

==New York State==  
**ACADEMY**  
**OF TRIAL LAWYERS**

**HOW TO SUCCESSFULLY LITIGATE A**  
**PERSONAL INJURY CASE SERIES –**  
**PART 5: PRE-TRIAL DISCLOSURES**  
**AND GEARING UP FOR TRIAL**

Live Streamed – May 5, 2021

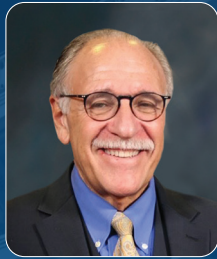
**Materials By**  
**Andrew Smiley, Esq.**

# ADDING TO OUR APPEAL

We are proud to have these accomplished  
Appellate Justices on our panel



**Hon. Richard T. Andrias (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st Judicial Department*



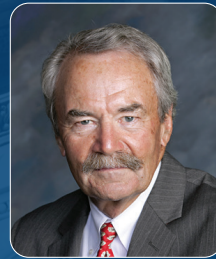
**Hon. Jeffrey A. Cohen (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. Luis A. Gonzalez (Ret.)**  
*Presiding Justice of  
the Appellate Division,  
1st Judicial Department*



**Hon. Jerome C. Gorski (Ret.)**  
*Associate Justice,  
Appellate Division,  
4th Judicial Department*



**Hon. E. Michael Kavanagh (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st and 3rd Judicial  
Departments*



**Hon. John M. Leventhal (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. Joseph J. Maltese (Ret.)**  
*Associate Justice,  
Appellate Division,  
2nd Judicial Department*



**Hon. Karla Moskowitz (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st Judicial Department*



**Hon. David B. Saxe (Ret.)**  
*Associate Justice,  
Appellate Division,  
1st Judicial Department*



**Hon. Alan D. Scheinkman (Ret.)**  
*Presiding Justice of  
the Appellate Division,  
2nd Judicial Department*



**Hon. Peter B. Skelos (Ret.)**  
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2nd Judicial Department*



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### **WHAT WE DO**

The firm offers professional investigative services for civil and criminal cases before both state and federal courts. We provide quality personalized services along with unparalleled attention to detail. Our 40 plus years of investigative experience provides our clients with an unmatched level of confidence and reliability.

The firm holds private investigative licenses in New York:  
New York State Department of State: 11000045080

Based in the Capital District Area of New York, we provide service to clients across upstate NY, including Albany, Schenectady, Rensselaer, Columbia, Saratoga, Greene, Washington, Schoharie, Warren, Essex, Montgomery, Fulton counties, and beyond.

### **AREAS OF FOCUS**

- Personal Injury
- Insurance Defense
- Criminal Defense
- DWI Defense
- Surveillance Services
- Service of Legal Process

### **SERVICE OF LEGAL PROCESS**

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As an investigative firm, we have the experience and resources to locate and serve nearly anyone. Based in Albany NY, we offer service upon the NYS Secretary of State, Corporation Service Company and all State Agencies in the Albany Area.

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# THE MENTOR ESQ

A podcast for lawyers and aspiring lawyers hosted by Andrew J. Smiley, Esq. This podcast is accredited by the NYS Academy of Trial Lawyers. Earn CLE credits by listening!

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## Episodes of the Mentor, Esq.

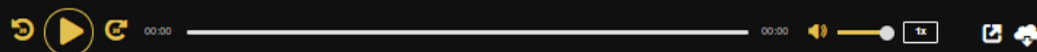
Find a list of episodes below, or [click here to sort by category](#). Click the episode title to find a full description, video, and links to CLE credits on applicable episodes.



### CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



# Episodes

Check out the full list of Mentor, Esq. episodes below, or filter by category.

ALL

"LITIGATING A PERSONAL INJURY CASE" SERIES

CLE EPISODES

INTERVIEW EPISODES

SEASON 1

SEASON 2

TRIAL SKILLS

VIDEO EPISODES



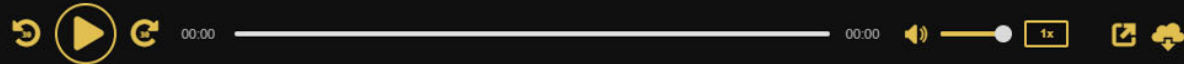
INTERVIEW

CHRIS PAIZ, ESQ

## Season 2 – Episode 9: Racing Cars with Chris Paiz

JANUARY 26, 2021 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - Andrew interviews Chris Paiz, a fellow lawyer and car racing enthusiast.



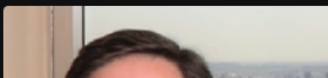
INTERVIEW

DA ERIC GONZALEZ

## Season 2 – Episode 8: An Interview with Brooklyn, New York's DA Eric Gonzalez

DECEMBER 29, 2020 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - In this week's episode, Andrew welcomes the District Attorney of Kings County in Brooklyn, New York, Eric Gonzalez.



## Season 2 – Episode 7: Fighting Through the Dark

# Continued Legal Education (CLE) Episodes

We are proud to offer CLE (or Continuing Legal Education) episodes of the Mentor, Esq in partnership with the New York State Academy of Trial Lawyers. You can earn **FREE** CLE credits just by listening to the episodes below and making note of the codes given in each one. To redeem your CLE credit, visit the episode page to find the link to the episode's unique Academy form and enter the code.

To see more information, other CLE opportunities, or to join the Academy, visit their website at [trialacademy.org](https://trialacademy.org).

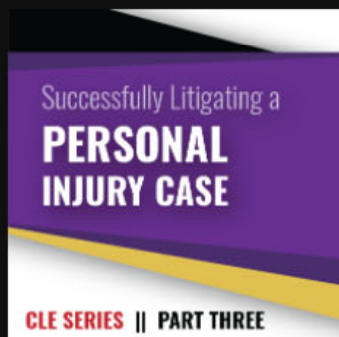
—New York State—  
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OF TRIAL LAWYERS



## CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

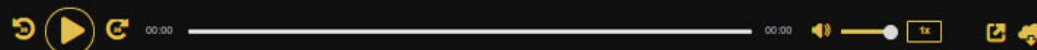
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.



## CLE: How to Successfully Litigate a Personal Injury Case Series Part 3

MARCH 9, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES

- Video Episode - Andrew discusses adversaries, the preliminary conference, and the initial discovery. 1.5 CLE credits.







## The Mentor, Esq.



Hosted By

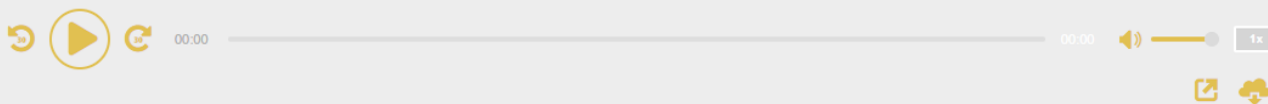
Andrew J. Smiley, Esq.

We hope you enjoy this highly rated podcast hosted by Andrew J. Smiley, Esq. and featuring interviews with other experts in law and litigation, CLE and educational series, and great legal advice.



## CLE: Taking the “Umm...” out of SUM/UM Coverage

FEBRUARY 23, 2021 / ADMIN / CLE EPISODES, SEASON 2, VIDEO EPISODES / COMMENTS OFF



In Andrew's current CLE series, “How to Litigate a Personal Injury Case”, the topic of SUM and UM coverage has come up several times. In fact, it came up so many times during the Q&A sessions that the Mentor, Esq. worked with the Academy to do an entire CLE on the topic!

If you are listening and would like to answer the poll in the program for **1.5** CLE credits, you can do so by emailing the Academy at [info@trialacademy.org](mailto:info@trialacademy.org).

Contact Andrew Smiley at [andrew@thementoresq.com](mailto:andrew@thementoresq.com).

<http://www.smileylaw.com/podcast>

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### RECENT EPISODES

- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 4](#) April 13, 2021
- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 3](#) March 9, 2021
- › [CLE: Taking the “Umm...” out of SUM/UM Coverage](#) February 23, 2021
- › [CLE: How to Successfully Litigate a Personal Injury Case Series Part 2](#) February 9, 2021





**Andrew J. Smiley, Esq.**  
**Smiley & Smiley, LLP**  
**122 East 42<sup>nd</sup> Street, NYC 10168**  
**212.986.2022**  
**asmiley@smileylaw.com**  
**www.smileylaw.com**  
**www.thementoresq.com**

### ***CURRICULUM VITAE***

#### **Education:**

· Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)  
Moot Court Honor Society - Competitor - National Appellate Trademark Competition  
Moot Court Honor Society – Coach, National Trial Team – Regional Champions  
CALI Excellence For The Future Award - Advanced Legal Research  
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

· Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

#### **Professional:**

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation.

## **Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 2**

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020

### Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District & Southern District of New York
- United State District Court of Vermont.

### Organizations/Affiliations:

- New York State Academy of Trial Lawyers
  - Immediate Past President (May 2018- May 2019)
  - President (May 2017 – May 2018)
  - President-Elect – (April 2016- May 2017)
  - Vice President – 1st Dept. (July 2013-May 2016)
  - Executive Committee ( May 2019 – present)
  - Board of Directors (2013- present)
  - Judicial Screening Committee (2013- present)
- New York City Trial Lawyers Alliance
  - Chairman of Board of Governors (July 2017 – July 2019)
  - President (July 2015 – July 2017)
  - Vice President (June 2013 – July 2015)
  - Treasurer (June 2011 – June 2013)
  - Secretary (June 2009- June 2011)
  - Board of Directors (2000-present)
- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
  - Brooklyn Bar Association
    - Medical Malpractice Committee
    - Supreme Courts Committee
- The American Association for Justice
- American Bar Association
- Brooklyn Law School Alumni Association
- National Order of Barristers
- Friars Club - member



**Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 3**

Continuing Legal Education (CLE) Presentations:

*How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021

*How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021

*Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020

*Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

*Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020

*Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020

*Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020

*Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019

*Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019

*Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019

*Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019

*Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018

*Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

**Andrew J. Smiley, Esq. Curriculum Vitae, Page 4**

Continuing Legal Education (CLE) Presentations Continued:

*Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015

*Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015

*Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015

*Powerful Opening Statements*, Clear Law Institute, January 13, 2015

*The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014

*Killer Cross Examination Strategies*, Lawline.com, November 20, 2014

*Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014

*Personal Trainer Negligence Update*, Lawline.com, October 14, 2014

*Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014

*Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014

*Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013

*Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013

*Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012

*“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012

*Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012

*The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011

*Personal Trainer Negligence*, Lawline.com, March 22, 2011

*Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011

## **Andrew J. Smiley, Esq. Curriculum Vitae, Page 5**

### Continuing Legal Education (CLE) Presentations Continued:

*Trial Techniques: The Tricks of the Trade*, Lawline.com, February 16, 2011

*Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011

*Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010

*Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010

*Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

### Television Appearances – Legal Commentary:

#### *Fox News Channel*

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
  - America's News Room
  - Fox & Friends
- Fox Business Channel
- Neil Cavuto
- Money with Melissa Francis

*CNN -Anderson Cooper 360*

*ET – Entertainment Tonight*

*Bloomberg TV*

*Headline News*

*Tru TV*

*Court TV*

*The Morning Show with Mike and Juliet*

### Interests, Hobbies:

Tennis, Porsche Club, Sim Racing, Yoga, Cooking



# SMILEY & SMILEY, LLP

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February 25, 2020

**Via Fax to: (516) 873-6229**

Picciano & Scahill, P.C.  
1065 Stewart Avenue, Suite 210  
Bethpage, New York 11714  
Attention: [REDACTED]

Re: Amador v. Lynch  
Your File No.: 32-1529-D30 [REDACTED]

Dear [REDACTED]:

Since you advised you will accept service on behalf of your clients, Carol and Philip Lynch, enclosed please find two subpoenas for them to give testimony in the plaintiff's case.

Thank you for your continued courtesy and cooperation in this matter.

Very truly yours,

  
ANDREW J. SMILEY

AJS:mis  
Enclosures



SMILEY LAW

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----x

**JUDICIAL SUBPOENA**

***THE PEOPLE OF THE STATE OF NEW YORK***

TO: PHILIP J. LYNCH  


***GREETINGS:***

WE COMMAND YOU, that all business and excuses being laid aside, you appear and attend before the **Honorable Frederick D.R. Sampson, Supreme Court, Queens County, Courtroom 208, 25-10 Court Square, Long Island City, New York 11101**, on the **28<sup>th</sup>** day of **February, 2020**, at 10:00 o'clock, in the forenoon and at any recessed or adjourned date to give testimony in this action on the part of the Plaintiff, **OSCAR E. AMADOR**.

*Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.*

WITNESS, Honorable Frederick D.R. Sampson, one of the Justices of said Court, at the Supreme Court, Queens County, 25-10 Court Square, Long Island City, New York 11101, on the 25<sup>th</sup> day of February, 2020.

  
\_\_\_\_\_  
**ANDREW J. SMILEY, ESQ.**  
**SMILEY & SMILEY, LLP**  
Attorneys for Plaintiff  
122 East 42nd Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----x

**JUDICIAL SUBPOENA**

***THE PEOPLE OF THE STATE OF NEW YORK***

TO: CAROL R. LYNCH  


***GREETINGS:***

WE COMMAND YOU, that all business and excuses being laid aside, you appear and attend before the **Honorable Frederick D.R. Sampson, Supreme Court, Queens County, Courtroom 208, 25-10 Court Square, Long Island City, New York 11101**, on the **28<sup>th</sup>** day of **February, 2020**, at 10:00 o'clock, in the forenoon and at any recessed or adjourned date to give testimony in this action on the part of the Plaintiff, **OSCAR E. AMADOR**.

*Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.*

WITNESS, Honorable Frederick D.R. Sampson, one of the Justices of said Court, at the Supreme Court, Queens County, 25-10 Court Square, Long Island City, New York 11101, on the 25<sup>th</sup> day of February, 2020.



ANDREW J. SMILEY, ESQ.  
SMILEY & SMILEY, LLP  
Attorneys for Plaintiff  
122 East 42nd Street, Suite 3900  
New York, New York 10168  
(212) 986-2022



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x Index No.: 717192/2017  
OSCAR E. AMADOR,

Plaintiff,

-against-

**JUDICIAL SUBPOENA  
DUCES TECUM**

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----x

***THE PEOPLE OF THE STATE OF NEW YORK***

**TO: NORTH SHORE UNIVERSITY HOSPITAL  
300 Community Drive  
Manhasset, New York 11030**

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend before the **Subpoenaed Records Room, Supreme Court, Queens County, located at 88-11 Sutphin Boulevard, New York, New York 11435**, on the **29<sup>th</sup> day of January, 2020** and that you bring with you, and produce the original and /or certified copy of the following:

**Complete hospital chart and hospital bill regarding:**

**Patient: Oscar Amador**

**Address:** [REDACTED]

**Date of Admission: 9/23/17-10/16/17**

**Date of Birth:** [REDACTED]

**Soc. Sec. No.: \*\*\*-\*\*-\*\*\*\***

**MRN: 4** [REDACTED]

**ALL RECORDS MUST BE ORIGINALS OR CERTIFIED COPIES**

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable Allan B. Weiss, one of the Justices of said Court, at 88-11 Sutphin Boulevard, Jamaica, New York 11435 the 2<sup>nd</sup> day of January, 2020.

\_\_\_\_\_  
JASON D. FRIEDMAN, ESQ.  
SMILEY & SMILEY, LLP  
Attorneys for Plaintiff  
122 East 42nd Street – Suite 3900  
New York, New York 10168  
(212) 986-2022



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x  
OSCAR E. AMADOR,

Index No.: 717192/2017

Plaintiff,

**JUDICIAL SUBPOENA**

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

-----x

**THE PEOPLE OF THE STATE OF NEW YORK**

TO: **P.O. DANIEL E. FORAN (Tax ID No.: 948025)**  
**Legal Division**  
**1 Police Plaza**  
**New York, New York 10007**

**GREETINGS:**

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before the Supreme Court, Queens County, located at **88-11 Sutphin Boulevard, Jamaica, New York 11435**, the **29<sup>th</sup> day of January, 2020** at 10:00 o'clock, in the forenoon and at any recessed or adjourned date to give testimony in this action on the part of the plaintiff, **OSCAR AMADOR**, relating to the accident involving **OSCAR AMADOR**, which occurred on September 23, 2017 and that you bring with you and produce at the time and place aforesaid: Memo books, logs, certified police reports, supervisor reports, supplementary reports, and any other relevant information regarding the accident below:

Date of Accident: September 23, 2017

Place of Accident: 254<sup>th</sup> Street and Grand Central Parkway, Queens, New York

Accident No.: MV2017-111-003152

**\*\*\*COPY OF POLICE ACCIDENT REPORT ANNEXED HERETO\*\*\***

*Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.*

Witness, Honorable Allan B. Weiss, one of the Justices of said Court, at 88-11 Sutphin Boulevard, Jamaica, New York 11435 the 19th day of December, 2019.

\_\_\_\_\_  
JASON D. FRIEDMAN, ESQ.  
SMILEY & SMILEY, LLP  
Attorneys for Plaintiff  
122 East 42nd Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

**PLEASE CONTACT THE  
OFFICES OF SMILEY &  
SMILEY TO CONFIRM  
AT (212) 986-2022**

SO ORDERED:

\_\_\_\_\_  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 717192/2017

-----X  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----X

**MARKED PLEADINGS:**

- (1) Summons and Verified Complaint
- (2) Verified Answer of the Defendants
- (3) Amended Verified Answer of the Defendants
- (4) Verified Bill of Particulars
- (5) Supplemental Verified Bill of Particulars

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff  
122 East 42<sup>nd</sup> Street  
Suite 3900  
New York, New York 10168  
(212) 986-2022

ANDREW J. SMILEY, ESQ.  
Of Counsel

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 717192/2017  
Filed: 12/12/17

-----X  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----X

Plaintiff designates Queens  
County as the place of trial.

**S U M M O N S**

The basis of venue is:  
Plaintiff's residence

Plaintiff resides at:

To the above named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: New York, New York  
December 1, 2017

SMILEY & SMILEY, LLP

By 

ANDREW J. SMILEY

Attorneys for Plaintiff  
122 East 42nd Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

Defendant:

CAROL R. LYNCH

PHILIP J. LYNCH



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 717192/2017

-----X  
OSCAR E. AMADOR,

Plaintiff,

VERIFIED  
COMPLAINT

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----X

Plaintiff, OSCAR E. AMADOR, by his attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, CAROL R. LYNCH and PHILIP J. LYNCH, hereinafter alleges at all times, upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION**

- DKI
1. Plaintiff, OSCAR E. AMADOR, resides at [REDACTED], Queens, New York [REDACTED]
  - A 2. Defendant, CAROL R. LYNCH, (hereinafter referred to as "C. LYNCH"), resides at [REDACTED] New York [REDACTED].
  - A 3. Defendant, PHILIP J. LYNCH, (hereinafter referred to as "P. LYNCH"), resides at 46-18 [REDACTED] [REDACTED].
  - DKI 4. On September 23, 2017, the plaintiff, OSCAR E. AMADOR, was the owner and operator of a certain motorcycle bearing New York license plate number [REDACTED].
  - A 5. On September 23, 2017, the defendant, C. LYNCH, was the operator of a motor vehicle bearing New York license plate number [REDACTED].
  - A 6. On September 23, 2017, the defendant P. LYNCH, was the owner of a motor vehicle bearing New York license plate number [REDACTED].



A 7. On September 23, 2017, defendant, C. LYNCH, was operating the  
aforementioned motor vehicle owned by the defendant, P. LYNCH, with the knowledge,  
permission and consent of its owner, either expressed or implied.

DKI 8. At all times hereinafter mentioned, the Grand Central Parkway at its intersection  
with 254<sup>th</sup> Street, in the County of Queens, City and State of New York, was and still is a public  
roadway.

DKI 9. On September 23, 2017, at approximately 12:15 P.M., the plaintiff, OSCAR E.  
AMADOR, was operating his motorcycle westbound on the Grand Central Parkway service  
road, in the County of Queens, City and State of New York.

DKI 10. On September 23, 2017, at approximately 12:15 P.M., the defendant, C. LYNCH,  
was operating the motor vehicle owned by defendant, P. LYNCH, westbound on the Grand  
Central Parkway service road, in the County of Queens, City and State of New York.

D 11. On September 23, 2017, at approximately 12:15 P.M., the motor vehicle owned  
by defendant, P. LYNCH, and operated by the defendant, C. LYNCH, struck the motorcycle  
being operated by the plaintiff, OSCAR E. AMADOR.

D 12. The defendants, CAROL R. LYNCH and PHILIP J. LYNCH were negligent and  
careless in the ownership, operation, management and control of their motor vehicle; in  
operating their aforesaid motor vehicle at a greater rate of speed than care and caution would  
permit under the circumstances; in operating their motor vehicle in a negligent and careless  
manner; in failing to operate horn, lights and/or signaling devices; in failing to observe other  
vehicles on the roadway; in failing to observe the roadway; in failing to keep a proper lookout  
and see what was there to be seen; in failing to yield the right of way; in failing and omitting to  
provide to give any signal or warning of approach; in failing and omitting to provide and/or



make timely and adequate use of brakes, signaling devices and steering mechanisms; and in violating provisions of the Vehicle and Traffic Laws of the State of New York.

D 13. Solely as a result of the defendants' negligence, the plaintiff, OSCAR E. AMADOR, was seriously and permanently injured and was caused to suffer and will continue to suffer great physical pain and mental anguish.

DKI 14. The action falls within one or more of the exceptions set forth in CPLR Section 1602.

D 15. The plaintiff has sustained serious injuries as defined by Section 5102 of the Insurance Law of the State of New York.

D 16. The amounts of damages sought in this action exceed the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, plaintiff, OSCAR E. AMADOR, demands judgment against the defendants, CAROL R. LYNCH and PHILIP J. LYNCH, in the FIRST and SECOND Causes of Action, together with the costs and disbursements of this action.

Dated: New York, New York  
December 1, 2017

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By: \_\_\_\_\_

ANDREW J. SMILEY  
122 East 42<sup>nd</sup> Street, 39<sup>th</sup> Floor  
New York, New York 10168  
(212) 986-2022

**INDIVIDUAL VERIFICATION**

STATE OF NEW YORK                    )  
  ) SS:  
COUNTY OF                            )

OSCAR E. AMADOR, being duly sworn say that I am the plaintiff in the action herein, I have read the annexed **COMPLAINT** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

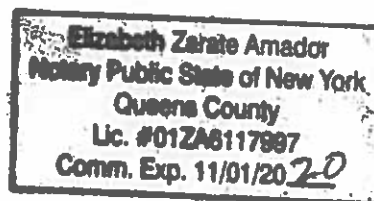
Dated: New York, New York

  
\_\_\_\_\_  
OSCAR E. AMADOR

Sworn to before me this

5<sup>th</sup> day of December, 2017

  
\_\_\_\_\_  
Notary Public



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

----- x  
Oscar E. Amador

Plaintiff/Petitioner,

-against-

Index No. 717192/2017

Carol R. Lynch, Philip J. Lynch

Defendant/Respondent.  
----- x

**NOTICE REGARDING AVAILABILITY OF ELECTRONIC  
SUPREME COURT CASES**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-b (consensual electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

**1) Parties represented by an attorney:** An attorney representing a party who is served with this Notice must promptly either consent or decline consent to electronic filing and service through NYSCEF for this case. Attorneys registered with NYSCEF may record their consent electronically in the manner provided at the NYSCEF site. Attorneys not registered with NYSCEF but intending to participate in e-filing must first create a NYSCEF account and obtain a user ID and password prior to recording their consent by going to [www.nycourts.gov/efile](http://www.nycourts.gov/efile). Attorneys declining to consent must file with the court and serve on all parties of record a declination of consent.

**2) Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file all documents in paper form and must be served with all documents in paper form.** However, an unrepresented litigant may consent to participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit [www.nycourts.gov/efileunrepresented](http://www.nycourts.gov/efileunrepresented). Unrepresented litigants also are encouraged to visit [www.nycourthelp.gov](http://www.nycourthelp.gov) or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at [www.nycourts.gov/efile](http://www.nycourts.gov/efile) or contact the NYSCEF Resource Center (phone: 646- 386-3033; e-mail: [efile@nycourts.gov](mailto:efile@nycourts.gov)).

Dated: 12/12/2017

Signature 

JASON D. FRIEDMAN

Name

Smiley & Smiley, LLP

Firm Name

122 East 42nd Street, Suite 3900

Address

New York, NY 10168

City, State, and Zip

(212) 986-2022

Phone

[jfriedman@smileylaw.com](mailto:jfriedman@smileylaw.com)

E-Mail

To:

Carol R. Lynch

Philip J. Lynch

9/3/15





# NYSCEF - Queens County Supreme Court Confirmation Notice



This is an automated response for Supreme Court cases. The NYSCEF site has received your electronically filed documents for the following case.

**Index Number NOT assigned**

**Oscar E. Amador - v. - Carol R. Lynch et al**

**Assigned Judge: None Recorded**

**Documents Received on 12/12/2017 03:10 PM**

<b>Doc #</b>	<b>Document Type</b>	<b>Motion #</b>
1	SUMMONS + COMPLAINT Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	

## Filing User

Name: **JASON D. FRIEDMAN**

Phone #:

Fax #:

E-mail Address: **jfriedman@smileylaw.com**

Work Address: **122 E 42nd St Rm 3900  
New York, NY 10168**

## E-mail Notifications

An e-mail notification regarding this filing has been sent to the following address(es) on 12/12/2017 03:10 PM:

**FRIEDMAN, JASON D. - jfriedman@smileylaw.com**

**NOTE: If submitting a working copy of this filing to the court, you must include as a notification page firmly affixed thereto a copy of this Confirmation Notice.**

---

Audrey I. Pheffer, Queens County Clerk and Clerk of the Supreme Court - [apheffer@nycourts.gov](mailto:apheffer@nycourts.gov)  
Phone: 718-298-0173, 718-298-0601 Website: <https://www.nycourts.gov/COURTS/11jd/queensclerk>

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NYSCEF Resource Center - [EFile@nycourts.gov](mailto:EFile@nycourts.gov)  
Phone: (646) 386-3033 Fax: (212) 401-9146 Website: [www.nycourts.gov/efile](http://www.nycourts.gov/efile)

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

---

OSCAR E. AMADOR,

**VERIFIED ANSWER**

Plaintiff(s),

Index No: 717192/17

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendant(s),

---

The defendant(s), Philip J. Lynch and Carol R. Lynch, answering the Complaint herein:

First: Admit(s) each and every allegation in the paragraph(s) of the Complaint designated as follows: 2, 3, 5, 6 and 7.

Second: Deny/denies each and every allegation in the paragraph(s) of the Complaint designated as follows: 11, 12, 13 and 16.

Third: Deny/denies any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph(s) of the Complaint designated as follows: 1, 4 and 9.

Fourth: Deny/denies each and every allegation contained in the paragraph(s) of the Complaint designated as follows, and refers all questions of law to the Court: 15.

Fifth: Deny/denies any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph(s) of the Complaint designated as follows, and refers all questions of law to the Court: 8, 10 and 14.

**The Defendant(s), Philip J. Lynch and Carol R. Lynch, Set(s)  
Forth the Following Affirmative Defenses**

Sixth: That whatever damage, personal injury, injury to property or wrongful death the plaintiff(s) and/or the plaintiff(s)'s decedent may have sustained, if any, at the time and place

alleged in the Complaint herein, or any amendments thereto, was caused by the carelessness, negligence, recklessness, assumption of risk and culpable conduct and want of care on the part of the plaintiff(s) and/or the plaintiff(s)'s decedent; and if any carelessness, negligence, recklessness or culpable conduct upon the part of the answering defendant(s) caused or contributed to such injury or wrongful death and damages to the plaintiff(s) and/or the plaintiff's decedent, such carelessness, negligence, recklessness or culpable conduct bore only a slight proportion to the entire negligence and culpable conduct attributable to both the plaintiff(s) and/or the plaintiff's decedent in causing the accident and any damages sustained.

Seventh: The plaintiff(s) failed to mitigate damages allegedly suffered.

Eighth: Upon information and belief, some or all of the damages alleged in the plaintiff(s)'s Complaint is/are barred and/or subject to the qualification of the provision of § 4545 of the CPLR.

Ninth: The defendant(s) was/were faced with a sudden emergency not of his/her/their own making and cannot be held liable for this accident.

Tenth: In the event that plaintiff was not wearing a helmet, defendant will claim plaintiff failed to mitigate damages.

Eleventh: That there was no contact between the vehicle operated by defendant, Carol R. Lynch and the plaintiff or plaintiff's motorcycle.

Wherefore, the defendant(s), Philip J. Lynch and Carol R. Lynch, demand(s) judgment as follows:

- a. dismissing the Complaint herein, together with the costs and disbursements of this action.

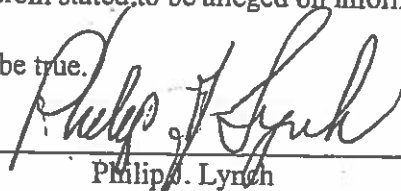
Dated: Jericho, New York  
January 19, 2018

**SMILEY & SMILEY, ESQS.**  
Attorney(s) for Plaintiff(s)  
Oscar E. Amador  
122 East 42nd Street  
Suite 3900  
New York, NY 10168  
(212) 986-2022

Sincerely,  
**RICHARD T. LAU & ASSOCIATES**  
Attorney(s) for Defendant(s)  
Philip J. Lynch and Carol R. Lynch  
P. O. Box 9040  
300 Jericho Quadrangle, Suite 260  
Jericho, NY 11753  
(516) 229-6000  
File Number: 18NEWY00067  
Claim Number: 32-1529-D30

STATE OF NEW YORK, COUNTY OF NASSAU

Philip J. Lynch, being duly sworn, deposes and says: deponent is a defendant in the within action; deponent has read the foregoing Answer and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.



Philip J. Lynch

Sworn to before me this 20<sup>th</sup> day  
of April, 2018.



NOTARY PUBLIC

18NEWY00067

THOMAS P. MAZZINI  
Notary Public, State of New York  
No. 4961472  
Qualified in Nassau County  
Commission Expires February 5, 2022

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

---

OSCAR E. AMADOR,

Plaintiff(s),

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendant(s),

**AMENDED  
VERIFIED ANSWER**

Index No: 717192/17

The defendant(s), Philip J. Lynch and Carol R. Lynch, answering the Complaint herein:

First: Admit(s) each and every allegation in the paragraph(s) of the Complaint designated as follows: 2, 3, 5, 6 and 7.

Second: Deny/denies each and every allegation in the paragraph(s) of the Complaint designated as follows: 11, 12, 13 and 16.

Third: Deny/denies any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph(s) of the Complaint designated as follows: 1, 4 and 9.

Fourth: Deny/denies each and every allegation contained in the paragraph(s) of the Complaint designated as follows, and refers all questions of law to the Court: 15.

Fifth: Deny/denies any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraph(s) of the Complaint designated as follows, and refers all questions of law to the Court: 8, 10 and 14.

**The Defendant(s), Philip J. Lynch and Carol R. Lynch, Set(s)  
Forth the Following Affirmative Defenses**

Sixth: That whatever damage, personal injury, injury to property or wrongful death the plaintiff(s) and/or the plaintiff(s)'s decedent may have sustained, if any, at the time and place



alleged in the Complaint herein, or any amendments thereto, was caused by the carelessness, negligence, recklessness, assumption of risk and culpable conduct and want of care on the part of the plaintiff(s) and/or the plaintiff(s)'s decedent; and if any carelessness, negligence, recklessness or culpable conduct upon the part of the answering defendant(s) caused or contributed to such injury or wrongful death and damages to the plaintiff(s) and/or the plaintiff's decedent, such carelessness, negligence, recklessness or culpable conduct bore only a slight proportion to the entire negligence and culpable conduct attributable to both the plaintiff(s) and/or the plaintiff's decedent in causing the accident and any damages sustained.

Seventh: The plaintiff(s) failed to mitigate damages allegedly suffered.

Eighth: Upon information and belief, some or all of the damages alleged in the plaintiff(s)'s Complaint is/are barred and/or subject to the qualification of the provision of § 4545 of the CPLR.

Ninth: The defendant(s) was/were faced with a sudden emergency not of his/her/their own making and cannot be held liable for this accident.

Tenth: In the event that plaintiff was not wearing a helmet, defendant will claim plaintiff failed to mitigate damages.

Eleventh: That there was no contact between the vehicle operated by defendant, Carol R. Lynch and the plaintiff or plaintiff's motorcycle.

Wherefore, the defendant(s), Philip J. Lynch and Carol R. Lynch, demand(s) judgment as follows:

- a. dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: Jericho, New York  
February 23, 2018

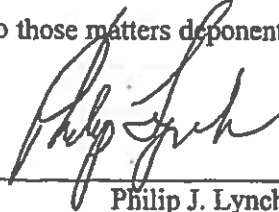
**SMILEY & SMILEY, ESQS.**  
Attorney(s) for Plaintiff(s)  
Oscar E. Amador  
122 East 42nd Street  
Suite 3900  
New York, NY 10168  
(212) 986-2022

Sincerely,  
**RICHARD T. LAU & ASSOCIATES**  
Attorney(s) for Defendant(s)  
Philip J. Lynch and Carol R. Lynch  
P. O. Box 9040  
300 Jericho Quadrangle, Suite 260  
Jericho, NY 11753  
(516) 229-6000  
File Number: 18NEWY00067  
Claim Number: 32-1529-D30

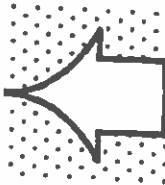
STATE OF NEW YORK, COUNTY OF NASSAU

Philip J. Lynch, being duly sworn, deposes and says: deponent is a defendant in the within  
action; deponent has read the foregoing Defendants' <sup>second</sup> Amended Bill of Particulars and knows the  
contents thereof; the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and as to those matters deponent believes it to be  
true.

Sworn to before me this 5<sup>th</sup> day  
of July, 2018.

  
Philip J. Lynch

  
NOTARY PUBLIC  
18NEWY00067



NOTARIZE

THOMAS P. MAZZINI  
Notary Public, State of New York  
No. 4861472  
Qualified in Nassau County  
Commission Expires February 5, 2022

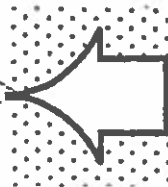
STATE OF NEW YORK, COUNTY OF NASSAU

Carol R. Lynch, being duly sworn, deposes and says: deponent is a defendant in the within  
action; deponent has read the foregoing Defendants' <sup>second</sup> Amended Bill of Particulars and knows the  
contents thereof; the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and as to those matters deponent believes it to be  
true.

Sworn to before me this 5<sup>th</sup> day  
of July, 2018.

  
NOTARY PUBLIC  
18NEWY00067

  
Carol R. Lynch



NOTARIZE

THOMAS P. MAZZINI  
Notary Public, State of New York  
No. 4961472  
Qualified In Nassau County  
Commission Expires February 5, 2022

-----X  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendant.  
-----X

**VERIFIED BILL  
OF PARTICULARS**

Plaintiff, OSCAR E. AMADOR, by his attorneys, SMILEY & SMILEY, LLP, hereby submit the following as and for his Verified Bill of Particulars in response to the demand of the defendants, CAROL R. LYNCH and PHILIP J. LYNCH:

1. Not applicable.
2. The accident herein occurred on September 23, 2017 at approximately 12:15 P.M. on the Grand Central Parkway service road at the intersection of 254<sup>th</sup> Street, in the County of Queens, City and State of New York.
3. The defendants, CAROL R. LYNCH and PHILIP J. LYNCH, were negligent and careless in the ownership, operation, management and control of their motor vehicle; in operating their aforesaid motor vehicle at a greater rate of speed than care and caution would permit under the circumstances; in operating their motor vehicle in a negligent and careless manner; in failing to operate horn, lights and/or signaling devices; in failing to observe other vehicles on the roadway; in failing to observe the roadway; in failing to keep a proper lookout and see what was there to be seen; in failing to yield the right of way; in failing and omitting to provide to give any signal or warning of approach; in failing and omitting to provide and/or make timely and adequate use of brakes, signaling devices and steering mechanisms; and in

violating provisions of the Vehicle and Traffic Laws of the State of New York.

4. All matters of law will be presented to the Justice presiding over this litigation at the time of trial. Plaintiff reserves the right to specify the Chapter, Section and Paragraph of every statute, ordinance, rule, regulation and code violated by the defendant during the time of trial.

5. The plaintiff sustained the following injuries as a result of the accident herein:

LEFT DISTAL TIBIA FRACTURE AND LEFT LEG COMPARTMENT SYNDROME, NECESSITATING SURGERY IN THE NATURE OF MEASUREMENT OF INTRACOMPARTMENTAL PRESSURES; FOUR COMPARTMENT FASCIOTOMY AND APPLICATION OF EXTERNAL FIXATOR ON SEPTEMBER 24, 2017 AT NORTH SHORE UNIVERSITY HOSPITAL;

LEFT LOWER EXTREMITY COMPARTMENT SYNDROME LEFT TIBIA, NECESSITATING SURGERY IN THE NATURE OF REMOVAL OF EXTERNAL FIXATOR LEFT LEG, INCISION AND DRAINAGE SKIN, MUSCLE, BONE, LEFT LEG; INTRA-MEDULLARY NAILING; LEFT TIBIA; AND OPEN REDUCTION AND INTERNAL FIXATION; LEFT POSTERIOR MALLEOLUS OF THE TIBIAL PLAFOND INVOLVING PLACEMENT OF 12 MM AND 11x 315 MM TIBIAL NAIL LOCKED WITH 3 STATIC BOLTS, ON SEPTEMBER 27, 2017 AT NORTH SHORE UNIVERSITY HOSPITAL;

OPEN WOUND OF LEFT LATERAL LEG NECESSITATING SURGERY IN THE NATURE OF ADJACENT TISSUE RE-ARRANGEMENT OF LOWER EXTREMITY, 20 X 12 CM ON OCTOBER 9, 2017 AT NORTH SHORE UNIVERSITY HOSPITAL;

CEREBRAL EMBOLISM WITH CEREBRAL INFARCTION;

RIGHT PICA DISTRIBUTION STROKE;

CYTOTOXIC CEREBRAL EDEMA;



LEFT SHOULDER INTERNAL DERANGEMENT;

LEFT SHOULDER ROTATOR CUFF TEAR;

LEFT SHOULDER IMPINGEMENT;

NEED FOR PHYSICAL AND OCCUPATIONAL  
THERAPY;

TRAUMATIC ANXIETY, PSYCHOLOGICAL  
ANGUISH, EMOTIONAL DISTRESS AND  
DEPRESSION;

TRAUMATICALLY INDUCED ARTHRITIS IS  
EXPECTED TO DEVELOP IN THE FUTURE AT  
THE AFFECTED SITES AND JOINTS;

LOST AND DECREASED ENJOYMENT OF LIFE;

LOST ENJOYMENT OF PRE-ACCIDENT SOCIAL  
ENDEAVORS;

LOSS OF INCOME;

SEVERE PAIN, SWELLING, TENDERNESS,  
LIMITATION OF MOTION, DECREASED  
RANGE OF MOTION, IMPAIRMENT OF  
FUNCTION OF SKIN, BONE, MUSCLE, CARTILAGE,  
LIGAMENTS, TENDONS, JOINTS, BLOOD VESSELS,  
AND NERVES.

a. All of the aforementioned injuries are, upon information and belief,  
permanent in nature and continuing into the future. The plaintiff reserves the right to supplement  
this response.

6. The plaintiff, OSCAR E. AMADOR, was confined as follows:

a. North Shore University Hospital  
300 Community Drive  
Manhasset, New York 11030

Admitted: 9/23/17

Discharged: 10/16/17

b. Plaintiff was confined to the bed from September 23, 2017 until October 16, 2017.

c. Plaintiff was confined to the house from October 16, 2017 until approximately December 2017.

d. Plaintiff was totally disabled from September 23, 2017 until approximately December 2017.

e. Plaintiff is partially disabled since approximately December 2017 until present.

7a. (i) Handyman.

(ii) Hyde Park Gardens.

(iii) [REDACTED]

(iv) [REDACTED]

(v) From the date of the accident to the present.

(vi) [REDACTED]

7b. Not applicable.

8. (a)-(g) Payments for plaintiff's physicians and hospital bills were made by Empire Health Choice Assurance, Inc. Plaintiff will be responsible to reimburse his insurance company which has asserted a lien in the amount of \$95,728.15.

9. Plaintiff's address is [REDACTED]  
[REDACTED]

10. Plaintiff, OSCAR E. AMADOR, was traveling westbound at the time of the occurrence. Defendant, CAROL R. LYNCH, was also traveling westbound at the time of the occurrence.

11. No claim for loss of services, society or consortium is being claimed.
12. Not applicable.
13. Not applicable.
14. Not applicable.
15. All of the plaintiff's medical payments were made by plaintiff's private health insurance.

- (a) Empire Health Choice Assurance, Inc.
- (b) \$95,728.15
- (c) Payments were made from September 23, 2017 to the present.
- (d) [REDACTED]
- (e) None.
- (f) To be provided.
- (g) Unknown at this time.
- (h) Unknown at this time.

16. The plaintiff, OSCAR E. AMADOR, has sustained a "serious injury" by virtue of significant disfigurement and or a fracture and/or a permanent consequential limitation of use of a body organ or function.

17. Objection. Improper demand.
18. No claim for personal or real property damage is being made.
19. Payments for plaintiff's physicians and hospital bills were made by Empire Health Choice Assurance, Inc. Plaintiff will be responsible to reimburse his insurance company, Empire Health Choice Assurance, Inc. which has asserted a lien in the amount of \$95,728.15.

Annexed hereto is a copy of notice of subrogation lien from Meridian Resource Company

LLC dated December 8, 2017. The lien amount, to date, is \$95,728.15.

20. Defendant, CAROL LYNCH, was the operator of a motor vehicle bearing New York license plate number [REDACTED] which was owned by the defendant, PHILIP J. LYNCH.

21. Plaintiff, OSCAR E. AMADOR, was the owner of the motorcycle involved in the occurrence and resides at [REDACTED]

22. The motorcycle was purchased in 2001 and was in a new condition.

23. (a) Harley Davidson.

(b) Super glide.

(c) Two (2) wheels.

(d) Five (5) or six (6) gears.

(e) Black.

24. The motorcycle was equipped with one (1) light in the back and three (3) lights in the front. There were reflectors on both sides of the motorcycle.

25. The motorcycle was equipped with a horn which was located on the right side (by knee) of the motorcycle.

26. The motorcycle had hand and foot brakes.

27. The motorcycle was equipped with two (2) mirrors, one on both sides of the motorcycle.

28. At the time of the accident, plaintiff was proceeding in the left lane of vehicular traffic.

29. Objection. Vague demand.

30. (a) Not applicable. The plaintiff's motorcycle has not been repaired to date.

(b) 2001 Harley Davidson.

(c) Unknown.

31. The plaintiff's motorcycle remains inoperable since the date the accident.

Dated: New York, New York  
March 16, 2018

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By: 

ANDREW J. SMILEY  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

TO: RICHARD T. LAU & ASSOCIATES  
Attorneys for Defendants,  
CAROL R. LYNCH and PHILIP J. LYNCH  
P.O. Box 9040  
300 Jericho Quadrangle, Suite 260  
Jericho, New York 11753  
(516) 229-6000

ATTORNEYS VERIFICATION


STATE OF NEW YORK     )  
                                  ss.:  
COUNTY OF NEW YORK )

ANDREW J. SMILEY, affirms the following under the penalty of perjury:

That I am the attorney for the plaintiff in the within action; that I have read the foregoing **BILL OF PARTICULARS** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Affirmant further states that the reason this verification is made by deponent and not by the plaintiff is that said plaintiff is not within the County of New York where deponent has his office. The source of affirmant's information and belief is reports and documentation in the file.

Dated: New York, New York  
March 16, 2018

  
\_\_\_\_\_  
ANDREW J. SMILEY



**AFFIDAVIT OF SERVICE**

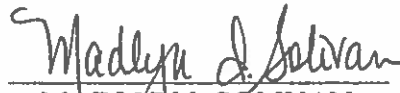
STATE OF NEW YORK     )  
                                  SS.:  
COUNTY OF NEW YORK    )

**Madlyn I. Solivan**, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York.

On **March 16, 2018** I served the annexed **VERIFIED BILL OF PARTICULARS** upon whose name and address are set forth below, by enclosing a true copy thereof in a securely sealed envelope, and/or container, with proper postage, at the address designated by them for that purpose, by depositing the same in an official box of the U.S. Post Office regularly maintained by the United States Government, 122 East 42nd Street, New York, New York 10168, as follows:

RICHARD T. LAU & ASSOCIATES  
Attorneys for Defendants,  
CAROL R. LYNCH and PHILIP J. LYNCH  
P.O. Box 9040  
300 Jericho Quadrangle, Suite 260  
Jericho, New York 11753

  
MADLYN I. SOLIVAN

Sworn to before me this  
16<sup>th</sup> day of March, 2018

  
NOTARY PUBLIC

ANDREW J. SMILEY  
Notary Public, State of New York  
No. 02SM5072933  
Qualified in Kings County  
Commission Expires April 11, 2019



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 717192/17

-----X  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendant.  
-----X

**SUPPLEMENTAL  
VERIFIED BILL  
OF PARTICULARS**

Plaintiff, by his attorneys, SMILEY & SMILEY, LLP, hereby submits the following as and for his Supplemental Verified Bill of Particulars in response to the demand of the defendants, upon information and belief:

8. (f) Loss of earnings: Total loss of wages claimed: \$24,795.37

Dated: New York, New York  
August 15, 2019

Yours, etc.

SMILEY & SMILEY, LLP  
Attorneys for Plaintiff

By: \_\_\_\_\_

JASON D. FRIEDMAN  
122 East 42<sup>nd</sup> Street, Suite 3900  
New York, New York 10168  
(212) 986-2022

TO: PICCIANO & SCAHILL, P.C.  
Attorneys for Defendants  
CAROL R. LYNCH and PHILIP J. LYNCH  
1065 Stewart Avenue, Suite 210  
Bethpage, New York 11714  
(516) 294-5200  
Claim No.: 32-1529-D30



ATTORNEYS VERIFICATION

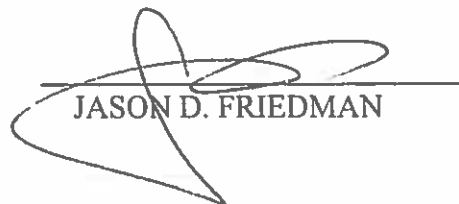
STATE OF NEW YORK     )  
                                  ss.:  
COUNTY OF NEW YORK )

JASON D. FRIEDMAN, affirms the following under the penalty of perjury:

That I am the attorney for the plaintiff in the within action; that I have read the foregoing **SUPPLEMENTAL BILL OF PARTICULARS** and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief, and that as to those matters I believe them to be true.

Affirmant further states that the reason this verification is made by deponent and not by the plaintiff is that said plaintiff is not within the County of New York where deponent has his office. The source of affirmant's information and belief is reports and documentation in the file.

Dated: New York, New York  
August 15, 2019

  
JASON D. FRIEDMAN



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                  SS.:  
COUNTY OF NEW YORK )

**Madlyn I. Solivan**, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York.

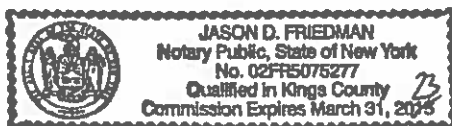
On August 15, 2019, I served the annexed **SUPPLEMENTAL VERIFIED BILL OF PARTICULARS** upon whose name and address are set forth below, by enclosing a true copy thereof in a securely sealed envelope, and/or container, with proper postage, at the address designated by them for that purpose, by depositing the same in an official box of the U.S. Post Office regularly maintained by the United States Government, 122 East 42nd Street, New York, New York 10168, as follows:

PICCIANO & SCAHILL, P.C.  
Attorneys for Defendants,  
CAROL R. LYNCH and PHILIP J. LYNCH  
1065 Stewart Avenue, Suite 210  
Bethpage, New York 11714

  
MADLYN I. SOLIVAN

Sworn to before me this  
15<sup>th</sup> day of August, 2019

  
NOTARY PUBLIC



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

Thursday morning is closed  
usually don't work on  
Thurs afternoon  
- put on record

Tomorrow RYC  
Verdict Sheet - 10 AM  
MARKED PLEADINGS  
Jury Selection Wednesday morning  
Start trial on Friday

Thursday  
- provide  
subpoenaed  
records

SMILEY & SMILEY, LLP

Attorney for Plaintiff

122 EAST 42nd STREET, SUITE 3900

NEW YORK, NEW YORK 10168

(212) 986-2022

Judge likes BMW motorcycle

Temp? 81°  
Type of boots? BATA - purchased in Brazil  
Gloves - type? - not wearing?  
Educational Background? H.S.

Mail ABL  
→ page?

Needs (DYC for Liability; damages - valuation

Can quote PJT section only

Unless modified we have to give modifications

(C) Verdict Sheet Liability; damages

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.  
-----X

Index No.: 717192/17

**3101(d) EXPERT WITNESS  
EXCHANGE**

***PLEASE TAKE NOTICE***, that pursuant to CPLR 3101(d)(1), the plaintiff, OSCAR AMADOR, by his attorneys, SMILEY & SMILEY, LLP, hereby submits the following as and for his Expert Witness Exchange.

The plaintiff, OSCAR AMADOR, intends to call Michael A. Diccico to testify at the trial on his behalf as an expert witness in the field of Traffic Accident Reconstruction.

1. The *Curriculum Vitae* of Michael A. Diccico is annexed as Exhibit "A".
2. The opinions of the expert will be based upon his knowledge, training and expertise in the field of Traffic Accident Reconstruction. The expert will also base his opinions upon appropriate literature, texts, articles, indexes and treatises in the field of Traffic Accident Reconstruction as well as the litigation materials herein including deposition transcripts, discovery exchanged between the parties, the NYPD accident report and upon an inspection of the plaintiff's motorcycle and an inspection of the scene of the accident and upon photographs exchanged between the parties and photographs and diagrams that are annexed hereto as Exhibit "B".
3. Mr. Diccico will testify to the following opinions to within a reasonable degree of accident reconstruction certainty regarding the subject accident that occurred on September 23, 2017:

1. The damage on the Amador motorcycle is consistent with the front bumper of Mrs. Lynch's Audi striking the right rear saddlebag on Mr. Amador's motorcycle in a nearly in-line orientation.

2. When Mr. Amador began his left turn, Mrs. Lynch's Audi was at least 220 feet away.

3. As Mr. Amador was turning left, all approaching traffic (including Mrs. Lynch) must yield right-of-way to Mr. Amador since he is already using the intersection.

4. Traveling at her stated 25 mph and utilizing a 0.8g deceleration rate for hard braking, Mrs. Lynch required approximately 81 feet (55 feet perception/reaction, 26 feet braking) to stop after observing Mr. Amador's motorcycle as a hazard.

5. Mrs. Lynch's Audi was approximately at the start of the service road when she perceived Amador's motorcycle as a hazard and began to react. At this location, Mrs. Lynch's Audi was approximately 45 feet or 1.2 seconds from the impact location and Mrs. Lynch would have been unable to begin braking until after the collision occurred.

6. Mrs. Lynch failed to yield the right-of-way to Mr. Amador's motorcycle as he was properly executing a left turn.

7. Mr. Amador should have been clearly visible to Mrs. Lynch as she approached the intersection.

8. Mrs. Lynch was not driving attentively and her inattentive driving caused the collision.

***PLEASE TAKE FURTHER NOTICE***, that plaintiff reserves the right to amend and/or supplement this response up to and including the time of trial.



# EXHIBIT “A”

# SKE Forensic Consultants, LLC



169 Ramapo Valley Road  
Oakland, NJ 07436  
Office 201.644.0700  
Fax 201.644.0701  
[www.skefc.com](http://www.skefc.com)

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## MICHAEL A. DICICCO

### CURRICULUM VITAE

#### CURRENT POSITION:

Senior Associate of SKE Forensic Consultants, LLC, a private consulting firm specializing in the analysis and reconstruction of vehicle collisions and defects.

- Crash Reconstruction: Inspection of vehicles and crash sites. Review of police reports, witness testimony, medical records, scene photos, weather records, repair bills, black box crash data, and other documents. Computational recreation of the crash using facts and scientifically accepted methodology to determine how the crash occurred. Determine the causes(s) of the crash, which may typically include driver actions, roadway issues, weather conditions, and vehicle defects.
- Motor Vehicle System Failure Analysis: Conventional and anti-lock braking, restraints, power-train, throttle-by-wire (drive-by-wire), seat, suspension, steering, wheels and tires, fuel delivery, emission controls, electrical, climate control, cooling, frame and unibody.
- Motor Vehicle Failures: Airbag, seat belt, seat performance, structural, suspension, axle, spindle failure and separation, wheel bearing failure, transmission failure, sudden acceleration, cruise control, steering, wheel separation, brakes, fuel injection, fuel delivery, electronic engine controls, electronic throttle control.
- Motor Vehicle Repair: Diagnosis and repair of engine, transmission, transfer case, differential and final drive, suspension and steering systems, conventional and anti-lock brake systems, stability/traction control, fuel system, emission systems, climate control, entertainment, restraint systems, lighting/electrical, interior/exterior components and systems, and Safety Recall repairs. Proper repair procedures and shop practices including proper use of tools and equipment.
- Manufacturing Processes: Experienced in metal fabrication, machining, welding, die-casting, injection molding, stampings, painting and coatings. Common issues and failure modes for these include premature corrosion, porosity, excessive burrs and flash, which lead to fires, injuries, and reduced crash performance.

## **PROFESSIONAL EXPERIENCE:**

### **Robson Forensic (2008-2016)**

#### Vehicle and Crash Reconstruction Expert

- Provide technical investigations, crash reconstruction, testing, analysis, reports, and testimony toward the resolution of litigation arising from motor vehicle collisions, vehicle design/manufacturing defects, improper repairs, and vehicle fires.
- Over 400 investigations of real-world collisions: vehicle-to-vehicle, single-vehicle, hit pedestrian.

### **Ford Motor Company (2007-2008)**

#### Product Engineer - Restraints

- Developed and released design changes for the Ford Escape, Edge, and F-150 curtain and side airbag programs. This process included feasibility analysis and meeting federal crash standards for sled, barrier, and rollover testing.
- Launched several design changes for the MY09 Ford Escape Curtain Airbag. Developed and approved Ford's first non-sealed side airbag connectors.

### **Takata – Automotive Inflation Systems (2006-2007)**

#### Sr. Product Engineer - Inflators

- Developed and qualified new airbag inflator designs. Tuned inflators for OEM airbag module testing, coordinated USCAR DV/PV testing, completed FMEA studies, conducted design reviews, released drawings and BOMs, provided mass flow data for system-level testing (Madymo), and evaluated design changes (margin testing, tolerance stack-ups, feasibility/cost analysis).

### **Autoliv – Automotive Safety Products (2003-2006)**

#### Project Engineer – Ford Business Unit

- Coordinated design changes for Ford airbags, seat belts and steering wheels. Conducted design change workshops and benchmarked restraint systems manufactured by Takata, TRW, Delphi, and Key Safety.

### **Autoliv – Automotive Inflators (2000-2003)**

#### Mechanical Design Engineer

- Completed design/product validation testing and provided engineering for automotive airbag inflators. Designed test fixtures, evaluated design changes, completed failure mode analysis, control plans, investigated lot testing anomalies, reviewed customer complaints, implemented permanent corrective actions, and created/edited drawings and test procedures. Utilized the Ford 8D process to address customer/internal corrective action issues, created statistical control charts, and performed Gage R/R's on critical processes.

### **IMI Norgren, Inc. (1998-2000)**

#### Mechanical Engineer, RMA Supervisor

- Supervised the Returned Merchandise Department and provided general manufacturing support for pneumatic airline products. Maintained customer complaint and supplier confidence-level reports for Executive review. Conducted laboratory product testing, performed customer product evaluations, maintained ISO 9001 procedures, and improved products/processes on a Value Analysis Team.

### **Jetstream Systems, Inc. (1997-1998)**

Mechanical Design Engineer

- Designed air conveying systems for the aluminum can industry. Rigorous AutoCAD design/detail experience.

### **EDUCATION/TRAINING:**

Fully Accredited Traffic Accident Reconstructionist from the Accreditation Commission for Traffic Accident Reconstructionists – ACTAR #3201 (2016)

California Polytechnic State University, San Luis Obispo, CA

- Bachelor of Science, Mechanical Engineering, 1997

Northwestern University, Traffic Institute, Evanston, IL

- Traffic Crash Reconstruction I, 2008
- Traffic Crash Reconstruction II, 2015
- Traffic Crash Reconstruction III, 2016

Court-qualified as a Crash Reconstruction Expert Witness

Investigating Motor Vehicle Fires, 2012

Fundamentals of Motor Vehicle Fire Investigation, SAE, 2013

Certified Motor Vehicle Air Conditioning Technician, 2007

NAPARS – NATARI – MATAI – NJAAR – NYSTARS – MATAI Conference, 2018

- Investigating Pedestrian Collisions, History of Pedestrian Crash Testing and Reconstruction, Pedestrian Crash Testing, Medical Perspective/Pedestrian Injury Patterns, Perception Response Times, Nighttime Perception, Pedestrian Distraction, Pedestrian Formulas Preferred and Problematic, Eye Tracking Testing Review, Crash Testing Results Review.  
Lake George, New York – October 17-19, 2018

NJAAR - Video Analysis Seminar

- Velocity Analysis from Traffic, Dash, and Witness Cameras which included Geolocation fundamentals, photography for photogrammetry, velocity comparison & testing, matchmoving, temporal analysis, and traffic/dash/witness camera analysis.  
Sayreville, New Jersey – March 20, 2019

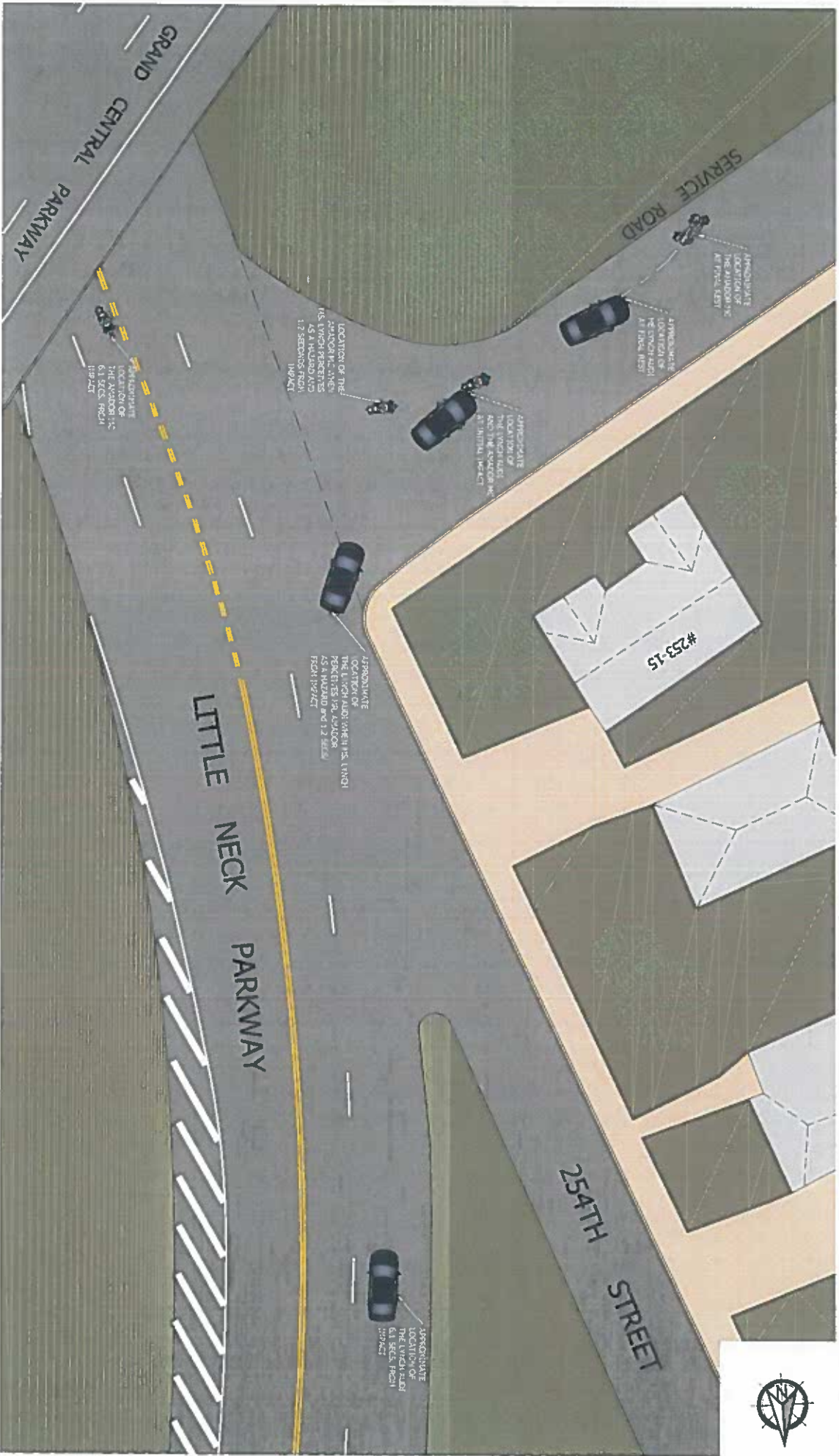
### **PROFESSIONAL AFFILIATIONS:**

<b>PI Tau Sigma</b>	Engineering Honor Society, 1995
<b>SAE</b>	Society of Automotive Engineers, 2003
<b>NJAAR</b>	New Jersey Association of Accident Reconstructionists
<b>NATARI</b>	National Association of Traffic Accident Reconstruction

### **GUEST SPEAKER**

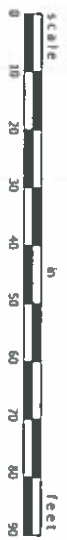
OACTA Personal Injury Defense Seminar, Columbus, Ohio, 2014  
Topic – Event Data Recorders.

# EXHIBIT “B”



# Accident Site Diagram

**SKE**  
 SKE Forensic Consultants, LLC  
 169 Ramapo Valley Road, Oakland, NJ 07436  
 www.skel.com







Service Road

253-15

Little Neck  
Parkway

Grand Central Park

Goog









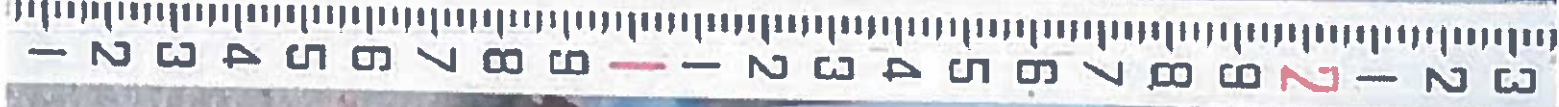












**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                  SS.:  
COUNTY OF NEW YORK    )

**Madlyn I. Solivan**, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in New York, New York.

On **December 18, 2019**, I served the annexed **3101(d) EXPERT WITNESS EXCHANGE** upon whose name and address are set forth below, by enclosing a true copy thereof in a securely sealed envelope, and/or container, with proper postage, at the address designated by them for that purpose, by depositing the same in an official box of the U.S. Post Office regularly maintained by the United States Government, 122 East 42nd Street, New York, New York 10168, as follows:

PICCIANO & SCAHILL, P.C.  
Attorneys for Defendants,  
CAROL R. LYNCH and PHILIP J. LYNCH  
1065 Stewart Avenue, Suite 210  
Bethpage, New York 11714

  
MADLYN I. SOLIVAN

Sworn to before me this  
18<sup>th</sup> day of December, 2019

  
NOTARY PUBLIC



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
KARAH PREISS,

Plaintiff,

-against-

PRECISION ELEVATORS and JAMES E.  
GRIFFIN,

Defendants.  
-----X

PRECISION ELEVATOR PRODUCTS, INC.  
D/B/A PRECISION ESCALATOR PRODUCTS,  
INC. S/H/A PRECISION ELEVATORS and  
JAMES E. GRIFFIN,

Third-Party Plaintiffs,

-against-

MTA BUS CO., NEW YORK CITY TRANSIT  
AUTHORITY and MAURICE BARTLEY,

Third-Party Defendants,  
-----X

The parties have conferred among themselves and with the Court pursuant to Fed. R. Civ. P.  
16. The following statements, directions and agreements are adopted as the Pretrial Order herein.

I. JURY/NON-JURY

Jury trial. Estimated trial time is 6 days.

II. STIPULATION OF FACTS

1. On August 20, 2010 at approximately 10:15a.m., Karah Preiss was riding her bicycle northbound on Third Avenue between 49<sup>th</sup>-50<sup>th</sup> Streets.
2. On August 20, 2010 at approximately 10:15a.m., defendant James E. Griffin was the operator of a van owned by defendant, Precision Elevators.

10 CV 7649 (JFK)(AJP)

**[PROPOSED]  
PRETRIAL ORDER**

**Magistrate Judge  
Andrew J. Peck**

3. On August 20, 2010 at approximately 10:15a.m., defendant James E. Griffin parked the aforesaid van in the right-hand bus lane on Third Avenue between 49<sup>th</sup>-50<sup>th</sup> Streets.

4. Defendant James E. Griffin was operating the aforesaid van with the knowledge, permission and consent of defendant Precision Elevators and in the course of business for defendant Precision Elevators.

5. On August 20, 2010 at approximately 10:15a.m., third-party defendant, Maurice Bartley, was the operator of a bus owned by third-party defendant, MTA Bus Co.

6. On August 20, 2010 at approximately 10:15a.m., third-party defendant, Maurice Bartley, was operating the aforesaid bus with the knowledge, permission and consent of third-party defendant, MTA Bus Co.

7. On August 20, 2010 at approximately 10:15a.m., third-party defendant, Maurice Bartley, was operating the aforesaid bus northbound on 3<sup>rd</sup> Avenue between 49<sup>th</sup>-50<sup>th</sup> Streets.

8. On August 20, 2010 at approximately 10:15a.m., an accident occurred involving the plaintiff, Karah Preiss, the defendants, James E. Griffin, Jr. and Precision Elevators, and the third-party defendants, Maurice Bartley and MTA Bus Co.

9. Plaintiff, Karah Preiss, sustained personal injuries as a result of the foregoing occurrence.

### III. ISSUES TO BE TRIED

The issues to be tried before this jury:

1. Were the defendants, Precision Elevator Products, Inc. and James E. Griffin, negligent in the operation of their motor vehicle?

2. Were the defendants, MTA Bus Co. and Maurice Bartley, negligent in the operation of their motor vehicle?

3. Did the defendants, Precision Elevator Products, Inc. and James E. Griffin, violate Section 1214 of the New York State Vehicle and Traffic Law?

4. Was the negligence of the defendants, Precision Elevator Products, Inc. and James E. Griffin, if proven, a substantial factor in causing this accident with the resultant injuries to plaintiff, Karah Preiss?

5. Was the negligence of the third-party defendants, MTA Bus Co. and Maurice Bartley, if proven, a substantial factor in causing this accident with the resultant injuries to plaintiff, Karah Preiss?

6. Was the violation of Section 1214 of the New York State Vehicle and Traffic Law by the defendants, Precision Elevator Products, Inc. and James E. Griffin, if proven, a substantial factor in causing this accident and resultant injuries to the plaintiff, Karah Preiss?

7. Was plaintiff, Karah Preiss, comparatively negligent in the operation of her bicycle?

8. Was the comparative negligence of plaintiff, Karah Preiss, if proven, a substantial factor in causing this accident and her resultant injuries?

9. What amounts, if any, is plaintiff Karah Preiss entitled to as compensation for her past and future damages.

#### IV. PLAINTIFF'S WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

1. Karah Preiss (plaintiff)
2. James E. Griffin (defendant/Precision Elevator driver)
3. Maurice Bartley (third-party defendant/MTA bus driver)
4. P.O. M. Linahan (responding NYC police officer)\*
5. Ilyau Khavsov (eyewitness/bus passenger)
6. Dr. Kenneth Francis (treating plastic surgeon)
7. Dr. Scott Ellis (treating orthopedic surgeon)
8. Dr. Carl Heise (treating neurologist)
9. Dr. Robert T. Grant (defendants' independent expert plastic surgeon)
10. Jeanette Friedman, C.S.W. (treating clinical social worker)\*
11. Sandi Mendelson (plaintiff's mother)

#### V. DEFENDANTS' WITNESS LIST

The witnesses listed below may be called at trial. No witness not identified herein shall be permitted to testify on either party's case in chief absent good cause shown.

Precision Elevators and James E. Griffin:

1. Karah Preiss (plaintiff)
2. Maurice Bartley (third-party defendant)
3. James Griffin (defendant)
4. Dr. Robert T. Grant (independent expert plastic surgeon)
5. Dr. John Denton (independent expert orthopedic surgeon)
6. Dr. Kenneth Francis (treating plastic surgeon)
7. Dr. Scott Ellis (treating orthopedic surgeon)
8. Dr. Carl Heise (treating neurologist)
9. Jeanette Friedman, C.S.W. (treating clinical social worker)\*
10. Dr. Sheri Spirt (prior treating therapist)\*

MTA Bus Co. and Maurice Bartley:

1. Maurice Bartley
2. Ilyau Khavsov
3. Karah Preiss



4. James E. Griffin
5. Dr. Robert T. Grant (if not called by defendant)
6. Dr. John Denton (if not called by defendant)

Plaintiff's Objection to witness list:

Precision Elevator and James E. Griffin's Objection to witness list:

MTA Bus Co. and Maurice Barley's Objection to witness list:

## VI. PLAINTIFF'S EXHIBITS

No exhibit not listed below may be used at trial except (a) for cross-examination purposes or (b) if good cause for its exclusion from the pretrial order is shown.

1. Diagram of the accident scene – photo overview and schematic.
2. New York Presbyterian Hospital chart
3. Color photographs of plaintiff's injuries.
4. MTA Bus Co. accident/investigation reports.
5. NYC Police Department accident report.
6. Photographs taken at the scene of the accident.
7. Medical illustration of skin and subcutaneous tissue.
8. Medical illustration of nerves of the lower limb.
9. Deposition testimony of Karah Preiss.
10. Deposition testimony of James E. Griffin.
11. Deposition testimony of Maurice Bartley.
12. Records of Dr. Scott Ellis.
13. Records of Dr. Carl Heise.
14. Records of Dr. Kenneth Francis.
15. Records of Jeanette Friedman, C.S.W.
16. Records of Metropolitan Jewish Home Care.

## VII. DEFENDANTS' EXHIBITS

No exhibit not listed below may be used at trial except (a) for cross-examination purposes or (b) if good cause for its exclusion from the pretrial order is shown.

Precision Elevator and James E. Griffin:

1. Deposition testimony of Karah Preiss.
2. Deposition testimony of Maurice Bartley.
3. Deposition testimony of James E. Griffin.

4. New York Presbyterian Hospital records.
5. Records of Dr. Scott Ellis.
6. Records of Metropolitan Jewish Home Care.
7. Records of Dr. Carl Heise.
8. Records of Dr. Kenneth Francis.
9. Records of Jeanette Friedman, C.S.W.
10. Records of Dr. Sheri Spirt.
11. MTA Incident Report dated 8/20/10.
12. MTA Supervisor's Incident Report.
13. MTA Internal Rules and Guidelines.

MTA Bus Co. and Maurice Bartley:

1. Photographs taken of the accident scene.
2. Deposition testimony of plaintiff.
3. Deposition testimony of James F. Griffin.
4. New York Presbyterian Hospital records.

#### VIII. STIPULATIONS AND OBJECTIONS WITH RESPECT TO EXHIBITS

The parties hereby stipulate to reserve all objections to the aforesaid exhibits until the time of trial.

#### IX. DEPOSITION DESIGNATIONS

1. Plaintiff's Designations:

Plaintiff does not intend to use deposition transcript testimony in her case in chief unless the deposed witness is unavailable for live testimony.

Plaintiff may use deposition transcript testimony to cross examine a witness pursuant to the local rules of this Court and the Federal Rules of Civil Practice.

2. Defendants Precision Elevators and James E. Griffin's Designations

Defendants do not intend to use deposition transcript testimony in their case in chief unless the deposed witness is unavailable for live testimony.

Defendants may use deposition transcript testimony to cross examine a witness pursuant to the local rules of this Court and the Federal Rules of Civil Practice.

3. Third Party-Defendants MTA Bus Co. and Maurice Bartley's Designations  
Third-party defendants do not intend to use deposition transcript testimony in their case in chief unless the deposed witness is unavailable for live testimony.  
Third-party defendants may use deposition transcript testimony to cross examine a witness pursuant to the local rules of this Court and the Federal Rules of Civil Practice.
4. Plaintiff's Objections and Counterdesignations: None
5. Defendant's Objections and Counterdesignations: None

Dated: August 11, 2011

Respectfully Submitted,

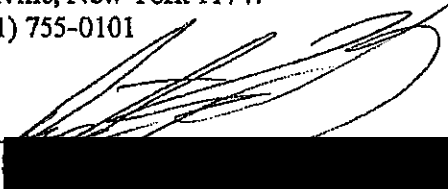
SMILEY & SMILEY, LLP  
Attorneys for Plaintiff  
60 East 42nd Street Suite 950  
New York, New York 10165  
(212) 986-2022

By:

  
GUY I. SMILEY (GIS/5926)

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\_\_\_\_\_  
U.S.M.J.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

Index No.: 717192/17

-----X  
OSCAR E. AMADOR,

Plaintiff,

PLAINTIFF'S  
PRE-MARKED EXHIBITS

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendant.  
-----X

<u>Pre Marked Number</u>	<u>Description of Exhibit</u>	<u>Entered Into Evidence As</u>
1	Photo of Motorcycle (full side right)	
2	Photo of Motorcycle (full front view)	
3	Photo Motorcycle (right rear saddle)	
4	Photo Motorcycle (rear view with ruler)	
5	Photo Motorcycle (front left bar)	
6	Photo of Intersection (EBT Ex. A)	
7	Photo of GCP Service Rd (EBT Ex. D)	
8	Photo Overhead View of Intersection	
9	Photo Accident scene #1	
10	Photo Accident scene #2	
11	Photo Accident scene #3	
12	Photo Accident scene with red arrow	
13	Accident Diagram	
14 (a)-(w)	Route Photos	
15	Police Report	

SMILEY & SMILEY, LLP  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x Index No.: 717192/17

OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

-----x

**PLAINTIFF'S REQUESTS TO CHARGE**

**LIABILITY**

**PJI 1:20 Introduction**

**PJI 1:21 Review Principles Stated**

**PJI 1:22 Falsus in Uno**

**PJI 1:23 Burden of Proof**

**PJI 1:91 General Instruction—Interested Witness—Generally**

The plaintiff and the defendant both testified before you. As parties to the action, both are interested witnesses. An interested witness is not necessarily less believable than a disinterested witness. The fact that he or she is interested in the outcome of the case does not mean that he or she has not told the truth. It is for you to decide from the demeanor of the witness on the stand and such other tests as your experience dictates whether or not the testimony has been influenced, intentionally or unintentionally, by his or her interest. You may, if you consider it proper under all of the circumstances, not believe the testimony of such a witness, even though it is not otherwise challenged or contradicted. However, you are not required to reject the testimony of such a witness, and may accept all or such part of his or her testimony as you find reliable and reject such part as you find unworthy of acceptance.

**PJI 1:90 General Instruction—Expert Witness**

You will recall that Michael DeCicco and Robert Genna testified concerning their qualifications in the field(s) of Accident Reconstruction and gave their opinions concerning issues in this case. When a case involves a matter of science or art or requires special knowledge or skill that most people do not have, a qualified witness is permitted to state their opinions for the information of the court and jury. The opinions stated by Michael DeCicco and Robert Genna were based on particular facts, as they obtained knowledge of them and testified about them or as the attorney

who questioned them asked them to assume. You may reject any opinion if you find the facts to be different from the facts that formed the basis for the opinion. You may also reject an opinion if, after careful consideration of all the evidence in the case, including the cross-examination of Michael DeCicco and Robert Genna, you decide that an opinion is not convincing. In other words, you are not required to accept any opinion to the exclusion of the facts and circumstances disclosed by other evidence. Opinion testimony should be evaluated in the same way as the testimony of any other witness. It is given to assist you in reaching a proper conclusion; it is entitled to such weight as you find the witness's qualifications in the field warrant and must be considered by you, but is not controlling upon your judgment.

**PJI 2:10 Common Law Standard of Care—Negligence Defined—Generally**

Negligence is lack of ordinary care. It is a failure to use that degree of care that a reasonably prudent person would have used under the same circumstances. Negligence may arise from doing an act that a reasonably prudent person would not have done under the same circumstances, or, on the other hand, from failing to do an act that a reasonably prudent person would have done under the same circumstances.

**PJI 2:70 Proximate Cause—In General**

An act or omission is regarded as a cause of an accident if it was a substantial factor in bringing about the accident, that is, if it had such an effect in producing the accident that reasonable people would regard it as a cause of the accident. There may be more than one cause of an accident, but to be substantial, it cannot be slight or trivial. You may, however, decide that a cause is substantial even if you assign a relatively small percentage to it.

**PJI 2:36 Comparative Fault**

If you find that the defendant was negligent and that the defendant's negligence contributed to causing of the accident, you must next consider whether the plaintiff was also negligent and whether the plaintiff's conduct contributed to causing the accident, injury.

The burden is on the defendant to prove that the plaintiff was negligent and that his negligence contributed to causing the accident. If you find that the plaintiff was not negligent, or if negligent, that his negligence did not contribute to causing the accident, you must find that plaintiff was not at fault. In that event, you should go no further and report your findings to the court. If, however, you find that the plaintiff was negligent and that his negligence contributed to causing the accident, you must then apportion the fault between the plaintiff and the defendant. Weighing all the facts and circumstances, you must consider the total fault, that is, the fault of both the plaintiff and the defendant and determine what percentage of fault is chargeable to each. In your verdict, you will state the percentages you find. The total of those percentages must equal one hundred percent.

**PJI 2:36.1 Comparative Fault [Supplemental Instruction]**

For example, if you should find that the defendant and the plaintiff were equally at fault you would report that each was 50% responsible. If you should find that one party was more at fault, you would assign a higher percentage to that party and a lower percentage to the other, with the total of the percentages equaling one hundred percent.

**PJI 2:77 Motor Vehicle Accidents—Duty Toward Other Motorists, In General**

It was the duty of each of the drivers to operate their vehicles with reasonable care taking into account the actual and potential dangers existing from weather, road, traffic and other conditions. Each of them was under a duty to maintain a reasonably safe rate of speed; to have their vehicles under reasonable control; to keep a proper lookout under the circumstances then existing to see and be aware of what was in their ; and to use reasonable care to avoid an accident.

**PJI 2:77.1 Motor Vehicle Accidents—Duty Toward Other Motorists, in General [Supplemental Instruction]**

A driver is charged with the duty to see that which under the facts and circumstances he or she should have seen by the proper use of his or her senses, and if you find that plaintiff or defendant did not observe that which was there to be seen you may find that he or she was negligent in failing to look or in not looking carefully.

**PJI 2:245 Liability for the Conduct of Another—Owner of Vehicle, for Acts of Operator—Permission, Express or Implied**

Although defendant PHILLIP LYNCH was not operating the vehicle at the time of the accident, pursuant to Section 388 of the Vehicle and Traffic law, he, as the owner of the vehicle, is also responsible for the accident if it results from the negligence of the driver, defendant CAROL R. LYNCH.

**PJI 1:26A General Instructions—Jury Not to Consider No-Fault Statute**

**PJI 2:26 Statutory Standard of Care—Vehicle and Traffic Law Violation**

The Vehicle and Traffic Law establishes rules of conduct that must be obeyed by motorists and pedestrians alike. Plaintiff claims that defendant failed to comply with §1180(d)1 of the Vehicle and Traffic Law by operating her motor vehicle in excess of the posted speed limit. §1180(d)1 of the Vehicle and Traffic Law provides as follows: *no person shall drive in excess of such maximum speed limits at any time.* In considering the evidence in this case, you must determine whether plaintiff has proved that defendant failed to comply with that statute. If you find that the defendant violated that statute, such a violation constitutes negligence. You cannot disregard a violation of the statute and substitute some standard of care other than that set forth in the statute.

**PJI 2:29 Statutory Standard of Care—Ordinances or Regulations**

Plaintiff claims that the defendant was speeding in excess of twenty-five miles per hour in violation of a New York City Traffic Rule and Regulation pertaining to speed restrictions. If you find that the defendant violated the Traffic Rule and Regulation you may consider the violation as some evidence of negligence, along with the other evidence in the case, provided that such violation was a substantial factor in bringing about the accident.

Section 4-06 of the Rules and Regulations of the City of New York provides as follows: *No person shall drive a vehicle at a speed greater than twenty-five miles per hour except where official signs indicate a different maximum speed limit.*



**PJI 1:24 Return to Courtroom**

**PJI 1:25 Consider Only Testimony and Exhibits**

**PJI 1:25A Juror's Use of Professional Expertise**

**PJI 1:26 Five-Sixths Verdict**

**PJI 1:28 Conclusion**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x Index No.: 717192/17

OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

-----x

**PLAINTIFF'S REQUEST TO CHARGE**

**DAMAGES**

**PJI 1:20 Introduction**

**PJI 1:21 Review Principles Stated**

**PJI 1:22 Falsus in Uno**

**PJI 1:23 Burden of Proof**

**PJI 1:25 Consider Only Testimony and Exhibits**

**PJI 2:36.2 Comparative Fault [Supplemental Instruction]**

You must now decide from the evidence before you the total amount of damages suffered by the plaintiff in dollars in accordance with the rules that I am about to explain to you. In arriving at the total, you must not consider the percentages of fault but must simply report the total amount of the plaintiff's damages.

**PJI 2:280 Damages—Personal Injury—Injury and Pain and Suffering**

If you decide that defendant is liable, plaintiff is entitled to recover a sum of money which will justly and fairly compensate him for any injury, disability and conscious pain and suffering to date caused by defendant. Conscious pain and suffering means pain and suffering of which there was some level of awareness by plaintiff.

**PJI 2:280.1 Damages—Personal Injury—Injury and Pain and Suffering [Supplemental Instruction]**

In determining the amount, if any, to be awarded plaintiff for pain and suffering, you may take into consideration the effect that plaintiff's injuries have had on plaintiff's ability to enjoy life. Loss of enjoyment of life involves the loss of the ability to perform daily tasks, to participate in the activities which were a part of the person's life before the injury, and to experience the pleasures of life. If you find that the plaintiff, as a result of his injuries, suffered some loss of the ability to enjoy life and that the plaintiff is aware, at some level, of a loss, you may take that loss into consideration in determining the amount to be awarded to plaintiff for pain and suffering.

**PJI 2:301 Damages—Personal Injury—Collateral Sources—Itemized Verdict**

If you decide for the plaintiff on the question of liability, you must include in your verdict an award for past and future pain and suffering. That amount must include the amount for the injury suffered and for the future effect of the injury, if any. Based upon the evidence you may also include an award for each of the following items, separately divided into amounts intended to compensate the plaintiff for damages incurred before your verdict and amounts intended to compensate the plaintiff for damages to be incurred in the future: medical expenses. If you make an award for any item of damages to be incurred in the future, then for each such item, you must state the period of years over which the amount awarded is intended to provide compensation and the amount you fix must represent the full amount awarded to plaintiff for that item of damage for that future period without reduction to present value.

Your verdict will include answers to the following questions which will be submitted to you in writing:

- (1) State separately the amount awarded for the following items of damages, if any, from the time of the occurrence up to the date of your verdict:
  - (a) Pain and suffering up to the date of your verdict.
  - (b) Medical expenses;If you decide not to make an award as to any item, you will insert the word “none” as to that item.
- (2) State separately the amount awarded for the following items of damages, if any, to be incurred in the future:
  - (a) Pain and suffering, including the permanent effect of the injury, from the time of verdict to the time that plaintiff could be expected to live.
  - (b) Medical expenses.If you decide not to make an award as to any item, you will insert the word “none” as to that item.
- (3) If you do decide to award any amounts intended to compensate the plaintiff for damages to be incurred in the future, then for each item for which an award is made, state the period of years over which such amounts are intended to provide compensation. For any item for which an award is not made, you will insert the word “none” as to that item.

**PJI 1:25A Juror’s Use of Professional Expertise****PJI 1:26 Five-Sixths Verdict****PJI 1:24 Return to Courtroom****PJI 1:28 Conclusion**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x Index No.: 717192/17  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

-----x

**VERDICT SHEET**

1. Was the defendant, CAROL R. LYNCH, negligent?

At least five jurors must agree on the answer to this question.

Yes\_\_\_ No\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If your answer is "No," proceed no further and report to the court.  
If your answer is "Yes," proceed to Question "2."

2. Was defendant, CAROL R. LYNCH's, negligence a substantial factor in causing the accident?

At least five jurors must agree on the answer to this question.

Yes\_\_\_ No\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If your answer to Question "2" is "No," proceed no further and report to the court.  
If your answer to Question "2" is "Yes," proceed to Question "3."

3. Was plaintiff negligent?

At least five jurors must agree on the answer to this question.

Yes\_\_\_\_ No \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If your answer to Question “3” is “No,” proceed no further and report to the court.  
If your answer to Question “3” is “Yes,” proceed to Question “4.”

4. Was plaintiff's negligence a substantial factor in causing the accident?

At least five jurors must agree on the answer to this question.

Yes\_\_\_\_ No\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

If your answer to Question “4” is “No,” do not answer Question “5” proceed no further and report to the court.  
If your answer to Question “4” is “Yes,” proceed to Question “5.”

5. What was the percentage of fault of the defendant and what was the percentage of fault of the plaintiff?

At least five jurors must agree on the answer to this question.

Defendant %\_\_\_\_\_

Plaintiff %\_\_\_\_\_

Total must be  
100%

\_\_\_\_\_  
\_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----x      Index No.: 717192/17  
OSCAR E. AMADOR,

Plaintiff,

-against-

CAROL R. LYNCH and PHILIP J. LYNCH,

Defendants.

-----x

**VERDICT SHEET**

1.      What amount of damages do you award to plaintiff OSCAR AMADOR for past pain and suffering?

\$ \_\_\_\_\_

At least five jurors must agree on the answer to this question.

\_\_\_\_\_  
\_\_\_\_\_

2.      What amount of damages do you award to plaintiff Oscar Amador for future pain and suffering?

\$ \_\_\_\_\_

For how many years does the future pain and suffering award cover?

\_\_\_\_\_ years

At least five jurors must agree on the answer to this question.

\_\_\_\_\_  
\_\_\_\_\_

3. What amount of damages do you award plaintiff OSCAR AMADOR for past medical expenses?

\$\_\_\_\_\_

At least five jurors must agree on the answer to this question.

\_\_\_\_\_  
\_\_\_\_\_

4. What amount of damages do you award plaintiff OSCAR AMADOR for future medical expenses?

\$\_\_\_\_\_

For how many years does the future medical expense award cover?

\_\_\_\_\_ years

At least five jurors must agree on the answer to this question.

\_\_\_\_\_  
\_\_\_\_\_

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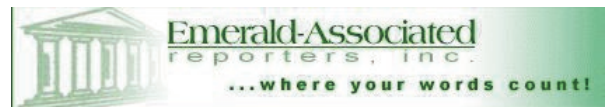
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