

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ADMIRAL INSURANCE COMPANY,

Plaintiff,

and

STARR INDEMNITY & LIABILITY
COMPANY, et al.

Intervenor Plaintiffs,

v.

TOCCI BUILDING CORPORATION,
et al.

Defendants.

Civ. No. 1:21-cv-10388-PBS

**STIPULATION AND ORDER FOR
FINAL JUDGMENT**

Whereas, on March 5, 2021, Admiral Insurance Company (“Admiral”) filed an insurance coverage action alleging that it had no duty to defend or indemnify its insureds, Tocci Building Corporation, , Tocci Residential, LLC and John L. Tocci, Sr. (collectively “Tocci”), under primary general liability insurance policies which Admiral issued to Tocci as it related to three underlying construction disputes abbreviated as follows: (1) the *Toll* action; (2) the *Connell* action; and (3) the *Boston Harbor* action; and

Whereas, Starr Indemnity & Liability Company (“Starr”) and Great American Assurance Company (“Great American”), as excess follow form insurers to Admiral’s primary insurance, sought and were granted the right to intervene as Intervenor Plaintiffs on September 8, 2021; and

Whereas, Admiral filed a motion for partial summary judgment dismissing Count I as

to defense in connection with the *Toll* action; and

Whereas, Tocci cross-moved for partial summary judgment on Count I as to Admiral's duty to defend Tocci in the *Toll* action; and

Whereas, following briefing and oral argument, the Court ruled pursuant to a March 28, 2022 Memorandum and Order that Admiral had no duty to defend Tocci in the *Toll* action; and

Whereas, the parties stipulate and agree that by virtue of that ruling and the law of Massachusetts, if Admiral has no duty to defend, it likewise has no duty to indemnify Tocci; and

Whereas, the parties stipulate similarly by virtue of the aforesaid ruling, the excess follow-form policies issued by Starr and Great American cannot be called upon to pay unless the primary Admiral policy is required to pay; and

Whereas, the parties to this action seek to streamline the resolution of the action involving all three underlying actions and avoid the need for repetitive briefing on the duty to defend in the *Connell* action and the *Boston Harbor* action; and

Whereas, the parties stipulate and agree that the import of the Court's Memorandum and Order holding that damage to property which is within the scope of the general contractor's work (Tocci's) is not covered property damage would likewise preclude coverage for the *Connell* and *Boston Harbor* actions on the same basis, and it is appropriate to enter judgment as to the duty to defend in those underlying actions based on the Court's Memorandum and Order; and

Whereas, Admiral agrees to withdraw its breach of contract claims against Tocci without prejudice; and

Whereas, Tocci agrees to withdraw its breach of contract claims against each insurer without prejudice; and

Whereas, Starr and Great American likewise agree to withdraw their breach of contract

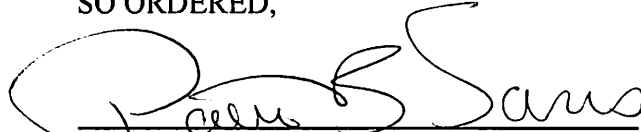
claims against Tocci without prejudice; and

Whereas, the statute of limitations for Admiral's, Starr's, Great American's, and Tocci's breach of contract claims will be tolled on any refiling of those claims until sixty (60) days after a decision by the First Circuit Court of Appeals on Tocci's appeal of this Court's Order; and

Whereas, in the event that the Court's Memorandum and Order is reversed on appeal, the parties reserve all of their respective rights under the policies and law;

Now Therefore, the Court hereby enters final judgment in favor of Admiral, Starr and Great American that the policies do not provide defense or indemnity for the *Toll*, *Connell* or *Boston Harbor* actions.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Patti B. Saris", written over a horizontal line.

Patti B. Saris

United States District Judge

Date: _____

5/17/22