

American Home Assur. Co. v Port Auth. of N.Y. & N.J.

2014 NY Slip Op 09044

Decided on December 30, 2014

Appellate Division, First Department

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publication in the Official Reports.

Decided on December 30, 2014

Sweeny, J.P., Andrias, Saxe, DeGrasse, Gische, JJ.

13853N 651096/12

[*1] American Home Assurance Company, Plaintiff-Appellant,**v****The Port Authority of New York and New Jersey, Defendant-
Respondent, Alcoa, Inc., et al., Defendants.**

Simpson Thacher & Barlett LLP, New York (Michael J. Garvey
of counsel), for appellant.

Anderson Kill P.C., New York (Robert M. Horkovich of

counsel), for respondent.

Order, Supreme Court, New York County (Eileen Bransten, J.), entered on or about June 4, 2014, which granted defendant The Port Authority of New York and New Jersey's (defendant) motion for attorneys' fees, unanimously affirmed, without costs.

"An insured who is cast in a defensive posture by the legal steps an insurer takes in an effort to free itself from its policy obligations, and who prevails on the merits, may recover attorneys' fees incurred in defending against the insurer's action" ([*U.S. Underwriters Ins. Co. v City Club Hotel, LLC*, 3 NY3d 592](#), 597-598 [2004] [internal quotation marks omitted]). Here, the motion court correctly determined that defendant is entitled to the legal fees incurred in connection with its prior successful motion for summary judgment on its counterclaim for declaratory relief. Defendant's counterclaim is a mirror image of the declaratory claim asserted against it by plaintiff, its insurer. Accordingly, the counterclaim did not cast plaintiff in a defensive posture (*compare West 56th St. Assoc. v Greater N.Y. Mut. Ins. Co.*, 250 AD2d 109, 114 [1st Dept 1998] [successful insureds in a declaratory judgment action were not entitled to attorneys' fees and costs since the insurer's counterclaim was "redundant and mere surplusage" and did not "cast [the insureds] in a defensive posture"]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT.

ENTERED: DECEMBER 30, 2014

CLERK

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