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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: SHLOMO HAGLER PART 17
J.S.C. Justice

Index Number : 109032/2010
SERRA, STEPHEN
vs.
GOLDMAN SACHS GROUP
SEQUENCE NUMBER : 002
RENEWAL

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). 2
Replying Affidavits _____ No(s). 3

Upon the foregoing papers, it is ordered that this motion is

THIS MOTION/ORDER TO SHOW CAUSE
IS DECIDED IN ACCORDANCE WITH
THE ATTACHED ORDER.

FILED
JUN 04 2013
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 5/24/13

SHLOMO HAGLER, J.S.C.
J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

----------X

STEPHEN SERRA and SUSAN SERRA,

Plaintiffs,

-against-

THE GOLDMAN SACHS GROUP, INC., GOLDMAN SACHS HEADQUARTERS LLC and TISHMAN CONSTRUCTION CORP.,

Defendants.

----------X

Index No. 109032/10

Decision/Order

Hon. Shlomo Hagler, J.S.C.:

Motions with sequence numbers 002 and 003 are hereby consolidated for disposition.

In this personal injury action which arises out of a construction site accident in which plaintiff Stephen Serra ("plaintiff") was injured, defendants move (motion sequence number 002), (1) pursuant to CPLR § 2221, for leave to renew and reargue this Court's June 4, 2012 Order (the "Prior Order") which denied defendants' motion to compel disclosure of plaintiff's psychiatric medical records and to compel plaintiff to appear for a further deposition related to his mental health treatment; (2) upon renewal and reargument, for the reversal of the Prior Order; (3) pursuant to CPLR § 3124, to compel plaintiff to provide HIPAA authorizations, unlimited in date, for all medical records relating to plaintiff's psychiatric condition and treatment both before and after the accident; and (4) to compel plaintiff to

appear for a further deposition related to records for his mental health treatment.

In motion sequence number 003, plaintiffs move, pursuant to CPLR § 3212, for partial summary judgment on the issue of defendants' liability under Labor Law § 240 (1). Defendants cross-move, pursuant to CPLR § 3212, for summary judgment dismissing the complaint.

Oral argument on these motions was held on November 26, 2012, wherein plaintiffs' claims for relief under Labor Law § 200 and common-law negligence were dismissed on consent (Transcript of 11/26/12 Oral Argument, at 31).

In order to view these motions in a logical order, this Court will consider them nonsequentially.

BACKGROUND

Plaintiff's accident occurred on January 14, 2010, while he was working at a construction site located at 200 West Street in Manhattan. Plaintiff was then a journeyman electrician employed by nonparty Zwicker Electric Co., Inc. ("Zwicker"), the electrical contractor for the project. The project consisted of new construction for new commercial office space for defendants The Goldman Sachs Group, Inc. and Goldman Sachs Headquarters LLC (together, "GS"). GS was the owner of the premises, and defendant Tishman Construction Corporation was the general contractor and construction manager for the project.

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Zwicker was hired to run electrical conduits and power and light for the core of the building (Plaintiff's Depo., at 27). On the day of the accident, plaintiff and another Zwicker journeyman electrician, Kevin Gottlieb ("Gottlieb"), and their foreman, Jimmy Bush ("Bush"), were working in an eighth-floor storage room, installing permanent fluorescent lighting fixtures (*id.* at 39-40). Plaintiff used a 24-foot extension ladder to install threaded rods in the Q-deck (lighting supports [*id.* at 44]) in the ceiling (*id.* at 46; *but see* Plaintiff's 6/6/11 Aff., at 1 of 2; Gottlieb Depo., at 25; and Bush 7/6/11 Aff., at 1 of 2 [it was a 16-foot extension ladder]). In order to install these support rods in the storeroom, plaintiff and Gottlieb moved the ladder a couple of times before the accident so they could install the rods every six or eight feet around the room (Plaintiff's Depo., at 48-49; Gottlieb Depo., at 56, 71). Once the ladder was positioned, plaintiff stood on the ladder, several feet above the floor, drilling holes in the ceiling, while Gottlieb held the ladder steady (i.e., "footed" the ladder [Gottlieb Depo., at 53-54]). They did not change this procedure as they proceeded around the room (Gottlieb Depo., at 73). Tools and materials they needed could be found in a material basket a few feet away (Gottlieb Depo., at 50).

On the day of the accident, Gottlieb and plaintiff were following this procedure, except that at one point, after

plaintiff had climbed part of the way up the ladder, Gottlieb let go of the ladder and went to get materials from the basket that he knew plaintiff would need. A moment later, plaintiff fell approximately six feet from the ladder and was injured.

PLEADINGS

Plaintiffs allege five causes of action in their complaint, sounding in common-law negligence, violations of Labor Laws §§ 200, 240 (1), 241 (6), and loss of consortium. Defendants interposed an answer without raising any counterclaims.

PROCEDURAL HISTORY

During plaintiff's November 3, 2011 deposition, counsel for the parties had a telephone conference with Justice Carol R. Edmead, during which counsel for plaintiff reiterated that no psychiatric claim is being presented, even though in plaintiff's bills of particulars (October 5, 2010; August 23, 2011), he alleges that his injuries have caused him "anxiety and mental anguish [which] have substantially prevented this plaintiff from enjoying the normal fruits of activities, social, educational and economic" (Bills of Particulars, ¶¶ 11-12). Counsel for plaintiff stated a couple of times that that language was "frankly part of a boilerplate language" (Plaintiff's 11/3/11 Depo., at 134-135). Counsel for plaintiff further averred that when using the terms "anxiety and mental anguish," he was not

using them as "psychiatric" terms, but rather, as "a normal response, a normal emotional response to the kind of severe injury that he had" (*id.* at 136-137). During the telephone conference, Justice Edmead denied defendants'

> "questioning with respect to pursuing psychiatric treatment and claim ... . However, it will not be an issue that goes to trial unless they supplement the BP at any which point you get a further deposition plus further authorizations. ... [A]s long as [counsel for plaintiff] is saying it's boilerplate and it's not a substantive claim at all, I'm going to say no, because at trial you've got this transcript, number 1; and 2, at trial the Plaintiff will not be able to delve into either one of those topics at all if it's not been substantiated and explored."

During the June 4, 2012 oral argument on defendants' motion to compel production of plaintiff's psychiatric records, this Court stated that *Pirone v Castro* (82 AD3d 431, 432 [1st Dept 2011]) provides the "right case law" for determining this matter. In *Pirone*, the Court granted defendants' motion to compel production of medical records pertaining to the plaintiff's depression, because plaintiff "alleged that because of defendants' conduct, he suffered physical injuries that ha[ve] resulted in him spending 'everyday or at least part of everyday from the date of the accident confined to his bed and home'" (*Pirone*, 82 AD3d at 432).

At the June 4, 2012 oral argument in this case, this Court stated that

> "I believe you've cited the right case law, however, the *Pirone versus Castro*, which is under 82 AD3d 431, talks about an unusual and extraordinary circumstance where every day, or at least part of every day from the date of the accident, was confined to his bed and home. If you are such a mental basket case and you cannot get up and go to work, you're certainly entitled to the psychiatric records because that would be relevant to it because he's put that condition at issue. Here, there is a normal response to a bill of particulars, which is that mental anguish, mental suffering, which is part of the PJI charge in pain and suffering, it's the mental anguish, the mental suffering is the damages you would get; that would be a normal response, and everyone that has a physical injury, you would then get the records based upon the general language. And, clearly, the courts and the legislature did not want to put that -- to breach that confidentiality of a patient's file. In extraordinary circumstances, in specific circumstances where the mental issue is at stake, just like in *Pirone versus Castro*, you'd be correct and I would grant it.
>
> I am denying your motion without prejudice. If you can show me anywhere in the transcript that it rises to the level of *Pirone versus Castro*, I will grant it. At this juncture, you have not met your high burden ..."

(Transcript of 6/4/12 Oral Argument, at 13-14).

During the November 26, 2012 oral argument, counsel for plaintiff stated that "the sole basis for [plaintiff's] inability to work is the back injury, the fracture, the three-level fusion" (Transcript of 11/26/12 Oral Argument, at 16).

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DISCUSSION

Motions for Summary Judgment

> "Since summary judgment is the equivalent of a trial, it has been a cornerstone of New York jurisprudence that the proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law. Once this requirement is met, the burden then shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial [citations omitted]"

(*Ostrov v Rozbruch*, 91 AD3d 147, 152 [1st Dept 2012]). The court must determine whether that standard has been met based "on the evidence before the court and drawing all reasonable inferences in plaintiff's favor ..." (*Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 137-138 [1st Dept 2012]).

Labor Law § 240 (1) and the Issue of Sole Proximate Cause

Labor Law § 240 (1) provides, in pertinent part:

> "All contractors and owners and their agents ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

"Labor Law § 240 (1) provides exceptional protection for workers against the 'special hazards' that arise when either

the work site itself is elevated or is positioned below the level where materials or load are being hoisted or secured [internal quotation marks and citation omitted]" (*Jamindar v Uniondale Union Free School Dist.*, 90 AD3d 612, 615 [2d Dept 2011]). "The statute imposes absolute liability on building owners and contractors whose failure to 'provide proper protection to workers employed on a construction site' proximately causes injury to a worker" (*Wilinski v 334 E. 92nd Hous. Dev. Fund Corp.*, 18 NY3d 1, 7 [2011], quoting *Misseritti v Mark IV Constr. Co.*, 86 NY2d 487, 490 [1995]).

"However, not every hazard or danger encountered in a construction zone falls within the scope of Labor Law § 240 (1) as to render the owner or contractor liable for an injured worker's damages. We have expressly held that Labor Law § 240 (1) was aimed only at elevation-related hazards ... [internal quotation marks and citations omitted]" (*Misseritti*, 86 NY2d at 490). "The single decisive question is whether plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential" (*Runner v New York Stock Exch., Inc.*, 13 NY3d 599, 603 [2009]).

> "To establish a cause of action under Labor Law § 240 (1), a plaintiff must show that the statute was violated and that the violation proximately caused his injury. Liability is contingent upon the existence of a hazard contemplated in § 240 (1) and a failure to

> provide, or the inadequacy of, a safety device of the kind enumerated in the statute. The injured worker's contributory negligence is not a defense. However, if adequate safety devices are provided and the worker either chooses for no good reason not to use them, or misuses them, the plaintiff will be deemed the sole proximate cause of his injuries, and liability will not attach under § 240 (1) [internal quotation marks and citations omitted]"

(*Fernandez v BBD Developers, LLC*, 103 AD3d 554, [1st Dept 2013]). "[I]f a statutory violation is a proximate cause of an injury, the plaintiff cannot be solely to blame for it. Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation" (*Blake v Neighborhood Hous. Servs. of N.Y. City*, 1 NY3d 280, 290 [2003]).

Here, plaintiff could not have been the sole proximate cause of his injuries because defendants failed to provide adequate footing while plaintiff was on the ladder.

Frank Susino, Select Safety Consulting Services' site safety manager, attested that extension ladders are required to be footed at the bottom and tied off at the top (Susino Depo., at 53). Two ways to properly foot a ladder are to nail a cleat at the base, or to have a person hold the ladder (*ibid.*; Rhoden Depo., at 95 ["One person would just shoot a two-by-four cleat and set the ladder in front of the cleat, which would hold the ladder in place"]). In this case, no cleat was used to foot the

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ladder, and there is no evidence that another means of footing the ladder was made available.

Gottlieb's failure to continue footing the ladder does not raise an issue of whether defendants provided adequate safety devices. A person is not "a safety device contemplated by the statute" (*McCarthy v Turner Constr., Inc.*, 52 AD3d 333, 334 [1st Dept 2008]). Moreover, "[p]laintiff's use of the ladder without his coworker present amounted, at most, to comparative negligence, which is not a defense to a section 240 (1) claim" (*Velasco v Green-Wood Cemetery*, 8 AD3d 88, 89 [1st Dept 2004]).

Gottlieb testified that plaintiff did not direct him to stop footing the ladder or to go over to the material basket (Gottlieb Depo., at 115-116, 140; errata sheet, page 80, line 6: "he did not ask me to leave the ladder to get the materials"), and his testimony appears to be uncontradicted.

As for tying the ladder off at the top, that was plaintiff's responsibility (Susino Depo., at 53 [the "person who is going to use" the ladder is responsible to make sure that it is tied off]). The evidence indicates that plaintiff was on his way up the ladder to tie it off when his accident occurred.

Plaintiff does not know for certain but he "thought Gottlieb was at the bottom of my ladder." (Stephen Serra Depo. at 55, attached as Exhibit "G" to the Motion). Thus, it cannot be determined whether or not he put himself at risk by climbing

the unsupported ladder while knowing that it was unsupported. Nevertheless, the failure of defendants to ensure that the ladder was properly footed and secured precludes a finding that plaintiff was the sole proximate cause of his injuries. "'Where a ladder is offered as a work-site safety device, it must be sufficient to provide proper protection. It is well settled that [the] failure to properly secure a ladder, to ensure that it remain steady and erect while being used, constitutes a violation of Labor Law § 240 (1)' [citations omitted]" (*Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d 173, 174 [1st Dept 2004]; *see also McCarthy*, 52 AD3d at 334 ["'It is sufficient for purposes of liability under section 240 (1) that adequate safety devices to prevent the ladder from slipping or to protect plaintiff from falling were absent' (citation omitted)"]; *Velasco*, 8 AD3d at 89 ["Given an unsecured ladder and no other safety devices, plaintiff cannot be held solely to blame for his injuries"]).

Therefore, plaintiff's motion for summary judgment on the issue of defendants' liability under Labor Law § 240 (1) is granted; that part of defendants' cross motion that seeks summary judgment dismissing plaintiff's section 240 (1) claim is denied.

Labor Law § 241 (6)

Labor Law § 241 (6) provides:

> "All contractors and owners and their agents ... when constructing or demolishing buildings or doing any excavating in

> connection therewith, shall comply with the following requirements:
>
> ***
>
> 6. All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work ... shall comply therewith."

The Commissioner's rules are set forth in the Industrial Code, 12 NYCRR Part 23.

"Labor Law § 241 (6) imposes a nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to persons employed in, or lawfully frequenting, all areas in which construction, excavation, or demolition work is being performed" (*Capuano v Tishman Constr. Corp.*, 98 AD3d 848, 850 [1st Dept 2012]). This nondelegable duty may attach "regardless of [the owners' and contractors'] control, direction or supervision of the work site" (*Giacomazzo v Exxon Corp.*, 185 AD2d 145, 146 [1st Dept 1992]). "In order to recover under section 241 (6), a plaintiff must demonstrate that there was a violation of a specific regulatory provision of the Industrial Code which resulted in his injury" (*Medina v City of New York*, 87 AD3d 907, 908 [1st Dept 2011]). In addition, the cited Industrial Code provision must be applicable to the facts

of the matter (*see e.g. Favia v Weatherby Constr. Corp.*, 26 AD3d 165, 166 [1st Dept 2006]).

In his October 5, 2010 bill of particulars, plaintiff asserts that defendants violated Industrial Code § 23-1.21 (b), a provision that sets forth "General requirements for ladders," specifically, section 23-1.21 (b) (4) (iv):

> "When work is being performed from ladder rungs between six and 10 feet above the ladder footing, a leaning ladder shall be held in place by a person stationed at the foot of such ladder unless the upper end of such ladder is secured against side slip by its position or by mechanical means. ..."

The Appellate Division, First Department, has ruled that this is "a specific Industrial Code provision with concrete specifications" (*Montalvo v J. Petrocelli Constr., Inc.*, 8 AD3d at 176.

Here, plaintiff fell from approximately six feet above the floor, when the ladder was neither footed by a coworker nor tied off at the top. The provision is both specific and applicable, and has been violated.

Plaintiff has not moved for summary judgment on his section 241 (6) claim. However, "a court may search the record and grant summary judgment in favor of a nonmoving party only with respect to a cause of action or issue that is the subject of the motions before the court" (*Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429-430 [1996]). Defendants' cross motion seeks

summary judgment dismissing the entire complaint, but with respect to the section 241 (6) claim, argues (1) that plaintiff cannot show that a violation was a proximate cause of the accident, (2) that the cited Industrial Code sections are not applicable, or are abandoned, and (3) that the claim should be dismissed anyway because plaintiff was the sole proximate cause of his injuries (Wilder 9/27/12 Affirm., ¶¶ 56-60; Wilder 10/15/12 Reply Affirm., ¶ 16). As a result, this Court searches the record, and grants plaintiff summary judgment on his section 241 (6) claim. That part of defendants' cross motion which seeks summary judgment dismissing the section 241 (6) claim is denied.

Loss of Consortium

Plaintiff Susan Serra, plaintiff's wife, brings a claim for loss of consortium, which is derivative of plaintiff's claims (*see e.g. Pavon v Rudin*, 254 AD2d 143, 144 n 1 [1st Dept 1998]). In the complaint's fifth cause of action, plaintiff's wife alleges that she has been deprived of her husband's "services, society, comfort, companionship and consortium" because of plaintiff's "serious personal injuries" that resulted from his accident (Complaint, ¶ 77; Plaintiffs' 10/5/10 Bill of Particulars, ¶ 26). Prior to the accident, plaintiff did most of the household chores (laundry, general cleaning, vacuuming), but since his accident, his performing household chores is "pretty much nonexistent" (Susan Serra Depo., at 14-15). Plaintiff and

his spouse used to take long walks, hike, ride bikes, and take long rides to spend a day looking at antique shops (*id.* at 16). They used to enjoy "date nights" where they would walk in the city, go to a movie, and go out to dinner (*id.* at 18-19). Since the accident, they have rarely done these things, because "it's a big effort. It's a big effort to go out and for him to feel pain and to get into a seat and have other people around and -- it's just a really serious effort" (*ibid.*). Since the accident, plaintiff and his spouse "have gotten closer," but plaintiff "doesn't like to be dependent on" Ms. Serra (*id.* at 18). Since the accident, the couple's intimacy has also been adversely affected (*id.* at 20). These assertions appear to be uncontested.

Defendants' have not met their burden of proof on Ms. Serra's cause of action. Therefore, the part of defendants' cross motion which seeks summary judgment dismissing this claim is denied.

The Motion for Leave to Renew and Reargue This Court's Prior Order (motion sequence number 002)

This Court entertained this motion at the November 26, 2012 oral argument. Thus, the part of the motion which seeks reargument and renewal is denied as moot. The remaining part of the motion shall be considered below.

The Motion to Compel Disclosure

Defendants seek, pursuant to CPLR § 3124, to compel plaintiff to provide HIPAA authorizations, unlimited in date, for all medical records relating to plaintiff's psychiatric condition and treatment both before and after the accident, and to compel plaintiff to appear for a further deposition related to records for his mental health treatment.

CPLR § 3121 (a) provides, in relevant part:

> Notice of examination. After commencement of an action in which the mental ... condition ... of a party ... is in controversy, any party may serve notice on another party to submit to a ... mental ... examination by a designated physician ... . The notice may require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of, the records of specified hospitals relating to such mental ... condition ... . A copy of the notice shall be served on the person to be examined. It shall specify the time, which shall be not less than twenty days after service of the notice, and the conditions and scope of the examination.

"[T]he mandate of CPLR 3121 (a), which requires that in order for a party to obtain discovery of records relating to another party's physical or mental condition, the moving party ... must first demonstrate that the other party has affirmatively placed his or her physical or mental condition in controversy" (*Aycadi v Baron*, 302 AD2d 313, 313 [1st Dept 2003]). A person may put his or her physical or mental condition in controversy by, among other things, his or her deposition testimony (*Pirone v*

Castro, 82 AD3d at 432); by "acknowledging in his testimony that factors other than his thyroid cancer were causes of his psychological symptoms" (*Velez v Daar*, 41 AD3d 164, 165 [1st Dept 2007]); by "asserting in their bills of particulars that they suffered from such mental disturbances as 'severe anxiety' and 'acute fear of the carc[i]nogenic nature and permanent effects of the chemicals in question' and by submitting to an examination by a psychologist to whom their treating physician had referred them" (*Spierer v Bloomingdale's*, 37 AD3d 371, 371 [1st Dept 2007]); by "asserting it as an affirmative defense in his pleadings and by submitting himself to an examination by a physician of his choice ..." (*TOA Constr. Co. v Tsitsires*, 4 AD3d 141, 142 [1st Dept 2004]); and by undergoing "a prior physical examination which substantiate[s] or [gives] credence to the allegations of the plaintiff's complaint" (*Maharam v Maharam*, 123 AD2d 165, 170 [1st Dept 1986]). "[A] party's mental or physical condition is not 'in controversy' merely because another party has placed such condition in issue" (*Andon v 302-304 Mott St. Assoc.*, 257 AD2d 37, 40 [1st Dept 1999], *affd* 94 NY2d 740 [2000]), but "[w]here records of a sensitive and confidential nature relate to the injury sued upon, disclosure is warranted" (*Napoleoni v Union Hosp. of Bronx*, 207 AD2d 660, 662 [1st Dept 1994]).

This Court is mindful that plaintiff has not sought damages for any mental or emotional condition that allegedly may have been caused by plaintiff's fall. Rather, he has maintained all along that his physical injuries, not his pre-existing depression, are his bases for seeking damages arising from his accident (*see Churchill v Malek*, 84 AD3d 446, 446 [1st Dept 2011] ["in this personal injury action, there is no claim to recover damages for emotional or psychological injury, or aggravation of a preexisting emotional or mental condition(. Thus,) plaintiff cannot be compelled to disclose confidential psychological or psychiatric records (internal citations omitted)"]).

Plaintiff's counsel has twice averred that the "anxiety and mental anguish" which are alleged in his bills of particulars are simply "boilerplate." During the June 4, 2012 oral argument, this Court indicated that the Legislature and courts have not intended that this sort of general language would allow the extensive breach of physician/patient confidentiality that disclosure of psychological records would entail.

It is abundantly clear that plaintiff did not put his mental or emotional health or treatment into contention by asserting boilerplate language in his bills of particulars. As a result, the court need not consider whether plaintiff waived his physician/patient privilege or whether the court should conduct an in camera review of plaintiff's medical records.

Accordingly, the parts of defendants' motion which seek to reverse this Court's June 4, 2012 Order, and to compel disclosure are denied.

CONCLUSION

Accordingly, it is

ORDERED that the part of defendants' motion (motion sequence number 002) which seeks renewal and reargument of the June 4, 2012 Order is denied as moot; and it is further

ORDERED that defendants' motion is otherwise denied; and it is further

ORDERED that plaintiffs' motion (motion sequence number 003) for summary judgment on the issue of defendants' liability under Labor Law § 240 (1) is granted, with the issue of damages to await trial; and it is further

ORDERED that, having searched the record, plaintiff is granted summary judgment on his Labor Law § 241 (6) claim; and it is further

ORDERED that defendants' cross motion (motion sequence number 003) for summary judgment dismissing the complaint is denied.

Dated: May 24, 2013
New York, New York

ENTER:

SHLOMO HAGLER
J.S.C.