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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN PART 21
Justice

Index Number : 104716/2011
DION, MICHAEL
vs.
METROPOLITAN
SEQUENCE NUMBER : 002
AMEND SUPPLEMENT PLEADINGS

INDEX NO. 104716/11
MOTION DATE 12/15/11
MOTION SEQ. NO. 002

The following papers, numbered 1 to 8 were read on this motion and cross motion to compel

Notice of Motion— Affirmation — Exhibits A-G	No(s). 1-2
Notice of Cross Motion—Affirmation of Good Faith — Affirmation— Exhibits A-E	No(s). 3-5
Affidavit in Opposition — Exhibits A-C	No(s). 6
Reply Affirmation — Exhibits A-B; Supplemental Affirmation	No(s). 7; 8

Upon the foregoing papers, it is ordered that this motion and cross motion are decided in accordance with the annexed memorandum decision and order.

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

Dated: 3/30/12
New York, New York

_____, J.S.C.

1. Check one: .....
2. Check if appropriate:..... MOTION IS:
3. Check if appropriate:.....

☐ CASE DISPOSED ■ NON-FINAL DISPOSITION
☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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MICHAEL DION,

Plaintiff,

Index No. 104716/2011

- against -

THE METROPOLITAN TRANSPORTATION AUTHORITY, THE NEW YORK CITY TRANSIT AUTHORITY, AND MANNING AND LEWIS EQUIPMENT, LLC, AND JAYGO, INC.,

Decision and Order

Defendants.

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HON. MICHAEL D. STALLMAN, J.:

In this action, plaintiff alleges that, on December 10, 2010, he fell into a 14-inch gap between the edge of the platform and the "third car" of a downtown express train on the southbound platform of the 14th Street-Union Square Station. Plaintiff claims that as he attempted to boost himself up to the platform, a "gap filler" allegedly activated and rammed him in the abdominal area, trapping him for a period of approximately 30 minutes, causing massive internal injuries and multiple fractures.

According to plaintiff's counsel, an independent contractor who was at the station was able to bleed the valves which controlled the gap filler mechanism to allow plaintiff to be removed. (Dankner Affirm. ¶ 3.) According to defendants' counsel, Jerry Settler, an employee of "Fresh Meadows,"[1] released the moving platform. (Henderson Affirm. ¶ 14.)

Plaintiff alleged in the bill of particulars that he suffered, among other injuries, a comminuted fracture of the left acetabulum, fracture of the inferior left ramus, a fractured rib, fracture and joint

[1] Plaintiff's counsel states that Settler is an employee of Fresh Meadow Electrical Contracts, LLC. (Dankner Suppl. Affirm. ¶ 6.)

diastasis of L3 and L5, perforations and lacerations to numerous internal organs, including splenic and bowel lacerations, pulmonary emboli, post traumatic stress disorder, and emotional and psychological distress. (Dankner Opp. Affirm., Ex C. [Verified Bill of Particulars] ¶ 10.)

Plaintiff asserts two theories of negligence:

> (1) the failure to have any barriers, railings, barricades, or similar devices or systems to prevent subway patrons from falling off the platform or into the unusually large gap that exists at this particular station and especially where the plaintiff fell;
>
> (2) the gap filler mechanism lacked any sensing or safety mechanism to prevent activation and full extension in the event an object was located between the gap filler and a car of the train, lacked any buffer or malleable edge to cushion any impact with a person's body; the gap filler did not retract upon impact; there was no way to stop or retract the gap filler; there was no emergency stop button, lever, or other device that one could activate to retract the gap filler.

(Verified Bill of Particulars ¶ 6.)

During discovery, defendants' counsel provided a contract between the New York City Transit Authority and S.N. Tannor, Inc., for retrofitting two gap fillers and furnishing and installing five new gap fillers for the 14th Street-Union Square Station on the Lexington Avenue Line (IRT Division). (Dankner Affirm., Ex A.) Plaintiff's counsel claims that, based on the contract, S.N. Tannor, Inc. hired defendants Manning & Lewis Equipment, LLC and Jaygo, Inc. as subcontractors on the project.

Plaintiff now moves to amend the complaint to add S.N. Tannor, Inc. as a defendant, and to compel defendants to respond to items 9, 10, 14,15, 16, 17, and 18 of plaintiff's notice for discovery and inspection dated June 14, 2011. Defendants cross-move to compel plaintiff to provide discovery as well.

DISCUSSION

I. Plaintiff's Motion

A. Discovery

The Court agrees that items 9, 10, and 14 of plaintiff's notice for discovery and inspection are irrelevant. Here, plaintiff seeks:

> "9. All memoranda concerning the decision to install stanchion and chain barriers at the South Ferry station on the #1 and #9 lines.
>
> 10. All memoranda concerning any consideration to extend and make the Union Square/14th Street Station so that the platform would be on tangent opposed to curved track.
>
> * * *
>
> 14. Time records for the week, inclusive of 12/10/10, for the employee referred to in paragraph 13."[2]

(Dankner Affirm., Ex C.)

Item 9 is irrelevant because the accident occurred at the 14th Street-Union Square subway station, not at the South Ferry station. As defendants' counsel indicates, a decision as to whether the platform at the Union Square subway station should be extended bears on the design of the station itself, and not to an alleged design defect of the gap filler. Plaintiff's counsel only speculates that Clarance Smith did not conduct an inspection of the gap filler on the date of plaintiff's alleged accident, because the source of his belief appears to be news reports that New York City Transit Authority safety workers falsified records of their inspection of subway track signals. (Dankner Reply Affirm., Ex A.) Smith's inspection of the gap-filler mechanism at issue is not a routine signal inspection.

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[2] According to plaintiff's counsel, the name of the employee demanded in paragraph 13 was "Clarence W. Smith, pass number 832071." (Dankner Affirm. ¶ 14.)

Items 15, 16, and 17 of plaintiff's notice for discovery and inspection are overly broad. The Court exercises its discretion to narrow the discovery demands to a more reasonable period of time, and directs defendants to produce the following within 90 days:

> Any memorandum written between December 10, 2005 and December 10, 2010 discussing considered or proposed changes to the gap filler mechanism at the 14th St-Union Sq station, inclusive of sensor systems, emergency switches, activation, extension or retraction devices and material changes to any part of the gap filler itself;
>
> The names and addresses of all persons known to defendant New York City Transit Authority who allegedly sustained injury at the 14th Street-Union Square subway station where: (1) the injury allegedly resulted from a fall into a gap between the southbound express platform and train, at the place where the third car stops, and (2) the fall allegedly occurred between December 10, 2005 and December 10, 2010; and any records during that period concerning malfunction or alleged injury caused by the subject platform extender/gap filler.

Item 18 of plaintiff's notice for discovery and inspection is overly broad, irrelevant, and unduly burdensome. Here, plaintiff seeks the full caption of any lawsuit relating to injuries allegedly sustained as a result of falling into a gap at the 14th Street-Union Square subway station, and the name of each plaintiff's counsel. However, plaintiff allegedly fell in the gap between the southbound express train platform and the platform extender of the "third car." Injuries from falls into gaps on the northbound platform, where there are no platform extenders, are not relevant to this lawsuit. Injuries from falls into gaps between the southbound platform and the train that are not bridged by a platform extender are also irrelevant. Moreover, lawsuits are a matter of public record. Plaintiff's counsel can readily access, for example, the Unified Court System's free online case information services (i.e., WebCivil Local and WebCivil Supreme at http://iapps.courts.state.ny.us/webcivil/ecourtsMain) or access computer terminals at the County Clerk to search for lawsuits by name, with the information of persons which defendants has been directed to provide to plaintiff,

as discussed above.

The Court directs both sides to exchange the following, within 90 days:

> Any MTA or NYCTA memoranda during the period of December 2005 through December 2010, concerning any meeting with Richard Muller about a gap filler system which he patented, and any correspondence between MTA or NYCTA and Muller during the period of December 2005 through December 2010 concerning his presentations and meetings, but only those memoranda and correspondence which pertain to the 14th Street-Union Square subway station.

According to plaintiff's counsel, Muller patented a gap filler device "which would have prevented it [plaintiff's accident] from occurring. Mr. Muller met with upper echelon officers of both the MTA and TA on various occasions at which time they showed a significant interest in utilizing his invention to prevent 'gap injuries.'" (Dankner Affirm. ¶ 16.)

Copies of correspondence between Muller and the MTA or NYCTA regarding his presentations and meetings are within the custody, possession, and control of both sides. Plaintiff has retained Richard Muller as an expert in this case. (Dankner Affirm. ¶ 16.) Thus, both sides are directed to search for such memoranda and correspondence, but only such memoranda and correspondence that pertain to the 14th Street-Union Square subway station. Plaintiff's counsel did not state on this motion when Muller purportedly met with the MTA or NYCTA. Because the demand is not limited in its scope as to time, the Court has narrowed the time period of the search to the five years preceding plaintiff's alleged accident.

Finally, plaintiff seeks an order directing defendants to supplement their response to plaintiff's demand for the name and addresses of any person whom defendants claimed observed plaintiff "staggering on the platform" or "drinking from a can of Budweiser beer," contained in plaintiff's combined demand dated June 6, 2011. (Dankner Affirm., Ex F.) Defendants' response

was "none at this time." (*Id.*, Ex G.) The Court agrees with plaintiff that defendants must supplement this response within 60 days after the completion of defendants' depositions.

As plaintiff points out, defendants did not respond to plaintiff's demand for "all videotapes of the subject station taken by cameras or retrieved from monitors on the platform taken at any time which shows the plaintiff, or any surveillance tapes of the plaintiff, Michael Dion." Therefore, within 90 days, defendants are directed to search for and disclose any such video footage taken on the date of the accident. If none is found, or if no video footage was taken or currently exists, defendants shall provide an affidavit by a person having knowledge of the search and the circumstances of the use of any camera/video device, and the disposition of videos.

B. Leave to amend

Leave to amend to add S.N. Tannor, Inc. as a defendant is granted without opposition.

II. Defendants' Motion to Compel

According to defendants, "Plaintiff has refused to comply with virtually each and every discovery request including the NYCTA's First Combined Demands dated June 2, 2011. . . , the NYCTA's Second Demand for Discovery and Inspection ("D&I No. 2") dated June 29, 2011 . . . ; and the NYCTA's Third Request for D&I (D&I No. 3) dated October 11, 2011 . . ." (Henderson Affirm. ¶ 8.) Plaintiff asserts that "(a) all valid discovery requests have been answered and responses served (b) those requests appropriately objected to . . . and not responded to are improper, irrelevant, blunderbuss, and border on (if not constitute) sheer harassment." (Dankner Opp. Affirm. ¶ 3.)

Having reviewed defendants' discovery demands and plaintiff's responses, some general

observations are worth noting. Plaintiff did not comply with some demands because plaintiff objected to the demand, and so the Court must rule on the validity of these objections in deciding defendants' cross motion. For other demands, defendants are simply dissatisfied with the amount of discovery that plaintiff provided. For example, defendants' counsel seeks to compel plaintiff to provide photographs because plaintiff provided two diskettes, one of which contained "a few photos." (Henderson Affirm. ¶ 7.) Where plaintiff provided the discovery sought, an order to compel does not lie. Defendants' unsubstantiated belief that plaintiff may be holding back responsive documents or other things is not a basis for compelling plaintiff to provide that which he has already provided.

Finally, D&I No. 2 makes demands as to documents and things "which you [plaintiff] may come into possession prior to trial." For the purpose of this cross motion, the issue is whether the documents or things sought were in plaintiff's custody, possession, or control at the time that the demand was made. (*See Samello v Intershoe Inc.*, 78 AD2d 796 [1st Dept 1980]["It is obvious that defendant cannot produce that which it does not possess and over which it has no control."].) As for documents and things demanded which might come into plaintiff's possession prior to trial, the Court need only reiterate that CPLR 3101 (h) governs a party's continuing duty to supplement a prior discovery response. (*See e.g. Frenk v Frederick*, 38 AD3d 593 [2d Dept 2007].)

A. Defendants' First Combined Demands dated June 2, 2011

Defendants' combined demands dated June 2, 2011 appear to be boilerplate demands, some of which do not appear relevant to the issues of this action. For example, on this motion defendants seek plaintiff's school records and motor vehicle records, including plaintiff's license and

registration, and any reports of motor vehicle accidents, but defendants do not explain how these records would be relevant to the issues of this action.

Defendants' request for an order compelling plaintiff to provide photographs in plaintiff's possession is denied as academic. Prior to the preliminary conference, plaintiff objected to the demand and stated that photographs would be "simultaneously exchanged pursuant to the terms of the preliminary conference order." (Henderson Affirm., Ex C.) However, defendants' counsel states that plaintiff provided two diskettes containing photographs to defendants' counsel. (Henderson Affirm. ¶ 7.) Defendants' counsel has not explained how plaintiff's production of photographs constitutes a failure to comply with their demand. Plaintiff also responded to defendants' demand for tax records by apparently producing copies of plaintiff's "W-2s for years, 2007 through 2010, the only ones currently available." (Dankner Opp. Affirm., Ex B.)

Defendants' request for an authorization for pharmacy records relating to plaintiff's injuries claimed in this action is granted. Pharmacy records are not subject to the physician-patient privilege (*Neferis v DeStefano*, 265 AD2d 464, 466 [2d Dept 1999] [citing CPLR 4504 (a)].) Authorizations for pharmacy records do not appear in the list of medical authorizations that plaintiff's counsel provided to defendants. (Dankner Suppl. Affirm., Ex A.)

Defendants' request for a copy of plaintiff's Metrocard is denied. Defendants have not shown that a copy of plaintiff's Metrocard will provide defendants with any information that would be relevant to, or reasonably likely to lead to admissible evidence as to the issues of the action. As to an examination of plaintiff's actual Metrocard, this was discussed at the December 8, 2011 court conference without resolution. The matter of inspection and examination of plaintiff's Metrocard will be addressed again at the next compliance conference.

B. Defendants' Second Request for Discovery and Inspection ("D&I No. 2") dated June 29, 2011

D&I No.2 requested nine different categories of items. (Henderson Affirm., Ex B.) Plaintiff objected to items 1, 2, 3, 4, 6, and 9. (*Id.*, Ex C.)[3]

Item 1 demands the "Names and addresses of all witnesses and statements taken by your investigator or written out by the witness him/herself now in your possession or which you may come into possession prior to trial." Plaintiff objected on the grounds of privilege, i.e., attorney work product and material prepared for litigation. Plaintiff further responded, "The defendant possesses the names of witnesses and has presumably conducted its own interviews."

Both sides are entitled to discovery as to the names and addresses of all witnesses to plaintiff's alleged accident. Plaintiff has not shown that defendants are already in possession of this information. Before plaintiff responded to defendants' demand for the names and addresses and witnesses, defendants had already respond to plaintiff's demand for the same information, and stated, "None at this time." (Dankner Affirm., Ex G.) Therefore, plaintiff is directed to provide defendants with the names and addresses of any witness to plaintiff's alleged accident known to plaintiff or to plaintiff's counsel.

As to witness statements, "[w]itness statements taken by a party's counsel are subject to the qualified privilege for materials prepared in anticipation of litigation or for trial." (*Valencia v Obayashi Corp.*, 84 AD3d 786, 787 [2d Dept 2011]; *Rojas v New York City Tr. Auth.*, 276 AD2d 684 [2d Dept 2000] ["The written statement of an eyewitness to an accident is 'truly material prepared for litigation' . . . and is 'qualifiedly exempt from disclosure'"].) Therefore, defendants are

[3] Item 2 demanded photographs, which was requested in defendants' combined demands.

not entitled to copies of any witness statements that plaintiff's counsel obtained. However, the qualified privilege does not shield plaintiff from divulging the existence of any witness statements taken by or on behalf of plaintiff's counsel, because defendants may overcome this qualified privilege by demonstrating substantial need of the materials, and undue hardship. (CPLR 3101 [d] [2].) Therefore, plaintiff must disclose the names of any person who made a statement, either orally or in writing to plaintiff's counsel or to someone acting on counsel's behalf.

Item 3 demanded "Any copies of 'You Tube' videos of the accident, or any other videos in your possession of the accident or which may come into possession prior to trial." Contrary to the argument of plaintiff's counsel, a notice for discovery and inspection is not limited only to document discovery. Item 6 of D&I No. 2 demanded any video footage of the accident taken by non-parties (such as television news teams).[4] Defendants are entitled to discovery of any videos of the accident, which includes YouTube.com videos or video footage taken by non-parties (such as television news teams), now in plaintiff's possession, custody, or control, because such videos would involve plaintiff. (CPLR 3101 [i].) If no such videos are in plaintiff's custody, possession, or control, then plaintiff shall so state.

Item 4 demanded "Any reports, memorandums, notes, statements of any person at the accident scene or which you may come into possession prior to trial." Plaintiff objected to this demand, stating, "The defendant is already in possession of this material, one of which was voluntarily produced at the plaintiff's 50-H hearing. Moreover, such documents are a matter of public record and can be obtained by the defendant."

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[4] According to plaintiff's counsel, Fox News or Channel 2 news covered the incident. (Dankner Suppl. Aff., Ex B.)

Although a party is not required to disclose that which is already in the demanding party's possession, plaintiff bears the burden of demonstrating that the particular document is already in the demanding party's possession. Thus, plaintiff may not assert a blanket objection. Neither has plaintiff established that all such materials are a "matter of public record." Plaintiff incorrectly assumes that any reports, memorandums, and notes of any person at the scene would be made by a government agency. Therefore, plaintiff is directed to produce copies of any reports, memorandums, or notes obtained from any person at the accident scene on the date of plaintiff's accident, i.e., December 10, 2010, excluding any forms prepared by an employee of defendants or the City of New York which would be available to defendants.

To the extent that defendants seek statements of persons at the scene made to counsel, this demand overlaps with item 1 of D&I No. 2, for which an objection of privilege was partially sustained.

Defendants point out that item 7 their demand for authorizations for medical records specifically included a demand for *Arons* authorizations to speak with treating physicians. Although plaintiff claims that authorizations for the release of medical records were provided, plaintiff has not shown that *Arons* authorizations were provided. Therefore, plaintiff is directed to provide defendants with *Arons* authorizations for each provider for whom plaintiff provided an authorization for the release of medical records.

Plaintiff complied with item 8 of D&I No. 2, which demanded "Copies of all contracts presently in your possession as to the design or manufacture of the 14th Street-Union Square moving platform southbound express track executed in the last 10 years." Plaintiff responded, "plaintiff's counsel is not in possession of such contracts, but has requested them from the co-defendants who

have yet to produce them in response to a notice for discovery and inspection." (Henderson Affirm., Ex C.)

Item 9 of D&I No. 2 demanded "statements in your possession from any employee of Fresh Meadows or Jerry Settler, or any documents, reports, memorandums, correspondence as to Fresh Meadows' contractual arrangements with either the NYCTA or a general contractor, or Manning & Lewis, or Jaygo Inc." Plaintiff objected to this demand as "Attorney work product and material prepared for litigation." (Dankner Affirm., Ex A.)

"The burden of establishing that the documents sought are covered by a certain privilege rests on the party asserting the privilege." (*Anonymous v High School for Envtl. Studies*, 32 AD3d 353, 359 [1st Dept 2006].) Here, plaintiff's counsel does not explain how statements from Fresh Meadow Electrical Contracts, LLC or Jerry Settler are "materials which are uniquely the product of a lawyer's learning and professional skills, such as materials which reflect his legal research, analysis, conclusions, legal theory or strategy." (*Hoffman v Ro-San Manor*, 73 AD2d 207, 211 [1st Dept 1980].)

However, as discussed above, Jerry Settler apparently released the gap-filler mechanism so that plaintiff could be removed from the gap between the platform and the train car, which means that Settler is a fact witness. Therefore, any oral or written statements that plaintiff's counsel obtained from this witness about the accident are privileged as material prepared in anticipation of litigation.

Defendants' request for "any documents, reports, memorandums, correspondence as to Fresh Meadows' contractual arrangements with either the NYCTA or a general contractor, or Manning & Lewis, or Jaygo Inc." is denied. Defendants have not explained how these documents are relevant

or reasonably calculated to lead to admissible evidence as to the issues of this action. Nothing in the record implies that Fresh Meadow Electrical Contracts, LLC has a contract with Manning & Lewis Equipment, LLC or with Jaygo, Inc.

C. Third Request for D&I (D&I No. 3) dated October 11, 2011

Plaintiff responded to this request. (*See* Dankner Opp. Affirm., Ex B.) For example, defendants demanded authorizations for any alcohol or drug treatment facility that plaintiff may have visited in the ten years prior to his alleged accident, and for authorizations for any mental health professional who treated plaintiff during the ten years prior to his alleged accident. Plaintiff's response was, "No such treatment; therefore not applicable." Plaintiff affirmatively responded that no such treatment for alcohol, drug treatment, and mental health treatment was sought in the last ten years prior to the alleged accident. Therefore, plaintiff may not be compelled to provide authorizations for non-existent treatment.

Plaintiff objected to providing authorizations for the general physician or internist whom plaintiff saw for the ten years prior to his alleged accident, on the ground that no exacerbation or aggravation of any prior condition is being claimed in this litigation.

Plaintiff's objection is partially sustained. Plaintiff placed into controversy the condition of his pelvis, the lumbar vertebrae L3 and L5, his spleen, his bowel, and his lungs, which were allegedly injured as a result of the accident. (Verified Bill of Particulars ¶ 10.) Defendants are entitled to discovery to determine the extent, if any, that plaintiff's claimed injuries are attributable to causes or circumstances other than the alleged accident. (*McGlone v Port Auth. of NY & NJ*, 90 AD3d 479, 480 [1st Dept 2011]; *Rega v Avon Prods., Inc.*, 49 AD3d 329 [1st Dept 2008].) In the Court's view, five years prior to the date of plaintiff's alleged accident is a reasonable period for the scope of this

discovery. (*See Roca v Perel*, 51 AD3d 757, 761 [2d Dept 2008] [five years prior to the date that the plaintiff started treatment with the defendants was a reasonable period of time]; *DeStrange v Lind*, 277 A.D.2d 344 [2d Dept 2000] [court properly limited the defendants' access to the plaintiff's past medical records to the five-year period before the alleged acts of medical malpractice in controversy].)

According to plaintiff's counsel, plaintiff's primary care physician is Dr. Susan Brundage. (Dankner Suppl. Aff. ¶ 4.) Therefore, plaintiff is directed to provide an authorization for Dr. Brundage for the release of records in the last 5 years prior to December 10, 2010 relating to complaints concerning plaintiff's pelvis, his lumbar region, his spleen, his bowel, and his lungs.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted as follows:

(1) Within 90 days, defendants are directed to search for and disclose any video footage taken by cameras or retrieved from monitors on the platform which shows the plaintiff, or any surveillance tapes of plaintiff, taken on the date of the accident. If none is found, or if no video footage was taken or currently exist, defendant shall provide an affidavit by a person having knowledge of the search and the circumstances of the use of any camera/video device, and the disposition of any videos or surveillance tapes;

(2) Within 90 days, defendants shall produce:

(a) Any memorandum written between December 10, 2005 and December 10, 2010 discussing considered or proposed changes to the gap filler mechanism at the 14th St-Union Square station, inclusive of sensor systems, emergency switches, activation, extension or retraction devices and material changes to any part of the gap filler itself;

(b) The names and addresses of all persons known to defendant New York City Transit Authority who allegedly sustained injury at the 14th Street-Union Square subway station where: (i) the injury allegedly resulted from a fall into a gap between

the southbound express platform and train, at the place where the third car stops, and (ii) the fall allegedly occurred between December 10, 2005 and December 10, 2010; and any records during that period concerning malfunction or alleged injury caused by the subject platform extender/gap filler;

(c) Any MTA or NYCTA memoranda during the period of December 2005 through December 2010, concerning any meeting with Richard Muller about a gap filler system which he patented, and any correspondence between MTA or NYCTA and Muller during the period of December 2005 through December 2010 concerning his presentations and meetings, but only those memoranda and correspondence which pertain to the 14th Street-Union Square subway station;

(3) within 60 days of completion of defendants' depositions, defendants shall serve a supplemental response to plaintiff's counsel, stating the name and addresses of any person whom defendants claimed observed plaintiff "staggering" or "drinking from a can of . . . beer";

(4) plaintiff is granted leave to amend to add S.N. Tannor, Inc. as a defendant, by serving a supplemental summons and amended complaint within 20 days of service of a copy of this order with notice of entry;

and plaintiff's motion is otherwise denied; and it is further

ORDERED that defendants' cross motion is granted as follows:

(1) Within 60 days, plaintiff shall provide:

(a) authorizations to defendants for the release of records from any pharmacy where plaintiff obtained prescription medication for the treatment of the injuries claimed in this action;

(b) the names and addresses of any witness to plaintiff's alleged accident known to plaintiff or to plaintiff's counsel;

(c) the names of any persons who made a statement, either orally or in writing to plaintiff's counsel or to someone acting on counsel's behalf;

(d) any video footage (including any YouTube.com videos or video footage taken by non-parties such as television news teams) in plaintiff's custody, possession or control depicting plaintiff within the 14th Street-Union Square subway station on the date of the accident;

(e) copies of any reports, memorandums, or notes obtained from any person at the

accident scene on the date of plaintiff's accident, i.e., December 10, 2010, excluding any forms prepared by an employee of defendants or the City of New York which would be available to defendants;

(f) *Arons* authorizations for each provider for whom plaintiff provided an authorization for the release of medical records;

(g) an authorization for Dr. Brundage for the release of records in the last 5 years prior to December 10, 2010 relating to complaints concerning plaintiff's pelvis, his lumbar region, his spleen, his bowel, and his lungs;

(2) Within 90 days, plaintiff shall provide any MTA or NYCTA memoranda during the period of December 2005 through December 2010,concerning any meeting with Richard Muller about a gap filler system which he patented, and any correspondence between MTA or NYCTA and Muller during the period of December 2005 through December 2010 concerning his presentations and meetings, but only those memoranda and correspondence which pertain to the 14th Street-Union Square subway station;

and defendants' cross motion is otherwise denied; and it is further

ORDERED that the parties are directed to appear for a compliance conference in IAS Part 21, 80 Centre St Room 278 on July 12, 2012 at 11 a.m.

Dated: March 30, 2012
New York, New York

ENTER:

J.S.C.

HON. MICHAEL D. STALLMAN