Erickson v Cross Ready Mix, Inc.

2011 NY Slip Op 31766(U)

June 20, 2011

Supreme Court, Nassau County

Docket Number: 11947/05

Judge: Ute W. Lally

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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 3

Present: HON. UTE WOLFF LALLY
Justice

MG, MG, MG, MD, MD

RICHARD J. ERICKSON,

Plaintiff,

-against-

CROSS READY MIX, INC. and "JOHN DOE", an agent, servant and/or employee of Cross Ready Mix, Inc., TURNER CONSTRUCTION COMPANY, ELITE READY MIX CORPORATION and "JOHN DOE", an agent, servant and/or employee of Elite Ready Mix Corporation,

Defendants.

Motion Sequence #17, #18, #19, #20, #21
Submitted April 27, 2011

INDEX NO: 11947/05

TURNER CONSTRUCTION COMPANY,

Third-Party Plaintiff,

-against-

COMMODORE CONSTRUCTION CORP.,

Third-Party Defendant.

The following papers were read on this motion:

Notice of Motion and Affs.....1-3
Notice of Cross Motion and Affs.....4-6
Second Notice of Cross Motion and Affs.....7-9
Third Notice of Cross Motion and Affs.....10-12
Second Notice of Motion and Affs.....13-15
Affs in Opposition.....16-21
Affs in Reply.....22-29
Memorandum of Law.....30

Upon the foregoing papers, it is ordered that these three motions, the first by the defendant/third party plaintiff, Turner Construction Company, the second a cross motion by the third party defendant, Commodore Construction Corp. and the third a cross motion by the defendant, Cross Ready Mix, Inc., for an order pursuant to CPLR 3101(d), striking plaintiff's Notice of Expert, or alternatively for an order pursuant to CPLR 3101(d) precluding the testimony of plaintiff's expert witness, are granted.

This motion by the third party defendant, Commodore Construction Corp., for an order pursuant to CPLR 3124 compelling defendants Cross Ready Mix, Inc. and Elite Ready Mix Corporation, to comply with the terms of the Preliminary Conference Order of this Court dated January 12, 2006 by responding to it's Notice for Discovery and Inspection dated November 8, 2010, is denied.

This cross motion by the plaintiff, Richard J. Erickson, for an order pursuant to CPLR 2221(f) granting a renewal and reargument of it's prior motion for leave to amend the bill of particulars pursuant to CPLR 3025(b) and CPLR 3042; and/or for an order directing the defendants to accept the Amended Bill of Particulars; and/or for an order compelling the defendants to accept the Supplemental Bill of Particulars; for an order dismissing the defendants' motions as moot; and for an order staying the preclusion of the Amended/Supplemental Bill of Particulars pending the appeal of the same issues, is denied in its entirety.

This action arises out of an occurrence which took place on November 4, 2003, at a construction site located at 177 Cantiague Rock Road, Hicksville, New York. The facts have been established, as follows: plaintiff, Richard J. Erickson ("Erickson"), employed by

third party defendant, Commodore Construction Corp. ("Commodore") as a concrete laborer, was pouring sidewalk curbs and light pole bases in the parking lot at the job site on the date of the accident. Erickson was injured when a cement truck struck him at the construction site where he was working. The concrete truck was backing up to pour concrete when it went over a pile of debris and tilted to one side. The 12-foot chute attached to the back of the truck then swung and struck and injured the plaintiff.

Defendant/third party plaintiff, Turner Construction Company ("Turner"), contracted with Commodore to perform concrete and masonry work for and at the job site. Commodore, in turn, entered into a verbal agreement with defendant, Cross Ready Mix, Inc. ("Cross") to deliver the concrete to the job site. Cross's dispatcher, Patrick Deacitis, explained at his deposition, that Cross too, on occasion, hired trucks from other concrete companies to make deliveries for it and on those occasions, the truck hire was done by phone call without a written contract or other documentation. Deacitis testified that on November 4, 2003 he specifically recalled dispatching trucks from other companies that day and more particularly, dispatching two trucks hired from Elite Ready Mix, one of which was sent to the subject job site.

On January 22, 2005, plaintiff commenced suit by filing a summons and complaint against defendant Cross Ready Mix. Plaintiff then commenced a second action arising from the same occurrence on or about June 28, 2005 against Elite Ready Mix and Turner Construction. On September 28, 2005, defendant Turner commenced a third party action against Commodore Construction, plaintiff's employer. On January 25, 2006, this Court granted plaintiff's motion and consolidated the above matters for all purposes.

On January 10, 2007, plaintiff served a bill of particulars in which he alleged violations of the Labor Law §§200, 240, 241(6) and common law negligence, asserted his injuries, and advanced his theories as to causation. On March 27, 2007 plaintiff filed the Note of Issue certifying that discovery in this matter is complete and the case is ready to be placed on the trial calender. Thereafter, on May 9, 2007, plaintiff served a supplemental bill of particulars where he asserted additional claims of bodily injury. Subsequently, all defendants together with the third party defendant filed motions for summary judgment seeking dismissal of the plaintiff's causes of action pursuant to Labor Law §§200, 240, 241(6) and common law negligence. Specifically, the basis of the dismissal of plaintiff's Labor Law §241(6) cause of action was plaintiff's failure to cite any specific Industrial Code violations that support this cause of action.

On June 9, 2008, plaintiff served another "supplemental" bill of particulars where he articulated specific Industrial Code violations and OSHA violations as well as additional injuries that he allegedly sustained as a result of his accident. Specifically, in this "Supplemental" Bill of Particulars, plaintiff alleged new injuries that indicated that a screw implanted as part of the lumbar fusion surgery had become dislodged and pierced his spinal canal. Additionally, plaintiff alleged a lack of sensation in his feet and toes and ankle pain, which necessitated the use of an ankle brace and a cane to ambulate. All defendants rejected plaintiff's supplemental bill of particulars.

Plaintiff then moved for an order compelling the defendants to accept service of his supplemental bill of particulars. In a prior order of this Court dated September 22, 2008 (Martin, J.) ordered that "(1) paragraphs 9 and 11 of supplemental bill of particulars are struck and (2) that the remainder of the bill of particulars is deemed served upon the

Defendant(s) and the third party Defendant herein." Interestingly, although plaintiff's counsel brought a motion in the Appellate Division, Second Department to file an "addendum" to the joint record to include this September 22, 2008 decision, he at no time ever appealed this order thus making it a "final" order as to the issue of inclusion of the new injuries either in a "Supplemental" and/or "Amended" Bill of Particulars.

With respect to defendants' motions for summary judgment dismissal of plaintiff's complaint, in a second order also dated September 22, 2008 (Martin, J.) ordered the following:

Each defendant's - namely, Cross, Turner and Elite - motion for summary judgment dismissal of plaintiff's Labor Law §240(1) claim was granted and those claims were dismissed "since the accident is not attributable to the kind of extraordinary height related risk contemplated by the statute."

The general contractor, Turner's motion for summary judgment dismissal of plaintiff's Labor Law §200 and common law negligence claims were also dismissed on the grounds that while Turner "submit[ted] ample evidence to establish that it did not direct, supervise, or control the plaintiff's work, the work area where the accident occurred, or direct the concrete truck that was making a delivery of concrete at the time of the incident [nor did it] provide plaintiff with his tools, materials and equipment [or] determine the means, methods and/or procedures used by plaintiff to perform his job" plaintiff failed to submit evidence inadmissible form raising a triable issue of fact. Additionally, neither Cross nor Elite proffered evidentiary proof in admissible form that was sufficient to ultimately create material issues of fact. Defendants, Elite and Cross's theory, raised in

opposition to Turner's motion for summary judgment, i.e., plaintiff's injury is alleged to be at least partially attributable to a defect upon the property of the job site namely a pile of debris upon which the cement truck drove over as it negligently operated in reverse towards the plaintiff as a result of which the unsecured cement chute swung into the plaintiff, was addressed and dismissed as neither defendant, Elite nor Cross submitted any proof of Turner's actual or constructive notice or that Turner was the cause of the dangerous condition - the large pile of debris. Thus, plaintiff's Labor Law §200 and common law negligence claims against Turner were also dismissed.

Defendant, Cross's motion for summary judgment dismissal of plaintiff's Labor Law §200 and common law negligence claims was also granted and plaintiff's Labor Law §200 and common law negligence claims against Cross were dismissed. Cross's theory in moving for summary judgment was that the truck which struck the plaintiff was simply not its truck. This Court found that defendant Cross met its *prima facie* burden of entitlement to judgment as a matter of law when it submitted ample evidence that established that it cannot be held vicariously liable for any alleged negligence of Elite's (an independent contractor it hired) driver, and, that it had no authority or control over the plaintiff or the work he was performing. In opposition, this Court found that plaintiff failed to offer any evidence that defendant Cross was anything other than a party who hired an independent contractor or that any of the three exceptions to the general rule that a party who hires an independent contractor is not liable for the negligence of the independent contract was applicable.

Defendant Elite's motion for summary judgment dismissal of plaintiff's Labor Law §200 and common law negligence claims was however denied as this Court found that

there remained issues of fact as to its knowledge or constructive knowledge of the condition or the work practice in issue or its ability/authority to correct it.

Finally, with regards to each defendants' Cross, Turner and Elite motion for summary judgment dismissal of plaintiff's Labor Law §241(6) claims, based upon their theory that plaintiff did not identify specific Industrial Code provisions and thus there was no predicate for sustaining a Labor Law §241(6) claim, this Court, taking into consideration that by an Order of the same date in which it granted plaintiff's motion to compel defendants to accept plaintiff's proffered supplemental bill of particulars alleging violations of, *inter alia*, the Industrial Code, denied as moot defendants' motion for summary judgment. However, because the Court did not rule on the merits of each alleged violations of the Industrial Code, defendants Elite and Turner sought leave to renew and reargue this Court's September 22, 2008 order which had dismissed the plaintiff's other claims and left unclear the status of plaintiff's Labor Law §241(6) claims.

Defendants' motions to re-argue portions of the aforesaid September 22, 2008 order were predicated upon issues unrelated to plaintiff's attempt to assert new injuries. At that time, plaintiff cross moved, this time seeking permission to serve an "Amended" Bill of Particulars. With respect to plaintiff's injuries, the proposed "Amended" Bill of Particulars contained language that was verbatim to that in he previously asserted "Supplemental" Bill of Particulars. In particular, it again alleged:

> "the plaintiff as a result of the surgery for circumferential arthrodesis of the lumbar spine, now suffers from a dislodged screw which has subsequently pierced his spinal canal. Furthermore, the plaintiff now has a lack of sensation in his feet and toes, and suffers from ankle pain, thereby necessitating an ankle brace and cane."

In a decision dated April 17, 2009, this Court (Martin, J.) noted that "plaintiff attempted to resurrect theories previously analyzed and rejected by the Court." Further, this Court noted that in this "second" motion, plaintiff failed to set forth any factual or legal basis for the modification of the Court's prior determinations and pursuant to the doctrine of "law of the case" held that "once an issue is decided, it cannot again be litigated at trial level (citations omitted)." This Court denied plaintiff's cross motion as the plaintiff's allegations of "new" injuries holding that plaintiff "failed to submit sufficient foundational proof to support the claims" and that the conclusory statements of plaintiff's counsel was speculative, inadmissible and insufficient to satisfy the burden of proof to demonstrate the plaintiff had sustained new, additional injuries, not previously ascertainable at the time the initial bill of particulars was framed. The Court concluded that "under these circumstances, plaintiff Richard Erickson's cross motion, *inter alia*, pursuant to CPLR 3025(b) for an Order permitting him to serve a further amended bill of particulars is denied."

Plaintiff then noticed and perfected an appeal of certain portions of the foregoing two decisions but plaintiff did not appeal nor move to reargue those portions of either the September 22, 2008 decision or the April 17, 2009 decision which denied plaintiff leave to assert new injuries in either a Supplemental or Amended Bill of Particulars. Plaintiff's counsel did not raise the issue concerning that part of the order that denied his motion as to the "Supplemental" and/or "Amended" Bill of Particulars in the Appellate Division, Second Department.

The Appellate Division issued a decision on plaintiff's Appeal, dated July 13, 2010. A review of that decision reveals that the Appellate Division did not review those portions

of Judge Martin's September 22, 2008 or April 17, 2009 orders concerning plaintiff's motions to "supplement" or "amend" his Bill of Particulars as to additional allegations of injury since that issue was not raised by plaintiff on the appeal. Thus, the September 22, 2008 and April 17, 2009 orders were "final" as to the issue of inclusion of the new injuries in a "Supplemental" and/or "Amended" Bill of Particulars.

However, prior to the Appellate Division's July 13, 2010 decision, but following the reassignment of this case to Justice Thomas Feinman of this Court, plaintiff, on May 12, 2010, moved, in this Court, for an order, pursuant to CPLR 3025(b) or (c) permitting him to serve an Amended Bill of Particulars as to the same "new" injuries that were set forth in the prior two motions. In support thereof, plaintiff's counsel included the affidavit of Dr. Holmes who never treated and/or examined the plaintiff. In denying plaintiff's "third" motion, "for the same relief," this Court (Feinman, J.) held that the notion that leave to amend should be liberally granted was outweighed by the doctrine of "law of the case."

Subsequently, on September 21, 2010, five days after the issuance of the order of this Court (Feinman, J.) counsel for plaintiff served an Expert Witness Disclosure pursuant to CPLR 3101(d) as to Dr. Holmes and disclosed that Dr. Holmes will testify as to the "standard of care required in the performance of a lumbar spinal fusion surgery" and that he will further testify as to the "standard of care and deviation from said standard of care that occurred in plaintiff's medical care both prior to, during and after the lumbar spinal fusion surgery."

This service of the Expert Witness Disclosure forms the basis of three of the motions currently before this Court.

Upon the instant motion, plaintiff again attempts to supplement the Bill of Particulars with the following alleged injuries:

> Injuries sustained by the plaintiff as a result of the accident are continuing in nature...the plaintiff underwent surgery on December 29, 2006 referred to as a laminectomy. This was a spinal fusion to repair the damage done to plaintiff's spine on November 3, 2003. The hardware involved in the spinal surgery was malpositioned during the surgery. It was not until June of 2008 that the plaintiff was informed that the surgery had failed. During the time period from December 29, 2006 through June 2008 plaintiff was not subjected to any additional tests and/or medical treatment because the surgeon Dr. Gary Gonya had left the [medical] office of Orlin and Cohen shortly after the surgery. As a result of the surgery plaintiff has incurred new injuries that were unknown at the time of initial disclosure to defendant. These screws are now piercing or protruding into the spinal canal of the plaintiff. Furthermore, the plaintiff now has a lack of sensation in his feet and toes, suffers from ankle pain thereby necessitating the use of an ankle brace and a cane.

Initially, it is noteworthy that CPLR 2221 requires that, when a movant, as the plaintiff herein, submits a single motion that seeks to both renew *and* reargue, the movant must take special care to identify and support each individual item of relief separately. Specifically, CPLR 2221(f) directs that: "... A combined motion for leave to reargue and leave to renew shall identify separately and support separately each item of relief sought. The court, in determining a combined motion for leave to reargue and leave to renew, shall decide each part of the motion as if it were separately made. If a motion for leave to reargue or leave to renew is granted, the court may adhere to the determination on the original motion or may alter that determination" (CPLR 2221[f]; *Seltzer v City of New York*, 288 AD2d 207).

Pursuant to CPLR 2221(d):

> A motion for leave to reargue: (1) shall be identified specifically as such; (2) shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and (3) shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry.

(*Cruz v Masada Auto Sales, Ltd.*, 41 AD3d 417; *Pryor v Commonwealth Land Title Ins. Co.*, 17 AD3d 434).

Reargument will not be made available if the movant seeks to argue "a new theory of liability not previously advanced" (*Frisenda v X Large Enterprises*, 280 AD2d 514, 515). Instead, the movant must demonstrate the matters of fact or law that he believes the court has misapprehended or overlooked (*Hoffmann v Debello–Teheny*, 27 AD3d 743). Absent a showing of misapprehension or the overlooking of a fact, the court must deny the motion (*Barrett v Jeannot*, 18 AD3d 679).

Pursuant to CPLR 2221(e):

> A motion for leave to renew: (1) shall be identified specifically as such; (2) shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and (3) shall contain reasonable justification for the failure to present such facts on the prior motion.
> (*515 Ave. I Corp. v 515 Ave. I Tenants Corp.*, 44 AD3d 707;*Veitsman v G & M Ambulette Serv., Inc.*, 35 AD3d 848).

It is not sufficient that new facts merely be presented to the Court. Specifically, the movant must demonstrate why facts known at the time of the original motion were not then presented to the Court (*Delvecchio v Bayside Chrysler Plymouth Jeep Eagle, Inc.*, 271 AD2d 636). Indeed, "[a] motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation" (*Lardo v Rivlab Transportation. Corp.*, 46 AD3d 759). However, where the facts could not be known at the time of the original motion, or a reasonable justification is given for non-disclosure, the court may properly grant leave to renew (*Lafferty v Eklecco, LLC*, 34 AD3d 754).

A review of the record in this case confirms that plaintiff has failed to present the existence of any new facts that were not offered on the prior motion that would change the prior determinations. That is, plaintiff does not allege that any new facts exist that were not known to him at the time of the submission of the initial moving papers. Plaintiff has also failed to demonstrate that there has been a change in the law that would change the prior determinations.

Plaintiff previously attempted to serve a Supplemental Bill of Particulars dated June 9, 2008 in which he alleged, *inter alia*, Industrial Code violations in support of his Labor Law §241(6) claims. Insofar as injuries are concerned, the plaintiff alleged as paragraph 11 thereof as follows:

> 11. Injuries sustained by the plaintiff as a result of the accident are continuing in nature...the plaintiff as a result of the surgery for circumferential arthoedesis of the lumbar spine, now suffers from a dislodged screw which has subsequently pierced his spinal canal. Furthermore, the plaintiff now has a lack of sensation in his feet and toes, and suffers from ankle pain, thereby necessitating an ankle brace and cane. As always, all of plaintiff's injuries are permanent in nature.

Subsequently, after the service of this June 9, 2009 Supplemental Bill of Particulars, motion practice ensued whereby on September 22, 2008, this Court (Martin, J.) issued a decision, *inter alia*, striking paragraph 11 of the Supplemental Bill of Particulars and holding that these are new injuries and not permitted without leave of the Court. This Court opined that these paragraphs set forth "a whole new injury" which had both a "different cause and result from those set forth in the original Bill of Particulars."

Having ordered that the "paragraph 11...is hereby struck," this Court previously ruled on this exact issue. No appeal of that Order ensued. Contrary to plaintiff's counsel's interpretation of the applicable case law, and his apparent ability to foresee future rulings

of the Appellate Division, the prior decisions of this Court are "law of the case" which compel the denial of plaintiff's instant motion. Plaintiff has already petitioned this Court on at least two prior occasions for an order permitting the pleading of the newly alleged injuries and this Court has consistently ordered that said injuries be struck. Plaintiff cannot simply ignore this Court's prior orders and relitigate the same issues herein. The New York Court of Appeals has held that the "law of the case" doctrine provides that "a court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction" (*People v Evans*, 94 NY2d 499, 504). Those decisions are law of the case.

Therefore, since plaintiff does not offer any new evidence that was in existence at the time of the original motion or proffer a reasonable excuse why he did not have the new evidence, that part of plaintiff's motion to "renew" is herewith denied.

Similarly, plaintiff's motion to reargue the prior motion resulting in this Court's decision and order dated September 16, 2010, is also denied. Plaintiff has failed to advance any argument that this Court overlooked or misapprehended relevant facts or misapplied any controlling principal of law. Plaintiff has failed to set forth any valid ground for reargument and does not present any contention as to what relevant facts the previous two Justices of this Court overlooked or misapprehended or misapplied any controlling principles of law when ruling on plaintiff's prior motions to amend/supplement his Bill of Particulars.

Therefore, plaintiff's instant cross motion, pursuant to CPLR 2221(f), for an Order granting him renewal and reargument of this Court's prior Decision and Order dated September 16, 2010 is denied in its entirety.

Turning to defendants, Turner, Commodore and Cross Ready's separate motions each seeking an Order, pursuant to CPLR 3101(d), striking plaintiff's Notice of Expert or alternatively, an Order precluding the testimony of plaintiff's expert witness, pursuant to CPLR 3101(d), said motions are granted.

On or about September 21, 2010, plaintiff served an expert disclosure stating that Dr. Holmes would testify as to the "standard of care required in the performance of a lumbar spinal fusion surgery." Plaintiff's Notice of Expert also disclosed that Dr. Holmes would further testify as to the "standard of care and deviation from said standard of care that occurred in plaintiff's medical care both prior to, during and after the lumbar spinal fusion surgery."

CPLR 3101(d)(I) provides, in pertinent part, that:

> Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just.***

In this case, Dr. Holmes' purported expert testimony concerning the plaintiff's injuries exceeds the bounds of the allegation of the Bill of Particulars (*Palchik v Eisenberg*, 278 AD2d 293). As the Second Department stated in *Ciriello v. Virgues*, 156 AD2d 417:

> The object of a bill of particulars is to "amplify the pleadings, limit the proof, and prevent surprise at trial" *** Where there is a variance between the bill of particulars and the proof adduced at trial, such that the bill of particulars may be said to have misled the adversary and precluded adequate preparation at trial, that adversary has the right to insist upon the primacy of the bill of particulars (*Ciriello v. Virgues*,

156 AD2d 417 [2nd Dept. 1989] [citations omitted]).

In this case, Dr. Holmes' opinions regarding these new injuries have never been included in the bill of particulars. These new injuries were never alleged in the bill of particulars and on at least two prior occasions by the directives of this Court, plaintiff's motion seeking to add these injuries have been denied. Therefore, allowing evidence that the plaintiff underwent a failed lumbar spinal fusion surgery and experienced medical sequelae thereafter as a result, at trial would obviously unfairly prejudice the defendants. Accordingly, this Court herewith precludes Dr. Holmes from testifying and/or the plaintiff from offering evidence regarding said claims at the time of trial. Therefore, he is precluded from testifying as to those injuries.

Accordingly, the separate motions of defendant, Turner Construction Company, third party defendant, Commodore Construction Corp. and defendant, Cross Ready Mix, Inc., seeking an order, pursuant to CPLR 3101(d), striking plaintiff's Notice of Expert, and precluding the testimony of plaintiff's expert witness, pursuant to CPLR 3101(d) are all granted.

Finally, third party defendant, Commodore's motion, pursuant to CPLR 3124, for an order compelling defendants Cross Ready and Elite to comply the terms of the Preliminary Conference Order of this Court dated January 12, 2006 to respond to it's Notice for Discovery and Inspection dated November 8, 2010 is denied.

Commodore's motion is predicated upon a Preliminary Conference Order of this Court dated January 12, 2006 in which one of the terms was that all of the defendants exchange insurance policies with one another. Commodore brings this motion asserting that neither Cross nor Elite has complied with these terms. Commodore maintains that on

or about November 8, 2010, it served a Notice for Discovery and Inspection upon Cross and Elite requesting complete copies of their primary and excess insurance policies but that to date these demands have gone unanswered.

Inasmuch as defendant Cross has, in opposing Commodore's instant motion, produced a copy of it's primary policy and further advised Commodore and this Court that no excess policy was in place at the time of the subject accident, Commodore's motion for an order compelling Cross is denied as moot.

Similarly, inasmuch as defendant Elite, in opposing Commodore's instant motion, has also produced a copy of it's primary policy issued by Markel Insurance, Commodore's motion for an Order compelling Elite to produce same is denied as moot. With respect to Commodore's request for a copy of Elite's excess insurance policy, to the extent that counsel for Elite has requested an additional 30 days to provide a copy of same, and insofar as the request may remain outstanding at the time of the issuance of this Order, this Court herewith directs Elite to produce same within 30 days of the plaintiff's service upon all parties of a copy of this order with notice of entry.

Dated: JUN 20 2011

UTE WOLFF LALLY, J.S.C.

ENTERED
JUN 22 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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