

Malpractice

Calendar

No. _____

Reserved for Clerk's use

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
 :
 LORRAINE ELSIE EVANS, :
 :
 Plaintiff, :
 :
 -against- :
 :
 THE NEW YORK AND PRESBYTERIAN :
 HOSPITAL and WEILL CORNELL :
 MEDICAL CENTER, :
 :
 Defendants. :
 :
 -----X

Index No.: 24968/2015E

**NOTICE OF MEDICAL AND
DENTAL MALPRACTICE**

PLEASE TAKE NOTICE that the above-captioned action for medical and dental malpractice was commenced by service of summons and verified complaint on September 10, 2015; that issue was joined therein on October 30, 2015, by the filing of a verified answer by the defendants (following a scheduling stipulation entered into by the parties); and that the action has not been dismissed, settled or otherwise terminated.

1. The name and address of the defendants is: The New York and Presbyterian Hospital and Weill Cornell Medical Center, 1320 York Avenue, New York, New York, 10021.

2. The name, address, and age of the plaintiff is: Lorriane Elsie Evans; 4160 Hutchinson River Parkway, Apt. 24-D, Bronx, New York, 10475-4832; 81.

3. The defendants operate a hospital, and, as relevant to this action, maintain specialties in otorhinolaryngology and dental surgery.

4. This action is for medical and dental malpractice.

5. The claim arose on January 9, 2015, at Weill Cornell Medical Center.

6. On the foregoing date and place, the defendants caused plaintiff's jaw and 5 teeth to break while she was unconscious and undergoing a throat biopsy procedure. The defendants failed to properly examine the plaintiff prior to this procedure. Following the defendants' negligence in breaking the Plaintiff's jaw and teeth, and while the Plaintiff was still unconscious, the defendants undertook non-emergency invasive/surgical procedures to repair the damage in the form of wiring plaintiff's jaw and teeth without plaintiff's consent and without the consent of plaintiff's surrogate. The defendants then improperly wired plaintiff's jaw and teeth, thus impairing her recovery.

7. (a) Proof is attached that authorizations to obtain medical, dental, and hospital records have been served upon the defendants in the action; (b) Copies of the summons, notice of appearance, all pleadings, certificate of merit, if required, and the bill of particulars are attached; (c) a demand for arbitration in this action has not been made; and (d) information required by CPLR 3101(d)(1)(i) is not yet available.

8. Plaintiff's attorney is: Joshua E. Abraham, Esq., 230 Park Avenue, Suite 850, New York, New York, 10169, (646) 245-6710. Defendants' attorney is: Brigitte R. Rose, Esq., MARTIN CLEARWATER & BELL LLP, 220 East 42nd Street, New York, New York, 10017, (212) 697-3122.

Dated: New York, New York
December 14, 2015



Joshua E. Abraham, Esq.
230 Park Avenue, Suite 850
New York, New York 10169
Tel: (646) 245-6710
Fax: (646) 201-4454
josh@joshabrahamlaw.com
Attorney for Plaintiff

To: Brigitte R. Rose, Esq.
MARTIN CLEARWATER & BELL LLP
220 East 42nd Street
New York, NY 10017
(212) 697-3122
Attorney for Defendants

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

LORRAINE ELSIE EVANS,
Plaintiff,

Against

THE NEW YORK AND PRESBYTERIAN HOSPITAL
and WEILL CORNELL MEDICAL CENTER,

Defendant.

**AFFIRMATION
OF SERVICE**

Index No.: 24968/2015E

JOSHUA E. ABRAHAM, an attorney duly admitted to practice law in the State of New York, and an individual not a party to this action, alleges the following under penalty of perjury:

That on November 17, 2015, I caused the Plaintiff's Medical Authorizations to be served via First Class mail on the individual at the address stated below:

Brigitte R. Rose, Esq.
MARTIN CLEARWATER & BELL LLP
220 East 42nd Street
New York, NY 10017
(212) 697-3122

Dated: New York, New York
December 10, 2015



JOSHUA E. ABRAHAM, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

----- X
LORRAINE ELSIE EVANS, :
: :
Plaintiff, :
: :
-against- :
: :
THE NEW YORK AND PRESBYTERIAN :
HOSPITAL and WEILL CORNELL :
MEDICAL CENTER, :
: :
Defendants. :
: :
----- X

Index No.:
Date Filed:

SUMMONS

Plaintiff designates Bronx County as the place of trial. The basis of venue is CPLR §§ 503(a).

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, if this Summons is personally delivered to you within the State of New York, or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York. Your time to appear may be extended as provided for in CPLR § 3012. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
September 8, 2015

Yours, etc.,


Joshua E. Abraham, Esq.
230 Park Avenue, Suite 850
New York, New York 10169
Tel: (646) 245-6710
Fax: (646) 201-4454
josh@joshabrahamlaw.com
Attorney for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
 :
 LORRAINE ELSIE EVANS, :
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 Plaintiff, :
 :
 -against- :
 :
 THE NEW YORK AND PRESBYTERIAN :
 HOSPITAL and WEILL CORNELL MEDICAL :
 CENTER, :
 :
 Defendants. :
 -----X

Index No.:

VERIFIED COMPLAINT

PRELIMINARY STATEMENT

1. *Res ipsa loquitur* – the event speaks for itself. In January 2015, Lorriane Elsie Evans arrived at New York-Presbyterian Hospital/Weill Cornell Medical Center for a routine throat biopsy. When she awoke from the procedure she learned that her face had been smashed in by her doctor and his medical team. Ms. Evans’ jaw had been broken and her five front teeth knocked out. She later learned that her teeth were crudely and improperly cemented together by a hospital dentist while she was unconscious. This procedure was done without Ms. Evans’ consent and without the consent of her surrogate. By this action, Ms. Evans seeks recoveries for significant damage done to her by the defendants and their negligent agents and employees.

**AS AND FOR A CAUSE OF ACTION
(Medical and Dental Malpractice)**

- 2. Ms. Evans is a resident of the Bronx.
- 3. In late-2014, Ms. Evans began to experience hoarseness in her throat/voice.

4. Her doctor – Lucian Sulica, M.D. (“Sulica”), a member of the Department of Otorhinolaryngology at Weill Medical College and an agent and/or employee of the defendants – examined her and recommended further analysis. On November 11, 2014, Sulica performed a CT exam of the area, but the results were inconclusive. Sulica then scheduled Ms. Evans for what she was told would be a routine biopsy of her vocal cords – i.e., a direct rigid laryngoscopy.

5. The biopsy was scheduled for January 9, 2015. Ms. Evans followed all pre-procedure protocols and instructions, and arrived at Weil Cornell Medical Center at 7:30 a.m. that morning.

6. At approximately 10:30 a.m., Mr. Evans was medicated and anaesthetized. At that point, Ms. Sulica and his team presumably commenced the procedure by intubating Ms. Evans.

7. Ms. Evans has no recollection of precisely what occurred after 10:30 a.m. because she was unconscious before and during the procedure. But what is known is that when Sulica and his medical team commenced the procedure, they knocked out Ms. Evans’ five upper front teeth (numbers 7, 8, 9, 10, and 11 under the Universal Numbering System adopted by the American Dental Association) and fractured her left maxilla. They then aborted the biopsy.

8. Soon after they damaged Ms. Evans’ face – but before she awoke – Sulica and his team called in a dental surgeon to attempt a repair. The dental surgeon proceeded to wire and cement Ms. Evans’ teeth together without any regard for her fractured jaw.

9. Significantly, the doctors did not obtain Ms. Evans’ consent that morning or at any time for any remedial dental procedure. Nor did they obtain the consent of Ms. Evans’ niece and surrogate, Rev. Gina Jacobs-Strain, who was with Ms. Evans that morning. Instead, Sulica

informed Rev. Jacobs-Strain *after* the dental repairs had been attempted – and before the anesthetics had worn off – what was done to Ms. Evans.

10. Ms. Evans awoke approximately an hour later. She was spitting blood and in great pain. Sulica did not explain to Ms. Evans precisely what had occurred, except to say that there was a problem with her teeth during the procedure. Ms. Evans was then discharged with instructions to take vitamins and basic pain medication (aspirin and acetaminophen-codeine). She was told to make a follow-up appointment a week later so that her mouth could be examined.

11. Ms. Evans feared going back to the hospital. Four days later, and unable to bear the pain and extreme swelling in her face, Ms. Evans made an appointment to see her dentist Dr. Robert M. Reiss. Dr. Reiss was appalled by what he saw. Ms. Evans' teeth had been wired and cemented together in manner that he could only describe as primitive. Dr. Reiss removed the contraption and sent Ms. Evans to be treated by Dr. Burton Langer. Dr. Langer removed the broken roots in Ms. Evans' mouth and reduced and stabilized her fractured maxilla.

12. Dr. Reiss has since created a temporary denture for Ms. Evans and is monitoring her recovery. It is not known if Ms. Evans' injuries will ever fully or properly heal.

13. In fracturing her jaw and teeth during a routine biopsy and then crudely and improperly fusing her teeth together without Ms. Evans' consent or the consent of her surrogate, the Defendants deviated and departed radically from accepted medical and dental practice. Moreover, the events that occurred – most notably, the severe injury and trauma to Ms. Evans' face – ordinarily do not occur in the absence of significant negligence. Ms. Evans was under the Defendants' exclusive control during the procedure – she was unconscious throughout – and she could not possibly have acted or contributed in any way to the Defendants' negligence.

14. Indeed, the Defendants' misconduct continued after the procedure was botched and aborted. Although the biopsy was never actually performed, Ms. Evans' insurance records indicate that the Defendants nevertheless billed Medicare for a "voice exam with biopsy" and were reimbursed for the full amount.

15. The Defendants' negligence and misconduct was the proximate cause of significant injury to Ms. Evans. In the months following the attempted biopsy and subsequent damage to her mouth and face, Ms. Evans was unable to eat properly and lost a significant amount of weight. She suffered extreme pain in her face and head, and continues to do so. Ms. Evans' face has been disfigured and she is embarrassed by her appearance. For a number of months following the procedure, she rarely left her home, and her state of mind has deteriorated.

16. Accordingly, Ms. Evans brings this suit to redress the damage done to her, and to ensure that the Defendants do not repeat their misconduct with similarly situated patients.

17. The amount of damages sought herein exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

18. Ms. Evans demands a jury for the trial of this action.

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

- (i) compensatory damages in an amount to be determined at trial;
- (ii) statutory interest;
- (iii) attorney's fees, litigation expenses, costs and disbursements of this action; and
- (iv) such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 8, 2015

Respectfully submitted,

JOSHUA E. ABRAHAM, ESQ.



230 Park Avenue, Suite 850
New York, New York 10169
Tel: (646) 245-6710
Fax: (646) 201-4454
josh@joshabrahamlaw.com
Attorney for Plaintiff

ATTORNEY VERIFICATION PURSUANT TO C.P.L.R. § 3020

JOSHUA E. ABRAHAM, an attorney duly admitted to practice law in the State of New York, affirms the following under penalties of perjury: I am the attorney for the Plaintiff in this action; I have read the foregoing Complaint and know the contents thereof; the same is true to the my knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The reason this Verification is not made by the Plaintiff is that the Plaintiffs is not presently located in the county where I maintain my office.



JOSHUA E. ABRAHAM, ESQ.

CERTIFICATE OF MERIT PURSUANT TO C.P.L.R. § 3012-a

I, Joshua E. Abraham, an attorney duly licensed and authorized to practice law in this state, certify that I am relying on the doctrine of *res ipsa loquitur* for purposes of establishing liability in this action. To the extent I am not relying on the forgoing doctrine, I certify that I have reviewed the facts of the case and have consulted with at least one dentist who is licensed to practice in this state and who I reasonably believe is knowledgeable in the relevant issues involved in this particular action, and that I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action.



JOSHUA E. ABRAHAM, ESQ.

BRR/JL 00095-084438

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
LORRAINE ELISE EVANS,

Plaintiff,

-against-

THE NEW YORK AND PRESBYTERIAN HOSPITAL
and WEILL CORNELL MEDICAL CENTER,

Defendant.
-----X

VERIFIED ANSWER

Index No.: 24968/2015E

Defendant THE NEW YORK AND PRESBYTERIAN HOSPITAL s/h/a THE NEW YORK AND PRESBYTERIAN HOSPITAL and WEILL CORNELL MEDICAL CENTER, by its attorneys, MARTIN CLEARWATER & BELL LLP, answers the plaintiff's complaint as follows, upon information and belief:

PRELIMINARY STATEMENT

1. Denies each and every allegation contained in the paragraph of the complaint designated "1".

AS TO THE FIRST CAUSE OF ACTION
(MEDICAL AND DENTAL MALPRACTICE)

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the complaint designated "2".

3. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "3", "4", "5", "6", "11", and "18" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

4. Denies each and every allegation contained in the paragraphs of the complaint designated "7", "8" and "10" except admits that defendant rendered certain professional services in accordance with acceptable medical standards and due care.

5. Denies each and every allegation contained in the paragraphs of the complaint designated "9", "13", "14", "15", "16" and "17".

6. Denies each and every allegation contained in the paragraphs of the complaint designated "12" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

WHEREFORE

7. Denies each and every allegation contained in the paragraph of the complaint designated "i", "ii", "iii", and "iv".

AS A FIRST AFFIRMATIVE DEFENSE

8. Defendant THE NEW YORK AND PRESBYTERIAN HOSPITAL s/h/a THE NEW YORK AND PRESBYTERIAN HOSPITAL and WEILL CORNELL MEDICAL CENTER denies liability, but if liability is found against this defendant and the liability is found to be 50% or less of the total liability assigned to all persons liable, then this defendant invokes the limits on liability for noneconomic loss set forth in CPLR §1601.

AS A SECOND AFFIRMATIVE DEFENSE

9. That defendant asserts the terms, provisions, limitations and rights contained in §4545 of the CPLR.

AS A THIRD AFFIRMATIVE DEFENSE

10. Defendant THE NEW YORK AND PRESBYTERIAN HOSPITAL s/h/a THE NEW YORK AND PRESBYTERIAN HOSPITAL and WEILL CORNELL MEDICAL CENTER invokes the protection of Public Health Law 2805-d(4) with respect to the alleged cause of action for informed consent and reserves all its rights pursuant thereto.

AS A FOURTH AFFIRMATIVE DEFENSE

11. Plaintiffs have failed to provide a Certificate of Merit pursuant to CPLR §3012(a).

WHEREFORE, defendant THE NEW YORK AND PRESBYTERIAN HOSPITAL s/h/a THE NEW YORK AND PRESBYTERIAN HOSPITAL and WEILL CORNELL MEDICAL CENTER demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
October 30, 2015

Yours, etc.

MARTIN CLEARWATER & BELL LLP

By: 

Brigitte R. Rose

Attorneys for Defendant
THE NEW YORK AND PRESBYTERIAN
HOSPITAL s/h/a THE NEW YORK AND
PRESBYTERIAN HOSPITAL and WEILL
CORNELL MEDICAL CENTER
220 East 42nd Street
New York, NY 10017
(212) 697-3122

TO: Joshua E. Abraham, Esq.
Attorney for Plaintiff
230 Park Avenue, Suite 850
New York, New York 10169
(646) 245-6710

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

LORRAINE ELSIE EVANS,

Plaintiff,

against

THE NEW YORK AND PRESBYTERIAN HOSPITAL
and WEILL CORNELL MEDICAL CENTER,

Defendant.

**VERIFIED BILL
OF PARTICULARS**

Index No.: 24968/2015E

Plaintiff, by and through her counsel, Joshua E. Abraham, Esq., as and for her response to the Defendants' Demand for a Verified Bill of Particulars, respectfully states as follows:

1. Plaintiff objects to this demand as being improper to the extent that it calls for evidentiary material or information in the form of, or to be gleaned from, expert testimony and, therefore, such demand is overly broad, improper, and beyond the scope of a bill of particulars. *See e.g., Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978). However, without waiver of the forgoing objection, Plaintiff can state at this time that the Defendants caused Plaintiff's jaw and teeth to break while she was unconscious and undergoing a biopsy procedure. The Defendants failed to properly examine the Plaintiff prior to this procedure. Following the Defendants' negligence in breaking the Plaintiff's jaw and teeth, and while the Plaintiff was still unconscious, the Defendants undertook non-emergency invasive/surgical procedures to repair the damage in the

form of wiring Plaintiff's jaw and teeth without Plaintiff's consent and without the consent of Plaintiff's surrogate, the Rev. Gina Jacobs-Strain. The Defendants improperly wired Plaintiff's jaw and teeth, thus impairing her recovery. Plaintiff intends to rely, in part, on the doctrine of *res ipsa loquitur* to demonstrate the Defendants' liability in this action.

2. Following the Defendants' negligence in breaking the Plaintiff's jaw and teeth, and while the Plaintiff was still unconscious, the Defendants undertook non-emergency invasive/surgical procedures to repair the damage in the form of wiring Plaintiff's jaw and teeth without Plaintiff's consent and without the consent of Plaintiff's surrogate, the Rev. Gina Jacobs-Strain.

3. No.

4. Plaintiff objects to this demand as vague and conclusory. Plaintiff further objects to this demand as premature on the grounds that Plaintiff was unconscious during the procedure and has served the Defendants with a set of interrogatories seeking the identities of all parties involved in treating Plaintiff on the relevant date and at the relevant location, as stated in the Complaint. The Defendants have not yet answered these interrogatories.

5. Plaintiff objects to this demand as premature, as Plaintiff has not yet had the opportunity to examine the equipment that was used in the procedure that is the subject of this dispute. Plaintiff further objects to this demand on the grounds that Plaintiff was unconscious during the procedure in which the equipment and/or medical instruments were used; the equipment and/or medical instruments were solely in the Defendants' custody and control during the relevant period; and Plaintiff intends to rely, in part, on the doctrine of *res ipsa loquitur* to establish the Defendants' liability in this action. Plaintiff further objects to this demand as being improper in that it calls for evidentiary material or information in the form of, or to be gleaned

from, expert testimony and, therefore, such demand is overly broad, improper, and beyond the scope of a bill of particulars. *See e.g., Dellaglio v. Paul*, 250 A.D.2d 806, 673 N.Y.S.2d 212 (2d Dep't 1998); *Heyward v. Ellenville Cmty. Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167 (3d Dep't 1995); *Patterson v. Jewish Hosp. & Med. Ctr. of Brooklyn*, 94 Misc. 2d 680, 405 N.Y.S.2d 194 (Sup. Ct., Kings Co.), *aff'd*, 65 A.D.2d 553, 409 N.Y.S.2d 124 (2d Dep't 1978).

6. January 9, 2015; January 9, 2015; The New York and Presbyterian Hospital/Weill Cornell Medical Center.

7. Plaintiff seeks damages for past and future physical and emotional harm, disfigurement, and financial losses including but not limited to medical expenses. Plaintiff does not yet know if the injuries claimed in this action are or will be permanent.

8. Robert M. Reiss, D.D.S., P.C., 115 E. 61st St., New York, New York, 10065.

Burton Langer, D.M.D., P.C., 933 Fifth Ave., New York, New York, 10021.

Plaintiff's precise treatment dates are set forth in Plaintiff's medical records.

9. Plaintiff spent a great deal of time in 2015 indoors and at home due to shame and embarrassment at her appearance following the Defendants' negligent procedures.

10. Not applicable.

11. Robert M. Reiss, D.D.S., P.C., 115 E. 61st St., New York, New York, 10065.

Burton Langer, D.M.D., P.C., 933 Fifth Ave., New York, New York, 10021.

Plaintiff's precise treatment dates are set forth in Plaintiff's medical records.

12. Not applicable.

13. Not applicable.

14. To date: Dr. Reiss, \$29,500.00; Dr. Langer, \$10,600.00.

15. Not applicable.

16. Not applicable.

17. It is reasonably anticipated that further medical expenses will be incurred in the future as a result of the Defendants' negligence, although the precise amount is uncertain at this time as Plaintiff's treatment is ongoing.

18. Not applicable.

19. 4160 Hutchinson River Parkway, Apt. 24-D, Bronx, New York, 10475-4832.

20. January 16, 1934.

21. SOCIAL SECURITY NUMBER REDACTED.

22. Plaintiff objects to this demand as not properly the subject of a demand for a bill of particulars. *See Marsala v. Weinraub*, 208 A.D.2d 689, 691-94 (2d Dep't 1994). Plaintiff further objects to this demand as premature on the grounds that Plaintiff has served the Defendants with a set of interrogatories seeking the identities of all parties involved in treating Plaintiff on the relevant date and at the relevant location, as stated in the Complaint. The Defendants have not yet answered these interrogatories.

23. Plaintiff objects to this demand as premature. Plaintiff reserves the right to amend the pleadings to include such a claim in the event additional relevant information is made available to Plaintiff through disclosure.

ATTORNEY VERIFICATION PURSUANT TO C.P.L.R. § 3020

JOSHUA E. ABRAHAM, an attorney duly admitted to practice law in the State of New York, affirms the following under penalties of perjury: I am the attorney for the Plaintiff in this action; I have read the foregoing Bill of Particulars and know the contents thereof; the same is true to the my knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true. The grounds for my knowledge and belief are as follows: review of the case file, review of medical records, and statements by the Plaintiff. The reason this Verification is not made by the Plaintiff is that the Plaintiff is not presently located in the county where I maintain my office.



JOSHUA E. ABRAHAM, ESQ.