

**SUPREME COURT OF THE STATE OF NEW YORK- NEW YORK COUNTY  
PRESENT: Hon. DORIS LING-COHAN, Justice** } **PART 36**

-----X  
GLADSTEIN & ISAAC and HARVEY GLADSTEIN,  
Individually and as Winding Down Partner of  
GLADSTEIN & ISAAC,

Index: 601014/2007

Plaintiffs,

**Motion Seq. 001**

-against-

**DECISION/  
ORDER**

PHILADELPHIA INDEMNITY INS. CO.,

Defendants.

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**LING-COHAN, J.:**

The following papers numbered 1 to 6 were considered upon determination of the within *in camera* review:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion - Affidavits - Exhibits _____	1,2
Answering Affidavits - Exhibits _____	3
Replying Affidavits _____	4
Interim Order of this court dated Sept. 23, 2008 _____	5
In Camera Documents & Privilege Log _____	6

**Cross-Motion:** [ ] Yes [ X ] No

This is a declaratory judgment action, in which plaintiffs seek a declaration that the policy of insurance issued to plaintiffs by defendant affords plaintiffs coverage with respect to an underlying action, *Esposito v. Isaac, et al.* Plaintiffs assert that defendant's disclaimer of coverage was improper and that defendant is obligated to defend and indemnify plaintiffs in the underlying action.

By order dated September 23, 2008, this court granted plaintiffs' motion to compel certain documentary discovery from defendant, to the extent of directing that an *in camera* review be conducted, with respect to documentary discovery previously withheld by defendant.

On or about October 1, 2008, the court received the *in camera* documents from defendant, together with a privilege log. Upon *in camera* review, the court makes the following determination:

- (1) Defendant's exhibit A to the documents submitted for *in camera* review (an eight (8) page letter drafted by James E. Musurca, of counsel to the law

firm of Babchik & Young LLP ("Babchik") to Mr. Lawrence Burns of Philadelphia Insurance Companies ("Philadelphia") is protected by the attorney-client privilege. As provided in defendant's privilege log, such document sets forth legal opinion of counsel, that the underlying claim did not fall within the coverage parameters of the legal malpractice policy issued to Gladstein & Isaac; investigatory information is not contained in such letter;

- (2) Defendant's exhibit B to the documents submitted for *in camera* review (a nine (9) page letter drafted by Musurca, of counsel to the Babchik law firm, to Burns of Philadelphia) is protected by the attorney-client privilege. As provided in defendant's privilege log, such document sets forth legal opinion of counsel, that the underlying federal action did not fall within the coverage parameters of the legal malpractice policy issued to Gladstein & Isaac; investigatory information is not contained in such letter;
- (3) Defendant's exhibits C and D to the documents submitted for *in camera* review (unredacted and redacted<sup>1</sup> copies of various entries in Philadelphia's "Claim Summary/Notes Report") have been properly redacted by defendants based upon the within facts and circumstances; no further exchange of such documentary discovery is required.

It is further

**ORDERED that on or before February 17, 2009, defendant shall produce for deposition Michael Barrile; should the parties be unable to agree on a date, the deposition shall be held on February 13, 2009, at 10 o'clock am, at the office of defendant's counsel.**

It is further

**ORDERED that plaintiffs shall file a note of issue, on or**

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<sup>1</sup> The redacted version has already been exchanged with plaintiffs.

before February 27, 2009; the parties shall appear for a discovery compliance conference on March 6, 2009, at 10 o'clock a.m., only if the note of issue is not filed as indicated above; a courtesy copy of the note of issue shall be supplied to the Part 36 Clerk, upon filing; the discovery conference scheduled for January 23, 2009, is adjourned as indicated above, to March 6, 2009.


It is further

ORDERED that within 20 days of entry, defendant shall serve a copy of this order upon defendant, with notice of entry; and it is further

ORDERED that defendant may pick-up the *in camera* documents, from Part 36, courtroom 428, within 30 days of the date of this order; thereafter, the documents will be destroyed by the court. A copy of this order shall be presented to the Part 36 clerk, if the documents are being picked-up.

A copy of this order shall be mailed to the parties by the clerk of Part 36.

Dated: January 9, 2009

  
Hon. Doris Ling-Cohan, JSC

Check One:     FINAL DISPOSITION     NON-FINAL DISPOSITION

Check if Appropriate:     DO NOT POST

J:\In Camera\gladstein.pii.wpd

**FILED**  
JAN 15 2009  
COUNTY CLERK'S OFFICE  
NEW YORK