

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 11-01485

PRESENT: SCUDDER, P.J., SMITH, FAHEY, CARNI, AND SCONIERS, JJ.

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BOARD OF EDUCATION OF SOLVAY UNION FREE SCHOOL  
DISTRICT, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

J.D. TAYLOR CONSTRUCTION CORPORATION, TURNER  
CONSTRUCTION COMPANY, DEFENDANTS-RESPONDENTS,  
AND QPK DESIGN, DEFENDANT-APPELLANT.

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J.D. TAYLOR CONSTRUCTION CORPORATION,  
THIRD-PARTY PLAINTIFF,

V

DAMACO WINDOW CONTRACTORS, INC., THIRD-PARTY  
DEFENDANT-RESPONDENT,  
AND KALWALL CORPORATION, THIRD-PARTY DEFENDANT.

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SUGARMAN LAW FIRM, LLP, SYRACUSE (MATTHEW D. GUMAER OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

FERRARA, FIORENZA, LARRISON, BARRETT & REITZ, P.C., EAST SYRACUSE  
(KATHERINE E. GAVETT OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

SHEATS & ASSOCIATES, P.C., BREWERTON (JASON B. BAILEY OF COUNSEL), FOR  
DEFENDANT-RESPONDENT J.D. TAYLOR CONSTRUCTION CORPORATION.

GOLDBERG SEGALLA LLP, SYRACUSE (KENNETH M. ALWEIS OF COUNSEL), FOR  
DEFENDANT-RESPONDENT TURNER CONSTRUCTION COMPANY.

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Appeal from an order of the Supreme Court, Onondaga County (Brian  
F. DeJoseph, J.), entered May 9, 2011. The order, among other things,  
denied the motion of defendant QPK Design for summary judgment.

It is hereby ORDERED that the order so appealed from is  
unanimously modified on the law by granting those parts of defendant  
QPK Design's motion for summary judgment dismissing the third and  
fourth cross claims of defendant Turner Construction Company against  
it and as modified the order is affirmed without costs.

Memorandum: We conclude that Supreme Court erred in denying  
those parts of defendant QPK Design's motion for summary judgment  
dismissing the third and fourth cross claims of defendant Turner  
Construction Company against it, for contractual indemnification and

breach of contract based on QPK Design's failure to procure the requisite insurance (*cf. DiBuono v Abbey, LLC*, 83 AD3d 650, 652-653; *Gillmore v Duke/Fluor Daniel*, 221 AD2d 938, 939; see generally *A & E Stores, Inc. v U.S. Team, Inc.*, 63 AD3d 486). We therefore modify the order accordingly. We reject the remaining contentions of QPK Design for reasons stated by the court in its bench decision.

Entered: March 16, 2012

Frances E. Cafarell  
Clerk of the Court