

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Developers Surety and Indemnity Company v. Capital Paving and Contracting, LLC et al.

Developers Surety · No. 3:25-cv-06139 (RK) (RLS) · Decided January 9, 2026

SUMMARY

The United States District Court for the District of New Jersey denied without prejudice a surety company's unopposed motion for default judgment against four defendants in an indemnity and reimbursement action. The court concluded that entering judgment before resolving the claims against the answering defendants could create inconsistent judgments, particularly because the defendants were subject to joint and several liability and some had asserted crossclaims for contribution and indemnification.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Robert Kirsch
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	January 9, 2026
DOCKET	3:25-cv-06139 (RK) (RLS)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 55(b) for default judgment against four defendants who had failed to appear or defend. The motion was unopposed, and five other defendants had answered and were participating in discovery.
STANDARD OF REVIEW	Entry of default judgment is primarily within the district court's discretion, but that discretion is constrained by the Third Circuit's preference for decisions on the merits. In multi-defendant cases, courts generally withhold default judgment until the claims against nondefaulting defendants are resolved when entering judgment earlier could create inconsistent results.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court memorandum order

TOPICS

default judgment

default

civil procedure

breach of contract

construction law

PRACTICE AREAS

civil procedure

contracts

construction law

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether the court should enter default judgment against four defaulted defendants while the claims against five answering defendants remained unresolved.
2. Whether the risk of inconsistent judgments and the relationship among the claims and parties warranted withholding default judgment under Federal Rules of Civil Procedure 54(b) and 55(b).

HOLDINGS

1. Default judgment should be denied without prejudice where the defaulted and nondefaulted defendants face claims based on the same factual allegations, the defendants may be jointly and severally liable, and adjudication of the nondefaulted defendants' defenses could produce facts inconsistent with a judgment against the defaulted defendants.

KEY QUOTATIONS

“The risk of inconsistent judgments warrants the denial of default judgment here.” (II. Discussion)

“Thus, this a case in which the “preferred practice” of “withhold[ing] granting default judgment until the action is resolved on its merits against non-defaulting defendants” is “strictly applied.”” (II. Discussion)

FACTUAL BACKGROUND

Plaintiff issued performance and payment bonds for projects undertaken by Capital Paving and Contracting, LLC and related defendants pursuant to a January 24, 2024 indemnity agreement. After claims were made concerning the bonded projects, plaintiff alleges that it resolved the claims and incurred losses, but defendants failed to indemnify, reimburse, or exonerate plaintiff. The indemnity agreement imposed joint and several liability, while the answering defendants disputed their roles, plaintiff's alleged injury and damages, and asserted crossclaims for contribution and indemnification.

PROCEDURAL HISTORY

Plaintiff filed a five-count breach-of-contract action on May 29, 2025, alleging that defendants breached an indemnity agreement by failing to reimburse or indemnify plaintiff for losses paid under performance and payment bonds. Five defendants answered, including three who asserted crossclaims for contribution and indemnification against all co-defendants. Four defendants failed to appear, answer, or otherwise defend, and the Clerk entered defaults against them. The court denied plaintiff's motion for default judgment without prejudice because adjudicating the defaulted defendants before resolving the answering defendants' liability could produce inconsistent judgments.

DISPOSITION

dismissed

CASES CITED

- *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180-81 (3d Cir. 1984)
- *Animal Sci. Prods., Inc. v. China Nat'l Metals & Mins. Imp. & Exp. Corp.*, 596 F. Supp. 2d 842, 849 (D.N.J. 2008)
- *Jefferson v. Briner, Inc.*, 461 F. Supp. 2d 430 (E.D. Va. 2006)
- *Frow v. De La Vega*, 82 U.S. (15 Wall.) 552 (1872)
- *Berkeley Inv. Grp., Ltd. v. Colkitt*, 455 F.3d 195, 203 (3d Cir. 2006)
- *Allis-Chalmers Corp. v. Phila. Elec. Co.*, 521 F.2d 360, 363 (3d Cir. 1975)
- *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 12-13 (1980)
- *Joe Hand Promotions, Inc. v. Tickle*, No. 12-01874, 2014 WL 1051821, at *5-7 (M.D. Pa. Mar. 17, 2014)
- *Eteam, Inc. v. Hilton Worldwide Holdings, Inc.*, No. 15-5057, 2016 WL 54676, at *3 (D.N.J. Jan. 5, 2016)
- *Alpine Fresh, Inc. v. Jala Trucking Corp.*, 181 F. Supp. 3d 250, 258 (D.N.J. 2016)
- *Farzetta v. Turner & Newall, Ltd.*, 797 F.2d 151, 154 (3d Cir. 1986)
- *S.A. Communale Co. Inc. v. Reddy-Buffaloes Fire Pump, Inc.*, No. 19-2219, 2019 WL 13394977, at *1 (E.D. Pa. Oct. 1, 2019)
- *Obembe v. Tata Consultancy Servs., Ltd.*, No. 25-01027, 2025 WL 2550522, at *3 (D.N.J. Sept. 4, 2025)
- *W. Am. Ins. Co. v. Boyarski*, No. 11-2139, 2012 WL 4755372, at *3 (M.D. Pa. Oct. 5, 2012)