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SUPREME COURT OF THE STATE OF NEW YORK
80 Centre Street, Room 102
New York, New York 10013

DIFFERENTIATED CASE MANAGEMENT PROGRAM

PRESENT: MARGARET A. CHAN, Justice

Part 52CC-DCM

Index Number: 0154284/2015

C.C.T.T. No. : 2015-024570

SHARPTON, DOMINIQUE

PLAINTIFF

v

CITY OF NEW YORK

DEFENDANT

CASE SCHEDULING ORDER - CITY CASES

A request for a preliminary conference having been filed or the court having taken action on its own initiative,

IT IS HEREBY ORDERED that this case is designated a Standard matter pursuant to Uniform Rule 202.19(b) and disclosure not already furnished shall proceed in accordance with the deadlines set forth below. However, a party claiming to be prejudiced by this order may seek a modification of the Standard designation or the schedule by contacting the clerk, at the Case Management Office (by phone 646-386-3683, fax 212-952-2779) within **20 DAYS FROM THE DATE OF THIS ORDER.** That Office will provide an opportunity to the parties to be heard on the request at a court conference and the court will take such action as is appropriate. Failure to contact the Office in a timely manner shall constitute a waiver of any objection to the designation or schedule. The parties shall not contact the Justice assigned.

1. **Notification:** After this Case Scheduling Order has been signed, it will be posted to the New York State Courts Electronic Filing System ("NYSCEF") if this is an e-filed case. All e-filing counsel are expected to monitor the NYSCEF docket and their e-mail addresses for access to this Order and other e-filings in the case. If this is a hard-copy case, a copy of this Order will be posted in the Supreme Court Records On-Line Library ("Scroll"), which is accessible at no charge on the court's website ("Case Information" at www.nycourts.gov/supctmanh). Counsel must consult Scroll to obtain a copy of this Order; no copy will be mailed by the court. Attorneys may obtain, at no charge, e-mail notification of the issuance of this Order and all other court developments in this and other cases by listing them with e-Track, the court system's case tracking service, which is accessible at <https://iapps.courts.state.ny.us/webcivil/etrackLogin> or by means of the e-Track link at www.nycourts.gov. In addition, counsel for plaintiff shall, within ten days after the posting of this Order to Scroll in a hard-copy case, serve copies on all counsel and all self-represented parties and shall file with the County Clerk an affidavit of service. In an e-filed case in which at least one party is exempt from e-filing, counsel for the first-named participating plaintiff or, if there is none, the first named participating defendant shall, within ten days after the e-filing of this Order, serve a hard copy on all exempt counsel and self-represented parties and shall e-file proof of such service.

2. **Insurance Coverage:** Within 30 days from the date of this order, defendant City of New York and any other defendant represented by Corporation Counsel, shall state in writing whether it is self-insured or covered by an insurance policy, and all defendants, including the City (if applicable), shall furnish to all parties evidence of primary and excess coverage and Certificate of Insurance.

3. Bill of Particulars: Any party seeking particulars (including as to affirmative defenses, if any) shall serve a demand for a bill within 21 days from the date of this order. The party receiving the demand shall serve a verified bill of particulars within 60 days from the date of this order.

4. Medical Records and Authorizations:

(a) Plaintiff(s) shall provide authorizations to obtain copies of the actual records of all treating and examining health care providers, including diagnostic tests, x-rays, MRIs, EMGs, CT Scans, for injuries specified in the bill of particulars, within 30 days from the date of this order.

(b) Plaintiff(s) shall provide an authorization for collateral source information, if any, within 30 days from the date of this order.

(c) If plaintiff is claiming a loss of income or wages, within 30 days from the date of this order, plaintiff shall provide authorizations for W-2 forms or employment records for the year of, year before and year after the date of the alleged accident, as well as for the period of time lost from work as a result of the alleged accident, or IRS records if provided by law.

(d) If plaintiff was a student at the time of the alleged accident, within 30 days from the date of this order, plaintiff shall provide an authorization for school attendance records for the period of time lost from school as a result of the alleged accident.

(e) For cases alleging police assault or false arrest, plaintiff(s) shall, within 30 days from the date of this order, submit to the Court in which termination of the proceeding occurred an unsealing order, to be "so ordered" by that Court, to obtain a copy of the Criminal Court file. Plaintiff(s) shall then serve the "so ordered" unsealing order upon the Criminal Court. After that Court provides plaintiff with a copy of the Criminal Court file, plaintiff shall provide a copy of the file to the Corporation Counsel within 30 days of the date of service of the unsealing order.

5. Depositions:

(a) The depositions of all parties shall take place on **NOVEMBER 04, 2015** at **10:00 A.M.** in the Office of the Corporation Counsel, 52 Duane Street, 4th Floor, New York, New York, 10007. **Absent prior court approval, any EBT which is not held as scheduled in this order must be immediately rescheduled for a date which is not later than four (4) weeks after the original date.**

(b) Defendant(s)' right to a further deposition of plaintiff(s) is reserved as to any new injuries or damages claimed in any supplemental bill of particulars served by plaintiff(s) following the plaintiff's deposition.

6. Physical Examination:

(a) A physical examination of the plaintiff(s) shall be conducted within 45 days after completion of examination before trial of the plaintiff(s).

(b) A copy of the physician's report shall be furnished to plaintiff(s) within 45 after the examination.

(c) Defendant(s)' right to a further physical is reserved as to any new injuries claimed in any supplemental bill of particulars served by plaintiff(s).

7. Other Disclosure:

(a) All parties shall provide the names and addresses of any witnesses to the occurrence and notice witnesses; accident reports; party statements; and photographs taken in the ordinary course of business and/or to be presented at trial, within 90 days from the date of this order.

(b) All parties shall supply expert witness disclosure pursuant to CPLR.

(c) All defendants other than those listed in Item 7(d) hereof shall, within 90 days from the date of this order, provide to all parties copies of maintenance and repair records for 2 years prior to and including the date of the occurrence.

(d) The City of New York and/or other defendants represented by Corporation Counsel, if any, shall provide the following Additional Disclosure to all parties within 90 days from the date of this order, subject to the date and location specified in the notice of claim:

ADDITIONAL DISCLOSURE ITEM 7(d)

Motor vehicle accidents involving City-owned vehicles:

- i. Departmental Accident Report from respective City agency.
- ii. Maintenance and repair records for the department vehicle involved for one year prior to and including the date of the occurrence, if a vehicular defect is alleged in either the departmental accident report or the MV-104.
- iii. Photos of damage to City vehicle.
- iv. Records regarding post-accident repairs shall be supplied by the City unless determined by the court not to be relevant to an issue in the case.

Slip and Fall Cases (Department of Sanitation):

- i. District Operation Log (carting book) for the period of two weeks prior to and including the date of occurrence.
- ii. District Snow Operation Book for the above period of time.
- iii. Snow Removal Operation Report (SR-2) and spreading or plowing operation card for the above time period, if the occurrence took place in the roadway.

Trip and Fall Cases (Department of Transportation (DOT):

- i. Applications for permits and permits for 2 years prior to and including the date of occurrence;
- ii. Cut forms, repair orders and repair records for 2 years prior to and including the date of occurrence;
- iii. Violations issued for 2 years prior to and including the date of occurrence;
- iv. A copy of the title and signature pages, and insurance declaration sheets and/or certificates, for all contracts in effect for two years prior to and including the date of occurrence.
- v. Contracts and all related contract documents (i.e. progress reports) for two years prior to and including the date of occurrence will be made available for inspection and copying at either the Office of the Corporation Counsel designated by said Counsel, or the appropriate City agency, upon a mutually convenient appointment, but in no event more than 90 days hereafter or a subsequent request for same plaintiff.
- vi. Complaints made for 2 years prior to and including the date of occurrence;
- vii. A copy of the most recent Big Apple Pothole and Sidewalk Protection Corporation map filed for the area in issue and, if the incident at issue occurred six months or less after the filing of the most recent such map, then the City shall also produce the last such map filed before the most recent such map for that location.

Trip and Fall Cases (Tree Well) (Department of Parks)

- i. Applications for permits and permits for 2 years prior to and including the date of occurrence;
- ii. Repair orders and repair records for 2 years prior to and including the date of occurrence;
- iii. Violations issued for 2 years prior to and including the date of occurrence;
- iv. Complaints made for 2 years prior to and including the date of occurrence.

Cases involving allegations of defective traffic signals (DOT)

- i. Maintenance and repair records for 30 days prior to and including date of occurrence;
- ii. Complaints made for 30 days prior to and including date of occurrence;
- iii. The name and addresses of the contractor responsible for maintenance of the traffic signals on date of the occurrence.
- iv. A copy of title and signature pages, and insurance declaration sheets and/or certificates, for all contracts in effect for two years prior to and including the date of the occurrence;

v. Contracts and all related contract document (i.e., progress reports) for two years prior to and including the date of the occurrence will be made available for inspection and copying at either the Office of the Corporation Counsel designated by said Counsel, or the appropriate City agency, upon a mutually convenient appointment, but in no event more than 90 days hereafter or a subsequent request for same by plaintiff.

Cases involving allegation of defective traffic signs (DOT):

- i. Maintenance and repair records for six months prior to and including the date of occurrence;
- ii. Complaints for six months prior to and including the date of the occurrence.

Cases involving allegations of police misconduct:

The City will provide the following within 90 days after receipt from plaintiff of an authorization and "so-ordered" unsealing order described in 4(e) above:

- i. Complaint Report;
- ii. Complaint Follow Up Report(s);
- iii. Arrest Report;
- iv. Memo Book entries for incident in question;
- v. On-line Booking Sheet;
- vi. Copies of the applicable Patrol Guide shall be made available by the City for inspection and copying within 90 days from the date of this order;
- vii. Copies of all 911 tapes, if still in existence, and all sprint printouts for any 911 calls and radio transmissions related to the events of the action.

Inmate assault cases Department of Correction (DOC):

- i. Department of Correction incident report, subject to redaction of privileged information, including any information regarding criminal acts of other inmates and/or personal information regarding DOC employees;
- ii. Injury to inmate report (within 90 days after receipt of an authorization from plaintiff);
- iii. In camera review of redactions to be made upon request of plaintiff's attorney.

Premises Liability Cases:

- i. Departmental accident/incident report from respective City agency;
- ii. For non-transitory conditions (including recurrent condition), maintenance and repair records and written complaints regarding the condition complained of for 18 months prior to and including the date of occurrence.
- iii. For transitory conditions, maintenance records and written complaints regarding the condition complained of for one month prior to and including the date of the occurrence.
- iv. If applicable, lease and or sublease for the City-owned building.

Board of Education Cases:

- i. Board of Education Comprehensive Accident Report for the occurrence, subject to redaction of privileged information pursuant to the Family Education and Privacy Act, 20 U.S. Code Ch. 31 Extent and nature of the redaction, if questioned, are subject to motion under the statute.
- ii. Witness statements, subject to redaction of privileged information pursuant to the Family Education and Privacy Act. Extent and nature of the redaction, if questioned, are subject to the motion under the statute.
- iii. For non-transitory conditions (including recurrent conditions), maintenance and repair records, written complaints and, to the extent applicable, related contracts for the situs of plaintiff's accident, regarding the condition complained of for 18 months prior to and including the date of occurrence.
- iv. For transitory conditions, maintenance records and written complaints regarding the condition complained of for three months prior to and including the date of the occurrence.

Motor vehicle accidents involving City-owned vehicles:

- i. Departmental Accident Report from respective City agency;
 - ii. Maintenance and repair records for the department vehicle involved for one year prior to and including the date of the occurrence, if a vehicular defect is alleged in either the departmental accident report or the MV-104;
 - iii. Photos of damage to City vehicle;
 - iv. Records regarding post-accident repairs shall be supplied by the City unless determined by the court not to be relevant to an issue in the case.
- (e) Surveillance videos to be provided in accordance with CPLR 3101(i).
- (f) Any party who wishes to obtain prior notices of claim, pursuant to GML § 50-g, may do so by contacting the Division Chief of Claims Support at (212) 669-4329 to set up an appointment to search the index maintained at 1 Centre Street, New York, New York.
- (g) The New York City Police Department no longer maintains MV-104s beyond 30 days for accidents occurring after April 15, 1995.
- (h) All searches shall be conducted based upon the date and location as described in the notice of claim.

8. Third-Party Actions/Impleader: Shall be completed within 45 days of the last Examination before Trial.

9. Compliance Conference: Shall be held on **DECEMBER 02, 2015 at 2:00 PM** in Room 103, at 80 Centre Street, New York, NY.

10. Note of Issue Date: Shall be determined at a future conference.


11. Plaintiff shall within 15 days after the note of issue is filed and request from defense counsel is received, provide HIPAA-compliant authorizations to defense counsel for medical records, to be attached to subpoenas directing that those records be sent to the courthouse. If there is any dispute, it shall be promptly brought to the attention of the Case Management Office for resolution.

12. Summary Judgment Motions: Shall be filed no later than 60 days after filing of the Note of Issue unless otherwise directed by the court.

If disputes arise about compliance with this Order, the parties shall promptly confer in an effort to resolve them. If that effort fails, the parties or any party aggrieved shall, in advance of deadlines and prior to initiating motion practice, bring the dispute to the attention of the Case Management Office (not the assigned Justice), which will schedule a conference shortly thereafter to resolve the dispute. The parties may adjourn the deadlines set forth in Items 5 through 8 above provided that all disclosure called for by this Order shall be furnished prior to the compliance conference set forth in Item 9. The date of the compliance conference will normally not be adjourned and any adjournment requires advance permission of the court. Absent good cause, failure to comply with this Order may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Such penalties may include waiver of the discovery, preclusion, dismissal, striking of an answer, costs, sanctions, and attorney's fees.

This constitutes the Order of this Court.

Dated: Jul 27, 2015



J.S.C.