MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 12, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Gall, Thomas v. Corasanti, James G., M.D., et al. (re Order to Produce Inmate to ECSO)*
Document Received:	Order to Show Cause
Name of Claimant:	Thomas Gall
Claimant's attorney:	Laraine Kelley, Esq. Lipsitz Green Scime Cambria LLP 42 Delaware Avenue, Suite 120 Buffalo, New York 14202-3924

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld

Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THOMAS GALL and NINA GALL,

Plaintiffs,

v.

JAMES J. PISCATELLI, M.D., MARY J. CIECHOSKI, ANP-C, JAMES G. CORASANTI, M.D., Ph.D., WALTER A. BALON, M.D., and BUFFALO MEDICAL GROUP, P.C.,

Defendants.

ORDER TO SHOW CAUSE

Index No.: 08/6331

Upon the annexed affidavit of Brian J. Weidner, Esq., sworn to on the 9th day of October, 2012 and all attached exhibits and upon all prior papers and proceedings in this action, and after due deliberation, it is hereby

ORDERED that the plaintiff and the County of Erie show cause before this Court, Part 1, to be held at the Courthouse at 92 Franklin, Buffalo, New York 14202 on the 16th day of October, 2012 at 9:00 o'clock why an order should not be entered in this action: (1) requiring the Erie County Sheriff's Department to produce the defendant, James G. Corasanti, M.D., Ph.D., for trial on each date of the proceedings, in civilian clothing, thereby permitting the defendant to attend the trial of this action during all phases so that he may participate in his own defense; and (2) requiring the Erie County Correctional Facility to accept delivery of legal documents necessary for Dr. Corasanti to prepare for trial; or in the alternative (3) adjourning the trial approximately 6 months until May of 2013 so that Dr. Corasanti may attend the trial of this action during all phases, thereby participating in his own defense without the need for the involvement of the Erie County Sheriff's Office; and (4) for such other, further or different relief as the Court may deem just and proper.

PAID
10/09/2012/ 10:14:34
ERIE COUNTY CLERK
RCPT # 12156540
I 20080063

ORDERED, that sufficient cause having been shown, service of a copy of this Order to Show Cause and the papers on which it is granted on the attorney for the plaintiff and the attorney for Erie County (as required by this Court) on or before the 10th day of October 2012 be deemed good and sufficient service; and it is further

ORDERED, that responding affidavits, if any, must be served via hand delivery on or before the 15th day of October 2012.

This Order has been signed by me this 9th day of October 2012, and shall upon presentation be entered in the Office of the Erie County Clerk.

Christopher J. Burns JSC
FOR Hon. Paula Feroleto, J.S.C.

GRANTED

OCT 09 2012

BY
ROBERT ADAMSKI
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THOMAS GALL and NINA GALL,

Plaintiffs,

v.

JAMES J. PISCATELLI, M.D., MARY J. CIECHOSKI, ANP-C, JAMES G. CORASANTI, M.D., Ph.D., WALTER A. BALON, M.D., and BUFFALO MEDICAL GROUP, P.C.,

Defendants.

SUPPORTING AFFIDAVIT

Index No.: 08/6331

State of New York)
County of Erie)ss.:
City of Buffalo)

Brian J. Weidner, Esq., being duly sworn, deposes and states:

1. I am an attorney licensed to practice in the State of New York, and I am a member of the law firm of Brown & Tarantino, LLC, attorneys for the defendant, James G. Corasanti, M.D., Ph.D. (hereinafter "Dr. Corasanti") in the above-entitled action, and as such I am familiar with the pleadings and proceedings of this action.

2. I submit this affidavit in support of the motion by the defendant for an Order of the Court: (1) requiring the Erie County Sheriff's Department to produce the defendant, James G. Corasanti, M.D., Ph.D., for trial on each date of the proceedings in civilian clothing, thereby permitting the defendant to attend the trial of this action during all phases so that he may participate in his own defense; and (2) requiring the Erie County Correctional Facility to accept delivery of legal documents necessary for Dr. Corasanti to prepare for trial; or in the alternative (3) adjourning the trial approximately 6 months until May of 2013 so that Dr. Corasanti may attend the trial of this

action during all phases, thereby participating in his own defense, without the need for the involvement of the Erie County Sheriff's Office; and (4) for such other, further or different relief as the Court may deem just and proper.

3. The plaintiff commenced this action by filing a summons and complaint with the Erie County Clerk's Office on May 29, 2008.

4. This is a medical malpractice case arising from care and treatment rendered by the defendants to the plaintiff, Thomas Gall, in April of 2007.

5. The moving defendants joined issue in this case by the service of their answer on or about June 19, 2008, together with a demand for a verified bill of particulars, and various discovery demands.

6. The plaintiffs served a verified bill of particulars on or about September 23, 2008, and an amended verified bill of particulars on or about April 11, 2012.

7. In October of 2011, the Court set the trial date of this action to begin on October 29, 2012.

8. The plaintiff did not file the note of issue and statement of readiness until April 26, 2012, only six months prior to the trial date previously scheduled by the Court, nearly four (4) years after the action was commenced, and more than five years after the care and treatment at issue. (A copy of the note of issue and statement of readiness is attached as **Exhibit A**).

9. In May of 2012 Dr. Corasanti was convicted of a misdemeanor charge of driving while intoxicated. He was sentenced on August 16, 2012 to one year in jail, and is currently incarcerated in the Erie County Correctional Facility located in Alden, New York.

10. Upon information and belief it is expected that Dr. Corasanti will be released from jail on April 16, 2013.

11. The plaintiffs moved by notice of motion dated September 24 , 2012 for the issuance of a "subpoena to compel the attendance of James G. Corasanti, M.D., Ph.D., now confined in the Erie County Correctional Facility in Alden, NY, at the trial of this action beginning on October 29, 2012, and any recessed or adjourned dates, and for such other and further relief as may be just and proper." The motion was made returnable on October 3, 2012. The defendants hereby incorporate the plaintiffs' motion by reference. (A copy of the plaintiff's notice of motion with attorney's affidavit of Joseph J. Manna is attached hereto as **Exhibit B**).

12. That motion was adjourned by plaintiffs' counsel at the request of counsel for Dr. Corasanti so that a stipulated order to produce Dr. Corasanti could be prepared and agreed on by the parties prior to presenting it to the judge for her signature.

13. Despite the adjournment of the motion, and despite the fact that nowhere in the plaintiff's motion did they request the presence of Dr. Corasanti at oral argument of their motion, Dr. Corasanti was produced at the Erie County Courthouse on the morning of October 3, 2012 by the Erie County Sheriff's Department.

14. Upon information and belief, the Court called all counsel and requested that they come to Court for the motion because Dr. Corasanti was present at Court.

15. Upon information and belief, a discussion was held between the judge and all counsel in the judge's chambers, after which a short statement was put on the record. The intention of the parties at that time was to reach a stipulated order to produce Dr. Corasanti for trial. The Court

indicated that it would contact Erie County regarding the logistics of obtaining Dr. Corasanti's presence in court during the trial.

16. The next day, October 4, 2012, this Court heard oral argument of co-defendant Dr. Balon's motion for summary judgment.

17. Upon information and belief, following the Court's decision on the motion, and after going off the record, the Court indicated that based on discussions with Erie County, the Court would not sign an order of production requiring that Dr. Corasanti be brought to the courthouse for the trial of this matter on each day of the trial. Instead, the Court indicated that it would only be feasible to have Dr. Corasanti present in court on 1 or 2 days during the trial for the purpose of giving testimony. The trial is expected to last approximately three (3) weeks in total. The Court stated that its decision was due to "logistics," "costs to the county," the fact that the trial would have to be held in a secure basement courtroom, and considerations of Dr. Corasanti's "safety."

18. Upon information and belief, the Court further indicated that it would not grant a motion to adjourn or stay the trial until after Dr. Corasanti's release from jail in May of 2012.

19. There have been no prior adjournments of the trial date of this action.

20. The Court instructed counsel for Dr. Corasanti to proceed with a motion with respect to the issue of an order to produce Dr. Corasanti at trial.

21. On Saturday, October 6, 2012, the United Parcel Service (UPS) returned to Dr. Corasanti's attorneys a package of legal documents which they had prepared and sent to Dr. Corasanti in preparation for trial.

22. The package was sent to Dr. Corasanti on October 3, 2012 and was addressed to "Dr. James Corasanti, DIN #134683, Erie County Correctional Facility, 1181 Walden Ave., Alden New York 14004," and was marked "LEGAL MAIL, PERSONAL & CONFIDENTIAL, TO BE READ IN THE PRESENCE OF THE INMATE" pursuant to instructions obtained from Dr. Corasanti's attorney in his criminal matter.

23. On October 5, 2012, the Erie County Correctional Facility refused delivery of the package of legal documents. (A copy of the package label stating "THE RECEIVER REFUSED DELIVERY" is attached hereto as **Exhibit C**).

24. As such, Erie County has denied Dr. Corasanti access to the legal documents necessary for him to prepare for this trial.

ARGUMENT
APPLICATION FOR ORDER TO PRODUCE

25. The defendant, Dr. Corasanti, respectfully requests that this Court issue an Order to produce, requiring the Erie County Sheriff's Department to produce him for the trial of this action on each day of the proceedings.

26. This requested relief is in accordance with the plaintiffs' motion seeking the same relief by way of subpoena which is currently pending before this Court.

27. Dr. Corasanti further requests that this Court issue an Order to produce specifically requiring that he be permitted to be dressed in civilian clothing, and further that he be permitted to wear a belt and tie at all times, while he is in a public area of the Erie County Courthouse within potential view of jurors during this trial.

28. In addition, in the event that the County determines that it will be necessary to restrain

Dr. Corasanti, we respectfully request that this be done in such a manner that said restraint is never visible to the jury in either the courtroom or outside the courtroom.

29. In addition, Dr. Corasanti requests that the Order to produce specifically requires that the Erie County Correctional Facility accept delivery of legal documents from Dr. Corasanti's counsel which are necessary for Dr. Corasanti to prepare for trial.

30. The due process clause of the Constitution provides every litigant the right to be present during every stage of the trial of an action. In the absence of an express waiver or unusual circumstances, a party to a civil action is entitled to be present during all stage of a trial. (See Accompanying Memorandum of Law).

31. Dr. Corasanti wishes to be present during the entire trial in this action against him, and has not expressly waived his right to attend.

32. There are no circumstances present which are unusual enough to justify depriving the defendant of his right to due process and to be present at the trial and participate in his own defense.

33. It goes without saying that inmates are *routinely* produced for trial in the Erie County Courthouse. This is certainly the case in criminal cases at the very least. There is no reason that the logistics for producing an inmate for a civil trial should be any more onerous than they are for a criminal trial. Nor is there a greater concern for the safety of an inmate who is a defendant in a civil case than there is for an inmate who is a defendant in a criminal case.

34. The defendant has a right to meaningfully participate in the defense of his action. Any arrangement other than having the defendant physically present in the courtroom during all aspects of the trial will not permit meaningful participation.

35. Arranging for the defendant to view the proceedings via video conference while he is not physically present with his counsel in the courtroom, as previously suggested by the Court, would not permit simultaneous interaction between Dr. Corasanti and his counsel, depriving him of the opportunity to meaningfully participate in his own defense.

36. In the event that Dr. Corasanti is denied the opportunity to attend trial except on one or two days out of the approximately 3 weeks of proceedings which are anticipated, it is respectfully submitted that principles of fairness and justice dictate that the Court must similarly deny the plaintiffs the opportunity to attend trial except on one or two days.

APPLICATION FOR A STAY/ADJOURNMENT PENDING DR. CORASANTI'S RELEASE

37. In the event that this Court denies Dr. Corasanti's motion for an order to produce permitting him to attend this trial on each day of the proceedings, the defendant alternatively requests that this Court grant an adjournment or stay of the trial for approximately 6 months until he is released from custody in April of 2013.

38. CPLR 2201 gives this Court the power to grant a stay "upon such terms as may be just." The granting of a stay is within the sound discretion of the trial court. In considering whether to grant a stay, the court can consider any relevant factor, including the presumptive merits and any exigency or hardship confronting any party. (See accompanying memorandum of law).

39. The conduct of a trial, including adjournments thereof, is committed to the trial court's sound discretion. In deciding whether to grant an application for an adjournment, the trial court must indulge in a balanced consideration of all relevant factors. Liberality should be exercised in granting postponements or continuances of trial to obtain material evidence or prevent

miscarriages of justice. It is well settled that it is an abuse of discretion to deny a continuance where the application complies with every requirement of the law and is not made merely for delay, where the evidence is material and where the need for a continuance does not result from the failure to exercise due diligence. (See accompanying memorandum of law).

40. It is respectfully requested that, in the absence of an order to produce as discussed above, a short stay or adjournment of the trial pending Dr. Corasanti's release from custody in approximately 6 months would be just and proper, and would further the interests of justice and judicial economy. This application for a stay is not made solely for the purposes of delay and is not the result of any failure on Dr. Corasanti's part to exercise due diligence.

41. Furthermore, the plaintiffs will not be prejudiced by a short adjournment. This case arises from medical care and treatment provided by the defendants in April of 2007, five and a half (5-1/2) years ago. The summons and complaint was filed in May of 2008, nearly four and a half (4-1/2) years ago. As such, it is respectfully submitted that a short adjournment of 6 months will not prejudice the plaintiffs in any way.

WHEREFORE, the defendant, James G. Corasanti, M.D., Ph.D., respectfully requests that this Court issue an order: (1) requiring the Erie County Sheriff's Department to produce the defendant, James G. Corasanti, M.D., Ph.D., for trial on each date of the proceedings in civilian clothing, thereby permitting the defendant to attend the trial of this action during all phases so that he may participate in his own defense; and (2) requiring the Erie County Correctional Facility to accept delivery of legal documents necessary for Dr. Corasanti to prepare for trial; or in the alternative (3) adjourning the trial approximately 6 months until May of 2013 so that Dr. Corasanti

may attend the trial of this action during all phases, thereby participating in his own defense without the need for the involvement of the Erie County Sheriff's Office; and (4) for such other, further or different relief as the Court may deem just and proper.

Brian J. Weidner

Sworn to before me this 9th day
of October, 2012.

Kimberly A. Cline
Notary Public

KIMBERLY A. CLINE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires April 17, 2014