

<b>Forest Labs., Inc. v Arch Ins. Co.</b>
2014 NY Slip Op 02866
Decided on April 29, 2014
Appellate Division, First Department
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on April 29, 2014

Gonzalez, P.J., Tom, Saxe, Freedman, Manzanet-Daniels, JJ.

11797 600219/10

**[\*1]Forest Laboratories, Inc., Plaintiff-Appellant,**

**v**

**Arch Insurance Company, et al., Defendants, RSUI Indemnity Company, Defendant-Respondent.**

Reed Smith LLP, New York (John B. Berringer of counsel), for appellant.

Babchik & Young, LLP, White Plains (Jack Babchik of counsel), for respondent.

Order, Supreme Court, New York County (Melvin Schweitzer, J.), entered on or about September 14, 2012, which granted defendant RSUI Indemnity Company's (RSUI) motion to dismiss the complaint made pursuant to CPLR 3211(a)(1) and (7), unanimously affirmed, with costs.

The motion court properly determined that the express terms of RSUI's policy providing excess coverage to plaintiff required the previous layer of excess coverage to be

exhausted through actual payment of that policy's limit prior to RSUI being required to pay (*see e.g. JP Morgan Chase & Co. v Indian Harbor Ins. Co.*, [98 AD3d 18](#) [1st Dept 2012], *lv denied* 20 NY3d 858 [2013]).

We have considered plaintiff's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 29, 2014

CLERK

[Return to Decision List](#)