

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. BRUCE D. ALPERT

Justice

TRIAL/IAS, PART7
NASSAU COUNTY

VINCENT PONTILLO, as the Administrator of the Estate of
FRANCIS PONTILLO, and VINCENT PONTILLO,
individually,

Index No. 15354/01
Motion Sequence Nos. 4-6

Plaintiff,

-against-

Motion Date: June 2, 2003

FRANKLIN HOSPITAL MEDICAL CENTER,
GEORAL INTERNATIONAL OF NEW YORK,
INC. and GEORAL INTERNATIONAL LTD.

Defendants.

GEORAL INTERNATIONAL OF NEW YORK,
INC. and GEORAL INTERNATIONAL LTD.,

Third-Party Plaintiffs,

-against -

P.J. WYLER CONSTRUCTION, INC.,
FRANKLIN HOSPITAL MEDICAL CENTER,
and OVERHEAD DOOR CORPORATION,

Third-Party Defendants.

P.J. WYLER CONSTRUCTION, INC.,

Fourth-Party Plaintiff,

-against-

MICHAEL RABIN, AIA,

Fourth-Party Defendant.

The following papers read on these applications to strike and compel:

Notices of Motion	XX
Notice of Cross-motion	X
Opposing Submissions	XXX
Reply Papers	X
Memoranda of Law	XX

Upon the foregoing papers it is ordered that the motions by third-party defendant, Overhead Door Corporation, and the cross-motion by defendant, Franklin Hospital Medical Center, for an order pursuant to 22 NYCRR 202.21(e) and CPLR 3124 vacating the Note of Issue and compelling discovery are granted to the extent hereinafter set forth and in all other respects are denied.

Plaintiff, Vincent Pontillo, individually, and as the administrator of the estate of his mother, Francis Pontillo, has brought this action to recover for the conscious pain and suffering she is asserted to have experienced and for her wrongful death. He alleges that his mother suffered orthopedic injuries as a result of being struck by an automatic sliding door at Franklin Medical Hospital Center, and that she subsequently died as a result thereof.

Third-party defendant, Overhead Door Corporation (hereinafter Overhead Door), has separately applied to vacate the Note of Issue and to compel discovery. Defendant, Franklin Hospital Medical Center (hereinafter Franklin Hospital), has cross-moved for similar relief.

Overhead Door has established that Georal International, Ltd., Franklin Hospital, P.J. Wyer Construction, Inc., and Michael Rabin, AIA, have not responded to its December 9, 2002 Interrogatories. Franklin Hospital has established that plaintiff has not supplied: (1) two forms of signature identification which are necessary to process an IRS authorization; (2) authorizations for the records of staff doctors who treated the decedent during her hospitalizations; and (3) authorizations for his own medical records.

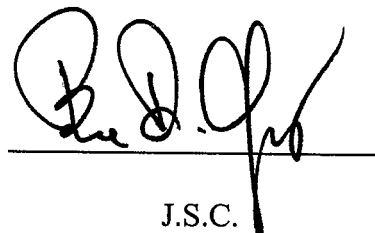
Franklin Hospital has since responded to Overhead Door's Interrogatories. Defendant, Georal International, Ltd., third-party defendant, P.J. Wyer Construction, Inc., and fourth-party defendant, Michael Rabin, AIA, are directed to respond to the movant's Interrogatories within twenty days of service of a copy of this Order with Notice of Entry.

Turning to Franklin Hospital's requested discovery, it has established the need for the signature identification materials, and its entitlement to authorizations requested is also clear. (see, *Scalone v Phelps Memorial Hospital Center*, 184 AD2d 65, 71-73) Plaintiff is directed to supply the subject authorizations and to provide the two forms of identification sought within the same temporal parameters as hereinabove set forth.

Though a distributee's age and life expectancy are relevant factors in assessing damages for pecuniary loss (see, *Turano*, Practice Commentaries, *McKinney's Estates, Powers and Trusts Law*, §5-4.3; see also, *Greenspan v East Nassau Medical Group*, 204 AD2d 273), neither Vincent Pontillo's status as a personal representative of the decedent nor as a distributee of her estate are sufficient to effectuate a waiver of the privilege which insulates his medical records from discovery. (See, *Scalone v Phelps Memorial Hospital Center*, supra; see also, *Lewkow v Gracie Square Hospital*, 114 Misc2d 732, affd 123 AD2d 526 [1st Dept.]).

Thus, the facility's prayer to compel the exchange of duly executed and notarized authorizations for the release of the personal representative's medical records is denied.

DATED: August 18, 2003



J.S.C.

ENTERED

AUG 22 2003

NASSAU COUNTY
COUNTY CLERK'S OFFICE