To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

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FREDERICK M. CIOFFI and ELISABETTA CIOFFI,

Plaintiffs,

-against-

S.M. FOODS, INC., GFI BOSTON, LLC, ATLANTA FOODS INTERNATIONAL, RUSSELL McCALL'S INC., RUSSELL McCALL'S INC. d/b/a SHEILA MARIE FOODS, SHEILA MARIE IMPORTS, DOUG JAY, RYDER TRUCK RENTAL, INC., PLM TRAILER LEASING and DANIEL E. BURKE,

Defendants.

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S.M. FOODS, INC., GFI BOSTON, LLC, PLM TRAILER LEASING and DANIEL BURKE,

Third-Party Plaintiffs,

-against-

VILLAGE OF TUCKAHOE and VINCENT PINTO,

Third-Party Defendants.

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**DECISION & ORDER**

**Index No. 55391/2011**
**Motion Date: Jun 10, 2013**
**Seq. Nos. 15, 16, 17**

LEFKOWITZ, J.

The following papers were read on the motion (sequence # 15) by defendants/third-party plaintiffs, SM Foods, Inc., GFI Boston LLC, PLM Trailer Leasing, Daniel E. Burke and defendant Ryder Truck Rental, Inc., for an order compelling the party depositions of third-party defendants, Village of Tuckahoe and Vincent Pinto:

Order to Show Cause dated May 3, 2013
Affirmations in Support dated May 2, 2013
Exhibits A-D
Third-party defendants' Affirmation in Opposition dated May 23, 2013

The following papers were read on the motion (sequence # 16) by plaintiffs for an

order compelling additional depositions of defendant Russell McCall's Inc,. by Ken Swords and Dan Crowley, and the deposition of third-party defendant Vincent Pinto:

Order to Show Cause dated May 3, 2013
Affirmation in Support dated May 1, 2013
Exhibits A- I
Third-Party Defendants' Affirmation in Opposition dated May 23, 2013
Exhibits A-J
Third-Party Defendants' Memo of Law in Opposition
Defendant Russell McCall's Inc. and Doug Jay's Affirmation in Opposition dated May 23, 2013
Exhibits A-F

The following papers were read on the motion (sequence # 17) by third-party defendants, Village of Tuckahoe and Vincent Pinto, for an order: (1) limiting, denying and/or prohibiting plaintiffs from requiring the presence of a non-attorney, third-party witness, representative or advocate at the independent medical examination of plaintiff Frederick Cioffi; (2) compelling plaintiffs to provide certain, enumerated authorizations; and (3) striking plaintiffs' complaint for their failure to provide the authorizations, to be stayed for 21 days from the date of an order, pending service of the requested authorizations.

Order to Show Cause dated May 3, 2013
Affirmation in Support dated May 2, 2013
Exhibits A-U
Memo of Law in Support dated May 2, 2013
Plaintiffs' Affirmation in Opposition dated May 23, 2013
Exhibits A-B
Plaintiffs' Memo of Law in Opposition

Upon the foregoing papers and upon the proceedings held on June 10, 2013, these motions are determined as follows:

**BACKROUND**

In this personal injury action, plaintiffs allege that on or about May 22, 2009, plaintiff Frederick Cioffi, a police officer for the third-party defendant, Village of Tuckahoe (hereinafter to be referred to as the Village), sustained serious personal injuries when he was struck by a tractor trailer while performing a routine vehicle stop. Plaintiffs allege that at the time of the incident, third-party defendant, Vincent Pinto (hereinafter to be referred to as Pinto), a fellow police officer with the Village, had parked his squad car at or near the intersection where the incident occurred. Plaintiffs further allege that Mr. Cioffi was injured due to the negligence of defendants in the ownership, leasing, operation, control, management, maintenance and repair of the tractor trailer involved in the accident. It should be noted that on or about August 7, 2009, plaintiffs filed the first complaint related to this matter under a different index number.

According to plaintiffs, during the course of discovery, they became aware of additional parties that should be named as defendants. Therefore, on or about September 13, 2011, plaintiffs filed a new summons and complaint, bearing the current operative index number.

This action involves complex matters related to the ownership of the tractor trailer that struck Mr. Cioffi. Plaintiffs allege that at the time of the accident, defendant/third-party plaintiff, Daniel E. Burke (hereinafter to be referred to as Burke), who was the driver of the tractor trailer, was on the payroll of defendant/third-party plaintiff, GFI Boston, LLC (hereinafter to be referred to as GFI), but he believed his employer was "Sheila Marie". Additionally, plaintiffs assert that "Sheila Marie" is a trade name and key identifier for the business of SM Foods, Inc. (a defendant/third-party plaintiff in this action, hereinafter to be referred to as SM Foods), and at the time of the accident, defendant Russell McCall's Inc. (hereinafter to be referred to as McCall's), had infused that company with capital and was paying all its bills. Furthermore, plaintiffs allege that SM Foods leased the trailer, and that GFI rented the tractor portion of the tractor trailer from defendant Ryder Truck Rental Inc. (hereinafter to be referred to as Ryder).

**MOTION SEQUENCE # 15**

Defendants/third-party plaintiffs, SM Foods, GFI, PLM Trailer Leasing (hereinafter to be referred to as PLM), Burke and defendant Ryder (hereinafter to be referred to jointly as Movants 15) presently are moving for an order to compel the party depositions of the third-party defendants, Village of Tuckahoe and Pinto. Movants 15 state that prior to commencing the new (and present) action, the depositions of all parties were conducted as well as several non-party depositions including that of Vincent Pinto and a number of other, fellow officers from the Village. Upon commencement of the subject action, discovery started anew and Mr. Cioffi has appeared for a deposition as have defendants Doug Jay (hereinafter to be referred to as Jay) and Burke. Movants 15 further assert that the fact that Pinto and certain officers previously appeared for depositions as non-parties does not negate their obligation to appear as parties in the present action. Since the previous depositions, more information has been obtained. Movants 15 seek an order directing third-party defendants, the Village and Pinto, to appear for party depositions.

In their order to show cause (sequence # 16) plaintiffs are also moving for an order compelling Pinto's deposition.

This motion (sequence # 15), and that part of plaintiffs' motion (sequence # 16), seeking an order compelling the deposition of third-party defendants, Village and Pinto (hereinafter to be referred to jointly as the Village), is opposed by these third-party defendants. The Village states that there is no reasonable explanation warranting that the third-party defendants be re-deposed and that the demand is duplicative of the depositions already taken in this matter, in plaintiffs' previous (related) case. The Village notes, among other things, that although plaintiffs state that they need to re-depose it in order to address the new allegations regarding the contribution of Mr. Cioffi to his own injuries, plaintiffs have been aware of

allegations of Mr. Cioffi's contribution to his own injuries and assumption of the risk since the initial action in this matter was commenced. The Village asserts that it is improper to permit plaintiffs and defendants/third-party plaintiffs to re-engage in complete discovery after plaintiffs voluntarily discontinued the first action.

CPLR 3101 (a)(1) provides that there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action regardless of the burden of proof by a party, or the officer, director, member, agent or employee of a party. In the present action the Village of Tuckahoe and Pinto are named third-party defendants. Although they were previously deposed in an arguably related action, that previous action was separate and apart from the action at bar and involved (some) different parties and (some) different issues (*compare Fasciglione v D.C.D. Advertising, LTD.*, 256 AD2d 215 [1st Dept 1998; it was error to abrogate defendants' right to depose plaintiffs. The deposition of plaintiff in a related federal action did not suffice. Defendants were not parties to the federal action and defendant in the federal action faced a lesser degree of potential liability]).

The Court notes that the cases relied upon by the Village are unavailing to them. The appellate court in *Lacqua v Staten Is. Univ. Hosp.* (56 AD3d 529 [2d Dept 2008]) found that it was improper for defendant therein to be re-deposed because he had been completely and fully deposed previously by plaintiff and plaintiff failed to demonstrate that a further deposition was necessary. Unlike the case at bar, *Lacqua* involved the same parties in the same action regarding litigation of the same issues.

An analysis of *Autex, Inc. v Rubio* (114 AD2d 827) demonstrates that it is factually distinguishable from the case at bar. Defendants there were subjected to two separate actions by *Autex*, that were interrelated, one of which was about who had the right to initiate an action on Autex's behalf. The Court found it improper to subject defendants to two, separate, independent discovery proceedings simply because the question of who had the authority to act on behalf of Autex had not been resolved. The Court suggested that disclosure in these actions may have been duplicative and, to the extent it was proper, it suggested merging the two suits or staying disclosure in one until the resolution of the other.

*Seltzer v Bayer* (272 AD2d 263 [2d Dept 2000]), likewise is not helpful to the Village. To the extent relevant here, the Court in *Seltzer* stated that just because defendant had answered (arguably extensive) interrogatories did not mean she could not be deposed. The Court noted that since answering the interrogatories, defendant had amended her answer twice and therefore discovery was not complete. Similarly to *Seltzer*, in the present case, plaintiffs have commenced a whole new action with new claims and several additional parties.

Accordingly the third-party defendants are required to appear for depositions in the present action.

**MOTION SEQUENCE # 16**

Plaintiffs presently are moving for an order to compel the depositions of Ken Swords and Dan Crowley, principals of McCall's (to be discussed herein below) and third-party defendant Pinto (discussed herein above). Plaintiffs note that Jay was deposed a second time on January 10, 2013. Plaintiffs state that at his deposition Jay was unfamiliar with several issues.

Plaintiffs note that Jay's testimony was deficient regarding the trucking operations of McCall's and GFI and they assert that Swords, vice president of operations for McCall's, would have such knowledge. Plaintiffs assert that it is critical to their case against Ryder, as the tractor owner and renter seeking to avoid liability, as well as their case against McCall's and GFI, that they be permitted to depose Swords not only as the person with knowledge of these operations but also as the person with knowledge of the compliance of these entities with state and federal regulations controlling interstate motor carrier operations. Plaintiffs state that Swords has knowledge not only of the trucking operations and the structure of the operations but also of all aspects of liability of all defendants in this case.

Plaintiffs note that at his deposition, Jay could not answer relevant questions about the relationship of defendants to each other; for example, he could not answer question relating to the liabilities of SM Foods that McCall's or GFI agreed to assume. Plaintiffs assert that the deposition of Crowley (vice president of finance) would likely be material and necessary in the prosecution of this case, in particular, to disclosing the liability of McCall's under theories of successor liability, de facto merger, agency, joint venture and piercing the corporate veil. Moreover, Crowley would have knowledge regarding the loan made by McCall's to GFI and would likely show to what extent McCall's dominated and controlled GFI, whether McCall's took over the businesses of GFI and "Sheila Marie Imports", and whether it should be responsible for their liabilities.

That part of plaintiffs' motion seeking an order compelling McCall's to produce two additional witnesses for deposition is opposed by McCall's. They note that Jay, president of McCall's, has already testified twice; in the old and in the new action. McCall's asserts that plaintiffs have not met the necessary criteria to require McCall's (a corporate defendant that has already produced a witness) to produce additional witnesses for deposition. McCall's further asserts that it would be improper to direct additional depositions of its employees before the depositions of co-defendants SM Foods, Ryder and GFI are conducted. McCall's notes that this Court has already concluded that the tractor which struck Mr. Cioffi was owned by Ryder and leased to GFI .[1] McCall's states that, therefore, any questions with respect to the tractor and its

[1] By Decision and Order filed and entered August 13, 2012, this Court (Smith, J.), granted Ryder's motion seeking dismissal of this action as asserted against it finding that the Graves Amendment (49 USC § 30106) barred the action against Ryder and that no viable theory of liability against Ryder was predicated upon negligence or criminal wrongdoing. The Court found that Ryder conclusively demonstrated that it was the owner of the subject tractor trailer, that it

compliance with federal and state rules and regulations would be best addressed to witnesses for Ryder and GFI. McCall's states that it would be unduly burdensome to it to provide the requested witness to travel from Atlanta to New York to testify about trucking operations of an affiliated entity before the president and the chief operating officer of that entity are deposed.

In his affidavit dated May 22, 2013, Swords states that he is McCall's vice president of operations. He states that McCall's is a Georgia corporation which does business under the name of Atlanta Foods International. He states that GFI dba Sheila Marie Imports became affiliated with McCall's in October, 2007. As with other divisions, GFI conducted its trucking operations independently from McCall's. He further states that Tony DeMarco, a GFI employee oversaw its trucking operations.

McCall's states that its arguments in opposition to plaintiffs' motion to compel the deposition of Ken Swords also applies to that part of plaintiffs' motion seeking to compel the deposition of Dan Crowley. In his affidavit dated May 23, 2013, Crowley, the vice president of finance for McCall's states that in the middle of 2007, Sheila Marie Imports, LTD was in "dire financial straits". Its president, John Greeley, approached Jay to ask if McCall's would provide financial assistance so that Sheila Marie Imports, LTD., could pay its vendors and other creditors. As a result of those discussions, a new entity was formed, GFI dba Sheila Marie Imports. According to Crowley, payment of the accounts of the creditors of Sheila Marie Imports Ltd., remained the responsibility of Sheila Marie Imports Ltd and was not guaranteed by McCall's or GFI . Crowley maintains that John Greeley, as principal of Sheila Marie Imports, Ltd, and president of GFI from 2007 to 2009, should be deposed before Crowley is required to come to New York.

McCall's states that plaintiffs have failed to sustain their burden of establishing: (1) that Jay's testimony was inadequate; (2) how the testimony of the two individuals whose depositions are now sought would be superior to the testimony of the other parties (who have yet to be deposed); (3) how the information being sought is relevant to plaintiffs' theories of liability premised upon a defacto merger or successor-in-interest relationship between McCall's, GFI and SM Foods. McCall's asserts that to date, despite long discovery proceedings, plaintiffs have been unable to demonstrate the relationship amongst these entities as they assert it to be in their amended complaint.

For the purposes of a deposition, a corporate entity has the right to designate, in the first instance, the employee who shall be examined (*Schiavone v Keyspan Energy Delivery NYC*, 89 AD3d 916 [2d Dept 2011]). The moving party that is seeking additional depositions

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was in the business of renting and leasing vehicles, that the subject vehicle had been leased to GFI on the accident date, that the subject tractor trailer had been in mechanically safe condition on the accident date and that the proximate cause of Mr. Cioffi's injury was the negligence of the driver of the tractor trailer.

has the burden of demonstrating (1) that the representative already deposed had insufficient knowledge or was otherwise inadequate, and (2) that there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case (*Gomez v State of New York,* 106 AD3d 870 [2d Dept 2013]; *Schiavone v Keyspan Energy Delivery NYC*, 89 AD3d 916 [2d Dept 2011]).

On this record, plaintiffs have not demonstrated that the deposition of Jay is insufficient or otherwise inadequate regarding the trucking operations at issue in this matter. Moreover, plaintiffs have failed to show that the deposition sought from Swords will yield information that is material and necessary to this action. As already noted, this Court has found that the subject tractor was in a safe condition at the time of the subject accident. Even if it were otherwise, plaintiffs have failed to show that Swords, as a principal of McCall's, possesses information relating to the operation and maintenance of the tractor and its trailer. As McCall's suggests, questions of this nature may be better addressed by the other parties that directly rented those pieces of equipment from Ryder.

Although plaintiffs state that the deposition of Jay is insufficient or otherwise inadequate in regards to describing the relationships amongst SM Foods, GFI and McCall's and/or in regards to describing the liabilities of SM Foods that McCall's or GFI agreed to assume, at his deposition Jay described the relationship as follows: "Sheila Marie Imports, Ltd." was on the verge of bankruptcy and owed its suppliers money. In order for McCall's to continue doing business in Boston it had to relieve those debts. McCall's loaned money to "Sheila Marie". Jay further testified that McCall's lawyers drafted closing statements that reflected the loan agreements made. He also testified that John Greeley in Boston handled the negotiations. Jay further testified that he did not know what liabilities "SMI" had. It was Crowley who was responsible for making certain that the representations of the business' different financial aspects were accurate. At this juncture in the discovery proceedings it cannot be said the deposition sought from Crowley will yield further information regarding the relationship of the entities, that is material and necessary to the relevant issues of the present action.

Accordingly, the further depositions sought from defendant McCall's, from its principals Swords and Crowley, is improper at this time.

**MOTION SEQUENCE # 17**

Third-party defendants, the Village and Pinto, presently are moving for a protective order, for an order to compel discovery and for an order dismissing the complaint if its discovery requests are not met.

As to the first branch of their motion seeking a protective order, third-party defendants assert that Mr. Cioffi should not be permitted to have a non-attorney advocate/fact witness attend his independent medical examination (IME). They note that a party may be examined in the presence of an attorney or other legal representative, as well as an interpreter if necessary, so long as those representatives do not interfere with the conduct of the examination.

They further note that a plaintiff must demonstrate special circumstances warranting the presence of either a medical representative or a stenographer at physical examinations to be conducted by a doctor designated by defendant.

This part of the motion is opposed by plaintiffs. They note that to refuse to allow a plaintiff to have a representative present at his IME, infringes on his right to assistance of counsel. In her affidavit dated May 22, 2103, Meryl Arbisfeld states that she is a social worker and president of IME Advocates, Inc., established in 2008, to provide litigation support services to law firms in connection with personal injury litigation. She further states that part of the services she provides includes attending IMEs and that she has attended 5-7 neuropsychological examinations conducted by David Erlanger, Ph.D, retained by defense counsel in this matter. She also states that she is familiar with the rules regarding performance of medical and mental health examinations by defense experts and when she has attended an examination she has not inserted herself improperly in the examination process. Plaintiffs note that they will agree to not have a personal representative attend the IME if plaintiffs are permitted to have a videographer present.

In *Ponce v Health Ins. Plan of Greater New York* (100 AD2d 963 [2d Dept 1984), the Court held that it was proper for plaintiff to submit to independent medical examinations in the presence of her attorney or other legal representative as long as the representative did not interfere with the conduct of the examination. It has been held that a registered nurse may be present during a physical examination (*see Grange v Sweet*, 4 Misc3d 470 [Supreme Court Ulster County, 2004]; *Grady v Phillips*, 159 Misc2d 848 [Supreme Court, Schenectady County, 1993]) or even plaintiff's psychiatrist at plaintiff's examination by defendant's psychiatrist (*Gray v Victory Mem. Hosp.*, 142 Misc2d 302 [Supreme Court, Kings County 1989]). For a court to deny plaintiff accompaniment of his choice, an attorney or a representative sent by the attorney, is an infringement upon plaintiff's right to be assisted by counsel (*Gray v Victory Mem. Hosp.*, 142 Misc2d 302 [Supreme Court, Kings County 1989]). In this matter third-party defendants have failed to demonstrate why it would be improper for Ms. Arbisfeld to be present at Mr. Cioffi's IME (*see Flores v Vescera*, 105 AD3d 1340 [4th Dept 2013]; *Jessica H. v Spagnolo*, 41 AD3d 1261 [4th Dept 2007]).

Whether or not to grant an application to permit the videotaping of an examination is vested in the court's discretion (*McNeil v State of New York*, 8 Misc3d 1028A [Court of Claims 2005]). Videotaping an examination is appropriate only in special and unusual circumstances such as where the party being examined is incompetent or comatose and unable to review the examination with his attorney or testify at trial as to the manner in which the examination was conducted (*Lamendola v Slocum, Jr.*, 148 AD2d 781 [3rd Dept 1989]). In the instant case, plaintiffs have not shown any such circumstances (*compare Matter of Campbell*, 177 Misc2d 59 [Supreme Court Nassau County, 1998; an involuntarily committed mental patient at a state psychiatric hospital was entitled to videotape his psychiatric exam]; *Mosel v Brookhaven Mem. Hosp.*, 134 Misc2d 73 [Supreme Court, Suffolk County, 1986; the incompetent plaintiff who was in a semicomatose state, was permitted to videotape the physical examination]) and a videographer's presence at Mr. Cioffi's IME would be improper. In any event, Mr. Cioffi's IME may be in the presence of a third-party as herein above discussed.

As to the second branch of their motion seeking an order compelling plaintiffs to provide outstanding discovery, third-party defendants assert that they have made numerous demands for various authorizations that have yet to be provided. Furthermore, they note that the authorizations provided for Mr. Cioffi's psychotherapy records are incomplete and inadequate for them to obtain full records. Third-party defendants assert that the requested records are material and necessary to their defense of this action and that plaintiffs have waived privilege by claiming Mr. Cioffi has suffered physical, mental and emotional injuries. Third-party defendants further assert that they are entitled to the employment records of plaintiff Elisabetta Cioffi.

This branch of the motion of third-party defendants is opposed by plaintiffs. Plaintiffs assert that third-party defendants are not entitled to an authorization for plaintiffs' tax returns. Mr. Cioffi was not self-employed and third-party defendants have not shown that these returns are necessary. Plaintiffs also assert that the request for an authorization for the file of Brian Mittman, Esq., should be denied because it encompasses privileged attorney-client communications and work product and the non-privileged information that is now sought, such as applications, submissions to and responses from the Social Security Administration are likely to be produced by the Social Security Administration in their file in response to an authorization sent to that agency. Plaintiffs note that should this Court find that the file of Brian Mittman, Esq. should be produced, they request that the file be submitted to the Court first for an in camera inspection. Finally, plaintiffs state that they have provided authorizations for all entities to which the adverse parties are entitled.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

The Court notes that by letter dated May 16, 2013 (after third-party defendants moved for the present relief for an order compelling discovery), plaintiffs provided several authorizations to third-party defendants. These included authorizations to obtain all of Mr. Cioffi's pharmacological records from A & P Pharmacy from May 22, 2009 (the date of the

accident) to the present and the pharmacological records from Hannaford Pharmacy from January 1, 2006 to the present (on an authorization form requested by that pharmacy). Also included under that cover letter were two authorizations to each of Mr. Cioffi's neuro-psychologists to obtain his complete file, including records, if any, relating to alcohol/drug treatment, mental health information and HIV-related information, from January, 2006 to the present. Upon careful review of the authorizations provided by plaintiffs to third-party defendants, the Court finds that all outstanding authorizations have been provided except for authorizations to obtain plaintiffs' state and federal income tax returns for 2005 to the present, the "non-privileged information of Brian Mittman, Esq." (who, according to third-party defendants and plaintiffs was the attorney who handled Mr. Cioffi's social security disability matter) and the employment records of plaintiff Elisabetta Cioffi.

Generally, a party seeking disclosure of tax returns must make a strong showing that the information is indispensable to the claim and cannot be obtained from other sources (*Gitlin v Chirinkin,* 71 AD3d 728 [2d Dept 2010]; *Nasca v D.M.R. Indus., Inc.*, 70 AD3d 908 [2d Dept 2010]). In the present case, third-party defendants do not set forth what specific information contained in plaintiffs' state and federal income tax returns for the years 2005 to the present (which they have requested) is relevant (*compare Singh v Singh*, 51 AD3d 770 [2d Dept 2008; defendants are entitled to tax returns because plaintiff's deposition testimony demonstrated that he is self-employed and claiming damages for lost earnings]) and unavailable through other means. In fact, the Court notes that plaintiffs have provided an authorization to third-party defendants to obtain Mr. Cioffi's payroll records, including his W-2 forms from 2005 to the present. Third-party defendants fail to demonstrate that the disclosure of the plaintiffs' tax returns is warranted (*see Panasuk v Viola Park Realty, LLC*, 41 AD3d 804 [2d Dept 2007]).

The Court notes that plaintiffs have provided an authorization to third-party defendants to obtain from the Social Security Administration the "disability application file and related records". Accordingly, the demand of third-party defendants for the "non-privileged information of Brian Mittman, Esq., plaintiff's social security disability attorney" is palpably improper in that the demand is for redundant information and is overbroad and burdensome (*Montalvo v CVS Pharmacy, Inc.*, 102 AD3d 842 [2d Dept 2013]). The discovery demand of third-party defendants for the employment records of plaintiff Elisabetta Cioffi is likewise palpably improper. Although plaintiffs allege in their bill of particulars dated June 25, 2012, a claim for the loss of earnings and future earning capacity of Elisabetta Cioffi (as a result of the injuries sustained by Mr. Cioffi for whom she is now caring), in their response to the third-party defendants' demands for authorizations, dated February 27, 2013 (served after the bill of particulars), plaintiffs state that the demand for the employment records is not relevant since they are not seeking damages for her lost earnings.

Accordingly, plaintiffs may have a representative present at Mr. Cioffi's IME if they so choose and there is no reason on this record to issue an order to compel, or to strike plaintiffs' answer on the basis of their non-cooperation in the discovery process.

In light of the foregoing, it is:

ORDERED that: (1) the motion by defendants/third-party plaintiffs, SM Foods, GFI, PLM, Burke and defendant Ryder; and (2) that branch of the motion by plaintiffs, both seeking an order compelling the party depositions of the third-party defendants, Village of Tuckahoe and Pinto are granted; and it is further,

ORDERED that the third-party defendants, the Village of Tuckahoe and Vincent Pinto, are directed to appear for their party depositions at some time between August 19, 2013 and August 23, 2013, at a time and place to be determined by the parties; and it is further,

ORDERED that the branch of the motion by plaintiffs for an order compelling defendant Russell McCall's Inc., to produce two additional witnesses for depositions, Dan Crowley and Ken Swords, is denied with leave to renew after all parties in this matter have been deposed; and it is further,

ORDERED that the motion by third-party defendants is denied in its entirety; and it is further,

ORDERED that Mr. Cioffi is to submit to an independent medical examination, with an attorney or other legal representative present if he chooses (as long as the attorney or representative does not interfere with the conduct of the examination), at such time and place as the parties may agree; and it is further,

ORDERED that, as previously directed, the parties appear in the Compliance Part, Room 800, on September 4, 2013, at 9:30 A.M.

Dated: White Plains, New York
August 6, 2013

HON. JOAN B. LEFKOWITZ, J.S.C.

TO:

Sim R. Shapiro, Esq.
Baxter & Smith, P.C.
Attorneys for Defendants/Third-Party Plaintiffs,
SM Foods, GFI Boston, PLM Trailer Leasing,
Daniel Burke and Ryder Truck Rental, Inc.
125 Jericho Tpke. Ste. 302
Jericho, New York 11753
**Via NYSCEF**

Jonathan Rice, Esq.
Grant & Longworth LLP
Attorneys for Plaintiffs
377 Ashford Avenue
Dobbs Ferry, New York 10522
**Via NYSCEF**

Terence M Quinlan, Esq.
White, Quinlan & Staley, LLP
Attorneys for Defendants Atlanta Food Int'l., Russell McCall's, Inc. and Doug Jay
377 Oak Street
Garden City, New York 11530
**Via NYSCEF**

Aaron Frank Carbone, Esq..
Maynard, O'Connor, Smith
Attorneys for Third-Party Defendants Village of Tuckahoe and Vincent Pinto
6 Tower Place
Albany, New York 12203
**Via NYSCEF**

William H Bave, Esq.
Wilson, Bave, Conboy, Cozza & Couzens, PC
Attorneys for Defendant Ryder Truck Rental
2 William Street
White Plains, New York 10601
**Via NYSCEF**

cc: Compliance Part Clerk