

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

American European Insurance Co. v. Congregation Horei Besomim Stree and David Geldzahler

No. 23-CV-2443 (RER) (LKE) (E.D.N.Y. Dec. 16, 2025) · No. 23-CV-2443 (RER) (LKE) · Decided December 16, 2025

SUMMARY

This Report and Recommendation addresses Plaintiff American European Insurance Co.’s motion for default judgment in a declaratory-judgment action concerning its duty to defend or indemnify defendants in an underlying personal-injury lawsuit. The court concluded that service, jurisdiction, venue, and default requirements were satisfied, but the allegations did not establish coverage exclusion based on employee status. The court did find that the insurer established grounds relating to the Congregation’s alleged failure to cooperate, and it recommended granting the motion.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Lara K. Eshkenazi
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	December 16, 2025
DOCKET	23-CV-2443 (RER) (LKE)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for default judgment in a declaratory-judgment action seeking a declaration that it had no duty to defend or indemnify defendants in an underlying personal-injury action. The magistrate judge issued a report and recommendation recommending that the motion be granted.
STANDARD OF REVIEW	On a motion for default judgment, well-pleaded factual allegations concerning liability are accepted as true, but the court must determine whether those allegations establish liability as a matter of law. Entry of default judgment is discretionary and is evaluated with reference to willfulness, the existence of a meritorious defense, and prejudice.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

American European Insurance Co. v. Congregation Horei Besomim
Stree, David Geldzahler

TOPICS

default judgment

duty to defend

duty to indemnify

declaratory relief insurance

service of process

PRACTICE AREAS

insurance

civil procedure

contracts

declaratory judgment

QUESTIONS PRESENTED

1. Whether the court had subject matter jurisdiction based on complete diversity and an amount in controversy exceeding \$75,000.
2. Whether service of process on Geldzahler and the Congregation was sufficient to establish personal jurisdiction.
3. Whether venue was proper in the Eastern District of New York.
4. Whether defendants' defaults warranted entry of default judgment.
5. Whether the employee-liability exclusion established that AEIC had no duty to defend or indemnify defendants.
6. Whether the Congregation's failure to cooperate with AEIC's investigation constituted a material breach supporting denial of coverage.
7. Whether an actual controversy existed and the claim for declaratory relief was ripe.

HOLDINGS

1. The court had subject matter jurisdiction under 28 U.S.C. § 1332 because AEIC and defendants were citizens of different states and the potential insurance obligations exceeded \$75,000.
2. Service was sufficient to establish personal jurisdiction over both defendants.
3. Entry of default judgment was permissible because defendants willfully failed to appear, their failure to appear prevented assessment of a meritorious defense, and AEIC would be prejudiced without relief.
4. AEIC did not establish liability under the employee-liability exclusion because the allegations did not show that Geldzahler was injured while performing duties related to his employment or duties as a member of the clergy.
5. The Congregation's failure to cooperate with AEIC's coverage investigation warranted denial of coverage.
6. AEIC's request for a declaration concerning its duty to defend or indemnify was ripe because an underlying action was pending and there was a practical likelihood that AEIC's obligations would become material.

KEY QUOTATIONS

“To avoid the duty to defend, an insurer ‘must demonstrate that the allegations of an underlying complaint place that pleading solely and entirely within the exclusions of the policy and that the allegations are subject to no other interpretation.’” (Section IV.A)

“For an insurance carrier to “deny insurance coverage based upon lack of cooperation, an insurance carrier must demonstrate (1) that it acted diligently in seeking to bring about the insured’s cooperation, (2) that the efforts employed by the carrier were reasonably calculated to obtain the insured’s cooperation, and (3) that the attitude of the insured... was one of willful and avowed obstruction.”” (Section IV.B)

FACTUAL BACKGROUND

American European Insurance Co. issued a commercial general liability policy to Congregation Horei Besomim Stree for premises in Brooklyn. David Geldzahler, a rabbi who lived on the premises, was injured after falling through recently replaced flooring and later sued the Congregation in Kings County Supreme Court. AEIC initially assigned defense counsel but later denied coverage, asserting an employee-liability exclusion and lack of cooperation after the Congregation failed to provide information or permit a site investigation. Defendants did not appear in the federal declaratory-judgment action.

PROCEDURAL HISTORY

American European Insurance Co. filed the action on March 30, 2023. Defendants were served but failed to answer or otherwise appear, and the Clerk entered their default on July 13, 2023. Plaintiff then moved for default judgment, and District Judge Ramón E. Reyes, Jr. referred the motion to Magistrate Judge Lara K. Eshkenazi for a report and recommendation. The recommendation advised entry of declaratory judgment in plaintiff’s favor, subject to the parties’ right to object within fourteen days.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The report recommends that the district court enter judgment declaring that AEIC has no duty to defend or indemnify the Congregation or Geldzahler in the underlying action. Parties may file specific written objections within fourteen days of service.

CASES CITED

- Finkel v. Romanowicz, 577 F.3d 79, 84 (2d Cir. 2009)
- Sunvestment Energy Grp. NY 64 LLC v. Nat’l Grid USA Servs. Co., 116 F.4th 106, 113 (2d Cir. 2024)
- Bayerische Landesbank, N.Y. Branch v. Aladdin Cap. Mgmt. LLC, 692 F.3d 42, 48 (2d Cir. 2012)
- Madison Stock Transfer, Inc. v. Exlites Holdings Int’l, Inc., 368 F. Supp. 3d 460, 475 (E.D.N.Y. 2019)
- Wash. Nat’l Ins. Co. v. OBEX Grp. LLC, 958 F.3d 126, 131 (2d Cir. 2020)
- Am. Safety Cas. Ins. Co. v. 385 Onderdonk Ave., LLC, 124 F. Supp. 3d 237, 243 (E.D.N.Y. 2015)

- Windward Bora LLC v. Valencia, No. 19-cv-4147 (NGG) (RER), 2020 WL 6470293, at *2 (E.D.N.Y. Oct. 16, 2020)
- Microsoft Corp. v. Does 1-2, No. 20-cv-1217 (LDH) (RER), 2021 WL 4755518, at *4 (E.D.N.Y. May 28, 2021)
- Farquharson v. Barnes & Noble, Inc., No. 17-cv-300 (KAM) (CLP), 2018 WL 11486486, at *3 (E.D.N.Y. Mar. 5, 2018)
- Hamill v. Glad Tidings Tabernacle, Inc., No. 110070/10, 2014 N.Y. Misc. LEXIS 270, at *6 (N.Y. Sup. Ct. Jan. 2, 2014)
- Mortg. Elec. Registration Sys., Inc. v. Congregation Shoneh Halochos, 189 A.D.3d 820, 821-23 (N.Y. App. Div. 2020)
- DCH Auto Group (USA), Inc. v. Fit You Best Auto., Inc., No. 05-cv-2973 (NG) (JMA), 2007 WL 2693848, at *4 (E.D.N.Y. Sept. 12, 2007)
- Fashion Page, Ltd. v. Zurich Ins. Co., 50 N.Y.2d 265, 272 (N.Y. 1980)
- Cirillo v. United States of Am., Inc., 466 N.Y.S.2d 206, 210 (N.Y. Sup. Ct. 1983)
- Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95-96 (2d Cir. 1993)
- Farmers New Century Ins. Co. v. Peruggia, No. 18-cv-1965 (ADS) (SIL), 2020 WL 3964715, at *2 (E.D.N.Y. June 22, 2020)
- Santander Bank, N.A. v. Bison Expedite Inc., No. 23-cv-6233 (NRM) (ST), 2025 WL 1640545, at *2 (E.D.N.Y. Jan. 30, 2025)
- Bravado Intern. Grp. Merch. Servs., Inc. v. Ninna, Inc., 655 F. Supp. 2d 177, 186 (E.D.N.Y. 2009)
- Erwin DeMarino Trucking Co. v. Jackson, 838 F. Supp. 160, 162 (S.D.N.Y. 1993)
- Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992)
- Hop Hing Produces Inc. v. Lin Zhang Trading Co., Inc., No. 11-cv-3259 (NGG) (RLM), 2013 WL 3990761, at *3 (E.D.N.Y. Aug. 5, 2013)
- Shah v. New York State Dep't of Civ. Serv., 168 F.3d 610, 615 (2d Cir. 1999)
- Double Green Produce, Inc. v. Forum Supermarket Inc., No. 18-cv-2660 (MKB)(SJB), 2019 WL 1387538, at *2 (E.D.N.Y. Jan. 29, 2019)
- Sola Franchise Corp. v. Solo Salon Studios Inc., No. 14-cv-0946 (JS) (AKT), 2015 WL 1299259, at *6 (E.D.N.Y. Mar. 23, 2015)
- United States v. Myers, 236 F. Supp. 3d 702, 707-08 (E.D.N.Y. 2017)
- Frazer Exton Development, L.P. v. Kemper Environmental, Ltd., 153 F. App'x 31, 32 (2d Cir. 2005)
- Am. Eur. Ins. Co. v. Tri State Plumbing & Heating Inc., No. 21-cv-725 (MKB) (PK), 2022 U.S. Dist. LEXIS 167154, at *10-14 (E.D.N.Y. Sept. 15, 2022)
- Pine Mgmt. v. Colony Ins. Co., No. 23-624-cv, 2024 U.S. App. LEXIS 7110, at *4 (2d Cir. Mar. 26, 2024)
- Int'l Bus. Machines Corp. v. Liberty Mut. Ins. Co., 363 F.3d 137, 144 (2d Cir. 2004)
- CGS Indus., Inc. v. Charter Oak Fire Ins. Co., 720 F.3d 71, 77 (2d Cir. 2013)
- Norguard Ins. Co. v. Lopez, No. 15-cv-5032 (DRH) (AYS), 2017 U.S. Dist. LEXIS 9798, at *42-43 (E.D.N.Y. Jan. 24, 2017)

- Park v. Sancia Healthcare Inc., No. 17-cv-00720, 2020 U.S. Dist. LEXIS 109676, at *12-13 (S.D.N.Y. June 23, 2020)
- SCW West LLC v. Westport Ins. Corp., 856 F. Supp. 2d 514, 522-23 (E.D.N.Y. 2012)
- Empire Fire & Marine Ins. Co. v. Velasquez, No. 17-cv-2556 (CBA) (ST), 2018 WL 4346716, at *3 (E.D.N.Y. Aug. 10, 2018)
- Roc Nation LLC v. HCC Int'l Ins. Co., 523 F. Supp. 3d 539, 555 (S.D.N.Y. 2021)
- Empire Fire & Marine Ins. Co. v. Estrella, No. 18-CV-3422 (KAM) (PK), 2019 U.S. Dist. LEXIS 160134, at *17 (E.D.N.Y. Sept. 13, 2019)
- Rosenthal v. Prudential Prop. & Cas. Co., 928 F.2d 493, 494-95 (2d Cir. 1991)
- Golden v. Zwickler, 394 U.S. 103, 108 (1969)
- Associated Indem. Corp. v. Fairchild Indus., Inc., 961 F.2d 32, 35 (2d Cir. 1992)
- United States Underwriters Ins. Co. v. Image By J & K, LLC, 335 F. Supp. 3d 321, 345-46 & n.17 (E.D.N.Y. 2018)
- Falls Lake Nat'l Ins. Co. v. BNH Const. (NY) Inc., No. 24-cv-4244 (RPK) (JPM), 2025 WL 925826, at *9 (E.D.N.Y. Mar. 27, 2025)
- Miller v. Brightstar Asia, Ltd., 43 F.4th 112, 120 (2d Cir. 2022)

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