

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
SABRAIL DAVENPORT, as Administrator of the
Estate of JARED CALVIN LLOYD a/k/a JARED
LLOYD,

Plaintiff,

-against-

EVERGREEN COURT HOME FOR ADULTS SP LLC,
SPJJ LLC, DENISE KERR, EMMANUEL LEMA,
NATHANIEL SOMMER, AARON SOMMER, PHILLIP
SCHONBERGER, JOSEPH SCHONBERGER, STEVEN
SCHONBERGER, JEFFREY SCHONBERGER,
RAYMOND CANARIO, WAYNE BALLARD,
VILLAGE OF SPRING VALLEY, and VILLAGE OF
SPRING VALLEY EMPLOYEES "JOHN DOES 1-10,"

Defendants.

-----X
Hon. John P. Collins, Jr., J.S.C.

The following papers were considered on this motion:

NYSCEF Doc. Nos. 174, 175, 176, 177 (Motion Papers — Spolzino Affirmation, Varga Affirmation in Support, Exhibits, Memorandum of Law in Support); 179 (Green Affirmation in Opposition with Exhibits); 185, 186, 187 (Reply Papers — Varga Reply Affirmation, Verschell Affirmation, Reply Memorandum of Law).

DECISION & ORDER

Index No. 033844/2022

Motion Seq. No. 6

BACKGROUND

This is a wrongful death and conscious pain and suffering action arising from a catastrophic fire on March 22–23, 2021, at the Evergreen Court Home for Adults, located at 65 Lafayette Street, Village of Spring Valley, Rockland County. Plaintiff decedent, Jared Calvin Lloyd, was a volunteer firefighter with the Spring Valley Fire Department who was killed when he became trapped inside the burning building, which ultimately collapsed. A resident of Evergreen Home for Adults, Oliver Hueston, also perished in the fire. The premises were owned by defendant SPJJ LLC and operated by defendant Evergreen Court Home for Adults SP LLC. Church Mutual Insurance Company, S.I. ("Church Mutual") is a Wisconsin-based commercial insurer that issued liability and property insurance policies to the facility.

The fire prompted investigations by at least five governmental agencies, including the New York State Department of Public Service ("DPS"), the New York State Office of Fire Prevention and Control ("OFPC"), the Rockland County Sheriff's Office, the Spring Valley Police Department, and the United States Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Criminal charges were brought against certain defendants and ultimately resolved by plea agreement.

Plaintiff now seeks disclosure, by subpoena duces tecum, from nonparty Church Mutual of three categories of documents: (i) the complete claim file associated with Claim No. 000-00-050055; (ii) complete copies of insurance policies with all endorsements relating to that claim number; and (iii) all applications, submissions, and underwriting files relating to that claim number. Two subpoenas were issued — an October 2025 subpoena that was so-ordered after its return date had already passed, and a December 2025 subpoena that was so-ordered on December 3, 2025, served on Church Mutual's agent on December 12, 2025, but not simultaneously filed or served upon the objecting defendants.

Moving defendants Evergreen Home for Adults SP LLC, SPJJ LLC, Joseph Schonberger, Steven Schonberger, and Jeffrey Schonberger (collectively, "the objecting defendants"), together with nonparty Church Mutual, now move pursuant to CPLR 2304, 3101, and 3103 to quash the subpoenas or, in the alternative, fix conditions or modify them. Plaintiff opposes and requests an in camera review of the subpoenaed materials if the Court finds any merit to the motion.

DISCUSSION

I. Standing

As a threshold matter, the Court must determine whether all movants have standing to seek relief. Church Mutual, as the creator, owner and custodian of the subpoenaed materials, plainly has standing to move to quash a subpoena directed to it and to seek a protective order pursuant to CPLR 3103. Plaintiff does not argue otherwise. The motion can therefore be fully adjudicated on Church Mutual's objections alone.

As to the objecting defendants, CPLR 3103 authorizes “any party or . . . any person about whom discovery is sought” to seek a protective order. The 2013 amendment adding the “about whom” language was intended to broaden the universe of people who may invoke the statute's protections. The documents sought in the subpoena — an insurance claim file and underwriting materials associated with the defendants’ insurer — are unquestionably “about” the objecting defendants within the meaning of the statute, notwithstanding that Church Mutual holds the proprietary interest in those documents. The objecting defendants have, at minimum, a cognizable interest in the character of those materials sufficient to support their participation in this motion. The Court therefore considers the motion on behalf of all movants, recognizing that even if the Court were to conclude that the objecting defendants lack independent standing, the motion would survive on Church Mutual's objections in any event.

II. The October 2025 Subpoena

The October 2025 subpoena is quashed on its face. It is undisputed that the subpoena was so-ordered on November 18, 2025 — four days after its stated return date of November 14, 2025. Compliance with a subpoena whose return date has already passed -- before the subpoena is even operative -- is a logical and practical impossibility. Plaintiff has not withdrawn this subpoena, and no basis exists to excuse this deficiency. The October 2025 subpoena is accordingly quashed.

III. The December 2025 Subpoena — Procedural Deficiencies

A. Simultaneous Service Under CPLR 3120(3)

CPLR 3120(3) provides that “[t]he party issuing a subpoena duces tecum . . . shall at the same time serve a copy of the subpoena upon all other parties.” It is undisputed that the December 2025 subpoena was not simultaneously served on counsel for the objecting defendants, nor was it

filed on NYSCEF at the time of service on Church Mutual. The purpose of this provision is to afford parties the opportunity to move for a protective order or to quash the subpoena before documents are actually produced. *See A.S. v. A.B.*, 84 Misc3d 692, 699 (Sup Ct, Kings Cnty. 2024).

The Court is not persuaded that this procedural violation, standing alone, requires outright quashing in the circumstances presented here. The motion to quash was filed on February 12, 2026, well in advance of any document production by Church Mutual. The objecting defendants therefore obtained precisely the protection CPLR 3120(3) was designed to provide — the ability to challenge the subpoena before compliance. Whatever prejudice might have resulted from the failure of simultaneous service was remedied by the timely motion. *See Levy v. Grandone*, 8 AD3d 630, 631 (2d Dept 2004). The Court declines to quash the December 2025 subpoena on this ground alone.

B. Notice Requirements Under CPLR 3101(a)(4)

CPLR 3101(a)(4) requires that a nonparty subpoena give “notice stating the circumstances or reasons such disclosure is sought or required.” The Court of Appeals has interpreted this as an initial “minimal obligation” designed to apprise the nonparty of the circumstances or reasons for the disclosure sought, so that the nonparty is positioned to challenge the subpoena if appropriate. *See Kapon v. Koch*, 23 NY3d 32, 37–39 (2014); *See also Reda v Port Authority of New York and New Jersey*, 188 AD3d 1278 (2d Dept 2020). The subpoena need not satisfy a demanding standard of specificity, but it must include some statement of purpose on its face or in an accompanying notice stating the circumstances or reasons such disclosure is sought or required. *See Ruppert v Ruppert*, 244 AD3d 892, 893 (2d Dept 2025); *See also DiBuono v Abbey, LLC*, 13 AD3d 524, 525 (2d Dept 2018).

The December 2025 subpoena is bare. It identifies a claim number, references the fire and demands three categories of documents. It contains no statement of why these materials are sought, how they relate to plaintiff's claims or what issue in the litigation they are intended to address. The accompanying cover letter from plaintiff's counsel does not cure this deficiency — it merely demands production and threatens enforcement proceedings.

However, the Court notes that Church Mutual is the insurer actively defending the very defendants against whom this subpoena arises. Church Mutual retained and is paying for defense counsel in this litigation. The subpoena's reference to Claim No. 000-00-050055 and the Evergreen

fire could not reasonably have left Church Mutual confused about the context of the demand. The *Kapon* court emphasized that the notice requirement serves the function of “giving petitioners sufficient information to challenge the subpoenas.” *Kapon*, 23 NY3d at 39. Church Mutual plainly had that information — as evidenced by the fact that it retained counsel and mounted a vigorous substantive challenge to the subpoenas' propriety. In these unusual circumstances, the Court declines to quash the subpoena solely on facial insufficiency grounds.

IV. Substantive Propriety of the Subpoenas

The Court now turns to the substantive objections which present the most consequential issues on this motion. The three categories of documents sought require separate analysis.

A. The Claim File (Claim No. 000-00-050055)

At the outset, the Court must resolve a factual dispute of threshold importance. Plaintiff's opposition proceeds on the premise that the subpoena seeks the premises loss claim file — i.e., the first-party property damage claim — which plaintiff characterizes as an ordinary business record created to determine the extent of coverage for the building loss, and which plaintiff claims was not created in anticipation of litigation. The moving defendants respond that Claim No. 000-00-050055 is the bodily injury liability claim file — not the premises file — and that the premises file bears a different claim number (000-00-050040).

This distinction is dispositive. The reply affirmation of Lia Varga, Church Mutual's Claims Manager, directly and unambiguously states that Claim No. 000-00-050055 is the bodily injury liability claim while Claim No. 000-00-050040 is the property loss claim. The subpoena, on its face, calls for the claim file "relating to Claim No.: 000-00-050055." If Ms. Varga is correct — and her affirmation is uncontroverted on this specific factual point — then the entire architecture of plaintiff's opposition has been constructed on a false premise.

The Court accepts Ms. Varga's uncontroverted affirmation that Claim No. 000-00-050055 is the bodily injury liability claim file. This is the file that Church Mutual opened to manage its defense obligations and litigation exposure arising from the very lawsuits now before this Court. The distinction matters enormously for purposes of the privilege analysis.

A liability insurer's claim file, created in connection with its defense of third-party claims against its insured, is conditionally immune from disclosure as material prepared in anticipation of litigation. *See Sofio v Hughes*, 148 AD2d 39 (2d Dept 1989); *See also Recant v. Harwood*, 222

AD2d 372, 372 (1st Dept 1995); *Kin Hwa Ku v. City of New York*, 106 AD3d 698, 699 (2d Dept 2013); *Veltre v. Rainbow Convenience Store, Inc.*, 146 AD3d 416, 417 (1st Dept 2017); *Teran v Ast*, 164 AD3d 1496, 1499 (2d Dept 2018).

This is not a first-party property damage claim where Church Mutual stood as the insured's adversary, assessing whether to pay for a building loss. This is a third-party liability file where Church Mutual, as the defendants' insurer, retained defense counsel, monitored litigation strategy, set reserves and coordinated the defense of wrongful death claims — precisely the context in which anticipation of litigation privilege attaches with full force.

The Court is mindful that the burden to establish the privilege rests on the party resisting discovery, and that conclusory assertions unsupported by a privilege log are ordinarily insufficient. *See Ligoure v. City of New York*, 128 AD3d 1027, 1028 (2d Dept 2015); *Crazytown Furniture, Inc. v. Brooklyn Union Gas Co.*, 145 AD2d 402, 403 (2d Dept 1988). Here, Ms. Varga's affirmations identify the general nature of the file's contents — communications between Church Mutual's departments, communications with assigned defense counsel, reserve-setting memoranda and litigation strategy assessments — with sufficient specificity to establish that the file is predominantly, if not entirely, composed of materials created in anticipation of and in connection with the defense of these very lawsuits. A privilege log itemizing hundreds of litigation-related communications would add procedural formality without changing the substantive outcome.

Moreover, plaintiff's argument that the claim file contains investigative materials obtained when the scene was fresh and evidence was intact — while rhetorically appealing — runs directly into the strong opposition set forth in the Verschell affirmation. Defense counsel documented that, in 3.7 hours of standard internet research, he was able to locate and download the complete 117-page DPS report, the 12-page OFPC report (originally submitted to the District Attorney with a non-disclosure request), and a 202-page criminal omnibus motion containing color photographs, a detailed kitchen blueprint, the complete 44 Control call detail report and a 19-page expert fire analysis report prepared by John Lentini of Scientific Fire Analysis, LLC. Five governmental agencies participated in the on-site investigation; the identities of whose investigators are specifically named in the record. With all criminal proceedings resolved, FOIL requests will yield the complete investigative record compiled by public agencies with unlimited access to the scene. Plaintiff has not rebutted this showing in any meaningful way.

To obtain conditionally privileged litigation materials, plaintiff must demonstrate “substantial need” and an inability “without undue hardship to obtain the substantial equivalent of the materials by other means.” CPLR 3101(d)(2). Plaintiff has made no such showing. The assertion that the Church Mutual file contains information “otherwise unobtainable” is refuted by the record before the Court. The motion to quash the subpoena's demand for the claim file is therefore granted.

B. The Insurance Policies

The subpoena seeks complete copies of insurance policies with all endorsements relating to Claim No. 000-00-050055. The Court notes that prior defense counsel produced homeowners’ insurance policies for the individual Schonberger defendants pursuant to the Court's September 29, 2025 order. However, those were individual homeowners’ policies; they are distinct from the commercial liability and property policies issued by Church Mutual to the Evergreen facility itself. On that basis, this portion of the subpoena is not moot.

That said, the Court observes that the insurance policies themselves — as distinct from the claim file and underwriting materials — are not privileged documents. They are contractual instruments. To the extent plaintiff seeks the policies for the purpose of identifying the full scope of available coverage, that is a legitimate discovery objective in a wrongful death action. The moving papers acknowledge that defense counsel has advised all parties of the liability limits and that no coverage denial has been issued. If accurate, a sworn statement from Church Mutual confirming the applicable policy limits and available coverage would adequately address plaintiff's legitimate interest in this information. The Court therefore grants the motion to quash the demand for complete copies of all policies and endorsements in their entirety, but directs that Church Mutual provide plaintiff with an affidavit identifying the policies in effect on March 23, 2021, the applicable coverage limits, and whether any coverage defenses or denials have been or may be asserted. This is a proportionate response to plaintiff's legitimate informational need.

C. The Underwriting Files

The underwriting files present the most nuanced question on this motion. Underwriting files typically contain the insured's personal and financial information, loss history, risk analyses, property assessments, and the insurer's internal coverage and premium calculations. The subpoena seeks these materials without any explanation of their relevance to a wrongful death and conscious pain and suffering action premised on alleged negligent maintenance of real property.

Plaintiff's principal argument for relevance is that Church Mutual, in the course of underwriting a commercial policy for an adult care facility, likely inspected the premises, photographed conditions, assessed fire hazards and imposed remedial requirements — and that these pre-loss inspection records bear directly on the condition of the premises and the defendants' notice of dangerous conditions. This argument has facial appeal. If the underwriting file contains inspection reports, hazard assessments or correspondence with the insured concerning dangerous conditions at the facility, such materials could be directly relevant to plaintiff's negligence theory.

The difficulty is that the record contains no evidence that Church Mutual actually conducted such inspections. Plaintiff's assumption that a commercial insurer necessarily undertakes physical premises inspections as part of its underwriting process is just that — an assumption. The subpoena is not narrowly tailored to seek inspection-related materials; it demands the complete underwriting file for all policies associated with the claim number, which would sweep in financial data, credit reports, payroll information, premium calculations and the insurer's proprietary risk assessment methodology — none of which has any bearing on whether the Evergreen facility was negligently maintained.

The Court is also persuaded by Church Mutual's showing that the underwriting file contains competitive business information that goes to the heart of its risk assessment methodology. Requiring wholesale disclosure of that proprietary process in a negligence action to which Church Mutual is not even a party would impose a burden on Church Mutual disproportionate to any legitimate discovery interest served and plaintiff has not demonstrated that the information is ““indispensable to the ascertainment of truth and cannot be acquired in any other way.”” *Carecore Nat., LLC v. New York State Ass'n of Med. Imaging Providers, Inc.*, 24 AD3d 488, 489 (2d Dept 2005) (*quoting Deas v Carson Prods. Co.*, 172 AD2d 795, 796 (2d Dept 1991)); *See Ferolito v Arizona Beverages USA, LLC*, 119 AD3d 642 (2d Dept 2014).

At the same time, the Court declines to categorically foreclose plaintiff's access to any pre-loss inspection records that may exist within the underwriting file, as such records — if they exist — could be genuinely probative of the condition of the premises and notice to the defendants. Outright quashing of the underwriting file demand in its entirety may be too blunt an instrument where a narrower remedy would serve the interests of justice.

The Court therefore grants the motion to quash the subpoena's demand for the underwriting files as currently framed, but does so without prejudice to plaintiff serving a narrowly tailored subpoena — accompanied by a proper statement of reasons under CPLR 3101(a)(4) — seeking specifically: (i) any pre-loss inspection reports, hazard assessment reports or written communications between Church Mutual and the insured concerning the physical condition of the premises at 65 Lafayette Street, Spring Valley, New York, generated in connection with the underwriting or renewal of any policy covering those premises; and (ii) any written requirements or recommendations made by Church Mutual to the insured concerning fire safety, building conditions or hazard remediation at the premises.

Any such narrowly tailored subpoena shall be subject to a confidentiality order protecting Church Mutual's proprietary risk assessment methodology and financial information, and Church Mutual shall be permitted to submit a privilege log with respect to any materials it contends are nevertheless privileged.

In arriving at this decision, the Court has reviewed, evaluated and considered all the issues framed by these motion papers and the failure of the Court to specifically mention any issue in this Decision and Order does not mean that it has not been considered by the Court in light of the appropriate legal authority.

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion to quash is GRANTED as follows:

1. The October 2025 subpoena (reflected in NYSCEF Doc. No. 158, so-ordered November 18, 2025) is quashed in its entirety as procedurally defective, the return date having passed before the subpoena was operative.

2. The December 2025 subpoena's demand for the complete claim file relating to Claim No. 000-00-050055 is quashed. The bodily injury liability claim file was created in anticipation of litigation and is conditionally immune from disclosure under CPLR 3101(d)(2). Plaintiff has failed to demonstrate substantial need or an inability to obtain equivalent materials by other means.

3. The December 2025 subpoena's demand for complete copies of all insurance policies and endorsements is quashed, without prejudice to plaintiff obtaining, within ten (10) days

of this Order, a sworn affidavit from Church Mutual identifying the policies in effect on March 23, 2021, the applicable liability and excess coverage limits and confirming whether any coverage defenses or denials have been or may be asserted.

4. The December 2025 subpoena's demand for all applications, submissions, and underwriting files is quashed as framed, without prejudice to plaintiff serving, within five (5) days of this Order, a narrowly tailored subpoena directed specifically at pre-loss inspection reports, hazard assessments and written communications or directives concerning the physical condition of the premises at 65 Lafayette Street, Spring Valley, New York, generated in connection with the underwriting or renewal of any Church Mutual policy covering those premises. Any such subpoena shall be accompanied by a proper statement of reasons pursuant to CPLR 3101(a)(4), served simultaneously on all parties pursuant to CPLR 3120(3) and subject to a confidentiality order protecting Church Mutual's proprietary underwriting methodology and financial data.

5. Church Mutual shall submit to plaintiff -- and to this Court -- a privilege log identifying by category any documents within the above-described subset of the underwriting file that it contends remain protected, within ten (10) days of service of any renewed subpoena.

6. The branch of the motion seeking a blanket protective order foreclosing all future discovery from Church Mutual is denied.

The foregoing constitutes the Decision and Order of the Court as to Motion Seq. No. 6. Plaintiff shall serve a copy of this Order with Notice of Entry upon all parties and upon Church Mutual.

Dated: April 22, 2026
New City, New York

Hon. John P. Collins, Jr., J.S.C.

To: All counsel via NYSCEF