

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 24

-----X

Plaintiff(s),

- against -

Defendant(s).

HON. SHAWN T. KELLY, J.S.C.
**PRELIMINARY CONFERENCE
AND
CASE SCHEDULING ORDER**

INDEX NO. _____

A request for judicial intervention, along with a request for a preliminary conference or a motion, having been filed or the Court having acted on its own initiative pursuant to 22 NYCRR §202.12(j), this matter is assigned to Part IA-24.

Discovery not yet provided shall proceed in accordance with the deadlines set forth below.

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.

RESOLUTION OF DISPUTES/PENALTIES FOR NON-COMPLIANCE

If disputes arise about compliance with this Order, the parties shall confer to try to resolve them. If that effort fails, then counsel of record shall, **no less than two (2) weeks** in advance of deadlines and prior to initiating motion practice, bring the dispute to the attention of the Court as set forth in the part rules of Part 24. The parties are advised, however, that nothing in this paragraph relieves them of the obligation of demonstrating sufficient good faith efforts to resolve their discovery disputes without resorting to court intervention via motion (see 22 NYCRR §202.20-f). Absent good cause, non-compliance with this order, including the failure to raise discovery problems in advance of the 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 attorneys' fees.

(1) **Mandatory Notification**. All parties and/or law firms are deemed to have been served with this Order as of its filing in NYSCEF. Plaintiff's attorney shall **within ten (10) days** thereafter, transmit a copy to any *pro se* appearing by regular mail, and email if known, and shall file an affidavit of service to NYSCEF **within ten (10) days** thereafter.

(2) **Insurance Information**. Where applicable, and pursuant to CPLR §3101(f), all parties shall exchange insurance and coverage information, including primary, excess and umbrella policies, **within thirty (30) days** from the date of this order. If there is no primary or excess or umbrella policy, a notarized affidavit to that effect, signed by the defendant(s) or a principal of the defendant(s) stating same, shall be provided **within thirty (30) days** from the date of this order. While insurance information need be timely exchanged, it is not appropriately uploaded to NYSCEF.

(3) **Bill of Particulars**.

a) if not already served, demand for Bill of Particulars by defendant(s) to plaintiff(s) shall be served and filed in NYSCEF **within thirty (30) days** of the date of this order. Verified Bill of Particulars by plaintiff(s) to defendant(s) shall be served and filed in NYSCEF **within thirty (30) days** of the date of service of the demand for Bill of Particulars.

b) if not already served, demand for Bill of Particulars by third-party defendants to third-party plaintiff(s) and direct plaintiff(s) shall be served and filed in NYSCEF **within thirty (30) days** of the date of this order. A Verified Bill of Particulars by third-party plaintiff(s) and direct plaintiff(s) shall be served and filed in NYSCEF **within thirty (30) days** of the date of service of the demand by third-party plaintiff(s).

c) if not already served, demand for Bill of Particulars as to affirmative defenses by direct plaintiff(s) to defendants shall be served and uploaded to NYSCEF **within thirty (30) days** of the date of this order. The Verified Bill of Particulars as to affirmative defenses by defendant(s) to plaintiff(s) shall be served and uploaded to NYSCEF **within thirty (30) days** of the service of the demand by plaintiff(s).

d) As to any Verified Bill of Particulars served by any party **not more than thirty (30) days** prior to the date of this order, any notice of deficiency shall be served and filed to NYSCEF **within thirty (30) days** of this order. A Supplemental Verified Bill of Particulars shall be served and filed in NYSCEF **within thirty (30) days** of the service of the notice of deficiency.

(4) **Authorizations**. Where applicable, properly executed HIPAA-compliant authorizations for all medical records pertaining to this action, and for relevant prior and subsequent injuries/conditions shall be served **within sixty (60) days** of this order.

Where applicable, properly executed HIPAA-compliant authorizations for Workers' Compensation Board, Workers' Compensation insurance, and Workers' Compensation attorney (as to the nonprivileged portion of the file), if any, pertaining to this action shall be served **within sixty (60) days** of this order.

Where applicable, properly executed authorizations for employment records for two (2) years prior to the date of the cause of action to present shall be served by **within sixty (60) days** of this order.

All direct and all third-party defendants shall process each authorization **within thirty (30) days of receipt and shall follow up weekly** until the records are received, so that the requested material will be received before the plaintiff's deposition date as ordered herein. If plaintiff timely provides proper authorizations, then non-receipt of records shall not be grounds for delaying plaintiff's deposition unless proof of timely processing and follow-up is provided to plaintiff and/or the Court.

(5) **Depositions.** If plaintiff timely complies with #4 above, then all depositions must be completed **within one hundred eighty (180) days** of the date of this order. Plaintiff shall be deposed first, and defendants shall be deposed in the order in which their names appear in the caption, unless the parties agree in writing otherwise. **Within forty-five (45) days** of this order, the parties shall confer and agree upon a deposition schedule in compliance with this deadline. Absent extraordinary circumstances, the failure of one defendant to appear as scheduled shall not constitute an excuse for the refusal of others to submit to deposition as scheduled and within the deadline fixed above.

If any plaintiff or defendant who is to be deposed requires the services of an interpreter for deposition, their attorney shall be responsible for advising their adversaries, **in writing**, as to an interpreter being required to conduct the deposition. Said written notice shall be sent at the onset of discussion of a deposition schedule. If an interpreter is required for deposition for plaintiff, then deposition shall be held with two dates for completion, one day for liability and one day for damages.

Depositions are either in-person at a place to be determined, or the parties may agree that they may be held virtually.

Post EBT demands shall be served and filed in NYSCEF **not later than thirty (30) days** after the completion of the relevant deposition and post EBT responses shall be served and filed in NYSCEF **within forty-five (45) days** of said service.

(6) **Witness and Other Disclosures.** All parties shall exchange and upload to NYSCEF statements of opposing parties, photographs, and the names and addresses of all fact witnesses **within sixty (60) days** of the date of this order. If any of these items do not exist, then the parties shall serve by that date an affirmation clearly so specifying.

Any discovery demands that have been served on or before the date of this order that have not yet been responded to, shall be responded to **within forty-five (45) days** of this order.

Any discovery demands that may still be made, by statute or rule, are to be served **within sixty (60) days** of the date of this order and shall be responded to **within ninety (90) days** of this order.

(7) **Physical Examination/IME and Reports (Uniform Rule §202.17).** Where applicable, physical examination(s) of the plaintiff shall be designated, with a copy to all parties within

thirty (30) days after plaintiff's deposition and said examination shall be completed within **ninety (90) days** of plaintiff's deposition. Copies of the medical reports generated from the physical examination/IME shall be furnished to plaintiff **within thirty (30) days** of the examination.

(8) **Impleader Actions.** Any impleader actions shall be filed **within one hundred twenty (120) days** of this order and shall be served forthwith. Failure to do so may result in severance of the third-party action.

(9) **Default Motions.** If any defendant(s), or any third-party defendant(s) have failed to appear or answer, then the plaintiff(s) or third-party plaintiff(s), as the case may be, shall file a motion for default against the non-appearing/non-answering defendant(s) **within one year of the default**, as required by CPLR 3215(c).

(10) **Discovery Motions and Conferences.** To the maximum extent possible, discovery disputes should be resolved by the attorneys. If not possible, discovery disputes shall first be addressed through informal procedures, such as conferences, as opposed to motion practice (22 NYCRR §202.20-f [a]). Parties shall seek a conference with the Court **BEFORE** the filing of any discovery-related motion by uploading a letter requesting a conference to NYSCEF. The letter must include a statement of the specific good faith efforts taken to resolve the dispute as set forth in 22 NYCRR §202.20-f(b) (including setting forth specific dates, times, and methods of attempts to resolve the issue).

In addition, on discovery motions, the Court also requires strict adherence to 22 NYCRR §202.20-f. Any motion not supported by an affirmation which specifically conforms with 22 NYCRR §202.20-f(b) (including setting forth specific dates, times, and methods of attempts to resolve the issue via telephone and email) will be denied with leave to renew upon proper papers. **SEE** the Rules of Part 24.

(11) **Mandatory Compliance Conference.** Compliance Conference will be held on _____ at _____ am/pm. Only counsel fully familiar with the case and authorized to settle, stipulate or dispose of the action shall appear at the conference.

Stipulations to adjourn a Compliance Conference must be made in accordance with Part 24 Rules. Adjournments of a Compliance Conference for greater than thirty (30) days will not be granted. If more than thirty (30) days is required, the parties are to provide a written explanation as to the reasons for the delay.

(12) **Note of Issue (NOI).** The date to file the Note of Issue (NOI) shall be determined at the final compliance/status conference. If all parties agree that discovery is complete prior to any scheduled compliance/status conference, the parties may submit a stipulation signed by all parties certifying that discovery is complete and providing a date for the filing of the Note of Issue (NOI). The stipulation shall be uploaded to NYSCEF using the document type "Stipulation-Trial Readiness (request to So Order)" and must be emailed with the NYSCEF Confirmation Notice to BXSUPCIV-IA24@nycourts.gov at least five (5) days before the final compliance/status conference. If approved, the Court shall so order the stipulation and the so ordered stipulation will be uploaded to NYSCEF.

Parties may not file Note of Issue (NOI) until all discovery is complete and certified as such by an order of this Court. Premature filing may result in the Note of Issue (NOI) being vacated or the imposition of other sanctions.

Failure by plaintiff to file the Note of Issue (NOI) and Certificate of Readiness on or before the date determined at the final compliance/status conference or specified within a so ordered stipulation, may subject plaintiff to dismissal of the action.

(12) **Summary Judgement Motions.** Summary judgment motions shall be made **no later than sixty (60) days** after filing the Note of Issue (CPLR §3212[a]). Motions made before filing the Note of Issue DO NOT STAY the discovery ordered herein. Parties are may seek a stay of disclosure by order to show case, where necessary. The parties are to follow the part rules as to the filing of the motions.

THIS ORDER SERVES AS THE REQUIRED COURT NOTICE THAT STATEMENTS OF MATERIAL FACTS AND COUNTER-STATEMENTS OF MATERIAL FACTS ARE REQUIRED ON EVERY MOTION FOR SUMMARY JUDGMENT. THE FAILURE TO SUBMIT SUCH A STATEMENT WITH THE MOVING PAPERS WILL RESULT IN DENIAL OF THE MOTION. THE FAILURE TO SUBMIT A COUNTER-STATEMENT OF MATERIAL FACTS IN OPPOSITION MAY CONSTITUTE A LEGAL ADMISSION BY THE OPPOSITION OF THE FACTS SET FORTH IN THE MOVANT’S STATEMENT.

(13) **Trial Authorizations.** Properly executed HIPAA-compliant authorizations shall be served on all defendants and all third-party defendants, if any, **one hundred twenty (120) days before** trial.

(14) **Settlement Conferences.** The Court will always be available to facilitate settlement conferences (pre-NOI and post-NOI) as long as **all parties** appearing in the action sign a stipulation requesting the same. Such stipulation must be filed on NYSCEF and must be emailed with the NYSCEF Confirmation Notice to BXSUPCIV-IA24@nycourts.gov.

(15) Other:

Counsel will be required to justify at the Compliance Conference the reasons for failure to adhere to the discovery scheduled set forth herein. In the event of non-compliance, costs or other sanctions may be imposed.

DATE

HON. SHAWN T. KELLY, J.S.C.