

September 29, 2011

**VIA LAWYERS SERVICE**

Honorable Jamie S. Perri, J.S.C.  
Monmouth County Superior Court  
71 Monument Park  
Freehold, New Jersey 07728

**Re: Marc J. Comer as administrator ad prosequendum of the  
Estate of Adalto De Lima; Estate of Alexandre Martinez v.  
Cilene Caixeta**  
**Docket No.: MON-L-5255-07**  
**(Consolidated with MON-L-5838-07 and MON-L-5839-07)**  
**Our File No.: 287-03**

Dear Judge Perri:

Please be advised that this firm represents plaintiff Marc Comer as administrator ad prosequendum of the Estates of Adalto DeLima and Alexandre Martinez. Kindly accept the following as well as the enclosed Certification of Exhibits in opposition to defendant's motions to dismiss plaintiffs' complaints. These motions are presently returnable on October 6, 2011.

**Background**

This matter arises out of a horrific one-car crash that occurred on Route 287 on November 4, 2005 wherein a box truck operated by defendant US Hardwood Floors overturned resulting in the death of two young men, Adalto DeLima and Alexandre Martinez. This crash resulted because of negligent driving and because the box truck was overloaded with hardwood flooring supplies. In fact the State Police investigation makes reference to the fact that the weight of the box truck was 5000 lbs. Moreover, the police report also makes reference that the truck weighed at least an additional 1000 lbs prior to the accident as there were seven men inside the truck in addition to the wood. (*Exhibit F, Accident Scene Photos*)(*Exhibit G, Police Report*).

It is undisputed that the hardwood flooring supplies and material were loaded into the box truck by the Speedwell/BFK defendants. The identity of the Speedwell/BFK defendants was revealed very late in discovery in the case that initially only proceeded against the owner/driver of the box truck. The owner/driver of the box truck settled with plaintiffs and the case proceeded against the entities responsible for the loading of the truck, Speedwell/BFK. The same resulted in a

discovery order dated October 1, 2010 which called for paper discovery, depositions and expert discovery to take place. Since the October 1, 2010 discovery order was executed, plaintiff has worked extremely diligently to conduct discovery in this case; including but not limited to working to get foreign non-party fact witnesses to New Jersey for depositions.

### LEGAL DISCUSSION

#### **I. DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S, MARC J. COMER, ESQ., AS ADMINISTRATOR AD PROSEQUENDUM FOR THE ESTATE OF ALEXANDRE MARTINEZ, COMPLAINT WITH PREJUDICE SHOULD BE DENIED**

##### A. Marc Comer, Esq. is the Plaintiff in this Action and Has Appeared for Deposition

New Jersey law requires that wrongful death actions be commenced as follows:

Every action commenced under this chapter shall be brought in the name of an administrator ad prosequendum of the decedent for whose death damages are sought, except where decedent dies testate and his will is probated, in which event the executor named in the will and qualifying, or the administrator with the will annexed, as the case may be, shall bring the action.

*N.J.S.A.* 2A:31-2. In this instance, Marc Comer, Esq., a trusts and estates attorney, has been appointed to act as the administrator ad prosequendum of the respective estates. Therefore, the plaintiff in these consolidated cases is Marc Comer, Esq. as administrator ad prosequendum of the estates. Mr. Comer was deposed in this action nearly two years ago. Moreover, the deposition of representatives of each decedent’s beneficiaries went forward in May 2011. As set forth below, it is the action of defendant that has hindered the remaining non-party depositions from taking place.

Of course, it is well settled that anyone can serve as the administrator of an estate for the limited purposes of bringing a lawsuit. The administrator ad prosequendum in a wrongful death lawsuit is merely a statutory agent appointed for the limited purpose of bringing the suit. *N.J.S.A.* 2A:31-4. An action for wrongful death is brought for the exclusive benefit of the persons entitled to take intestate property of the decedent. *Id.* See also, *Kasharian v. Wilentz*, 93 N.J. Super. 479, 481 (App. Div. 1967); *Glucksman v. Strelecki*, 102 N.J. Super. 53, 58 (Law Div. 1968). The administrator ad prosequendum is a representative of the class and acts as fiduciary for the general administrator who is charged with distribution of the funds recovered. *Kasharian v. Wilentz*, 93 N.J. Super. at 481, citing *Loughner v. Thomas*, 117 N.J.L. 169 (E&A 1936). Accordingly, for purposes of this litigation, the named plaintiff is the administrator ad prosequendum, an agent of the beneficiaries, Marc J. Comer, Esq.

B. Had Defense Counsel Cooperated, Alexandre Martinez's Remaining Beneficiary Would Have Been Able to Obtain the Necessary Visa So the Deposition Could Proceed.

It is noteworthy that despite the fact that the plaintiff in this matter is Marc Comer, Esq., this firm has gone to extraordinary measures in order to produce the foreign, non-party, fact witnesses defendant has requested. The remaining fact witnesses with respect to decedent Martinez is his mother and sister. The deposition of these foreign witnesses has been noticed on one occasion since the previous motion decided by Judge Mullaney.

This deposition did not go forward for a very simple reason that has been articulated to defense counsel on multiple occasions including at the time of oral argument on the July 8, 2011 discovery motions before Judge Mullaney as well as in a letter dated September 8, 2011. Simply put, in order to be able to obtain a visa, the Brazilian fact witnesses must have an original deposition notice with a deposition date more than thirty (30) days from the date of the notice. The reason for this is the consulate must have time to evaluate the request for the visa in conjunction with a deposition notice. (*Exhibit A, July 8, 2011 Motion Hearing Transcript*)(*Exhibit B, September 8, 2011 Letter*). Despite advising defense counsel and defense counsel's staff of this requirement the depositions notice was not received timely. As such, by the time the original letter arrived in Brazil there was not sufficient time for the Martinez foreign fact witnesses to obtain the visa.

As can be gleaned from my September 8, 2011 letter, I am almost imploring that defendant comply with this simple request. To date they have not. Rather than simply follow the guidelines set up by the consulate (and out of the undersigned's control), defendant seeks to dismiss plaintiff's claims. There is absolutely no basis for this. Plaintiff has gone through herculean efforts in attempt coordinate the depositions of the remaining non-party Martinez fact witnesses but without assistance from the party seeking the depositions, this task is nearly impossible. If defendant wishes to obtain the remaining depositions of decedent Martinez's foreign fact witnesses than we ask that they simply comply with the requirements of the consulate. As it stands decedent Martinez's mother and sister have an appointment with the consulate on October 25, 2011. Without an original deposition notice providing a new date after October 25, 2011 it remains to be seen whether visas will be issued to the remaining foreign non-party fact witnesses.

It must also be brought to bear that decedent Martinez's father appeared in New Jersey for depositions. Defendants seek the remaining deposition of decedent Martinez's mother as well as his sister and brother. However, under defendant's own reasoning (with respect to decedent DeLima), the deposition of decedent Martinez's brother and sister are irrelevant since neither would take under the intestacy laws in the State of New Jersey. Notwithstanding same, decedent Martinez's sister is attempting to obtain a visa so she can appear for deposition. However, the brother is only 14 years old and was very young at the time decedent Martinez left Brazil to come to the United States. (*Exhibit A, July 8, 2011 Motion Hearing Transcript, at 9-10*).

Based on the foregoing, it is obvious that plaintiff is acting extremely diligently and doing all within our power to assist in getting the remaining non-party foreign fact witness to New Jersey.

However, even if we were unable to get this one witness to New Jersey there is still no basis in fact or in law to dismiss plaintiff's complaint. Plaintiff, Marc Comer has been deposed in this case. The individuals that defendant seeks are independent fact witnesses. Defendant asserts that the July 8, 2011 Order was intended to compel fact witnesses to come to New Jersey before September 1, 2011. However, upon reading the transcript of oral argument on the motions it becomes obvious that it was not Judge Mullaney's intention that plaintiff's complaint be dismissed should it not come to pass that the depositions took place before September 1, 2011. Rather, Judge Mullaney took judicial notice that the visa process was difficult. Therefore, the dates in the July 8, 2011 Order were intended to provide time frames for discovery not to serve as a basis to make a dispositive ruling in the case. Moreover, it seems patently unfair to dismiss plaintiff's complaint with prejudice on this basis where the only party that was not diligent in attempting to obtain the depositions is movant. Accordingly, defendant's motion should be denied.

C. The Martinez Family's Failure to Provide Banking Records for Decedent Martinez Should Similarly Not Serve as a Basis to Dismiss the Complaint Brought on Behalf of Decedent With Prejudice<sup>1</sup>.

In normal course a tort claim arising out of a death contains a wrongful death claim as well as a survivorship claim. Without even addressing that there are two separate and distinct claims, defendant seeks to dismiss plaintiff's complaint with prejudice for failure to provide banking records.

To begin, an action lies under our Wrongful Death Statute:

When the death of a person is caused by a wrongful act, neglect or default, such as would, if death had not ensued, have entitled the person injured to maintain an action for damages resulting from the injury, the person who would have been liable in damages for the injury if death had not ensued shall be liable in an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances amounting in law to a crime.

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<sup>1</sup>A fatal flaw to defendant's application and the relief sought lies in the fact that the plaintiff in these cases is Marc Comer, as administrator ad prosequendum of the respective estates. The documents requested are not requested from "plaintiff" but rather from decedent's beneficiary; specifically his father. Defendant has not provided a basis in law by which the Court can dismiss the wrongful death and survivorship claims brought by Marc Comer based on a non-parties failure to provide documents that were not within his possession, custody or control. As set forth herein, my office has, in good faith, undertaken several steps to expedite and coordinate production of the discovery that originates in Brazil. It is of course in our best interest to do so; however, this does not change the fact that the plaintiff in this matter is Marc Comer.

*N.J.S.A.* 2A:31-1. (Emphasis added). Pecuniary damages not only include loss of help with household chores or “anticipated direct financial contributions” by the decedent but also “[t]he loss of guidance, advice and counsel” and companionship. *Green v. Bittner*, 85 N.J. 1, 4 (1980); *see also N.J.S.A.* 2A:31-5; *Gangemi v. National Health Laboratories, Inc.*, 291 N.J. Super. 569, 575 (App. Div. 1996). The *Green* Court, *supra*, however, was very careful to explain that “[c]ompanionship and advice must be limited strictly to their pecuniary element.” 85 N.J. at 12. Moreover, the value of companionship or advice is limited to “what the marketplace would pay a stranger with similar qualifications for performing such services.” *Id.* at 12-13.

Put differently, damages in a wrongful death matter go beyond the mere value of lost wages caused by the death of a person; but include also the pecuniary value of the loss of guidance, loss of advice, loss of counsel occasioned by the death of a person. Accordingly, even if the court agreed with defendant’s (implicit) argument that plaintiff is not entitled to the pecuniary value of his lost wages because a non-party fact witness has not supplied a particular banking record, the claim for the pecuniary value of contributions such as guidance, advice and counsel remain. The amount of these damages, at a minimum, constitutes a question of fact that must be presented to a jury. Accordingly, dismissing plaintiff’s wrongful death with prejudice does not comport with law or the facts of this case.

The banking records were first referenced during the deposition of decedent Martinez’s father. Even at the time of his deposition Mr. Martinez stated that he did not have the account number for the account in which Alexandre would deposit money. (*Exhibit E, Deposition of Jose Alecio Martinez at 29-20*).

Judge Mullaney was well aware of this issue at oral argument in connection with the July 8, 2011 discovery motions. Specifically, the following exchange took place:

With respect to Martinez [banking records], the father did testify that there was some bank transfer that occurred, but some of the money was brought over by friends of Mr. Martinez in the United States, who happen to be going back to Brazil. That money he can testify to, because there’s - - there’s no account, there’s not bank record.

Mr. Martinez also testified that since the death of his son, he has transferred account, he’s finding it difficult to get the banking records. . .He’s trying every effort. I explained to him the importance of them.

If he can’t get them, he can’t get them and I - - you know, we would submit on a different motion at time of trial or maybe at a different time that he should be able to testify as to that, but this is - - Your Honor - - this is really - - whatever proofs we can produce would be the subject of a motion at trial . . .If I don’t produce something during discovery, this is very simple, I can’t produce it at trial. . .

(*Exhibit A, July 8, 2011 Motion Hearing Transcript, at 15-18*). Clearly, the tenor of the argument before Judge Mullaney makes clear that his intention in issuing the July 8, 2011 Orders were to extend time for plaintiff and defendant to complete discovery in a case where discovery is complicated by the simple fact that various forms of plaintiff's proofs originate in Brazil.

Again, there is simply no basis by which to dismiss plaintiff's complaint for a non-parties failure to produce records which are not in his possession, custody or control. *R. 4:18-1(a)*. As Judge Mullaney noted: "This is a file - - just so the records is clear, there is absolutely due diligence on the part of all counsel involved in the case." (*Exhibit A, July 8, 2011 Motion Hearing Transcript, at 18*). This is not an instance where plaintiff is withholding evidence or simply not acting diligently to discover the requested evidence. The banking records are simply not within possession, custody or control of the non-party witness. *R. 4:18-1(a)*<sup>2</sup>. There is a much less harsh alternative where documents are requested from a non-parties. *R. 4:18-1(d)*.

Especially in light of the proper process set forth in *R. 4:18-1(d)*, the sanction defendant requests, dismissal with prejudice, is extreme and disfavored where lesser sanction will erase the prejudice suffered by the non-delinquent party." *Crispin v. Volkswagenwerk, A.G.*, 96 N.J. 336, 345(1984). "Cases should be won or lost on their merits and not because litigants have failed to comply precisely with particular court schedules, unless such noncompliance was purposeful and no lesser remedy was available." *Connors v. Sexton Studios, Inc.*, 270 N.J. Super. 390, 395 (App.Div.1994). "Justice to the litigants is always the polestar." *Rivera v. Gerner*, 89 N.J. 526 (1982); *Martindell v. Martindell*, 21 N.J. 341, 349 (1956); *Grober v. Kahn*, 47 N.J. 132, 155 (1966); *New Jersey Highway Authority v. Renner*, 18 N.J. 485, 495 (1955). Again, plaintiff is not delinquent in this instances so there is simply no factual or legal basis by which to dismiss this matter even without prejudice.

Additionally, without authority, defendant presupposes that, in order to sustain a lost wage claim a dearth of documentation is needed. However, lack of documentation (e.g., bank records) regarding a the lost wage aspect of the plaintiff's claim does not preclude the claim. Rather, the lack of documents is a factor for the jury to consider in evaluating the weight of plaintiff's lost wage claim. *Hawkins v. 248 Haynes St. Assoc., Inc.*, No. A-5648-93T2, 1995 WL 378462, at \*9 (N.J. Super. App. Div.)(emphasis added).

It is well settled that testimony alone from a surviving member of an estate is sufficient to establish the decedent's net income. *See Langley v. Allstate Ins. Co.*, 206 N.J. Super. 365, 370-71 (App. Div. 1985). In *Langley*, the plaintiff was unable to produce documentation of her deceased son's employment as a bartender because, according to plaintiff's testimony, her son had been paid

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<sup>2</sup> With respect to productions of documents from a non-party witness, the same requires an independent action or alternatively defendant to issue a subpoena to the Bank of Brazil. *R. 4:18-1(d)*. However, it stands to reason that after endeavoring both efforts, defendant will likely be in the same position in which they presently stand. It is not unreasonable that records relating to bank transactions some six years ago have been destroyed or are otherwise unavailable.

“under the table.” *Id* at 368. The Court recognized that the plaintiff was “trapped by an underground sub-culture of illegal wage payments which cheat governments of taxes and deprives employees of social security benefits and minimum wage protection.” *Id.* at 370. Therefore, the Court held plaintiff’s testimony was adequate to establish her deceased son’s net income because such illegal conduct by employers “should not deprive individuals of benefits properly owing from an insurance company.” *Id.*

Likewise, in *Yube v. Bernberg*, No. L-1926-02, 2005 WL 3954743, at \*3 (N.J. Super. App. Div.), the plaintiff was not required to present documentary evidence to establish his net income. Similar to *Langley*, the plaintiff in *Yube* was unable to provide documentation of his employment at a restaurant because he was paid off the books. *Yube v. Bernberg*, at \*3. Consequently, the plaintiff could not produce tax returns or pay stubs because they did not exist. *Id.* at \*6. Once again the Court found it would be inequitable to bar the plaintiff’s lost wage claim due to employers failure to provide tax documents to his employees. *Id.*

Additionally, it is well settled that a plaintiff need not present an expert to support an estimate of lost wages. Where it is certain that some damage has resulted, mere uncertainty as to the amount thereof will not necessarily preclude the right of recovery. *Betenbaugh v. Princeton Hospital*, 50 N.J. 390, 392 (1967). Rather, where exact figures are not available, “the approved practice is to leave it to the good sense of the jury . . .to form from the evidence the best estimate that can be made under the circumstances . . .” *Id.* In this instance, as documented specifically in the deposition of Jose Alecio, decedent’s father, there is more than sufficient information to sustain the lost wage portion of decedent’s wrongful death/survivorship claims. (*Exhibit E, Deposition of Jose Alecio Martinez at 29-60*).

Furthermore, the form of relief defendant requests is inappropriate and unnecessarily harsh in light of the circumstances of this case. Additionally, the relief requested does not logically or practically make sense in light of *R. 4:23-2(b)(3)*, upon which defendants rely. Essentially, defendants are asking the Court to dismiss plaintiffs’ complaints because a non-party witness did not produce banking record (dating back some six years), not within the witness’s possession, custody or control. *R. 4:18-1(a)*. Generally speaking, the requested sanction would be appropriate in specific instances where a plaintiff abandons their case. However, defendants seek this relief in the face of the extraordinary efforts undertaken plaintiff’s counsel and despite the best efforts of the non-party witness from whom the documents are sought. Once again, it is defendants who lack diligence in connection with the records they seek. Defendant can certainly follow the procedure set forth in *R. 4:18-1(d)* and issue a subpoena for the documents from the originating source, the Bank of Brazil.

Finally, there is no basis to support defendant’s contention that costs should be awarded in connection with this motion. Clearly plaintiff has worked diligently to coordinate with the non-party witnesses to obtain these foreign documents, but to no avail.

**II. DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S, MARC J. COMER, ESQ., AS ADMINISTRATOR AD PROSEQUENDUM FOR THE ESTATE OF ADALTO DELIMA, COMPLAINT WITH PREJUDICE SHOULD BE DENIED**

A. Defendant’s Motion to Compel Translation of Foreign Documents Should be Denied As Moot.

Defendants’ motions as they pertain to decedent DeLima are somewhat contradictory. First, defendant moves to compel English translation of documents obtained by the DeLima family in Brazil. These records include two doctor’s notes that pertain to decedent DeLima’s parents as well as banking records. A notarized translation issued by a New Jersey AOC Certified translator was obtained and provided to defendants on September 26, 2011. (*Exhibit C, September 26, 2011 Correspondence*)(*Exhibit D, AOC Translation of Brazilian Documents*). Accordingly, defendants’ motion to compel the translation should either be withdrawn by counsel or denied as moot.

B. Defendant’s Motion to Dismiss the DeLima Claims with Prejudice Should Be Denied as the AOC Translation Makes Clear the Parents of Decedent DeLima Cannot Travel to the United States for Depositions<sup>3</sup>.

Defendant moves to compel an English translation of foreign documents and almost simultaneously makes the instant motion to dismiss plaintiff’s complaint with prejudice on the basis that the documents they needed translations of, when translated, are insufficient. The confusion created by these two competing motions highlights the baselessness of all of the instant dispositive motions.

First, the translation of the doctor’s notes, as per the notarized AOC Certified translator states the following with respect to decedent DeLima’s parents’ health:

Joao Pinheiro [decedent DeLima’s father]

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<sup>3</sup> A fatal flaw to defendant’s application and the relief sought lies in the fact that the plaintiff in these cases is Marc Comer, as administrator ad prosequendum of the respective estates. Defense counsel is unjustifiably unsatisfied with the medical documentation concerning third party fact witnesses. Neither of decedent DeLima’s parents are the plaintiff in this personal injury case. They are simply decedent’s beneficiaries who may take under New Jersey’s intestacy laws in the event damages are recovered in this matter. Defendant has not provided a basis in law by which the Court can dismiss the wrongful death and survivorship claims brought by Marc Comer based on a non-parties failure to provide documents that were not within his possession, custody or control. As set forth herein, my office has, in good faith, undertaken several steps to expedite and coordinate the discovery that originates in Brazil. It is of course in our best interest to do so; however, this does not change the fact that the plaintiff in this matter is Marc Comer.

Patient present residual sequel of an old fracture, being that the left lower limb shorter than the right lower limb and arthropathy coxofemoral with pain and limited locomotion.

Patient has a history of fainting.

Patient presents history of cardiovascular disease, EKG shows electro inactive Anteropseptal wall.

Hip X-Ray shows acute arthritis of the left hip.

Lumbar spinal X-Ray shows acute lumbar sacrum Dextroscoliosis.

Patient presents pain and difficult of movement due to advanced arthritis of the left him.

\* \* \*

Maria Dos Reis De Lima Pinheiro [decedent DeLima's mother]

Patient is under continue treatment for Arterial Hypertension and Diabetes.

Presents Insomnia Disorder accompanied of Agoraphobi, in other words, fear of places or situations that may present difficult possibilities of scape.

Due to this fear, the patient limits her trips outside of the house.

Common Agoraphobia situations includes fear of being alone, of traveling by car or airplane.

*(Exhibit D, AOC Translation of Brazilian Documents)*. Accordingly, it is clear that in attempting to dismiss plaintiff's complaint with prejudice, defendant downplays the significance and completeness of the DeLima's treating doctor's assessment of their physical conditions. There is simply no basis by which to assert the extreme sanction of dismissal with prejudice in this instance. Moreover, in issuing the July 8, 2011 Orders, Judge Mullaney clearly accounted for the parents of decedent DeLima; intending that the depositions take place remotely (via telephone or video conference). *(Exhibit A, July 8, 2011 Motion Hearing Transcript, at 10)*.

There is simply no basis by which to evoke the sanction defendant requests, dismissal with prejudice, is extreme and disfavored where lesser sanction will erase the prejudice suffered by the non-delinquent party." *Crispin v. Volkswagenwerk, A.G.*, 96 N.J. 336, 345(1984). "Cases should be won or lost on their merits and not because litigants have failed to comply precisely with particular court schedules, unless such noncompliance was purposeful and no lesser remedy was available." *Connors v. Sexton Studios, Inc.*, 270 N.J.Super. 390, 395 (App.Div.1994). "Justice to the litigants is always the polestar." *Rivera v. Gerner*, 89 N.J. 526 (1982); *Martindell v. Martindell*, 21 N.J. 341, 349 (1956); *Grober v. Kahn*, 47 N.J. 132, 155 (1966); *New Jersey Highway Authority v. Renner*, 18 N.J. 485, 495 (1955). Again, plaintiff is not delinquent in this instances so there is simply no factual or legal basis by which to dismiss this matter even without prejudice.

Additionally, as set forth above, plaintiff in these wrongful death/survivorship claims is left to their proofs. However, the plaintiff is Marc Comer. The depositions sought are of non-party witnesses. If the non-party witnesses do not appear for depositions or fails to provide a document

not within their possession, custody or control, than we will obviously be barred from relying on same at time of trial. There is simply no basis by which to dismiss plaintiffs' complaints. This is not an instance where plaintiffs' counsel has not been diligent in working with the non-party witnesses to meet all the internal deadlines of the July 8, 2011 discovery Orders. Quite the opposite. Plaintiffs' counsel has worked extremely diligently to coordinate compliance with all defendants' discovery requests. As set forth above, defendants' non-cooperation has stymied plaintiff's efforts in particular situations. Finally, any failures to comply are due to reasons beyond the control of plaintiffs' counsel. We obviously do not control the consulate's visa decisions. We do not control the record keeping division of the Bank of Brazil. There has been due diligence on the part of counsel and the part of the non-party witnesses.

Defendant's request for the ultimate sanction of dismissal with prejudice is entirely procedurally based. It is clear from even a cursory review of the record that the young men who had the unfortunate and fatal experience in riding in a box truck overloaded by defendant Speedwell/BFK, have presented sufficient evidence to support their claims. Should defendant disagree with respect to particular aspects of the claims, a motion for summary judgment is the appropriate mechanism. The simple truth at the end of this opposition is that defendant has attempted to dismiss plaintiffs' cases on a technicality from the outset. This is not defendant's first motion to dismiss that is entirely procedurally based<sup>4</sup>. Defendant's *modus operandi* in this matter is to engage in a game of procedural marksmanship to dismiss plaintiffs' significant claims because as defendant must be aware by now, defendant Speedwell/BKF is liable for the death of these two young men. (*Exhibit F, Accident Scene Photos*)(*Exhibit G, Police Report*). Justice requires that plaintiffs' claims not be dismissed simply because they were of Brazilian decent and therefore obtaining certain discovery items in this matter has presented a challenged.

As such, there are clearly other alternative methods to deal with the instant discovery issues that stop short of dismissing plaintiffs' complaints. Moreover, as set forth in plaintiff's motion to compel discovery, also returnable on October 6, 2011, defendant is in default and therefore these motions must denied procedurally and substantively as set forth herein.

Thank you for your consideration.

Respectfully submitted,

SARAH K. DELAHANT  
For the Firm

cc: Darren Kayal, Esq.

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<sup>4</sup> Defendant has not prevailed on any of these motions.

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Project\lost-wages-dont-need-tax-returns-or-other-documents.wpd