

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

CRESCENZO CHIARAMONTE,

Plaintiff(s)

- against -

EFRAEM MOSKOWITZ AND BILLY SAND,

Defendant(s)

DEMAND FOR DISCOVERY
INDEX NO: 700051/2009

COUNSELORS:

PLEASE TAKE NOTICE that pursuant to the applicable Rules, you are hereby required to serve the following upon the undersigned within twenty (20) days after receipt of this notice:

A. Delete the following language from item 5 of Plaintiff's Verified Bill of Particulars as it is vague and overinclusive: "inotherwise being careless, negligent and reckless in the ownership, leasing entrusting, lending, operation, management, maintenance, inspection, repair, and control of their vehicle."

B. Duly executed, current and acknowledged **HIPAA Compliant** authorizations enabling MENDOLIA & STENZ to obtain plaintiff's pharmaceutical records for two years prior to date of loss to present from all applicable pharmacies.

C. Delete all references to "pain" in item 6 of Verified Bill of Particulars as "pian" is not an injury.

D. Duly executed, current and acknowledged **HIPAA Compliant** authorizations enabling MENDOLIA & STENZ to obtain emergency room records, hospital records, medical records, physical therapy records, acupuncture records, MRI's, X-rays, Cat Scans and any other diagnostic tests relative to claim of "future surgery" in item 6 of Plaintiff's Verified Bill of Particulars to include exact surgery, and anticipated date of same.

E. The exact dates plaintiff was confined to bed and home as requested in items 8 and 9 of Demand for Bill of Particulars.

F. An approximate amount for "other" special damages as requested in item 12 of Demand for Bill of Particulars.

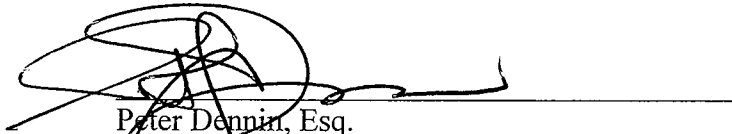
PLEASE TAKE FURTHER NOTICE that each of these authorizations must have an expiration date of, "the completion of litigation".

PLEASE TAKE FURTHER NOTICE that each of these authorizations must include complete names, addresses, and any and all pertinent identifying information.

PLEASE TAKE FURTHER NOTICE that this is a continuing demand and should any of the above requested information become available to or known in the future, you are then required to furnish same at such time.

DATED: Westbury, New York
August 05, 2009

Yours, etc.



Peter Dennis, Esq.
MENDOLIA & STENZ
Attorneys for Defendant(s)
Efraem Moskowitz and Dr. Billy Sand
875 Merrick Avenue
Westbury, New York 11590
516-229-4220
Our File Number: 09Q0536
Claim Number: 0004373650101097 (J691)

TO:

Lefkowitz & Gottfried, LLP
Attorneys for Plaintiff(s)
150 Broadway
Suite 1007
New York, NY 10038
212-766-5665

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CRESCENZO CHIARAMONTE,

Plaintiff(s),

Index No.:
700051/2009

-against-

**PLAINTIFFS' RESPONSE
TO DEFENDANTS' 8/5/09
NOTICE FOR
DISCOVERY AND INSPECTION**

EFRAEM MOSKOWITZ AND BILLY SAND,

Defendant(s).
-----X

The plaintiff(s), **CRESCENZO CHIARAMONTE**, by retained counsel **LEFKOWICZ & GOTTFRIED, LLP**, as and for a **Response to the August 5, 2009 Demands for Discovery and Inspection** of defendant **EFRAEM MOSKOWITZ AND BILLY SAND**, respectfully sets forth the following upon information and belief:

- A. Delete the "in otherwise being careless, negligent and reckless . . ." language from item 5 of Plaintiff's Verified Bill of Particulars as it is vague and overinclusive . . .

Despite the fact that this item of Defendant's Demand for Discovery is not, in fact, a demand for discovery of any sort or kind and Plaintiff is under no obligation, whatsoever, to respond to the same, Plaintiff will not redact said allegations, and instead, refers Defendants to the following case: McDougald v. Garber, 135 A.D.2d 80, 96, 524 N.Y.S.2d 192, 202 (N.Y.A.D. 1 Dept., 1988)

- B. HIPPA Compliant Authorizations for Plaintiff's pharmaceutical records for two years prior to the date of loss:

Pursuant to the 2003 Amendment to C.P.L.R. § 3122, and the 1994 amendment to C.P.L.R. § 3042, in lieu of a motion for a protective order, Plaintiff hereby objects to this demand as overbroad, patently irrelevant and unduly burdensome. Moreover, Plaintiff(s) objects to this demand as improper as a defendant in an action for personal injuries is not entitled to medical evidence of Plaintiff's prior treatment, where plaintiff only sought damages for physical injuries and made no claim for aggravation of pre-existing condition. Sternberger v. Offen, 138 A.D.2d 480, 526 N.Y.S.2d 27

(1988). See, Zimmer v. Cathedral School of St. Mary & St. Paul, 204 A.D.2d 538, 539, 611 N.Y.S.2d 911.

- C. Delete all references to “pain” in item 6 of Verified Bill of Particulars as “pian” [*sic*] is not an injury:

Despite the fact that this item of Defendant’s Demand for Discovery is not, in fact, a demand for discovery of any sort or kind and Plaintiff is under no obligation, whatsoever, to respond to the same, and moreover Defendants’ demand was for the following:

A statement of the injuries claimed to have been sustained as a result of the occurrence and the nature and extent thereof.

Accordingly, a claim of “pain” necessarily falls within a proper response to the same, Plaintiff will not delete any such reference. For a beginning tutorial of how a claim of “pain” is central and essential to a personal injury lawsuit and how “pain is a physiological response of the body to . . .injury,” you are referred to McDougald v. Garber, 135 A.D.2d 80, 86, 524 N.Y.S.2d 192, 195 (N.Y.A.D.,1988)

- D. Authorizations for Defendants to obtain medical records that reference “future surgery” as is claimed by Plaintiff:

Defendants have already been provided with duly executed, HIPPA compliant, authorizations for all of Plaintiff’s medical records for the accident which was caused by the negligence of the Defendants herein. Defendants are referred to Plaintiff’s **Combined Response to the Demands for Discovery and Inspection** of defendant **EFRAEM MOSKOWITZ AND BILLY SAND** dated August 3, 2009.

- E. The exact dates Plaintiff was confined to bed:

Although Defendant has, once again, failed to properly make a demand for information, Plaintiff responds as follows:

- (b) Bed: From the date of loss, through 12/10/09, and continuing intermittently thereafter.
(c) Home: From the date of loss, through 12/10/09, and continuing intermittently thereafter.

- F. Amount of “other” damages:

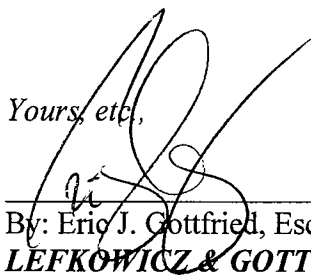
This will be provided, as per the C.P.L.R., through the course of discovery as such information becomes available.

Plaintiff reserve its right to supplement each and every one of the above responses as

additional or new information becomes available; pursuant to the provisions of the CPLR.

Dated: New York, New York
August 17, 2009

Yours, etc.,



By: Eric J. Gottfried, Esq.
LEFKOWICZ & GOTTFRIED, LLP
Attorneys for Plaintiff(s)
150 Broadway - Suite 1007
New York, New York 10038
(212) 766-5665
L&G File #: 08-02389aut

TO:
MENDOLIA & STENZ
Attorneys for Defendants
875 Merrick Avenue
Westbury, New York 11590
(516) 229-4220
File #: 09Q0536

AFFIRMATION OF SERVICE BY MAIL

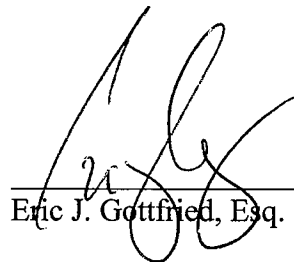
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Eric J. Gottfried, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following under the penalties of perjury:

I am not a party to this action; I am over the age of 18 years; and resides in Westchester, New York.

That on the **17th day of August, 2009.**, deponent served the within **Plaintiff's Response to the August 5, 2009 Demands for Discovery and Inspection** of defendant **EFRAEM MOSKOWITZ AND BILLY SAND** upon the following attorneys for the defendant(s), as listed below, at the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

MENDOLIA & STENZ
Attorneys for Defendants
875 Merrick Avenue
Westbury, New York 11590
(516) 229-4220
File #: 09Q0536



Eric J. Gottfried, Esq.

S I R S:

Please take notice that the within is a true copy of a judgment made and entered in the within entitled action and duly filed in the Office of the

Clerk of the within named Court on the day of ,

Yours, etc.,
LEFKOWICZ & GOTTFRIED, LLP

Attorneys for Plaintiff(s)

Office Address and P. O. Box
150 Broadway - Suite 1007

New York, New York 10038
(212) 766-5665

Index No. 700051/2009

Supreme Court of the State of New York
County of QUEENS

CRESCENZO CHIARAMONTE,

Plaintiff(s),

~ against ~

EFRAEM MOSKOWITZ AND BILLY SAND

Defendant(s).

RESPONSE TO THE AUGUST 5, 2009 DEMANDS FOR DISCOVERY AND INSPECTION OF DEFENDANT EFRAEM MOSKOWITZ AND BILLY SAND

Yours, etc.,

By:

LEFKOWICZ & GOTTFRIED, LLP

Attorneys for Plaintiff
Office Address and P. O. Box
150 Broadway, Suite 1007
New York, New York 10038

State of New York, County of New York ss.: , being duly sworn, deposes and

says; that deponent is over 18 years of age and resides at . That on the

day of ,

deponent served the within judgment and notice of entry thereof, on

attorney(s) for defendant(s) herein, at herein, at the address designated by said attorney(s) for that purpose by depositing a true copy

in a postpaid properly addressed wrapper, and

deposited the same in an official depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me this day of ,

NOTARY PUBLIC

Amount and Interest
Costs and Disbursements

TOTAL:

Filed:

Service of a judgment and notice of entry thereof of which the within is a copy, admitted this day of ,

Attorneys for Defendant