

**Aide v Gutman**

2007 NY Slip Op 30865(U)

April 2, 2007

Supreme Court, Suffolk County

Docket Number: 0010208/1999

Judge: Paul J. Baisley

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SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART XXXVI SUFFOLK COUNTY

**PRESENT:**

**HON. PAUL J. BAISLEY, JR., J.S.C.**

-----X  
SHEILA GABRIELLE AIDE,

Plaintiff,

-against-

HARVEY GUTMAN, M.D. and ISLAND  
UROLOGY ASSOCIATES, a Partnership including  
HARVEY GUTMAN, M.D., EPISCOPAL  
HEALTH SERVICES, INC. d/b/a ST. JOHN'S  
EPISCOPAL HOSPITAL - SMITHTOWN, OEC-  
DIASONICS, INC., OEC MEDICAL SYSTEMS,  
INC., and GE OEC MEDICAL SYSTEMS, INC.,  
a/k/a OEC-DIASONICS, INC., and/or OEC  
MEDICAL SYSTEMS, INC.,

Defendants.

-----X

**PLAINTIFF'S ATTORNEY:**

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INDEX NO.: 10208/1999

MOTION DATE: 11/02/2006

MOT. NO.: 004 MOT D

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Upon the following papers numbered 1 to 74 read on this motion to strike complaint: Notice of Motion and Affirmation 1 to 26 and supporting papers; Affirmation in Support 27 to 31 and supporting papers; Affirmation in Opposition 32 to 67 and supporting papers; Reply Affirmation 68 to 74; it is

**ORDERED** that the motion (motion sequence no. 004) of defendants OEC-DIASONICS, INC., OEC MEDICAL SYSTEMS, INC., and GE OEC MEDICAL SYSTEMS, INC., a/k/a OEC-DIASONICS, INC., and/or OEC MEDICAL SYSTEMS, INC. (collectively, "OEC"), for an order pursuant to CPLR §3126 striking plaintiff's complaint due to plaintiff's willful failure to provide a proper response to OEC's discovery demands/ interrogatories, and ignoring multiple orders of this court; or, in the alternative, precluding plaintiff from offering any evidence on the issues of liability and damages at the time of trial; or, in the alternative, compelling plaintiff to provide the outstanding discovery and supplement her interrogatories, is determined as follows:

In this personal injury action in which plaintiff, a nurse-anesthetist, was allegedly injured when a cystoscopy table (hereinafter the "cysto table") was lowered and came in contact with her legs, plaintiff has asserted claims against the moving defendants sounding in negligence, negligent design/testing/manufacture, breach of warranty, false advertising and strict products liability. Defendant served plaintiff with two sets of interrogatories, in July 2001 and August 2002, to which plaintiff responded on April 15, 2002 and September 25, 2002, respectively. Plaintiff's response to many of the interrogatories was that she was "unable to answer this interrogatory" and that she "needs to complete discovery in order to obtain the information." Pursuant to stipulations/orders dated January 20, 2001 and August 17, 2006, plaintiff agreed to and was directed to supplement her responses to OEC's first and second set of interrogatories, which she did on or about August 11, 2006. Defendant's motion to dismiss plaintiff's complaint is predicated on its claim that plaintiff's supplemental responses to its discovery demands/interrogatories are still deficient in that plaintiff refuses to reveal her claims or to specify the known facts upon which her claims are based.

Upon a careful review of the parties' submissions, the Court is constrained to agree that plaintiff has failed to provide OEC with detailed, substantive, meaningful responses to a substantial number of defendant's interrogatories regarding the basis of plaintiff's claims against the moving defendants. Instead, plaintiff has provided vague references to general documents or classes of documents, or generalized references to the "deposition testimony" of witnesses. In particular, plaintiff has failed to provide specifics as to the nature, content and timing of any actual notice to OEC of the allegedly defective condition or to establish the factual basis of her claim that defendants had constructive notice. Plaintiff has failed to identify any contract, industry standard and/or specification regarding the subject cysto table with which defendants failed to comply. Plaintiff has failed to identify the substance of any applicable express or implied warranty or to provide any particulars as to the specific manner in which such warranties were allegedly breached, or to identify the particular document or documents in which such warranties are assertedly set forth. Plaintiff has failed to provide the factual basis for her claim that the cysto table was negligently tested, evaluated or inspected. Plaintiff has also failed to identify with particularity any documents issued by, to, from or on behalf of any government or quasi-governmental agency or board upon which it intends to rely to establish its claims against OEC. Finally, plaintiff has failed to provide specific information as to the length of time she was allegedly confined to bed or home as a result of the incident.

In light of the fact that defendants' demands for greater specificity in plaintiff's responses have been the subject of numerous court conferences and discovery orders, and that defendants have repeatedly corresponded with plaintiff's counsel detailing the many and continued deficiencies of plaintiff's responses, the Court is constrained to conclude that plaintiff's failure to respond appropriately and meaningfully is willful.

In light of the foregoing, the motion is granted to the extent that plaintiff is precluded from introducing evidence at trial with respect to any claims that OEC had actual or constructive notice of any allegedly defective condition of the subject cysto table, or that OEC breached any contract or violated any industry standard or specifications, or that OEC breached any express or implied warranty with respect to the cysto table. Plaintiff is also precluded from introducing evidence that defendant was negligent in inspecting, evaluating or testing the subject cysto table. In addition,

plaintiff is precluded from introducing evidence that she was confined to home or bed for any length of time as a result of the accident.

Co-defendant EPISCOPAL HEALTH SERVICES (“EHS”) submitted an affirmation in support of OEC’s motion to strike plaintiff’s complaint in which it alleges that plaintiff has also failed to respond to outstanding discovery demands of EHS. To the extent that EHS seeks affirmative relief predicated on such averrals, the request is denied, as EHS failed to serve a notice of cross-motion as required by CPLR R. 2215.

The parties are reminded that this matter is scheduled for a compliance conference before the undersigned on May 31, 2007 at 9:30 a.m.

Dated: April 2, 2007 HON. PAUL J. BAISLEY, JR.  
J.S.C.