

MEISELMAN & GORDON
150 Broadway, Suite 1920
(212) 766- 2200
(212) 766- 2222
Ava M. Gordon
Gregory Posella and Carmen Posella

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

	x	
	:	
In re	:	
		Chapter 11
SAINT VINCENTS CATHOLIC MEDICAL	:	Case No. 05-14945 (ASH)
CENTERS OF NEW YORK d/b/a SAINT VINCENT	:	
CATHOLIC MEDICAL CENTERS, <i>et al.</i> ,	:	(Jointly Administered)
	:	
Debtors.	:	
	x	

**NOTICE OF MOTION OF [INSERT NAME OF MOVANT] SEEKING RELIEF FROM
AUTOMATIC STAY PURSUANT TO BANKRUPTCY CODE SECTION 362(d)**

TO THE HONORABLE ADLAI S. HARDIN, JR.,
UNITED STATES BANKRUPTCY JUDGE:

In support of [his/her] request for relief from the automatic stay pursuant to section 362(d) of title 11 of the United States Code (the "Bankruptcy Code"), [INSERT MOVANT'S NAME] (C Movant"), by and through [his/her] counsel, [INSERT COUNSEL NAME], respectfully represents as follows:

1. The case caption of the Movant's action in state court (the "State Court Action") is as follows:

GREGORY POSELLA and CARMEN POSELLA,

Plaintiffs,

Index No.

- against -

VERIFIED COMPLAINT

SYED M.S. ALI, M.D. and ST. VINCENT'S
CATHOLIC MEDICAL CENTERS
OF NEW YORK, STATEN ISLAND REGION -
BAYLEY SETON HOSPITAL,

Defendants.

- action: 2. The State Court Action is predicated upon the following causes of
See EXHIBIT A
- occurred is/are: 3. The hospital(s) in which the alleged act(s) of medical malpractice
Saint Vincents Catholic Medical Center
Staten Island Region Bayley Seton Hospital
4. The alleged act(s) of medical malpractice occurred on January 19,
2004
5. Relief from the automatic stay ought to be granted for
the following reasons:
The Plaintiff has agreed to limit her recovery to the
value of hospital's insurance or to an amount as the court may direct.

6. As supportive documentation, Movant attaches (a) a copy of the original
summons and complaint filed in state court and (b) a copy of a proof of claim timely filed in
these bankruptcy cases, if any. **EXHIBIT A**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Index No.

GREGORY POSELLA and CARMEN POSELLA,

Plaintiff designates
RICHMOND

County as the place of

trial

Plaintiffs,

- against -

The basis of the venue is
P L A I N T I F F ' S
RESIDENCE

SYED M.S. ALI, M.D. and ST. VINCENT'S
CATHOLIC MEDICAL CENTERS
OF NEW YORK, STATEN ISLAND REGION -
BAYLEY SETON HOSPITAL,

SUMMONS

Plaintiff resides at

339 Van Name Avenue
Staten Island, NY 10303

Defendants.

To the above named Defendants:

**YOU ARE HEREBY SUMMONED to answer the complaint in this action and
to serve a copy of your answer, or, if the complaint is not served with this summons, to serve
a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this
summons, exclusive of the day of service (or within 30 days after the service is complete if this
summons is not personally delivered to you within the State of New York; and the case of your
failure to appear or answer, judgment will be taken against you by default for the relief**

demanded in the complaint.

Dated, New York, New York
October 20, 2004

MEISELMAN & GORDON, LLP
Attorney(s) for Plaintiffs
Post Office Address
150 Broadway, Suite 1920
New York, NY 10038
(212) 766-2200

Defendants' addresses
SYED M.S. ALI, M.D.
1430 Clove Road
Staten Island, NY

ST. VINCENT'S
CATHOLIC MEDICAL CENTERS
OF NEW YORK, STATEN ISLAND
REGION - BAYLEY SETON
HOSPITAL
75 Vanderbilt Avenue
Staten Island, NY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

_____X

GREGORY POSELLA and CARMEN POSELLA,

Plaintiffs,

Index No.

- against -

**VERIFIED
COMPLAINT**

SYED M.S. ALI, M.D. and ST. VINCENT'S
CATHOLIC MEDICAL CENTERS
OF NEW YORK, STATEN ISLAND REGION -
BAYLEY SETON HOSPITAL,

Defendants.

_____X

Plaintiffs, complaining of the defendants, by their attorneys MEISELMAN & GORDON, LLP respectfully allege, upon information and belief, at all times hereinafter mentioned, as follows:

THE PARTIES

1. Plaintiffs are husband and wife.
2. Plaintiffs reside at 339 Van Name Avenue, Staten Island, County of

Richmond, State of New York.

3. Defendant SYED M.S. ALI, M.D. (hereinafter "ALI") is a physician duly licensed to practice medicine in the State of New York.
4. Defendant ALI held himself out as a physician duly licensed to practice medicine in the State of New York.
5. Defendant ALI held himself out as specializing in the field of psychiatry.
6. Defendant ALI maintains an office for his practice at ST. VINCENT'S CATHOLIC MEDICAL CENTERS OF NEW YORK, STATEN ISLAND REGION - BAYLEY SETON HOSPITAL (hereinafter "HOSPITAL"), County of Richmond, State of New York.
7. Defendant ALI maintains an office for his practice at 1430 Clove Road, Staten Island, County of Richmond, State of New York.
8. Defendant ALI held herself out to the public at large and more particularly to the plaintiff herein, GREGORY POSELLA, as a physician duly qualified and competent to render requisite medical care and treatment to the public at large and more particularly to the plaintiff herein.
9. Defendant ALI is an agent, servant, and/or employee of defendant HOSPITAL.
10. Defendant HOSPITAL is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
11. Defendant HOSPITAL owns and/or operates a hospital premises located at 75 Vanderbilt Avenue, Staten Island, County of Richmond, State of New York.
12. Defendant HOSPITAL, its agents, servants and/or employees, operated, maintained, managed, controlled and supervised the aforesaid hospital, which held itself out to the public at large and, more particularly, to the plaintiff herein, as a hospital duly qualified and capable of rendering adequate medical care and treatment to the public at large and for such purposes hired physicians, surgeons, nurses, attendants and other personnel.

THE UNDERLYING FACTS

13. Commencing on or about January 19, 2004, and prior and subsequent thereto, plaintiff GREGORY POSELLA came under the continuous care and treatment of

defendant ALI.

14. It was the duty of defendant ALI, his agents, servants and/or employees, to reasonably care for, treat and supervise his patients and, more particularly, the plaintiff herein.
15. Defendant ALI attended to plaintiff in the course and scope of his employment with defendant HOSPITAL.
16. Commencing in or about January 19, 2004, and prior and subsequent thereto, plaintiff GREGORY POSELLA came under the continuous care and treatment of defendant MEDICAL CENTER, by its agents, servants and/or employees.
17. It was the duty of defendant HOSPITAL, by its agents, servants and/or employees, to reasonably care for, treat and supervise its patients and, more particularly, the plaintiff herein.
18. On or about January 9, 2004, while a patient at defendant HOSPITAL, plaintiff GREGORY POSELLA woke up with a burn on his arm.
19. On or about January 9, 2004, while a patient at defendant HOSPITAL, plaintiff GREGORY POSELLA, while under sedation, fell from his bed.
20. The aforesaid occurrences were caused solely by means of the negligence and carelessness of the defendants, their agents, servants and employees, and without any negligence on the part of the plaintiffs contributing thereto.
21. As a result of the aforementioned occurrences, GREGORY POSELLA sustained severe and permanent injuries.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, GREGORY POSELLA**

22. The medical care and treatment rendered by the defendants to plaintiff, GREGORY POSELLA, was rendered in a careless, reckless and negligent manner, not in accordance and conformity with proper and accepted medical practice and procedure.
23. Among other things, the defendants were careless, reckless and negligent in failing to order proper precautions to prevent injury to the plaintiff, GREGORY POSELLA; in failing to institute proper precautions to prevent injury to the plaintiff; in causing, permitting and allowing the occurrence of a burn to the arm; in causing, permitting and allowing plaintiff to fall out

of bed and sustain injuries; in failing to properly diagnose and treat a burn to plaintiff's arm; in failing to properly diagnose and treat injuries to plaintiff's arm and shoulder; in ignoring and failing to heed the significance of plaintiff's signs, symptoms and complaints; in ignoring and failing to heed the complaints of the plaintiff; in mocking the plaintiff; in embarrassing the plaintiff; in failing to perform proper tests and studies; in failing to consult proper specialists; in failing to notify the treating physician of the patient's condition; in failing to properly treat the plaintiff's condition; in failing to render proper follow-up care to plaintiff; in causing the injuries complained of herein; and the defendants were otherwise careless, reckless and negligent.

24. As a result of the carelessness, recklessness and negligence of the defendants, plaintiff GREGORY POSELLA was caused to sustain severe and permanent personal injuries, including, among other things, a burn to the arm; laceration of the arm with infection; scarring; pain and limitation of movement of shoulder and arm; was caused to suffer severe and persistent mental anguish, psychological disturbance, emotional distress, and behavioral pathology; was caused to be rendered sick, sore, lame and disabled; was caused to be confined to hospital, home and bed for a lengthy period of time and may, in the future, be so caused; was caused to seek medical and surgical care, treatment and procedures and may, in the future, be so caused; was caused to undergo diagnostic tests and procedures and may, in the future, be so caused; was caused to expend sums of money for medical care and treatment and may, in the future, be so caused; was caused to be incapacitated from his usual duties and may, in the future, be so caused; and this plaintiff was otherwise damaged, all of which damages and injuries are permanent in nature and continuing into the future.
25. By reason of the foregoing, the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.
26. By reason of the foregoing, plaintiff GREGORY POSELLA is entitled to recover all his damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, GREGORY POSELLA

27. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in the paragraphs of this Complaint numbered "1" through "26", inclusive, with the same force and effect as if more fully set forth at length herein.
28. Defendants failed to obtain the plaintiff's informed consent or the consent of an individual authorized to act on his behalf to the treatment, or lack of treatment rendered to him.
29. Proper medical practice and procedure required defendants to obtain plaintiff's consent to the treatment or lack of treatment rendered to him.
30. A reasonably prudent person in the plaintiff's position would not have undergone the treatment or lack of treatment provided by the defendants had he and/or his authorized representative been properly informed of the risks and hazards of such treatment, or lack of treatment.
31. Plaintiff and/or his authorized representative would not have agreed to the treatment, or lack of treatment provided by the defendants had he been properly informed of the risks and hazards of such treatment, or lack of treatment.
32. The defendants' failure to obtain the plaintiff's informed consent is a contributing cause of the injuries sustained by plaintiff, as set forth above.
33. By reason of the foregoing, the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.
34. By reason of the foregoing, plaintiff is entitled to recover all his damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, GREGORY POSELLA

35. Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint numbered "1" through "34", with the same force and effect as if more fully set forth at length herein.
36. The aforesaid occurrence was caused solely by means of the negligence and

- carelessness of the defendants, their agents, servants and employees, and without any negligence on the part of the plaintiffs contributing thereto
37. As a result of the conduct of the defendants, plaintiff GREGORY POSELLA was caused to sustain severe and persistent mental anguish, psychological disturbance and emotional distress.
38. By reason of the foregoing, the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.
39. By reason of the foregoing, plaintiff is entitled to recover all his damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, GREGORY POSELLA**

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint numbered "1" through "39", with the same force and effect as if more fully set forth at length herein.
41. The above facts constitute intentional injury to the person, emotions and property of plaintiff by the defendants.
42. As a result of the conduct of the defendants, plaintiff GREGORY POSELLA was caused to sustain severe and persistent mental anguish, psychological disturbance and emotional distress.
43. By reason of the foregoing, the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.
44. By reason of the foregoing, plaintiff is entitled to recover all his damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF, CARMEN POSELLA**

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in the paragraphs of this Complaint numbered "1" through "44", with the same force and effect as if more fully set forth at length herein.
46. Plaintiff CARMEN POSELLA is the wife of plaintiff GREGORY POSELLA and, as such, was and is entitled to his services, society,

companionship and consortium.

47. As a result of the carelessness, intentional, reckless and negligent behavior of the defendants, plaintiff CARMEN POSELLA was deprived of the society, companionship and consortium of her husband and was required to care for him and to expend funds for his medical care and treatment.
48. By reason of the foregoing, the defendants are jointly and severally liable pursuant to the exceptions set forth in Article 16 of the CPLR.
49. By reason of the foregoing, plaintiff is entitled to recover all her damages from the defendants pursuant to CPLR 3017(c), the amount of which exceeds the jurisdictional limits of all lower Courts.

WHEREFORE, plaintiffs GREGORY POSELLA and CARMEN POSELLA demand judgment against the defendants on the First, Second, Third, Fourth and Fifth Causes of Action pursuant to CPLR 3017(c), and demand that they be awarded all damages and relief to which they are entitled.

Ava M. Gordon
MEISELMAN & GORDON, L.L.P.
Attorneys for the Plaintiff
150 Broadway, Suite 1920
New York, New York 10038
(212) 766-2200

ATTORNEY'S VERIFICATION

AVA M. GORDON, an attorney associated with the law firm of MEISELMAN & GORDON, LLP, attorneys for the plaintiff(s) in the within action, duly admitted to practice law in the Courts of the State of New York, affirms the following statements to be true under the penalties of perjury, pursuant to Rule 2106 of the CPLR:

That affirmant has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to affirmant's own knowledge, except as to the matters therein stated to be alleged upon

information and belief, and that as to those matters affirmant believes them to be true.

Affirmant further states that the source of affirmant's information and grounds of affirmant's belief are derived from the file maintained in the normal course of business of the attorneys for the plaintiff(s).

Affirmant further states that the reason this verification is not made by the plaintiff is that the plaintiff does not reside within the County of New York, which is the County where the attorneys for the plaintiff(s) herein maintain their offices.

Dated: New York, New York
February 1, 2007

AVA M. GORDON

ATTORNEY'S CERTIFICATION

AVA M. GORDON, an attorney duly admitted to practice before the Courts of this State, certifies the following:

1. I am an attorney associated with the law firm of MEISELMAN & GORDON, LLP, attorneys for the plaintiff in the within action.

2. I have reviewed the facts of the case and have consulted with a physician duly licensed to practice medicine in the State of New York and reasonably believe that said physician is knowledgeable with respect to the relevant issues involved in this action.

3. Based upon the discussions had with the aforesaid physician, I have concluded, on the basis of my review and consultation, that there is a reasonable basis for the commencement of this action.

Dated: New York, New York
February 1, 2007

AVA M. GORDON

[Ava M. Gordon
MEISELMAN & GORDON
150 Broadway, Suite 1920
(212) 766- 2200
(212) 766- 2222
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Dated: _____, 2007 New York, New York