

To commence the statutory time period for appeals of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp x Dec _____ Seq. No. 2 Type SJ

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

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HARLEYSVILLE INSURANCE COMPANY OF NEW YORK a/s/o TIFFANY TOWERS, LTD. and TIFFANY TOWERS LTD. individually,

Plaintiffs,

Index No. 50073/14

-against-

DECISION AND ORDER

THE CITY OF WHITE PLAINS,

Defendant.

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The following papers numbered 1 to 3 were read on this motion:

<u>Paper</u>	<u>Number</u>
Notice of Motion, Affidavit, Affirmation, Memorandum of Law and Exhibits	1
Affirmation and Exhibits in Opposition	2
Reply Affirmation and Memorandum of Law	3

Plaintiff brings its motion seeking summary judgment on damages in this case involving an accident when a City employee backed a City truck into claimant's subrogee's building, damaging it. (The motion also sought summary judgment on liability, but the City conceded liability at a recent conference.)

In support of its motion for damages, plaintiff submits evidence that it paid its insured \$95,232.25 on December 11, 2013. Plaintiff now seeks that amount, plus the \$2,500 deductible that the insured paid, plus interest at the statutory rate from the date of the loss (August 21, 2013), plus costs.

Plaintiff states that the actual cost of the building repairs amounted to \$108,260. Plaintiff does not explain why it did not pay its insured for the actual cost of the repairs. By submitting the evidence of the payments, the proposal for the work and the invoices, plaintiff has established its prima facie entitlement to summary judgment.

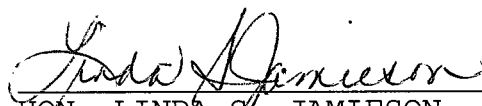
In response, defendant fails to rebut this prima facie showing. All that defendant submits in opposition is an attorney affirmation. *Cleary v. Wallace Oil Co.*, 55 A.D.3d 773, 777, 865 N.Y.S.2d 663, 666 (2d Dept. 2008) ("The affirmation of Wallace's attorney has no probative weight and cannot raise a triable issue of fact."). Defendant also argues that summary judgment is inappropriate because it has not received any documents. While it is true that it has not received any documents from plaintiff, that is because **defendant failed** to seek any documents pursuant to the schedule set forth in the Preliminary Conference Order. (The Court notes that after this motion was fully submitted, defendant did serve a document demand on plaintiff.) None of defendant's arguments serves to rebut plaintiff's prima facie case.

Accordingly, the Court grants the motion in its entirety. Plaintiff may submit a proposed Judgment, on notice to defendant, to the Judgment Clerk in the amount of \$95,232.25, plus the \$2,500 deductible, plus interest at the statutory rate from the

date of the loss (August 21, 2013).

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
March 6, 2015


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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