

At an I.A.S. Trial Term, Part ³⁴ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 27th day of June 2018

P R E S E N T :
 Hon. Law Goodrai
 Justice

Sebrun LLC

Plaintiff(s)

Cal. No. 35
 Index No. 505707/17

- against -

Amtrust Financial Services, Inc. and
 Amtrust North America
 Defendant(s)

The following papers numbered 1 to read on this motion	Papers Numbered
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed	1
Answering Affidavit (Affirmation)	2
Reply Affidavit (Affirmation)	3
_____ Affidavit (Affirmation)	
Pleadings - Exhibits	
Stipulations - Minutes	
Filed Papers	

Defendants' motion for summary judgment is granted for the following reasons:

① Plaintiff lacks privity of contract with Defendants since the insurance policy being sued under was issued by Wesco Insurance Company. Defendants did not issue the policy, but acted as claim administrators for Wesco. Moreover, the denial letter specifically identified Wesco Insurance Company as the insurance company;

For Clerks use only
 MG _____
 MD _____
 Motion Seq. # _____

E N T E R
 1/2
 J.S.C.

[Signature] For Appraiser Only
 GC/Men For Plaintiff

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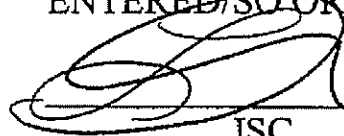
DATE 6/27/18

PLAINTIFF Sebmar LLC vs DEFENDANT Amtrac

② Even assuming arguendo that Plaintiff sued the correct entity, the insurance policy's earth movement exclusion bars coverage under these circumstances as held by the New York Court of Appeals in Bentonia Holdings, Inc. v. Travelers, 20 NY3d 65 (2012); and

③ Plaintiff failed to rebut the findings of defendant's Engineer Paul Angelides regarding the cause of loss with any admissible evidence.

ENTERED/SO ORDERED



JSC

Lara J. Genovesi
J.S.C.