To be Argued by:
MATTHEW F. DIDORA
(Time Requested: 15 Minutes)

APL-2018-00167
Albany County Clerk's Index No. 776-16

Court of Appeals

of the

State of New York

In the Matter of the Application of

THE PLASTIC SURGERY GROUP, P.C.,

Petitioner-Appellant,

– against –

THE COMPTROLLER OF THE STATE OF NEW YORK,

Respondent-Respondent.

BRIEF FOR PETITIONER-APPELLANT

ABRAMS, FENSTERMAN,
FENSTERMAN, EISMAN, FORMATO,
FERRARA, WOLF & CARONE, LLP
Attorneys for Petitioner-Appellant
3 Dakota Drive, Suite 300
Lake Success, New York 11042
Tel.: (516) 328-2300
Fax: (516) 328-6638

Date Completed: November 12, 2018

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

QUESTION PRESENTED

State Finance Law § 9 states that any subpoena issued by the Comptroller shall be regulated by the Civil Practice Law and Rules. The plain language of CPLR 3122(a)(2) requires that a subpoena duces tecum issued to a medical provider requesting the production of a patient's medical records, other than a trial subpoena issued by a court, be accompanied by a written authorization from the patient and include a statement that the provider need not respond to the subpoena absent the written authorization of the patient. In the absence of any other exception in the statutory language, does CPLR 3122(a)(2) apply to a subpoena duces tecum issued by the Comptroller to a medical provider seeking patient medical records outside of a pending action or proceeding?

The Third Department said it did not.

PRELIMINARY STATEMENT

This appeal presents the intersection of State Finance Law § 9, which gives the Comptroller subpoena power and states that any subpoena issued shall be regulated by the CPLR, and CPLR 3211(a)(2),

which specifically addresses subpoenas issued to medical providers for patient records.

In February 2016, the New York State Comptroller served The Plastic Surgery Group, a medical provider, with a subpoena duces tecum requesting a wide range of medical records for individuals insured under the Empire Plan who were patients of the practice between January 1, 2011 and October 31, 2015. The subpoena duces tecum was not accompanied by written authorizations from the patients permitting The Plastic Surgery Group to release their medical records. Because the patient authorizations were missing, The Plastic Surgery Group first requested the Comptroller withdraw the subpoena, and when it refused, the Group filed a special proceeding to quash.

The Supreme Court granted The Plastic Surgery Group's motion and quashed the subpoena, holding that the Comptroller's subpoena fails to satisfy the requirements of CPLR 3122(a)(2) and is therefore deficient on its face. The Appellate Division, Third Department, reversed and, *inter alia*, denied the motion to quash. The court held that the Comptroller issued the subpoena in furtherance of its constitutional and statutory obligation, recognized by this Court in

Handler v. DiNapoli, 23 NY3d 239 (2014), to audit the state's payments under the Empire Plan and was therefore a valid exercise of subpoena power. Moreover, the court held that the Comptroller was not required to comply with CPLR 3122(a)(2) because that section only applies to subpoenas issued pursuant to CPLR 3120 and 3121 in the course of discovery in a pending action.

This Court must reverse. If CPLR 3122(a)(2) is held not to apply to the Comptroller's subpoena to The Plastic Surgery Group, the confidential medical records of over 1,500 patients pertaining to sensitive medical procedures, which the patients may well want to keep private, will be revealed without their knowledge and without them being provided any process to object, though there may be far less intrusive means for the Comptroller to secure the information needed to conduct its audit. The Third Department's memorandum and order limiting the application of CPLR 3122(a)(2) has implications far beyond the parties to this proceeding that affect residents and businesses throughout the state. The Third Department's memorandum and order has altered an express legislative framework laid out in State Finance

Law § 9 and CPLR 3122(a)(2) through the inclusion of limitations that do not appear in the legislative text.

DISCLOSURE STATEMENT

The Plastic Surgery Group is a professional corporation with no parents, subsidiaries or affiliates.

STATEMENT OF FACTS

The Plastic Surgery Group is, as its name suggests, a medical provider specializing in plastic surgery. (R 14) It is a non-participating provider under the Empire Plan, which is the primary medical and surgical benefits option offered by the New York State Health Insurance Program. As an out-of-network provider, The Plastic Surgery Group does not have a contract with the state or United Healthcare, which processes and pays claims made by Empire Plan beneficiaries on behalf of the state.

In July of 2015, the Comptroller announced its intention to review the state's payments under the New York State Health Insurance Program. (R 65) The Comptroller thereafter sent notice to The Plastic Surgery Group that "[a]uditors from [the Comptroller] will be visiting your office to inspect records supporting the accuracy and

appropriateness of the State health care payments." (R 65) There was no indication on this notice that any of The Plastic Surgery Group's patients had been notified that state auditors intended to review their confidential health information or that those patients had consented to such review. When the Plastic Surgery Group refused voluntarily to provide confidential patient medical records to the Comptroller, the Comptroller served the Group with a subpoena duces tecum. (R 21-26)

That subpoena claims that it was issued "pursuant to Civil Practice Law and Rules, section 2302(a) and the Comptroller's subpoena power under State Finance Law, section 9." (R 21) It is not disputed that the subpoena requests a broad range of confidential patient health information, including documents listing the names and addresses of any and all of The Plastic Surgery Group's patients insured under the Empire Plan for a nearly five-year period; any and all patient account records and ledgers for those patients; dates of service and procedure codes and descriptions of services rendered; copies of any and all checks from or on behalf of any and all of those patients during the same five-year period; and correspondence between The Plastic Surgery Group and those patients. (R 25-26)

The subpoena was not accompanied by written authorizations from the patients whose records were the focus of the Comptroller's subpoena. Nor did the subpoena contain any notification whatsoever – let alone a notice in conspicuous bold-faced type as required by CPLR 3122(a)(2) – that the patient records need not be provided by The Plastic Surgery Group unless the subpoena is accompanied by a written authorization from the patient.

Because the subpoena requested patient medical records but lacked the necessary authorizations from the patients whose records were requested (among other reasons), The Plastic Surgery Group requested that the Comptroller withdraw the subpoena. (*See* R 28-31) The Comptroller refused. (R 33-36)

The Plastic Surgery Group commenced a special proceeding in Supreme Court, Albany County, seeking an order quashing the Comptroller's subpoena duces tecum. (R 11) The Comptroller opposed the petition and cross-moved to compel compliance. The Supreme Court (Ryba, J.) granted The Plastic Surgery Group's petition, quashed the subpoena, and denied the Comptroller's cross-motion to compel on the ground that the subpoena did not comply with CPLR 3122(a)(2). (R 6-9)

The Comptroller appealed, and the Third Department reversed, denying the application to quash the subpoena and granting the cross-motion to compel compliance. 155 AD3d 1417 (3d Dept 2017).

This Court granted The Plastic Surgery Group leave to appeal. (R 93)

ARGUMENT

In *Matter of Martin H. Handler, M.D., P.C. v. DiNapoli*, 23 NY3d 239 (2014), this Court held that the Comptroller's review of two non-participating providers' billing records that had been voluntarily provided to it by the providers did not violate article V, § 1 of the State Constitution. In doing so, this Court noted that the Comptroller is constitutionally and statutorily obligated to ensure proper billing and payment for the Empire Plan and that, to satisfy that obligation, the Comptroller must perform pre- and post-payment audits of the state's Empire Plan payments. *Id.* at 247.

The Third Department relied heavily on that decision to deny The Plastic Surgery Group's request to quash the Comptroller's subpoena and grant the cross-motion to compel. *See The Plastic Surgery Group, P.C. v. Comptroller of the State of New York*, 155 AD3d 1417, 1418-19

(3d Dept 2017). In particular, the court reasoned that because reviews of non-participating providers' billing records was a matter properly within the scope of the Comptroller's authority, the Comptroller's subpoena to The Plastic Surgery Group "represented a valid exercise of its subpoena power." *Id.*

The court further concluded that the trial court's reliance on CPLR 3122(a)(2) as a condition on the Comptroller's subpoena power was misplaced. The court held that CPLR 3122(a)(2) "only applies, by its terms, to subpoenas issued by a party to litigation seeking discovery under CPLR 3120 or 3121, after an action or proceeding has been commenced." *Id.* at 1419. The court read CPLR 3122(a)(1) together with subdivision (2) to conclude that the latter's provisions apply only to subpoenas issued during the discovery phase of litigation and are not applicable to the subpoena issued by the Comptroller pursuant to State Finance Law § 9. *Id.*

This determination was made in error, as it conflicts with an express legislative intent set forth in both State Finance Law § 9 and CPLR 3122(a)(2). The Appellate Division's decision ignores the legislature's express subjugation of the Comptroller's subpoena powers

to the entirety of the CPLR and yields the untenable result that the one section of the CPLR specifically addressing subpoenas duces tecum issued to medical providers for patient records does not apply to the Comptroller's subpoena duces tecum to a medical provider for patient records. No doubt, the Appellate Division was concerned about restricting the Comptroller's ability to discharge its constitutional and statutory authority; however, that concern, regardless of how legitimate it may be, does not give the court license to circumvent express statutory requirements set forth by the legislature. If those requirements unduly restrict the Comptroller's ability to discharge his or her duties, it is for the legislature to correct.

I. CPLR 3122(a)(2) Applies on Its Face to All Subpoenas Duces Tecum Regardless of the Existence of a Pending Action or Proceeding

The Comptroller's authority to issue subpoenas originates from State Finance Law § 9, which provides as follows:

> The comptroller, deputy comptrollers and assistant deputy comptroller, or either of them, may issue a subpoena or subpoenas requiring a person or persons to attend before the comptroller, a deputy comptroller or assistant deputy comptroller and be examined in reference to any matter within the scope of the inquiry or investigation being conducted by the comptroller, and, in a proper case, to bring

> with him, a book or paper. A subpoena issued under this section shall be regulated by the civil practice law and rules. The comptroller and deputy comptroller or assistant deputy comptroller or any person designated in writing by them may administer an oath to a witness in any such inquiry or investigation.

NY State Finance Law § 9. The plain terms of this section impose two conditions on the Comptroller's subpoena power: First, the subpoena must be "in reference to any matter within the scope of the inquiry or investigation being conducted by the comptroller," and second, the subpoena must comply with the CPLR. *Id.* While the Third Department devoted much of its analysis to addressing the Comptroller's authority and obligation to review Empire Plan payments, The Plastic Surgery Group has never argued that the Comptroller lacks such authority. Indeed, The Plastic Surgery Group recognizes that this Court's decision in *Handler* finally resolves any issue relating to the first condition.

But this appeal does not concern the first condition. Rather, this appeal is specifically addressed to the second condition – that the subpoena comply with the CPLR – and *Handler* has no bearing on that

issue.[1] While this Court in *Handler* noted that "the Legislature has granted the Comptroller broad subpoena powers in furtherance of the Comptroller's investigatory functions under State Finance Law § 9," *Handler*, 23 NY3d at 247, that statement was *dicta*, as the facts of *Handler* did not require any analysis of the Comptroller's subpoena powers because the providers had voluntarily turned over the patients' medical records. Therefore, the Comptroller never issued a subpoena. *Handler* simply did not address the core question presented for review to this Court: whether the Comptroller must comply with CPLR 3122(a)(2) when issuing an investigative subpoena duces tecum to a medical provider for patient records.

Originally, the legislature subjected the Comptroller's subpoena power to only specific procedural statutes. The Comptroller first

[1] For this reason, the Third Department's determination that The Plastic Surgery Group's disclosure of patient medical records would not violate the HIPAA privacy rule because the Comptroller acts as a "health oversight agency" within the meaning of the applicable regulations (45 C.F.R. § 164.501) and covered entities such as The Plastic Surgery Group are permitted (but not required) to disclose patient information to health oversight agencies without violating the rule (45 C.F.R. § 164.512(a)(1)) is not relevant to this appeal. *See The Plastic Surgery Group, P.C.*, 155 AD 3d at 1419-20. The regulations state in part that a covered entity may use or disclose protected health information "to a health oversight agency for oversight activities authorized by law." *Id.* The Plastic Surgery Group would only be "authorized by law" to disclose its patient's records to the Comptroller if it were served with a valid subpoena. The precise issue to be decided by this Court is whether the Comptroller's subpoena to The Plastic Surgery Group is valid.

obtained the ability to issue subpoenas in 1937. Section 53 of the State Finance Law, which became law that year, conferred upon the Comptroller, deputy comptrollers and assistant deputy comptrollers the power to issue a subpoena requiring a person to attend before either of them and be examined in reference of any matter within the scope of the inquiry or investigation being conducted and in a proper case to bring with him a book or paper. L. 1937, c. 773, s.53. The statute further directed that the "provisions of the civil practice act in relation to enforcing obedience to a subpoena lawfully issued by a judge, arbitrator, referee or other person in a matter not arising in an action in a court of record applies to a subpoena as authorized by this section." *Id.* When the State Finance Law was restructured in 1940, Section 53 was moved to its current home in Section 9; however, the scope of the subpoena power and regulation of the civil practice act remained the same. L. 1940, c. 593.

In 1962, when the Civil Practice Act was replaced by the CPLR, State Finance Law § 9 was amended to its current form to state that "[a] subpoena issued under this section shall be regulated by the civil practice law and rules." L. 1962, c. 310, s. 424. The legislature's

direction that the CPLR regulate subpoenas issued by the Comptroller is unequivocal and unconditional. The legislature did not limit application of the CPLR only to particular sections, as it did previously, but rather applied the entirety of the statute and rules. Indeed, where the legislature has intended to limit the sections of the CPLR that apply to subpoenas issued pursuant to specific grants of authority, it has done so expressly. For example, Section 111-p of the Social Services Law – which authorizes the Department of Social Services, a child support enforcement unit coordinator, support collection unit supervisor of a social services district, or a designee thereof, to issue subpoenas for information needed to establish paternity or establish or modify a support order – specifically states that the subpoena "shall be subject to the provisions of article twenty-three of the civil practice law and rules." Social Services Law § 111-p. Similarly, Section 58 of the Executive Law – which grants the inspector general for transportation subpoena power – subjects subpoenas issued pursuant to that section only to article 23 of the CPLR or articles 190 or 610 of the Criminal Procedure Law. Executive Law § 58(3).

Unlike Social Services Law § 111-p and Executive Law § 58, State Finance Law § 9 contains no limitation on the application of the CPLR. The absence of such limiting language reflects the legislature's intention to subject subpoenas issued by the Comptroller to the entirety of the CPLR. *See* Statutes § 240 ("[W]here a statute creates provisos certain matters the inclusion of such provisos or exceptions is generally considered to deny the existence of others not mentioned.").

CPLR 3122(a)(2) specifically addresses a subpoena duces tecum issued to a medical provider requesting patient medical records. That section states that:

> [a] medical provider served with a subpoena duces tecum, other than a trial subpoena issued by a court, requesting the production of a patient's medical records pursuant to this rule need not respond or object to the subpoena if the subpoena is not accompanied by a written authorization by the patient. Any subpoena served upon a medical provider requesting the medical records of a patient shall state in conspicuous bold-faced type that the records shall not be provided unless the subpoena is accompanied by a written authorization by the patient, or the court has issued the subpoena or otherwise directed the production of the documents.

NY CPLR 3122(a)(2). There is no dispute in this appeal that The Plastic Surgery Group is a "medical provider" and that the Comptroller served it with a "subpoena duces tecum . . . requesting the production of

a patient's medical records." Nevertheless, the Third Department held that this section "by its terms" applies only to subpoenas issued by a party to litigation seeking discovery under CPLR 3120 or 3121. The court never identified which "terms" support its interpretation. Instead, the court reached this result by reading CPLR 3122(a)(2) together with 3122(a)(1). There is nothing in the plain language of the statute to support the Third Department's interpretation. Indeed, the plain language expressly contradicts the court's reading and warrants reversal.

First, CPLR 2301 defines a subpoena duces tecum generally as requiring the production of books, papers and other things. NY CPLR 2301. There is no component of this definition that requires the existence of an action or proceeding. On its face, this definition is broad enough to include both discovery and investigatory subpoenas.

Second, no part of CPLR 3122(a)(2) narrows the universe of subpoenas duces tecum to which that section applies to a smaller subset of only those issued in the course of a pending action. CPLR 3122(a)(2) uses the same broad language "subpoena duces tecum" as CPLR 2301,

so there is no basis for the Third Department's application of differing definitions to the same terms.

Third, there is nothing in the express language of CPLR 3122(a)(2) that supports reading it in conjunction with CPLR 3122(a)(1), as the Third Department did. Before August 3, 2011, CPLR 3122(a) consisted of only one paragraph with no subsections. However, on that date, an amendment became effective which broke 3122(a) into its current form consisting of subsections (1) and (2). *See* Laws of New York, 2011, Chapter 307. Unlike other sections of the CPLR, the amended CPLR 3122(a) does not contain any introductory provision that unites its two subsections. Rather, subsection (a) is composed of two distinct subsections with no text applicable to both. *Contrast* CPLR 3122(a) *with e.g.* CPLR 5015(a) containing prefatory language applicable to subdivisions (a)(1), (a)(2), (a)(3), (a)(4) and (a)(5). While subdivision (a)(1) sets forth the procedure that a "party or person" served with a notice or subpoena "pursuant to rule 3120 or section 3121" must follow when objecting to the notice or subpoena, subdivision (a)(2) does not refer to a "party or person" or 3120 or 3121. Instead, CPLR 3122(a)(2) focuses exclusively and without qualification on a

medical provider's response to a single document: a subpoena duces tecum seeking patient medical records.

Fourth, there is nothing in the express language of CPLR 3122(a)(2) that supports the Third Department limiting its application only to discovery requests under 3120 and 3121. While subdivision (a)(1) refers expressly to CPLR 3120 or 3121, subdivision (a)(2) has no such reference. In the courts below, the Comptroller argued that the phrase "pursuant to this rule" in 3122(a)(2) is an indirect reference to CPLR 3120 and 3121. That argument is not supported by the text of the statute. When the legislature wanted to refer to CPLR 3120 and 3121, it did so by express language. Furthermore, "rule" as used in CPLR 3122(a)(2) is written in the singular, not the plural, and thus clearly is not a reference to both CPLR 3120 and 3121.

Thus, there is nothing in the text of CPLR 3122(a)(2) that limits its application exclusively to subpoenas duces tecum issued pursuant to CPLR 3120 or 3121 in the course of discovery in a pending action. While there is a reference in the legislative history of the 2011 amendment to CPLR 3122(a) stating that "CPLR 3122, requiring a patient's authorization, applies only to subpoenas issued during

discovery" (2011, New York Bill Jacket, 2011 Assembly Bill 7465; *see also* A.7465. Assemb. Reg. Sess. 2011-2012 (N.Y. 2011) (adopting the recommendation of the Unified Court System)), that isolated sentence should not be used in any way to restrict the plain text of CPLR 3122(a)(2). This Court has previously held that "[w]hen the plain language of the statute is precise and unambiguous, it is determinative." *See Washington Post Co. v. New York State Ins. Dept*, 61 NY2d 557, 565 (1984). And while courts may look to legislative history even when the words used are clear (NY Statutes § 124; *Riley v. County of Broome*, 95 NY2d 455 (2000)), in this case, the history of the 2011 amendment to CPLR 3122 is far from clear. The Division of the Budget had a broader view than the Unified Court System on the scope of the amendment. According to the Division, the "bill also makes it explicit that a medical provider served with a *subpoena duces tecum*, from an individual other than a judge, for a patient's medical records does not have to respond to the subpoena if it is not accompanied by a written authorization from the patient. A.7465. Assemb. Reg. Sess. 2009-2010 (N.Y. 2009).

In the absence of any clear statement of intent in the legislative history, this Court is left to apply the plain meaning of the words used in the statute. CPLR 3122(a)(2), as currently enacted, applies by its terms to any request for books, papers, and other things issued to a medical provider if the books, papers, or things requested are patient medical records. And because the Comptroller's ability to issue subpoenas is regulated by the entirety of the CPLR, it was obligated to follow the requirements of CPLR 3122(a)(2) by supplying patient authorizations with the subpoena and including the necessary disclaimer on the face of the subpoena.

II. Requiring the Comptroller to Comply With CPLR 3122(a)(2) Promotes Public Policy Protecting Patient Confidentiality

There is a strong public policy in New York that protects the confidentiality of an individual's medical information. Public Health Law § 2803-c(3)(f) declares that "[e]very patient shall have the right to have privacy in treatment and in caring for personal needs, [and] confidentiality in the treatment of personal and medical records." Patients disclose comprehensive medical information to their treating doctors to ensure proper medical care and do so based upon the promise

that the information they disclose shall remain confidential and will not be disclosed by the treating doctors. *See Doe v. Guthrie Clinic, Ltd.*, 22 NY3d 480, 486 (2014) (Rivera, J., dissenting).

Numerous statutes have been enacted to effectuate that policy. *See MacDonald v. Clinger*, 84 AD2d 482, 484 (4th Dept 1982). For example, CPLR 4504(a) states that "[u]nless the patient waives the privilege, a person authorized to practice medicine . . . shall not be allowed to disclose any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity." CPLR 4504(a); *see also* CPLR 4507; Mental Hygiene Law § 33.13(c), (d). The Education Law and regulations define professional medical misconduct to include the disclosure of "personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law." *See* Education Law § 6530(23); 8 NYCRR 29.1(b)(8). Indeed, courts recognize a cause of action against treating physicians who willingly disclose patient information without consent. *See Doe v. Roe*, 93 Misc 2d 201 (Sup Ct, NY County 1977).

Requiring the Comptroller to comply with CPLR 3122(a)(2) furthers that policy. Every patient should have a say in what happens to his or her medical records, and certainly any policy which permits the exchange of that information without the patient's knowledge or consent should not be condoned.

The Third Department commented that requiring the Comptroller to obtain patient authorizations would lead to the "untenable result" that absent voluntary compliance by the provider, the Comptroller would be unable to fulfill its constitutional and statutory obligations unless it obtained written authorizations from all patients whose records are requested. Yet, the court did not cite any other instance in which individuals' recognized rights yield to the convenience of the government. Surely, it is more convenient for law enforcement to abridge one's liberty without the burdens of proving probable cause or obtaining search warrants, but the law requires both. The convenience of the government is simply no justification for trampling on individuals' well-recognized rights.

Furthermore, the court overstated the impact that complying with CPLR 3122(a)(2) would have on the Comptroller's ability to discharge

his or her duties. The court's assumption that the Comptroller would need authorizations from "all patients whose records were requested" in order to perform its review is not supported by the history of similar Comptroller audits. Government auditors are not generally required to analyze specifically each record falling within the scope of their audit. Rather, they employ extrapolation – meaning they only review a limited subset of the entire data set and then apply the results of the sample across the entire population. When conducting other audits of the state's Empire Plan payments, the Comptroller relied on extrapolation to reach its conclusions.

The Comptroller's audits of the providers at issue in *Handler* demonstrate that the Comptroller need not review every patient's record. With respect to Handler, the Comptroller only reviewed 178 out of 3,364 claims – which is a review rate of 5%. *Handler*, 23 NY3d at 244. For South Island Orthopedic, the Comptroller reviewed 190 out of 5,952 claims – a review rate of only 3%. *Id.*

Here, the Comptroller did not intend to review records from every Empire Plan patient treated by The Plastic Surgery Group during the period of the audit. The affidavit of David Fleming submitted in

opposition to The Plastic Surgery Group's petition to quash the subpoena describes the process the Comptroller's office followed to whittle down a data set of 1,568 total records to "a random sample" of records to review on a site visit. (R 46-48)

Given the Comptroller's ability to extrapolate, there is no basis for the Third Department's fears that it would need consent from every patient to complete its audit. Even at the higher 5% review rate in *Handler*, the Comptroller would only have had to review 78 of The Plastic Surgery Group's records (1,568*5%) to perform its audit. There is no reason to believe that the Comptroller could not secure authorizations from this smaller sample set or that obtaining authorizations from this limited group would impose any undue burden on the Comptroller sufficient to warrant the abrogation of the policy protecting patient confidentiality.

CONCLUSION

The Court should hold that the Comptroller was obligated to comply with CPLR 3122(a)(2) when issuing its subpoena duces tecum to The Plastic Surgery Group for patient's medical records, reverse the Third Department's memorandum and order, quash the Comptroller's subpoena, and deny the cross-motion to compel.

Dated: November 12, 2018

ABRAMS, FENSTERMAN,
FENSTERMAN, EISMAN, FORMATO,
FERRARA, WOLF & CARONE, LLP

By: _____
Matthew F. Didora
3 Dakota Drive, Suite 300
Lake Success, New York 11042
(516) 328-2300
mdidora@abramslaw.com

NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word.

Type. A proportionally spaced typeface was used, as follows:

Name of typeface: Century
Point size: 14
Line spacing: Double

Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, corporate disclosure statement, questions presented, statement of related cases, or any authorized addendum containing statutes, rules, regulations, etc., is 4,545 words.

Dated: November 12, 2018