

**Richman v Harleystville Worchester Ins.  
Co.**

2008 NY Slip Op 30054(U)

January 4, 2008

Supreme Court, New York County

Docket Number: 0600467/2006

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN

PART 17

Justice

Index Number : 600467/2006

**RICHMAN, GAYLE GRENADIER**  
 vs.  
**HARLEYSVILLE WORCESTER INS.**

SEQUENCE NUMBER : 006

TH DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

No. \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cross-Motion:  Yes  No

*and Cross Motion*

Upon the foregoing papers, it is ordered that this motion *is granted*

*decided per attached*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**  
 JAN 10 2008  
 NEW YORK  
 COUNTY CLERK'S OFFICE

Dated: 1/4/08

**EMILY JANE GOODMAN** *J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : I.A.S. PART 17

-----X  
GAYLE GRENADIER RICHMAN,

Plaintiff,

Index No. 600467/06

-against-

HARLEYSVILLE WORCESTER INSURANCE  
COMPANY and ALEXANDER WALL  
CORPORATION,

Defendants.

-----X  
EMILY JANE GOODMAN, J.S.C.

**FILED**  
JAN 10 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

Defendant Harleysville Worcester Insurance Company (Harleysville) moves, and Alexander Wall Corporation (Wall) cross moves, to preclude testimony or alternatively for an order continuing Plaintiff's deposition, prior to Defendants' depositions, and for sanctions. Defendants seek an order compelling Plaintiff to answer various questions that her counsel directed her not to answer at her deposition. Plaintiff opposes the motions, maintaining that Plaintiff was properly instructed not to answer certain questions based on CPLR 3101 (d) (1) and (d) (2). Plaintiff also notes that CPLR 3101 (d) (1) does not require disclosure of expert information at any specific time. Plaintiff makes no argument whatsoever regarding CPLR 3101 (d) (2), and merely cites that provision.

The questions which Plaintiff refused to answer involved (1) whether any contractors visited the house at issue, (2) whether anyone prepared an estimate of the cost to repair the house or quantified that cost and whether an estimate was ever sent to Harleysville, (3) whether Plaintiff knew the cost to repair her home, (4) whether Phillip

\* 3 ]

Kaufman ever estimated the cost to repair her home, or, provided Plaintiff or her attorneys with any information (but not the substance of that information), (5) whether Plaintiff could identify the language that Kaufman allegedly provided to her or to her attorney, in connection with answering an interrogatory, and (6) whether a test for the presence of *Baylisascaris procynonis* was performed.

Pursuant to CPLR 3101 (a) discovery is broad. However, pursuant to CPLR 3101 (b) disclosure is not warranted if the matter is privileged. Apart from the fifth referenced question, Plaintiff's counsel's instructions to his client were improper. The fact that CPLR 3101 (d) does not provide a specific time period by which an expert must be identified has nothing to do with whether the question calls for an answer which is protected by CPLR 3101 (d). CPLR 3101 (d) requires a party, upon request, to identify each person whom the party expects to call as an expert at trial, to identify in reasonable detail the subject matter and the substance of the facts and opinions on which expert is expected to testify, the expert's qualifications and a summary of the grounds for the expert's opinion. Those opinions include revealing the value of the damages and to some extent, the methodology (see Zimmer-Masiello, Inc. v Zimmer, Inc., 164 AD2d 845 [1st Dept 1990]; Brossoit v O'Brian, 169 AD2d 1019 [3d Dept 1991]). Apart from the fifth question, which the Court finds improper, none of the other referenced questions call for an answer which would be protected by CPLR 3101 (d) (1). The questions were essentially foundation questions. Moreover, Defendants are entitled to know if any fact witnesses exist in this action.

[\* 4 ]

Plaintiff has also failed to establish that the questions called for an answer which would identify materials prepared in anticipation of litigation (CPLR 3101 (d) (2)).

In fact no argument was made at all on that point. Notably, none of the questions cited by Harleysville called for Plaintiff to divulge the actual amount of any estimate, if made, which may or may not have been generated in anticipation of litigation.

Defendants' request for sanctions pursuant to CPLR 3126 is denied.

It is hereby

ORDERED that the motion is granted to the extent that Plaintiff is directed to appear for further deposition forthwith, which shall be in advance of Defendants' depositions, and is directed to answer all questions previously posed by Defendants but which were not answered, but should have been answered, in light of this Decision and Order; and it is further

ORDERED that in addition to the above, Defendants are entitled to ask Plaintiff any proper question, which is related to any of the above questions, which was not previously asked; and it is further

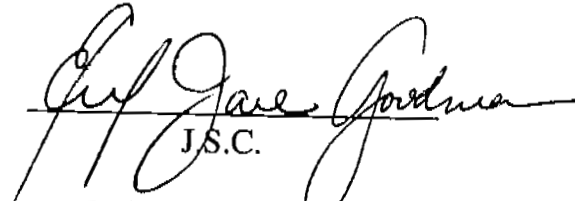
ORDERED that the parties are directed to call the Court for a deposition ruling if any further issues arise at any deposition, and, to accommodate the Court's schedule the

deposition should be scheduled any afternoon (except for Thursdays).

**This constitutes the Decision and Order of the Court.**

Dated: January 4, 2008

ENTER:

  
J.S.C.  
**EMILY JANE GOODMAN**

**FILED**  
JAN 10 2008  
NEW YORK  
COUNTY CLERK'S OFFICE