

Grandison v Gabbur

2021 NY Slip Op 31588(U)

May 10, 2021

Supreme Court, Kings County

Docket Number: 10138/11

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

[*1]

At an IAS Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 10th day of May 2021.

P R E S E N T:

HON. GENINE D. EDWARDS,
Justice.

-----X

Nyasia Grandison,
Plaintiff,

- against -

Nagaraj Gabbur, M.D.,
Mary Toussaint-Milord, M.D.,
and Kiranmayi Mechineni, M.D.,
a/k/a Dr. Kiranmayi Muddada,
a/k/a Dr. Muddada,
Defendants.

-----X

DECISION AND ORDER

Index No. 10138/11

Mot. Seq. No. 23

Recitation, as required by CPLR 2219 (a), of the papers considered in the review of this motion:

Papers:

NYSCEF #:

Notice of Motion, Affirmations (Affidavits) and Exhibits Annexed _____

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Affirmations in Opposition and Exhibits Annexed _____

5-11, 12-18, 19-28

Reply Affirmation _____

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In this action to recover damages for medical malpractice, plaintiff Nyasia Grandison (plaintiff) moves for an order:¹

(1)-(2) granting plaintiff leave, pursuant to CPLR 3025 and the conditions of the Court's decision and order, dated Sept. 5, 2019 (NYSCEF #20) (the prior order), to

¹ The Court rearranged the sequence and reworded the language (but not the substance), of plaintiff's requests made in her motion.

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amend her Supplemental Bills of Particulars (collectively, the 2015 BOPs) by way of her proposed Amended Bills of Particulars (collectively, the proposed BOPs) as to each of defendants Nagaraj Gabbur, M.D. (Dr. Gabbur), Mary Toussaint-Milord, M.D., (Dr. Toussaint-Milord), and Kiranmayi Mechineni, M.D. (incorrectly sued herein as Kiranmayi Mechineni, M.D., a/k/a Dr. Kiranmayi Muddada, a/k/a Dr. Muddada) (Dr. Mechineni); and, upon granting such leave, declaring that the proposed BOPs² were duly served on each, Drs. Gabbur, Toussaint-Milord, and Mechineni (collectively, defendants);

(3) “striking defendants’ [affirmative defenses] . . . unless [defendants’ responses to plaintiff’s demands for bills of particulars as to affirmative defenses] are amended on or before a date certain”;

(4) “granting a protective order against any further discovery demands by defendants as to plaintiff’s diary”; and

(5) “delineating the time[]frame within which the Note of Issue and Certificate of Readiness should be filed.”

Background

On November 9, 2008, plaintiff, then 20 years of age, underwent an emergency C-section delivery at nonparty SUNY Downstate Hospital (SUNY). Severe blood loss ensued, resulting in plaintiff undergoing a hysterectomy later the same day. At that time, Dr. Mechineni was a third-year resident in the OB/GYN department of the hospital; Dr. Gabbur was the OB/GYN attending surgeon who commenced, but allegedly did not

² As a collective term, the “proposed BOPs” encompass: (1) the Amended Verified Bill of Particulars as to Nagaraj Gabbur, M.D., dated Oct. 30, 2020 (the proposed BOP as to Dr. Gabbur); (2) the Amended Verified Bill of Particulars as to Dr. Toussaint-Milord, dated Oct. 30, 2020 (the proposed BOP as to Dr. Toussaint-Milord); and (3) the Amended Verified Bill of Particulars as to Kiranmayi Mechineni, M.D., dated Nov. 12, 2020 (the proposed BOP as to Dr. Mechineni).

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complete, the C-section; and Dr. Toussaint-Milord was the OB/GYN who followed plaintiff in her private practice since Aug. 20, 2008 and who allegedly completed the C-section after Dr. Gabbur scrubbed out. Plaintiff was discharged from SUNY on Nov. 17, 2008.

On May 4, 2011, plaintiff commenced the instant action against defendants, among others, by filing a verified complaint, dated March 8, 2011 (the complaint), with the Kings County Clerk. The complaint, though pleading five causes of action, advanced essentially three types of claims: medical malpractice, negligence, and lack of informed consent. The time period in question was “prior to and on or about November 9, 2008.” Complaint, ¶¶ 44-45. Each defendant, in answering the complaint, asserted various affirmative defenses.³ Each defendant, with his or her respective answer, served plaintiff with a demand for a verified bill of particulars.

As more fully set forth in the prior order, the Court struck plaintiff’s prior request to amend her 2015 BOPs for failure, among other things, to specify the periods of the alleged malpractice. The Court’s directive was without prejudice to plaintiff’s right to move for leave, pursuant to CPLR 3025, to amend the 2015 BOPs, with a proviso that “[i]n any future motion practice, the merit of the proposed amendments to the [2015] . . . BOPs must be established by expert affirmations. . .” (page 16; footnote omitted). In that regard, the Court noted that “[u]nder the circumstances, the submission of expert affirmations as part of any future request for amending the [2015] BOPs would [, among

³ See Dr. Gabbur’s and Dr. Mechineni’s Verified Answers, each dated July 19, 2011 (each asserting eight affirmative defenses); Dr. Toussaint-Milord’s Verified Answer, dated July 11, 2011 (asserting seven affirmative defenses).

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other things,] serve as an important check on plaintiff's ability to alter and expand her theories of liability throughout the pendency of this action." *Id.* at 16.

On Nov. 14, 2020, plaintiff served the instant motion for leave to amend the 2015 BOPs and for additional relief. The motion is accompanied by: (1) the proposed BOPs (one per defendant); (2) the physician affirmations (also one per defendant) by plaintiff's expert obstetrician/gynecologist Edward Amelemah, M.D. (Dr. Amelemah); and (3) plaintiff's affidavit averring, as relevant herein, that, despite a diligent search at home, she was unable to find her diary.⁴ Each defendant opposed plaintiff's motion.

Discussion

(1)-(2) Leave to Amend The 2015 BOPs

"[T]he scope of a bill of particulars is merely to amplify the pleadings, limit the proof and prevent surprise at the trial." *Medaris v. Vosburgh*, 93 A.D.2d 882, 461 N.Y.S.2d 415 (2d Dept. 1983) (internal quotation marks omitted). "[A] bill of particulars is of limited scope and may not be used to obtain evidentiary material." *Ginsberg v. Ginsberg*, 104 A.D.2d 482, 479 N.Y.S.2d 233 (2d Dept. 1984).

CPLR 3025 (b) provides that leave to amend a pleading, including a bill of particulars, "shall be freely given." "The decision to allow or disallow the amendment is committed to the court's discretion." *Edenwald Contr. Co., Inc. v City of New York*, 60 N.Y.2d 957, 471 N.Y.S.2d 55 (1983). "[L]eave should be given where the amendment is *neither palpably insufficient nor patently devoid of merit*, and the delay in

⁴ Although the notary's commission, as it appeared on the face of plaintiff's affidavit, had expired before he notarized plaintiff's affidavit, the Court took judicial notice, at plaintiff's request, of the official website of the New York State Department of State, Division of Licensing Services, regarding the current status of the notary's commission. See *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 871 N.Y.S.2d 680 (2d Dept. 2009) ("material derived from official government websites may be the subject of judicial notice").

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seeking amendment does not prejudice or surprise the opposing party.” *US Bank, N.A. v. Primiano*, 140 A.D.3d 857, 32 N.Y.S.3d 643 (2d Dept. 2016) (emphasis added). Where this standard is satisfied, “[t]he sufficiency or underlying merit of the proposed amendment is to be examined no further.” *Maldonado v. Newport Gardens, Inc.*, 91 A.D.3d 731, 937 N.Y.S.2d 260 (2d Dept. 2012) (emphasis added). “Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side.” *Blanco Gomez v. Principe*, 186 A.D.3d 466, 126 N.Y.S.3d 393 (2d Dept. 2020) (internal quotation marks omitted). Nevertheless, “[a] plaintiff seeking leave to amend a bill of particulars by asserting a new injury must . . . include a medical affidavit showing a causal connection between the alleged injury and the original injuries sustained.” *Daly-Caffrey v. Licausi*, 70 A.D.3d 884, 895 N.Y.S.2d 197 (2d Dept. 2010) (emphasis added).

With two exceptions set forth below, the proposed BOPs, as supported by Dr. Amelemah’s affirmations, are neither palpably insufficient nor patently devoid of merit. Plaintiff’s approximately one-year delay in seeking leave to amend her 2015 BOPs caused no significant prejudice to defendants. See *Moore v. Franklin Hosp. Med. Ctr.-N. Shore-Long Is. Jewish Health Sys.*, 155 A.D.3d 945, 63 N.Y.S.3d 884 (2d Dept. 2017). The proposed BOPs provide each defendant with adequate notice of plaintiff’s claims and injuries.

The two exceptions to the acceptance of the proposed BOPs in their current form are as follows. First, the alleged malpractice period as to each of Drs. Gabbur and Mechineni “on or about 10/4/08 up to and including 12/13/09,” as set forth in their respective proposed BOPs, is impermissibly overbroad and, based on the record before the Court, must be limited, as to each of those defendants, to the month of November

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2008. On the other hand, the alleged malpractice period as to Dr. Toussaint-Milord (*i.e.*, “from on or about 8/20/08 up to and including 11/20/08”) is sufficiently specific and consistent with the record. *See* Proposed BOP as to Dr. Toussaint-Milord, ¶ 1.

Second, the neurological injuries (and the orthopedic consequences) plaintiff allegedly sustained as a result of (as well as in between) the C-section and the hysterectomy are unsupported either by an affirmation of her expert neurologist⁵ or by the record before the Court.⁶ Therefore, such neurological injuries are stricken from the proposed BOPs as more fully set forth in the decretal paragraphs below.⁷ *See Cherry v. Longo*, 175 A.D.3d 1481, 109 N.Y.S.3d 464 (2d Dept. 2019); *Roman v. Binder*, 100 A.D.2d 541, 473 N.Y.S.2d 236 (2d Dept. 1984).

Accordingly, in keeping with the general policy that pre-Note of Issue “motions for leave to amend bills of particulars are to be liberally granted in the absence of prejudice,” the branch of plaintiff’s motion which is for leave to serve the proposed BOPs

⁵ As an obstetrician/gynecologist, plaintiff’s expert, Dr. Amelemah, did not indicate in his affirmations whether he had any training in the field of neurology. Thus, he was not qualified to opine whether, as plaintiff alleged, she sustained, among other injuries, a “cerebrovascular accident, infarction, [and] brain damage.” *See* Proposed BOPs as to Drs. Gabbur and Mechineni, ¶ 30; Proposed BOP as to Dr. Toussaint-Milord, ¶ 36. *See also Keane v. Dayani*, 178 A.D.3d 797, 114 N.Y.S.3d 93 (2d Dept. 2019).

⁶ Plaintiff’s brain MRI, performed on Aug. 18, 2011 at Doshi Diagnostic Imaging Services, found, as relevant herein: “Multiple foci of T2 hyperintensity and gliosis and encephalomalacia within the bilateral cerebellar hemispheres are nonspecific and may be the sequela[e] of old infarction, demyelinating disease, or other inflammatory etiologies. There is no abnormal contrast enhancement.” (NYSCEF #17, page 2 of 3 [emphasis added]).

Plaintiff’s subsequent brain MRI, performed on June 16, 2016, to assess the status of her previously discovered pituitary adenoma, found it to be stable with no evidence of neurological disease. *See* Medical Records of Alan David, D.O. (NYSCEF #10).

“Gliosis” is an “[o]vergrowth of the astrocytes in an area of damage in the brain”; “astrocyte” is “[o]ne of the large neuroglia cells of nervous tissue”; “encephalomalacia” is an “[a]bnormal softness of the cerebral parenchyma often due to ischemia or infarction”; “demyelinating disease” is a “generic term for a group of diseases, of unknown cause, in which there is extensive loss of the myelin [lipoproteinaceous material] in the central nervous system.” All definitions are from *Stedman’s Medical Dictionary* (online edition).

⁷ On other hand, the Court declines Dr. Mechineni’s request, made without the benefit of an expert affirmation, to strike plaintiff’s allegation that her injuries include “acute tubular necrosis, anuria, kidney failure and bladder collapse.”

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is granted, *with two exceptions* as more fully set forth in the decretal paragraphs below.

See Simino v. St. Mary's Hosp. of Brooklyn, 107 A.D.2d 800, 484 N.Y.S.2d 634 (2d Dept. 1985); *see also Liese v. Hennessey*, 164 A.D.3d 1318, 83 N.Y.S.3d 618 (2d Dept. 2018).⁸

(3) Plaintiff's Demands for Defendants' BOPs as To Their Affirmative Defenses

Pursuant to CPLR 3041, a plaintiff may properly demand a bill of particulars as to affirmative defenses and thereafter move to strike them based upon the defendant's failure to comply with such a demand. As noted, each defendant, in his or her answer, asserted numerous affirmative defenses. Thus, plaintiff was entitled to demand from each defendant a bill of particulars as to his or her affirmative defenses.⁹ Contrary to defendants' contentions, it is not appropriate for them to defer answering plaintiff's demands for BOPs as to their affirmative defenses until after the completion of discovery, inasmuch as they are in possession and control of the information and hospital records necessary to supply the details of their defenses. *See McLean v. Huntington Hosp.*, 227 A.D.2d 533, 642 N.Y.S.2d 951 (2d Dept. 1996). Accordingly, defendants are directed to respond to plaintiff's demands for BOPs as to their affirmative defenses as more fully set forth in the decretal paragraphs below.

⁸ Compare *Green v. New York City Hous. Auth.*, 81 A.D.3d 890, 917 N.Y.S.2d 313 (2d Dept. 2011) ("when leave is sought *on the eve of trial*, judicial discretion should be exercised sparingly"); *Hastie v. Midway Nursing Home*, 8 A.D.3d 532, 779 N.Y.S.2d 223 (2d Dept. 2004) ("it was error to grant plaintiffs leave to serve sixth verified bill of particulars *after note of issue had been filed* – sixth verified bill of particulars, which altered [their] theory of liability"); *Kyong Hi Wohn v. County of Suffolk*, 237 A.D.2d 412, 654 N.Y.S.2d 826 (2d Dept. 1997) ("when leave to amend a bill of particulars is sought *on the eve of trial*, judicial discretion should be exercised in a discreet, circumspect, prudent and cautious manner" (internal quotation marks omitted) (emphasis added in each instance)).

⁹ The County Clerk's minutes include a copy of the "Demands for Particulars of Affirmative Defenses" as to, among others, Drs. Gabbur and Mechineni, dated Jan. 19, 2012. Whether plaintiff served a similar demand as to Dr. Toussaint-Milord is not reflected in the County Clerk's minutes.

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(4) Protective Order Against Discovery of Plaintiff's Diary

On Oct. 31, 2019, plaintiff testified at her deposition that, for “[a] little over about two-and-a-half years” since her prior deposition on June 26, 2014, she kept a diary of her “personal feelings and how [her] kid [*i.e.*, plaintiff’s daughter who was born via the C-section which is the subject matter of this lawsuit], how she comes to [plaintiff] talking about [having a] sibling and [other] stuff [plaintiff] can’t give her [daughter].” Plaintiff’s Oct. 31, 2019 EBT tr at page 83, lines 6-7; page 84, lines 3-5 (NYSCEF #24). It appears that plaintiff provided no response to defendants’ request for her diary (*i.e.*, specifically, those portions addressing the surgeries at issue) until she sought, by way of this motion, a protective order against its discovery. In this regard, plaintiff, as part of her motion, submitted an affidavit regarding the unavailability of her diary.¹⁰ That plaintiff is unable to find her diary at this time does not entitle her to a protective order against its discovery should she come across it in the future.

(5) Deadline for Filing Note of Issue/Certificate of Readiness

Inasmuch as the parties are scheduled to appear at the Note of Issue/Final Conference Part on Aug. 24, 2021, the deadline for filing a note of issue and certificate of readiness can be more properly addressed during that appearance.

Conclusion

Accordingly, it is

ORDERED that in the twenty-third motion sequence, plaintiff’s motion is *granted to the extent that:*

¹⁰ Only paragraph 30 of plaintiff’s affidavit addresses the diary, whereas the remaining paragraphs of her 31-paragraph affidavit summarizing her case against defendants is surplusage. Plaintiff’s deposition testimony stands on its own. Affidavits to vary or contradict it cannot be accepted. *See Blocker v. Filene’s Basement #51-00540*, 126 A.D.3d 744, 5 N.Y.S.3d 265 (2d Dept. 2015); *Bluth v. Bias Yaakov Academy for Girls*, 123 A.D.3d 866, 999 N.Y.S.2d 840 (2d Dept. 2014).

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(a) Paragraph 1 of each of the proposed BOPs as to Dr. Gabbur and Dr. Mechineni is amended, in each instance, to replace the phrase “on or about 10/4/08 up to and including 12/13/09” with “November 2008”;

(b) Paragraph 13.a. of each of the proposed BOPs as to Dr. Gabbur and Dr. Mechineni is amended, in each instance, to read in its entirety as follows (the stricken language is indicated by a strike-out; the additions are indicated by a double-underlining):

ANSWER: Upon information and belief, plaintiff has sustained the following injuries, together with the consequences thereof: chronic vomiting, nausea and abdominal pain; iatrogenic injuries, including tears of the rectus sheath and uterine artery, inversion, laceration, fatigue, rupture and sub-involution; uterine atony, “punctured” right uterine artery, hematuria, hematomas and blood clots; DIC, severe diathesis and thrombosis; exploratory laparotomy hysterectomy, bareness and loss of fertility at 20 years of age; prolonged untreated prenatal and postsurgical anemia and infection in addition to postpartum fever, sepsis and endometritis; acute wound dehiscence, supraumbilical ventral (incisional) hernia, ~~seare~~ scar tissues and adhesions requiring future corrective surgeries; abnormal blood acidity levels, hypovolemia, hemorrhagic shock, fluid and blood transfusions; prolonged unresolved elevated BP of up to 176/74 ~~together with the sequela of increased intracranial pressure~~; postoperative sepsis, fever, pneumonia, edema and generalized bodily swelling; fluid overloads resulting in pulmonary, cerebral and myocardial complications; over four liters of blood loss, DIC, thromboembolism; nonspecific multiple foci of T2 hyperintensity and encephalomalacia within the bilateral cerebellar hemispheres as found on plaintiff’s MRI scan performed at Doshi Diagnostic Imaging Services on 08/18/11; ~~cerebrovascular accident, infarct with encephalomalacia (degeneration of brain tissue and severe resultant impairments of memory (memory loss), motor and other elements of cognition) and gliosis (damage to the central nervous system), empty sella syndrome, irreversible brain damage and the sequela therefrom; impairments of muscular coordination causing leg twisting and fall resulting in a torn meniscus of the right knee, arthroscopic surgery and meniscectomy on 8/28/12 another fall requiring in hospital evaluation on 9/20/19 and continuing; persistent headaches, dizziness, fatigue, blackouts, lethargy, gait instability and related injuries; neoplasm of the pituitary gland, pituitary gland tumor, microadenoma, pituitary dysfunction, disorders of the pituitary and hypothalamus, Sheehan syndrome, decreased estrogen production with premature menopause, osteoporosis and related hormonal disorders; lumps or mass in breast and fluid build-up requiring several hospitalizations for drainages to unblock the~~

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milk ducts and mastitis; ongoing lactation (galactorrhea) together with abnormal breast milk production (hyperprolactinemia), ongoing lactation 12 years after baby delivery (~~galactorrheas~~ galactorrhea) and ~~other related~~ breast diseases; thrombocytopenia, tachypnea, orthostatic hypotension, chronic sphenoidal sinusitis, prerenal azotemia, ischemic renal and congestive heart failures, hepatic failure, ischemic necrosis of organs, tachycardia, acute respiratory distress, alkalosis, metabolic acidosis, electrolyte imbalances, hypokalemia, hyponatremia, hypoxemia, hypoxia, atelectasis and prolonged mechanical intubation; acute tubular necrosis, anuria, kidney failure and bladder collapse; bowel and bladder prolapses; weakening of the pelvic floor and loss of feeling due to nerve damage, occasional urinary and fecal incontinence and chronic constipation; electromechanical disassociation, enlargement of the cardiac silhouette, postpartum cardiomyopathy, pulseless electrical activity; injuries to vessels, arteries, veins, nerves, muscles, soft tissues and ligaments in and around all the ~~affected~~ surgical sites with urinary and fecal incontinence; forgetfulness and memory loss; recurrent headaches; severe emotional distress, personality changes, psychological ~~overlay~~ disturbances manifested by fears, anxieties, restlessness, sleeplessness, insomnia, irritabilities and frequent crying episodes; depression, PTSD, diminishment of interests in friendships and social activities; fear of intimacy, loss of sexual desire, arousal and sensation ~~from the severing of the nerves that interact with the vagina, clitoris, labia and nipples;~~ shortened vagina, vaginal dryness, edematous vulva and cervix; cervical and vaginal pain and inflammation; inability to ~~have and~~ enjoy sexual relations; pain, suffering and loss of enjoyment of life.

All of plaintiff's injuries, along with the consequences thereof, are severe and permanent in nature.

(c) Paragraph 11.a. of the proposed BOP as to Dr. Toussaint-Milord is amended to read in its entirety as follows (the stricken language is indicated by a strike-out; the additions are indicated by a double-underlining):¹¹

ANSWER: Upon information and belief, plaintiff has sustained the following injuries, together with the consequences thereof: uterine atony, "punctured" right uterine artery and hematomas; hysterectomy, bareness and loss of fertility at 20

¹¹ Although ¶ 11.a of the proposed BOP as to Dr. Toussaint-Milord is similar to ¶ 13.a of each of the proposed BOPs as to Dr. Gabbur and Dr. Mechineni, they are not identical, as the former alleges fewer injuries than the latter. Thus, the amendment to ¶ 11.a of the proposed BOP as to Dr. Toussaint-Milord merits its own decretal section.

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years of age; prolonged untreated prenatal and postsurgical anemia and infection; supraumbilical ventral (incisional) hernia and adhesions requiring future corrective surgeries; abnormal blood acidity levels, hypovolemia, hemorrhagic shock, fluid and blood transfusions; prolonged unresolved elevated BP of up to 176/74 ~~together with the sequela of increased intracranial pressure~~; postoperative sepsis, fever, pneumonia, edema and generalized bodily swelling; over four liters of blood loss, DIC, thromboembolism; nonspecific multiple foci of T2 hyperintensity and encephalomalacia within the bilateral cerebellar hemispheres as found on plaintiff's MRI scan performed at Doshi Diagnostic Imaging Services on 08/18/11; ~~cerebrovascular accident, infarct with encephalomalacia (degeneration of brain tissue and severe resultant impairments of memory, motor and other elements of cognition) and gliosis (damage to the central nervous system); irreversible brain damage and the sequela therefrom; impairments of muscular coordination causing leg twisting and fall resulting in a torn meniscus of the right knee, arthroscopic surgery and meniscectomy on 8/28/12 another fall requiring in hospital evaluation on 9/20/19 and continuing; persistent headaches, dizziness, fatigue, blackouts, lethargy, gait instability and related injuries; neoplasm of the pituitary gland, pituitary gland tumor, microadenoma, pituitary dysfunction, disorders of the pituitary and hypothalamus, decreased estrogen production with premature menopause, osteoporosis and related hormonal disorders; lumps or mass in breast and fluid build-up requiring several hospitalizations for drainages to unblock the milk ducts; ongoing lactation (galactorrhea) together with abnormal breast milk production (hyperprolactinemia), ongoing lactation 12 years after baby delivery (galactorrheas galactorrhea) and other related breast diseases; respiratory alkalosis, metabolic acidosis, atelectasis and prolonged mechanical intubation; acute tubular necrosis, anuria, kidney failure and bladder collapse; injuries to vessels, arteries, veins, nerves, muscles, soft tissues and ligaments in and around all the affected surgical sites with urinary and fecal incontinence; forgetfulness and memory loss; recurrent headaches; severe emotional distress, personality changes, psychological overlay disturbances manifested by fears, anxieties, restlessness, sleeplessness, irritabilities and frequent crying episodes; depression, PTSD, diminishment of interests in friendships and social activities; fear of intimacy, loss of sexual desire, arousal and sensation ~~from the severing of the nerves that interact with the vagina, clitoris, labia and nipples~~; cervical and vaginal pain and inflammation; inability to ~~have and enjoy~~ sexual relations; pain, suffering and loss of enjoyment of life.~~

All of plaintiff's injuries, along with the consequences thereof, are severe and permanent in nature.

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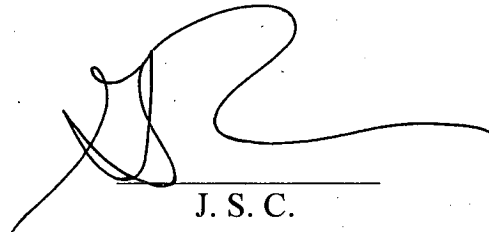
(d) The proposed BOPs, as annexed to plaintiff's motion and *as amended herein*, are deemed served on each defendant;

(e) Defendants shall electronically serve (or, if already served, to amplify) their respective bills of particulars as to their affirmative defenses within thirty (30) days after plaintiff's electronic service of this Decision and Order with notice of entry on defendants' respective counsel; *and the remainder of plaintiff's motion is denied.*

Plaintiff is directed to electronically serve a copy of this Decision and Order with notice of entry on defendants' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision and Order of the Court.

ENTER,

A handwritten signature in black ink, consisting of a stylized 'J' and 'S' followed by a horizontal line and a long, sweeping flourish.

J. S. C.

HON. GENINE D. EDWARDS