTY COMPANY  
OF AMERICA, ZURICH-AMERICAN INSURANCE  
COMPANY, and NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURGH, PA,

Defendants.

\_\_\_\_\_X

1. Plaintiff, United National Insurance Company (“United National”), by and through its counsel of record, and for its Complaint for Equitable Indemnity, Equitable Contribution, Equitable Reapportionment, Equitable Subrogation, and Declaratory Judgment against Defendants, Travelers Property Casualty Company of America (“Travelers”), Zurich-American Insurance Company (“Zurich”), and National Union Fire Insurance Company of Pittsburgh, PA (“National Union”), alleges, states and avers:

**Venue**

2. Venue is proper in this Court as the underlying accident occurred in New York City and the underlying personal injury action to which this action relates was filed in the New York Supreme Court for New York County.

**Parties**

3. United National Insurance Company is a Pennsylvania corporation with its principal place of business in Bala Cynwyd, Pennsylvania.

4. Travelers Property Casualty Company of America is an authorized insurer writing property and casualty insurance business in New York, with its principal place of business in Connecticut.

5. Zurich-American Insurance Company of America is an authorized insurer writing property and casualty insurance business in New York, with its principal place of business in New York.

6. National Union Fire Insurance Company of Pittsburgh, PA is an authorized insurer writing property and casualty insurance business in New York, with its principal place of business in Pennsylvania.

#### **Insurance Policies**

7. United National Insurance Company issued Commercial Insurance Policy No. M5157124 that included a Commercial General Liability Coverage Part to Phoenix Mechanical, Inc. and others that was in effect from November 11, 2005 to November 11, 2006. United National's policy includes a \$1 million per occurrence limit of liability.

8. Travelers Property Casualty Company of America issued Commercial Insurance Policy No. TC2J-GLSA-107T5973-TIL-06 that includes Commercial General Liability Insurance to MetLife, Inc. and others that was in effect from January 1, 2006 to January 1, 2007. Travelers' policy, in pertinent part, includes a \$2 million per occurrence limit of liability.

9. Zurich-American Insurance Company issued a Commercial Umbrella Liability Policy No. AUC3750732 04 to MetLife, Inc. and others that was in effect from January 1, 2006 to January 1, 2007. Zurich's policy, in pertinent part, includes a \$25 million per occurrence limit of liability.

10. National Union Fire Insurance Company of Pittsburgh, PA issued Commercial Umbrella Policy No. EBU 9036881 to Phoenix Mechanical, Inc. and others that was in effect from November 11, 2005 to November 11, 2006. National Union's policy includes a \$1 million per occurrence limit of liability.

### **The Underlying Litigation**

11. Wojciech Rzymiski was injured in a construction accident occurring on October 30, 2006 at a residential project in New York City.

12. Rzymiski filed a tort action against Metropolitan Tower Life Insurance Company and Independent Temperature Control Services, Inc. in the New York Supreme Court for New York County under Index No. 104591/2007.

13. Independent Temperature Control Services, Inc. filed a third-party action against Phoenix Mechanical Piping, LLC in the New York Supreme Court for New York County under Third-Party Index No. 590892/2009.

14. Following a jury trial, a Judgment was entered for plaintiff Rzymiski and against the defendants for a total of \$6,697,534.93.

### **The Insurers' Payments**

15. At all times pertinent hereto, United National paid for and incurred over \$500,000 in the costs of defending the *Rzymiski v. Metropolitan Tower Life Insurance Company, et al.* action.

16. At all times pertinent hereto, United National asserted and reserved the right to seek contribution, indemnity, and/or reapportionment of its defense costs, as well as its overpayment of its indemnity obligations incurred in the underlying action from the defendants hereto.

17. United National contributed \$1,075,000 towards satisfaction of the Judgment.

18. Travelers contributed \$2 million towards satisfaction of the Judgment.

19. Zurich contributed \$1,695,885 towards satisfaction of the Judgment.
20. National Union contributed \$1 million towards satisfaction of the Judgment.

#### **First Cause of Action – Equitable Indemnity**

21. The allegations set forth in Paragraphs 1 to 20 are incorporated by reference.
22. Because of the Residential Projects Exclusion contained in United National's policy, it had neither a duty to defend nor indemnify anyone in the *Rzyski v. Metropolitan Tower Life Insurance Company, et al.* action.

23. United National is therefore entitled to equitable indemnity from the defendants for the portions of the defense and indemnity costs incurred by United National that should have been paid by defendants.

#### **Second Cause of Action – Equitable Indemnity**

24. The allegations set forth in Paragraphs 1 to 20 are incorporated by reference.
25. United National paid \$75,000 over the amount of its per occurrence limit of liability as a contribution to satisfy the Judgment.

26. United National is therefore entitled to equitable indemnity from the defendants for the portions of the indemnity costs incurred by United National that should have been paid by defendants.

#### **Third Cause of Action – Equitable Contribution**

27. The allegations set forth in Paragraphs 1 to 20 are incorporated by reference.
28. Travelers was mutually obligated to defend the *Rzyski* action but did not contribute to the defense costs of the *Rzyski* case. The defense costs in the *Rzyski* case were paid entirely by United National.

29. United National is entitled to equitable contribution of half its defense costs

incurred in the *Rzymiski* action from Travelers.

#### **Fourth Cause of Action – Equitable Reapportionment**

30. The allegations set forth in Paragraphs 1 to 20 are incorporated by reference.

31. United National complied with its duty to front the expense of the defense as part of its duty to defend Phoenix Mechanical, Independent Temperature Control, and Metropolitan Tower Life Insurance Company in the *Rzymiski* action.

32. New York allows for the ultimate equitable allocation of the defense costs, where the liabilities are established in excess of the primary policy limits, across all layers of the insurance portfolio in the same proportion as the insurers bear for their respective indemnity obligations.

33. United National is entitled to recoup from defendants their pro-rata portion of the expense incurred by United National to defend the *Rzymiski* action.

#### **Fifth Cause of Action – Equitable Subrogation**

34. The allegations set forth in Paragraphs 1 to 20 are incorporated by reference.

35. United National complied with its duty to front the expense of the defense as part of its duty to defend Phoenix Mechanical, Independent Temperature Control, and Metropolitan Tower Life Insurance Company in the *Rzymiski* action.

36. New York allows for the ultimate equitable allocation of the defense costs, where the liabilities are established in excess of the primary policy limits, across all layers of the insurance portfolio in the same proportion as the insurers bear for their respective indemnity obligations.

37. United National is entitled to recoup from defendants in equitable subrogation their pro-rata portion of the expense incurred by United National to defend the *Rzymiski* action.

### **Sixth Cause of Action – Equitable Subrogation**

38. The allegations set forth in Paragraphs 1 to 23 are incorporated by reference.

39. United National paid more than its per occurrence policy limits as a contribution to satisfy the Judgment of the *Rzyski* case even where its policy excludes coverage for the insureds' work in relation to residential projects.

40. United National is entitled to recoup from defendants in equitable subrogation their pro-rata portion of the expense incurred by United National for its contribution to satisfy the Judgment in the *Rzyski* action.

### **Seventh Cause of Action - Declaratory Judgment**

41. The allegations set forth in Paragraphs 1 to 40 are incorporated by reference.

42. An actual controversy now exists between United National and the defendants in that United National contends entitlement to recoup some or all of its defense and indemnity costs incurred in the underlying *Rzyski* action from the defendants and the defendants refuse to acknowledge the same obligations.

43. Declaratory judgment from the Supreme Court is now desirable to advise the parties of their actual obligations as set forth above.

**WHEREFORE**, United National prays:

41. For a judgment against one or more of the defendants for the amounts of United National's defense and indemnity costs incurred in the *Rzyski* action that should have been or should now be paid by the defendant(s) under terms the Court finds appropriate;

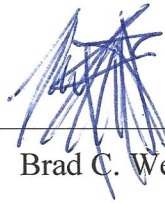
42. For declaratory judgment setting forth the rights, duties, and obligations of the parties with respect to matters addressed above, under terms the Court finds appropriate;

43. For costs of suit herein; and,

44. For the further relief the Court deems just and proper.

Dated: July 28, 2015  
New York, New York

By: \_\_\_\_\_



Brad C. Westlye

Attorney for Plaintiff  
UNITED NATIONAL INSURANCE COMPANY  
225 East 96th Street 6R  
New York, New York 10128  
(212) 831-7168  
bwestlye@westlyelaw.com