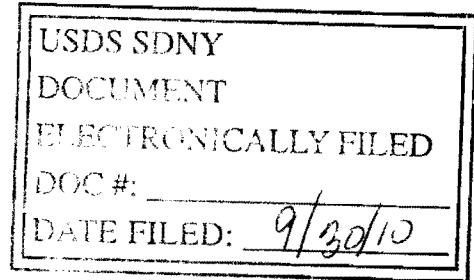


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL TOLIVER,  
Plaintiff,

10 Civ. 5355 (JGK)

- AGAINST -

**MEMORANDUM OPINION AND  
ORDER**

P.H.S. CORP. AND MENTAL HEALTH-  
KEPPLINPHILLPS, ET AL.,  
Defendants.

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**JOHN G. KOELTL, District Judge:**

The plaintiff's application for appointment of counsel filed September 16, 2010 is **denied** at this time without prejudice to renewal.

For the Court to order the appointment of counsel, the plaintiff must, as a threshold matter, demonstrate that his claim has substance or a likelihood of success on the merits. See Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986).

Only then can the Court consider the other factors appropriate to determination of whether counsel should be appointed:

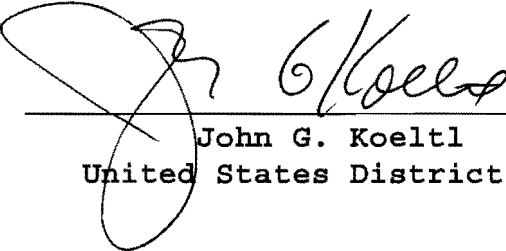
"plaintiff's ability to obtain representation independently, and his ability to handle the case without assistance in the light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity." Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172 (2d Cir. 1989).

At this point in the proceedings, the Court denies the plaintiff's application for appointment of counsel without prejudice to renewal because the Court cannot determine based on the record that the plaintiff's claims are substantial or that he is likely to succeed on the merits.

The plaintiff should work with the Pro Se Office of the Court for any additional help that he needs and should also seek to obtain private counsel. The Pro Se Office may be contacted at: Pro Se Office, United States District Court, S.D.N.Y., 500 Pearl St, New York, N.Y. 10007, 212-805-0175.

**SO ORDERED.**

**Dated:** New York, New York  
September 29, 2010



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John G. Koeltl  
United States District Judge