SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

25-01 Newkirk Ave., LLC v. Everest Natl. Ins. Co.

2026 NY Slip Op 01331 (2d Dep't 2026) · No. 2023-00580 · Decided March 11, 2026

SUMMARY

The Appellate Division, Second Department, affirmed a judgment declaring that Everest National Insurance Company was not obligated to defend or indemnify 25-01 Newkirk Avenue, LLC in an underlying lead-exposure personal injury action. The court held that the policy's absolute lead exclusion unambiguously applied to the alleged injuries and that the defendants established the exclusion's applicability. The plaintiff failed to raise a triable issue regarding the exclusion's addition to the policy or its application.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Linda Christopher, J.; Helen Voutsinas, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	March 11, 2026
DOCKET	2023-00580
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from an order and judgment granting the defendants' motion for summary judgment and declaring that the defendants had no duty to defend or indemnify the plaintiff in an underlying lead-exposure personal injury action.
STANDARD OF REVIEW	The court reviewed the grant of summary judgment and the interpretation and applicability of the unambiguous insurance policy exclusion as questions of law.
PRECEDENTIAL VALUE	Published New York Appellate Division decision
PARTIES	25-01 Newkirk Avenue, LLC v. Everest National Insurance Company, Brownstone Agency, Inc., other defendants

TOPICS

insurance coverage · duty to defend · duty to indemnify · declaratory relief insurance · appellate procedure

PRACTICE AREAS

insurance coverage · insurance law · contract law · appellate practice

QUESTIONS PRESENTED

1. Whether the absolute lead exclusion was properly added to the insurance policy.
2. Whether the absolute lead exclusion unambiguously applied to the underlying personal injury action involving alleged lead exposure.
3. Whether the defendants were obligated to defend or indemnify the plaintiff in the underlying action.

HOLDINGS

1. The defendants established their prima facie entitlement to summary judgment declaring that the absolute lead exclusion was properly included in the policy, and the plaintiff failed to raise a triable issue of fact on that point.
2. The absolute lead exclusion unambiguously excluded coverage for the underlying action because the claimed bodily injury arose from exposure to lead.
3. The defendants were not obligated to defend or indemnify the plaintiff in the underlying action because the absolute lead exclusion eliminated coverage for the asserted claim.

KEY QUOTATIONS

> *"IMPORTANT: . . . All lead inspection reports must be received and reviewed by our office within 30 days of binding. The lead exclusion will be added back to policy inception if the inspection is unfavorable or the 30 day period has expired."* ([*1])

> *"An insurance policy is a written contract between an insurer and an insured and is based, in essence, on contract law"* ([*2])

> *"In determining an insurance coverage dispute, a court must first look to the language of the policy"* ([*2])

> *"before an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation"* ([*2])

FACTUAL BACKGROUND

25-01 Newkirk Avenue, LLC obtained insurance for a Brooklyn residential building, including anticipated lead-liability coverage. The policy stated that lead inspection reports had to be received and reviewed within 30 days of binding, or the lead exclusion would be added back to the policy. After the inspection did not occur within that period, the insurer issued a change endorsement removing lead-liability coverage and adding an absolute lead exclusion. A building resident later sued the plaintiff for personal injuries allegedly caused by lead exposure, and Everest disclaimed coverage.

PROCEDURAL HISTORY

The plaintiff commenced a declaratory judgment action after Everest disclaimed coverage based on an absolute lead exclusion added to the policy. The Supreme Court, Kings County, granted the defendants' motion for summary judgment and issued declarations denying coverage and finding that the exclusion was properly included in the policy. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- American W. Home Ins. Co. v Gjonaj Realty & Mgt. Co., 192 AD3d 28, 38
- Holtzman v Connecticut Gen. Life Ins. Co., 213 AD3d 918, 919
- Matter of Progressive Ins. Co. v Baby, 232 AD3d 902, 903
- White v Continental Cas. Co., 9 NY3d 264, 267
- Dean v Tower Ins. Co. of N.Y., 19 NY3d 704, 708
- Landau v IDS Prop. Cas. Ins. Co., 228 AD3d 855, 856-857
- Swan USA, Inc. v Wesco Ins. Co., 217 AD3d 987, 989
- Mapfre Ins. Co. of N.Y. v Ferrall, 214 AD3d 635, 636
- Gem-Quality Corp. v Colony Ins. Co., 209 AD3d 986, 992-993

OPINION

PER CURIAM.

25-01 Newkirk Ave., LLC v Everest Natl. Ins. Co. (2026 NY Slip Op 01331) 25-01 Newkirk Ave., LLC v Everest Natl. Ins. Co. 2026 NY Slip Op 01331 Decided on March 11, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on March 11, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department FRANCESCA E. CONNOLLY, J.P. LINDA CHRISTOPHER HELEN VOUTSINAS PHILLIP HOM, JJ. 2023-00580 (Index No. 503144/18) [*1]25-01 Newkirk Avenue, LLC, appellant, v Everest National Insurance Company, et al., respondents. Mark L. Cortegiano, Middle Village, NY, for appellant.

Kennedys CMK LLP, New York, NY (Thomas C. Kaufman of counsel), for respondents. DECISION & ORDER In an action, inter alia, for a judgment declaring that the defendant Everest

National Insurance Company is obligated to defend and indemnify the plaintiff in an underlying personal injury action entitled G.M. v 25-01 Newkirk Avenue, LLC, commenced in the Supreme Court, Kings County, under Index No. 500473/17, the plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Peter P. Sweeney, J.), dated December 15, 2022.

The order and judgment granted the defendants' motion for summary judgment declaring, among other things, that they are not obligated to defend or indemnify the plaintiff in the underlying action and declared that (1) the plaintiff is not entitled to coverage under the insurance policy issued to it by the defendant Everest National Insurance Company for the cause of action asserted in the underlying action, (2) the absolute lead exclusion is properly included in the policy and excludes coverage for the underlying action, and (3) the defendants are not obligated to defend or indemnify the plaintiff in the underlying action.

ORDERED that the order and judgment is affirmed, with costs. The plaintiff, 25-01 Newkirk Avenue, LLC, engaged the services of an insurance broker, Stern Agency, Inc. (hereinafter Stern Agency), to obtain insurance coverage, including coverage for liability for exposure to lead, for a residential building in Brooklyn owned by the plaintiff.

The defendant Brownstone Agency, Inc. (hereinafter Brownstone), acting as the agent of the defendant Everest National Insurance Company (hereinafter Everest), provided Stern Agency with an Indication for insurance coverage for the building (hereinafter the policy).

The policy provided, in relevant part, the following: "IMPORTANT:... All lead inspection reports must be received and reviewed by our office within 30 days of binding. The lead exclusion will be added back to policy inception if the inspection is unfavorable or the 30 day period has expired."

After the inspection did not occur within that time period, the defendants issued a change endorsement removing lead liability coverage from the policy and incorporated an "absolute lead exclusion" into the policy. Subsequently, a resident of the building commenced an action in the Supreme Court, Kings County, entitled G.M. v 25-01 Newkirk Avenue, LLC, under Index No. 500473/17 (hereinafter the underlying action), against, among others, the plaintiff in the instant [*2]action, to recover damages for personal injuries allegedly sustained through exposure to lead on the premises.

Brownstone, on behalf of Everest, sent a notice of disclaimer to the plaintiff, informing the plaintiff that Everest would not indemnify the plaintiff for any judgment rendered in the underlying action against it because the absolute lead exclusion endorsement in the policy precluded coverage. Several months later, the plaintiff commenced this action against the defendants seeking, inter alia, a judgment declaring that Everest was obligated to defend and indemnify the plaintiff in connection with the underlying action.

The defendants moved for summary judgment declaring, among other things, that they are not obligated to defend or indemnify the plaintiff in the underlying action. In an order and judgment dated December 15, 2022, the Supreme Court granted the defendants' motion and declared that (1) the plaintiff is not entitled to coverage under the policy for the cause of action asserted in the underlying action, (2) the absolute lead exclusion is properly included in the policy and excludes coverage for the underlying action, and (3) the defendants are not obligated to defend or indemnify the plaintiff in the underlying action.

The plaintiff appeals. "An insurance policy is a written contract between an insurer and an insured and is based, in essence, on contract law" (American W. Home Ins. Co. v Gjonaj Realty & Mgt. Co., 192 AD3d 28, 38). "In determining an insurance coverage dispute, a court must first look to the language of the policy" (Holtzman v Connecticut Gen. Life Ins.

Co., 213 AD3d 918, 919). "As with any contract, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning[,] and the interpretation of such provisions is a question of law for the court" (Matter of Progressive Ins. Co. v Baby, 232 AD3d 902, 903 [internal quotation marks omitted]; see White v Continental Cas. Co., 9 NY3d 264, 267). "[B]efore an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation" (Dean v Tower Ins.

Co. of N.Y., 19 NY3d 704, 708 [internal quotation marks omitted]; see Landau v IDS Prop. Cas. Ins. Co., 228 AD3d 855, 856). Here, the absolute lead exclusion endorsement to the policy, which the defendants submitted in support of their motion, unequivocally excludes coverage for, inter alia, bodily injury "arising out of the existence or control of the hazardous properties of lead, irrespective of the form or source of such lead."

Thus, the exclusion clearly applies to the cause of action brought against the plaintiff in the underlying action to recover damages for personal injuries allegedly sustained by exposure to lead (see Swan USA, Inc. v Wesco Ins. Co., 217 AD3d 987, 989; Mapfre Ins. Co. of N.Y. v Ferrall, 214 AD3d 635, 636).

Accordingly, the defendants established their prima facie entitlement to a declaration that (1) the plaintiff is not entitled to coverage under the policy for the cause of action asserted in the underlying action, (2) the absolute lead exclusion is properly included in the policy and excludes coverage for the underlying action, and (3) the defendants are not obligated to defend or indemnify the plaintiff in the underlying action (see Landau v IDS Prop.

Cas. Ins. Co., 228 AD3d at 856; Gem-Quality Corp. v Colony Ins. Co., 209 AD3d 986, 992-993). In opposition, the plaintiff failed to raise a triable issue of fact as to whether the absolute lead exclusion was properly added to the policy or whether the exclusion applies (see Landau v IDS Prop. Cas. Ins. Co., 228 AD3d at 856-857; Swan USA, Inc. v Wesco Ins.

Co., 217 AD3d at 989). The plaintiff's remaining contention is without merit. CONNOLLY, J.P., CHRISTOPHER, VOUTSINAS and HOM, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court