NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

JAMIE SCHARE FRIEDLAND, ADMINSTRATOR AD PROSEQUENDUM OF THE ESTATE OF DUSTIN J. FRIEDLAND, Plaintiffs, v. FIRST SPECIALTY INSURANCE CORP., CRUM & FORSTER, THE HARTFORD INSURANCE GROUP, FIREMAN'S FUND INSURANCE COMPANY, TAUBMAN CNETERS, INC., SHORT HILLS ASSOCIATES, L.L.C., UNIVERSAL PROTECTION SERVICE, LLC, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ESSEX COUNTY DOCKET NO.: ESX-L-4155-15 **OPINION**

Oral Argument Heard: June 10, 2016

Decided: August 3, 2016

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By: Stephanie A. Mitterhoff, J.S.C.

STATEMENT OF FACTS

This matter came before the court by way of Defendant National Surety Corporation's ("National Surety") and United States Fire Insurance Company's ("U.S. Fire") motions for reconsideration and/or clarification of Judge Rothschild's April 26, 2016 decision holding that (1) the contract between the Mall Defendants and IPC did not give rise to a duty to indemnify the Mall Defendants for their own negligence, pursuant to Azurak v. Corporate Property Investors, 125 N.J. 110 (2003) and also holding that (2) whether the Mall Defendants are entitled to indemnity coverage based on their status as additional insureds under the IPC policy must await a jury determination as to what allegations of negligence lie solely against the mall, what allegations of negligence lie solely against IPC, and what allegations of negligence constitute "joint" actions or inactions by the Mall and IPC. For the reasons that follow, the court will not disturb Judge Rothschild's decision concerning contractual indemnification, which is clearly correct. Having reviewed the governing case law concerning the language in the "additional insured" endorsement, both in New Jersey and in other jurisdictions, the court will reconsider its prior decision and provide clarification.

For the reasons that follow, the court has concluded that (1) the duty to defend under the subject endorsement is triggered if the Complaint alleges that both the Mall defendants, as additional insureds, and IPC, as the named insured, were negligent; and (2) the Mall Defendants will be entitled to indemnification under the endorsement if IPC is found to be at least one percent liable for the incident at issue. Conversely, if IPC is found to be zero percent liable, the Mall Defendants will not be entitled to indemnification. Thus, although the court was correct in its decision that the issue of indemnification must await an allocation of liability, such allocation will look to the ordinary comparative negligence division of responsibility and does not

necessitate a jury's consideration of whether any specific acts or omissions pertain to "joint" actions or inactions of the Mall defendants and IPC.

By way of background, this case arises out of the murder of Dustin J. Friedland at the Short Hills Mall on December 15, 2013. After his death, Jamie Schare Friedland filed this suit on behalf of herself and as administrator ad prosequendum of the Estate of Dustin J. Friedland (collectively "Plaintiffs"). The purpose of this declaratory judgment action is to determine the responsibilities of various insurers, including those for Taubman Centers, Inc. ("TIC"), Short Hills Associates, LLC ("SHA"), Michael McAvine (collectively "Mall Defendants") and Universal Protection Service, LLC ("UPS").

Plaintiffs allege that IPC International Corp. ("IPC") provided security services to the Short Hills Mall pursuant to a contract with Mall Defendants. Plaintiffs' Complaint in the underlying wrongful death action asserts that UPS purchased in a bankruptcy proceeding the assets of IPC. Plaintiffs allege that IPC entered into a Strategic Relationship Agreement (SRA) with the Mall Defendants pursuant to which IPC was to provide security services. The Complaint further alleges that IPC acted negligently and grossly negligently, as did the Mall Defendants. That negligence and gross negligence, according to the allegations in Plaintiff's Complaint, caused Mr. Friedland to be killed by third parties.

In 2013, IPC filed for bankruptcy and entered into an asset purchase agreement with UPS. Pursuant to this asset purchase agreement, and an agreement between Mall Defendants and UPS, UPS began providing security for the Mall. First Specialty Insurance Corporation ("FSIC") had issued a commercial general liability (CGL) policy to IPC, which carried over to UPS. In addition, U.S. Fire had issued an excess policy to IPC, which contains an additional insured endorsement that mirrors that in the FISC policy. FISC is currently defending the Mall

Defendants in the underlying action as additional insureds under the FISC policy. U.S. Fire has acknowledged that the Mall Defendants are additional insureds under the U.S. Fire policy.[1]

On March 4, 2016, U.S. Fire filed a motion for partial summary judgment, which sought a declaration that the clear and unambiguous terms of the additional insured endorsement in the U.S. Fire policy issued to IPC dictates that any coverage obligation owed to Mall Defendants for the underlying action is limited to the Mall Defendants' vicarious liability for the acts or omissions of IPC. In other words, the declaration sought to determine that the U.S. Fire policy does not cover any independent negligent acts or omissions on the part of the Mall Defendants. On April 26, 2016, the court issued its opinion holding, as stated above, (1) the contract between the Mall Defendants and IPC did not give rise to a duty to indemnify the Mall Defendants for their own negligence, pursuant to Azurak, supra, 175 N.J. 110, and also holding that (2) whether the Mall Defendants are entitled to coverage based on their status as additional insureds under the IPC policy must await a jury determination as to what allegations of negligence lie solely against the mall, what allegations of negligence lie solely against IPC, and what allegations of negligence constitute "joint" actions or inactions by the Mall and IPC.

Before the court are motions by both National Surety and U.S. Fire seeking reconsideration and clarification of the court's April 26, 2016 decision.

ARGUMENTS OF THE PARTIES

U.S. Fire argues that the court's previous order that U.S. Fire does not cover the Mall Defendants' independent negligence was correct; however, U.S. Fire contends that the court

[1] In addition, Twin City Fire Insurance Company ("TCF") issued a commercial general liability policy under which the Mall Defendants are named insureds. National Surety Corporation ("NSC") issued a policy, which is excess of the TCF policy, and under which Mall Defendants are also named insureds.

improperly went beyond the legal issue before it and categorized which allegations of negligence in the underlying action were covered or not covered by the U.S. Fire Policy. U.S. Fire contends that because liability has yet to be determined, it was improper for the court to apply its ruling to hypothetical scenarios. U.S. Fire argues that any superfluous language regarding which of Plaintiffs' theories of liability are potentially covered must be stricken from the court's order and that the court clarify its opinion to strictly hold that the U.S. Fire policy only covers the Mall Defendants' vicarious liability for the acts or omissions of IPC, and does not cover the independent negligence of the Mall Defendants.

In opposition, National Surety and the Mall Defendants argue that the court erred in holding that the U.S. Fire policy does not cover Mall Defendants' independent negligence and/or independent acts and omissions and/or independent decisions. Further, National Surety and the Mall Defendants argue that the court erred in holding that there is no contractual duty for IPC to indemnify the Mall Defendants for their negligent acts or omissions. National Surety and the Mall Defendants additionally contend that the court erred in relying upon Schafer v. Paragano Custom Bldg., Inc. 2010 N.J. Super. Unpub. LEXIS 356 (App. Div. Feb. 24, 2010), cert. denied 202 N.J. 45 (2010), because it is unpublished.

DISCUSSION

I. Reconsideration Standard

Motions for reconsideration are governed by R. 4:49-2, which provides that the "motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." "An order that is not final may be reconsidered and revised at any time before the entry of a final judgment in the sound discretion of the court in the interest of justice." Pressler, N.J.

Court Rules, comment 1 on R. 4:49-2 (2008); Bender v. Walgreen Eastern Co., Inc., 399 N.J. Super. 584, 593 (App. Div. 2008).

Further, motions for reconsideration should be granted for those cases in which "(1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch.Div. 1990). "Reconsideration is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice." Id.

At the outset, for the reasons set forth in Judge Rothschild's April 26, 2016 opinion, the court agrees with the determination that the contract between the Mall Defendants and IPC did not contain the requisite language that would require IPC to indemnify the Mall Defendants for their own negligence. See Azurak, supra, 125 N.J. 110 (2003).

With respect to the indemnity coverage afforded to the Mall Defendants as additional insureds under the U.S. Fire/FSIC policies, however, the court will reconsider its prior decision. As more fully discussed below, it is clear that the trial court overlooked persuasive and uniform jurisprudence construing the precise additional insured endorsement at issue. To the extent that the unpublished decision in Schafer, supra, 2010 N.J. Super. Unpub. LEXIS 356, diverges from the widespread and uniform interpretation of the endorsement under review, it is clear to this court that Schafer is an anomaly and thus unpersuasive.

II. Analysis

A. Jurisdictions Construing the Subject Additional Insured Endorsement Have Uniformly Rejected U.S. Fire's Position that Coverage is Limited to Claims of Vicarious Liability Against the Additional Insured

As stated, squarely at issue in this motion is the extent of indemnity coverage owed to the Mall Defendants based on their status as additional insureds under the U.S. Fire/FISC policies. That endorsement states, in pertinent part:

> Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" **caused, in whole or in part, by:**
>
> 1. Your acts or omissions; or
>
> 2. The acts or omissions of those acting on your behalf;
>
> in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above (emphasis added).

As recognized by the parties, there are no reported decisions in New Jersey construing the "caused, in whole or in part, by" language of the foregoing additional insured ("AI") endorsement. The precise language in the subject endorsement has, however, been construed in a number of jurisdictions both state and federal.

For instance, the identical additional insured endorsement was construed by the Maryland Court of Appeals decision of James G. Davis Constr. Corp. v. Erie Ins. Exch., 126 Md. App. 25 (Md.Ct.Spec.App. 2015). In that case, Davis was the general contractor for a home construction project in Washington, D.C. Davis subcontracted with Tricon to provide drywall, installation and fireplace services on the project. The subcontract agreement with Tricon provided that Davis would be named "as an additional insured by ISO from CG 2010, 11/89 edition endorsement or equivalent." James G. Davis Constr. Corp., supra, 126 Md. App. at 29. In

accordance with this contractual obligation, Tricon procured a commercial general liability policy with Erie Insurance Exchange (Erie) naming Davis as an additional insured. Id. at 29-30.

As part of its work on the project, Tricon erected a scaffold, which it owned, at the site of the construction. Another of Davis's subcontractors, American Mechanical Services, subcontracted with Frost Fire Insulation to perform air conditioning and insulation work on the project. Id. at 31. Two Frost Fire employees were utilizing Tricon's scaffold when the scaffold collapsed, injuring the two Frost Fire employees. The Frost Fire employees alleged that they were authorized to use Tricon's scaffold and were assured by Davis that the scaffolding was safe and secure. Ibid.

The two injured Frost Fire employees filed suit against Tricon and Davis. The Complaint alleged one count of negligence against Davis and one count of negligence against Tricon. After being served with the Complaint, Davis tendered its defense to Erie. After the carrier successfully moved for summary judgment on the basis that the Complaint did not allege a claim based on vicarious liability, Davis appealed. The Court of Appeals noted that Maryland state court, like New Jersey courts, had not had an occasion to construe the language "caused, in whole or in part, by" language in the endorsement. Id. at 40. Thus, the court looked to a recent analysis of the subject language by the Fourth Circuit in Capital City Real Estate, LLC v. Certain Underwriters at Lloyd's London, 788 F.3d 375 (4th Cir. 2015). In Capital City, the Fourth Circuit held that the language is quite clear that coverage is provided for the real estate development company, an additional insured, for "property damages… caused, in whole or in part by" the subcontractor. Capital City, supra, 788 F.3d at 380. The Fourth Circuit construed the endorsement language to mean that an insurer has a duty to defend an additional insured

"only if the underlying pleadings allege that" the named insured or someone acting on its behalf, proximately caused the injury or damage. Ibid.

Based on the court's reasoning in Capital City, the Davis court rejected Erie's contention that the "liability… caused, in whole or in part, by" language restricted Davis's coverage as an additional insured to claims of vicarious liability for Tricon's acts. The court reasoned that vicarious liability is liability imputed to an innocent third party and that the third party to whom liability is imputed could not be "innocent" unless the named insured caused the liability in whole. For the same reason, the court found that a party could not be vicariously liable "in part." Accordingly, the court held that the word liability in the policy relates to proximate causation and not vicarious liability. James G. Davis Constr. Corp., supra, 126 Md. App. at 40-41.

The court in Davis concluded that under the additional insured endorsement at issue, Erie had the duty to defend Davis even if the allegations in the Complaint were not based solely on vicarious liability. Turning to the allegations of the Complaint, the court observed that the Complaint alleged that both Tricon and Davis failed to exercise reasonable care. Id. at 42. Thus, the court concluded, based on the allegations of the Complaint alleging that the injury was caused, at least in part, by the named insured, coverage was triggered under the additional insured endorsement. Id. at 44-45. The court in Davis dealt only with Tricon's duty to defend and did not address the extent of the duty to indemnify under the additional insured endorsement.

The Federal District Court of Maine has also had occasion to construe the precise endorsement at issue in Pro Con, Inc. v. Interstate Fire & Cas. Co., 794 F. Supp. 2d 242 (D. Me. 2011). In Pro Con, the plaintiff was the general contractor on a project to construct an ice hockey rink for Bowdoin College. Pro Con retained a structural steel subcontractor, Canatal

Industries. Canatal, pursuant to its contract with Pro Con, was required to obtain and maintain commercial general liability coverage naming Pro Con and Bowdoin as additional insureds. Canatal, in turn, subcontracted with CCS Constructors, LLC – a crane services and rental company – to perform structural steel erection services on the project. Pursuant to the Canatal/CCS subcontract, CCS was required to secure general liability insurance coverage naming Canatal, Pro Con and Bowdoin College as additional insureds. Pro Con, supra, 794 F. Supp. 2d at 245.

CCS obtained the required CGL policy through Defendant Interstate Fire and Casualty Company (Interstate), containing, in pertinent part, the following language in the Additional Insured endorsement:

> **A.** Section II- Who Is An Insured is amended to include as an additional insured the person(s) or organizations shown in the Schedule, but only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" **caused, in whole or in part, by:**
>
> 1. Your acts or omissions; or
> 2. The acts or omissions of those actions on your behalf;
> In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above (emphasis added).
>
> [Id. at 247.]

In short, as in Davis, the precise endorsement currently under review.

On December 5, 2007, Stephen Williams, a CCS employee, was injured at the site after slipping on tarps covered with snow that had been installed by Pro Con around the perimeter of the building to prevent frost issues. Following the accident, CCS's superintendent at the site sent Pro Con a letter reiterating what he characterized as a prior request that the frost blankets be removed in order to prevent further injuries. Id. at 248.

Williams filed suit against Pro Con, alleging Pro Con failed to maintain the premises in a reasonably safe condition. Pro Con filed an Answer alleging Williams was comparatively negligent. AIG as Pro Con's liability carrier tendered its defense to CCS's carrier Interstate. Interstate rejected the tender based on its assessment that the accident was not "caused, in whole or in part," by the acts of CCS. Id. at 249. Consistent with the decision in Davis, the court in Pro Con rejected Interstate's position that coverage for Pro Con was limited to vicarious liability for CCS's negligence. In that regard, the court noted that if the insured had really intended to limit coverage to claims for vicarious liability it was free to draft a policy with language that expressed that intention. Id. at 256. To the contrary the court found that Interstate, "by including the language 'in whole or in part' in its [Additional Insured Endorsement], specifically intended coverage for additional insureds to extend to occurrences attributable in part to acts or omissions by both the named insured *and* the additional insured. Id. at 256-57; see Gilbane Bldg. Co. v. Admiral Ins. Co., 664 F.3d 589, 599 (5th Cir. 2011) (holding that the court must only consider the facts alleged in the pleadings that affirmatively implicate negligence and must not make any factual assumptions or inferences that were not pleaded); Dale Corp. v. Cumberland Mut. Fire Ins. Co., No. 09-1115, 2010 U.S. Dist. LEXIS 127126 (E.D. Pa. Nov. 30, 2010) (holding that because the first complaint contained no allegations that the named insured's acts or omissions were the proximate cause of the plaintiff's injury, the first complaint did not give rise to coverage). Again, as in Davis, the Pro Con court's analysis dealt with the duty to defend and did not address the duty to indemnify, except to note in a footnote that "an insurer may not litigate its duty to indemnify until the liability of the insured has been determined." Pro Con, supra, 794 F. Supp. 2d at 258.

The District Court of Montana's construction of the "caused, in whole or in part, by" language in the subject additional insured endorsement is in line with that of the foregoing courts in Maryland, the District Courts in Maine and Pennsylvania and the Fifth Circuit. In WBI Energy Transmission, Inc. v. Colony Ins. Co., 56 F. Supp. 3d 1194 (D. Mont. 2014), the court likewise rejected that the AI endorsement limited coverage to any vicarious liability on the part of the additional insured, rejecting the invitation to unjustifiably write into the policy a vicarious liability limitation. WBI Energy Transmission, Inc., supra, 56 F. Supp. 3d at 1205. Instead, the court determined that "the endorsement as published provides that 'caused, in whole or in part, by' means that the acts or omissions of the additional insured can be a *concurrent* or *contributing* cause of the injury or damage, but a direct causal link to the named insured must be made. In other words, not only must the *additional* insured not be the sole cause of the injury or damage, but the *named* insured must be at least a partial cause." Id. at 1203. The court deferred any determination as to the duty to indemnify pending a determination of liability in the underlying lawsuit. Id. at 1205. See also Thunder Basin Coal Co., LLC v. Zurich Am.Ins.Co., 943 F.Supp. 2d 1010, 1014-15. (E.D. Mo. 2013) (rejecting that the subject AI endorsement covered only claims for vicarious liability, finding coverage was triggered based on allegations in the complaint that both the named insured and the additional insured were negligent); Am. Empire Surplus Lines Ins. Co. v. Crum & Forster Specialty Ins. Co., No. H-06-0004, 2006 U.S. Dist. LEXIS 33556 (S.D. Tex. May 23, 2006) (rejecting that the subject AI endorsement covered only claims for vicarious liability, noting "conspicuous absence" in the endorsement of the words "derivative" or "vicarious," and finding coverage was triggered based on allegations in the complaint that both the named insured and the additional insured were negligent, but staying any

determination concerning the duty to indemnify pending the resolution of liability in the underlying personal injury case).

Thus, the overwhelming and indeed uniform interpretation of the "caused, in whole or in part, by" language holds that coverage is triggered where the allegations of the complaint allege negligence on the part of both the named and additional insureds. In stark counterpoint to this large body of jurisprudence is the unreported decision of Schafer v. Paragano Custom Bldg., Inc., 2010 N.J. Super. Unpub. WL 624108 (App. Div. Feb. 24, 2010), cert. denied, 202 N.J. 45 (2010). In Schafer, Paragano was a general contractor for the renovation of a home and subcontracted a portion of its work to K&D Builders. As required by the subcontract between Paragano and K&D, K&D Builders named Paragano as an additional insured under K&D's insurance policy. Paragano erected a scaffold for the renovation, but it was not tall enough for Schafer to install a window on the second floor. Schafer therefore placed a ladder on top of the scaffold, climbed up the scaffold while holding a window, lost his balance and fell to his death. Schafer's estate filed a claim against Paragano and Paragano sought coverage as an additional insured under K&D's policy. Schafer, supra, 2010 N.J. Super. Unpub. WL 624108 at *1.

The additional insured endorsement in Schafer contained the identical language as the endorsement herein. The endorsement provided that Paragano was an additional insured:

> only with respect to liability for bodily injury, property damage, or personal and advertising injury **caused, in whole or in part, by:**
>
> 1. [K&D]'s acts or omissions; or
> 2. The acts or omissions of those actions on [K&D]'s behalf
> in the performance of [K&D]'s ongoing operations for [Paragano] (emphasis added).

In interpreting the endorsement, the Appellate Division stated "[w]e perceive no ambiguity. The words of the policy are clear in providing coverage to Paragano only for liability that is caused in whole or in part by the acts or omissions of K&D Builders. The policy does not provide

coverage for liability caused by Paragano's own acts or omissions." Id. at *6. The court concluded that the "additional insured endorsement…clearly states that Paragano is covered only as to liability caused by the acts or omissions of K&D Builders. It provides coverage for a claim asserted against Paragano for vicarious liability; it does not provide coverage for a claim against Paragano for its own direct negligence. Coverage for such claims rests with Paragano's own liability insurer, not K&D's." Id. at *3.

At the outset, Schafer, as an unreported decision, is not binding on this court. Moreover, it appears that the Schafer court may have confounded the legal standards that apply to a claim for contractual indemnification with those that apply to a claim for coverage as an additional insured. With respect to the former, a clear and unequivocal statement of intent to indemnify the indemnitee for its own negligence is required. Azurak, supra, 125 N.J. at 112. As to the latter, no such express statement is required. See e.g. Harrah's Atlantic City, Inc. v. Harleysville Ins Co., 288 N.J. Super. 152, 157 (App. Div. 1996). In any event, in the context of additional insured coverage, this court finds that the court in Schafer failed to look to the allegations of the complaint to determine whether the plaintiff alleged that the accident was caused, in whole or in part, by the acts or omissions of K & D as the named insured. In fact, the complaint did allege, and Plaintiff's expert opined, that Paragano negligently erected the scaffold, and that K & D was negligent in placing a ladder atop the scaffold. Pursuant to every other case, both reported and unreported, that has addressed the issue, as set forth at length above, those allegations clearly invoked a duty to defend and, possibly, to indemnify.

It is manifest that to construe the "caused, in whole or in part, by" language as did the court in Schafer would effectively limit the additional insured coverage to any claims arising from vicarious liability for the named insured's acts. That construction has been soundly

rejected by every other court that has interpreted the exact same endorsement. At the outset, here as in other cases where an insurer unsuccessfully sought to thus limit the additional insured coverage, there is a conspicuous absence of the terms "derivative" or "vicarious" in the endorsement. This court finds that the language of the endorsement is clear and unambiguous as to what constitutes a covered loss for the additional insured. Specifically, the Mall Defendants are entitled to both a defense and indemnity for any liability for "bodily injury," "property damage" or "personal and advertising injury" **caused, in whole or in part, by** the acts or omissions of the named insured, in this case IPC. In this case, the Complaint alleges that both IPC and the Mall Defendants acted negligently and grossly negligently, resulting in Mr. Friedland's death. Therefore, the duty to defend and possibly indemnify the Mall Defendants under the U.S. Fire/FSIC additional insured endorsements is clearly triggered.

In that regard, there is no differentiation under the endorsement between what constitutes a covered loss for purposes of defense, and what constitutes a covered loss for purposes of indemnity. The only distinction between the trigger of a defense obligation and the trigger of an indemnity obligation is that the former arises based solely on the allegations in the Complaint, whereas the latter arises if Plaintiff will be able to prove at trial whether the incident in the underlying lawsuit was caused, at least in part, by the acts or omissions of the named insured.

Moreover, there is nothing in the endorsement that would require a specific allocation of liability, percentage-wise, against IPC in order to receive coverage. Cf. Essex Ins. Co. v. Newark Builders, Inc., 2015 N.J.Super. Unpub. LEXIS 1165 (App. Div. 2015) (finding named insured owed additional insured indemnity coverage even though the jury allocated 70% responsibility for the accident against the additional insured, finding that the policy did not

specify that in order to receive coverage, an additional insured must be less liable than the primary insured). Accordingly, if IPC is found to be 1% responsible for the incident, the Mall Defendants will be entitled to full indemnification pursuant to the endorsement. Conversely, if IPC is found to be 0% liable, the Mall Defendants will not be entitled to indemnification at all.

CONCLUSION

In conclusion, for the foregoing reasons, the court has granted the request to reconsider and clarify its prior holding and now holds: (1) the Mall Defendants are entitled to coverage, for defense, and possibly indemnity, as additional insureds under the U.S. Fire/FSIC policies of insurance; (2) coverage under the additional insured endorsement is not limited to claims based on vicarious liability; (3) whether the Mall Defendants are entitled to indemnity coverage will depend on the resolution of the respective liabilities of the parties, under an ordinary comparative negligence analysis; and (4) if IPC is found to be at least 1% responsible for the incident, the Mall Defendants will be entitled to full indemnification pursuant to the endorsement. Conversely, if IPC is found to be 0% liable, the Mall Defendants will not be entitled to indemnification at all.