

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

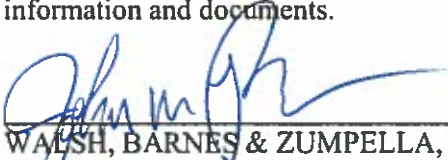
IN RE: PHILADELPHIA INDEMNITY CIVIL DIVISION
INSURANCE COMPANY

DOCKET NO.: GD-22-014347

**MOTION TO QUASH SUBPOENA
SERVED UPON FRANJO
CONSTRUCTION COMPANY**

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.


WALSH, BARNES & ZUMPELLA, P.C.

3685-108

Filed on Behalf of
Franjo Construction Company

Counsel of Record for this Party:

John M. Polena, Esquire
Pa.ID. No.: 204268

WALSH BARNES, P.C.
2100 CORPORATE DRIVE, SUITE 1400
WEXFORD, PA 15090
412-258-2255
jpolena@walshlegal.net

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY CIVIL DIVISION
INSURANCE COMPANY

DOCKET NO.: GD-22-014347

I. MOTION TO QUASH SUBPOENA

AND NOW, comes the subpoenaed party Franjo Construction Corporation by and through its counsel Walsh Barnes, P.C. and John M. Polena, Esquire and files the following Motion to Quash Subpoena and aver as follows:

1. This matter involves a miscellaneous docket opened via petition to serve a subpoena on a general contractor seeking its construction file for a revitalization project it completed at the Fox Chapel Golf Club.

2. On January 27, 2022, the Fox Chapel Golf Club allegedly suffered water damage to its facility when a fire sprinkler pipe burst.

3. A claim was made by counsel for Philadelphia Indemnity Insurance Company as subrogee of Fox Chapel Golf Club to the insurance carrier for Franjo Construction Corporation alleging it was responsible for the alleged construction defect that caused the water damage.

4. Following investigation of the incident at the site the claim by Fox Chapel Golf Club was denied by Berkley Mid-Atlantic Group the insurance carrier for Franjo Construction Corporation. *See June 23, 2022 Correspondence attached as Exhibit A.*

5. On November 22, 2022, Counsel for Philadelphia Indemnity Insurance Company filed a Petition to Issue Docket Number for Service of a Subpoena to Produce Documents identifying that it was based upon a January 27, 2022 incident and sought to subpoena Franjo

Construction Corporation and the architect for the Fox Chapel Golf Club revitalization project. *See Petition to Issue Docket Number attached as Exhibit B.*

6. On February 6, 2023, Plaintiff served the at-issue Subpoena to produce documents on Franjo Construction Corporation via certified mail seeking Franjo Construction Corporation's full construction file for the Fox Chapel Golf Club Revitalization Project. *See Subpoena and Transmittal Correspondence attached as Exhibit C.*

7. A courtesy copy of the subpoena was received by Franjo Construction Corporation's insurance carrier from Counsel for Philadelphia Indemnity Insurance Company.

8. Franjo Construction Corporation has not actually been served with the subpoena to date.

9. No Complaint has been filed regarding the January 27, 2022 fire sprinkler break.

10. It is clear that the miscellaneous docket seeking a subpoena was opened to obtain pre-suit discovery from Franjo Construction Corporation for future litigation regarding the water damage claim that has already been denied and for which no Complaint or Writ has been filed to date.

11. While Pa.R.C.P. 4003.8 does permit Pre-Complaint discovery nowhere under the rule does it permit discovery where litigation has not even been initiated.

12. In addition, the subpoena clearly constitutes a fishing expedition lacking any particularity that there is probable cause for believing the documents sought will materially advance any pleading and which without the documents being sought would result in Philadelphia Indemnity Insurance Company being unable to formulate a legally sufficient pleading. *See Cooper v. Frankford Health Care System, Inc., 960 A.2d 134 (Pa. Super. 2008).*

13. Philadelphia Indemnity Insurance Company should not be permitted to avoid initiating litigation or to be permitted to utilize the pre-suit discovery process to try and detect causes of action it currently has no probable cause to anticipate. *See Id.*

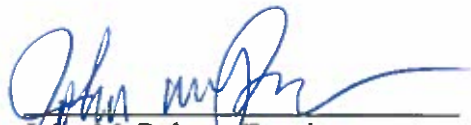
14. Philadelphia Indemnity Insurance Company already has sufficient information based upon its own personal investigation of the incident to file a legally sufficient Complaint without the need for the production of the construction file of Franjo Construction Corporation.

15. Philadelphia Indemnity Insurance Company has already identified that it believes a construction defect caused the loss based upon the claim it made to Franjo Construction Corporation's insurance carrier. No further pre-complaint discovery is required for it to draft a legally sufficient Complaint.

WHEREFORE, Franjo Construction Corporation by and through its counsel Walsh Barnes, P.C. respectfully requests that this Motion to Quash Subpoena is granted and the subpoena duces tecum directed to Franjo Construction Corporation is quashed and Franjo Construction Corporation is not required to respond to the subpoena served upon it by Philadelphia Indemnity Insurance Company.

Respectfully submitted,

Walsh Barnes, PC


John M. Polena, Esquire
Counsel for Franjo Construction Corporation



"Insuring the Future of BusinessSM"

June 23, 2022

Jonathan Beech, Esquire
Poerio & Walter
411 Seventh Avenue
Suite 1400
Pittsburgh, PA 15219-1942

email: jbeech@pwlawinc.com

Your Client: Fox Chapel Golf Club
Date Of Loss: 1/27/22
Our Insured: Franjo Construction Corporation

Dear Mr. Beech,

Based on our investigation into this matter and consultation with our expert who attended the inspection, there is no proof that Franjo's actions or lack thereof, led to this loss. This is not a construction defect.

As such we are denying your claim.

Thank you.

Very truly yours,

Michelle Stover

Michelle R. Stover, JD, CPCU, SCLA, AIC
Claims Specialist
1-800-283-1153 x 3363

Workers Compensation Claims
P.O. Box 27827
Richmond, VA 23261



(800) 283-1153
Fax (877) 684-5484

A BERKLEY COMPANY

Liability and Property Claims

P.O. Box 27707
Richmond, VA 23261



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY
INSURANCE COMPANY

) CIVIL DIVISION
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)
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No.

) PETITION TO ISSUE DOCKET NUMBER
) FOR SERVICE OF A SUBPOENA TO
) PRODUCE DOCUMENTS
)
)

) Filed on Behalf of
) Philadelphia Indemnity Insurance Company
)

) Counsel of Record for This Party:
)


) Jonathan C. Beech
) PA ID No. 82440
)

) POERIO & WALTER, INC.
)

) 411 Seventh Ave, Suite 1400
) Pittsburgh, PA 15219
) 412.246.0506
) 412.246.0508
) jbееch@pwlawinc.com

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.


Jonathan C. Beech
PA ID No. 82440



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY) CIVIL DIVISION
INSURANCE COMPANY)
)
) No.
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**PETITION TO ISSUE DOCKET NUMBER
TO SERVE SUBPOENA TO PRODUCE DOCUMENTS**

TO THE DEPARTMENT OF COURT RECORDS OF ALLEGHENY COUNTY:

1. This Petition involves a January 27, 2022 incident, which occurred in Allegheny County.
2. The undersigned has been retained to represent Philadelphia Indemnity Insurance Company relative to this incident.
3. As such, a Docket Number is required to serve a Subpoena to Produce Documents upon Franjo Construction Corporation and Chapman Coyle Chapman Architecture & Planning, Inc. to obtain a copy of documents relating to the incident of January 27, 2022.

Respectfully submitted,

POERIO & WALTER, INC.

By:


Jonathan C. Beech

Poerio & Walter, Inc.
411 Seventh Avenue, Suite 1400
Pittsburgh, PA 15219-1942
(412) 246-0506

**POERIO &
WALTER INC.**
ATTORNEYS AT LAW

Jonathan C. Beech
(412) 246-2024
jbeech@pwlawinc.com
*Also Admitted in West Virginia

February 6, 2023

*Via Certified Mail 7022 0410 0003 4560 9634
Return Receipt Requested*

Franjo Construction Corporation
335 7th Avenue
Homestead, PA 15120

RE: IN RE: Philadelphia Indemnity Insurance Company
Docket No. GD-22-014347
Date of Loss: 01/27/2022
Our File No.: 500002-142827

To Whom It May Concern:

Enclosed please find a Subpoena to Produce Documents or Things for Discovery Pursuant to Rule 4009.22. The enclosed Subpoena specifies the information that is being requested.

You are required to produce the documentation requested in this Subpoena to me within the next twenty (20) days to the Pittsburgh address listed below. You are also required to complete and return the enclosed Certificate of Compliance. Thank you in advance for your cooperation for complying with this Subpoena. Please call with any questions.

Very truly yours,



Jonathan C. Beech
JCB/jg

Enclosures
500002-142827/Documents/102138

411 Seventh Avenue, Suite 1400 | Pittsburgh, Pennsylvania 15219-1942 | Telephone 412.246.0506 | Facsimile 412.246.0508

25 N. Front Street | Harrisburg, Pennsylvania 17108 | Telephone 717.724.0331 | Facsimile 717.724.0332

www.pwlawinc.com

 **Your House Counsel®**
MEMBER FIRM



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY INSURANCE COMPANY

vs.

No. GD-22-014347

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

To: FRANK CONSTRUCTION CORPORATION
Name of Person or Entity

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

PLEASE SEE ATTACHMENT FOR DOCUMENTS REQUESTED.

at 411 SEVENTH AVENUE, SUITE 1400, PITTSBURGH PA 15219
Address

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

Attorney's or Party's Name: JONATHAN C. BEECH

Address: 411 SEVENTH AVE, STE 1400
PITTSBURGH, PA 15219

Telephone: 412-246-2506

Supreme Court ID # 82440

Attorney for: PHILADELPHIA INDEMNITY INS. CO.



Date: 11/30/2022

By The Court:

No 43402

By: Michael McGeever

Michael McGeever
Director, Department of Court Records

By: Max Homer

Max Homer
Deputy Director, Department of Court Records

RETURN OF SERVICE

On the _____ day of _____, 20____,

I, _____

served _____, with the foregoing subpoena by

(describe method of service) _____

I verify that the statements made in this return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Date

Signature

Language Access Coordinator-Allegheny County Courts
300 Frick Building, 437 Grant Street
(412) 350-5419 or (412) 350-4044
courtaccess@alleghenycourts.us



NOTICE OF LANGUAGE RIGHTS

English: You have the right to an interpreter at no cost to you. To request an interpreter, please inform court staff using the contact information provided at the top of this notice.

Spanish/Español: Usted tiene derecho a un intérprete libre de costo. Para solicitar un intérprete favor de informárselo al personal judicial utilizando la información provista en la parte superior de este aviso.

Nepali/नेपाली: तपाईंको निःशुल्क रूपमा भाषा अनुवादक राख्न पाउने अधिकार छ। अनुवादकको लागि अनुरोध गर्न, यस सूचनाको माथि दिइएको सम्पर्क जानकारी भरेर अदालतका कर्मचारीहरूलाई जानकारी दिनुहोस्।

Mandarin/Cantonese Simplified Chinese/普通话/粵語簡體中文: 您有权获得免费的口译员服务。若需要口译员, 请使用本通知上方提供的联系信息通知法院工作人员。

Mandarin/Cantonese Traditional Chinese/普通话/廣東話繁體中文: 您有權要求免費傳譯服務。如欲要求傳譯服務, 請參閱本通知頂部的聯絡資料。通知法庭職員。

العربية/Arabic: يحق لك الحصول على مترجم دون دفع أي تكلفة من جانبك. لطلب مترجم، يُرجى إعلام موظفي المحكمة باستخدام معلومات الاتصال المقدمة في الجزء العلوي من هذا الإشعار.

Russian/Русский: У вас есть право на бесплатные услуги переводчика. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Attachment to Subpoena

For the "Fox Chapel Golf Club Revitalization Project" located at 426 Fox Chapel Road, Pittsburgh, PA 15238, a true and correct copy of any and all construction contract administration correspondence, including, but not limited to:

1. Change Orders;
2. Requests for Information;
3. Architect's Supplemental Information;
4. Job Meeting Minutes;
5. Insulation Inspection Reports;
6. Borough of Fox Chapel Building Inspection Reports including Architectural, Structural, and MEP (Mechanical, Electrical and Plumbing)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY) CIVIL DIVISION
INSURANCE COMPANY)
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)
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) No. GD-22-014347
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)
)

TO: Franjo Construction Corporation
(Person served with Subpoena)

You are required to complete the following Certificate of Compliance when producing documents or things pursuant to the Subpoena. Send the documents or things, along with this Certificate of Compliance (with your original signature), to the person at whose request the subpoena was issued.

***Do not send the documents or things,
or the Certificate of Compliance,
to the Prothonotary's Office***

**Certificate of Compliance With Subpoena to Produce
Documents or Things Pursuant to Rule 4009.23**

I, _____,
(Person Served With Subpoena)

certify to the best of my knowledge, information, and belief that all documents or things required to be produced pursuant to the subpoena issued on _____
(Date of Subpoena)
have been produced.

Date: _____
(Signature of Person Served with Subpoena)

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: PHILADELPHIA INDEMNITY CIVIL DIVISION
INSURANCE COMPANY

DOCKET NO.: GD-22-014347

ORDER OF COURT

AND NOW, this _____ day of _____, 2023 Franjo Construction Corporation's Motion to Quash Subpoena is hereby **GRANTED** and Philadelphia Indemnity Insurance Company's subpoena is hereby **ORDERED, ADJUDGED** and **DECREED** the subpoena served upon Franjo Construction Corporation is hereby **QUASHED** and Franjo Construction Corporation is required to respond to the subpoena served upon it by Philadelphia Indemnity Insurance Company.

J.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Motion to Quash Subpoena** has been sent to counsel/parties of record via method indicated below this 13th day of March 2023.

Jonathan Beech, Esquire
Poerio & Walter
411 Seventh Avenue, Suite 1400
Pittsburgh, PA 15219-1942
Counsel for Philadelphia Indemnity Insurance Company

Respectfully submitted,

Walsh Barnes, PC

A handwritten signature in blue ink that reads "John M. Polena" followed by a stylized set of initials "rdcb".

John M. Polena, Esquire
Counsel for Franjo Construction Corporation