

**County Wide Masonry Corp. v Hudson Meridian
Constr. Group LLC**

2025 NY Slip Op 34795(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 654485/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

COUNTY WIDE MASONRY CORP.,
Plaintiff,

INDEX NO. 654485/2022

MOTION DATE N/A

MOTION SEQ. NO. 006

- v -

HUDSON MERIDIAN CONSTRUCTION GROUP LLC,440
HAMILTON DEVELOPER LLC, BELDEN BRICK SALES &
SERVICE, INC. D/B/A BELDEN TRI-STATE BUILDING
MATERIALS, LIBERTY MUTUAL INSURANCE COMPANY
OF BOSTON, MASSACHUSETTS D/B/A LIBERTY
MUTUAL INSURANCE COMPANY, N-EAST SITE
CONTRACTING, INC., GAMA CONSTRUCTION CORP.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

BELDEN BRICK SALES & SERVICE, INC. D/B/A BELDEN
TRI-STATE BUILDING MATERIALS

Third-Party
Index No. 595096/2025

Plaintiff,

-against-

TAYLOR CLAY PRODUCTS, INC.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 146, 147, 148, 149,
150, 151, 152, 153, 154, 155, 156, 157, 158, 159

were read on this motion to/for DISCOVERY.

Third Party Defendant Taylor Clay Products, Inc.’s motion to compel is denied.

Background

This action arises out of a construction project in White Plains. Plaintiff alleges it entered into an agreement with Hudson Meridian Construction Group LLC (“Hudson”) to do masonry work on a large brick building. The brick was to be delivered by Belden Brick Sales & Service,

Inc. (“Belden”). Plaintiff argues that defendants have withheld payments as there are issues with the bricks.

Belden served a third-party complaint upon Taylor Clay Products, Inc. (“Taylor”) on January 24, 2025. There, Belden alleges that it ordered the bricks from Taylor, that the bricks that Taylor provided were defective, and brings causes of action against Taylor for common law indemnification, contribution, breach of contract, and negligence.

Hudson was insured against a default by plaintiff pursuant to a Subcontractor Default Insurance (“SDI”) policy which was issued by Liberty Surplus Insurance Corporation (“LSIC”). Hudson is represented by Sokoloff Stern LLP who is also counsel for Liberty Mutual Insurance Company (“LMIC”) – both of which are named parties. Despite similar names, LMIC and LSIC are not synonymous, and LSIC is not a party to this action. Taylor claims that although LSIC is not a named party, Hudson’s counsel, Sokoloff Stern, seeks to recover both Hudson’s self-insured retention under the SDI policy and LSIC’s subrogation claim for around \$2 million which it paid Hudson under an SDI claim.

In this motion, Taylor moves to compel the production of documents that it requested from Hudson in its August 12, 2025 notice for discovery and inspection and for the Court to preclude LSIC from presenting any subrogation claim if Hudson fails to produce the requested documents. Specifically, Taylor seeks the production of LSIC’s SDI claim file, other documents establishing LSIC’s right to subrogate, and details of its subrogation claim.

In response to the August 2025 demands, Hudson responded that it did not possess the requested documents and that the request should be directed towards LSIC. Hudson provided the contact information for LSIC and instructed that the information should be sought by subpoena. Hudson contends, and its attorney affirms, that Hudson simply does not have the requested

documentation and that LSIC's claim file would only be in the possession of LSIC. Hudson shows that it sent an email to Taylor's counsel with a copy to counsel for LSIC to try to facilitate the production of these documents (NYSCEF Doc. No. 156). Hudson states that Taylor did not respond. Hudson further details that it cooperated to the best of its ability – it produced a copy of the documents it had, including the policy that Taylor attached to this motion (NYSCEF Doc. No. 149). Hudson further details that, while Taylor asserts that it has been denied all discovery, Hudson has produced 29,835 pages of documents, while Taylor has only produced 155 pages in total. Hudson contends that Taylor is needlessly dragging out discovery when it could have easily sought the information from LSIC by subpoena, which Hudson attempted to facilitate.

In reply, Taylor insists that Hudson's counsel is also representing LSIC's subrogation claim and has admitted as much to Taylor's counsel and to other counsel on this case. Taylor reasons that Hudson's counsel therefore must have control over documents in the possession of an insurance company that it allegedly represents.

Discussion

A court cannot order a party to produce documents that the party does not possess and which are not under its control (*Calcados Samello, S. A. v Intershoe, Inc.*, 78 AD2d 796, 796 [1st Dept 1980]).


Here, the Court finds that Hudson has adequately shown that it is not in possession of LSIC's claim file and that it cannot produce the claim file. The Court therefore cannot compel the production of LSIC's claim file from Hudson. While Taylor contends that Hudson's counsel is representing LSIC's interests – the fact is that LSIC is not a party to this matter and the document requests were issued to Hudson.

Taylor served its document demands on Hudson on or around August 12, 2025 (NYSCEF Doc. No. 155). Hudson timely responded on September 5, 2025, stated that it did not have the documents requested, instructed that they must be sought by subpoena to LSIC, and provided the contact info for LSIC’s counsel (NYSCEF Doc. No. 151). Furthermore, Hudson has shown that it attempted to connect Taylor’s counsel with LSIC’s counsel by email dated September 29, 2025 and reiterated that Taylor should serve a subpoena on LSIC to get the requested information (NYSCEF Doc. No. 156). Taylor’s counsel, instead of stamping its foot and making this motion, should have just served the subpoena. If the response to that subpoena was unacceptable, then a motion should have been made.

Accordingly, it is hereby

ORDERED that Taylor’s motion to compel is denied in its entirety.

See NYSCEF Doc. No. 165 for details on the next conference.

<u>12/11/2025</u> DATE					 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	