

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - November 18, 2009

PETER B. SKELOS, J.P.  
ANITA R. FLORIO  
RUTH C. BALKIN  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2009-02700

DECISION & ORDER

Christine Tucker, respondent, v Bay Shore Storage  
Warehouse, Inc., et al., appellants.

(Index No. 25407/07)

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Rawle & Henderson LLP, New York, N.Y. (James R. Callan and Jon Michael  
Dumont of counsel), for appellants.

Siben & Siben LLP, Bay Shore, N.Y. (Alan G. Faber of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Rebolini, J.), entered March 9, 2009, as denied those branches of their motion which were to compel the plaintiff to undergo a further examination by their neurologist and to direct the plaintiff, as part of the examination, to answer all of their neurologist's questions concerning her medical history.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the defendants' contentions, the Supreme Court did not improvidently exercise its discretion in denying that branch of their motion which was to compel the plaintiff to undergo a second independent medical examination. "The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed" (*Mattocks v White Motor Corp.*, 258 AD2d 628, 629 [internal quotation marks and citations omitted]; see *Kaplan v Herbstein*, 175 AD2d 200). While CPLR 3121 does not limit the number of examinations

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to which a party may be subjected, a party seeking a further examination must demonstrate the necessity for it (*see Young v Kalow*, 214 AD2d 559; *see also Huggins v New York City Tr. Auth.*, 225 AD2d 732). Here, the defendants failed to show that a further physical examination of the plaintiff was required. While we strongly disapprove of the plaintiff's counsel instructing the plaintiff to refuse to respond to questions relating to her relevant past medical history, there was no indication by the defendants' examining physician that his prior examination was hindered, or that he required additional information.

SKELOS, J.P., FLORIO, BALKIN, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court