At an IAS Term, Part 18 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 25th day of January, 2005

PRESENT:

HON. BERNADETTE BAYNE,

Justice.

- X

TRATAROS CONSTRUCTION, INC., Index No. 33226/01

Plaintiff,

against -

AIU INSURANCE COMPANY, ET AL.,

Defendants.

The following papers numbered 1 to 12 read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause! Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-3 5-6 8-9
Opposing Affidavits (Affirmations)	10
Reply Affidavits (Affirmations)	4 7 11=12
Affidavit (Affirmation)	
Other Pa	

Upon the foregoing papers in this declaratory judgment action brought by plaintiff Trataros Construction, Inca (plaintiff), defendant Commercial Underwriters Insurance Company (CUIC) moves for summary judgment dismissing all claims as against it. Defendants AIU Insurance Company (AIU), Illinois National Insurance Company (Illinois National), and AIG Claim Service, Inc. (AIG) cross-move for summary judgment dismissing plaintiffs complaint tiled <t31 cross claim as tgt:inst them and, pursuant to CPLR 001

declaring that they do not owe a duty to defend or indemnify plaintiff for the amounts demander' in the complaint. Plaintiff cross-moves for summary judgment in its favor as against CUIC, AIU, and Illinois National based upon. these defendants' alleged failure to timely disclaim or, in the alternative, for an order striking those affirmative defenses raised by CUIC in this action which were not set forth in its notice of disclaimer.

On July 3, 1993, plaintiff, as the general contractor, entered into a written contract with the New York City School Construction Authority (the SCA) for the construction of a four-stoy school, known as P.S. 24 n Brooklyn, New York . The construction of P.S. 24 required, among other things, a facade ofpredominantly reddish brown scored face brick with columns and windows spandrels with whitish glazed block (the masonry work). Pursuant to the contract, plaintiff was to perform the construction of P.S. 24, including the masonry work, in exchange for the payment of approximately $19,000,000, for which plaintiff obtained a performance bond. Thereafter, plaintiff entered into a subcontract with Commercial Brick Corporation (Commercial Brick), under which Commercial Brick was to perform the exterior masonry work at P.S. 24.

Pursuant to its contract with the SCA, plaintiff was required to partake in a wrap-up insurance program, whereby the SCA paid for general liability coverage on which plaintiff was named as an additional insured. Such coverage was procured by wrap-up policies issued by AIU (the AIU policy) and Illinois National (the Illinois National policy). In addition, plaintiff also procured its own general liability coverage through a commercial general liability insurance policy issued by CUIC (the CUIC policy).

All of these policies contained Section IV - Commercial General Liability Conditions (2), which required that the insurer be "notified as soon as practicable of an `occurrence' . which may result in a claim," and that the insurer receive written notice of [a] claim [made] or `suitas soon as practicable. All of the policies further provided in Section IV (2) (d) that [n]o insured[ ] will, except at [that insured s] own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without [the insurer's] consent."

In the Section V- Definitions section of all of these policies, the term occurrence was defir.°d, in paragraph 12, as an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Section V, in paragraph 15, also defined "property damage" as "[p]hysical injury to tangible property, including all resulting loss of use of that property," and "[1]oss of use of tangible propertythat is not physically injured.

Boththe AIU.pol icy' and the Illinois National policy also. contained Exclusions'(j)(5) and (j) (5), which excluded, respectively, coverage forproperty damage to ' [t]hat particular part of re€1 property on which you or any contractors or . subcontractors working directly or. indirectly on your behalf are performing operations, if the `property damage' arises out of these operations," and to "[t]hat particular part of any property that must be restored, repaired or replaced because `your work' was incorrectly performed on it."

In addition, these policies and the CUIC policy. contained Exclusion (n), which excluded coverage for "[d]amages claimed for any loss, cost orexpense incurred by [the insured] or others for the ... repair, replacement, adjustment, [or] removal of ... `[y]our

work' .i] mpaired property' if such ... work, or property'is recalled from . use by any person ... because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Plaintiff and Commercial Brick performed the work at P.S. 24 pursuant to the contract and subcontract from March 4, 1994 until approximately June 1999. By letter dated August 9 2000 the SCA informed plaintiff that it had discovered a defective condition in the masoi ry work performed in the construction of P.S. 24 and that plaintiff should advise its surety of this matter. By letter dated September 6, 2000, entitled "P.S. 24 Claim, plaintiff wrote to its insurance broker, Steven Klein (Klein) of The Allied Group of CompanitS (Allied), enclosing a copy of the August 9,2000 letter from the SCA, and stating that such letter was "regarding a possible claim on P.S. 24 regarding defective brick." On October 9, 2000; the SCA issued a scope report," estimating the cost to perform corrective work to repair the defective masonry to be $3,939,093. Thereafter, in December 2000, the SCA and.'plaintiff began negotiatinga possible resolution concerning the..defectivemasonry work.

On December 26, 2000, the SCA faxed a letter to plaintiff, stating that the SCA had officially decided to take down the masonry wall at P.S 24 It advised plaintiff that it had until 5:00 P.M. on December 28, 2000 to agree to perform the remedial work On December 26, 2000, plaintiff sent a letter to the SCA's insurance broker, Ted Xenakis (Xenakis) of Willis Corroon Construction, Inc., informing him of the SCA's claim and requesting Xenakis to place tae wrap-up insurers on notice. By letter dated December 28, 2000, plaintiff

confirmed to the SCA that it and the SCA had reached an agreement, whereby plaintiff would perform all the necessary work to correct the defective masonry work. Klein, by letter dated January 2, 2001 advised plaintiff *that* he would be placing the non-wrap-up carriers on notice.

By letter dated January 3, 2001, Xenakis notified AIU, Illinois National, and AIG of the SCA's claim *against* plaintiff. On January 2001, n accordance with the earlier settlemen reached with the SCA in the December 28, 2000 letter, plaintiff and the SCA entered into a formal agreement. The agreement provided that the SCA had discovered certain defective conditions in the construction of an exterior wall; that plaintiff, pursuant to its obligations under the contract, desired to correct *all defective* conditions that may exist in the wal , and that plaintiff would perform the remedial masonry work. It further stated that "[t]he Work shall be performed without prejudice to either Party hereto and with a complete reservation of the rights of each Party to pursue any and all claims either may have against the other rinsing out of the performance of the Contract, the Work or this Agreement." On the same date the agreement was executed, the SCA issued a notice to proceed letter to plaintiff, permitting it to commence the necessary work to correct the defective masonry work.

On February 2001, Allied notified CUIC of the SCA's claim against plaintiff. By letter dated February 9, 2001, CUIC acknowledged receipt of plaintiff's notice of claim and stated that it was unable to make a coverage decision because of the limited information provided, and requested information from plaintiff to assist it in its investigation. CUIC

reserved : is right to disclaim coverage based upon the insuring agreement, setting forth the definition of "occurrence" and "property damage contained in Section V of the policy and relevant exclusions, including Exclusion (n). It also stated that plaintiff should "not interpret any actioais taken by CUIC as a waiver of any rights or obligations of ... CUIC .. under the CUIC policy or under law," and that it "expressly reserved] its right to assert . . . any and all other policy and legal defenses available to it."

By letter dated March 22, 2001, plaintiff purportedly advised CUIC that remedial work was to begin at P;S. 24 four days later, onMarch 26, 2001. A letter dated the same date to Daynard & Van Thunen (Daynard), the claims adjuster for AIU and Illinois National, advised it that demolition work would begin at P.S 24 on March 26, 2001 at 6:00 P.M. By letter dat,td March 23, 2001 CUIC stated that in addition to the rights reserved in its February 9, 2001 letter, it also specifically reserved its rights under the Conditions ' section of the CUIC policy, which obligated plaintiff to notify it as soon as practicable of a claim, and CUIC asked plaintiff to account for its delay in providing it with notice.

Ors March 262001, remedial work at P.S. 24 began. On April 10, 2001, AIU and Illinois National disclaimed coverage to plaintiff The letter stated that the basis for such disclaimer was that: plaintiff breached the late notice of occurrence and claim provisions of the policies by delaying notice for about five months from August 9, 2000, when plaintiff was notified by the SCA of the claim; that the January 2001 agreement violated the "voluntary payments provision of the policies since plaintiff voluntarily assumed an obligation without the knowledge or consent of AIU or Illinois National; that there was no

coverage under the policies because there was no "occurrence" within the meaning of such policies; ind that the policies were not intended to insure against faulty workmanship in the work itsef.

By letter dated July 10, 2001, CUIC disclaimed coverage to plaintiff under the CUIC policy based upon plaintiff's failure to timely notify CUIC of the subject occurrence in violation of Section IV - Commercial General Liability Conditions (2). It noted that this "d[idj not necessarily represent an all-encompassing explanation as to its coverage position," and "expressly reserve[dJ the right to assert, if necessary, any and all other policy and legal defenses available to

Or. September 1 1 2001, plaintiff brought this action against AIU, Illinois National, AIG, and CUIC, seeking a declaratory judgment that AIU, Illinois National, and CUIC are obligated ?o provide it with insurance coverage, including defense and indemnification, under the respective insurance policies issued by them, with respect to the claims by the SCA arising out of the work performed pursuant to plaintiffs contract with the SCA. Plaintiffs complaint with respect to AIG only alleges that AIG was an authorized claims representative of AIU and Illinois National, but no cause of action or claim for relief is asserted as against it therein.

Plaintiff, in support of its cross motion for summary judgment in its favor as against AIU and Llinois National; asserts that since ATU and Illinois National received notice of its claim on January 3, 2001 and did not disclaim coverage until over three months later, by their letter dated April 10, 2001, they failed to timely disclaim coverage. Plaintiff argues that this

delay in disclaiming coverage was unreasonable as a matter of law, rendering the disclaimer by them ineffective, and requiring them to defend and indemnify it under the insurance policies issued by them. Plaintiff similarly argues that since CUIC received notice of its claim on F ebruary 8, 2001 and did not disclaim coverage until almost five months later, by its letter of July 0, 2001, CUIC' delay_in disclaiming coverage was also unreasonable as a matter of law, rendering its disclaimer ineffective, and requiring it to defend and indemnify it under the insurance policy issued by t

Plaintiff's arguments are rejected. Insurance L 3420 (d), the statute which requires that written notice of disclaimer of liability or coverage be given as soon as is reasonably possible to the insured, only *applies* to insurance policies involving tort liability to an *injured* third party and does not apply where the underlying claim does not involve death or bodily injury *(Scappatura v Allstate Ins. Co.. 6* AD3d 692, 692 [2004]; *Iafallo v Nationwide Mu'. Fire Ins.* Co., 299 AD2d 925,926 [2002]; *Fairmont Funding Ltd. v Utica Hut. Ins. Co. 264* AD2d 581, 581 [1999]; *Interested Underwriters at Lloyd's Assocs.*, 213 AD2d 246,247 [1995]; *Incorporated Village ofPleasantville v Calvert Ins. Co., 204 AD2d 689, 690* [1994]; *Kamyr, Inc. v St. Paul Surplus Lines Ins.* Co.,152 AD2d 62, 67 [19891). No comparable notice requirement exists for actions involving property insurance policies *(Interested Underwriters at Lloyd's,* 213 AD2d at 247);

Titus, since Insurance Law § 3420 (d) is inapplicable to the property insurance policies ' issue, the common-law rule applies under which even if the insurer's delay in disclaimirg coverage is unreasonable, this will not stop the insurer from asserting its

coverage defenses unless the insured can *show* that it was prejudiced as a result of the *insurer's delay (Incorporated Village of Pleasantville, 204 AD2d at 690; Kamyr, Inc., 152* AD2d at 67).

Plaintiff argues that it was grossly prejudiced by the three-month delay by AIU and Illinois N.itional from the time they received notice of its claim on January 3 2001 and their notice of disclaimer on April 10, 2001 n support of this argument, plaintiff claims that these defendants were *aware* that remediation work was scheduled *to* begin by it n March 2001, but they,elected to wait until *such* work began before disclaiming coverage. It claims that such conduct was egregious and prejudiced its rights.

In response, AIU and Illinois National assert that they acknowledged plaintiffs claim in aletter dated January 12, 2001 and assigned their claims adjuster, Daynard, *to* investigate the claim, and that, *by* letter dated February 7, 2001, Daynard wrote to plaintiff and to the SCA, requesting certain documentation *in* order to properly investigate plaintiff's claim. AIU and Illinois National point out that, *in* response, plaintiff, *by* the letter dated March 22, 2001 to Daynard, advised it that its remedial work *would* begin *on* March 26, 2001, but that they did not receive the requested documentation from the SCA until March 26, 2001, the day the remediation work was to begin, and that they did not receive such requested documentation from plaintiff until April 10, 2001, after the remedial work already had commenced. Plaintiff asserts, however, that there were two meetings on January 23, and 29, 2001, :t which Daynard met with it and the SCA, and that Daynard was, therefore, aware of the existence of the remediation agreement. It relies upon these meetings, claiming that

AIU and Illinois National were aware of the remediation work and that they did not need any of the requested documentation.

Plaintiff's reliance upon these January 23, and 29, 2001 meetings is misplaced and its contention that it suffered prejudice by the delay by AIU or Illinois National in disclaiming coverage until after remediation work had commenced by it, is devoid o merit. As discussed above, plaintiff had already agreed with the SCA that it would perform the necessary remedial work to correct the defective masonry conditions on December 28,2000, seven days before AIU or Illinois National were advised of plaintiff's claim, and plaintiff had entered into the formal remediation agreement on January 8, 2001, prior to these meetings. Thus, plaintiff cannot show any change in position by it or any reliance by it upon any lack of action by AIU or Illinois National in disclaiming coverage *(see William Crawford, Inc. v Travelers Ins. Co.,* 838 F Supp 157, 160 [SD NY 1993], *affd 23* F3d 663 [2d Cir 1994], *Scappatura,* 6 AD3d at *692; Smith v General Accident Ins Co.*, 295 AD2d 738, 740 [2002]; *Fairmont Funding, Ltd.,* 264 AD2d at 582).

Plaintiff further argues that it was prejudiced due to defendants' delay in disclaiming coverage because if it had been made aware, prior to the commencement of the remedial work, that it was being denied insurance coverage from defendants, it would have changed its position and vitiated the January 8, 2001 agreement pursuant to the reservation of rights clause contained therein. Such argument is rejected. The reservation of rights clause contained within the January 2001 agreement only concerned rights reserved between plaintiff and the SCA with respect to pursuing future claims either may have against the other

arising out of the performance of the contract. It specifically lists, as among the items so reserved =)y the SCA the SCA's claims against plaintiff for soft costs," and it notes the SCA's assignment to plaintiff of any rights and claims it may have to money damages as against E 73ASCO/Statewide (EBASCO), the construction manager on the project. It did not grant pla'-itiff the right to repudiate the agreement to perform the remedial work in the event of a disclaimer as to its insurance coverage.

Plaintiff's argument that it was also prejudiced because of the relationship between AIU and Illinois National and the SCA because AIU and Illinois National were wrap-up insurers paid by the SCA and, therefore, had a conflict of interest with it, is also rejected. Plaintiff l :as not shown how it was prejudiced by this relationship and, in any event, as discussed below, this is irrelevant to the issue of whether the policies provided insurance coverage o plaintiff Thus, inasmuch as plaintiff has failed to make any showing that it was prejudiced by the delay by AIU and Illinois National in disclaiming liability, they are not estopped from making such a disclaimer *(see Scappatura,* 6 AD3d at 692; *Smith,* 295 AD2d at 740; *Fairmont Funding, Ltd.,* 264 AD2d at 581-582).

Plaintiff, in support of its cross motion with respect to CUIC, similarly argues that the five-mont.t delay by CUIC from the time CUIC received notice of its claim on February S, 2001 and its notice of disclaimer on July 10,2001 prejudiced It. It bases such claim of prejudice upon the ground that CUIC was in possession of the August 9, 2000 letter regarding the SCR's claims against it by February 2001, but allowed it to commence the performance of the remediation work prior to its disclaimer.

Plaintiff's argument that CUIC delay in disclaiming coverage prejudiced it, is without merit. As noted above, plaintiff's first notice to CUIC was February 8, 2001, one month aft plaintiff had already executed the January 8, 2001 agreement with the SCA *(see William Crawford, Inc., 838 F* Supp at 160). The February 8, 2001 notice to CUIC did not advise CUIC of such agreement. As discussed above, CUIC, by letter dated February 9, 2001, stated that it was unable to make a coverage decision because of the limited information provided, and expressly reserved its right to *disclaim* coverage based upon the insuring agreement, and stated that CUIC should not interpret any actions taken by [it] as waiver of any [of its] rights or obligations." CUIC also further reserved its rights by its letter dated March 23, 2001. Thus, since CUIC specifically reserved its rights, plaintiff cannot show any material change in position or reliance by it to its detriment based upon CUIC's d-lay in disclaiming coverage or, consequently, any prejudice caused by such delay *(see William Crawford, Inc838 F* Supp at 160; *Albert J. Schiff Assocs v Flack, 51 NY2d* 692,699 *[1980]; Levin v G T.J. Co.,* 306 AD2d 385, 386 [2003]; *CGUIns. v Guadagno, 280* AD2d 509 510 [2001j; *Smith,* 295 AD2d at *740; Fairmont Funding, Ltd.,* 264 AD2d *at* 582).

Furthermore AIU, Illinois National, and CUIC were also not required to give timely notice of disclaimer or denial of coverage for the further reason that no coverage existed under the policies at issue *(see Bonded Concrete v Transcontinental Ins. Co., 12* AD3d 761, 761 [2004]; *Iafallo, 299* AD2d at 927 *CGU Ins 280* AD2d at 510). A disclaimer is not required when the policy does not cover the incident giving rise to the liability; a failure to disclaim coverage cannot create coverage where none existed *(see Matter of Worcester Ins.*

Co. v Bettenhauser, 95 NY2d 185, 188 [2000]; *National Union Fire Ins. Co. ofPittsburgh, Pa. v Utica First Ins.* Co., 6 AD3d 681, 682 [2004]; *Jasper Corp./ Celotex Corp. v Dunikowski,* 229 AD2d 424, 426 [19961);

As previously discussed, the insurance policies at issue provided coverage *only* for liability a°ismg out of an "occurrence," which, *as* noted above, was defined as an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Plaintiff argues that its claims should be covered under the subject policies because its remedial work to P.S. 24 was not intended by it as it did not intend to build a structure which required remedial/corrective work, and, consequently, its claim for the expenses incurred by It was based upon an "accident" within the definition of "occurrence as set forte in the policies.

Pleintiff's argument is rejected. It is well settled that "the issuer of a commercial general h ibility insurance policy is not a surety for a construction contractor's defective work product" *(Bonded Concrete,_ 12* AD3d at 761; *see also George A. Fuller Co. v United States Fi[g]. & Guar. Co., 200 AD2d* 255, 260 [1994]). "[T]he `purpose of a commercial liability policy. into provide coverage for tort liability for physical damage to others and not for contractual liability of the insured for economic loss because the product ... is not what the damaged [party] bargained *for (Bonded Concrete,* 12 AD3d *at* 761, quoting *Hartford Accident & Indemnity Co. v A.P. Reale &: Sons,* 228 AD2d 935, 936 [1996]). Such a policy does not insure against faulty workmanship in the work product itself and is not ntended to provide contractual indemnification for economic loss to a contracting party

because the work product contracted for is defectively produced" *(George A. Fuller Co.,* 200 AD2d at 259)

Here, the gist of the claim asserted by the SCA against plaintiff was that plaintiff provided an allegedly defective product, and the costs for which plaintiff seeks coverage are for the remediation work required to correct the defects, not damage to property other than the completed work itself *(see Bonded Concrete, 12* AD3d at 761; *Baker Residential Ltd. Partnership v Travelers Ins Co.,* 10 AD3d 586, 587 *[2004])* Thus, the SCA's claim against plaintiff was essentially one for breach of contract, which is not to be equated with an `accident" under the definition of an "occurrence" *(see Pavarini Constr. Co. v Continental Ins. Co.,* 304 AD2d 501, 502 [2003]). Indeed, the remedial work for which plaintiff seeks coverage Irises out of "a classic faulty workmanship/construction contract dispute" which cannot constitute an "occurrence ˙ as there was no damage to property distinct from plaintiff's own work product *(Baker Residential Ltd. Partnership,* l0 AD3d at 587).

Plaintiff additionally argues that it is possible that the defects in the construction of PS. 24 could have been caused, impart, by the negligence and/or breach of contract by the SCA, or its construction manager, EBASCO, and/or the SCR's architect. It claims that it did not have the authority over the SCA's design decisions concerning the type of block that was used, and that EBASCO and/or the SCA's architect should have discovered the defects sooner through inspections. This argument by plaintiff, however, only relates to possible breach of contract claims plaintiff may have against these parties, and is irrelevant to the issue of insurance coverage. Plaintiff's claim as against the insurers seeks reimbursement

of the expenses it incurred in performing remedial work due to defective workmanship. Regardless of the underlying cause of the defective work and the issue of whether plaintiff's damages were partially caused by the SCA, EBASCO, or the SCA's architect, plaintiff's claim cannot be transformed from one based upon defective workmanship to a covered `occurren ue as defined in the policies.

Consequently inasmuch as the remedial *work* performed by plaintiff to correct the defective condition of the masonry work cannot constitute an "occurrence" as defined in the policies, plaintiffs claims as against AIU, Illinois National, and CUIC do not fall within the coverage of the subject policies *(see Bonded Concrete,* 12 AD3d at *761; Baker Residential Ltd. Partnership,* 10 AD3d at 586-587; *Pavarini Constr.* Co., 304 AD2d at 502; *Iafallo, 299* AD2d at 927; *George A. Fuller Co.,* 200 AD2d at 259). "Indeed `requiring payment of a claim up(n failure to timely disclaim would create coverage where it never existed *(Bonded Concrete, 12* AD3d at 761 quoting *Matter of Worcesterins. Co.,* 95 NY2d at 188).;

Th'refore, since the *policies* at issue did not provide coverage for plaintiff's claims, plaintiff s cross motion, insofar as it seeks summary judgment *in* its favor as against CUIC, AIU, and Illinois National, must *be* denied, and the motion by CUIC and the cross motion by AIU and Illinois National for summary judgment *must* be granted. In view of this determinuion, it is unnecessary to *reach* the issues of whether plaintiff was not entitled to coverage under the subject policies based upon the additional grounds of plaintiffs failure to give timely notice to defendants of the SCA'sclaim against it, plaintiff's entry into the

remediation agreement without defendants' consent Exclusion (n) of the policies, and Exclusions (j) (5) and (6) of the AIU policy and Illinois National policy.

It is noted, in passing, however, that with respect to AIU and Illinois National; even if the clai t=is asserted in plaintiffs complaint were otherwise covered, they would plainly fall within Ex;fusions (j) (5) and (6) ofthe AIU policy and Illinois National policy, which except from coverage property damage to the insured's work arising out of such work, and damage to the pro; crty being worked on due to faulty workmanship and the cost of correcting such work *(see Pavarini Constr. Co.*. 304 AD2d at 501- 502; *Basil Dev*. *Corp. v General Accident Ins. Co.,* 229 AD2d 640, 641 [1996], *affd* 89 NY2d 1057 [1997]; *Poulos v United States Fidelity & Guaranty Co., 227 AD2d 539,* 540-541 [1996]; *Brawdy v National Grange Mut. Ins. Co., 207 AD2d* 1019, 1020 *[1994] George A*. *Fuller Co., 200 AD2d* at *260). As* discussed above, AIU and Illinois National would not be estopped from relying upon these exclusions due to their failure to timely disclaim since Insurance Law § 3420 (d) does not apply and no prejudice to plaintiff has been shown *(see George A . Fuller Co., 200 AD2d* at 261).

With regard to the cross motion by AIU, Illinois National, and AIG, as concerns AIG, since AIG, as a claims administrator, did not issue any contract of insurance, and since no cause of action is asserted as against it and plaintiff does not oppose the cross motion insofar as it seeks summary judgment dismissing its claims as against AIG, the granting of the cross motion in this respect is warranted.

Plaintiffs cross motion, in the alternative, seeks an order striking those affirmative defenses raised by CUIC in this action which were not set forth n its July 10, 2001 notice of disclaimer. Plaintiff argues that an insurer is deemed to waive any grounds for disclaiming coverage which are not specifically set forth in its notice of disclaimer. Plaintiff contends that therefore, since CUIC 's July 10, 2001 notice of disclaimer only specifically mentioned its failure to timely notify it of the subject occurrence as the ground for disclaimer, CUIC, due to its lack of specificity as to any other grounds upon which the disclaimer was predicated, is precluded from asserting any of the other grounds for disclaimer of coverage which it has now asserted in its affirmative defenses to this action.

PIF ntiff's contention is devoid of merit. Since this action "involves a property insurance laim, it is not controlled by the high degree of specificity required by Insurance Law § 3420 (d) for a disclaimer of liability for death or bodily injury " *(Smith, 295* AD2d at 739-740). In any event, CUIC was not required to give timely or specific notice of disclaimer or denial of coverage with respect to its defense that there was no "occurrence" for the further reason that (as discussed above) no coverage existed under the policy *(see Bonded Concrete,* 12 AD3d at *761;Iafallo,* 299 AD2d at 927). Thus, plaintiff's alternative cross motion must be denied.

Accordingly, CUIC's motion and the cross motion by AIU, Illinois National, and AIG for summary judgment are granted and it is declared that CUIC, AIU, and Illinois National do not owe a *duty* to defend or indemnify plaintiff for the amounts demanded in the complaint. Plaintiff's cross motion for summary judgment in its favor as against CUIC, AIU,

and Illinois National,, and its alternative cross motion as against CUIC, are denied in all respects.

This constitutes the decision, order, and judgment of the court.

ENTER,