UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CERTAIN UNDERWRITERS AT LLOYD'S named individually herein; AXA GLOBAL RISKS UK LTD.; COPENHAGEN REINSURANCE COMPANY LTD.; GREAT LAKES REINSURANCE (UK) PLC; HOUSTON CASUALTY COMPANY; QBE INTERNATIONAL INSURANCE LTD.; SIRIUS INTERNATIONAL INSURANCE CORPORATION; WÜRTTEMBERGISCHE VERSICHERUNG AG; ZURICH SPECIALITIES LONDON LTD; and ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, Plaintiffs, v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, Defendant and Counterclaim Plaintiff, v. ACE AMERICAN INSURANCE CO., et al., Additional Counterclaim Defendants.	05 CV 5239 (BSJ) **ORDER**
SR INTERNATIONAL BUSINESS INSURANCE CO. LTD., Plaintiff, v. THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, Defendant.	05 CV 8305 (BSJ) (CONSOLIDATED)

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

The motions for partial summary judgment presently before

this Court ask the Court to decide the meaning of "Exclusion f" as set forth in the policy form submitted to those insurers providing coverage for the Port Authority of New York and New Jersey's (the "Port Authority") real and personal property against risks of physical loss or damage and related loss of revenue (the "Port Authority Insurance"). Specifically, the parties seek a declaration as to whether the Port Authority Insurance, which incepted on June 1, 2001, provided coverage for certain properties at the World Trade Center ("WTC") when it was attacked and destroyed on September 11, 2001. The specific WTC properties at issue in this litigation are those that were leased by the Port Authority on July 16, 2001 to various entities[1] pursuant to 99-year net leases (the "Net Lease Property").

The various Plaintiff and additional Counterclaim Defendant insurers in these consolidated actions have moved for partial summary judgment[2] on the issue of the interpretation of Exclusion

1 As described in further detail below, properties commonly known as 1 World Trade Center, 2 World Trade Center, 3 World Trade Center, 4 World Trade Center, and 5 World Trade Center, along with appurtenant underground space, were leased to real estate developer Larry Silverstein ("Silverstein") and his co-investors through respectively named corporate entities: One World Trade Center LLC, Two World Trade Center LLC, Three World Trade Center LLC, Four World Trade Center LLC, and Five World Trade Center LLC (the "Silverstein Property"). Westfield WTC LLC, now known as WTC Retail LLC, leased the World Trade Center retail space ("WTC Retail"). The Court will refer to the Silverstein Property together with WTC Retail as the "Net Lease Property."

2 While there are several motions presently before the Court, each seeks only interpretation of Exclusion f in the Port Authority Insurance program. While the Court will address the arguments set forth in the various submissions collectively, the specific motions before the Court are as follows: Motion for Partial Summary Judgment (Docket Entry No. 96) by Certain London Underwriters at Lloyd's, AXA Global Risks UK Ltd., Copenhagen Reinsurance Company Ltd., Great Lakes Reinsurance (UK) PLC, Houston Casualty Company, QBE International Insurance Ltd., Sirius International Insurance Corporation, Wurtembergishe Versicherung AG, and Zurich Specialties London Ltd. (together, the "London Insurers"); Motion for Partial Summary Judgment (Docket Entry No. 100) by Intervenor Plaintiff Allianz Global Risks US Insurance Company; Motion for Partial Summary Judgment (Docket Entry No. 104)

f, and argue that because Silverstein indemnified the Port Authority by agreeing to repair or rebuild the Silverstein Property without regard to fault or the existence of any insurance, and because Exclusion f removes property from the Port Authority Insurance that is indemnified by a third party, the Port Authority Insurance excludes the Silverstein Property. The Port Authority, in turn, argues that the Net Lease Property was covered under the Port Authority Insurance program at its inception and that Exclusion f does not remove this property from its insurance. According to the Port Authority, the plain language of the exception within Exclusion f provides that the Port Authority Insurance program applies as supplemental coverage when other insurance coverage obtained for the Net Lease Property is insufficient, as is the case here with respect to the Silverstein Property.

For the reasons set forth herein, the Court finds that as of July 2001 and, therefore, at the time of loss, Exclusion f did remove the Silverstein Property from coverage under the Port Authority Insurance program. Accordingly, the motions for partial summary judgment of the Plaintiff and additional Counterclaim Defendant insurers are GRANTED and the Port

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by Zurich American Insurance Co; Motion for Partial Summary Judgment (Docket Entry No. 108) by additional Counterclaim Defendants ACE American Insurance Co., Essex Insurance Co., Federal Insurance Co., General Security Indemnity Company of Arizona, Lexington Insurance Co., Royal Indemnity Co., TIG Insurance Co., and United States Fire Insurance Group; Motion for Partial Summary Judgment (Docket Entry No. 117) by Plaintiff SR International Business Insurance Co. Ltd. ("Swiss Re); and, as to each of the Plaintiffs and additional Counterclaim Defendants, the Cross-Motion for Partial Summary Judgment (Docket Entry No. 112) by the Port Authority.

Authority's Cross-Motion for Partial Summary Judgment is DENIED.

BACKGROUND

A. The Port Authority Insurance

The Port Authority is a body corporate and politic created by compact between the states of New York and New Jersey, with the consent of the U.S. Congress. The Port Authority owns and leases multiple properties in New York and New Jersey, including bridges, tunnels, airports, bus terminals, rail facilities, seaports and office buildings. In April and May 2001, the Port Authority, through its broker, Willis Ltd. ("Willis"), renewed its property, extra expense and business interruption insurance program. The insurance was bound following meetings, discussions, and distribution of the Port Authority's renewal underwriting submission to the insurers. This underwriting submission included the Port Authority's draft manuscript policy form (the "Port Authority Policy").

As part of the Port Authority Insurance program, the insurers agreed to provide $1.5 billion per occurrence coverage at various layers and percentages of participation.[3] The insurers agreed to participate in the program for the June 1, 2001 to June 1, 2002 period and, as of September 11, 2001, had signed "binders" or "slips" to that effect. While most of the insurers had not negotiated and executed final policy wording at

3 The London Insurers underwrote the largest share of limits on the program at a total of approximately $527 million at various layers.

that time, the parties to this action agree that the terms and conditions of the Port Authority Insurance that are relevant to the Court's present inquiry may be found in i) the parties' binder agreements, or slips, and ii) the wording of the Port Authority Policy that Willis provided to the insurers prior to binding, the terms of which are incorporated in the binders.

The Port Authority Insurance provided broad coverage to the real and personal property interests of the Port Authority as the "Insured," subject to several exclusions. Among the exclusions is Exclusion f, at issue here, which is located in the section of the manuscript policy form entitled "Property Excluded." In its entirety, Exclusion f provides:

> This policy does not cover loss or damage to:
> ***
> f. Any property at the described premises in respect of which any person, firm or corporation has [i]n force at the time of loss, pursuant to a lease or other written agreement, valid and collectible insurance in favor of the Insured or has otherwise indemnified the Insured against such loss or damage; except that if any person, firm or corporation is required pursuant to a lease or other written agreement to insure any property which would otherwise be covered by this Policy, and for whatever reason such property is not fully insured, then such property will be insured property under this Policy.

Port Authority Manuscript Policy Form at 18-19 (Exclusion (1)(f)).

B. The Net Lease Transaction

Effective July 24, 2001, the Port Authority leased the Net Lease Property to various entities pursuant to 99-year net leases. Specifically, 1 World Trade Center and 2 World Trade

Center (known as the "Twin Towers"), as well as 4 World Trade Center, 5 World Trade Center,[4] and the below-grade space associated with the properties, was leased to certain Silverstein entities, while the WTC Retail space was leased to Westfield WTC LLC. Certain properties located at the WTC were not a part of the July 2001 net leases.

A separate agreement was entered for each of the four buildings that comprise the Silverstein Property, although these agreements were virtually identical (the "Net Lease Agreements").[5] As is typical in a net lease arrangement, see First Fed. Sav. & Loan Ass'n v. Minkoff, 575 N.Y.S.2d 197, 199 (App. Div. 3d Dep't 1991), the Net Lease Agreements shifted control over and responsibility for the Net Lease Property to the "Lessee." Among other provisions, the Lessee was obligated to repair or rebuild the property without regard to insurance and without regard to fault or cause of loss. Specifically, the agreements provide:

> Section 13. Maintenance, Repair and Rebuilding.
> 13.1 [T]he Lessee shall, throughout the Term of this Agreement, assume the entire responsibility, and shall relieve the Port Authority of all responsibility, for all care, maintenance, repair and rebuilding whatsoever in the Premises, whether such maintenance, repair or rebuilding be ordinary or extraordinary, partial or entire, foreseen or unforeseen, structural or otherwise . . . .
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> Section 15. Fire and Other Casualty.
> 15.1 If the Premises (other than the Appurtenances) or any structures, improvements, fixtures and equipment,

4 The Port Authority had previously entered into a net lease arrangement for 3 World Trade Center with Host Marriott Corporation.

5 The parties to the Net Lease Agreements also executed a Reciprocal Easement and Operating Agreement ("REOA") of Portions of the World Trade Center, dated as of July 24, 2001.

> furnishings and physical property located thereon, or any part thereof, shall be damaged or destroyed by fire, the elements, the public enemy or other casualty, or by reason of any cause whatsoever and whether partial or total, the Lessee, at its sole cost and expense, and whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, shall remove all debris resulting from such damage or destruction, and shall rebuild, restore, repair and replace the Premises (other than the Appurtenances) and any structures, improvements, fixtures and equipment, furnishings and physical property located thereon . . . .

Agreement of Lease [One World Trade Center] Dated as of July 16, 2001 at 154, 171. Furthermore, the agreements require the Lessee to "pay all costs, expenses and charges of every kind and nature relating to [the Net Lease Property]," with the Port Authority "indemnified by the Lessee against, and held harmless by the Lessee from, the same." Id. at 76-77 (§ 5.10).

The Net Leases and REOA also contained provisions that required the Lessee to obtain property and business interruption insurance with respect to the Net Lease Property, with no exclusion for terrorist acts. Id. at 161-62 (§ 14.1.1). The Net Lease Agreements required that such insurance coverage "be maintained in an amount equal to the lesser of (x) an amount sufficient to insure and keep insured at all times during the term the items of property described . . . to the extent of not less than the Full Insurable Value and (y) One Billion Five Hundred Million and 00/100 Dollars ($1,500,000,000) per occurrence."[6] Id. at 162. Silverstein obtained primary and

6 The Net Lease Agreements define "Full Insurable Value" as "the actual replacement cost" of the property described therein, to be determined at least

excess insurance coverage for the Silverstein Property from about two dozen insurers in the amount of approximately $3.5 billion "per occurrence" (the "Silverstein Insurance"). See World Trade Ctr. Props., L.L.C. v. Hartford Fire Ins. Co., 345 F.3d 154, 158 (2d Cir. 2003).[7]

C. Destruction of the WTC on September 11, 2001

Within weeks of the effective date of the WTC Net Leases, on September 11, 2001, the WTC was destroyed when "the buildings were struck by two fuel-laden aircraft that had been hijacked by terrorists." Id. Following the destruction of the WTC, an adjustment process was initiated with respect to the Port Authority Insurance which resulted in the Port Authority receiving $950 million in what the insurers have termed "advances." Subsequently, in March of 2005, the Port Authority informed adjusters that it would seek to recover under the Port Authority Insurance program for any shortfall between the amount available under the Silverstein Insurance program and the funds required to "fully restore the demised premises under their net leases." Reynolds Aff. in Supp. of the Port Authority's Cross-Motion for Partial Summ. J. (Ex. H). Following this communication, the present action was commenced when the insurers filed complaints for declaratory relief seeking, inter alia, a declaration that the Port Authority Insurance does not insure

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once every three years. Id.

7 Litigation regarding the Silverstein Insurance has been ongoing in this District as the parties have sought a determination of the amount of insurance that is recoverable under that program for the destruction of the WTC on September 11, 2001. See id.

losses to the Silverstein Property.

DISCUSSION

A. Legal Standard

i. Summary Judgment

A court can grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party must "demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving party does so successfully, the non-moving party must present "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The court must draw all reasonable inferences and resolve all ambiguities in favor of the non-movant. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

Summary judgment is appropriate in a contract dispute "only if the language of the contract is wholly unambiguous." Compagnie Financiere de Cic et de L'Union Europeenne v. Merrill Lynch, 232 F.3d 153, 157-58 (2d Cir. 2000) (citations omitted). Determining whether "the language of a contract is clear or ambiguous is a question of law to be decided by the court." Id. at 158. If a "reasonably intelligent person" could objectively

find more than one meaning of the language in a contract, in light of the agreement as a whole, then the language is ambiguous. See id. (citations omitted). When ambiguous language is found by the court, its meaning is generally to be resolved by the factfinder unless "the evidence presented about the parties' intended meaning [is] so one-sided that no reasonable person could decide to the contrary" or if the non-moving party fails to identify extrinsic evidence supporting its interpretation of the contract's language. Id.

ii. Interpretation of Insurance Contracts

"[A]n ambiguity is not created simply because the parties to an insurance contract put forward different interpretations of its terms, particularly 'where one of two competing constructions is strained or unnatural.'" Colson Services Corp. v. Ins. Co. of N. Am., 874 F.Supp. 65, 68 (S.D.N.Y. 1994) (quoting County of Schenectady v. Travelers Ins. Co., 368 N.Y.S.2d 894, 897 (3d Dep't 1975)). Instead, ambiguity exists where a reasonably intelligent person could find more than one meaning of a contract term in light of the agreement as a whole and the customs and practices of a particular trade. See World Trade Ctr. Props., 345 F.3d at 184.

Under New York law, an insurance contract is construed in the same manner as other contracts and must be read to give effect to the intent of the parties as expressed in the plain meaning of the words in the contract. See id. at 183-84 ("[W]ords should be given the meanings ordinarily ascribed to them and

absurd results should be avoided.")(citing Newmont Mines Ltd. v. Hanover Ins. Co., 784 F.2d 127, 135 (2d Cir. 1986)); see also Ogden Corp. v. Travelers Indem. Co., 681 F.Supp. 169, 173 (S.D.N.Y. 1988). With respect to the applicability of an exclusion, the insurer bears the burden of proving that a claim falls within the scope of an exclusion. See, e.g., Village of Sylvan Beach, N.Y. v. Travelers Indem. Co., 55 F.3d 114, 115-16 (2d Cir. 1995); Maurice Goldman & Sons, Inc. v. Hanover Ins. Co., 607 N.E.2d 792, 793 (N.Y. 1992). "To negate coverage by virtue of an exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case." Sea Ins. Co. v. Westchester Fire Ins. Co., 51 F.3d 22, 26 (2d Cir. 1995) (citation omitted). While the insurer must establish the applicability of an exclusion, the insured must show that an exception to the exclusion applies. Northville Indus. Corp. v. Nat'l Union Fire Ins. Co., 679 N.E.2d 1044, 1049 (N.Y. 1997).

B. Exclusion f

i. Property Indemnified by a Third Party

As set forth previously, Exclusion f provides:

> This policy does not cover loss or damage to:
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> ***
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> f. Any property at the described premises in respect of which any person, firm or corporation has [i]n force at the time of loss, pursuant to a lease or other written agreement, valid and collectible insurance in favor of the Insured or has otherwise indemnified the Insured against such loss or damage; except that if any person,

> firm or corporation is required pursuant to a lease or other written agreement to insure any property which would otherwise be covered by this Policy, and for whatever reason such property is not fully insured, then such property will be insured property under this Policy.

Port Authority Manuscript Policy Form at 18-19 (Exclusion (1)(f)).

The parties, in their moving papers, all agree that Exclusion f is unambiguous, although the insurers and the Port Authority differ in their interpretation of its terms. The insurers moving for partial summary judgment in this case argue that this provision unambiguously excludes property that was either i) indemnified by a third party, or ii) insured by a third party, with only the latter exclusion being subject to the "not fully insured" exception that follows the semi-colon. The Port Authority, however, asserts that this interpretation of Exclusion f is self-serving on the part of the insurers who seek to evade their coverage obligations. Instead, as set forth by the Port Authority, Exclusion f must be read to require coverage for property under the insurance in any instance where, "for whatever reason such property is not fully insured." The structure of this provision, in the Port Authority's view, requires application of the exception to the entire exclusion, for the exception follows a semicolon that is preceded by both the "valid and collectible insurance" and "has otherwise indemnified" language. Because the exception is set off with "a punctuation," according to the Port Authority, the exception must modify all of

the preceding clauses.

However, the Court finds that it is not a reasonable interpretation of the exception language to find that it applies to both property that was indemnified by a third party and property insured by a third party. To read the exception as applying to both categories of properties excluded from coverage would render the exclusion for indemnified coverage meaningless. Such a construction would mean that the indemnification exclusion applies only if the indemnification is fully supported by other insurance, which, in effect, reads that portion of the exclusion out of the agreement. Such an interpretation would make the exclusion for indemnified property superfluous and would therefore be contrary to law. See Manley v. AmBase Corp., 337 F.3d 237, 250 (2d Cir. 2003).[8] The Port Authority's interpretation also ignores the fact that the language of the exception tracks only the language of the initial portion of the exclusion describing property for which "any person, firm or corporation . . . pursuant to a lease or other written agreement" is required to provide insurance, but does not again reference

8 The Port Authority argues it is the "Other Insurance" provision in the Port Authority Policy that would be rendered meaningless by an interpretation of Exclusion f that finds that the exception set forth therein applies only to the exclusion relating to property for which other insurance was in force at the time of loss. Port Authority Manuscript Policy Form at 23. The Port Authority asserts that the Other Insurance provision makes clear that its insurance "sits excess" to outside insurance policies, and that a carve-out for property for which the Port Authority had been indemnified would contradict its terms. However, the interpretation of Exclusion f adopted by the Court does not render the Other Insurance provision meaningless as it would apply in those instances, unlike the present case, where the Port Authority was not indemnified by a third party against a loss, and where other insurance was in force at the time of loss that did not "fully insure[]" the property, although the Court notes that it need not and has not made any

indemnified property.

Furthermore, the cases cited by the Port Authority in support of its interpretation that discuss the effect of punctuation all involve the use of a comma, and not a semi-colon. Unlike a comma, the use of a semi-colon before a phrase "indicates that the clause is independent from that which precedes it." Greater E. Transport, LLC v. Waste Mgmt of Conn., Inc., 211 F. Supp. 2d 499, 504 (S.D.N.Y. 2002)(citations and quotations omitted); see also Marshall v. Commercial Travs. Mut. Acc. Ass'n of Am., 63 N.E. 446, 447 (N.Y. 1902). While it is well-established that the parties' words control the meaning of a particular provision, and not the punctuation, see Sirvint v. Fid. & Deposit Co. of Md., 272 N.Y.S. 555, 557 (App. Div. 1st Dep't 1934), the use of the semi-colon between the exclusions and the exception supports the Court's view that the exception clause functions independently and does not apply to indemnified property. Thus, the Court finds that the Port Authority's proposed interpretation of the exception to the exclusion is untenable and that Exclusion f is unambiguous in providing that property is excluded from coverage under the Port Authority Insurance where it is indemnified by a third party or insured by a third party, with only the latter exclusion being subject to the "not fully insured" exception.

ii. Was the Port Authority Indemnified With Respect to the Silverstein Property?

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determination regarding the meaning of "fully insured" in this context.

Having determined that Exclusion f removes property from the Port Authority Insurance program where a third party has indemnified the Port Authority against loss or damage, the Court must now turn to deciding whether the Port Authority was indemnified on September 11, 2001 with respect to the Silverstein Property at issue in the present case.

Under New York law, an "indemnity" can be identified where the language and circumstances of a particular agreement demonstrate that responsibility for any losses was shifted from one party to another. See SCAC Transp. (USA) Inc. v. S.S. Danaos, 845 F.2d 1157, 1164 (2d Cir. 1988)("Indemnity, by definition, entails the 'shifting of responsibility' for any losses 'from the shoulders of one person to another.'")(quoting W.P. Keeton et al., Prosser and Keeton on the Law of Torts § 51, at 344 (5th ed. 1984)); Clark v. Taylor Wine Co., 539 N.Y.S.2d 536, 538 (App. Div. 3d Dep't 1989). The insurers, who have the burden of showing that Exclusion f applies in this case, see Sea Ins. Co., 51 F.3d at 26, put forth contractual guarantees contained within the Net Lease Agreements that support a finding that the Port Authority had obtained an indemnification with respect to the Silverstein Property.[9] Specifically, the insurers

9 While the Court finds the plain language of the Net Lease Agreements sufficient to establish an indemnity in this case, the parties have also included news articles, court documents, and press releases in their submissions that detail the statements and actions of the Port Authority and Silverstein following September 11, 2001 and demonstrate that the "surrounding facts and circumstances" also indicate that an indemnity was understood to be in place. See, e.g., Opening Br. for Appellants WTC Properties LLC, et al. at 15 ("The leases impose an obligation upon the Silverstein entities to rebuild."); Port Authority Comptroller's Dep't, Financial Statements and Appended Notes Year 2006, at 59 ("The terms of the original net leases

point to the provisions that "relieve the Port Authority of all responsibility, for all . . . rebuilding whatsoever" of the Net Lease Property and that provide for the Lessee to rebuild the Net Lease Property "at its sole cost and expense," regardless of whether insurance proceeds cover that purpose. Agreement of Lease [One World Trade Center] Dated as of July 16, 2001 at 154, 171 (§§ 13.1, 15.1). These provisions stand as a complete indemnity for any "loss or damage" as referred to in Exclusion f.

For its part, the Port Authority stakes out the position that the insurers cannot demonstrate that the Port Authority was indemnified under Exclusion f because the obligation to rebuild under the Net Lease Agreements has not, to date, been fulfilled. However, not only does the Port Authority fail to support this argument with citation to any case law, but this position is, in fact, contradicted by the controlling decisions on this issue. As the Second Circuit has found, "a right to payment based on a written indemnification contract arises at the time the indemnification agreement is executed." In re Manville Forest Prods. Corp., 209 F.3d 125, 129 (2d Cir. 2000)(citations omitted). This comports with more general and well-settled first-party insurance principles that fix the property that is insured at the time of loss so that insureds, insurers, and third parties do not face uncertainty following a loss. See, e.g., S.R. Int'l Bus Ins. Co. Ltd. v. World Trade Ctr. Props., LLC, 445

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established both an obligation and a concomitant right for the net lessees, at their sole cost and expense, to restore their net leased premises following a

F. Supp. 2d 320, 335 (S.D.N.Y. 2006)("[I]t is the insurable interests existing at the time of loss which determine the rights and liabilities as between the insured and insurer.")(citation omitted); Whitestone Sav. & Loan Ass'n v. Allstate Ins. Co., 270 N.E.2d 694, 695 (N.Y. 1971)("[The] well[-]settled rule [is] that the rights under a fire insurance policy are fixed both as to amount and standing to recover at the time of the fire loss.").

To find as the Port Authority has proposed, and to therefore postpone a determination of the obligations under the Port Authority Insurance until it is determined whether third parties have completed performance under the Net Lease Agreements, would be contrary to both law and sound policy considerations. Accordingly, the Court finds that the Port Authority was indemnified pursuant to the Net Lease Agreements that were in place at the time of loss. Accordingly, Exclusion f applies in the present case and removes the Silverstein Property from coverage under the Port Authority Insurance program.[10]

CONCLUSION

The Court finds that, as a matter of law, Exclusion f as set forth in the Port Authority Policy removed the Silverstein Property from coverage under the Port Authority Insurance as the Port Authority was indemnified with respect to the Silverstein

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casualty whether or not the damage is covered by insurance.").

10 While the Cross-Motion for Summary Judgment made by the Port Authority is addressed to the portion of Exclusion f that relates to property for which other insurance was in place at the time of loss, the Court need not make a determination on the interpretation of various terms within that exclusion and the exception thereto (i.e., the meaning of "fully insured") based on its finding that, as "otherwise indemnified" property under Exclusion f, the Net

Property at the time of loss pursuant to the Net Lease Agreements. Accordingly, the Motions for Partial Summary Judgment by the Plaintiff and additional Counterclaim Defendants are GRANTED (Docket Entry Nos. 96, 100, 104, 108, and 117), and the Cross-Motion for Partial Summary Judgment by the Port Authority is DENIED (Docket Entry No. 112).

A telephone conference to discuss the status of the case will be held on Wednesday, April 2, 2008 at 10:00 a.m., to be initiated by counsel for the London Insurers.

SO ORDERED:

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
February 22, 2008