At a term of the Supreme Court of the
State of New York, held in and for the
County of Sullivan, at Monticello,
New York, on October 28, 2015

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

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THE ESTATE OF MARY THERESA GALVIN ACTON
By G. CHRISTOPHER ACTON, Administrator

Plaintiff,

-against-

1906 RESTAURANT CORP., and ROBERT L. DECRISTOFARO and ROSEMARIE S. DECRISTOFARO

Defendants.

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DECISION/ORDER

Index #629-2014
RJI # 52-35273-2014

Present: Hon. Mark M. Meddaugh,
Acting Justice, Supreme Court

Appearances:

Mainetti, Mainetti & O'Connor, P.C.
By: Joseph E. O'Connor, Esq.
Attorneys for the Plaintiff
130 N. Front Street
Kingston, NY 12401

McCabe & Mack, LLP
By: Betsy N. Garrison, Esq.
Attorneys for the Defendants
P.O. Box 509
Poughkeepsie, NY 12602

MEDDAUGH, J.:

There are two motions pending before this Court, the first is the Defendant's motion to preclude Plaintiff's expert testimony for the failure to comply with CPLR §3101(d) and the Third Judicial Department Expert Disclosure Rule, and the second is the Defendant's motion for summary judgment to dismiss the complaint, pursuant to CPLR 3212.

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Motion to Preclude Expert Testimony

The Defendants assert the Note of Issue was filed on May 28, 2015 and the Plaintiff served Expert Disclosure pursuant to CPLR 3101(d) on May 20, 2015, for two treating physicians of the decedent, Mary Galvin Acton. Thereafter, on July 9, 2015, the Plaintiff served additional expert disclosure for an Architect, Frederick Bremer, with regard to the stairway at the Defendants' business where the Plaintiff fell on March 15, 2014, resulting in injuries which led to Ms. Acton's death on March 23, 2014.

It is argued by the Defendants' attorney that the Expert Disclosure provided on July 9, 2015 was untimely under the Expert Disclosure Rule for the Third Judicial District.

It is argued that this late disclosure was prejudicial to the Defendant, as the trial was scheduled for October 13, 2015. The Court notes, however, that since the Defendants' motion to preclude was made, the trial was adjourned to January 11, 2016, and has now been adjourned to March 7, 2016.

It is further argued that the Plaintiff's failure to timely provide the expert disclosure was intentional, since they were clearly aware of the Third Judicial District Rule, and that the expert's report indicates that he investigated the premises on April 24, 2014, more than a year before his report was provided to the Defendants.

In response, the Plaintiff argues that there was no surprise, prejudice or willful failure to disclose. It is asserted that they did not receive the report from their expert until July 6, 2015, and that counsel acted promptly to draft and serve their 3101(d) response. It is argued that the Defendants are not prejudiced, as they had the expert disclosure three months before the original trial date. It is also asserted that the expert's identity was known to the Defendants, as the expert's name

was disclosed upon the physical examination of the property which took place on April 24, 2014. Furthermore, the Plaintiff asserts that there is no claim that the expert disclosure from Mr. Bremer was not full and complete.

In reply, the Defendants assert that, where expert disclosure is untimely, pursuant to the Expert Disclosure Rule in the Third Judicial District, the Plaintiff must show that its actions were not willful nor intentional and that good cause for delay existed.

The Defendants further argue that it was prejudicial to them to be presented with expert testimony six weeks after the Note of Issue and that, although they were aware of the expert's identity, there was no notice of manner in which the expert intended to testify.

The Defendants reiterate that willfulness can be implied from the circumstances, where the Plaintiff was aware of the Third Judicial Rule, and the expert was hired more than fifteen months before his belated disclosure.

Conclusions of Law - Motion to Preclude Expert Testimony

In *Silverberg v Community Gen. Hosp. of Sullivan County*, 290 AD2d 788, 736 N.Y.S.2d 758 [3d Dept. 2002], the Third Department declined to impose the drastic remedy of preclusion where the expert disclosure was provided by the Plaintiff after the Note of Issue, but more than four months prior to the trial date. It was found that the Defendants had sufficient time to prepare for trial under these circumstances.

In the case at bar, the expert disclosure will have been in the hands of the Defendants for eight months prior to the adjourned date of the trial, negating any claim of prejudice based on the fact that the disclosure was originally provided six weeks late.

The Court shall also decline to find that the circumstances surrounding the filing of the expert disclosure support an implication that the late filing was wilful or intentional (*McColgan v Brewer*, 84 AD3d 1573, 923 N.Y.S.2d 276 [3d Dept. 2011]; *Ennis-Short v Ostapeck*, 68 AD3d 1399, 890 N.Y.S.2d [3d Dept. 2009]). The Plaintiff's counsel indicated that it did not receive its expert's report until after it had filed the Note of Issue and that she then proceeded promptly to file its 3101(d) disclosure. The Court does not believe that the Plaintiff's delay in producing this disclosure was a tactical decision to somehow put the Defendants at a disadvantage, particularly since the Plaintiff's counsel was certainly aware that its delay in providing its expert disclosure created a risk that a motion to preclude could be granted (*see, Tienken v Benedictine Hosp.*, 45 Misc. 3d 1210(A), 3 N.Y.S.3d 287 [S.Ct, Ulster Co., 2011])[1].

Accordingly, the Defendant's motion to preclude the expert testimony, reports, narratives and opinions of Frederick G. Bremer, AIA, NCARB, is denied.

Motion for Summary Judgment to Dismiss the Complaint

The Defendants have also moved for summary judgment to dismiss the complaint, based upon an argument that the Plaintiff cannot identify how or what caused the decedent to fall, and that any finding that the Defendant's negligence caused the decedent's injuries would be based on speculation. Alternatively, the Defendants argue that they had no notice of any dangerous or defective condition, and that any claimed condition was open and obvious and not inherently dangerous.

The Defendants indicate that the stairway on which the decedent fell was for employees, was "well lit, and there is a handrail" and that no one observed how she fell. It is also argued that the

[1]The firm representing the Plaintiff in the instant case represented one of the parties in the cited case.

stairway was accessed through a door, and the Defendant, Robert DeCristofaro, testified that he had never seen any customers try to open that door. Both Robert DeCristofaro and Rosemarie DeCristofaro stated in affidavits that they were not aware of any prior incidents or injuries occurring in the vicinity where Ms. Acton fell, nor had they received any complaints about any conditions in the vicinity of Ms. Acton's fall.

The Defendants also assert that the doorway and stairway where Ms. Acton fell, including the stairs, handrails and guards, and interior doors, was in compliance with the applicable New York State Codes.

The Defendants also provided the deposition testimony of the decedent's dinner companion, Mary Ellen Boyd, who testified that the day of the accident was the first time that Ms. Acton had been at the 1906 Restaurant. She and Ms. Acton had been to a movie in town, and had a beer at another establishment before coming to dinner at the Defendant restaurant. Ms. Acton had another beer and a glass a wine with her dinner at the 1906 Restaurant. At the end of their dinner, Ms. Acton left the table and Ms. Boyd assumed that she was going to the bathroom. She then described hearing a "big boom" and she ran toward the direction of the sound, and saw Ms. Action lying on floor at the foot of the stairs.

In opposition, the Plaintiff argues that the decedent was in good health at the time of the accident, and that the autopsy report indicated that she died a week after her fall from "fractures of the skull, subdural hematoma, contusions of the brain, survival of one week in coma with cerebral edema and encephalopathy."

The Plaintiff argues that a dangerous condition existed in the vicinity of Ms. Acton's fall, in that the door accessing the stairwell opened inward and extended over the stairs.

The Plaintiffs rely, in part, on an affidavit from a former employee of the 1906 Restaurant Corp., Amanda Rosenberger, who states that the steps were "very old' and "not in the best condition" and that she fell going down the stairs at least two or three times during the course of her employment. Ms. Rosenberger also stated that the staircase was very steep and the area of the staircase was dimly lit. Ms. Rosenberger indicated that the steps were made of wood, and some of them were warped and one of the steps slanted downward. She also recalled that there was no warning sign on the door.

The Plaintiff also relies on the deposition testimony of the Defendant, Rosemarie DeCristofaro, that the tread on the stairs was worn, there was not any no-skid taping on them, and that the door accessing the stairs did not have a locking device on it. Ms. DeCristofaro also testifed that a "No Admittance" sign, shown on some of the photographs in evidence, was only installed on the door several hours after Ms. Acton's accident.

The Defendant, Robert DeCristofaro, testified that he had installed oak flooring on the landing at the top of the stairs, which was placed on top of the existing flooring, raising it by 3/4 of an inch. Mr. DeCristofaro also testified that he installed the handrail along the stairway himself, and he did not recall measuring it to be sure that the height of the handrail was consistent all the way down the stairs. He also confirmed that the stairwell light fixture was located inside the stairwell, behind the door.

The Plaintiff provided an affidavit from its expert witness, Frederick Bremer, AIA, NCARB, who indicated that the cause of the incident was the failure to provide a safe stairway landing, the failure to eliminate unauthorized access to the dangerous stairway landing condition, and the failure to maintain a safe premises as required by the Property Maintenance Code of New York State.

Mr. Bremer indicates that the door at the top of the stairwell opened inward over the edge of the landing at the top of the stairs by 14 ½ inches, and over the edge of the next tread down by four inches. Mr. Bremer asserts that the stairwell does not comply the Life Safety Code of the National Fire Protection Association, because the door swings over the stair.

The Plaintiff argues that, in a death case, a Plaintiff is not be held to as high a degree of proof as one in which the Plaintiff can describe the occurrence.

In reply, the Defendants reiterate their arguments that how Ms. Acton fell is a matter of speculation, and that, during the more than twenty-five years that they ran the restaurant, there was no actual or constructive notice of any allegedly defective condition at the restaurant.

It is argued that the statement of the former employee was subjective, and there is no indication that Ms. Rosenberger, who was a teenager when she worked at the restaurant, has any knowledge as to the requirements for stairs and stairwells. It is further argued that the fact that Ms. Rosenberger "slipped off" a step a "few times' has no probative value, and there is no indication that she ever fell down the stairs. Finally, it is asserted that Ms. Rosenberger never complained about the steps to the Defendants.

The Defendants argue that they had no actual or constructive notice of any defective conditions or prior accidents or incidents in the vicinity of the stairway, and that a certified New York State Building Inspector stated in an affidavit in support of the Defendant's motion that the building was in compliance with New York State Codes, including the Property Maintenance Code, the Plumbing Code, the existing Building Code and the Fire Code. Their expert specifically asserted that the stairs, walking surface, handrails and guards, and the interior door were in compliance with New York State Property Maintenance Code, and that the bathroom door had the proper signage.

It is therefore asserted that the Plaintiff has failed to rebut the Defendants' prima facie showing affirmatively establishing that it maintained the premises in a reasonably safe condition, and that they had no notice of any dangerous or defective condition, and that any condition was open and obvious and not inherently dangerous.

Conclusions of Law- Motion for Summary Judgment

For the Defendants to prevail on their summary judgment motion, their initial burden is to "establish as a matter of law that they maintained the property in question in a reasonably safe condition and that they neither created the allegedly dangerous condition existing thereon nor had actual or constructive notice thereof" (*Mokszki v Pratt*, 13 AD3d 709, 710, 786 N.Y.S.2d 222 [3d Dept. 2004]; see also, *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562, 427 N.Y.S.2d 595 [1980]).

The Defendants attached the deposition testimony of Robert DeCristofaro, who testified that he and his wife, co-Defendant, Rosemarie DeCristofaro, purchased the restaurant building in 1988. He testified that he did not make any changes to the stairs, but he did add a hand rail on the right side of the stairway, which consisted of a 1" by 6" board which was affixed to a piece of wood of an unidentified size, which held the handrail away from the wall. He testified that the stairs were made of wood, and acknowledged that they were worn. He also testified that it was his belief that the stairs were original to the building, which was built in 1906.

He also indicated that he replaced the existing wood floor in the restaurant with an oak floor, which oak floor extended over the existing floor on an existing small landing at the top of the stairs leading to the basement, but he did not otherwise modify the landing.

Mr. DeCristofaro also testified that the stairway was regularly used by the staff to bring up bottled beer and white wine for the bar, and that the employees' coat room and their restroom were also in the basement. He testified that the staff would make as few as one trip downstairs per shift, or as many as twenty trips downstairs on a busy night. Mr. DeCristofaro also indicated that he would personally make two or three trips on the stairs at the beginning of a shift to bring up vegetables and meat from the walk-in cooler in the basement.

Mr. DeCristofaro also testified that the stairway was lit by a light fixture above the landing at the top of the stairs, that he would turn the stairway light each day when he opened the restaurant, and that it would stay the entire time that the restaurant was open. There were also florescent light fixtures in the basement. At the time of the accident, there was no sign on the door, and the door was not equipped with any locking device.

The Court also notes that in the deposition testimony of Ms. Boyd, the decedent's dinner companion, who ran to the stairway when she heard Ms. Acton fall, there was no indication that the stairway was unlit or dimly lit.

Mr. DeCristofaro indicated that, in the twenty-seven years that he operated the restaurant, no customer, other than the Plaintiff had opened that door. In an affidavit submitted in support of the motion, Mr. DeCristofaro indicated that he was never told by any customer, employee or anyone else that they had fallen down the stairs or injured themselves on the stairs, nor had he received any complaints about the stairs or the vicinity in which the accident occurred.

The Defendants also provided an affidavit from a "New York State Certified Building Official, Code Compliance Technician, Licensed Home Inspector, Certified Electrical Inspector, and Certified Back flow Inspector" who stated that, in March of 2014, the building, including that

stairway, interior door, handrail and guardrails, was in compliance with the Property Maintenance Code of New York State, the signage for the bathrooms was in compliance with the Plumbing Code of New York State, and that the building was in compliance with the Fire Code of New York State.

The Court finds that the Defendants have satisfied their initial burden of showing that they maintained the property in a reasonably safe condition, did not create any allegedly dangerous condition and had no notice of such a condition, and that the burden then shifts to the Plaintiff to raise issues of fact requiring a trial (*Timmins v Benjamin*, 77 AD3d 1254, 910 N.Y.S.2d 584 [3d Dept. 2010]; *Ennis-Short v Ostapeck*, 68 AD3d 1399, 890 N.Y.S.2d 215 [3d Dept. 2009]).

In response, the Plaintiffs failed to demonstrate that the Defendants created a dangerous condition or had actual notice of any such dangerous condition. The issue that is presented is whether the Plaintiff has rebutted the Defendants' prima facie showing on the issue of constructive notice of a dangerous condition.

Constructive notice may be established by showing that the condition was apparent, visible and existed for a sufficient time prior to the accident so as to allow defendant to discover and remedy the problem (*Ennis-Short v Ostapeck*, *supra.*, (*Bravo v 564 Seneca Ave. Corp.*, 83 AD3d 633, 634, 922 N.Y.S.2d 88 [2d Dept. 2011]).

In her affirmation in opposition, the Plaintiff's counsel listed a number of provisions of the Property Maintenance Code of New York and the Fire Code of New York, but then fails to argue that the Defendants' building violated any of the listed provisions. The only argument made by the Plaintiff's counsel was that the landing at the top of the stairs was unsafe by virtue of the fact that the entry door extended over the top of the stairs when it was open.

The Plaintiff also provided an expert affidavit from a Registered Architect, licensed to practice in New York State, who opined that the cause of the accident was the failure to provide a safe stairway landing, the failure to eliminate unauthorized access to the dangerous stairway landing condition, and the failure to maintain a safe premises as required by the Property Maintenance Code of New York State.

The expert relied upon an analysis of the Life Safety Code of the National Fire Protection Association[2], which he stated "provides minimum requirements for buildings and properties, and is nationally recognized as a model code that defines the necessary elements of safe design, construction, and maintenance of building elements." Section 7.2.2.3.2 of the Life Safety Code provides that a "door at the top of a stair shall be permitted to open directly to the stair, provided that the door does not swing over the stair." He also cites commentary to that section, which provides that a door which opens directly to a stairway, without a landing, must swing away from the stair, rather than swinging over the stair. The expert states that the door at the 1906 Restaurant swung over the landing by approximately 14 ½ inches, and over the next tread down by approximately 4 inches, thereby resulting in a dangerous condition.

The Plaintiff's expert then refers to a general provision of the Property Maintenance Code of New York State which provides that an owner shall maintain the premises in a "safe condition" and a provision which requires a safe means of egress or exit from the building. The Court notes that

[2]The Court has researched whether the Life Safety Code has been relied upon by experts in reported cases, and finds that it is cited almost exclusively in cases in 1973 and 1974 involving nursing homes, which were apparently required to comply with certain sections of Life Safety Code to obtain certification as a provider of skilled nursing home care under the state medicaid program (see, e.g., *Kruger v Ingraham*, 42 AD2d 983, 348 N.Y.S.2d 177 [2d Dept 1973]). The Court found only one reported case which did not involve nursing home certification, in which the Life Safety Code was relied on by an expert to support a claim of negligence (*Rondin v Victoria's Secret Stores, LLC*, 116 AD3d 555, 984 N.Y.S.2d 329 [1st Dept 2014]).

the Defendants have argued in response to this argument that the subject stairway was located within the building, and was not a means of egress to pedestrians or patrons, with the only means of egress being the front door to the restaurant. Defendant's counsel asserts that the stairwell was clearly meant to be used only by employees.

Finally, the expert identifies a number of "dangerous conditions/defects" at the subject stairway: deteriorated stair treads and bullnoses, improper riser heights and tread depths, excessive variations in riser heights and tread depths, ungraspable hand rail, protruding nailheads, and improper inspection and maintenance. The expert relies upon various scholarly research in stair design and maintenance, and the Life Safety Code Handbook, as the basis for the foregoing conclusions, rather than any provisions of New York State Code.

The Court shall note that the Plaintiff's claim is not dependent upon proving a violation of Code provisions, but may be based upon a common-law negligence claim consisting of the existence of a dangerous condition, of which the Defendants were, or should have been aware, and the failure to remedy or warn of such condition (*Wilson v Proctors Theater & Arts Ctr. & Theater of Schenectady, Inc.*, 223 AD2d 826, 636 N.Y.S.2d 456 [3d Dept. 1996], Carter v State, 119 AD3d 1198, 1201, 990 N.Y.S.2d 333 [3d Dept. 2014]).

It has been held that it is a matter of "[s]imple logic" whether a door swinging over steps may create a "hazardous and unsafe" condition and that the determination should be for the trier of fact under the circumstances of a particular case (*Griffin v Sadauskas*, 14 AD3d 930, 931, 787 N.Y.S.2d 721 [3d Dept. 2005]).

The Court also notes that the door to the basement was not locked, nor was there any indication thereon that access was restricted to employees. In *Wrubel v Rose Boutique II, Inc.*, 13

AD3d 264, 265, 787 N.Y.S.2d 263 [1st Dept. 2004], the Court found that an open stairway, without any warning of their existence, created a triable issue of fact as to whether the stairs were a dangerous trap, hidden from the view of customers.

It is also noted that the Courts have relied on photographs, as well as on testimony, to find that a triable issue of fact has been raised as to whether a Defendant had constructive notice of a dangerous condition (*Timmins v Benjamin, supra.; Ennis-Short v Ostapeck, supra., Bravo v 564 Seneca Ave. Corp.*, 83 AD3d 633, 634, 922 N.Y.S.2d 88 [2d Dept. 2011]).

In the case at bar, the Court finds that the deposition testimony, the supporting deposition, the pictures attached to Plaintiff's papers, including those included in their expert's report, of the stairway, showing the overlap of the door over the landing, the worn treads on the stairs, and the handrail, which consists of the board rather than an actual handrail, together with the information contained in the report of the Plaintiff's expert, are sufficient to rebut the Defendant's prima facie showing on the issue of a dangerous condition. Therefore, the Court finds that a triable issue of fact has been demonstrated with regard to whether a dangerous condition existed at the subject property, and that it existed for a sufficient time prior to the accident so as to allow Defendant to discover and remedy the problem, so as to give the Defendants constructive knowledge of such condition.

Even though there is a finding that there is a triable issue of fact with regard to existence of a dangerous condition, and the Defendants' constructive notice thereof, the Defendants' attorney has also argued that the Defendants are entitled to summary judgment dismissing the Plaintiff's complaint, because the Plaintiff cannot identify how or what caused the decedent to fall.

In the ordinary slip and fall case, a Defendant can establish their prima facie entitlement to judgment as a matter of law by demonstrating that the Plaintiff could not identify the cause of his

fall, because a finding that the Defendant's negligence, if any, proximately caused the plaintiff's injuries would be based on speculation (*Kloepfer v Aslanis*, 106 A.D.3d 956, 966 N.Y.S.2d 151 [2d Dept. 2013]; *Dennis v Lakhani*, 102 AD3d 651, 652, 958 N.Y.S.2d 170 [2d Dept. 2013]). Where, as here, the injured party has died as a result of the injuries suffered in the fall, however, the Court of Appeals has held that the Plaintiff may be held to a lesser standard of proof on the question of the Defendant's negligence (*Noseworthy v City of New York*, 298 NY 76, 80 N.E.2d 744 [1948]), and that the Plaintiff can rely on circumstantial evidence to establish that it was more than likely, or more reasonable, that the injuries were caused by defendant's negligence than by some other cause (*Timmins v Benjamin*, 77 AD3d 1254, 910 N.Y.S.2d 584 [3d Dept. 2010]; *Grob v Kings Realty Assoc., LLC*, 4 AD3d 394, 771 N.Y.S.2d 384 [2d Dept. 2004]).

The Court finds, however, that the *Noseworthy* doctrine does not apply in this case, since the Defendants' knowledge as to the cause of the decedent's accident is no greater than that of the Plaintiff (*Budik v CSX Transp., Inc.*, 88 AD3d 1097, 1097-99, 88 AD3d 1097 [3d Dept. 2011] *Hod v Orchard Fields, LLC*, 111 AD3d 794, 794-95, 975 N.Y.S.2d 162 [2d Dept. 2013]; *Knudsen v Mamaroneck Post No. 90, Dept. of New York--Am. Legion, Inc.*, 94 AD3d 1058, 942 N.Y.S.2d 800 [2d Dept. 2012]; *Lynn v Lynn*, 216 AD2d 194, 194-95, 628 N.Y.S.2d 667 [1st Dept. 1995]).

Therefore, although the Plaintiff need not positively exclude every possible cause of his fall, other than the alleged staircase defects, it must be sufficient to permit a finding of proximate cause based upon logical inferences, not speculation (*Timmins v Benjamin, id.*; *Reed v Piran Realty Corp.*, 30 AD3d 319, 320, 818 N.Y.S.2d 58 [1st Dept. 2006]; *Kane v Estia Greek Rest., Inc.*, 4 AD3d 189, 772 N.Y.S.2d 59 [1st Dept. 2004]).

Accordingly, the Court finds in the instant case, that the Plaintiff's evidence does not raise a triable issue of fact as to whether the decedent's fall was proximately caused by those allegedly unsafe conditions, since it is just as likely that the accident could have been caused by some other factor, such as a misstep or loss of balance, any determination by the trier of fact as to the cause of the accident would be based upon sheer speculation (*Hod v Orchard Fields, LLC, supra.; Kloepfer v Aslanis, supra.*; *Dennis v Lakhani, supra.*; *Knudsen v Mamaroneck Post No. 90, Dept. of New York--Am. Legion, Inc., supra.; Aguilar v Anthony*, 80 AD3d 544, 544-45, 915 N.Y.S.2d 284 [2d Dept. 2011]; *Ghany v Hossain*, 65 AD3d 517, 884 N.Y.S.2d 125 [2d Dept. 2009]; *Grob v Kings Realty Assoc.*, LLC, 4 AD3d 394, 395, 771 N.Y.S.2d 384 [2d Dept. 2004]; *cf., Griffin v Sadauskas, supra.; Detres v New York City Hous. Auth.*, 271 AD2d 309, 311, 706 N.Y.S.2d 105 [1st Dept. 2000]).

CONCLUSIONS

WHEREFORE, based on the foregoing, the Court finds that the Defendant is entitled to summary judgment dismissing the complaint, and it is hereby

ORDERED that the Defendant's motion to preclude the expert testimony, reports, narratives and opinions of Frederick G. Bremer, AIA., NCARB, is denied; and it is further

ORDERED that the Defendant's motion for summary judgment is granted, and the complaint herein is dismissed.

This memorandum shall constitute the Decision and Order of this Court. The original Decision and Order, together with the motion papers have been forwarded to the Clerk's office for

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filing. The filing of this Order does not relieve counsel from the obligation to serve a copy of this order, together with notice of entry, pursuant to CPLR § 5513(a).

ORIGINAL

Dated: January 29, 2016
Monticello, New York

ENTER: _____
HON. MARK M. MEDDAUGH
Acting Supreme Court Justice

Papers Considered:

Motion to Preclude Expert Testimony

1. Notice of Motion, dated July 28, 2015
2. Affirmation of Betsy N. Abraham, Esq., dated July 28, 2015
3. Affirmation in Opposition of Joseph E. O'Connor, Esq., dated August 31, 2015
4. Reply Affirmation of Betsy N. Abraham, Esq., dated September 17, 2015

Notice of Motion for Summary Judgement to Dismiss

5. Notice of Motion dated August 31, 2015
6. Affirmation in Support of Betsy N. Abraham, Esq., dated August 31, 2015
7. Affidavit of Robert L. DeCristofaro, sworn to August 24, 2015
8. Affidaivt of Gary E. Beck, Jr., sworn to August 24, 2015
9. Affirmation in Opposition of Regina Fitzpatrick, Esq., dated October 21, 2015
10. Affidavit of Frederick G. Bremer, AIA, NCARB, sworn to October 22, 2015
11. Supporting Deposition of Amanda Rosenberger, sworn to June 18, 2015
12. Reply Affirmation of Betsy N. Abraham, Esq., sworn to October 27, 2015