

**MT. HAWLEY INSURANCE COMPANY, Plaintiff, -against- ABRAHAM LITTLE  
NECK DEVELOPMENT GROUP, INC., and GILBERTO DIAZ, Defendants.**

**09 CV 3463 (PKC) (ARL)**

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW  
YORK**

*2015 U.S. Dist. LEXIS 24435*

**February 27, 2015, Decided**

**February 27, 2015, Filed**

**PRIOR HISTORY:** *Mt. Hawley Ins. Co. v. Abraham Little Neck Dev. Group, Inc.*, 2015 U.S. Dist. LEXIS 24979 (E.D.N.Y., Jan. 29, 2015)

**COUNSEL:** [\*1] For Mt. Hawley Insurance Company, Plaintiff: Elsa Johanna Schmidt, Timothy E. Delahunt, Kenney Shelton Liptak Nowak LLP, Buffalo, NY.

For Abraham Little Neck Development Group, Inc., Defendant: Tal Hirshberg, Kirschenbaum & Kirschenbaum, Garden City, NY.

For Gilberto Diaz, Defendant: Jeffrey B. Gold, Gold Benes LLP, Bellmore, NY; Melissa Beth Levine, Gold, Stewart, Kravatz, Benes & Stone, LLP, Westbury, NY; Steven D. Gacovino, Gacovino, Lake & Associates, P.C., Sayville, NY.

**JUDGES:** PAMELA K. CHEN, United States District Judge.

**OPINION BY:** PAMELA K. CHEN

**OPINION**

**ORDER ADOPTING REPORT REPORT AND RECOMMENDATION**

PAMELA K. CHEN, United States District Court Judge:

Plaintiff Mt. Hawley Insurance Company ("Mt. Hawley") commenced this action against the above-captioned Defendants seeking a declaratory judgment regarding coverage under an insurance policy issued by Mt. Hawley to Defendant Abraham Little Neck Development Group, Inc. ("Abraham Little Neck") for alleged injuries sustained by Defendant Gilberto Diaz ("Diaz") during an accident on September 22, 2008. Previously, the Honorable Arthur D. Spatt awarded summary judgment to Mt. Hawley with respect to Abraham Little

Neck, finding that Mt. Hawley had no obligation to "cover, [\*2] defend, or indemnify Abraham Little Neck with respect to the September 22, 2008 accident[.]" *Mt. Hawley Ins. Co. v. Abraham Little Neck Dev. Grp., Inc.*, 825 F. Supp2d 384, 395 (E.D.N.Y. 2011). Judge Spatt, however, denied, without prejudice, Mt. Hawley's motion for summary judgment as to Diaz because the parties' submissions did not adequately address the issue of whether Diaz had provided adequate notice to Mt. Hawley. (*Id.* at 396-97.) After the parties conducted additional discovery, Mt. Hawley renewed its motion for summary judgment as to Diaz. That motion was referred to the Honorable Arlene R. Lindsay.

On January 29, 2015, Judge Lindsay issued a Report and Recommendation in which she recommended that Mt. Hawley's motion be granted. (Dkt. 49.) An amended version of the Report and Recommendation, correcting a typographical error, was filed on February 3, 2015. (Dkt. 49.)<sup>1</sup> As of this date, no objections have been filed with respect to the Report and Recommendation, and the time for doing so has passed. *See Fed.R.Civ.P. 72(b)(2)* (providing for the filing of objections within 14 days of a party being served with the recommended disposition).

1 The parties received notice via the Court's Electronic Filing System, on February 3, 2015, that "Main Document 49 [was] replaced to correct typographical errors on 2/3/2105." [\*3] (Dkt. 49.)

The Court has reviewed and adopts in its entirety Judge Lindsay's Report and Recommendation. The Court finds that the thorough and well-reasoned Report and Recommendation is not "clearly erroneous." *See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b); Prioleau v. Caserta*, 10-CV-5670 (SJF), 2012 U.S. Dist. LEXIS 161513, 2012 WL 5389931 (E.D.N.Y. Oct. 29, 2012), at \*1 ("To accept the report and recommendation of a magistrate judge on a dispositive matter as to which no timely objection has been made, the district judge need

only be satisfied that there is no clear error on the face of the record.") (citing, *inter alia*, *Johnson v. Goord*, 487 F. Supp. 2d 377, 379 (S.D.N.Y. 2007)); *Baptichon v. Nevada State Bank*, 304 F.Supp.2d 451, 453 (E.D.N.Y. 2004) (reviewing dispositive Report and Recommendation for "clear error" where no objections made).

#### CONCLUSION

For the reasons set forth in the Report and Recommendation, Mt. Hawley's motion is granted. The Court hereby declares that Mt. Hawley has no obligation to cover or indemnify Diaz in connection with the action entitled *Gilberto Diaz v. Abraham Little Neck Development Group Inc., Steven Cortese, and Donna Cortese*

(New York Sup. Ct. Suffolk Co., Index No. 704/2009) or the September 22, 2008 accident alleged therein. The Clerk of the Court is respectfully directed to terminate this matter. The parties shall each bear their own fees and costs. [\*4]

SO ORDERED:

/s/ Pamela K. Chen

PAMELA K. CHEN

United States District Judge

Dated: February 27, 2015

Brooklyn, New York