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INSURANCE LAW BLOG

January 6, 2026

Magistrate Judge's Report and Recommendation Clarifies Scope of Employer Liability Exclusion; Finds that Insurer Met Burden of Proving Non-Cooperation

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In the recent case of *Am. European Ins. Co. v. Stree, No. 23-CV-2443 (RER) (LKE), 2025 LX 527499 (E.D.N.Y. Dec. 16, 2025)* , Magistrate Judge Laura Eshkenazi held that although the insurer American European Insurance Company ("AEIC") had not made a factual showing that the employer liability exclusion to its policy applied to bar coverage, AEIC had met its burden to show that the insured Congregation Horei Besomim Stree had failed to cooperate, in violation of a condition precedent to the AEIC policy.

The underlying case involved a rabbi who fell through recently replaced flooring. The rabbi lived at the Congregation.

AEIC denied coverage pursuant to the employer's liability exclusion, which bars coverage for injury to an employee of the insured arising in and out of the course of employment, or performing duties related to the conduct of the insured's business. AEIC contended that because the rabbi was the head of the Congregation and was not in his apartment, he was necessarily performing duties in the course of his employment. However, the underlying complaint did not allege what services or duties the rabbi was performing at the time of his accident. On the default judgment standard, Magistrate Judge Eshkenazi found that AEIC did not meet its burden.

However, the Congregation repeatedly refused to cooperate in the investigation and defense of the claim and suit. To this end, AEIC hired an investigator shortly after notice of the claim. The Congregation's sole representative with knowledge of the claim told the investigator that he was unavailable for two months, and then again for another two months. Once a date was set for a meeting, the Congregation's representative did not respond to calls and the meeting was never held. AEIC then sent a non-cooperation reservation of rights letter to the Congregation. The court found that the Congregation's conduct was one of willful and avowed obstruction, in that it made no effort to cooperate with the investigation or defense.

This case illustrates the scrutiny that will be given to an exclusion in an insurance policy. Even though the injured rabbi was an employee of the Congregation, the facts did not support a denial based on the employer's liability exclusion. The case also provides a checklist of sorts for required insurer actions to gain cooperation, and to prove that non-cooperation is willful and avowed obstruction, which is the standard under New York law. Finally, the case demonstrates that a court will not simply "rubber stamp" a default motion, and that the insurer must make a factual showing to be entitled to relief.

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