

470 4th Ave. Fee Owner, LLC v Wesco Ins. Co.

2025 NY Slip Op 30136(U)

January 8, 2025

Supreme Court, New York County

Docket Number: Index No. 651184/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

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470 4TH AVENUE FEE OWNER, LLC, TPH 470 4TH AVENUE INVESTORS LLC, and TRINITY PLACE HOLDINGS INC.,

Plaintiffs,

- v -

WESCO INSURANCE COMPANY and AMTRUST NORTH AMERICA INC.,

Defendants.

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INDEX NO. 651184/2020

MOTION DATE 01/08/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of non-party Danya Cebus Construction, LLC, to quash or modify a subpoena duces tecum and ad testificandum returnable in this court, served upon it on October 4, 2024, is granted to the extent that the movant need not, and shall not, produce its "entire file related to the premises located at 470 4th Avenue, Brooklyn, New York that is the subject of this litigation" in its possession identified in the affirmation of Ethan W. Middlebrooks, Esq., dated October 30, 2024, submitted in support of the motion; and it is further

ORDERED that the herein order is without prejudice to defendant Wesco Insurance Company propounding a Sub Duces Tecum to

non-party Danya Cebus Construction, LLC, that specifies the category of records, such as daily activity reports/logs; subcontracts; electronic or physical letters or correspondence, etc., related to construction work, including repairs, which such non-party prosecuted, monitored, and/or inspected in connection with the installation of Packaged Terminal Air Conditioning units, including louvers, thereof; façade; roof system; exterior wall cladding; foundation; elevators; wood flooring; mechanical, plumbing, electrical and fire protection systems of 470 4th Avenue, Brooklyn, New York, from July 2014 through and including May 24, 2019; and it is further

ORDERED that defendant Wesco Insurance Company shall bear the reasonable costs¹ incurred by non-party Danya Cebus Construction, LLL, of photocopying and delivering copies of such records to all counsel herein, upon receipt of an estimate of such costs at least fifteen days before production, and shall reimburse such costs, within 30 days of receipt of such records and invoice therefor; and it is further

ORDERED that there shall be no further extension of the deadlines for discovery and filing of the note of issue, which are set forth in the Status Conference Order dated November 1, 2024.

¹Defendant and Wesco shall bear their own attorneys' or related legal services fees.

DECISION

By Subpoena Duces Tecum and Ad Testificandum dated October 4, 2024, defendant Wesco Insurance Company seeks from non-party Danya Cebus Construction, LLC, "your entire file related to the premises located at 470 4th Avenue, Brooklyn, New York that is the subject of this litigation." Such general, unspecified subpoena, which seeks records that are not material to this lawsuit, is overbroad. See In re New York City Asbestos Litigation, 133 AD3d 463, 463-464 (1st Dept 2015) ("all other relevant documents and records, including but not limited to commercial records. . . is overbroad.") There is no way this court can "cull good from the bad", given such generic description (see Soho Generation of New York, Inc v Tri-City Ins Brokers, Inc, 236 AD2d 276, 277 [1st Dept 1997]), so an order directing modification is not available. However, defendant Wesco Insurance Co has leave to serve a new subpoena that delineates the specific categories of records sought.

This court disagrees with non-party Danya Cebus Construction, LLC, to the extent that it argues that defendant Wesco Insurance Company must first secure from plaintiffs copies of records of Danya Cebus Construction, LLC, which plaintiffs may have in their possession. See Kapon v Koch, 23 NY3d 32, 38 (2014).

Finally, defendant Wesco Insurance Company, which seeks discovery from non-party Danya Cebus Construction, LLC, shall bear

the reasonable non-legal costs incurred by such non-party in complying with any newly issued that properly delineates the records and any testimony sought. See Waltzer v Tradescape & Co, LLC, 31 AD3d 302 (1st Dept 2006).

Debra A. James

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1/8/2025
DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE