

**Kornblau v Sauter**

2025 NY Slip Op 30419(U)

January 23, 2025

Supreme Court, New York County

Docket Number: Index No. 805344/2015

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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LYNN SARE KORNBLAU, as Executrix of the Estate of  
JEFFREY M. KORNBLAU, and LYNN KORNBLAU,  
Individually,

Plaintiff,

- v -

CRAIG SAUTER, M.D., MEMORIAL SLOAN-KETTERING  
CANCER CENTER, MEMORIAL HOSPITAL FOR CANCER  
AND ALLIED DISEASES, FATIMA CONTEH, N.P., ROSINA  
ROSARIO, P.A., JAMES YOUNG, M.D., ANN  
JAKUBOWSKI, M.D., and JENNA GOLDBERG, M.D.,

Defendants.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

In this action to recover damages, inter alia, for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, negligent hiring, breach of contract, negligent infliction of emotional distress, and wrongful death, the defendants move pursuant to CPLR 3212 for summary judgment dismissing the eleventh, twelfth, and thirteenth causes of action asserted by the plaintiff in the amended complaint, which respectively sought to recover for breach of contract against the defendants Craig Sauter, M.D., Memorial Sloan-Kettering Cancer Center (MSKCC), and Memorial Hospital for Cancer and Allied Diseases (MHCAD), and dismissing the seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth causes of action asserted by the plaintiff in the amended complaint, which respectively sought to recover for negligent infliction of emotional

distress upon the plaintiff's decedent against Sauter and the defendants Fatima Conteh, N.P., Rosina Rosario, P.A., James Young M.D., Ann Jakubowski, M.D., Jenna Goldberg, M.D., MSKCC, and MHCAD. The defendants also seek summary judgment dismissing any claim asserted by the plaintiff, Lynn Kornblau, in her individual capacity, to recover for emotional distress, and request that the plaintiff serve and file a second amended complaint excising the causes of action sounding in breach of contract and negligent infliction of emotional distress, and an amended bill of particulars that excises any claim asserted by Kornblau in her individual capacity to recover for emotional distress. The plaintiff opposes the motion, and cross-moves pursuant to CPLR 3025(b) for leave to serve and file a second amended complaint adding a cause of action to recover for intentional infliction of emotional distress, and otherwise to "conform the pleading to the evidence in support of Plaintiff's claims for Breach of Contract, Negligent Infliction of Emotional Distress, Negligence and Lack of Informed Consent." She also cross-moves pursuant to CPLR 3217(b) for leave voluntarily to discontinue the action against Conteh and to amend the caption accordingly. The defendants oppose the cross motion, except as to the branch thereof seeking to discontinue the action against Conteh.

The defendants' motion is granted to the extent that they are awarded summary judgment dismissing the breach of contract causes of action and any claim by Kornblau, in her individual capacity, to recover for emotional distress. That cause of action and claim are dismissed. The motion is otherwise denied. The cross motion is granted only to the extent that the plaintiff may serve and file a second amended complaint conforming that pleading to the evidence in connection with her negligent infliction of emotional distress, negligence, and lack of informed consent causes of action, and may voluntarily discontinue the action as against Conteh. The cross motion is otherwise denied. The caption is amended accordingly.

The crux of the plaintiff's claim is that her decedent, while a cancer patient under the care of the defendants, underwent an allogenic stem-cell transplant that resulted in the onset of graft-versus-host disease and necrotizing fasciitis, and that the defendants failed timely to

diagnose or treat those conditions, resulting in the development and exacerbation thereof, which ultimately led to his death.

It is well settled that the movant on a summary judgment motion “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). The motion must be supported by evidence in admissible form (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (see CPLR 3212). The facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In other words, “[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]). Once the movant meets his or her burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (see *Vega v Restani Constr. Corp.*, 18 NY3d at 503). A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *id.*; *Medina v Fischer Mills Condo Assn.*, 181 AD3d 448, 449 [1st Dept 2020]).

“The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even ‘arguable’” (*De Paris v Women's Natl. Republican Club, Inc.*, 148 AD3d 401, 403-404 [1st Dept 2017]; see *Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). Thus, a moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case. He or she must affirmatively demonstrate the merit of his or her defense (see *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 462 [1st Dept 2016]).

With respect to the cause of action to recover for negligent infliction of emotional distress

“[i]t is well-settled that a person ‘to whom a duty of care is owed . . . may recover for harm sustained solely as a result of an initial, negligently-caused psychological trauma, but with ensuing psychic harm with residual physical manifestations’ (*Johnson v State of New York*, 37 NY2d 378, 381 [1975] [citations omitted]). A breach of the duty of care ‘resulting directly in emotional harm is compensable even though no physical injury occurred’ (*Kennedy v McKesson Co.*, 58 NY2d 500, 504 [1983]) when the mental injury is ‘a direct, rather than a consequential, result of the breach’ (*id.* at 506) and when the claim possesses ‘some guarantee of genuineness’ (*Ferrara v Galluchio*, 5 NY2d 16, 21 [1958])”

(*Ornstein v New York City Health & Hosps. Corp.*, 10 NY3d 1, 6 [2008]). “A cause of action for negligent infliction of emotional distress generally requires [the] plaintiff to show a breach of duty owed to [him or] her which unreasonably endangered [his or] her physical safety, or caused [him or] her to fear for [his or] her own safety” (*A.M.P. v Benjamin*, 201 AD3d 50, 57 [2d Dept 2021] [emphasis added; citations and internal quotation marks omitted]; see *Schultes v Kane*, 50 AD3d 1277, 1278 [3d Dept 2008]). Although a claim to recover for negligent infliction of emotional distress usually cannot be asserted where it is essentially duplicative of other tort causes of action (see *C.T. v Valley Stream Union Free Sch. Dist.*, 201 F Supp 3d 307, 327-328 [ED NY 2016]), the plaintiff’s cause of action sounding in negligent infliction of emotional distress, as asserted on behalf of her decedent, in effect, alleged that the defendants’ breach of the duty that they owed to him caused him to fear that his condition was deteriorating, which in fact occurred (*cf. Padilla v Verczky-Porter*, 66 AD3d 1481, 1483 [4th Dept 2009] [no proof of fear]). Moreover, the emotional distress claimed by the plaintiff on behalf of her decedent was a direct result of the defendants’ alleged failure to diagnose and treat degenerative graft-versus-host disease, leaving the decedent in a painful and deteriorating condition for a significant period of time, during which he allegedly realized that he was not improving (see *Candelario v MJHS Hospice & Palliative Care, Inc.*, 223 AD3d 456, 457 [1st Dept 2024] [affirming denial of defendants’ motion for summary judgment dismissing cause of actions alleging both negligent infliction of emotional distress and medical malpractice where “plaintiff’s claimed emotional

anguish was a direct result of defendants' alleged misdiagnosis of stage IV pancreatic cancer resulting in plaintiff's transfer to hospice, during which he believed that he only had months to live"]; see also *Ferrara v Galluchio*, 5 NY2d 16, 20-21 [1958] [recognizing cause of action to recover for "cancerphobia," a species of negligent infliction of emotional distress, where allegedly negligent radiation treatment led to physical changes that were reasonably interpreted by the patient as increasing his risk of contracting cancer]).

Since the defendants failed to establish, prima facie, that they were entitled to judgment as a matter of law in connection with the cause of action alleging that they negligently inflicted emotional distress upon the decedent while he remained alive, that branch of their motion seeking summary judgment dismissing that cause of action must be denied, regardless of the sufficiency of the plaintiff's opposition papers. In any event, the plaintiff's deposition testimony raised a triable issue of fact as to whether her decedent consciously experienced fear or emotional distress during the latter months of his life as direct result of his deteriorating skin condition and concomitant fasciitis and infections.

Where a person other than an injured party seeks to recover for negligent infliction of emotional distress, New York only recognizes a right of recovery where the claimant is a close family member of the injured party and was within the zone of danger generated by the tortfeasor, so that the claimant himself or herself also could have been injured by the tortfeasor's wrongful conduct. In other words, the claimant must be an at-risk bystander and a witness to the occurrence that caused injury to his or her family member (see *Greene v Esplanade Venture Partnership*, 36 NY3d 513, 525-526 [2021]; *Bovsun v Sanperi*, 61 NY2d 21, 223-224 [1984]). The plaintiff did not allege that she was in any way, shape, or form placed personally at risk by the defendants' alleged failure to diagnose or treat graft-versus-host disease and necrotizing fasciitis in her decedent.

Nor can the plaintiff recover for her own emotional distress as an incident of her wrongful death cause of action pursuant to EPTL 5-4.3(a), or pursuant to a so-called "survival action"

prosecuted under EPTL 11-3.2(b). The latter statute provides that, in addition to a wrongful death cause of action,

“[n]o cause of action for injury to person or property is lost because of the death of the person in whose favor the cause of action existed. For any injury an action may be brought or continued by the personal representative of the decedent,”

thus permitting the representative of the estate to prosecute a survival action to recover for the conscious pain and suffering caused by the defendant and sustained by the decedent while the decedent remained alive. The court notes that, in addition, a surviving spouse may prosecute a derivative cause of action for loss of consortium, albeit one that is limited to the period of time during which the decedent was alive, and suffering from injuries caused by a defendant (*see Liff v Schildkrout*, 49 NY2d 622, 632 [1980]). Conversely, “[i]n a wrongful death action, an award of damages is limited to the fair and just compensation for the pecuniary injuries resulting from the decedent’s death to the persons for whose benefit the action is brought” (*Leger v Chasky*, 55 AD3d 564, 565 [2d Dept 2008], quoting *Plotkin v New York City Health & Hosps. Corp.*, 221 AD2d 425, 426 [2d Dept 1995]; *see* EPTL 5-4.3 [a]).<sup>1</sup>

“There are four elements of compensable loss encompassed by the general term pecuniary loss: (1) decedent’s loss of earnings; (2) loss of services each survivor may have received from decedent; (3) loss of parental guidance from decedent; and (4) the possibility of inheritance from decedent”

(*Huthmacher v Dunlop Tire Corp.*, 309 AD2d 1175, 1176 [4th Dept 2003] [citations omitted]).

Damages for a survivor’s emotional distress are not recoverable in a wrongful death action because such damages are not pecuniary injuries as defined by EPTL 5-4.3 (*see Levin v New York City Health & Hosps. Corp. (Harlem Hosp. Ctr.)*, 119 AD3d 480, 484 [1st Dept 2014]; *see generally Liff v Schildkrout*, 49 NY2d 622 [1980]).

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<sup>1</sup> The court notes that a survival claim for conscious pain and suffering that is prosecuted pursuant to EPTL 11-3.2(b) belongs to the estate, and not to the distributees of the estate, while wrongful death claims to recover pecuniary loss “belong” to the distributees (*Cragg v Allstate Indem. Corp.*, 17 NY3d 118, 121 [2011]; *see Heslin v County of Greene*, 14 NY3d 67, 76-77 [2010]).

Hence, the defendants established their prima facie entitlement to judgment as a matter of law dismissing any claim asserted by the plaintiff, in her personal capacity, to recover for her own emotional distress. Since the plaintiff failed to raise any colorable argument contradicting the defendants in this respect, the defendants must be awarded summary judgment dismissing any such claim that she asserted in her bills of particulars or amended complaint.

The defendants also established their prima facie entitlement to judgment as a matter of law in connection with the plaintiff's breach of contract causes of action.

To establish a cause of action alleging breach of contract, a plaintiff ultimately must demonstrate the "formation of a contract between the parties, performance by the plaintiff, the defendant's failure to perform, and resulting damage" (*Flomenbaum v New York Univ.*, 71 AD3d 80, 91 [1st Dept 2009]). A breach of contract claim in relation to the rendition of medical services will withstand a test of legal sufficiency where a medical defendant "expressed a specific promise to accomplish some definite result" (*B.F. v Reproductive Medicine Assoc. of N.Y., LLP*, 136 AD3d 73, 81 [1st Dept 2015]; see *Leighton v Lowenberg*, 103 AD3d 530, 531 [1st Dept 2013]; *Scalisi v New York Univ. Med. Ctr.*, 24 AD3d 145, 147 [1st Dept 2005]; *Chaff v Parkway Hosp.*, 205 AD2d 571, 613 [2d Dept 1994]; *Nicoleau v Brookhaven Mem. Hosp.*, 201 AD2d 544, 545 [2d Dept 1994]; *Dodes v North Shore Univ. Hosp.*, 149 AD2d 455, 456 [2d Dept 1989]; *Monroe v Long Is. Coll. Hosp.*, 84 AD2d 576, 576-577 [2d Dept 1981]; see also *Robins v Finestone*, 308 NY 543, 546 [1955]; *Catapano v Winthrop Univ. Hosp.*, 19 AD3d 355, 355-356 [2d Dept 2005]). Moreover, a breach of contract cause of action may also be stated where a patient enters into an oral agreement with a physician, pursuant to which the patient agrees to retain the physician's services in exchange for a specific promise that the physician would provide the patient with certain medical services in a particularized fashion, and the physician does not provide the services that were agreed to, or provide them in the manner agreed to (see *Duquette v Oliva*, 75 AD3d 727, 728 [3d Dept 2010]; *Nicoleau v Brookhaven Mem. Hosp.*, 201 AD2d at 545).

In the instant dispute, the plaintiff has not identified any specific promise made by any of the defendants over and above their promise to provide her decedent with good medical care, and to provide the requisite expertise in performing allegedly “state-of-the-art” allogenic stem-cell transplant services and follow-up care. “[A] claim sounds in medical malpractice when the gravamen of the complaint is negligence in furnishing medical treatment” (*Scalisi v New York Univ. Med. Ctr.*, 24 AD3d 145, 146-147 [1st Dept 2005]; see *Weiner v Lenox Hill Hosp.*, 88 NY2d 784 [1996]; *Payette v Rockefeller Univ.*, 220 AD2d 69, 71 [1st Dept 1996]). In this case, the plaintiff’s breach of contract claims clearly alleged negligence, since they asserted that the defendants failed to perform the subject medical procedure---an allogenic stem-cell transplant---in a manner that comported with good and accepted medical practice, and to follow up with the plaintiff’s decedent to assure that no adverse effects had been caused by that procedure. In opposition to the defendants’ prima facie showing that Sauter, MSKCC, and MHCAD did not enter into a specific contract with the decedent, and made no specific promises as to the outcome of the procedure that they performed, the plaintiff failed to raise a triable issue of fact. Hence, that branch of the defendants’ motion seeking summary judgment dismissing the breach of contract causes of action that had been asserted against Sauter, MSKCC, and MHCAD in the amended complaint must be granted.

Although leave to amend a pleading is to be freely given absent prejudice or surprise resulting from the amendment, provided that the evidence submitted in support of the motion indicates that the proposed amendment may have merit (see CPLR 3025[b]; *McCaskey, Davies and Assocs., Inc v New York City Health & Hospitals Corp.*, 59 NY2d 755 [1983]; *360 West 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552 [1st Dept 2011]; *Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d 809 [1st Dept 2008]), the court nonetheless must examine the sufficiency of the proposed amendment to determine whether the proposed amended pleading is “palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; see *Badesch v Fort 710 Assoc., L.P.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2024

NY Slip Op 06650, \*1 [1st Dept, Dec. 31, 2024]; *Ferrer v Go New York Tours Inc.*, 221 AD3d 499, 500 [1st Dept 2023]).

Inasmuch as the court is awarding summary judgment to the defendants dismissing the causes of action alleging breach of contract, that branch of the plaintiff's motion seeking leave to conform her pleadings to the proof in connection with that claim has been rendered academic. The court, however, grants those branches of her cross motion seeking to conform her complaint to the evidence adduced during discovery, insofar as it relates to her causes of action alleging negligent infliction of emotional distress, negligence, and lack of informed consent, since "such a motion may be made at any time and should be liberally granted 'unless doing so results in prejudice to the nonmoving party'" (*Lakshmi Grocery & Gas, Inc. v GRJH, Inc.*, 138 AD3d 1290, 1291 [3d Dept 2016], quoting *Matter of Mogil v Building Essentials, Inc.*, 129 AD3d 1378, 1380 [3d Dept 2015]; see CPLR 3025[c]; *Murray v City of New York*, 43 NY2d 400, 405 [1977]; *Lewis & Clarkson v October Mtn. Broadcasting Co.*, 131 AD2d 15, 17 [3d Dept 1987]), and the defendants have not shown any prejudice or inability to contest the evidence underlying the basis for the amendment (see *Gonfiantini v Zino*, 184 AD2d 368, 369-370 [1st Dept 1992]).

The court, however, denies that branch of the plaintiff's cross motion seeking to add a cause of action to recover for intentional infliction of emotional distress. In order to make out a claim of intentional infliction of emotional distress, a plaintiff must allege (1) that a defendant's conduct was extreme and outrageous, (2) that a defendant intended to cause or disregarded a substantial probability of causing severe emotional stress, (3) a causal connection between the conduct and the injury, and (4) resultant severe emotional distress (see *Chanko v American Broadcasting Cos. Inc.*, 27 NY3d 46, 56 [2016]; *Howell v New York Post Co.*, 81 NY2d 115, 121-122 [1993]; *Troy v City of New York*, 160 AD3d at 411). Here, the plaintiff's primary allegations, in essence, were that the defendants failed to diagnose or appreciate the severity of her decedent's graft-versus-host disease and necrotizing fasciitis, and failed timely to treat it.

This conduct cannot be characterized as extreme or outrageous, and the plaintiff has failed to identify any other conduct by the defendants that satisfies that standard.

The court grants that branch of the plaintiff's cross motion seeking voluntarily to discontinue the action as against the defendant Fatima Conteh, N.P. As the Appellate Division, First Department, has explained,

"CPLR 3217(b) authorizes a court to grant a motion for voluntary discontinuance 'upon terms and conditions, as the court deems proper.' While the determination upon such an application is generally within the sound discretion of the court (see *Tucker v Tucker*, 55 NY2d 378, 383 [1982]), a party ordinarily cannot be compelled to litigate and, absent special circumstances, such as prejudice to adverse parties, a discontinuance should be granted"

(*Bank of Am., N.A. v. Douglas*, 110 AD3d 452, 452 [1st Dept 2013]; see *Burnham Serv. Corp. v National Council on Compensation Ins.*, 288 AD2d 31 [1st Dept 2001]). No party expressly has opposed the plaintiff's request to discontinue the action against Conteh, and none has demonstrated the existence of special circumstances here (see *Bank of Am., N.A. v. Douglas*, 110 AD3d at 452). Nor has there been any showing that the plaintiff sought the discontinuance against Conteh solely to avoid an adverse determination in this action (see *id.*). Hence, that branch of the plaintiff's cross motion seeking leave to discontinue the action against Conteh is granted, and the plaintiff is given permission to discontinue the action against Conteh.

Inasmuch as the breach of contract cause of action and the plaintiff's personal claim to recover for emotional distress are being dismissed, they are deemed stricken from any pleading or bill of particulars in which they appear. There is no requirement that the plaintiff serve and file a second amended complaint or an amended bill of particulars that physically omits the breach of contract cause of action or her claim to recover for emotional distress in her personal capacity. Rather, those allegations, as set forth in the plaintiff's proposed second amended complaint, which was uploaded to the New York State Court Electronic Filing system as docket entry number 275, and in her bill of particulars, are simply deemed to be nullities, and may be redacted if they are admitted into evidence before a jury.

Accordingly, it is,

ORDERED that the defendants' motion is granted to the extent that they are awarded summary judgment dismissing the eleventh, twelfth, and thirteenth causes of action asserted in the amended complaint, which sought to recover for breach of contract against the defendants Craig Sauter, M.D., Memorial Sloan-Kettering Cancer Center, and Memorial Hospital for Cancer and Allied Diseases, respectively, and any claim asserted by the plaintiff, Lynn Kornblau, to recover for emotional distress in her personal capacity, those causes of action and that claim are dismissed, and the defendants' motion is otherwise denied; and it is further,

ORDERED that the plaintiff's cross motion is granted to the extent that she may:

(a) serve and file a second amended complaint, in the form uploaded to the New York State Court Electronic Filing system as docket entry 275, conforming her pleadings to the evidence adduced during the discovery phase of this action, whether obtained by virtue of that discovery or not, but solely with respect to her causes of action alleging negligent infliction of emotional distress, negligence, and lack of informed consent, and

(b) voluntarily discontinue the action against the defendant Fatima Conteh, N.P.,

the cross motion is otherwise denied, the action is deemed to be discontinued against the defendant Fatima Conteh, N.P., and the proposed second amended complaint that the plaintiff uploaded to the New York State Court Electronic Filing system as docket entry 275 shall be deemed to have been served and filed upon the defendants when the plaintiff serves a copy of this order with notice of entry upon the defendants, provided that the breach of contract causes of action asserted therein are deemed to have been stricken; and it is further,

ORDERED that the caption of the action is amended to read as follows:

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LYNN SARE KORNBLAU, as Executrix of the Estate of JEFFREY M. KORNBLAU, and LYNN KORNBLAU, Individually,

Plaintiff,

v

CRAIG SAUTER, M.D., MEMORIAL SLOAN-KETTERING CANCER

CENTER, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, ROSINA ROSARIO, P.A., JAMES YOUNG, M.D., ANN JAKUBOWSKI, M.D., and JENNA GOLDBERG, M.D.,

Defendants.

-----X;


and it is further,

ORDERED that, within 15 days of the entry of this decision and order, the plaintiff shall serve a copy of this decision and order upon both the County Clerk and the Clerk of the General Clerk’s Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the “E-Filing” page on the court’s website at <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/Efil-protocol.pdf> ([nycourts.gov](https://www.nycourts.gov)), and, to comply with those procedures, the plaintiff shall (1) upload the decision and order to the NYSCEF system under document title “SERVICE ON SUPREME COURT CLERK (GENL CLERK) W/COPY OF ORDER” **AND** (2) separately file and upload the notice required by CPLR 8019(c) in a completed Form EF-22, along with a copy of the decision and order, under document title “NOTICE TO COUNTY CLERK CPLR 8019(C),” and the County Clerk and all appropriate court support offices shall thereupon amend the court records accordingly; and it is further,

ORDERED that that, on the court’s own motion, the attorneys for all of the remaining parties shall appear for an initial pretrial settlement conference before the court, in Room 204 at 71 Thomas Street, New York, New York 10013, on February 25, 2025, at 11:00 a.m., at which time they shall be prepared to discuss resolution of the action and the scheduling of a firm date for the commencement of jury selection.

This constitutes the Decision and Order of the court.

1/23/2025  
DATE

  
JOHN J. KELLEY, J.S.C.

MOTION:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
CROSS MOTION:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE