

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: PERSONAL INJURY PILOT PROGRAM	:	Mediation Referral Order
	:	For Personal Injury Cases
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, District/Magistrate Judge:

As part of a pilot program for cases involving certain personal injury claims, the Clerk of the Court is directed to enter this Order in all newly filed counseled motor vehicle, premises liability, Federal Employers Liability Act, or Federal Tort Claims Act cases on my docket. Since personal injury cases often benefit from early mediation, it is hereby

ORDERED that the Court is referring this case to mediation under Local Civil Rule 83.9 and that mediation shall be scheduled within ninety days.

IT IS FURTHER ORDERED that, if requested by a defendant, a plaintiff asserting bodily injury shall submit to an Independent Medical Examination (IME) in advance of the mediation. The defendant requesting the IME shall schedule it to take place within 45 days of the date of this Order.

IT IS FURTHER ORDERED that to facilitate mediation the parties shall, within sixty days of this Order, produce the information specified in the following discovery protocols. The protocols require the early exchange of targeted, core discovery, and are intended to frame issues for resolution through mediation and to assist the parties in planning for additional discovery in the event the case is not promptly resolved through mediation. If any party believes that there is good cause why a particular case should be exempted from the discovery protocols, in whole or in part, or that mediation should be adjourned until a later date, that party must raise the issue promptly with the Court.

The discovery protocols do not modify any party's rights under the Federal Rules of Civil Procedure or the Local Civil Rules, but they do supersede the parties' obligations under Fed. R. Civ. P. 26(a)(1) during the pendency of mediation. All documents and information produced under the Discovery Protocols will be deemed part of discovery under the Federal Rules of Civil Procedure. The parties' responses to the discovery protocols are subject to Fed. R. Civ. P. 26(e) regarding supplementation, Fed. R. Civ. P. 26(g) regarding certification of responses, and Fed. R. Civ. P. 34(b)(2)(E) regarding the form of production for documents and electronically stored information.

**1. All parties shall produce the following, if applicable:**

- a. Incident or accident reports concerning the incident or accident;
- b. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment;
- c. All photographs and videos (including surveillance and security videos) depicting the incident or accident including: damage to vehicle(s), injuries sustained by parties, or the incident or accident scene, and/or any other photographs or videos which relate to this case;
- d. The names and contact information for each person who witnessed the incident or accident;
- e. All statements or communications of any witnesses to the incident or accident;
- f. For motor vehicle cases, any invoices, bills, or repair estimates relating to the repair of the vehicle(s) involved in the accident; and
- g. For cases alleging damage to property, other than to motor vehicles, estimates of the damage and costs of repair to the property.

**2. Plaintiff(s) shall produce to the Defendant(s) the following Documents, if applicable:**

- a. If the Plaintiff is claiming lost income, Plaintiff shall produce any documents supporting that claim including: any income tax returns or documents which refer to Plaintiff's employment, W2 forms, the records of the dates of absences from work, the records relating to the facts and duration of any unemployment, the records of workers' compensation claims, the records of unemployment insurance claims, and applications for assistance from any governmental agency because of unemployment or ill health;
- b. All medical reports and records in Plaintiff's possession relating to the injuries at issue in this matter, as well as any bills, reports, notes, and records prepared by any physician, hospital, or healthcare provider who has examined, evaluated, and/or treated plaintiff for injuries sustained as a result of the incident/accident;
- c. Authorizations for release of all medical records relating to the injuries sustained by the Plaintiff as a result of the incident/accident;
- d. Documentation concerning any Medicare liens; and

- e. For motor vehicle cases, documents concerning the repair history of the vehicle involved in the accident.

**3. Defendant(s) must produce to the Plaintiff(s) the following Documents, if applicable:**

- a. Any IME report as well as any and all bills, reports, notes, and records prepared by any Independent Medical Examiner or healthcare provider who has examined or evaluated Plaintiff;
- b. Any documents which reflect any inspection made of the area where the incident or accident occurred on or after the date of the incident or accident and for a period of twelve months prior thereto;
- c. Any documents which reflect any complaints or violations issued for the subject location on or after the date of the incident and in the twelve months prior thereto;
- d. Any documents describing any repairs, replacements, or alterations to the subject location;
- e. Policy and procedure manuals, posted notices, and any other documents connected to routine repairs, cleaning, maintenance, and upkeep of the premises;
- f. Notices and any other documents connected to non-routine repairs, cleaning, maintenance, and upkeep of the area where the incident occurred, up to and including the date of the subject incident or accident;
- g. Documents demonstrating ownership and control of the subject premises; and
- h. For motor vehicle cases, documents concerning the repair history of the vehicle involved in the accident.

If the mediation is unsuccessful, the parties shall promptly request that an initial pre-trial conference be scheduled, if one has not already been scheduled or held. The parties may consent to proceed for all purposes before the assigned Magistrate Judge (the appropriate form for which is available at <http://nysd.uscourts.gov/file/forms/consent-to-proceed-before-us-magistrate-judge>).

SO ORDERED:

Dated:           New York, New York  
                      , 20\_\_

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United States District/Magistrate Judge