

Newly Admitted, Now What?

THE SKILLS YOU DIDN'T LEARN IN LAW SCHOOL PART 1

MATERIALS BY

Andrew Smiley, Esq.

Michael Solomon, Esq.

—New York State—
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Andrew J. Smiley, Esq.
Smiley & Smiley, LLP
28 Liberty Street, NYC 10005
212.986.2022
asmiley@smileylaw.com
www.smileylaw.com
www.thementoresq.com

CURRICULUM VITAE

Education:

·Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence for the Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

·Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United States District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

Andrew J. Smiley, Esq. Curriculum Vitae, Page 3

- Brooklyn Law School Alumni Association
- National Order of Barristers
- Lime Rock Drivers Club
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors & Legal Counsel

Authored Books

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide*, 2022, The Mentor Esq. Handbook Series – Amazon Best Seller in Personal Injury Law

Smiley, Andrew J. *Successful Trial Skills – A Practical Guide to Jury Selection, Opening Statements, Direct & Cross Examinations and Closing Arguments*, 2024, The Mentor Esq. Handbook Series – Amazon #1 New Release in Trial Practice

Continuing Legal Education (CLE) Presentations:

(83) *Working with Vocational Experts in Personal Injury Litigation*, Lawline, July 24, 2025

(82) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 3: Motion Practice in Federal Court*, New York State Academy of Trial Lawyers, June 5, 2025

(81) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 2: Depositions in Federal Court*, New York State Academy of Trial Lawyers, May 1, 2025

(80) *Federal Court Confidence: Successfully Litigating Personal Injury Cases – Part 1: Overview of the Federal Court Process*, New York State Academy of Trial Lawyers, April 3, 2025

(79) *Who's on the Hook?- Part 4: Litigation and Insurance Issues in SUM Cases*, New York State Academy of Trial Lawyers, January 8, 2025

(78) *Who's on the Hook?- Part 3: Litigation and Insurance Issues in Premise Liability Cases*, New York State Academy of Trial Lawyers, December 4, 2024

(77) *Who's on the Hook?- Part 2: Litigation and Insurance Issues in Construction Accident Cases*, New York State Academy of Trial Lawyers, November 6, 2024

(76) *Who's on the Hook?- Part 1: Litigation and Insurance Issues in Ride-Share and Rental Car Accident Cases*, New York State Academy of Trial Lawyers, October 2, 2024

(75) *Introducing Evidence and Impeaching Witnesses*, Office of The New York State Attorney General – Legal Education and Professional Development, September 26, 2024

(74) *Walking the Line: Settlement Negotiation Skills & Ethics*, New York State Academy of Trial Lawyers, July 9, 2024

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Continuing Legal Education (CLE) Presentations Continued:

(73) *Novel Negligence Cases – Part 2: How to Successfully Litigate Dram Shop Cases*, New York State Academy of Trial Lawyers, June 5, 2024

(72) *Working with Experts*, Office of The New York State Attorney General – Legal Education and Professional Development, April 2, 2024

(71) *Novel Negligence Cases – Part 3: How to Successfully Litigate Ski Accident Cases*, New York State Academy of Trial Lawyers, March 6, 2024

(70) *Novel Negligence Cases – Part 1: How to Successfully Litigate Personal Trainer and Gym Negligence Cases*, New York State Academy of Trial Lawyers, January 3, 2024

(69) *Litigation Back to Basics – Part 3: Introducing Evidence and Impeaching Witnesses*, New York State Academy of Trial Lawyers, December 6, 2023

(68) *Litigation Back to Basics – Part 2: Working With Experts*, New York State Academy of Trial Lawyers, November 1, 2023

(67) *Construction Site Injury Litigation: Pursuing or Defending Claims Against Site Owners, Contractors, and Other Third Parties*, Strafford CLE/BarBri, October 17, 2023

(66) *Litigation Back to Basics – Part 1: Preparing and Conducting Depositions*, New York State Academy of Trial Lawyers, October 4, 2023

(65) *Depositions*, Office of The New York State Attorney General – Legal Education and Professional Development, September 28, 2023

(64) *How to Litigate a Medical Malpractice Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, June 7, 2023

(63) *How to Litigate a Medical Malpractice Case – Part 5: Pre-Trial Preparation*, New York State Academy of Trial Lawyers, May 3, 2023

(62) *How to Litigate a Medical Malpractice Case – Part 4: Discovery & Depositions*, New York State Academy of Trial Lawyers, April 4, 2023

(61) *How to Litigate a Medical Malpractice Case – Part 3: Commencing the Action*, New York State Academy of Trial Lawyers, February 28, 2023

(60) *How to Litigate a Medical Malpractice Case – Part 2: Expert Selection*, New York State Academy of Trial Lawyers, February 1, 2023

(59) *How to Litigate a Medical Malpractice Case – Part 1: The Initial Screening*, New York State Academy of Trial Lawyers, January 4, 2023

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

Andrew J. Smiley, Esq. Curriculum Vitae, Page 5

Continuing Legal Education (CLE) Presentations Continued:

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The New York State Attorney General, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

(47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022

(46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022

(45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021

(44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021

(43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021

(42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021

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Continuing Legal Education (CLE) Presentations Continued:

(41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021

(40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021

(39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021

(38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021

(37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021

(36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

(35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

(34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

(33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

(32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

(31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

(30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

(29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

(28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

(27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

(26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

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Continuing Legal Education (CLE) Presentations Continued:

- (25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018
- (24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017
- (23) Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016
- (22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015
- (21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015
- (20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015
- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014
- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello” : Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

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Continuing Legal Education (CLE) Presentations Continued:

- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
 - America's News Room
 - Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

High-Performance Driving Events, Lime Rock Drivers Club, Porsche Enthusiast, Sim Racing, Tennis, Lego, Cooking, Yoga



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A PRACTICAL GUIDE

Trial Advocacy Case Litigation

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No.: **611371/2023**

-----X
DAVID DEAR,

Plaintiff,

-against-

PALMETTO-RPT OPERATOR, LLC, its agents/apparent agents/servants/employees, PALMETTO – RPT OWNER, LLC, its agents/apparent agents/servants/employees, PALMETTO HOSPITALITY OF GARDEN CITY III, LLC, its agents/apparent agents/servants/employees PALMETTO HOSPITALITY GM, LLC, its agents/apparent agents/servants/employees, RPT HOTEL FEE MEMBER, LLC, its agents/apparent Agents/servants/employees, OTO DEVELOPMENT, LLC its agents/apparent agents /servants/employees, AND OTIS ELEVATOR COMPANY, its agents/apparent agents/servants/employees,

**REQUEST FOR
PRELIMINARY
CONFERENCE**

Defendants.
-----X

The undersigned requests a preliminary conference.

The nature of the action is personal injuries.

The names, addresses and telephone numbers of all attorneys appearing in the action are as follows:

SMILEY & SMILEY, LLP
Attorneys for Plaintiff,
DAVID DEAR
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

MARTYN, SMITH, MURRAY & YONG
Attorneys for Defendants,
PALMETTO-RPT OPERATOR, LLC; PALMETTO – RPT OWNER, LLC; PALMETTO HOSPITALITY GM, LLC; RPT HOTEL FEE MEMBER, LLC and OTO DEVELOPMENT, LLC
102 Motor Parkway, Suite 230
Hauppauge, New York 11788
(516) 739-0000

GORDON REES SCULLY MANSUKHANI, LLP
Attorneys for Defendants,
OTIS ELEVATOR COMPANY

One Battery Park Plaza, 28th Floor
New York New York 10004
(646) 353-3593

Dated: New York, New York
September 8, 2023

SMILEY & SMILEY, LLP
Attorneys for Plaintiff



By: _____

ANDREW J. SMILEY
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

SUPREME COURT COUNTY OF NASSAU

IAS JUSTICE HON. Danielle M. Peterson

-----x
DEAR, DAVIDIndex No.: 611371/2023
PRELIMINARY CONFERENCE ORDER-against-
PALMETTO-RPT OPERATOR, LLC, et alSections 202.8 & 202.12 & 202.19 of the
Uniform Rules-----x
Discovery Track: E S C

A request for a Preliminary Conference having been filed, or the Court having acted on its own initiative pursuant to 22 NYCRR §202.12(j), it is hereby:

ORDERED that disclosure shall proceed as follows:

1. **Insurance Coverage (CPLR 3101 (f)):** If not already provided, shall be furnished by defendant(s) within 30 days of this Order.
2. **Bill of Particulars/ Interrogatories:**
 - a. If not already served, a demand for a Bill of Particulars or Interrogatories shall be served by defendant(s) on or before 15 days from the date of this order.
 - b. A Bill of Particulars or Interrogatories shall be served on or before 30 days from the date of service of the demand.
 - c. If an affirmative defense or counterclaim is asserted, a Demand for a Bill of Particulars or Interrogatories shall be served by plaintiff on or before 15 days from the date of this order. A response to such demand shall be served on or before 30 days from the date of service of the demand.
3. **Medical Report(s), Record(s) and Authorization(s):** On or before 30 days from the date of this order hereof, all parties shall provide upon request of another party a duly executed written authorizations(s) if applicable, for the following:
 - a. Health care provider, and/or hospital, pharmacy and/or autopsy records;
 - b. Employment and/or attendance records for the period two years prior to and one year after the date of the occurrence/accident;
 - c. No fault file;
 - d. Diagnostic tests and films;
 - e. Collateral source authorizations / workers comp records;
 - f. W2 and/or tax return records for self-employed individuals (if there is a loss of wages claim) for the period of two years prior to and one year after the date of the occurrence/accident.
4. **Physical Examinations:**
 - a. Examination(s) of plaintiff shall be noticed within 20 days of completion of the Plaintiff's deposition and held within 45 days of service of notice.
 - b. Pursuant to 22 NYCRR §202.17(b), at least 20 days before such examination, plaintiff shall serve upon all other parties copies of the medical reports of those physicians, actually in their possession, who have previously treated or examined him/her.
 - c. A copy of the examining physician's report shall be furnished to all parties within 45 days of examination.

5. Depositions:

- a. Examinations before trial for all parties/non-parties shall be conducted on a mutually convenient date, time and location within 120 days of this order as per Deposition Schedule Rider attached hereto and made a part of this Preliminary Conference Order.
- b. EBTs **SHALL NOT** be adjourned to a later date without **PRIOR** Court approval.
- c. Attorneys seeking rulings on objections or making application for any other relief pertaining to the depositions shall communicate with the Individual Assigned Justice for a determination.
- d. Once begun, a deposition shall continue until completed and shall not be adjourned without further order of the court.
- e. The transcript of an examination before trial shall be delivered to the party deposed within 30 days of the deposition and shall be returned, duly executed, pursuant to CPLR §3116.

6. Other Disclosure:

- a. Within 30 days from the date of this order, all parties shall exchange names and addresses of all witnesses, and shall exchange statements of opposing parties and photographs, or, if none, shall provide an affirmation to that effect.
- b. Demand for discovery and inspection shall be served on parties and the items sought shall be produced to the extent not objected to pursuant to CPLR §3120, and objections, if any, shall be stated pursuant to CPLR §3122.
- c. Accident reports prepared in the regular course of business shall be exchanged pursuant to CPLR §3101(g).
- d. Additional Disclosure Issues: the parties shall produce the following within 45 days, if applicable:
 1. Maintenance and repair records for 2 years prior to and including the date of the occurrence.
 2. Contracts and all related contract documents (i.e. Progress Reports) for 2 years prior to and including the date of the occurrence.
- e. Demands for documents shall be served within 30 days and shall be responded to within 30 days from service of demand.
- f. No discovery motion shall be made without a good faith attempt by the parties to resolve the dispute. If the dispute is not resolved, the party seeking discovery shall request a conference with the Individual Assigned Justice. If the conference does not resolve the dispute, a motion may be filed unless otherwise directed by the Individual Assigned Justice. An Affirmation from the movant that a good faith effort was made to resolve the discovery dispute and that a conference with the Individual Assigned Justice was requested and held or denied, **must** accompany the motion in full compliance with 22 NYCRR §202.7(c).

7. **Stipulations of Settlement or Discontinuance** shall be promptly filed in a case pursuant to 22 NYCRR §202.28 before the next meeting with the Court. Failure to comply with any of these directions may result in the imposition of costs or sanctions or other action authorized by law.
8. **Motions:** Any dispositive motion(s) (CPLR §3211 and §3212) shall be made on or before **90** days of the filing of the Note of Issue.
9. **Dispositive Motions:** Pursuant to CPLR §3214(b), service of a Notice of Motion under rule 3211, 3212, or 3213 **shall NOT stay** disclosure pending the determination of that motion.
10. **Impleader Motion(s)** to amend the pleadings or to add parties shall be completed on or before 30 days from completion of EBTs.
11. **End Date for all Disclosure:** 7/30/24
12. **Compliance/Certification Conference** shall be held on **04/17/2024** at 10:00 A.M./P.M.

13. Alternative Dispute Resolution:

All counsel are directed to participate in a settlement conference with the assigned Justice to be held on **04/17/2024** at 10:00 A.M./P.M.

Counsel is directed to discuss with their client(s) any alternative dispute resolution options available through the Court, which are as follows: (i) a settlement conference; (ii) participation in a court alternative dispute resolution program, or (iii) alternative dispute resolution offered by private entities. Counsel shall file an Attorney Good Faith ADR Certificate certifying compliance pursuant to 22 NYCRR §202.11.

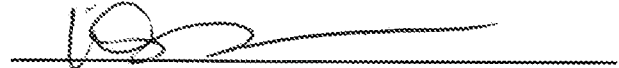
At the first mediation conference, counsel must be fully familiar with the case and authorized to enter into a settlement agreement. Counsel is urged to have their client present at the settlement conference. If, however, counsel's client is not able to appear, the client shall be available by telephone. It is important to note that participation in a mediation program does not waive any provisions within the Preliminary Conference Order or any timelines pursuant to NYCRR §202.19.

Absent good cause, non-compliance with this Order, including the failure to raise discovery problems in advance of deadlines, may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Such penalties may include waiver of the discovery, preclusion, dismissal, striking of a pleading, costs, sanctions and attorney's fees, and it is further;

ORDERED, that the dates in this Order may not be extended without advance approval by the Court. Stipulations, unless so ordered by the Court, will not be honored.

DATED: 12/06/2023

SO ORDERED:



HON. Danielle M. Peterson, J.S.C

ENTERED

Jan 02 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE

NYSCEF DOC. NO. 16

Index# Dec, 611371/2023

Caption: David Dear v. Palmetto-RPT Operator, LLC, et al

Judge's name: Justice Danielle M. Peterson

PC Date: 12/6/2023

Deposition Schedule Rider pursuant to 5(a) of the Preliminary Conference Order:

5a. Deposition Schedule:

Deponent:

Date and Time:

Location:

David Dear

March 5, 2024, 11:00 AM

Virtual

Palmetto Defendants

March 12, 2024, 11:00 AM

Virtual

Otis Elevator Company

March 19, 2024, 11:00 AM

Virtual

Agreed to by (Please Type Name)

Plaintiff(s)

Defendant(s)

ANDREW J. SMILEY, SMILEY & SMILEY, LLP

Palmetto Defendants - DID NOT PARTICIPATE

Otis Elevator Company - Gordon Rees Scully Mansukhani LLP

Agreed to by (Please Type Your Name Below):

Plaintiff(s)

Defendant(s)

ANDREW J. SMILEY, SMILEY & SMILEY, LLP

Palmetto Defendants - DID NOT PARTICIPATE

Otis Elevator Company - Gordon Rees Scully Mansukhani LLP

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

INDIVIDUAL ASSIGNMENT PART 21

_____ x
David Dear

STIPULATION

✓
Palmetto, et al. and
OTIS elevator

Index No. 611371/2023

Mot. Cal. No. _____

_____ x

Date 3/19/25

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

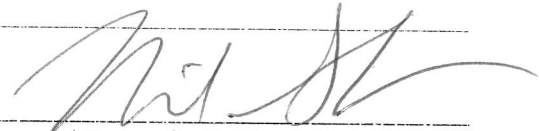
All Defendants FBTS to be completed on
or before May 1, 2025.

TI to be re-deposed for damages only on
or before May 15, 2025.

Defendants to Notice Plaintiff's IME w/in 30
days of redeposition. IME to be held ^{w/in} 60 days
of designation. IME report to be exchanged
w/in 30 days of examination

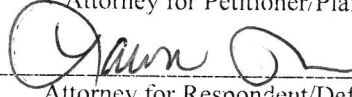
Further Conference on 7/17 2025 - TO CERTIFY

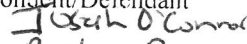
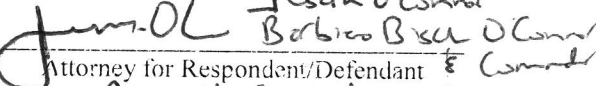
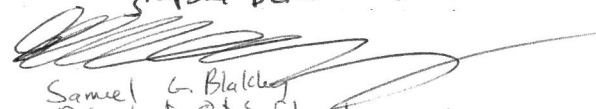
Date: 3/19/2025



Attorney for Petitioner/Plaintiff

So Ordered 
HON. DANIELLE M. PETERSON J.S.C.



Attorney for Respondent/Defendant

Joseph O'Connor

Barbara Biscia O'Connor
Attorney for Respondent/Defendant
Racavelli Construction (Sib) 474-0206
3rd Floor

Samuel G. Blalock
Defendant Otis Elevator Company

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

INDIVIDUAL ASSIGNMENT PART 21

_____ x

David Dear

STIPULATION

Index No. 611371/2023

✓

Palmetto - Rpt operator, LLC et al

Mot. Cal. No. _____

_____ x

Date 9/10/25

IT IS HEREBY STIPULATED AND AGREED by and between the below-named attorney(s) as follows:

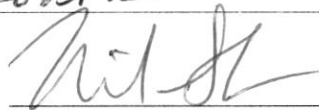
T's continued EBT for damages only Regarding Surgery. (9/22/25)

- D's to schedule/notice T's IME w/in 30 days of 9/22 EBT.
- D's to hold IME w/in 30 days of designation.
- D's to serve IME Reports w/in 45 days of IME.

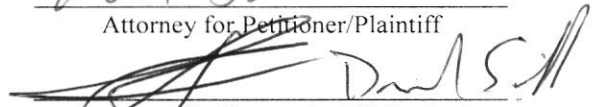
All outstanding discovery demands including ^{T's} ⁺ ^{10/15/25} post-EBT demands to S Palmetto, to be responded to w/in 30 days.


A certification Conference shall be held on December 4, 2025 at 10:00am

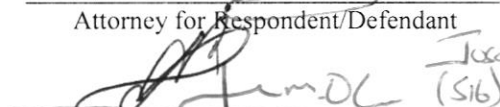
Date: 9/10/25


Attorney for Petitioner/Plaintiff

So Ordered 
HON. DANIELLE M. PETERSON J.S.C.


Attorney for Respondent/Defendant


Attorney for Respondent/Defendant


Attorney for Third Party Δ
Jesse L. Conner
(516) 474-0206

HON. DANIELLE M. PETERSON

IAS Part 24 – Part Rules & Procedures

Principal Law Clerk: Jeremy L. Jorgensen, Esq.

Secretary: Rosemarie Licameli

Part Clerk: Barbara Luger

Chambers: 516-493-3180

Chambers Fax: 516-493-3384

Courtroom: 516-493-3183

Chambers email: JudgePetersonRemote@nycourts.gov

Prior to the preliminary conference, attorneys or parties appearing *pro se* must obtain the rules of this Part, thoroughly review them and comply with them throughout the course of any matter assigned to this Part. All of the rules applicable to attorneys are equally applicable to *pro se* parties. **These Part Rules are subject to change without notice, so they should be reviewed frequently by all who appear before this Part.**

I. Preliminary Conferences

- A. Adjournments: Requests for adjournments of Preliminary Conferences are to be addressed to the DCM Part and not to chambers.
- B. Deadlines: Discovery, Certification and Note of Issue deadlines set forth in the Preliminary Conference Order shall be enforced. Dates stipulated by the parties are subject to change by the Court.
- C. Adjournments of Depositions: Any adjournment of deposition dates must be to a date which precedes the Compliance Conference date.

II. All Other Conferences

- A. Appearance Required: Unless otherwise directed by the Court, attorneys shall appear in person at the time indicated for all conferences. The Court expects all counsel and *pro se* litigants to be appropriately dressed for court. All attorneys appearing for a conference shall be knowledgeable and familiar with the case and shall be vested with the authority to enter into stipulations and/or dispositions which bind their respective clients. (See 22 NYCRR 202.1(f) and (g)). Counsel should be prepared to discuss any pending or submitted motions. Self-represented litigants shall be subject to the same rules of practice as attorneys appearing in the part.
- B. Attorneys and unrepresented litigants must alert the courtroom clerk of their presence and complete a sign-in sheet. If counsel must also appear before another Judge, they must advise the Part Clerk of what Part they will be appearing in and

how they can be reached. All counsel and pro se parties must appear for each and every conference.

- C. **Adjournments:** Requests for adjournments of conferences must be made through chambers , in the manner directed below, prior to the conference date. The Court will consider granting such requests upon good cause shown and the consent of all parties. Two proposed adjournments dates, no more than six weeks from the original date, consented to by all parties, must be provided at the time the adjournment is sought. Applications for adjournments must be made on the **Request for Adjournment Form** included at the end of this document and must be sent to chambers by email or fax. If any party or counsel objects to the adjournment of the conference, so state on the Request for Adjournment form and the Court will contact all parties.
- D. Failure to appear for court ordered conferences may result in sanctions pursuant to 22 NYCRR 202.27.

III. Motions

A. Discovery Motions:

- 1. **Pre-motion Discovery Conferences:** Prior to making or filing any discovery motions, counsel for the moving party **MUST** make a good faith effort to resolve the issues at hand, pursuant to 22 NYCRR 202.7(c) and Section 202.20-f. It is the policy of this Part to not accept letters as good faith efforts, unless a series of letters indicates an interaction among counsel and not just a one-sided request or threat. If after a true good faith effort to resolve the discovery issues has been made without success, counsel for the moving party **MUST** arrange for a conference to be held among counsel for all parties and the Court to discuss the issues involved and the possible resolution of those issues. Requests for discovery related conferences must be submitted on the **Pre-Motion Discovery Conference Request Form** attached at the end of this document, and must be sent to chambers by email or fax.
- 2. **Sua Sponte Order:** If the matter can be resolved during the conference call, an order consistent with such resolution may be issued on the Court's own motion on consent of the parties or over their objection.
- 3. **Discovery in General:** Parties are directed to review, and be familiar with, the following sections of the Uniform Civil Rules for the Supreme Court and the County Court, eff. February 1, 2021: Sections 202.20 (Interrogatories limited to a maximum of 25); 202.20-a (procedures related to privilege logs); 202.20-b (limitations on depositions); 202.20-c (rules regarding responses and objections to discovery demands); and 202.20-d (procedures regarding deposing entities and identification of matters). Parties are also expected to strictly adhere to discovery schedules, as discussed *supra* and confirmed by section 202.20-e.

B. All Other Motions:

1. Service: Motions are to be served and filed in conformity with CPLR 2214 and uploaded to NYSCEF where appropriate.
2. Appearances: Counsel are **not** required to appear on the return date of the motion unless directed by the Court or unless there is a contested application for adjournment.
3. Oral Argument: The Court generally will not entertain oral argument of motions, however, a pro se party or counsel may request oral argument by letter accompanying the motion papers in accordance with 22 NYCRR 202.8-f. Should the Court determine that oral argument is warranted, attorneys for all parties and pro se litigants will be contacted and advised of the date for oral argument.
4. Adjournments: Motion adjournment requests must be made through the Courtroom clerk of this part or by submitting to chambers the **Request for Adjournment Form** (included at the end of this document) prior to the return date. The Court will consider granting such request upon good cause shown and with consent of all parties. A date certain consented by all parties must be requested at the time the adjournment is sought. The Court is inclined to allow each side a brief one time adjournment over objection upon good cause if it is the party/counsel's first request for same. If there is no consent to adjourn the motion, all counsel or pro se parties must appear in court in person regarding the adjournment on the scheduled motion date.
5. No sur-reply affidavit, affirmation or letter will be accepted or considered by the Court.
6. Orders to Show Cause: Motions may be brought by Order to Show Cause **only** when there is genuine urgency, a stay is required, or a statute mandates so proceeding. (22 NYCRR 202.8-d).

Any Order to Show Cause seeking **injunctive relief**, including a stay or TRO must be made in accordance with 22 NYCRR 202.7(f). Accordingly, any application for temporary injunctive relief shall contain an affirmation demonstrating that there will be significant prejudice to the party seeking the restraining order by giving notice. In the absence of a showing of significant prejudice, the affirmation must demonstrate that a good faith effort has been made to notify the party against whom the restraining order is sought. Where there has been no significant prejudice shown, the Court requires that the party seeking temporary injunctive relief give the opposing side 24 hours notice in advance of presentment of the Order to Show Cause to the Court. Notice should be given by telephone, facsimile and/or email and an affirmation/affidavit stating that such notice has been provided to the opposing party/counsel must be filed and uploaded to NYSCEF. Upon such notice, any party/counsel seeking to be heard

in opposition to the request for injunctive relief must fax or email the Court, on notice to all parties, requesting a time to appear for same.

7. No Reply papers will be permitted on Orders to Show Cause.
8. Cross-motions: Submission of a cross-motion with a stated return date that is beyond the return date of the original motion will not serve to adjourn the original motion.
9. Parties are directed to review Section 202.8-b of the Uniform Rules for the Supreme Court and County Court, eff February 1, 2021, regarding the length of papers.
10. Interim Partial or Full Settlement: If all or part of a submitted motion is settled, a letter or stipulation shall be sent to the court, on notice to all parties/counsel, and same shall be uploaded to NYSCEF. Such notice shall set forth the date that the motion was submitted, what aspects of the motion have been settled, and what issues, if any, remain to be decided. If any motion is resolved, in whole or part, on the record, counsel shall obtain such transcript so that same can be "so ordered," unless the Court otherwise directs.
11. Withdrawn Motions: If a motion is being withdrawn, a letter from the movant requesting withdrawal may be sent to chambers by email or fax and must be uploaded to NYSCEF.
12. Summary Judgment: Motions for summary judgment shall be returnable no later than 60 days after the filing of a Note of Issue.
13. Motions brought pursuant to CPRL 3211, 3212 or 3213 shall not stay discovery unless specifically ordered by the Court.

IV. Communication with Chambers

- A. In all communications with chambers by letter, email or fax, the title of the action, full names of the parties and index number shall be set forth, with copies simultaneously delivered to all counsel. Do not assume that communications submitted through e-filing are seen by Chambers.
- B. Copies of correspondence between counsel shall not be sent to the Court except in the limited circumstances provided within these Part Rules and as 22 NYCRR 202.7 directs.
- C. The Court will not accept a fax or submissions without prior permission, unless allowed by these Part Rules.
- D. No out of court settlement will be recognized or accepted unless counsel submits a letter, on notice to opposing counsel/parties, submitting the executed settlement

agreement/stipulation or certifying that such agreement/stipulation has, in fact, been executed.

- E. The Court will never accept ex parte communications on any substantive issue nor will the Judge or any staff member read such communications.
- F. DO NOT EMAIL JUDGE PETERSON DIRECTLY.
- G. Except as provided herein, telephone calls to chambers are not permitted absent emergency situations requiring immediate attention.
- H. Adjournment requests that are left on Chamber's voicemail shall be disregarded. All requests for adjournments must be made in accordance with the directives of these Part Rules.

V. SANCTIONS

- A. The Court will not consider an application for sanctions unless the moving party first seeks withdrawal or discontinuance of the offending act or action or demands a required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

VI. TRIALS

- A. Jury Trials: A trial conference with the Court shall be held immediately prior to the commencement of all jury trials. Counsel should come prepared to discuss demands and offers of settlement. At the trial conference, counsel shall supply the Court with all pleadings, all bills of particulars, witness lists, exhibit lists and any deposition transcripts that will be used at trial. If any expert witnesses are to be called, counsel shall provide the information required by CPLR 3101(d)(1)(i). All trial exhibits shall be pre-marked for identification and, where possible, counsel shall stipulate to the admissibility of documents and records and shall notify the Court of their inability to stipulate to the admission of any exhibits to be offered at trial. Counsel shall further provide the Court with proposed jury charges and proposed jury verdict sheets at the trial conference. The filing of a Note of Issue is a condition precedent to the commencement of any trial.
- B. Motions in limine: Counsel shall notify the Court as soon as the trial assignment is made, or at the trial conference if unable to do so sooner, of any motions in limine and any supporting statutory or case law. Counsel shall submit a brief written affirmation and/or memorandum of law setting forth the nature of the application and any supporting authority or case law. Motions in limine should be e-filed as "Pre-Trial Memorandum" document type on NYSCEF and emailed to jjorgens@nycourts.gov and JudgePetersonRemote@nycourts.gov.
- C. Scheduling: Scheduling problems should be immediately brought to the Court's attention.

- D. Counsel shall notify the Court if a witness requires a language interpreter as soon as the case is assigned so that timely arrangements can be made.
- E. Subpoenaed Records: Counsel are reminded of their authority to issue subpoenas under applicable law. Subpoenas seeking documents from a state agency must comply with CPLR 2307. Except as otherwise permitted by the CPLR, subpoenaed records for trial must be sent to the Subpoenaed Records Room. Trial authorizations should be filled out accordingly. It is the responsibility of counsel to ensure that the subpoenaed records have arrived in the records room before trial.
- F. Please provide business cards for the Court and the Court reporter.
- G. Malpractice "Departures": In cases involving claims of professional negligence, on the next trial session after a party rests, or such other time as the Court may direct, each party [plaintiff] shall furnish the Court and counsel for all parties with a list of the departures from the standards of good and accepted practice which that party asserts were testified to by its expert witness or witnesses. Where the testimony has been transcribed, page references will be required.
- H. Non-Jury Trials: Non-jury trials are subject to scheduling upon forty-eight hours notice. An in person conference with the Court shall precede the commencement of all non-jury trials, at which time counsel shall provide the Court with the following: (1) a copy of marked pleadings, amendments thereto, and all bills of particulars; (2) A list of pre-marked exhibits and the identification of those exhibits which counsel cannot stipulate to admit into evidence at trial; (3) a list of witnesses and if any be experts, the information required by CPLR 3101(d)(1)(i); (4) a list of the causes of action to be tried; and (5) pre-trial memorandums of law, if any. The parties shall be required to provide the Court with a transcript of the trial. It is the obligation of the counsel or unrepresented parties to contact the Court within 48 hours prior to the start of the trial to confirm all parties will appear. Failure to contact the Court can result in the trial date being changed or vacated. The filing of a Note of Issue is a condition precedent to the commencement of trial.
- I. Disposition of Cases: If a pending action has been settled, counsel shall notify chambers by email or fax that the matter has been settled and shall upload such notice to NYSCEF. Counsel shall further upload settlement documents within 20 days.

VII. Miscellaneous Rules

- A. Court personnel: The Court functions with the aid and support of the courtroom and chambers personnel. The Court and the personnel assigned to the Court will treat counsel, litigants and other persons present with dignity and courtesy, which is indispensable to the proper administration of justice. The Court expects that court personnel will be treated in like manner and the Court will not tolerate disrespectful or abusive conduct.

- B. Attorneys of Record: Attorneys who have appeared in the matter are to make all appearances until they are relieved by the Court or until a Consent to Change Attorney has been filed in NYSCEF and with this part by email or fax.
- C. Compromise Applications: All applications for court approval of a proposed compromise of an infant or other disabled party's claim must be submitted through the Special Term, with proof of service on all remaining parties. Compliance with the provisions of CPLR Sections 1207, 1208, and 22 NYCRR 202.67 and a proposed distribution of net amounts to be recovered by the disabled plaintiff that is consistent with the provisions of the CPLR 1206 is required. The Court will not accept medical reports/affidavits executed more than six months prior to the submission date. The report must indicate whether the injured plaintiff has fully recovered, and if not, the nature and extent of the injuries and the costs of future treatment. Since the Court may direct that notice of the application be given to all persons who possess claims against the proceeds recoverable under the compromise, including those with statutory liens, the names and addresses of all such persons and the amount of their prospective claims must be set forth in the petition. If no person has asserted such a claim, the petition must so state. Once the submissions are complete, an appearance date shall be scheduled by the Court.
- D. In the absence of an emergency, no Order to Show Cause will be heard after 2:00 P.M. Said Orders to Show Cause will be heard the following day.
- E. Stipulations to be "so ordered:" Absent good cause to do so, stipulations executed by all parties/counsel will not be "so ordered" by the Court. Should there be a significant reason that same is requested, the stipulation may be sent to chambers by fax or email with a cover letter requesting said relief and the reason for requesting it, with copies to all counsel/pro se parties.
- F. Paper Submission to NYSCEF: Counsel must seek permission of the Court for the submission of "evidentiary" materials to NYSCEF, unless such materials are exhibits to a formally submitted motion or an approved filing. The abuse of the NYSCEF filing system may be sanctionable by the Court.

**REQUEST FOR ADJOURNMENT FORM – PART 24
HON. DANIELLE M. PETERSON**

**THIS FORM MUST BE FILLED OUT COMPLETELY
TO REQUEST AN ADJOURNMENT OF ANY CONFERENCE OR MOTION**

CASE NAME: _____

INDEX NUMBER: _____ LAST COURT APPEARANCE: _____

NATURE OF THIS ACTION (i.e. motor vehicle, Labor Law etc.): _____

NUMBER OF PRIOR ADJOURNMENTS (OF THIS PARTICULAR EVENT): _____

LAST ADJOURNMENT REQUESTED BY: _____

DATE OF CONFERENCE/MOTION APPEARANCE: _____

PROPOSED ADJOURNMENT DATES (AT LEAST TWO): _____

MOTION, CONFERENCE OR OTHER: _____

IF MOTION, NATURE OR RELIEF SOUGHT: _____

REASON FOR ADJOURNMENT: _____

DISCOVERY COMPLETED: (Y/N): _____ WAS NOI FILED? _____ DATE FILED/DATE TO FILE NOI: _____

IS THE ADJOURNMENT REQUEST ON CONSENT: _____

IF NO CONSENT, WHAT IS THE REASON FOR THE OBJECTION: _____

ATTORNEY REQUESTING ADJOURNMENT:

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

ADVERSARY'S CONTACT INFO:

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

**ALL REQUESTS MUST BE RECEIVED BY EMAIL OR FAX TO CHAMBERS BEFORE 4:45 P.M.
ON THE BUSINESS DAY PRIOR TO THE SCHEDULED APPEARANCE DATE.**

Pre-Motion Discovery Conference Request Form – PART 24
HON. DANIELLE M. PETERSON

THIS FORM MUST BE FILLED OUT COMPLETELY TO REQUEST A DISCOVERY CONFERENCE PRIOR TO MOTION PRACTICE

CASE NAME: _____

INDEX NUMBER: _____ LAST COURT APPEARANCE: _____ NEXT CONFERENCE: _____

NATURE OF THIS ACTION (i.e. motor vehicle, Labor Law etc.): _____

POTENTIAL MOVANT/MOVANT'S COUNSEL:

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

ADVERSARY'S CONTACT INFO:

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

NAME: _____ PHONE: _____
EMAIL: _____ ATTORNEY FOR PLAINTIFF/DEFENDANT (circle)

OUTSTANDING DISCOVERY AT ISSUE:

GOOD FAITH EFFORTS TO RESOLVE DISCOVERY DISPUTE PRIOR TO SEEKING COURT INTERVENTION (attach proof):

ALL OTHER DISCOVERY COMPLETED: (Y/N): _____ WAS NOI FILED? _____ DATE FILED/DATE TO FILE NOI: _____

REASON GIVEN, IF ANY, FOR FAILURE TO PROVIDE REQUESTED DISCOVERY: _____

Signature of Attorney/Party Requesting Conference: _____

Print Name: _____ Date: _____

- **NO DISCOVERY MOTIONS MAY BE FILED IN THIS PART WITHOUT FIRST SUBMITTING THIS FORM AND CONFERRING THE MATTER WITH THE COURT.**



Case Info

Consent

Documents

Payment

Review & File

e-File: Enter Case Information

[Help](#)



NYSCEF Filing Advisory

Marking a document redacted or unredacted is available on the document upload pages. When attaching an unredacted version to a previously filed redacted document, select the Attach option in Document Category. Refer to the [Redaction Advisory](#).

Case Number *

Court *

I am Filing: *

Motion Documents

- Notice of Motion/Petition
- Notice of Cross-Motion
- Proposed Order to Show Cause/Ex Parte App.
- Documents relating to an existing Motion, Cross-Motion, Petition, OSC
- Documents related to Multiple Motions

Non-Motion Documents

- Documents not related to a Motion, Petition, OSC
e.g. Answer, Note of Issue, Stipulation of Discontinuance
- Proposed Judgment to Clerk or Court

OR

Attach Un-Redacted Version

- I am filing an un-redacted document to be attached to a previously filed redacted document pursuant to [22 NYCRR §202.5\(e\)](#) or [22 NYCRR §206.5\(e\)](#)

Non-Party Filing

- I am filing as a non-party to this case

Cancel

Next

[Case Info](#)[Consent](#)**Documents**[Payment](#)[Review & File](#)

e-File: Add Documents

[◀ Previous](#)[? Help](#)Index #: **163870/2025**Court: **New York County Supreme Court**Case Type: **Torts - Motor Vehicle**Short Caption: **JESSICA CORTEZ v. SKINNER PLUMBING AND HEATING CORP. et al**[Full Caption](#)

PDF  **IMPORTANT:** NYSCEF will not accept certain PDF documents. [Check your PDF documents now.](#)
For more information, view [NYSCEF Document Requirements.](#)

**Are you filing a Request for Judicial Intervention?** Yes NoWill the "Nature of Action" stay as **Torts - Motor Vehicle**? Yes No

To file an RJJ, you MUST check yes above. After completing the RJJ Information screen, you will have the option to allow NYSCEF to create a PDF of your RJJ or you can upload your own PDF. You will have an opportunity to view all documents before submitting your filing.

[File RJJ Only](#)

 For detailed instructions on how to file your documents, refer to our [Filing Help](#) page. * Required fields.

Main Document

Document Type *

Attach PDF (Max size 100 MB) *

[Choose File](#) No file chosen

Exhibit Number/Letter (if applicable)

Additional Document Information

Special Instructions (Court Part, Judge, etc)

Does this document contain Confidential Personal Information as defined in [22 NYCRR §202.5\(e\)](#)?

- No** ... this document DOES NOT contain a Social Security Number or other [CPI](#) as defined in [22 NYCRR §202.5\(e\)](#), including information from any of the documents or testimony in a [matrimonial action](#) protected by [DRL §235](#) or evidence sealed by the court in such an action.

SMILEY & SMILEY, LLP

Case Intake Form

Date: _____

Intake By: _____

Client Background

Name: _____

Address: _____

Home Number: _____

Business Number: _____

Cell Number: _____

(Place an * next to preferred method(s) of contact)

Email Address: _____

Fax Number: _____

Business Address: _____

Date of Birth: _____

Social Security Number: _____

Spouse: _____

Spouse Date of Birth and S. S. #: _____

Children: _____

Miscellaneous: _____

Referral Information

Referred By: _____

Engagement with referrer: YES _____ NO _____

Copies of papers to referring party: YES _____ NO _____

Copies of papers to any other party: _____

Nature of Action

Date, Time and Location

Description of Occurrence

Name and address of defendants and their insurance carriers

Names and addresses of witnesses

Police or other official investigation

(Include precinct, officer names & shield #'s, aided #'s)

Present injuries and complaints

Hospitalization & Medical Treatment

Ambulance

Ambulance service	Names of attendants

Hospital

Name / Address	Date of Admission	Date of Discharge

Physicians/ Health Care Providers

Name / Address	Phone	Specialty	Date(s) of Visit(s)

Physicians/ Health Care Providers (Cont'd)

Name/Address	Phone	Specialty	Date(s) of Visit(s)

Employment Information

Loss of earning claim? YES _____ NO _____

Employer's Name: _____

Address: _____

Telephone number: _____

Job Title: _____

Current salary: _____

Name of Supervisor: _____

Union Membership: _____

Investigation Required (Including Photos)

Expert Witnesses Required

Theory of Legal Liability

If autopsy performed, medical examiner case number and name and phone
number of examiner: _____

Auto Accident Case

Plaintiff Vehicle Information

Name of Insurance Company: _____

Address: _____

Telephone Number: _____

Liability Policy Number: _____

No-Fault Claim Number: _____

Make, Model & Year of Vehicle(s): _____

License Plate Number(s): _____

Driver(s) License Number(s): _____

Underinsured/Uninsured Coverage

Insurance Company: _____

Policy Number: _____

Amount of Coverage: _____

Name, address and telephone number of Policy Holder: _____

Defendant (1) Vehicle Information

Make, Model & Year of Vehicle(s): _____

License Plate Number(s): _____

Driver(s) License Number(s): _____

Insurance Coverage: _____

Defendant (2) Vehicle Information

Make, Model & Year of Vehicle(s): _____

License Plate Number(s): _____

Driver(s) License Number(s): _____

Insurance Coverage: _____

Additional Information

NEGLIGENCE INTAKE SHEET
AUTO ACCIDENT

INTERVIEW DATE: _____ TAKEN BY: _____ REFERRED BY: _____

SOL DATE: _____

CLIENT INFORMATION

CLIENT'S NAME: _____

IF INFANT, PARENT'S NAME: _____

ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE #: _____ D.O.B: _____ S.S.N.: _____

EMAIL ADDRESS: _____

EMPLOYER/SCHOOL: _____

BUSINESS/SCHOOL
ADDRESS: _____

CITY, STATE, ZIP CODE: _____

PHONE #: _____ WAGES: _____ OCCUPATION: _____

DID YOU LOSE TIME FROM WORK/SCHOOL AS A RESULT OF THIS ACCIDENT?

_____. IF YES, HOW LONG? _____

SPOUSAL INFORMATION

SPOUSE'S NAME: _____ SPOUSE'S BUSINESS #: _____

OCCUPATION: _____ SPOUSE'S S.S.N.: _____

DATE OF MARRIAGE: _____

AUTOMOBILE ACCIDENT INFORMATION

DATE OF ACCIDENT: _____ TIME: _____ WEATHER: _____

EXACT LOCATION: _____

DESCRIBE ACCIDENT: _____

POLICE AT SCENE? _____ DEPARTMENT: _____ CC#: _____

ANY WITNESSES? _____

DO YOU HAVE SCENE PHOTOS? _____ DO YOU HAVE DAMAGE PHOTOS? _____

STATEMENT GIVEN? _____ TO WHOM? _____

NAMES OF PERSONS IN VEHICLE: _____

MV-104 FILED? _____ DO YOU HAVE A COPY? _____

CITATIONS ISSUED, IF SO, TO WHOM? _____

AREA OF IMPACT ON YOUR CAR: _____ COST OF REPAIRS: _____

WHO PAID FOR THE REPAIRS? _____

CLIENT'S AUTOMOBILE & INSURANCE INFORMATION

AUTOMOBILE AND INSURANCE INFORMATION ON YOUR CAR OR THE CAR YOU WERE IN (CLIENT/PLAINTIFF)

OWNER: _____ FULL ADDRESS: _____

OPERATOR: _____ FULL ADDRESS: _____

VEHICLE TYPE: _____ VEHICLE MODEL/YEAR: _____

VEHICLE PLATE/STATE: _____

CLIENT'S INSURANCE COMPANY: _____

FULL ADDRESS: _____

POLICY #: _____ POLICY DECLARATION PAGE: _____

NO-FAULT AMT: _____ LIABILITY AMT: _____ UN/SUM: _____

ADJUSTER'S NAME: _____ PHONE #: _____

FILE/CLAIM NUMBER: _____

DID YOU FILE A NO-FAULT APPLICATION? _____ DATE FILED: _____

OTHER AUTOMOBILE AND INSURANCE INFORMATION

OTHER VEHICLE INFORMATION (IF MORE THAN 1 CAR, REPEAT SAME INFORMATION BELOW) (DEFENDANT)

OWNER: _____ FULL ADDRESS: _____

OPERATOR: _____ FULL ADDRESS: _____

VEHICLE TYPE: _____ VEHICLE MODEL/YEAR: _____

VEHICLE PLATE/STATE: _____

INSURANCE COMPANY: _____

FULL ADDRESS: _____

ADJUSTER'S NAME: _____ PHONE #: _____

POLICY #: _____ LIABILITY AMT: _____ FILE/CLAIM #: _____

CLIENT'S MEDICAL INFORMATION

INJURIES RECEIVED: _____

AMBULANCE AT SCENE: _____ HOSPITAL: _____

E/R: _____ ADMITTED: _____ HOW LONG? _____

X-RAYS: _____ MRI: _____ OTHER TESTS: _____

ANY TESTS SCHEDULED IN THE FUTURE? _____

TREATING DOCTORS (INCLUDE FULL ADDRESSES & PHONE #'S):

ANY PREVIOUS ACCIDENTS? _____ IF YES, EXPLAIN: _____

ANY PREVIOUS INJURIES? _____ IF YES, EXPLAIN: _____

ANY PREVIOUS HOSPITAL STAYS? _____ IF YES, EXPLAIN: _____

ANY PREVIOUS OPERATIONS? _____ IF YES, EXPLAIN: _____

Case	Time Since	The Law
Arson	No time limit, 2 or 5 years depending on the facts	Crim. Proc. 30.10(2)(a) or (b) or (c)
Assault/Battery	1 year from act (Civil); 2 or 5 years depending on the facts (Criminal)	CPLR 215(3) ; Crim. Proc. 30.10(2)(b) or (c)
Burglary	2 or 5 years depending on the facts	Crim. Proc. 30.10(2)(b) or (c)
Car accidents	3 years from date of accident	CPLR 214(4)
Child sex abuse	most cases until victim turns 55 (Civil) or turns 28 (Criminal)	CPLR 214-G ; Crim. Proc. 30.10(3)(f)
Class A felony	No statute of limitations	Crim. Proc. 30.10(2)(a)
Contract in writing	6 years	CPLR 213(2)
Contract oral or not in writing	6 years	CPLR 213(2)
Debt collection	3 years *If the company is based outside of New York State, the statute of limitations may be even shorter depending on that state's statute of limitations.	CPLR 214-j
Emotional distress (intentional)	1 year from act	CPLR 215(3) ; 14 N.Y.Prac., New York Law of Torts 1:40
Emotional distress (negligent)	3 years from date of accident	75A Jur. 2d, Limitations and Laches 215
Enforcing court judgments	20 years	CPLR 211(b)
False imprisonment	1 year (Civil)	CPLR 215(3)
Fraud	6 years	CPLR 213(8)
Kidnapping	No time limit or 5 years depending on the facts	Crim. Proc. 30.10(2)(a) or (b)
Legal malpractice	3 years	CPLR 214(6)
Libel/Slander	1 year from act	CPLR 215(3)
Manslaughter 1st & 2nd degrees	5 years	Crim. Proc. 30.10(2)(b)
Medical malpractice	2 years and 6 months from date of malpractice or from end of continuous treatment rendered by the party or entity you intend to sue for a particular condition, illness or injury	CPLR 214-A
Misdemeanors	2 years	Crim. Proc. 30.10(2)(c)
Mortgages	6 years	CPLR 213(4)
Murder, 1st degree	No time limit	Crim. Proc. 30.10(2)(a)
New York City & New York State	90 days to give notice; 1 year and 90 days	CPLR 217-A
Other felonies	5 years	Crim. Proc. 30.10(2)(b)
Other negligence resulting in personal injury	3 years from date of accident	CPLR 214(5)
Petty offense	1 year	Crim. Proc. 30.10(2)(d)
Product liability	3 years from date of accident	CPLR 214(3)
Property damage	3 years	CPLR 214(4) or CPLR 214-C
Rape	No time limit	Crim. Proc. 30.10(2)(a)
Receiving stolen property	2 or 5 years depending on the facts	Crim. Proc. 30.10(2)(b) or (c)
Robbery	5 years	Crim. Proc. 30.10(2)(b)
Slip and fall	3 years from date of accident	CPLR 214(5)
Store credit cards	4 years	UCC 2-725(1)
Theft ("Larceny")	2 or 5 years depending on the facts	Crim. Proc. 30.10(2)(b) or (c)
Trespass	3 years	CPLR 214(4)
Wrongful death	2 years from death	EPTL 5-4.1

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT (NYC)
MV-104AN (7/11)

Precinct
005
Accident No.
MV-2024-005-000151

Complaint Number

AMENDED REPORT

1
-
Accident Date: Month **3**, Day **20**, Year **2024**. Day of Week: **WEDNESDAY**. Military Time: **15:40**. No. of Vehicles: **2**. No. Injured: **2**. No. Killed: **0**. Not Investigated at Scene: . Left Scene: . Police Photos: Yes No. Reconstructed: .

2
-
VEHICLE 1: Driver License ID Number **313425330**, State of Lic. **NY**, Driver Name **LEKISHVILI, NIKA**, Address **1342 EAST 18 STREET**, City **BROOKLYN**, State **NY**, Zip Code **11230**.
VEHICLE 2: VEHICLE 2 BICYCLIST PEDESTRIAN OTHER PEDESTRIAN. Driver License ID Number **693235298**, State of Lic. **NY**, Driver Name **RAMNAUTH, BHESHAM**, Address **15022 116TH ST**, City **JAMAICA**, State **NY**, Zip Code **11434**.

3
2
Date of Birth, Sex, Unlicensed, No. of Occupants, Public Property Damaged. VEHICLE 1: Sex **M**, Unlicensed , No. of Occupants **2**, Public Property Damaged . VEHICLE 2: Sex **M**, Unlicensed , No. of Occupants **2**, Public Property Damaged .

4
1
Name - exactly as printed on registration, Sex, Date of Birth, Address (Include Number & Street), City or Town, State, Zip Code. VEHICLE 1: Name **KARISSA JODHAN ENTERPRISE INC**, Address **23-59 77 STREET**, City **QUEENS**, State **NY**, Zip Code **11370**. VEHICLE 2: Name **SKINNER PLUMBING AND HEATING CORP**, Address **24021 BRADDOCK AVE**, City **NEW YORK**, State **NY**, Zip Code **11426**.

5
1
Plate Number, State of Reg., Vehicle Year & Make, Vehicle Type, Ins. Code. VEHICLE 1: Plate **T755806C**, State **NY**, Year/Make **2019 HYUNDAI**, Type **SEDAN**, Ins. Code **326**. VEHICLE 2: Plate **39436JV**, State **NY**, Year/Make **2018 RAM**, Type **SEDAN**, Ins. Code **16**.

6
1
Violation Section(s)

7
1
Check if involved vehicle is: more than 95 inches wide; more than 34 feet long; operated with an overweight permit; operated with an overdimension permit.

7
2
VEHICLE 1 DAMAGE CODES: Box 1 - Point of Impact **1**, Box 2 - Most Damage **8**. VEHICLE 2 DAMAGE CODES: Box 1 - Point of Impact **2**, Box 2 - Most Damage **2**. Enter up to three more Damage Codes: **3**, **4**, **5**.

VEHICLE DAMAGE CODING:
1-13. SEE DIAGRAM ON RIGHT.
14. UNDERCARRIAGE 17. DEMOLISHED
15. TRAILER 18. NO DAMAGE
16. OVERTURNED 19. OTHER
VEHICLE 1 Towed: By **METRO AUTO BODY INC**, To **96-14 NORTHERN BLVD., CORONA NY 11368**.
VEHICLE 2 Towed: By _____, To _____.
ACCIDENT DIAGRAM: **1 REAR END**.
Cost of repairs to any one vehicle will be more than \$1000. Unknown/Unable to Determine Yes No

Reference Marker, Coordinates (if available), Latitude/Northing: **40.723648**, Longitude/Easting: **-73.99103**. Place Where Accident Occurred: BRONX KINGS NEW YORK QUEENS RICHMOND. Road on which accident occurred: **EAST HOUSTON STREET**. at 1) intersecting street: **CHRYSTIE STREET**. or 2) _____ of _____.

Accident Description/Officer's Notes: **DRIVER 1 STATES HE STOPPED AT THE RED LIGHT AND VEH2 HIT HIM. DRIVER2 STATES HE WAS MAKING A RIGHT TURN ON GREEN LIGHT AND VEH 1 STOPPED SHORT BECAUSE OF A VEHICLE IN FRONT OF IT, NOT INVOLVED, STOPPED AND HE COLLIDED WITH VEH1. PO DIDN'T OBSERVE THE ACCIDENT.**

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	1	1	X	1		M	4	12	6	04A	7201			LEKISHVILI, NIKA	
B	1	6	X	1		F	6	12	6	02F	7203			CORTEZ, JESSICA	
C	2	1	X	1		M	-	-	-	-	-			RAMNAUTH, BHESHAM	
D	2	3	X	1		M	-	-	-	-	-			MAHADEO, STEPHAN	

Officer's Rank and Signature: **PO**. Print Name in Full: **MONIKA A POWESKA**. Tax ID No.: **943181**. NCIC No.: **03030**. Precinct: **005**. Post/Sector: _____. Reviewing Officer: **SGT DOMINIT A MEJIA**. Date/Time Reviewed: **03/21/2024 08:27**.

PERSONS KILLED OR INJURED IN ACCIDENT (Letter designation of persons killed or injured must correspond with letter designation on front).

A Last Name First M.I. LEKISHVILI NIKA			Last Name First M.I. 		
Address 1342 EAST 18 STREET APT 5E BROOKLYN NY 11230			Address 		
Date of Birth [REDACTED]			Telephone (Area Code) ([REDACTED])		
Last Name First M.I. CORTEZ JESSICA			Date of Birth Month Day Year () () ()		
Address 			Address 		
Date of Birth Month Day Year 7 11 1985			Telephone (Area Code) () 9175753551		
Last Name First M.I. 			Date of Birth Month Day Year () () ()		
Address 			Highway Dist. at Scene? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Name: 		
Date of Birth Month Day Year () () ()			Telephone (Area Code) () () ()		
Last Name First M.I. 			Shield No. 		

ENTER INSURANCE POLICY NUMBER FROM INSURANCE IDENTIFICATION CARD, EXPIRATION DATE (IN ALL CASES), AND VIN.

Vehicle No. 1	[REDACTED]	Vehicle No. 2	[REDACTED]
Expiration Date	[REDACTED]	Expiration Date	[REDACTED]
VIN	[REDACTED]	VIN	[REDACTED]

WITNESS (Attach separate sheet, if necessary)

Name	Address	Phone

DUPLICATE COPY REQUIRED FOR:

<input type="checkbox"/> Dept. of Motor Vehicles (if anyone is killed/injured)	<input type="checkbox"/> Motor Transport Division (P.D. vehicle involved)	<input type="checkbox"/> NYC Taxi & Limousine Comm. (if a Licensed taxi or limousine involved)	<input type="checkbox"/> Other City Agency (Specify) _____
<input type="checkbox"/> Office of Comptroller (if a City vehicle involved)	<input type="checkbox"/> Personnel Safety Unit (if a P.D. vehicle involved)	<input type="checkbox"/> Highway Unit _____	

NOTIFICATIONS: (Enter name, address, and relationship of friend or relative notified. If aided person is unidentified, list Missing Person Squad member who was notified. In either case, give date and time of notification.)

PROPERTY DAMAGED (other than vehicles)	OWNER OF PROPERTY (include city agency, where applicable)

IF NYPD VEHICLE IS INVOLVED:

Police Vehicle	Operator's First Name	Last Name	Rank	Shield No.	Tax ID. No.	Command
Make of Vehicle	Year	Type of Vehicle	Plate No.	Dept. Vehicle No.	Assigned To What Command	

Equipment in Use At Time of Accident

Siren
 Horn
 Turret Light
 4-Way Flasher
 High-Level Warning Lights
 Traffic Cones
 Headlights

ACTIONS OF POLICE VEHICLE

<input type="checkbox"/> Responding to Code Signal	<input type="checkbox"/> Complying with Station House Directive
<input type="checkbox"/> Pursuing Violator	<input type="checkbox"/> Routine Patrol
<input type="checkbox"/> Other (Describe) _____	

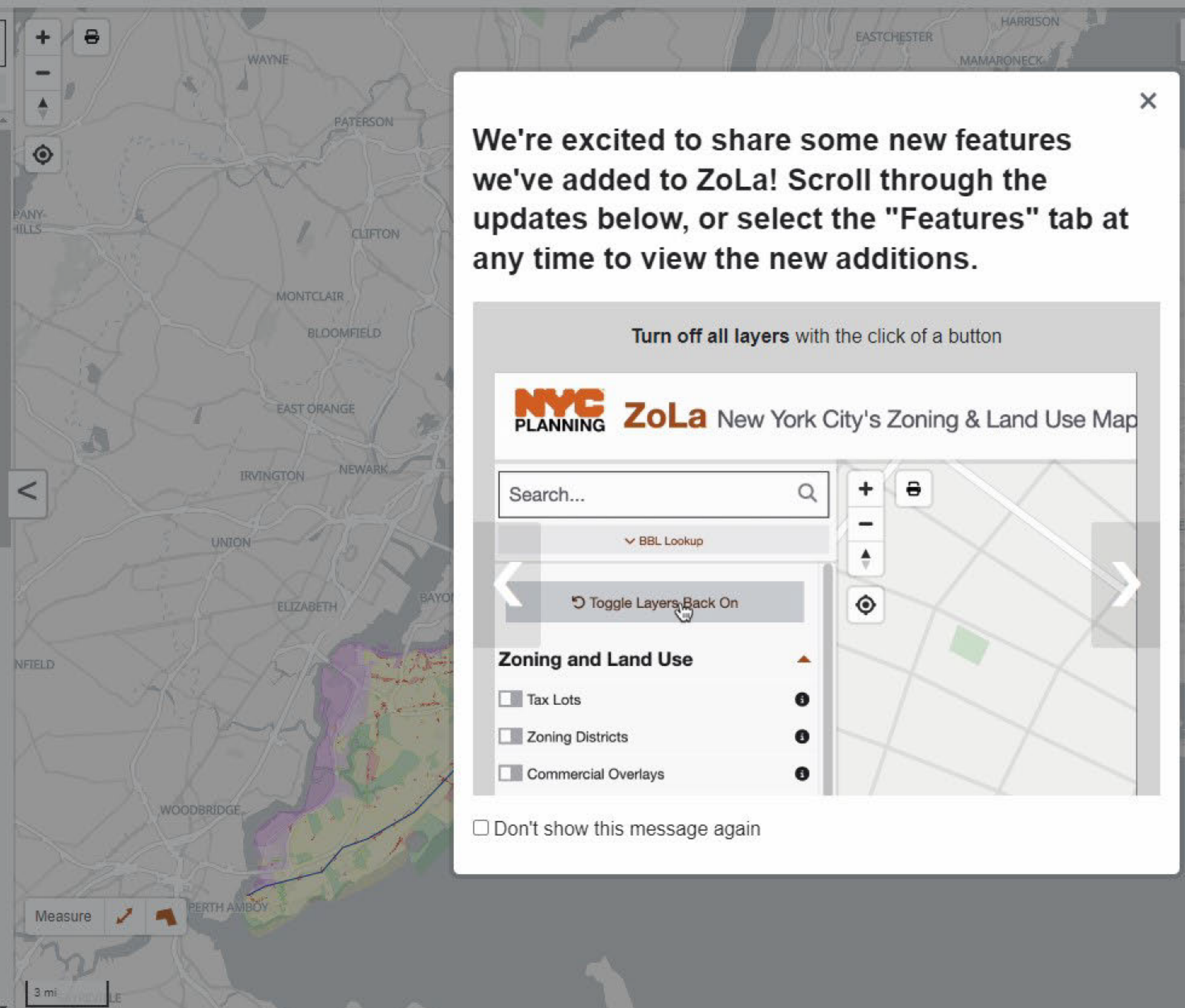
Search...

BBL Lookup

Toggle All Map Layers Off

Zoning and Land Use

- Tax Lots
- Show Land Use Colors
- Zoning Districts
 - Commercial Districts
 - Manufacturing Districts
 - Residence Districts
 - Parks
 - Battery Park City
- Commercial Overlays
 - C1-1 through C1-5
 - C2-1 through C2-5
- Zoning Map Amendments
- Pending Zoning Map Amendments
- Special Purpose Districts
- Special Purpose Subdistricts
- Supporting Zoning Layers**
 - Mandatory Inclusionary Housing Areas
 - Inclusionary Housing Designated Areas
 - Transit Zones
 - FRESH Zones
 - Limited Height Districts



We're excited to share some new features we've added to ZoLa! Scroll through the updates below, or select the "Features" tab at any time to view the new additions.

Turn off all layers with the click of a button

Don't show this message again

Welcome to New York City's zoning & land use map.

ZoLa provides a simple way to research zoning regulations. Find the zoning for your property, discover new proposals for your neighborhood, and learn where City Planning initiatives are happening throughout the City.

Zoning Questions

For general zoning questions, read the [Zoning Help Desk FAQ](#). If your question isn't answered there, call **212-720-3291** during business hours (8:30AM–5:30PM, Monday–Friday, closed on legal holidays). Leave a detailed message with your block and lot information, and a zoning specialist will get back to you within two business days. Or fill out the [Zoning Information Inquiry Form](#).

Application Feedback

To let [@NYCPlanningTech](#) know how this app could be better, [add a GitHub Issue](#) or send an email to tech@planning.nyc.gov.

ZoLa was developed by the City of New York using NYC open data and other public data sources and is provided solely for informational purposes. The City makes no representation as to the accuracy of the information or to its suitability for any purpose. The City disclaims any liability for errors that may be contained herein and shall not be responsible for any damages consequential or actual, arising out of or in connection with the use of this information. The City makes no warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose as to the quality, content, accuracy, or completeness of the information, text graphics, links and other items contained in ZoLa. The text of the Zoning Resolution can be accessed [here](#) and the zoning maps can be accessed [here](#).

28 LIBERTY STREET, New York, X

BBL Lookup

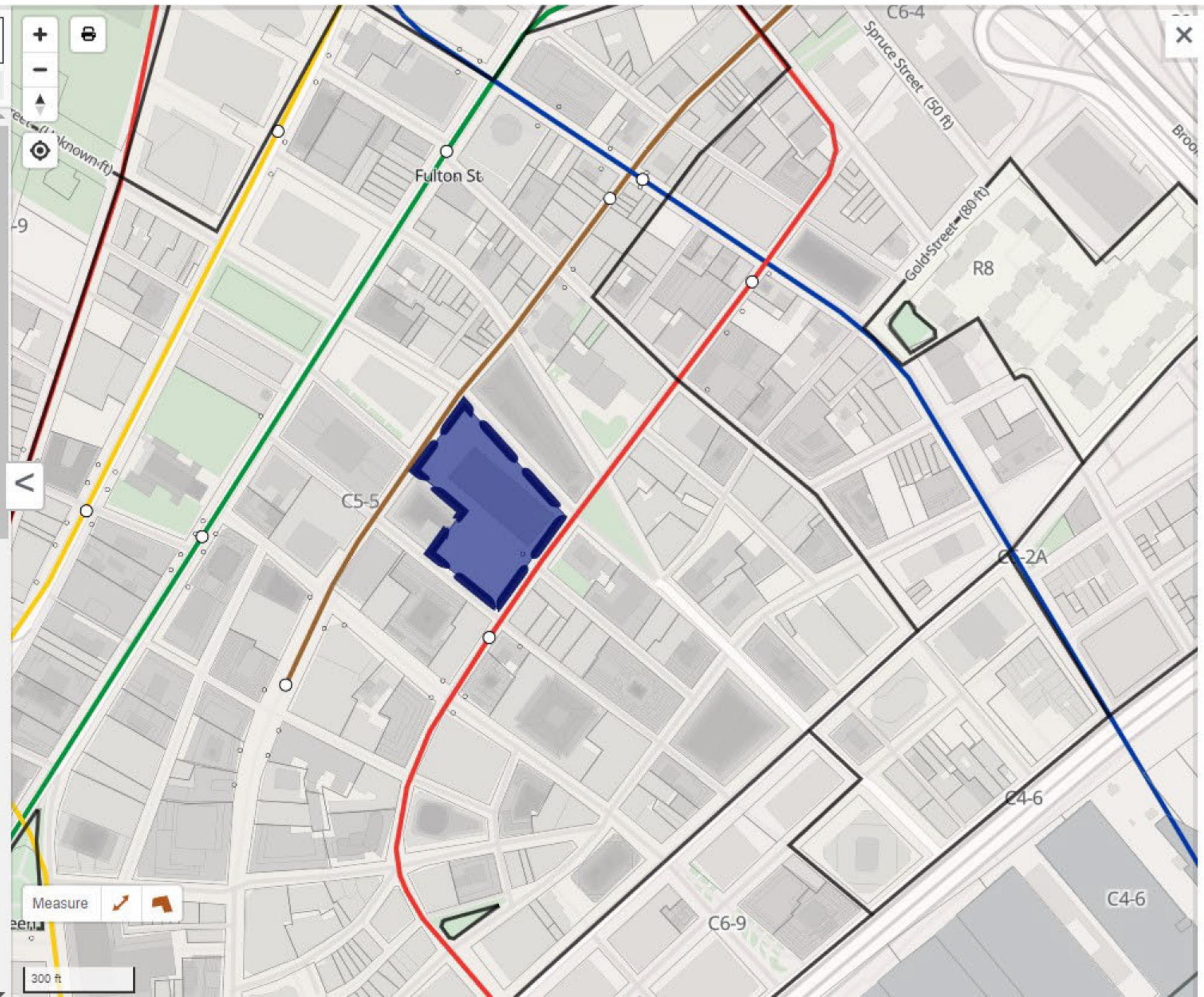
Toggle All Map Layers Off

Zoning and Land Use 3

- Tax Lots
- Show Land Use Colors
- Zoning Districts
 - Commercial Districts
 - Manufacturing Districts
 - Residence Districts
 - Parks
 - Battery Park City
- Commercial Overlays
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Supporting Zoning Layers

- Mandatory Inclusionary Housing Areas
- Inclusionary Housing Designated Areas
- Transit Zones
- FRESH Zones
- Limited Height Districts



+ Add Another Tax Lot for Comparison

TAX LOT | BBL 1000440001

INDIVIDUAL LANDMARK

28 LIBERTY STREET, 10005

Manhattan (Borough 1) | Block 44 | Lot 1



Zoning Districts: C5-5 LM

INTERSECTING MAP LAYERS:

- Historic District Individual Landmark

ZONING DETAILS:

- Digital Tax Map
- Zoning Map: 12b (PDF)
- Historical Zoning Maps (PDF)

Owner	Show Owner
Land Use	Commercial & Office Buildings
Lot Area	112,555 sq ft
Lot Frontage	409.5 ft
Lot Depth	312 ft
Year Built	1964
Year Altered	2018
Building Class	Office Buildings - Office Only or Office with Comm – 20 Stories or More (O4)
Number of Buildings	1
Number of Floors	60
Gross Floor Area	2,224,200 sq ft
Total # of Units	16
Building Info	<input checked="" type="checkbox"/> BISWEB
Property Records	<input checked="" type="checkbox"/> View ACRIS
Housing Info	<input checked="" type="checkbox"/> View HPD's Building, Registration & Violation Records

Neighborhood Information

Community District Manhattan Community District 1

City Council District Council District 1

Measure

300 ft



INDIVIDUAL LANDMARK

28 LIBERTY STREET, 10005

Manhattan (Borough 1) | Block 44 | Lot 1



Zoning Districts: [C5-5](#) [LM](#)

INTERSECTING MAP LAYERS ⓘ:

[Historic District](#) [Individual Landmark](#)

ZONING DETAILS:

[Digital Tax Map](#)

[Zoning Map: 12b \(PDF\)](#)

[Historical Zoning Maps \(PDF\)](#)

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Total # of Units	16
Building Info ⓘ	BISWEB
Property Records ⓘ	View ACRIS
Housing Info ⓘ	View HPD's Building, Registration & Violation Records

Neighborhood Information

Community District [Manhattan Community District 1](#)

City Council District [Council District 1](#)



Privacy · Terms



Apr 19, 2024

2024

2023

2022

2021

2020

2019

2018

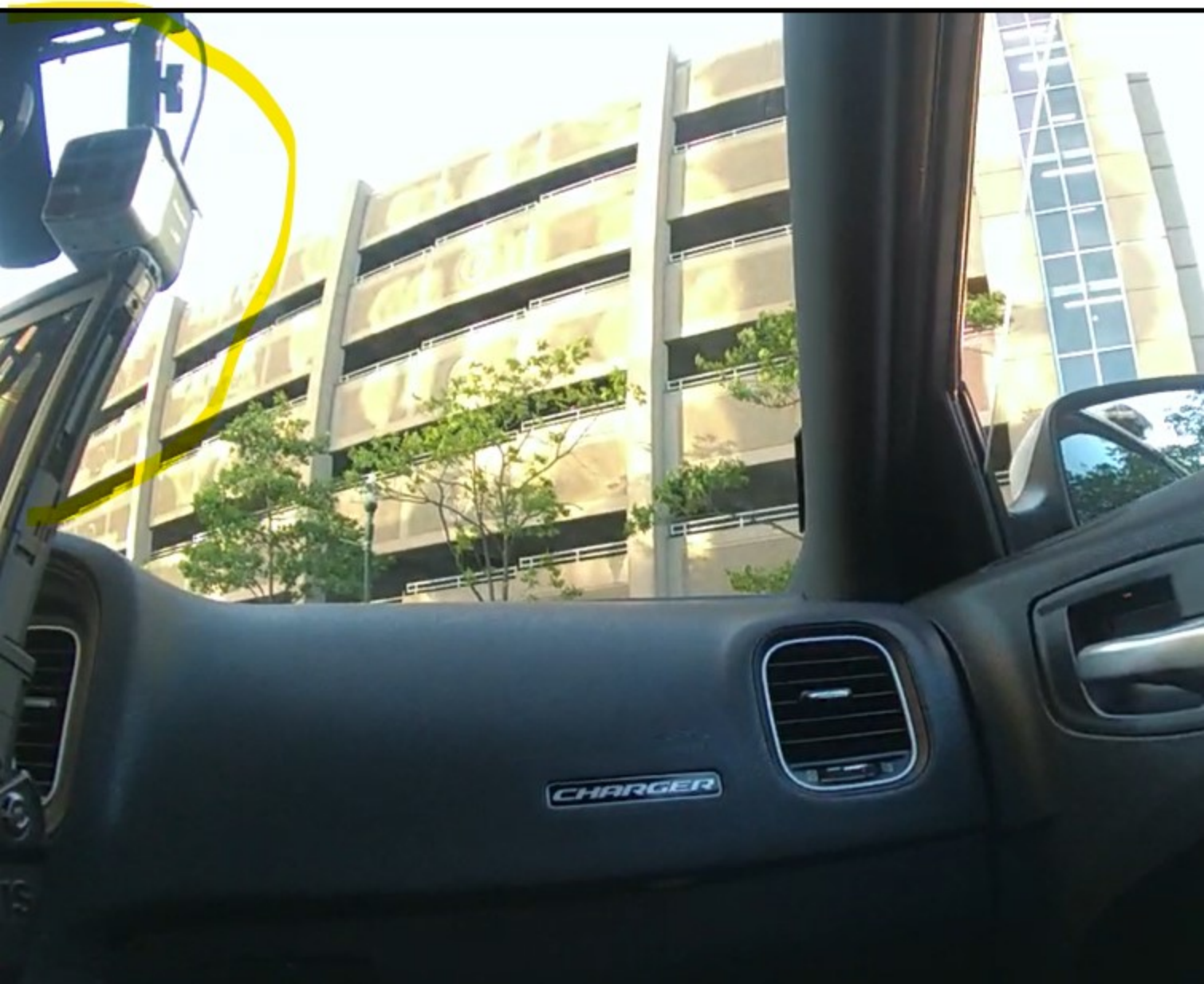
2017

2016

2015







CHARGER

Insert firm name and address or letterhead here

RETAINER AGREEMENT

The undersigned, _____ (“Client”), residing _____ hereby retains _____ (“Firm”), who assume responsibility for the representation, to prosecute or adjust a claim for damages arising from personal injuries sustained by, _____ and loss of services of _____ on the ____ day of _____, through the negligence of _____ and/or other persons, and the undersigned hereby gives the aforesaid Firm the exclusive right to take all legal steps to enforce this claim through trial. The Firm shall have the right but not the obligation to represent the Client on appeal.

In consideration of the services rendered and to be rendered by the Firm, the Client hereby agrees to pay the Firm legal fees which shall be thirty-three and one-third (33⅓) percent of the sum recovered, whether recovered by suit, settlement or otherwise.

The Client has been given the following options with respect to how such percentage shall be computed, and has made the selection of how the percentage shall be computed as reflected by the checking and *initialing* of the appropriate box below:

Option Number One: Client Remains Liable for Payment of All Costs and Expenses, Regardless of the Outcome of This Matter. Percentage is computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action;

OR

Option Number Two: The Firm Agrees to Pay and Remain Liable for All Costs and Expenses, Regardless of the Outcome of This Matter. Percentage is computed on the gross sum recovered before deducting expenses and disbursements. The Firm agrees to pay all costs and expenses of the action and the Client will not be responsible for any expenses and disbursements in the event the claim or action is dismissed or otherwise rejected by any court of competent jurisdiction.

The following reflects the financial consequences of each of the above two Options, using as an example a case in which there is a recovery of \$100,000 – *and this number is used only as an example that is easy to understand* – and the expenses and disbursements in the case are \$10,000:

Option Number One Example (The Client Remains Liable for Payment of All Costs and Expenses, Regardless of the Outcome of This Matter):

Total recovery	\$100,000.00
Less expenses and disbursements:	-\$10,000.00
<u>Less 33 1/3 % of remaining \$90,000.00:</u>	<u>-\$30,000.00</u>
Client's recovery:	\$60,000.00

Option Number Two Example (The Firm Agrees to Pay and Remain Liable for All Costs and Expenses, Regardless of the Outcome of This Matter):

Total recovery:	\$100,000.00
Less 33 1/3 % of \$100,000:	-\$33,333.33
<u>Less expenses and disbursements:</u>	<u>-\$10,000.00</u>
Client's recovery:	\$56,666.67

The Client understands and agrees that, if the Client has selected Option Number One, the Firm reserves the right, in its sole discretion, to elect to make payment in the first instance of some or all costs, expenses and disbursements, so as not to hinder the enforcement of the claim or prosecution of the action. If the Firm has advanced these payments, the Client understands that he or she remains fully responsible to reimburse the Firm for such costs, expenses and disbursements. If the Firm elects not to make payment in the first instance of some or all costs, expenses and disbursements, the Client will advance and prepay to the Firm all such costs, expenses and disbursements as they are incurred or anticipated for the enforcement of the claim and the prosecution of the action. The Firm may, in its discretion, require the Client to deposit with the Firm a specified amount of money, as the Firm deems appropriate, in order for such costs, expenses and disbursements to be paid. Should the Client not comply with his or her financial obligations under Option Number One after election to do so or the Client fails to advance the necessary case costs, disbursements and/or expenses, or fails to reimburse the Firm for such costs, disbursements and/or expenses which the Firm has advanced, the Firm may, at the Firm's sole option, pay or absorb such costs, disbursements and/or expenses on the Client's account. In such instance, the Firm shall notify the Client that the Firm is advancing the case costs, disbursements and/or expenses and that the fee shall be calculated on the gross recovery in accordance with the terms of Option Number Two above.

Examples of expenses and disbursements or other services properly chargeable to the enforcement of the claim or prosecution of the action include, but are not limited to, charges for: retaining investigators; storage fees relating to the preservation of evidence; obtaining medical records; retaining expert witnesses and consultants, including locating and preparing expert witnesses and consultants, obtaining expert reports, and testimony, and related transportation, parking, mileage, meals and hotel costs; court filing fees; service of process fees; subpoena fees; costs associated with taking depositions, including stenographer's fees, videographer's fees and video conferencing costs; court reporter fees; notary fees; mediator, arbitrator and/or special master fees; specialized medical and legal research fees; computerized research fees; expenses for focus groups and jury consultants; photography; preparation of exhibits; photocopying and other reproduction costs; fees and expenses of non-expert witnesses; postage and delivery fees; travel costs, including parking, mileage, transportation, meals and hotel costs; long distance telephone and fax charges; and all other necessary and incidental expenses and disbursements incurred on the Client's behalf. This list is not exclusive.

In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of

the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: Liens, assignments or claims in favor of hospitals, for medical care and treatment by doctors and nurses, or self-insurers or insurance carriers.

The Client understands and agrees that, without regard to whether the Client has selected Option Number One or Option Number Two, under no circumstances will the Firm be responsible for the payment of any judgment that may be entered against the Client arising out of either the incident or the prosecution of the action, including any bill of costs.

If at any time, the Firm determines that the Client's claim lacks legal or medical merit, or if circumstances arise which make it impossible for the attorneys to represent the Client's interests, then the attorneys may withdraw from representing the Client.

In the event that the claim results in a judgment unfavorable to the undersigned, the Firm shall not be obligated to undertake an appeal on the undersigned's behalf. The retainer agreement is effective only up until settlement or verdict after trial. This retainer agreement anticipates no appeal. If any appeal is required then a new retainer agreement covering the appeal will be negotiated. In the event extraordinary services are required the Firm may apply to the court for greater compensation pursuant to the Judiciary Law and the Special Rules of the Appellate Division regulating the conduct of attorneys.

Either party may terminate this Agreement. If terminated, the Firm has a lien for all work and disbursements to the time of termination. This case is accepted by the Firm subject to investigation.

This constitutes the sole agreement between the Firm and the Client, and any changes or modification shall be by subsequent written agreement signed by the parties hereto or their successors.

Dated:

_____ (L.S.)

STATE OF NEW YORK COUNTY OF NEW YORK ss.:

On the ___ day of _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be individually whose name is subscribed to the within instrument and acknowledge to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

Patient Name	Date of Birth	Social Security Number
Patient Address		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form: In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.
- THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:

8. Name and address of person(s) or category of person to whom this information will be sent:
SMILEY & SMILEY, LLP, 28 Liberty Street, 6th Floor, New York, New York 10005

- 9(a). Specific information to be released:
- Medical Record from (insert date) _____ to (insert date) _____
- Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.
- Other: _____ Include: *(Indicate by Initialing)*

_____ Alcohol/Drug Treatment
 _____ Mental Health Information
 _____ HIV-Related Information

Authorization to Discuss Health Information

- (b) By initialing here _____ I authorize _____
 Initials Name of individual health care provider
 to discuss my health information with my attorney, or a governmental agency, listed here:

 (Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information: <input type="checkbox"/> At request of individual <input checked="" type="checkbox"/> Other: Litigation	11. Date or event on which this authorization will expire: One year from date signed
12. If not the patient, name of person signing form:	13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Date: _____

Signature of patient or representative authorized by law.

* **Human Immunodeficiency Virus that causes AIDS.** The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

January 30, 2020

(client)
123 East 12th Street
New York, New York 10003

Re: Your accident on 1/21/20

Dear Ms. _____:

This shall confirm the fact that you have retained us to represent you with reference to the personal injuries you sustained as a result of a slip and fall accident that occurred on January 21, 2020.

We shall keep you fully informed of our progress by sending you copies of all our correspondence and other communications in connection with your matter. You may rest assured that we shall do everything possible to bring this case to a successful conclusion for you.

If at any time you have any questions or comments, please feel free to telephone me.

With best wishes, I remain,

Very truly yours,

ANDREW J. SMILEY

AJS:mis

January 31, 2020

Via email:

(Property Owner)

Attention:

Re: (CLIENT)
D/A: (d/a)

Dear _____:

This office represents _____, who sustained serious personal injuries as a result of a slip and fall accident in front of _____ Street, New York City on January 21, 2020 at approximately 8:20 A.M.

Please turn this letter over to your insurance company and have your insurance representative contact the undersigned immediately. **You are hereby instructed to preserve any and all surveillance video that may exist related to this occurrence.**

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

ANDREW J. SMILEY

AJS:mis

cc: (client)

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

28 Liberty Street
6th Floor
New York, New York 10005

WWW.SMILEYLAW.COM
Fax: (212) 697-4689

September 16, 2024

**Via email to: [REDACTED]
and First Class Mail**

[REDACTED]

Re: [REDACTED]
D/A: [REDACTED]

Dear Sir or Madam:

Please be advised that this office represents [REDACTED] for serious personal injuries sustained as a result of a fall. The accident herein occurred on [REDACTED], inside [REDACTED], located at [REDACTED].

Please consider this as our formal request for you to preserve any and all video surveillance depicting the accident herein.

Please immediately forward this letter to your insurance carrier and have them contact us.

Thank you for your courtesy and cooperation herein.

Very truly yours,

Michael S. Solomon

MICHAEL S. SOLOMON

MSS:mis

cc: [REDACTED]



October 7, 2010

MTA Foil Department
2 Broadway, 21st Floor
New York, N.Y. 10004

Att: FOIL Unit

Re: Injured Party: (client)
Place of Occurrence: Route QMR Bus #3122 at Third Avenue
and East 49th Street, New York, NY
Date of Accident: August 20, 2010

Dear _____:

Please be advised that this office represents _____ with reference to the injuries she sustained when she was hit by the above captioned MTA bus on the above captioned date and place.

Pursuant to the Freedom of Information Law, would you please send us copies of any and all accident reports with reference to this matter.

Thank you for your prompt attention to this matter.

Very truly yours,

ANDREW J. SMILEY

AJS/lv

cc: (client)

December 19, 2007

NYC Department of Transportation
Attn: Records Access Officer
55 Water Street, 6th Fl.
New York, N.Y. 10041

Re: Our Client: (client)
D/A: November 16, 2007
Accident Location: On the sidewalk located in front of
premises 800 2nd Avenue, New York,
New York 10017

Dear Ms. _____:

This office represents _____ who sustained severe personal injuries when she was caused to trip and fall on an uneven pavement on the sidewalk at 2nd Avenue between 42nd & 43rd Streets, in front of the premises known as 800 2nd Avenue, New York, New York 10017.

Please furnish our office with any and all Notices of Claim, repair records, work orders and/or permit requests concerning the roadway at the above mentioned location for the time period from November 16, 2005 – November 16, 2007.

If you have any questions, please do not hesitate to contact me.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

cc: (CLIENT)

August 20, 2020

Via Fax No.: 402-916-3031

National Liability & Fire Insurance

Attention: David Cooper, Liability Adjuster

Re: Claimant: _____
Insured: _____
Claim No.: _____
D/A: May 15, 2020

Dear Mr. Cooper:

Our office represents _____ for serious injuries he sustained as a result of a motor vehicle accident on May 15, 2020, when your insured's motor vehicle rear-ended our client's motor vehicle.

Kindly advise us of the policy limits herein. Please direct all future correspondence concerning this matter to the undersigned.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS:mis

cc: (client)

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

122 EAST 42ND STREET
39TH FLOOR
NEW YORK, NEW YORK 10168

WWW.SMILEYLAW.COM
FAX: (212) 697-4689

August 26, 2020

Via Fax No.: (856) 294-5154

GEICO Insurance

Attention: Anand Sethi, No-Fault Adjuster

Re: Claimant: Arturo Boutin
Insured: Tina Ferraioli
Claim No.: 0472670990101024
D/A: May 15, 2020

Dear Mr. Sethi:

Our office represents Arturo Boutin for serious injuries he sustained as a result of a motor vehicle accident on May 15, 2020.

Please direct all future correspondence concerning this matter to the undersigned.

Thank you for your courtesy and cooperation herein.

Very truly yours,



ANDREW J. SMILEY

AJS:mis
Enclosure
cc: Arturo Boutin



February 4, 2020

_____, M.D.
170 Williams Street, 8th Floor
New York, NY 10038
Attn: Medical Records Dept.

Re: (CLIENT)
D/O/S: 01/28/2020 to the present.

Dear Dr. _____:

Please be advised that we are the attorneys who represent _____ for injuries she sustained as a result of an accident on January 21, 2020.

In order to properly prepare our client's case, it is necessary that we obtain a copy of the complete medical record, including patient history, notes, test results, radiology studies, consults, operative reports, etc., relative to our client from **January 28, 2020 to the present.**

A duly executed authorization for the release of this information is enclosed.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS:dmp
Enclosure

cc: (CLIENT)

NY CLS CPLR § 503

Current through 2025 released Chapters 1-503

New York Consolidated Laws Service > **Civil Practice Law And Rules (Arts. 1 — 100)** > **Article 5 Venue (§§ 501 — 515)**

§ 503. Venue based on residence.

- (a) Generally. Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.
- (b) Executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver. An executor, administrator, trustee, committee, conservator, general or testamentary guardian, or receiver shall be deemed a resident of the county of his appointment as well as the county in which he actually resides.
- (c) Corporation. A domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located; except that such a corporation, if a railroad or other common carrier, shall also be deemed a resident of the county where the cause of action arose.
- (d) Unincorporated association, partnership, or individually-owned business. A president or treasurer of an unincorporated association, suing or being sued on behalf of the association, shall be deemed a resident of any county in which the association has its principal office, as well as the county in which he actually resides. A partnership or an individually-owned business shall be deemed a resident of any county in which it has its principal office, as well as the county in which the partner or individual owner suing or being sued actually resides.
- (e) Assignee. In an action for a sum of money only, brought by an assignee other than an assignee for the benefit of creditors or a holder in due course of a negotiable instrument, the assignee's residence shall be deemed the same as that of the original assignor at the time of the original assignment.
- (f) Consumer credit transaction. In an action arising out of a consumer credit transaction where a purchaser, borrower or debtor is a defendant, the place of trial shall be the residence of a defendant, if one resides within the state or the county where such transaction took place, if it is within the state, or, in other cases, as set forth in subdivision (a).
- (g) Student debt. In an action to recover tuition, fees, room and board, educational benefit payments, student loans, or other such charges incurred by a student in furtherance of such student's education owed to the state of New York, the place of trial shall be the residence of a defendant, if one resides within the state, or, in other cases, as set forth in this article.

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

Index No.:

-----x
JESSICA CORTEZ,

Date Filed:

Plaintiff,

Plaintiff designates
NEW YORK COUNTY

-against-

SUMMONS

SKINNER PLUMBING AND HEATING CORP.,
BHESHAM RAMNAUTH, NIKA LEKISHVILI and
KARISSA JODHAN ENTERPRISE, INC.,

The basis of venue is:
The place of occurrence

Defendants.
-----x

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the plaintiff's attorneys within 20 days after the service of this Summons, exclusive of the day of service of this Summons, or within 30 days after service of this Summons is complete if this Summons is not personally delivered to you within the State of New York.

In case of your failure to answer this Summons, a judgment by default will be taken against you for the relief demanded in the Complaint, together with the costs of this action.

Dated: New York, New York
October 20, 2025

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: Michael S. Solomon
MICHAEL S. SOLOMON
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

DEFENDANTS:
SKINNER PLUMBING AND HEATING CORP.
240-21 Braddock Avenue
Bellerose, New York 10022

BHESHAM RAMNAUTH
15022 116th Street
Jamaica, New York 11434

NIKA LEKISHVILI
1342 East 18th Street, Apt. 5E
Brooklyn, New York 11230

KARISSA JODHAN ENTERPRISE, INC.
23-59 77 Street
Queens, New York 11370

SUPREME COURT OF THE STATE OF NEW YORK Index No.:
COUNTY OF NEW YORK

-----x
JESSICA CORTEZ,

Plaintiff,

-against-

VERIFIED COMPLAINT

SKINNER PLUMBING AND HEATING CORP.,
BHESHAM RAMNAUTH, NIKA LEKISHVILI and
KARISSA JODHAN ENTERPRISE, INC.,

Defendants.
-----x

Plaintiff, JESSICA CORTEZ, by her attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, SKINNER PLUMBING AND HEATING CORP., BHESHAM RAMNAUTH, NIKA LEKISHVILI and KARISSA JODHAN ENTERPRISE, INC., hereinafter alleges at all times, upon information and belief, as follows:

1. Plaintiff, JESSICA CORTEZ, resides at 1 University Place, New York, New York 10003.
2. Defendant, SKINNER PLUMBING AND HEATING CORP., (hereinafter referred to as “SKINNER”) was and still is a domestic business corporation authorized to do business in the State of New York, with a place of business located at 240-21 Braddock Avenue, Bellerose, New York 10022.
3. Defendant, BHESHAM RAMNAUTH, (hereinafter referred to as “RAMNAUTH”), resides at 15022 116th Street, Jamaica, New York 11434.
4. Defendant, NIKA LEKISHVILI, (hereinafter referred to as “LEKISHVILI”), resides at 1342 East 18th Street, Apt. 5E, Brooklyn, New York 11230.

5. Defendant, KARISSA JODHAN ENTERPRISE, INC., (hereinafter referred to as “KARISSA”) was and still is a domestic business corporation authorized to do business in the State of New York, with a place of business located at 23-59 77 Street, Queens, New York 11370.

6. On March 20, 2024, defendant, SKINNER, was the owner of a certain motor vehicle bearing New York State license plate number 39436JV.

7. On March 20, 2024, defendant, RAMNAUTH, was the operator of a certain motor vehicle bearing New York State license plate number 39436JV.

8. On March 20, 2024, defendant, KARISSA, was the owner of a certain motor vehicle bearing New York State license plate number T755806C.

9. On March 20, 2024, defendant, LEKISHVILI, was the operator of a certain motor vehicle bearing New York State license plate number T755806C.

10. On March 20, 2024, defendant, RAMNAUTH, was operating the aforementioned motor vehicle owned by the defendant, SKINNER, with the knowledge, permission and consent of its owner, either expressed or implied.

11. On March 20, 2024, defendant, LEKISHVILI, was operating the aforementioned motor vehicle owned by the defendant, KARISSA, with the knowledge, permission and consent of its owner, either expressed or implied.

12. On March 20, 2024, at approximately 3:40 P.M., the plaintiff, JESSICA CORTEZ, was a lawful passenger in the motor vehicle owned by defendant, KARISSA, and operated by defendant, LEKISHVILI, which was travelling in the vicinity of East Houston Street and Chrystie Street in the County, City and State of New York.

13. On March 20, 2024, at approximately 3:40 P.M., the motor vehicle owned by defendant, SKINNER and operated by RAMANAUTH, struck the rear of the motor vehicle owned by defendant, KARISSA and operated by defendant, LEKISHVILI in the vicinity of East Houston Street and Chrystie Street in the County, City and State of New York.

14. The defendants were negligent and careless in the ownership, operation, management and control of their motor vehicles; in operating their aforesaid motor vehicles at a greater rate of speed than care and caution would permit under the circumstances; in operating their vehicles in a negligent, careless and reckless manner; in failing to operate horns, lights and/or signaling devices; in failing and omitting to provide or give any signal or warning of approach; in failing and omitting to provide and/or make timely and adequate use of brakes, signaling devices and steering mechanisms in violation of the Vehicle and Traffic Laws of the State of New York; and in violating provisions of the Vehicle and Traffic Laws of the State of New York.

15. Solely as a result of the defendants' negligence, the plaintiff, JESSICA CORTEZ, was seriously and permanently injured and was caused to suffer and will continue to suffer great physical pain and mental anguish.

16. The action falls within one or more of the exceptions set forth in CPLR Section 1602.

17. The plaintiff has sustained serious injuries as defined by Section 5102 of the Insurance Law of the State of New York.

18. The amounts of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, JESSICA CORTEZ, demands judgment against the defendants,

SKINNER PLUMBING AND HEATING CORP., BHESHAM RAMNAUTH NIKA
LEKISHVILI, KARISSA JODHAN ENTERPRISE, INC., together with the costs and
disbursements of this action.

Dated: New York, New York
October 20, 2025

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

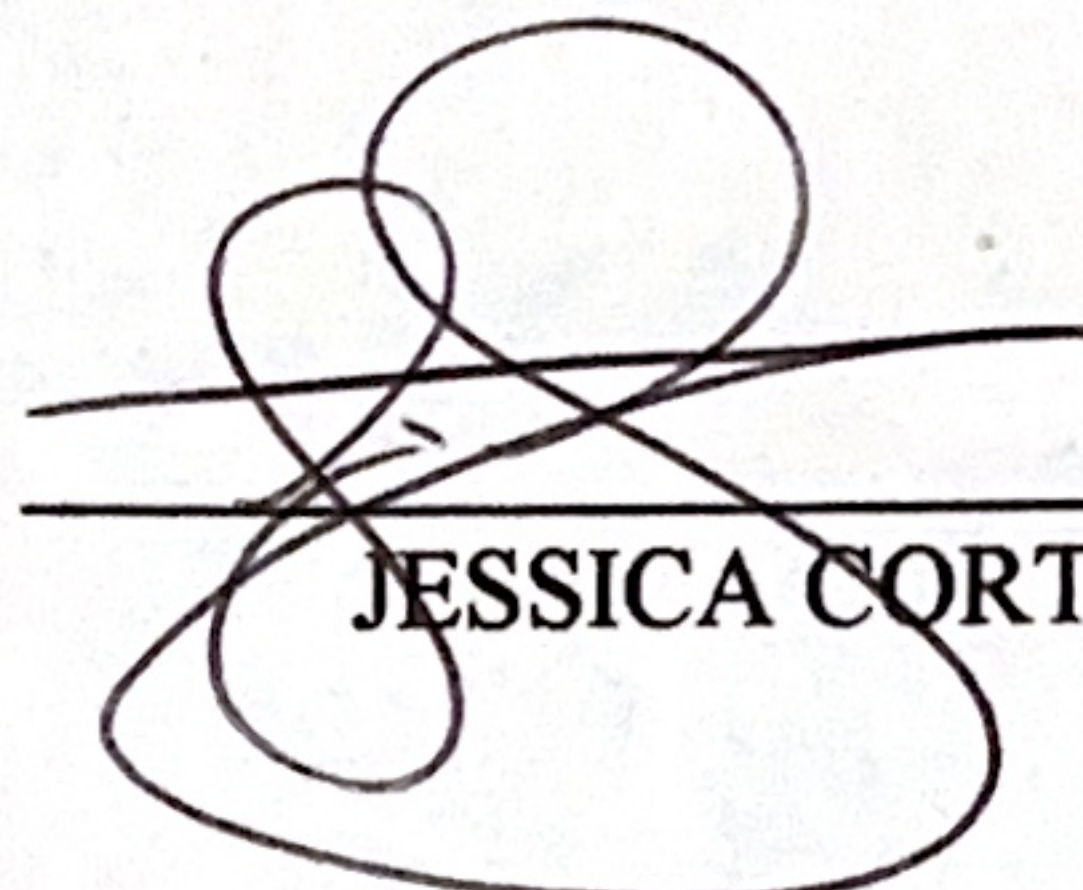
By: *Michael S. Solomon*
MICHAEL S. SOLOMON
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

INDIVIDUAL VERIFICATION

JESSICA CORTEZ, being duly sworn say that I am the plaintiff in the action herein, I have read the annexed **COMPLAINT** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

I affirm this 20 day of Oct., 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York



JESSICA CORTEZ

Index No.:

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

JESSICA CORTEZ,

Plaintiff,

-against-

SKINNER PLUMBING AND HEATING CORP., BHESHAM RAMNAUTH, NIKA
LEKISHVILI and KARISSA JODHAN ENTERPRISE, INC.,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

SMILEY & SMILEY, LLP

Attorneys for Plaintiff

28 LIBERTY STREET, 6TH FLOOR

NEW YORK, NEW YORK 10005

(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518688/2023

-----X
DONNA FELDMAN,

ACTION #1

Plaintiff,

-against-

YEHUDA WOLFF, ROYAL AUTO LEASING, LLC
and SOUTH SHORE NISSAN LLC,

**NOTICE OF MOTION
TO CONSOLIDATE**

Defendants.
-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 533163/2023

-----X
DONNA FELDMAN,

ACTION #2

Plaintiff,

-against-

CYNTHIA M. MONACO,

Defendant.
-----X

PLEASE TAKE NOTICE, that upon the affirmation of JASON D. FRIEDMAN, dated March 11, 2024, the pleadings and all other pertinent papers, the undersigned will move this Court, before Motion Support Office, Room 227, at the courthouse located at 360 Adams Street, Brooklyn, New York, New York 11201, on the 8th day of April, 2024, at 9:30 o'clock in the forenoon of that day, or soon thereafter as Counsel may be heard, for an Order:

(1) pursuant to CPLR § 602(a) directing that Action No. 1 and Action No. 2 be consolidated/joined for trial under Index No. 518688/2023, and


(2) granting the plaintiff such other and further relief that this Court may deem just and proper.

Pursuant to CPLR 2214(b), answering papers, if any, shall be served at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
March 11, 2024

Yours, etc.

SMILEY & SMILEY, LLP

BY: 

JASON D. FRIEDMAN
Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: SCAHILL LAW GROUP P.C.
Attorneys for Defendant,
YEHUDA WOLFF
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714
(516) 294-5200

LAW OFFICE OF ALAN J. SASSON, P.C.
Attorneys for Defendant,
ROYAL AUTO LEASING, LLC
2102 Avenue Z, Suite 201
Brooklyn, New York 11235
(718) 339-0856

MORRIS DUFFY ALONSO FALEY & PITCOFF
Attorneys for Defendant,
SOUTH SHORE NISSAN LLC
101 Greenwich Street, 22nd Floor
New York, New York 10006
(212) 766-1888
File No.: (PRG) 76895

PEKNIC, PEKNIC & SCHAEFER, LLC
Attorneys for Defendant,
CYNTHIA M. MONACO
1005 West Beech Street
Long Beach, New York 11561
(516) 432-9400
File No.: PROG/002/24

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518688/2023

-----X
DONNA FELDMAN,

ACTION #1

Plaintiff,

-against-

YEHUDA WOLFF, ROYAL AUTO LEASING, LLC
and SOUTH SHORE NISSAN LLC,

AFFIRMATION

Defendants.

-----X

Index No.: 533163/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
DONNA FELDMAN,

ACTION #2

Plaintiff,

-against-

CYNTHIA M. MONACO,

Defendant.

-----X

JASON D. FRIEDMAN, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a member of the law firm of SMILEY & SMILEY, LLP, and as such I am fully familiar with the facts and circumstances of the within action.

I make this affirmation in support of the plaintiff's motion for an order:

(1) pursuant to CPLR § 602(a) directing that Action No. 1 and Action No. 2 be consolidated/joined for trial under Index No. 518688/2023; and

(2) granting the plaintiff such other and further relief that this Court may deem just and proper.

Action No. 1 and Action No. 2 herein are actions to recover damages sustained by the plaintiff, DONNA FELDMAN, as a result of a rear-end motor vehicle accident which occurred on December 14, 2022, on the West Anchorage Mill Basin Draw Bridge which is on the westbound Belt Parkway, Brooklyn, New York.

Action No. 1 was commenced against defendants, YEHUDA WOLFF (hereinafter “WOLFF”), ROYAL AUTO LEASING, LLC (hereinafter “ROYAL”) and SOUTH SHORE NISSAN LLC (“hereinafter SOUTH SHORE) on June 27, 2023, alleging that a 2023 Nissan motor vehicle bearing New York State license plate number ZJL8822 was the motor vehicle owned by defendant SOUTH SHORE and operated by defendant WOLFF. Further, it is alleged that Defendant WOLFF was traveling on West Anchorage Mill Basin Draw Bridge on the Belt Parkway and struck the rear of the vehicle owned and operated by plaintiff, DONNA FELDMAN. The police report identified the owner of the offending vehicle as SOUTH SHORE and the driver of the offending vehicle as WOLFF. A copy of the Police Accident Report is annexed hereto as Exhibit “A”. Further investigation revealed that YEHUDA WOLFF was driving the offending vehicle in his capacity as an agent or employee of ROYAL. Thus, WOLFF, ROYAL and SOUTH SHORE were all named as defendants.


Subsequently, and prior to having counsel, your affirmant was informed by the owner of ROYAL that ROYAL is a “broker” and that CYNTHIA MONACO (hereinafter “MONACO”) had hired ROYAL to procure her the subject offending vehicle from SOUTH SHORE and that WOLFF

was hired to drive the vehicle from SOUTH SHORE's place of business to the home of MONACO. The accident occurred while WOLFF was in route to MONACO's home. Therefore Action No. 2 was commenced against MONACO on November 10, 2023. A copy of the Summons & Complaints in Action No. 1 and Action No. 2 are annexed hereto as Exhibit "B".

A reading of both of these Complaints reveals that both actions involve common questions of law and facts, and therefore should be consolidated.

No previous application has been made for the relief sought herein.

WHEREFORE, it is respectfully requested that this Court issue an Order pursuant to CPLR § 602(a) directing that Action No. 1 and Action No. 2 be consolidated/joined for trial under Index No. 518688/2023, and for such other and further relief as this Court shall deem just and proper.



JASON D. FRIEDMAN

*Affirmed the 11th day
Of March, 2024.*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518688/2023

-----X
DONNA FELDMAN,

Plaintiff,

**ORDER WITH
NOTICE OF ENTRY**

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL
AUTO LEASING, LLC and SOUTH SHORE NISSAN
LLC,

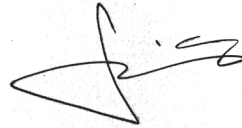
Defendants.
-----X

PLEASE TAKE NOTICE, that the within is a true certified copy of the Consolidation Order of the Honorable Peter P. Sweeney, dated June 17, 2024, and duly entered in the office of the clerk of the within named Court on June 21, 2024.

Dated: New York, New York
July 9, 2024

Yours, etc.,

SMILEY & SMILEY, LLP



By: _____
JASON D. FRIEDMAN

Attorneys for Plaintiff
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

TO: PEKNIC, PEKNIC & SCHAEFER, LLC
Attorneys for Defendant,
CYNTHIA M. MONACO
1005 West Beech Street
Long Beach, New York 11561
(516) 432-9400

SCAHILL LAW GROUP P.C.
Attorneys for Defendant,
YEHUDA WOLFF
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714
(516) 294-5200

LAW OFFICE OF ALAN J. SASSON, P.C.
Attorneys for Defendant,
ROYAL AUTO LEASING, LLC
2102 Avenue Z, Suite 201
Brooklyn, New York 11235
(718) 339-0856

MORRIS DUFFY ALONSO FALEY & PITCOFF
Attorneys for Defendant,
SOUTH SHORE NISSAN LLC
101 Greenwich Street, 22nd Floor
New York, New York 10006
(212) 766-1888

At an I.A.S. Part 13 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State New York on the 14th day of June 2024

PRESENT: Hon. Sweeney JSC

Donna Feldman

Plaintiff

Consolidation Order

-against-

Index # 518688/2023

Yehuda Wolff, Royal Auto Leasing, LLC

Defendant

MS # 1

South Shore Nissan LLC Cynthia Monaco

Upon the Notice of Motion and the affirmation in support and due deliberation had, it is now

Ordered, that the motion is granted to the extent that actions # 1 and # 2 are consolidated for all purposes; and it is further,

**Ordered, that upon service of a copy of this order and payment of the requisite fees, the Clerk of Kings County is directed to transfer the file of index # 533163/23 and all papers contained therein to the Clerk of Kings County; and it is further,

Ordered, that the Clerk of Kings County is directed to consolidate the file of index # 533163/23 into index # 518688/23; and it is further,

Ordered, that the pleadings in each action shall stand as the pleadings in the consolidated action; and it is further,

Ordered, that a copy of this order with notice of entry shall be served upon all parties to the consolidated action; and it is further,

Ordered, that the caption shall read as follows:

Donna Feldman

Plaintiff

Index # 518688/23

-against-

Cynthia Monaco, South Shore Nissan LLC
Yehuda Wolff, Royal Auto Leasing, LLC

Defendant

check if additional page annexed with more captions

** strike decretal if inapplicable

ENTER,

JSC

2024 JUN 21 A 9:22
KINGS COUNTY CLERK
FILED

HON. PETER P. SWEENEY, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No: 518688/2023

-----X
DONNA FELDMAN,

Plaintiff,

NOTICE OF MOTION

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL
AUTO LEASING, LLC and SOUTH SHORE
NISSAN LLC,

Defendants.
-----X

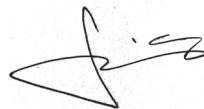
PLEASE TAKE NOTICE that upon the annexed affirmation of JASON D. FRIEDMAN, ESQ. dated the 24th day of March, 2025 and the Exhibits annexed thereto; the Affirmation of plaintiff, DONNA FELDMAN dated the 13th day of March, 2025; the Statement of Material Facts; the Memorandum of Law; and the pleadings and all other pertinent papers, the undersigned will move this Court in Part 73, before the Honorable Peter P. Sweeney, at the courthouse located at 360 Adams Street, Brooklyn, New York, on the **30th day of April, 2025**, at 9:30 A.M., or as soon thereafter as counsel may be heard, for an Order granting the plaintiff summary judgment against defendants, YEHUDA WOLFF and SOUTH SHORE NISSAN LLC, on the issue of liability and dismissing the affirmative defense of plaintiff's culpable conduct asserted by all defendants and such other and further relief that this Court may deem just and proper.

Pursuant to CPLR 2214(b), answering papers, if any, shall be served at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
March 24, 2025

Yours, etc.,

SMILEY & SMILEY, LLP



By: _____

JASON D. FRIEDMAN

Attorneys for Plaintiff
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

To: SCAHILL LAW GROUP P.C.
Attorneys for Defendant,
YEHUDA WOLFF
1065 Stewart Avenue, Suite 210
Bethpage, New York 11714
(516) 294-5200

MORRIS DUFFY ALONSO FALEY & PITCOFF
Attorneys for Defendant,
SOUTH SHORE NISSAN LLC
101 Greenwich Street, 22nd Floor
New York, New York 10006
(212) 766-1888

PEKNIC, PEKNIC & SCHAEFER, LLC
Attorneys for Defendant, CYNTHIA M. MONACO
1005 West Beech Street
Long Beach, New York 11561
(516) 432-9400

LAW OFFICE OF ALAN J. SASSON, P.C.
Attorneys for Defendant,
ROYAL AUTO LEASING, LLC
2102 Avenue Z, Suite 201
Brooklyn, New York 11235
(718) 339-0856

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

NOTICE OF MOTION

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No: 518688/2023

-----X
DONNA FELDMAN,

Plaintiff,

NOTICE OF MOTION

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL
AUTO LEASING, LLC and SOUTH SHORE
NISSAN LLC,

Defendants.
-----X

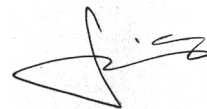
PLEASE TAKE NOTICE that upon the annexed affirmation of JASON D. FRIEDMAN, ESQ. dated the 24th day of March, 2025 and the Exhibits annexed thereto; the Affirmation of plaintiff, DONNA FELDMAN dated the 13th day of March, 2025; the Statement of Material Facts; the Memorandum of Law; and the pleadings and all other pertinent papers, the undersigned will move this Court in Part 73, before the Honorable Peter P. Sweeney, at the courthouse located at 360 Adams Street, Brooklyn, New York, on the **30th day of April, 2025**, at 9:30 A.M., or as soon thereafter as counsel may be heard, for an Order granting the plaintiff summary judgment against defendants, YEHUDA WOLFF and SOUTH SHORE NISSAN LLC, on the issue of liability and dismissing the affirmative defense of plaintiff's culpable conduct asserted by all defendants and such other and further relief that this Court may deem just and proper.

Pursuant to CPLR 2214(b), answering papers, if any, shall be served at least seven (7) days prior to the return date of this motion.

Dated: New York, New York
March 24, 2025

Yours, etc.,

SMILEY & SMILEY, LLP



By: _____

JASON D. FRIEDMAN

Attorneys for Plaintiff
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

To: SCAHILL LAW GROUP P.C.
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YEHUDA WOLFF
1065 Stewart Avenue, Suite 210
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(516) 294-5200

MORRIS DUFFY ALONSO FALEY & PITCOFF
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SOUTH SHORE NISSAN LLC
101 Greenwich Street, 22nd Floor
New York, New York 10006
(212) 766-1888

PEKNIC, PEKNIC & SCHAEFER, LLC
Attorneys for Defendant, CYNTHIA M. MONACO
1005 West Beech Street
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(516) 432-9400

LAW OFFICE OF ALAN J. SASSON, P.C.
Attorneys for Defendant,
ROYAL AUTO LEASING, LLC
2102 Avenue Z, Suite 201
Brooklyn, New York 11235
(718) 339-0856

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

NOTICE OF MOTION

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----x
DONNA FELDMAN,

Index No.: 518688/2023

Plaintiff,

-against-

ATTORNEY AFFIRMATION

CYNTHIA M. MONACO, SOUTH SHORE NISSAN LLC,
YEHUDA WOLFF and ROYAL AUTO LEASING, LLC,

Defendants.
-----x

JASON D. FRIEDMAN, an attorney duly licensed to practice law before the Courts in the State of New York, hereby affirms under penalties of perjury as follows:

1. I am a partner of Smiley & Smiley, LLP, attorneys for the plaintiff, DONNA FELDMAN (hereinafter referred to as "FELDMAN") and as such, I am fully familiar with the facts and circumstances of this action.

2. This affirmation, with the exhibits referenced herein, the annexed Affirmation of Feldman and the Memorandum of Law, which are incorporated herein by reference, are submitted on behalf of the plaintiff seeking summary judgment pursuant to CPLR §3212 against defendants YEHUDA WOLFF (hereinafter referred to as "Wolff") and SOUTH SHORE NISSAN LLC (hereinafter referred to as "South Shore"), striking the Affirmative Defense of plaintiff's culpable conduct against all defendants, setting this matter down for a trial on damages, and for such other and further relief as this Court deems just and proper

3. The evidence clearly establishes that there are no material questions of fact regarding liability of these defendants and there was no culpable conduct by the plaintiff and

therefore judgment should be entered in favor of the Plaintiff as a matter of law along with dismissal of the Affirmative Defense of the plaintiff's culpable conduct.

4. The admissible evidence herein establishes the Plaintiff's prima facie entitlement to summary judgment as a matter of law. The evidence demonstrates that Defendant Wolff negligently and carelessly caused the vehicle he was operating to "rear-end" the vehicle being operated by Feldman on the westbound Belt Parkway, in Brooklyn, New York, on December 14, 2022 and that Wolff was operating said vehicle with the permission of the owner which was Defendant South Shore.

PROCEDURAL & FACTUAL HISTORY

5. This action to recover damages for personal injuries sustained by Plaintiff was commenced by the filing of a Summons and Complaint against Defendants Wolff, South Shore and ROYAL AUTO LEASING, LLC (hereinafter "Royal") on June 27, 2023. [NYSCEF # 1](#).

6. An Amended Complaint was filed on August 16, 2023. [NYSCEF #4](#).

7. Issue was joined by service of Defendants' Verified Answers to the Amended Complaint on December 15, 2023 (Royal, [NYSCEF #12](#)), January 26, 2024 (Wolff, [NYSCEF #13](#)), and February 6, 2024 (South Shore, [NYSCEF #17](#)).

8. A Summons and Complaint was then filed against Defendant CYNTHIA M. MONACO (hereinafter "Monaco") under index Number 533163/2023 on November 10, 2023 ([NYSCEF #1](#) under that index number).

9. Issue was joined by service of an Answer on behalf of Monaco on January 4, 2024 ([NYSCEF #3](#) under that index number).

10. By Order of the Court dated June 21, 2024, the two matters were consolidated under the instant index number. ([NYSCEF #29](#)).

11. Discovery is ongoing, depositions of all parties have been held, and the Note of Issue has not yet been filed.

BACKGROUND FACTS

12. This is an action for money damages arising out of serious personal injuries sustained by Feldman when she was rear-ended on the westbound side of the Belt Parkway, Brooklyn, New York on December 14, 2022. A copy of the Police Accident Report is annexed hereto as Exhibit "A."

13. At the time of the accident, defendant Wolff was operating a 2023 Nissan Rogue. Prior to the accident, defendant Monaco, a resident of New Jersey, engaged defendant Royal to secure her a car to lease. In other words, Royal was acting as a broker. Royal located the Nissan Rogue at defendant South Shore who operates a Nissan dealership on Long Island. Royal engaged Wolff to travel to South Shore to pick up the Nissan Rogue and then drive to New Jersey to deliver the vehicle to Monaco. The vehicle was never delivered because Wolff rear-ended Feldman on his way to New Jersey.

14. It is undisputed that Monaco had not yet leased the vehicle at the time of the accident; that South Shore owned the vehicle at the time of the accident; and that Wolff, who was 19 years-old and only had his driver's license for about six months and his total driving experience was less than 20 hours of driving, admitted to causing the accident because he was not looking at the roadway at the time of the accident.

EXAMINATION BEFORE TRIAL TESTIMONY OF FELDMAN

15. Feldman was deposed on September 30, 2024. (Annexed hereto as Exhibit "B," is a copy of the transcript of Feldman). Feldman testified that she was the operator of a 2021 Honda CRV and that she was rear-ended while stopped in traffic on the westbound Belt Parkway. Exhibit

B, pages 20, 34-35

EXAMINATION BEFORE TRIAL TESTIMONY OF WOLFF

16. Wolff was deposed on December 16, 2024. (Annexed hereto as Exhibit “C,” is a copy of the transcript of Wolff). Wolff testified that he responded to a posting on a “chat” to drive a car from South Shore Nissan to a customer’s house. (Ex. C, p.20). After some back-and-forth messaging, Wolff agreed to the job where he was to be paid about \$200. He was to take an Uber to South Shore Nissan, pick up the car and deliver it to a customer in New Jersey. (Ex. C, p.20-36). Wolff was never actually paid any money from Royal. Ex. C, p.30.

17. Wolff testified that he arrived at South Shore Nissan and spoke to someone briefly and that person took him outside to the vehicle, handed him a folder and gave him the keys to the car. (Ex. C, p.35-41). Wolff testified that he was nineteen years-old on the date of the accident (Ex C, p.16) and that he only had less than twenty hours of driving experience from the time he got his driver’s license until the date of the accident. (Ex. C, p. 42).

18. When Wolff was asked what happened, he testified that:

“I was figuring out the system of the car. I was going through the buttons on the screen, so the tire pressure and all of that stuff. I don’t know exactly what happened next. Definitely my eyes were not focused on the road, so I either hit into the car or mistakenly hit the gas. I don’t remember.”
Ex. C, p. 53.

19. Wolff testified that the impact was severe enough that the air bags deployed in the Nissan he was driving. Ex. C, p 53. When asked how fast he was traveling at the moment of impact, Wolff testified “I don’t remember, but if I had to guess based on the impact, at least 30”. Ex. C., p 54. Wolff testified that the front of the Nissan struck the rear center of the Honda CRV. Ex. C, p. 54. When Wolff was asked where he was looking at the time of the impact, he testified “at the dashboard where I was going through the buttons I believe.”. Wolff further testified that

his eyes were not on the road at the time of impact. Ex. C, p.55. Lastly, when asked if the driver of the Honda CRV did anything he thought was unsafe or improper to cause the accident. Wolff testified “No, not that I can remember.” Ex. C, p. 55-56.

EXAMINATION BEFORE TRIAL TESTIMONY OF SOUTH SHORE

20. Christopher Janazzo (hereinafter “Janazzo”), on behalf of South Shore, testified at a deposition on December 17, 2024. (Annexed hereto as Exhibit “D” is a copy of the transcript of Janazzo).

21. Janazzo testified that he was and is employed by South Shore in sales and finance and that Ike from Royal contacted him about a deal for a Nissan Rogue. Ex. D, p. 11, 17, 19.

22. Janazzo testified that prior to cars being leased out, the “dealership” owns the car. Ex. D, p. 23. Janazzo testified that the contract for the lease to Monaco was in fact never signed by Monaco. Ex D., p. 25-26. Janazzo testified that the process was that the car would be delivered to the customer and then the customer would sign the lease paperwork, and that Monaco was going to sign the lease paperwork when the car was delivered to her (Ex. D, p. 26-27.) and that prior to that, South Shore Nissan had the title for the car. Ex. D., p.29.

23. Janazzo was shown a document called “certificate of origin for a vehicle” and testified as follows about that document:

Q: Now I’m looking at page 58 of the PDF. This is a very common document in the car business. It says certificate of origin for a vehicle. Are you familiar with this document?

A: Yes.

Q: In general what is your understanding of what this document is?

A: That’s the certificate. It shows you who the owner is.

Q: And according to this certificate the Nissan Rogue was owned

by South Shore Nissan, right?

A: Yes.

Q: And the date if you look all the way at the date on top November 16th, 2022, right?

A: Yes.

Q: So you would agree with me according to this document on November 16, 2022 South Shore Nissan was the owner of the car?

A: Yes.

Ex. D, p. 41. (Note the date of accident was December 4, 2022)

24. Janazzo testified that Ike was going to send a driver to pick up the car and deliver it to Monaco. Ex. D, p. 42. He testified that Monaco was supposed to sign the lease paperwork when the car was delivered to her and that it is not a closed lease until the paperwork is signed by the customer. Ex. D, p.44. Janazzo testified that the driver showed up at the dealership and that he gave him the lease paperwork and told him to have the customer sign the paperwork when he delivered the car and, in fact, put post-it notes on the paperwork where the customer was to sign. Ex. D, p. 46.

25. Janazzo testified that he then gave the keys to the car to the driver and gave him permission to drive the car. Ex. D, p. 48. Janazzo testified that at some point he learned that the car was never actually delivered to the customer because the driver had an accident on the way. Ex. D, p. 52. After the accident, South Shore Nissan eventually got the car back after sending a tow truck. Ex. D, p. 55. Janazzo believes the car was a “total loss”. Ex. D, p. 59.

26. Lastly, Janazzo testified that the lease transaction had not been completed at the time of the accident. Ex. D, p. 79.

EXAMINATION BEFORE TRIAL TESTIMONY OF MONACO

27. Monaco was deposed on January 27, 2025 (Attached hereto as Exhibit “E” is a copy of Monaco’s transcript). Monaco testified that she had contacted Royal to obtain a vehicle and they agreed on the Nissan Rogue. Ex. E, p.12, 15.

28. Monaco testified that the arrangement was that the car would be delivered to her and she would then sign the lease agreement. Ex. E, p. 16. Monaco testified that at no point in time did she sign any lease paperwork electronically, via PDF or in any way at all. Ex. E, p.19. Monaco testified that the vehicle was never delivered to her because the driver got into the subject accident on the way to her house. Ex. E, p11-12.

AFFIRMATION OF FELDMAN

29. Attached hereto as Exhibit “F” is an affirmation of Feldman which again states that she was rear-ended on the Belt Parkway on December 14, 2022 while she was on her way home from work. Feldman affirmed that she was operating her car in a careful manner, came to a gradual stop while in traffic and was struck in the rear by the vehicle traveling behind her.

30. Attached hereto as Exhibit “G” is the Certificate of Origin for a Vehicle that was referenced during Janazzo’s deposition (paragraph 23 above). The Certificate of Origin lists South Shore as the distributor/dealer and above that says: “I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation.....”. the Certificate of Origin is dated November 16, 2022 which almost one month before the date of the accident.

CONCLUSION

31. Based upon the relevant admissible evidence and the testimony and admissions by Janazzo, Wolff and Feldman, it is undisputed that South Shore was the owner of the subject Nissan

Rogue, that Wolff was operating the subject Nissan Rogue with the permission and consent of South Shore and that the sole cause of Wolff rear-ending Feldman was his inattention to the roadway while he was driving on the Belt Parkway. Therefore, summary judgment should be granted on liability in favor of the plaintiff as against Wolff and South Shore, the Affirmative defense of the Plaintiff's culpable conduct asserted by all defendants should be dismissed and the matter set down for a trial on damages.

WHEREFORE, for all of the reasons set forth herein, in the Statement of Material Facts, the supporting Affirmation of Feldman, the accompanying Memorandum of Law in support and upon all of the exhibits referenced and attached hereto, it is respectfully requested that this Court grant plaintiff's summary judgment in their favor and against the defendants Wolff and South Shore, dismissing the Affirmative Defense asserted by all defendants of plaintiff's culpable conduct and such other and further relief as may be just and proper.

Dated: New York, New York
March 24, 2025

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiff
28 Liberty Street, 6th Floor
New York, NY 10005
P: 212.986.2022

BY: 

JASON D. FRIEDMAN

CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-B

I, Jason D. Friedman, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify the following meet the word-count limits under the Uniform Civil Rules 202.8-b:

Plaintiff's Affirmation in Support of Motion for Summary Judgment contains 2404 words.

Pursuant to the Rules, the word count excludes the caption and signature block. No table of contents or table of authorities is attached.

In preparing this certification, I have relied on the computer-generated word count from Word which was used to prepare the above materials.

Dated: New York, New York
March 24, 2025



JASON D. FRIEDMAN

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

ATTORNEY AFFIRMATION

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518688/2023

-----X
DONNA FELDMAN,

Plaintiff,

-against-

STATEMENT OF MATERIAL FACTS

CYNTHIA M. MONACO, SOUTH SHORE NISSAN LLC,
YEHUDA WOLFF and ROYAL AUTO LEASING, LLC,

Defendants.
-----X

JASON D. FRIEDMAN, an attorney duly admitted to practice law before the Courts of the State of New York, pursuant to Section 202.8-G, hereby contends that there are no genuine issues of fact as to the following facts:

1. The subject action arises out of a rear-end motor vehicle accident that occurred on December 14, 2022, on the westbound side of the Belt Parkway, west of the Anchorage Mill Basin Draw Bridge in Brooklyn, New York. See Ex “A”.

2. At the time of the accident, plaintiff Donna Feldman was the operator of a 2021 Honda CRV. See Ex. “A”, Ex. “B” at p.20 and Ex. “F”.

3. At the time of the accident, defendant Yahuda Wolff (hereinafter “Wolff”) was the operator of a 2023 Nissan Rogue and defendant South Shore Nissan LLC (hereinafter “South Shore”) was the owner and title-holder of a 2023 Nissan Rogue. See Ex. “C” at p.20 and Ex “D” at p. 22-23, p.29, p. 37-38, p.41.

4. A lease transaction in favor of Monaco had not been completed and there was never a lease agreement signed by Monaco. Ex. “D” at p.25-26 and Ex. “E” at p.19.

5. Plaintiff Donna Feldman was “rear-ended” by the Nissan Rogue. See Ex. “A”, Ex.

“B” at p.34-35, Ex. “C” at p.53-54 and Ex. “F”.

6. The sole cause of the rear-end motor vehicle accident was Wolff’s inattention to the roadway and the vehicles on the roadway because he was not looking at the roadway at the time of the accident. See Ex. C at p.53

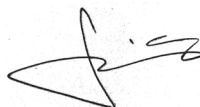
7. Wolff was “going through the buttons on the screen” and “definitely my eyes were not focused on the road” and his “eyes were not on the road” at the time of impact. See Ex “C” at p.53-55.

8. Plaintiff Donna Feldman was simply driving her car in a normal manner when she slowed down due to traffic conditions and was then rear-ended. Plaintiff Donna Feldman did not do anything to cause the occurrence of the rear-end accident. See Ex. “A”, Ex. “C” at p.56 and Ex. F.

Dated: New York, New York.
March 24, 2025

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff



JASON D. FRIEDMAN
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-B

I, Jason D. Friedman, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify the following meet the word-count limits under the Uniform Civil Rules 202.8-b:

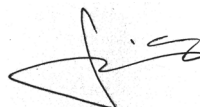
Plaintiff's Statement of Material Facts contains 543 words.

Pursuant to the Rules, the word count excludes the caption and signature block. No table of contents or table of authorities is attached.

In preparing this certification, I have relied on the computer-generated word count from Word which was used to prepare the above materials.

Dated: New York, New York
March 24, 2025

SMILEY & SMILEY, LLP
Attorneys for Plaintiff



JASON D. FRIEDMAN
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

STATEMENT OF MATERIAL FACTS

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----x Index No.: 518688/2023
DONNA FELDMAN,

Plaintiff,

MEMORADUM OF LAW

-against-

CYNTHIA M. MONACO, SOUTH SHORE NISSAN LLC,
YEHUDA WOLFF and ROYAL AUTO LEASING, LLC,

Defendants.

-----x

PRELIMINARY STATEMENT

1. This Memorandum of Law is respectfully submitted in support of the Motion for Summary Judgment of Plaintiff, DONNA FELDMAN (hereinafter “Feldman”), pursuant to CPLR §3212, on liability against defendants YEHUDA WOLFF (hereinafter “Wolff) and SOUTH SHORE NISSAN, LLC (hereinafter “South Shore”) and dismissal of the Affirmative Defense of plaintiff’s culpable conduct asserted by all defendants.

2. This is an action for the personal injuries sustained by Feldman as a result of a rear-end collision which occurred on December 14, 2022 on the westbound Belt Parkway, Brooklyn, New York. As will be demonstrated, Plaintiff is entitled to an Order and Judgment, as a matter of law, against Wolff for his negligent operation of a motor vehicle he was using with the permission and consent of the owner of the vehicle, South Shore, and against South Shore as the owner of the vehicle.

PROCEDURAL & FACTUAL HISTORY

3. The Court is respectfully referred to the accompanying Affirmation of Jason D.

Friedman, Statement of Material Facts, and the Affirmation of Feldman for the procedural and factual history of this case. This memorandum of law is incorporated therein by reference and made a part of the Affirmation for the record.

SUMMARY JUDGMENT STANDARD

4. A Plaintiff moving for summary judgment must show there are no genuine issues of fact to be resolved to warrant a trial, CPLR §3212(b), and when judgment is warranted as a matter of law. It is the proponent's burden to make a *prima facie* showing of entitlement to judgment. See *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *see also Weingrad v. New York University Medical Center*, 64 N.Y.2d 851, 487 N.Y.S.2d 316 (1985); and *Zuckerman v. New York City Transit Authority*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). Summary Judgment is meant to “expedite all civil cases by eliminating from the trial calendar claims that can be properly resolved as a matter of law.” *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131 (1974).

5. In the case at bar, there are no genuine issues for trial regarding Defendant Wolff's negligence and that South Shore was the owner of the vehicle and, as such, Plaintiff is entitled to judgment as a matter of law.

ARGUMENT

PLAINTIFF HAS MADE OUT A PRIMA FACIE CASE OF LIABILITY AGAINST WOLFF

6. It is well established that a rear-end collision with a stopped vehicle creates a *prima facie* case of negligence against the operator of the moving vehicle and imposes a duty on that operator to provide a non-negligent explanation for the collision. *Abramov v. Martinez*, 205

N.Y.S.3d 212 (2nd Dep't. 2024); *McPhaul-Guerrier v. Leppla*, 162 N.Y.S.3d 116 (2nd Dep't. 2022); *Carman v Arthur J. Edwards Mason Contr. Co.*, 897 NYS2d 191 (2nd Dep't. 2010).

7. If the operator of the moving vehicle cannot come forward with evidence to rebut the inference of negligence, the occupants and owner of the stationary vehicle are entitled to summary judgment on the issue of liability. *Id.*

8. Here, Plaintiff has established, prima facie, that Wolff's failure to have his eyes focused on the road at the time of the accident and was instead looking at the dashboard and going "through the buttons", was the sole proximate cause of the subject accident.

9. It is well settled that the statement by the driver of a motor vehicle that they failed to see the other vehicle prior to the accident is a party admission and thus, admissible on a motion for summary judgment to prove the parties liability. *Mims v Hobbs*, 138 N.Y.S.3d 906, (2nd Dep't. 2021); *Kraynova v Lowy*, 87 N.Y.S.3d 653, (2nd Dep't. 2018). *Nieves v. JHH Transport, LLC*, 836 NYS2d 697 (2nd Dep't. 2007).

10. It is noted that drivers have a duty to see what should be seen and to exercise reasonable care under the circumstances to avoid an accident. *Maragos v Sakurai*, 938 NYS2d 908 (2nd Dep't. 2012); *Balducci v Velasquez*, 938 NYS2d 178 (2nd Dep't. 2012).

11. Furthermore, to be entitled to summary judgment on the issue of liability, a plaintiff is no longer required to show freedom from comparative fault in establishing his or her prima facie case. *Rodriguez v. City of New York*, 31 N.Y.3d 312 (2018).

12. It is clear that Wolff struck the Plaintiff's vehicle in the rear and did not see the vehicle before the impact because he was "not focused on the road" and was looking "at the dashboard where I was going through the buttons I believe". Ex. C. Wolff also admitted that Feldman did not engage in any unsafe or improper conduct to cause the accident. As such, Wolff's

negligence was the sole proximate cause of the accident and Plaintiff is entitled to summary judgment on the issue of liability as a matter of law.

**SOUTH SHORE IS VICARIOUSLY LIABLE
BECAUSE THEY OWNED THE VEHICLE AND
WOLFF WAS OPERATING THE VEHICLE WITH
THEIR PERMISSION**

13. NYS Vehicle and Traffic Law, section 388(1) provides that the owner of a motor vehicle is liable for the negligence of one who operates the vehicle with the owner's express or implied consent. *Rodriguez v. Morales*, 190 N.Y.S.3d 452 (2nd Dep't. 2023); *Piano Exch. V. Weber*, 92 N.Y.S.3d 327 (2nd Dep't. 2019). Here, there is no dispute that South Shore owned the vehicle and that Wolff was operating the vehicle with their permission and consent. ¹

THIS CASE IS RIPE FOR SUMMARY JUDGMENT

14. Summary judgment is designed to expedite all civil cases by eliminating from the trial calendar claims which can properly be resolved as a matter of law. Where there is no genuine issue to be resolved at trial, a case would be summarily decided. The Court of Appeals in *Andre v. Pomeroy*, 35 N.Y.2d 361 (1974), held that a plaintiff would be entitled to summary judgment when: "there is no conflict at all in the evidence that defendant's conduct fell far below any permissible standard of due care, and plaintiffs conduct...was not really involved."

15. Such is the case herein where there is no comparative negligence on the part of the Plaintiff's decedent. Rather, she was merely a victim of a collision caused by Wolff.

¹ To the extent South Shore claims liability is barred by what is known as the Graves Amendment 49 USC § 30106(a), it should be noted that the statute states "An owner of a motor vehicle that rents or leases *the* (emphasis added) vehicle to a person shall not be liable under the law of any State...by reason of being the owner of the vehicle." **The** vehicle in this case was not a rented or leased vehicle and therefore the Graves Amended does not apply.

16. Negligence cases, supplying the bulk of the trial calendar, are a perfect example of the implementation of this policy. CPLR §3212(b) states that, regarding a motion for summary judgment: "The motion shall be granted if, upon all the papers and proof submitted, the cause of action ...shall be established sufficiently to warrant the court as a matter of law in directing Judgment in favor of any party."

17. Courts have long upheld the notion that cases involving "hit-in-the-rear" motor vehicle accidents are ripe for summary judgment on the issue of liability when it is uncontroverted that the plaintiff's vehicle was struck in the rear by the defendant's vehicle. Nieves, supra.

18. It is respectfully submitted that the circumstances and evidence in this case leave no triable issues of fact and, thus, this motion should be granted in all respects.


19. No prior request for the relief requested herein has heretofore been made.

WHEREFORE, it is respectfully requested that the within motion be granted in all respects, and that an Order be issued granting plaintiff summary judgment on the issue of liability against defendants Wolff and South Shore, dismissing the Affirmative Defense of plaintiff's culpable conduct asserted by all defendants and setting the matter down for an inquest on damages only, together with such other and further relief as to this Court may seem just and proper.

Dated: New York, New York.
March 24, 2025

Yours, etc.

SMILEY & SMILEY, LLP
Attorneys for Plaintiff



JASON D. FRIEDMAN
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-B

I, Jason D. Friedman, an attorney duly admitted to practice law before the courts of the State of New York, hereby certify the following meet the word-count limits under the Uniform Civil Rules 202.8-b:

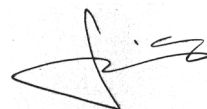
Plaintiff's Memorandum of Law contains 1532 words.

Pursuant to the Rules, the word count excludes the caption and signature block. No table of contents or table of authorities is attached.

In preparing this certification, I have relied on the computer-generated word count from Word which was used to prepare the above materials.

Dated: New York, New York
March 24, 2025

SMILEY & SMILEY, LLP
Attorneys for Plaintiff



JASON D. FRIEDMAN
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

MEMORANDUM OF LAW

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 518688/2023

-----X
DONNA FELDMAN,

Plaintiff,

**ORDER WITH
NOTICE OF ENTRY**

-against-

CYNTHIA M. MONACO, YEHUDA WOLFF,
ROYAL AUTO LEASING, LLC and SOUTH
SHORE NISSAN LLC,

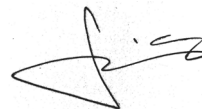
Defendants.
-----X

PLEASE TAKE NOTICE, that the within is a true certified copy of the Order of the Honorable Peter P. Sweeney, J.S.C, dated June 30, 2025 and duly entered in the office of the clerk of the within named Court on July 2, 2025.

Dated: New York, New York
July 9, 2025

Yours, etc.,

SMILEY & SMILEY, LLP



By: _____

JASON D. FRIEDMAN

Attorneys for Plaintiff
28 Liberty Street, 6th Floor
New York, New York 10005
(212) 986-2022

TO: ALL PARTIES VIA ECF FILING

At an I.A.S. Trial Term, Part 73 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 30th day of JUNE 2025

KINGS COUNTY CLERK FILED

2025 JUL -2: A 10:14
P R E S E N T

Hon. SWEENEY
Justice

DONNA FELDMAN

Plaintiff(s)

Cal. No. 12.13.14

Index No.

518688/2023

- against -

CYNTHIA MONACO, SOUTH SHORE NISSAN LLC,
JEHUDA WOLFF & ROYAL AUTO LEASING LLC
Defendant(s)

The following papers numbered 1 to	read on this motion	Papers Numbered
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed		
Answering Affidavit (Affirmation)		
Reply Affidavit (Affirmation)		
_____ Affidavit (Affirmation)		
Pleadings- Exhibits		
Stipulations - Minutes		
Filed Papers		

① PLAWTIF MOTION FOR ^{partial} SUMMARY JUDGMENT ^{ON the ISSUE OF liability} AGAINST
002 Δ WOLFF AND SOUTH SHORE NISSAN IS
GRANTED

② Δ CYNTHIA MONACO CROSS-MOTION FOR SUMMARY JUDGMENT
003 AGAINST TI + CO- Δ'S ON CROSS-CLAIMS IS
GRANTED

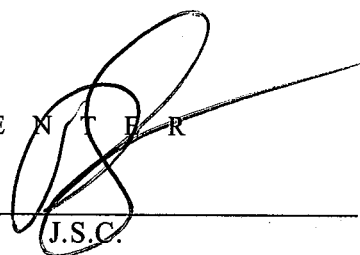
③ Δ ROYAL CROSS-MOTION FOR SUMMARY JUDGMENT AGAINST
004 TI IS DENIED BECAUSE THERE IS AN ISSUE OF FACT ABOUT
WHETHER Δ WOLFF WAS AN INDEPENDENT CONTRACTOR

For Clerks use only

MG XX
MD X

Motion Seq. #

002, 003, 004

E N T E R

J.S.C.

HON. PETER P. SWEENEY, J.S.C.

Index No. 518688

Year 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

DONNA FELDMAN,

Plaintiff,

-against-

YEHUDA WOLFF, ROYAL AUTO LEASING, LLC and
SOUTH SHORE NISSAN LLC,

Defendants.

ORDER WITH NOTICE OF ENTRY

SMILEY & SMILEY, LLP
Attorney for Plaintiff
28 LIBERTY STREET, 6TH FLOOR
NEW YORK, NEW YORK 10005
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 59748/2020

-----X
ROBER FAHEY,

Plaintiff,

NOTICE OF MOTION

-against-

THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR,
ALEXIS AGOSTA and CHRISTOPHER TOBIN,

Defendants.
-----X

PLEASE TAKE NOTICE, that upon the annexed Affirmation of MICHAEL S. SOLOMON, ESQ., dated April 8, 2021, with exhibits annexed thereto and upon all the pleadings and proceedings heretofore had herein, the undersigned counsel for plaintiff, ROBERT FAHEY, will move this Court before an IAS Part, at the Courthouse located 111 Martin Luther King, Jr. Boulevard, White Plains, New York 10601, on the **10th** day of **May, 2021**, at 9:30 o'clock in the forenoon of that day or as soon thereafter as Counsel may be heard for an Order:

- (a) granting default judgment against the defendants, THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR and ALEXIS AGOSTA;
- (b) setting this action down for an inquest on damages before a jury on a date certain; and;
- (c) granting such other and further relief that this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §2214(b), responsive papers, if any, shall be served upon the undersigned at least seven (7) days prior to the return date herein.

Dated: New York, New York
April 8, 2021

Yours, etc.

SMILEY & SMILEY, LLP

Michael S. Solomon

By: _____

MICHAEL S. SOLOMON

Attorneys for Plaintiff

122 East 42nd Street, Suite 3900

New York, New York 10168

(212) 986-2022

TO: THE GRANDSTAND INC., d/b/a
GRANDSTAND BAR

Pro Se

197 Grand Street

Croton, New York 10520

ALEXIS AGOSTA

Pro Se

197 Grand Street

Croton, New York 10520

MIRANDA SLONE SKLARIN VERVENIOTIS, LLP

Attorneys for Defendant, CHRISTOPHER TOBIN

240 Mineola Boulevard

Mineola, New York 11501

(516) 741-7676

File #: 20-541

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 59748/2020

-----X
ROBERT FAHEY,

Plaintiff,

-against-

THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR,
ALEXIS AGOSTA and CHRISTOPHER TOBIN,

Defendants.
-----X

AFFIRMATION
IN SUPPORT OF
RENEWAL OF MOTION
FOR A DEFAULT
JUDGMENT

MICHAEL S. SOLOMON, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a member of the law firm of SMILEY & SMILEY, LLP, attorneys for the plaintiff, ROBERT FAHEY, in the above-entitled action, and, as such, I am familiar with the facts and circumstances herein.

2. On or about October 20, 2020, your affirmant submitted a motion for a default judgment against defendants, THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR (hereinafter "GRANDSTAND") and ALEXIS AGOSTA (hereinafter "AGOSTA"). On January 5, 2021, the Honorable Joan B. Lefkowitz denied plaintiff's motion with leave to renew. A copy of Justice Lefkowitz's decision is annexed hereto as *Exhibit "A"*.

3. Accordingly, I make this affirmation in support of the renewal of an application for an Order:

- (a) granting default judgment against the defendants, THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR and ALEXIS AGOSTA;
- (b) setting this action down for an inquest on damages before a jury on a date certain; and

- (c) granting such other and further relief that this Court may deem just and proper.

4. This is an action to recover damages for serious personal injuries sustained by the plaintiff, ROBERT FAHEY, on October 5, 2019 when he was assaulted by defendant, CHRISTOPHER TOBIN, while both were patrons at the Grandstand Bar. An action for assault and battery was commenced against defendant, CHRISTOPHER TOBIN, and Dram Shop and negligence claims were asserted against defendants, GRANDSTAND and AGOSTA.

5. A copy of the of the Summons and Verified Complaint is annexed hereto as *Exhibit "B"*.

6. The Summons and Verified Complaint was served personally on all defendants on September 17, 2020. Copies of the affidavits of service are collectively annexed hereto as *Exhibit "C"*.

7. To date, defendants GRANDSTAND and AGOSTA have not appeared, answered, or submitted any response to the Summons and Verified Complaint.

8. The facts and circumstances surrounding this occurrence are contained in the body of the Complaint which has been personally verified by the plaintiff, ROBERT FAHEY. A copy of the verification page of the Complaint is annexed hereto as *Exhibit "D"*. One of the reasons the Court denied our previous default judgment motion was due to the fact that the allegations in the complaint were verified by counsel, not the plaintiff himself. That omission has been cured by having the complaint verified by the plaintiff.

9. Another basis for denying plaintiff's original motion for a default judgment was the Court's concern that COVID-19 pandemic may have somehow affected the defaulting defendants' ability to answer or otherwise appear in the case. It is clear, however, that the COVID-19 pandemic had nothing to do with the failure by the defaulting defendants to answer or appear in the case.

10. At the outset, the affidavits of service affirm that the Summons and Verified Complaint was served personally on the defaulting defendants on September 17, 2020 as opposed to being served via another method. In other words, the defaulting defendants cannot claim they did not know about the commencement of this action. In addition, on April 1, 2021 at approximately 6:30 P.M., your affirmant spoke with a representative from the Grandstand. Your affirmant was informed that the bar was open continuously from July 2020 through the end of December 2020. Furthermore, your affirmant has been informed that the Grandstand is now currently open for business. Therefore, it is respectfully submitted that the failure by GRANDSTAND and AGOSTA to respond to the Summons and Verified Complaint cannot be related to any COVID-19 issue.

11. Although statutes of limitations were tolled in New York State pursuant to Executive Order No. 202.8 issued by Governor Andrew M. Cuomo on March 20, 2020, that tolling statute was repealed by the Governor on October 4, 2020 by Executive Order No. 202.67. Tolling henceforth would be extended for only an additional 30-day period until November 3, 2020. Thus, the tolling of the statutes of limitations is no longer in effect. Furthermore, your affirmant believes that the granting of a default judgment herein is not contrary to any statute, executive order, or administrative order.

12. Defendants, GRANDSTAND and AGOSTA, are currently in default because as of this date, they still have failed to appear, answer, or respond to the plaintiff's Summons and Verified Complaint.

WHEREFORE, it is respectfully requested that this Court issue an order granting a default judgment against defendants, THE GRANDSTAND, INC., d/b/a GRANDSTAND BAR, and

ALEXIS AGOSTA; setting this action down for an inquest on damages before a jury on a date certain; and granting such other and further relief that this Court may deem just and proper.

Affirmed: New York, New York
April 8, 2021

Michael S. Solomon

MICHAEL S. SOLOMON

SUPREME COURT: STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

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.

-----X
ROBERT FAHEY,

Plaintiff,

-against-

THE GRANDSTAND, INC., d/b/a GRANDSTAND
BAR, ALEXIS AGOSTA and CHRISTOPHER
TOBIN,

Defendants.
-----X

DECISION & ORDER

Index No: 59748/2020

Motion Sequence No. 2

The following papers (e-filed document nos. 26-32) were read on the motion by the plaintiff for an order granting leave to enter a default judgment against the defendants, The Grandstand, Inc., d/b/a Grandstand Bar and Alexis Agosta.

Notice of Motion-Affirmation-Exhibits (A-D)-Affidavit of Service

Upon reading the foregoing papers, and without opposition, it is

ORDERED the motion is granted to the extent that plaintiff is awarded a default judgment on the issue of liability on his cause of action for violation of the Dram Shop Act (General Obligations Law § 11-101) as against the defendants, The Grandstand, Inc., d/b/a Grandstand Bar and Alexis Agosta, and an inquest shall be held on the issue of damages at the time of trial of the remaining defendant.

Plaintiff sues to recover damages for personal injuries allegedly sustained on October 5, 2019, when he was allegedly assaulted by the defendant, Christopher Tobin, on the premises of the defendant, Grandstand Bar, which is allegedly owned by the defendant, Alexis Agosta.

On October 6, 2020, plaintiff filed affidavits of service, purportedly indicating that he had effectuated service of process on: (1) the defendant, The Grandstand, Inc., d/b/a Grandstand Bar, by personal service upon its owner, Alexis Agosta; and on (2) the defendant, Alexis Agosta, by service upon a person of suitable age and discretion (collectively, the Grandstand Defendants). When the Grandstand Defendants failed to appear or otherwise interpose an answer to the complaint, plaintiff moved (sequence no. 1)

for leave to enter a default judgment against the Grandstand Defendants in accordance with CPLR 3215.

By order dated and entered January 5, 2021, the court denied plaintiff's motion for want of compliance with administrative orders and for failure to establish "proof of the facts constituting the claim" (CPLR 3215 [f]). The denial of plaintiff's prior motion was without prejudice. The instant motion by plaintiff ensued.

At the outset, the court notes that plaintiff has sufficiently demonstrated compliance with administrative orders regarding the current public health emergency (*see* Thirteenth Amended Administrative Order, Ninth Judicial District [Davidson, J.], dated June 30, 2021). As such, the court addresses the motion on its merits.

On a motion for leave to enter a default judgment pursuant to CPLR 3215, a plaintiff must submit proof of service of the summons and complaint, the facts constituting the cause of action, and the defendant's default in answering or appearing (*see* CPLR 3215 [f]). "CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action" (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]; *see Resnick v Lebovitz*, 28 AD3d 533, 534 [2d Dept 2006]). While "[t]he standard of proof is not stringent[]" (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]), the proof submitted must establish a *prima facie* case (*see Walley v Leatherstocking Healthcare, LLC*, 79 AD3d 1236, 1238 [3d Dept 2010]; *Green v Dophy Constr. Co.*, 187 AD2d 635, 636-637 [2d Dept 1992]). Thus, although a defaulting defendant admits all factual allegations of the complaint, "the legal conclusions to be drawn from such proof are reserved for the court's determination" (*Green*, 187 AD2d at 636; *see Wine Antiques v St. Paul Fire & Mar. Ins. Co.*, 40 AD2d 657, 657 [1st Dept 1972], *aff'd* 34 NY2d 781 [1974]). As such, "[w]here a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default" (*Green*, 187 AD2d at 636).

The complaint asserts three causes of action against the Grandstand Defendants—(i) negligence; (ii) negligent hiring, training, and supervision; and (iii) violation of the Dram Shop Act (General Obligations Law § 11-101). For the reasons that follow, the motion is granted as to liability on the cause of action alleging violation of the Dram Shop Act and otherwise denied as to the causes of action alleging negligence and negligent hiring, training, and supervision.

I. Negligence

Plaintiff alleges that the Grandstand Defendants were negligent in failing to remove defendant Tobin from their establishment (*see* Fahey complaint at ¶¶ 27-29).

“Landowners, as a general rule, have a duty to exercise reasonable care to prevent harm to patrons on their property. However, an owner’s duty to control the conduct of persons on its premises arises only when it has the opportunity to control such conduct, and is reasonably aware of the need for such control. Thus, the owner of a public establishment has no duty to protect patrons against unforeseeable and unexpected assaults” (*Kranenberg v TKRS Pub, Inc.*, 99 AD3d 767, 768 [2d Dept 2012] [internal citations and quotation marks omitted]).

In support of the motion, plaintiff proffers his verified complaint in which he alleges that the subject assault occurred “suddenly and without warning” (Fahey complaint at ¶ 44). Since tavern owners have no duty to protect patrons against unforeseeable and unexpected assaults, and there is no other proof submitted from which to conclude that the subject assault was neither unexpected nor unforeseeable (*see Gentile v Town & Vil. of Harrison, N.Y.*, 137 AD3d 971, 971-972 [2d Dept 2016]), the motion is denied to the extent that plaintiff seeks a default judgment for this cause of action. The court notes that although plaintiff alleges that the Grandstand Defendants were negligent in failing to remove Tobin from their establishment “upon notice that T[obin] was acting in a dangerous, aggressive and intoxicated manner” (Fahey complaint at ¶ 27), such allegations are conclusory and thus, insufficient to demonstrate proof of the facts constituting the negligence claim (*see CPLR 3215 [f]; Beaton v Transit Facility Corp.*, 14 AD3d 637, 637 [2d Dept 2005]). In any event, and notwithstanding the foregoing, this claim is barred as duplicative of the cause of action alleging violation of the Dram Shop Act insofar as the claims are premised upon the same set of facts.

II. Negligent Hiring, Training, and Supervision

Plaintiff alleges that the Grandstand Defendants were negligent in the hiring, training, and supervision of their employees because, *inter alia*, employees of the Grandstand Defendants served Tobin alcohol when he was visibly intoxicated (*see* Fahey complaint at ¶¶ 31-38). Such allegations are, however, insufficient to demonstrate a valid cause of action for negligent hiring, training, and supervision. At common law, no cause of action for negligence exists for serving an intoxicated person alcohol who thereafter causes injury by reason of his or her intoxication (*see Sherman v Robinson*, 80 NY2d 483 [1992]). Thus, insofar as plaintiff has not stated a valid cause of action to recover damages for negligent hiring, training, and supervision, the motion is denied to the extent that plaintiff seeks a default judgment for this cause of action.

III. Dram Shop Act (General Obligations Law § 11-101)

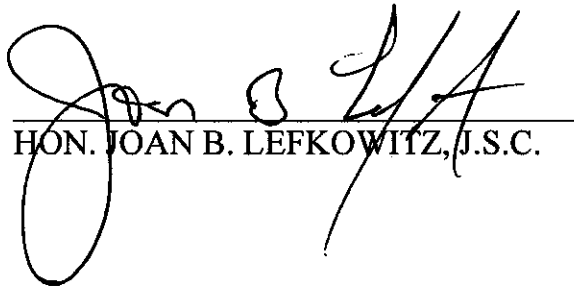
“To establish a cause of action under New York’s Dram Shop Act, a plaintiff is required to prove that the defendant sold alcohol to a person who was visibly intoxicated and that the sale of that alcohol bore some reasonable or practical connection to the resulting damages” (*Dugan v Olson*, 74 AD3d 1131, 1132 [2d Dept 2010]). Here, plaintiff

alleges that the Grandstand Defendants served (and continued to serve) alcohol to Tobin, who was in a visibly intoxicated state, and that while intoxicated, Tobin attacked and injured the plaintiff (*see* Fahey complaint at ¶¶ 11, 39-47). Such allegations are sufficient to demonstrate “proof of the facts” constituting the cause of action for violation of the Dram Shop Act against the Grandstand Defendants (*see* CPLR 3215 [f]; General Obligations Law § 11-101; *Dugan*, 74 AD3d at 1132). Thus, plaintiff is awarded a default judgment on the issue of liability against the Grandstand Defendants on this cause of action, and the matter shall be set down for an inquest at the time of trial of the remaining defendant to determine the amount of damages, if any, plaintiff may be entitled to recover.

This matter is presently scheduled for a compliance conference on October 12, 2021, at 12:30 p.m. which shall be conducted virtually via Microsoft Teams.

ENTER,

Dated: White Plains, New York
September 14, 2021



HON. JOAN B. LEFKOWITZ, J.S.C.

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