

==New York State==

ACADEMY
OF TRIAL LAWYERS

How to Litigate a
Catastrophic Automobile
Accident Case: Part 2 –
Claims, Notices and
Commencing the Action

Materials By:
Andrew J. Smiley, Esq.



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THE MENTOR ESQ

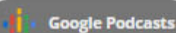
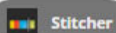
A podcast for lawyers and aspiring lawyers hosted by Andrew J. Smiley, Esq. This podcast is accredited by the NYS Academy of Trial Lawyers. Earn CLE credits by listening!

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—New York State—
ACADEMY
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CLE: How to Successfully Litigate a Personal Injury Case Series Part 4

APRIL 13, 2021 / "LITIGATING A PERSONAL INJURY CASE" SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.

00:00 00:00



Episodes

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ALL

"LITIGATING A PERSONAL INJURY CASE" SERIES

CLE EPISODES

INTERVIEW EPISODES

SEASON 1

SEASON 2

TRIAL SKILLS

VIDEO EPISODES



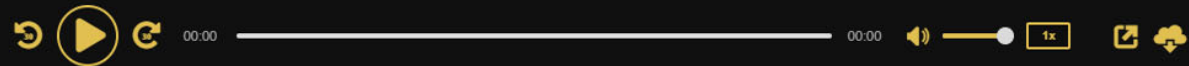
CHRIS PAIZ, ESQ

INTERVIEW

Season 2 – Episode 9: Racing Cars with Chris Paiz

JANUARY 26, 2021 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - Andrew interviews Chris Paiz, a fellow lawyer and car racing enthusiast.



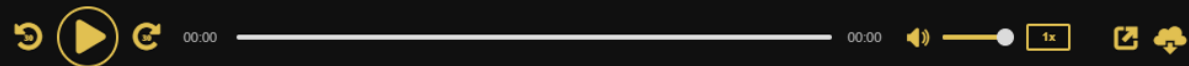
DA ERIC GONZALEZ

INTERVIEW

Season 2 – Episode 8: An Interview with Brooklyn, New York's DA Eric Gonzalez

DECEMBER 29, 2020 / ADMIN / INTERVIEW EPISODES, SEASON 2, VIDEO EPISODES

-Video Episode - In this week's episode, Andrew welcomes the District Attorney of Kings County in Brooklyn, New York, Eric Gonzalez.



Season 2 – Episode 7: Fighting Through the Dark

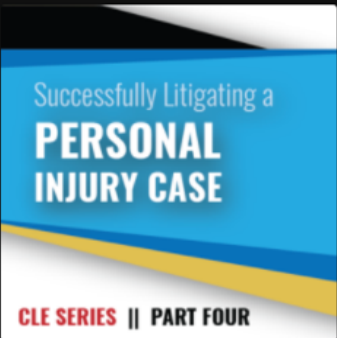
Continued Legal Education (CLE) Episodes

We are proud to offer CLE (or Continuing Legal Education) episodes of the Mentor, Esq in partnership with the New York State Academy of Trial Lawyers. You can earn **FREE** CLE credits just by listening to the episodes below and making note of the codes given in each one. To redeem your CLE credit, visit the episode page to find the link to the episode's unique Academy form and enter the code.

To see more information, other CLE opportunities, or to join the Academy, visit their website at trialacademy.org.


—New York State—
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OF TRIAL LAWYERS

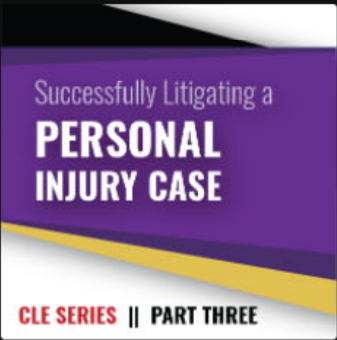




CLE: How to Successfully Litigate a Personal Injury Case Series Part 4
APRIL 13, 2021 / *LITIGATING A PERSONAL INJURY CASE* SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES / 01:22:36

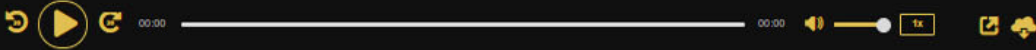
-Video Episode - Andrew discusses properly preparing and conducting depositions. 1.5 CLE credits.





CLE: How to Successfully Litigate a Personal Injury Case Series Part 3
MARCH 9, 2021 / *LITIGATING A PERSONAL INJURY CASE* SERIES, CLE EPISODES, SEASON 2, VIDEO EPISODES

- Video Episode - Andrew discusses adversaries, the preliminary conference, and the initial discovery. 1.5 CLE credits.





The Mentor, Esq.



Hosted By

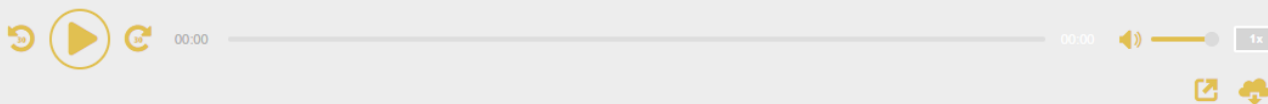
Andrew J. Smiley, Esq.

We hope you enjoy this highly rated podcast hosted by Andrew J. Smiley, Esq. and featuring interviews with other experts in law and litigation, CLE and educational series, and great legal advice.



CLE: Taking the "Umm..." out of SUM/UM Coverage

FEBRUARY 23, 2021 / ADMIN / CLE EPISODES, SEASON 2, VIDEO EPISODES / COMMENTS OFF



In Andrew's current CLE series, "How to Litigate a Personal Injury Case", the topic of SUM and UM coverage has come up several times. In fact, it came up so many times during the Q&A sessions that the Mentor, Esq. worked with the Academy to do an entire CLE on the topic!

If you are listening and would like to answer the poll in the program for **1.5** CLE credits, you can do so by emailing the Academy at info@trialacademy.org.

Contact Andrew Smiley at andrew@thementoresq.com.

<http://www.smileylaw.com/podcast>

RECENT EPISODES

- > [CLE: How to Successfully Litigate a Personal Injury Case Series Part 4](#) April 13, 2021
- > [CLE: How to Successfully Litigate a Personal Injury Case Series Part 3](#) March 9, 2021
- > [CLE: Taking the "Umm..." out of SUM/UM Coverage](#) February 23, 2021
- > [CLE: How to Successfully Litigate a Personal Injury Case Series Part 2](#) February 9, 2021





Andrew J. Smiley, Esq.
Smiley & Smiley, LLP
122 East 42nd Street, NYC 10168
212.986.2022
asmiley@smileylaw.com
www.smileylaw.com
www.thementoresq.com

CURRICULUM VITAE

Education:

·Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

·Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation.

Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *New York "Super Lawyer"*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021

· Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United State District Court of Vermont.

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

· Judicial Screening Committee, Kings County Democratic Party (2013)

· New York State Bar Association

· Brooklyn Bar Association

- Medical Malpractice Committee
- Supreme Courts Committee

· The American Association for Justice

· American Bar Association

· Brooklyn Law School Alumni Association

· National Order of Barristers

· Friars Club - member

Andrew J. Smiley, Esq. *Curriculum Vitae*, Page 3

Continuing Legal Education (CLE) Presentations:

How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit, New York State Academy of Trial Lawyers, February 3, 2021

How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File, New York State Academy of Trial Lawyers, January 6, 2021

Brick by Brick: Building a Personal Injury Practice, New York State Academy of Trial Lawyers, December 10, 2020

Working with Experts to Build Your Case, New York State Academy of Trial Lawyers, October 8, 2020

Fitness Industry Liability: Gyms, Trainers and Waivers, The Mentor Esq. Podcast, September 8, 2020

Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court, New York State Academy of Trial Lawyers, June 9, 2020

Crisis Management - The Corona Virus Pandemic, The Mentor Esq. Podcast, April 9, 2020

Do You Have a Federal Tort Claims Act Case in Your Office, New York State Academy of Trial Lawyers, December 10, 2019

Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts, New York State Bar Association, September 9, 2019

Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective, The Defense Association of New York, March 12, 2019

Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions, The Defense Association of New York, January 31, 2019

Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives, The Defense Association of New York, September 17, 2018

Punitive Damages – What to Plead, What to Prove: Medical Malpractice, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017

Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016

Andrew J. Smiley, Esq. Curriculum Vitae, Page 4

Continuing Legal Education (CLE) Presentations Continued:

Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA, New York State Bar Association, October 11, 2015

Effectively Using Experts in Personal Injury Cases, Lawline, October 8, 2015

Killer Cross Examination Strategies, Clear Law Institute, April 21, 2015

Powerful Opening Statements, Clear Law Institute, January 13, 2015

The Dram Shop Law: New York Liquor Liability, Lawline.com, November 20, 2014

Killer Cross Examination Strategies, Lawline.com, November 20, 2014

Trial Techniques: Tricks of the Trade Update, Lawline.com, October 14, 2014

Personal Trainer Negligence Update, Lawline.com, October 14, 2014

Trial Techniques – Part 2: Cross- Examination & Closing Arguments, Brooklyn Bar Association, May 15, 2014

Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination, Brooklyn Bar Association, May 7, 2014

Health, Fitness & Adventure Sports Liability, New York State Bar Association, August 1, 2013

Direct Exams: How To Make Your Witnesses Shine, New York State Academy of Trial Lawyers, May 6, 2013

Opening Statements: A Recipe for Success, Lawline.com, August 7, 2012

“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement, New York State Academy of Trial Lawyers, April 1, 2012

Preparing the Construction Accident Case, New York County Lawyers Association, March 26, 2012

The Nuts and Bolts of a Trial, New York State Academy of Trial Lawyers, October 24, 2011

Personal Trainer Negligence, Lawline.com, March 22, 2011

Effectively Using Experts in Personal Injury Cases, Lawline.com, May 4, 2011

Andrew J. Smiley, Esq. Curriculum Vitae, Page 5

Continuing Legal Education (CLE) Presentations Continued:

Trial Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011

Practice Makes Perfect: Learn to Practice Like a Pro, Lawline.com, January 18, 2011

Jury Selection 101, New York State Academy of Trial Lawyers, December 14, 2010

Practical Guidelines for Getting Items into Evidence, Lawline.com, March, 2010

Winning Your Case: Trial Skills that Count, Lawline.com, August 21, 2009

Television Appearances – Legal Commentary:

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
 - America's News Room
 - Fox & Friends
- Fox Business Channel
 - Neil Cavuto
 - Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

Tennis, Porsche Club, Sim Racing, Yoga, Cooking

May 27, 2016

Richard A. Taft
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Matthew J. Izquierdo
Date of Accident: 5/17/16
Place of Accident: Exit 15 Off Ramp on SB NYS Thruway

Dear Mr. Taft:

This office represents Matthew J. Izquierdo with reference to the serious personal injuries he sustained in a motor vehicle accident which occurred as above stated.

Please turn this letter over to your insurance company and have your insurance representative contact the undersigned immediately. In the event you did not have insurance on the date of the accident, please call me immediately.

Thank you for your courtesy and cooperation herein.

Very truly yours,

JASON D. FRIEDMAN

JDF:mis

cc: Matthew J. Izquierdo

May 31, 2016

Via Fax No.: (855) 277-8859

GEICO

P.O. Box 9111

Macon, GA 31201

Attention: Devaughn Simmons, BI Adjuster

Re: Claimant: Matthew Izquierdo
Insured: Matthew Izquierdo
D/A: 5/17/16
Claim No.: 048355056-0101-057

Dear Mr. Simmons:

Please be advised that this firm represents the above named claimant, Matthew Izquierdo, who was seriously injured in a motor vehicle accident that occurred on May 17, 2016 on the Exit 15 off ramp on the Southbound NYS Thruway.

We are pleased to enclose herewith an Accident Information Exchange form relative to the accident. Upon information and belief, an accident report has not yet been completed.

Please provide us with all applicable coverage including any umbrella coverage.

Please direct all future correspondence concerning this matter to the undersigned.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS:mis

cc: Matthew Izquierdo

May 31, 2016

***Via email to: mamanto@jfterry.com
and First Class Mail***

Maria Amanto
JF Terry Inc.
90 South Newtown Street Road, #7
Newtown Square, PA 19073

Re: Claimant: Matthew Izquierdo
Insured: Ianni Concessions Inc.
D/A: 5/17/16
Claim No.: 16546

Dear Ms. Amanto:

Please be advised that this firm represents the above named claimant, Matthew Izquierdo, who was seriously injured in a motor vehicle accident with your insured that occurred on May 17, 2016 on the Exit 15 off ramp on the Southbound NYS Thruway.

Please provide us with the limits of your insured's policy.

Please direct all future correspondence concerning this matter to the undersigned.

Thank you for your courtesy and cooperation herein.

Very truly yours,

JASON D. FRIEDMAN

JDF:mis

cc: Matthew Izquierdo

May 31, 2016

Via Fax No.: (856) 294-5154

GEICO

P.O. Box 9507

Fredericksburg, VA 22403

Attention: Eva Henderson, NF Adjuster

Re: Claimant: Matthew Izquierdo
Insured: Matthew Izquierdo
D/A: 5/17/16
Claim No.: 048355056-0101-057

Dear Ms. Henderson:

Please be advised that this firm represents the above named claimant, Matthew Izquierdo, who was seriously injured in a motor vehicle accident that occurred on May 17, 2016 on the Exit 15 off ramp on the Southbound NYS Thruway.

We are pleased to enclose herewith an Accident Information Exchange form relative to the accident. Upon information and belief, an accident report has not yet been completed.

We are also enclosing a completed and signed no-fault application.

If you have any questions regarding this matter, please call me.

Thank you for your courtesy and cooperation herein.

Very truly yours,

JASON D. FRIEDMAN

JDF:mis

Enclosure

cc: Matthew Izquierdo

February 28, 2013

VIA EMAIL and REGULAR MAIL

Travelers Insurance Company
P.O. Box 430
Buffalo, NY 14240

Attn: Timothy Unger

Re: Matthew Ferber
D/A: 2/2/13
Your Insured: John J. Behler, Jr.
Claim No: HPM0583

Dear Mr. Unger:

Please be advised that we represent the above named claimant, Matthew Ferber, who was seriously injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

We are not in receipt of the State Police Report at this time, however, we will forward it upon receipt.

We are, herein requesting that you cease and desist from removing the insured's vehicle and transporting it for salvage. We request that you order it not to be destroyed, as we intend to send an expert to examine and photograph the vehicle.

Please direct all future correspondence concerning this matter to the undersigned.

Additionally, please disclose your insured's policy limits at the time of this occurrence in writing as soon as possible.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS/jw
Enclosure

cc: Matthew Ferber

March 7, 2013

VIA EMAIL and REGULAR MAIL

Travelers Insurance Company
P.O. Box 430
Buffalo, NY 14240

Attn: Richard Kirisits
Adjuster

Re: Matthew Ferber
D/A: 2/2/13
Your Insured: John J. Behler, Jr.
Claim No: HPM2479

Dear Mr. Kirisits:

Please be advised that we represent the above named claimant, Matthew Ferber, who was catastrophically injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

We are making a claim against Mr. Behler for the negligent entrustment of his vehicle.

Please direct all future correspondence concerning this matter to the undersigned.

Additionally, please disclose your insured's policy limits at the time of this occurrence in writing as soon as possible.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS/jw
Enclosure

cc: Matthew Ferber

February 28, 2013

VIA FAX & REGULAR MAIL

Travelers Insurance Company
P.O. Box 430
Buffalo, NY 14240

Attn: Ms. Christina M.
No Fault Examiner

Re: Matthew Ferber
D/A: 2/2/13
Your Insured: John J. Behler, Jr.
Claim No: HPM0583

Dear Christina M.:

Please be advised that we represent the above named claimant, Matthew Ferber, who was seriously injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

Please direct all future correspondence concerning this matter to the undersigned.

Additionally, please disclose your insured's PIP limits at the time of this occurrence as soon as possible.

Thank you for your courtesy and cooperation herein.

Very truly yours,

ANDREW J. SMILEY

AJS/jw

cc: Matthew Ferber

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10165

E-MAIL: INFO@SMILEYLAW.COM
WWW.SMILEYLAW.COM
FAX: (212) 697-4689

February 28, 2013

VIA FEDERAL EXPRESS

Olde Erie Brew Pub & Grill, LLC
d/b/a DeStefano's Old Erie
7 West Main Street
Middletown, NY 10940

CLAIM LETTER

Attn: Linda Lee DeStefano
Charles F. Mitchell

Re: Matthew Ferber

D/A: 2/2/13

Dear Ms. DeStefano and/or Mr. Mitchell:

Please be advised that we represent the above named claimant, Matthew Ferber, who was catastrophically injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

These catastrophic injuries, which include the loss of both legs, were caused in whole or in part by your negligence in serving alcoholic beverages to an intoxicated, underage individual and then allowing him to leave the premises and operate a motor vehicle.

Please immediately forward this letter to your insurance carrier and have them contact us.

Thank you for your courtesy and cooperation herein.

Very truly yours,


ANDREW J. SMILEY

AJS/jw

cc: Matthew Ferber



SMILEY LAW

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10165

E-MAIL: INFO@SMILEYLAW.COM
WWW.SMILEYLAW.COM
FAX: (212) 697-4689

February 28, 2013

VIA FEDERAL EXPRESS

Hacienda Restaurant
1753 New York 17M
Goshen, NY 10924

CLAIM LETTER

Attn: Manager

Re: Matthew Ferber
D/A: 2/2/13

Dear Sir/Madam:

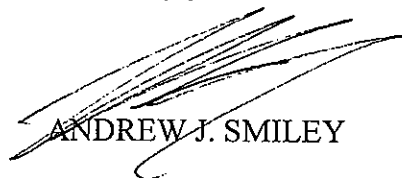
Please be advised that we represent the above named claimant, Matthew Ferber, who was catastrophically injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

These catastrophic injuries, which include the loss of both legs, were caused in whole or in part by your negligence in serving alcoholic beverages to an intoxicated, underage individual and then allowing him to leave the premises and operate a motor vehicle.

Please immediately forward this letter to your insurance carrier and have them contact us.

Thank you for your courtesy and cooperation herein.

Very truly yours,



ANDREW J. SMILEY

AJS/jw

cc: Matthew Ferber



SMILEY LAW

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

LINCOLN BUILDING
60 EAST 42ND STREET
NEW YORK, NEW YORK 10165

E-MAIL: INFO@SMILEYLAW.COM
WWW.SMILEYLAW.COM
FAX: (212) 697-4689

February 28, 2013

VIA FEDERAL EXPRESS

GW's Sports Grill
78 Brookside Avenue
Chester, NY 10918

CLAIM LETTER

Attn: Manager

Re: Matthew Ferber

D/A: 2/2/13

Dear Sir/Madam:

Please be advised that we represent the above named claimant, Matthew Ferber, who was catastrophically injured in a motor vehicle accident that occurred on February 2, 2013 on Route 17 eastbound near Exit 125 in Goshen, NY.

These catastrophic injuries, which include the loss of both legs, were caused in whole or in part by your negligence in serving alcoholic beverages to an intoxicated, underage individual and then allowing him to leave the premises and operate a motor vehicle.

Please immediately forward this letter to your insurance carrier and have them contact us.

Thank you for your courtesy and cooperation herein.

Very truly yours,


ANDREW J. SMILEY

AJS/jw

cc: Matthew Ferber



SMILEY LAW

SMILEY & SMILEY, LLP

ATTORNEYS AT LAW

(212) 986-2022

122 EAST 42ND STREET
39TH FLOOR
NEW YORK, NEW YORK 10168

WWW.SMILEYLAW.COM
FAX: (212) 697-4689

September 15, 2016

Via Fax No.: (866) 889-8376

Travelers

Attention: [REDACTED]

Re: Claimant: [REDACTED]
Insured: [REDACTED]
Claim #: [REDACTED]
Policy #: [REDACTED]
D/A: 9/11/16

Dear Mr. [REDACTED]:

Please be advised that we represent [REDACTED], a pedestrian who was seriously injured on September 11, 2016 when she was struck by a motor vehicle operated and owned by [REDACTED]. A copy of the Police Accident report is enclosed herewith.

Please let this letter serve as a formal notice that we intend to make a claim on behalf of [REDACTED] against the Supplemental Underinsured Motorist provision of your company's policy.

Please direct all future correspondence regarding this claim to our office.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,


ANDREW J. SMILEY

AJS:mis

cc: [REDACTED]



UNITED STATES DISTRICT COURT

for the

Southern District of New York

MATTHEW J. IZQUIERDO

Plaintiff(s)

v.

RICHARD A. TAFT and IANNI CONCESSIONS, INC.,

Defendant(s)

Civil Action No. 16-cv-5618

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RICHARD A. TAFT
11705 Boyette Road, # 474
Riverview, Florida 33569-5533

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

SMILEY & SMILEY, LLP
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 7/14/2016

Handwritten signature and official seal of the United States District Court for the Southern District of New York.

CLERK OF COURT

/s/ R. Chambers

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the

Southern District of New York

MATTHEW J. IZQUIERDO

Plaintiff(s)

v.

RICHARD A. TAFT and IANNI CONCESSIONS, INC.,

Defendant(s)

Civil Action No. 16-cv-5618

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) IANNI CONCESSIONS, INC.
11705 Boyette Road, # 474
Riverview, Florida 33569-5533

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

SMILEY & SMILEY, LLP
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



CLERK OF COURT

Date: 7/14/2016

/s/ R. Chambers

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Civil Action No.: 16-cv-5618

-----X
MATTHEW J. IZQUIERDO,

Plaintiff,

**VERIFIED
COMPLAINT**

-against-

RICHARD A. TAFT and IANNI CONCESSIONS, INC.,

**PLAINTIFFS DEMAND
TRIAL BY JURY**

Defendants.
-----X

Plaintiff, by his attorneys, SMILEY & SMILEY, LLP, complaining of the defendants, hereinafter alleges at all times, upon information and belief, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332, in that this is an action by and between citizens of different States. The amount in controversy exceeds Seventy Five Thousand (\$75,000.00) Dollars as to the plaintiff, exclusive of interests and costs.

2. Plaintiff demands a trial by jury on each of the causes of action pleaded herein.

THE PARTIES

3. Plaintiff, MATTHEW J. IZQUIERDO, resides at 548 Riley Road, New Windsor, New York 12553.

4. Defendant, RICHARD A. TAFT, resides at 11705 Boyette Road, #474, Riverview, Florida, 33569-5533.

5. Defendant, IANNI CONCESSIONS, INC., was and still is a foreign corporation duly organized and existing under and by virtue of the laws of the State of Florida, having a place of business at 11705 Boyette Road, # 474, Riverview, Florida, 33569-5533.



AS AND FOR A FIRST CAUSE OF ACTION

6. On May 17, 2016, plaintiff, MATTHEW J. IZQUIERDO, was the operator of a motor vehicle bearing New York license plate number HCR6378.

7. On May 17, 2016, defendant, RICHARD A. TAFT, was the operator of a truck bearing Florida license plate number F8940T.

8. On May 17, 2016, defendant, RICHARD A. TAFT, was the owner of a truck bearing Florida license plate number F8940T

9. On May 17, 2016, defendant, IANNI CONCESSIONS, INC., was the owner of the aforementioned truck bearing Florida license plate number F8940T.

10. On May 17, 2016, defendant, RICHARD A. TAFT, was operating the aforementioned truck owned by the defendant, IANNI CONCESSIONS, INC., with the knowledge, permission and consent of its owner, either expressed or implied.

11. At all times hereinafter mentioned, southbound I-87, Exit 15 ramp to I-287, in the County of Rockland, State of New York, was and still is a public roadway.

12. On May 17, 2016, at approximately 8:30 A.M., the plaintiff, MATTHEW J. IZQUIERDO, was operating the motor vehicle bearing license plate number HCR6378, southbound I-87, Exit 15 ramp to I-287, in the County of Rockland, State of New York.

13. On May 17, 2016, at approximately 8:30 .AM. p.m., the defendant, RICHARD A. TAFT, was operating the aforesaid truck owned by defendant, IANNA CONCESSIONS, INC. on southbound I-87, Exit 15 ramp to I-287, in the County of Rockland, State of New York.

14. On May 17, 2016, at approximately 8:30 A.M., the truck owned by the defendant IANNA CONCESSIONS, INC. and operated by RICHARD A. TAFT, struck the motor vehicle operated by plaintiff, MATTHEW J. IZQUIERDO.



15. Defendant RICHARD A. TAFT was negligently operating the aforesaid truck at the time he struck the plaintiff's vehicle.

16. The negligence of the defendants, their agents, servants and/or employees consisted of permitting and allowing their motor vehicle to be operated in a negligent and careless manner; in carelessly and negligently failing and omitting to have said motor vehicle under reasonable and proper condition and control; in failing and omitting to keep a proper lookout and to be reasonably alert; in failing to look in the direction in which their motor vehicle was proceeding; in failing to avoid a collision; in failing to stay in the proper lane of travel; in striking the plaintiff's motor vehicle; in carelessly and negligently omitting to provide and/or make prompt and timely use of braking devices, steering mechanisms, horns and signaling devices; in further operating their motor vehicle in reckless disregard for the safety and well-being of another; in carelessly and negligently failing to give signs, signals and/or warnings of approach by horn or otherwise; and in negligently failing to observe the safety rules, regulations, statutes, promulgations and ordinances of the State of New York.

17. As a result of the negligence and carelessness of the defendants, the plaintiff, MATTHEW J. IZQUIERDO, sustained severe and permanent injuries, including a traumatic brain injury.

18. That as a result of the negligence and carelessness of the defendants, the plaintiff sustained a serious injury as defined in Section 5102(d) of the Insurance Law of the State of New York.

19. By reason of the foregoing, plaintiff has been damaged in this cause of action in the amount of TWENTY MILLION AND 00/100 (\$20,000,000.00) DOLLARS.

WHEREFORE, plaintiff demands judgment against the defendants, RICHARD A. TAFT and IANNI CONCESSIONS, INC., on the FIRST Cause of Action, together with the costs and disbursements of this action.

Dated: New York, New York
June 29, 2016

Yours, etc.,

SMILEY & SMILEY, LLP
Attorneys for Plaintiff

By: _____

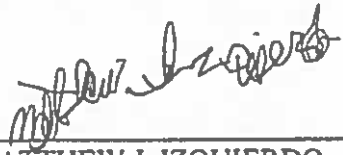
JASON D. FRIEDMAN (1265)
122 East 42nd Street, Suite 3900
New York, New York 10168
(212) 986-2022



VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF ORANGE)

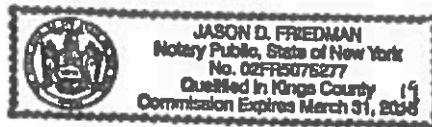
MATTHEW J. IZQUIERDO being duly sworn, says that I am the Plaintiff in the action herein; I have read the annexed COMPLAINT and know the contents thereof; that the same is true of my own knowledge, except matters alleged upon information and belief; and that as to those matters I believe them to be true.



MATTHEW J. IZQUIERDO

Sworn to before me this
11 day of JULY, 2016

Notary Public



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

MATTHEW FERBER,

Plaintiff,

-against-

OLDE ERIE BREW PUB & GRILL, LLC d/b/a
DeSTEFANO'S OLD ERIE; CHESTER LANES, LLC
d/b/a COLONIAL LANES and GW'S AMERICAN
BURGERS; VALJON INC. d/b/a HACIENDA; and
JOHN J. BEHLER, JR.,

Defendants,

-----X

INDEX NO.

VERIFIED COMPLAINT

Plaintiff, by his attorneys, SMILEY & SMILEY, LLP, complaining of the defendants,
hereinafter alleges at all times relevant hereto and upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT, JOHN J. BEHLER, JR.**

1. Plaintiff, MATTHEW FERBER, resides at 2817 Whispering Hills, Chester, New York 10918.
2. Defendant, JOHN J. BEHLER, JR., resides at 530 S Centerville Road, Middletown, New York 10940.
3. Defendant, JOHN J. BEHLER, JR. had a son, John A. Behler, now deceased.
4. John A. Behler formerly resided at 530 S Centerville Road, Middletown, New York 10940 with defendant, JOHN J. BEHLER, JR.
5. John A. Behler was born on August 14, 1992 and was 20 years old at the time of his death.

6. On February 2, 2013, defendant, JOHN J. BEHLER, JR., was the owner of a certain motor vehicle bearing New York State license plate number EGN1107.

7. On February 2, 2013, decedent, John A. Behler, was the operator of the aforesaid motor vehicle owned by the defendant, JOHN J. BEHLER, JR.

8. On February 2, 2013, decedent, John A. Behler, was operating the aforementioned motor vehicle owned by the defendant, JOHN J. BEHLER, JR., with the knowledge, permission and consent of its owner, either expressed or implied.

9. At all times hereinafter mentioned, SR17 eastbound, in the vicinity of Exit 125, in the Town of Goshen, County of Orange, and State of New York was and still is a public roadway.

10. On February 2, 2013, plaintiff, MATTHEW FERBER, was a passenger in the aforesaid vehicle, owned by defendant, JOHN J. BEHLER, JR. and driven by his son, John A. Behler.

11. On February 2, 2013, at approximately 12:01 A.M., the aforesaid motor vehicle owned by the defendant, JOHN J. BEHLER, JR., and operated by John A. Behler, suddenly went out of control and struck the guardrail located on SR17 eastbound, 500 feet west of the Exit 125 off-ramp, in the Town of Goshen, causing the plaintiff, MATTHEW FERBER, to sustain catastrophic injuries, and causing the driver, John A. Behler, to be killed.

12. The defendant, JOHN J. BEHLER, JR., is vicariously liable for the negligent operation of his motor vehicle by his son, John A. Behler, deceased.

13. The defendant was negligent, careless and reckless in the operation, management and control of the aforesaid motor vehicle; in operating the aforesaid motor vehicle at a greater rate of speed than care and caution would permit under the circumstances; in operating the vehicle in a negligent, careless and reckless manner; in failing and omitting to provide and/or make timely and

adequate use of accelerator, horn, brakes, signaling devices and steering mechanisms; in failing to give any signal or warning of approach, in failing to keep a proper lookout; in allowing the aforesaid motor vehicle to leave the roadway and strike the guardrail; and in violating provisions of the Vehicle and Traffic Laws of the State of New York.

14. At the time of this occurrence, John A. Behler, the driver, was highly intoxicated with a blood alcohol content far in excess of the legal limit.

15. Solely as a result of the defendant's negligence, the plaintiff, MATTHEW FERBER, sustained severe and permanent injuries resulting in the traumatic amputation of both legs above the knee and sustained extreme pain and suffering.

16. This action falls within one or more of the exceptions set forth in the C.P.L.R. Section 1602.

17. The plaintiff, MATTHEW FERBER, has sustained serious injuries as defined by Section 5102 of the Insurance Law of the State of New York.

18. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, JOHN J. BEHLER, JR.**

19. For a long time and prior to February 2, 2013, the defendant, JOHN J. BEHLER, JR.'s son, John A. Behler, was known to drink excessively and become highly agitated and reckless

while in an intoxicated state which rendered him unfit to drive and operate an automobile with reasonable safety upon the public highways in the County of Orange and State of New York.

20. For a long time prior to and on February 2, 2013, defendant, JOHN J. BEHLER, JR., knew or should have known of the predilection of his son, John A. Behler, to attempt to drive and operate an automobile while in a highly agitated and intoxicated state.

21. With such knowledge and notice, defendant, JOHN J. BEHLER, JR., negligently entrusted to his son, John A. Behler, the possession, operation, and control of his automobile for travel and use upon the public highways in the County of Orange and State of New York.

22. While driving the aforesaid automobile owned by defendant, JOHN J. BEHLER, JR., in a highly agitated and intoxicated state, John A. Behler lost control of said motor vehicle and struck a guardrail as aforesaid thereby causing severe and permanent injuries to the plaintiff, MATTHEW FERBER.

23. By reason of the foregoing, plaintiff, MATTHEW FERBER, sustained catastrophic injuries.

24. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, OLDE ERIE BREW PUB & GRILL, LLC
d/b/a DeSTEFANO'S OLD ERIE**

25. Upon information and belief, defendant OLDE ERIE BREW PUB & GRILL, LLC, was and still is a domestic corporation with a principal place of business located at 7 West Main Street, in the Town of Middletown, County of Orange, and State of New York.

26. Upon information and belief, on or about February 2, 2013, defendant, OLDE ERIE BREW PUB & GRILL, LLC managed, operated, maintained, supervised and controlled a bar known as DeSTEFANO's OLD ERIE located at premises 7 West Main Street, in the Town of Middletown, County of Orange, and State of New York.

27. Upon information and belief, the business of defendant, OLDE ERIE BREW PUB & GRILL, LLC, at the aforementioned premises consisted of the sale of, among other things, intoxicating beverages as authorized and approved by the Alcohol Beverage Control Board and other governmental agencies created for this purpose.

28. Defendant, OLDE ERIE BREW PUB & GRILL, LLC, employed agents, servants, and employees to work at the aforesaid bar known as DeSTEFANO's OLD ERIE.

29. The aforesaid agents, servants, and employees were acting in the course and scope of their employment with defendant, OLDE ERIE BREW PUB & GRILL, LLC d/b/a DeSTEFANO's OLD ERIE, and in the furtherance of its business.

30. On February 1, 2013, decedent, John A. Behler, was a patron of the aforesaid bar known as DeSTEFANO's OLD ERIE located at 7 West Main Street, in the Town of Middletown, County of Orange and State of New York.

31. On February 1, 2013, defendant, OLDE ERIE BREW PUB & GRILL, LLC, its agents, servants and employees, served alcoholic beverages to John A. Behler at the aforesaid bar known as DeSTEFANO's OLD ERIE, located at 7 West Main Street, in the Town of Middletown, County of Orange and State of New York.

32. On February 1, 2013 defendant, OLDE ERIE BREW PUB & GRILL, LLC, its agents, servants and/or employees served alcoholic beverages to John A. Behler, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was in a visibly intoxicated state, thereby contributing to the intoxication of John A. Behler, defendant JOHN J. BEHLER, JR.'s son.

33. On February 1, 2013 defendant, OLDE ERIE BREW PUB & GRILL, LLC, its agents, servants and/or employees unlawfully served alcoholic beverages to John A. Behler, a minor under the age of twenty-one (21) years, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was under the legal drinking age.

34. That the aforesaid serving of alcohol to John A Behler, defendant, JOHN H. BEHLER, JR.'s son, by defendant, OLDE ERIE BREW PUB & GRILL, LLC d/b/a DeSTEPHANO's OLD ERIE, its agents, servants and employees constituted an unlawful sale of alcoholic beverages under Section 65 of the Alcoholic Beverage Control Law.

35. On February 2, 2013, at 12:01A.M., after decedent, John A. Behler, had consumed alcoholic beverages at the aforesaid bar known as DeSTEFANO's OLD ERIE, John A. Behler, while highly intoxicated, suddenly and without warning lost control of the motor vehicle he was operating, struck the guardrail on SR17 eastbound, 500 feet west of Exit 125, in the Town of Goshen, County of Orange and State of New York.

36. That by reason of the aforesaid acts of defendant, OLDE ERIE BREW PUB & GRILL, LLC d/b/a DeSTEFANO's OLD ERIE, its agents, servants and employees, the plaintiff, MATTHEW FERBER, has a right to recover actual and exemplary damages under Section 11-101 of the General Obligations Law of the State of New York.

37. As a result of the foregoing, the plaintiff MATTHEW FERBER, sustained catastrophic injuries.

38. By reason of the foregoing defendant, OLDE ERIE BREW PUB & GRILL, LLC d/b/a DeSTEFANO's OLD ERIE, is liable to the plaintiff, MATTHEW FERBER, for compensatory, punitive, and exemplary damages.

39. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT CHESTER LANES, LLC d/b/a COLONIAL LANES
and GW's AMERICAN BURGERS**

40. Upon information and belief, defendant, CHESTER LANES, LLC, was and still is a domestic corporation with a principal place of business located at 78 Brookside Avenue, in Town of Chester, County of Orange, and State of New York.

41. Upon information and belief, on or about February 2, 2013, defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS managed, operated, maintained, supervised and controlled a bar known as GW's AMERICAN BURGERS located at premises 78 Brookside Avenue, in the Town of Chester, County of Orange, and State of New York.

42. Upon information and belief, the business of defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, at the aforementioned premises consisted of the sale of, among other things, intoxicating beverages as authorized and approved by the Alcohol Beverage Control Board and other governmental agencies created for this purpose.

43. Defendant, CHESTER LANES, LLC, employed agents, servants, and employees to work at the aforesaid bar known as COLONIAL LANES and GW's AMERICAN BURGERS.

44. The aforesaid agents, servants, and employees were acting in the course and scope of their employment with defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, and in the furtherance of its business.

45. On February 1, 2013, decedent, John A. Behler, was a patron of the aforesaid bar known as COLONIAL LANES and GW's AMERICAN BURGERS located at 78 Brookside Avenue, in the Town of Chester, County of Orange and State of New York.

46. On February 1, 2013, defendant, CHESTER LANES, LLC, its agents, servants and employees, served alcoholic beverages to John A. Behler at the aforesaid bar known as COLONIAL LANES and GW's AMERICAN BURGERS, located at 78 Brookside Avenue, in the Town of Chester, County of Orange and State of New York.

47. On February 1, 2013 defendant, CHESTER LANES, LLC, its agents, servants and/or employees served alcoholic beverages to John A. Behler, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was in a visibly intoxicated state, thereby contributing to the intoxication of John A. Behler, defendant JOHN J. BEHLER, JR.'s son.

48. On February 1, 2013 defendant, CHESTER LANES, LLC, its agents, servants and/or employees unlawfully served alcoholic beverages to John A. Behler, a minor under the age of twenty-one (21) years, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was under the legal drinking age.

49. That the aforesaid serving of alcohol to John A. Behler by defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, its agents, servants and employees constituted an unlawful sale of alcoholic beverages under Section 65 of the Alcoholic Beverage Control Law.

50. On February 2, 2013, at 12:01A.M., after decedent, John A. Behler, had consumed alcoholic beverages at the aforesaid bar known as, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, John A. Behler, while highly intoxicated, suddenly and without warning lost control of the motor vehicle he was operating, struck the guardrail on SR17 eastbound, 500 feet west of Exit 125, in the Town of Goshen, County of Orange and State of New York.

51. That by reason of the aforesaid acts of defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, its agents, servants and employees, the plaintiff, MATTHEW FERBER, has a right to recover actual and exemplary damages under Section 11-101 of the General Obligations Law of the State of New York.

52. As a result of the foregoing, the plaintiff MATTHEW FERBER, sustained catastrophic injuries.

53. By reason of the foregoing defendant, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW's AMERICAN BURGERS, is liable to the plaintiff, MATTHEW FERBER, for compensatory, punitive, and exemplary damages.

54. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST DEFENDANT VALJON INC. d/b/a HACIENDA**

55. Upon information and belief, defendant VALJON, INC. was and still is a domestic corporation with a principal place of business located at 1753 New York 17M, in the Town of Goshen, County of Orange, and State of New York.

56. Upon information and belief, on or about February 2, 2013, defendant, VALJON INC. d/b/a HACIENDA, managed, operated, maintained, supervised and controlled a bar known as

HACIENDA located at premises 1753 New York 17M, in the Town of Goshen, County of Orange, and State of New York.

57. Upon information and belief, the business of defendant, VALJON INC. d/b/a HACIENDA, at the aforementioned premises consisted of the sale of, among other things, intoxicating beverages as authorized and approved by the Alcohol Beverage Control Board and other governmental agencies created for this purpose.

58. Defendant, VALJON INC., employed agents, servants, and employees to work at the aforesaid bar known as HACIENDA.

59. The aforesaid agents, servants, and employees were acting in the course and scope of their employment with defendant, VALJON INC. d/b/a HACIENDA, and in the furtherance of its business.

60. On February 1, 2013, decedent, John A. Behler, was a patron of the aforesaid bar known as HACIENDA located at 1753 New York 17M, in the Town of Goshen, County of Orange and State of New York.

61. On February 1, 2013, defendant, VALJON INC, its agents, servants and employees, served alcoholic beverages to John A. Behler at the aforesaid bar known as HACIENDA, located at 1753 New York 17M, in the Town of Goshen, County of Orange and State of New York.

62. On February 1, 2013 defendant, VALJON INC., its agents, servants and/or employees served alcoholic beverages to John A. Behler, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was in a visibly intoxicated state, thereby contributing to the intoxication of John A. Behler, defendant JOHN J. BEHLER, JR.'s son.

63. On February 1, 2013 defendant, VALJON INC., its agents, servants and/or employees unlawfully served alcoholic beverages to John A. Behler, a minor under the age of

twenty-one (21) years, at a time when its agents, servants and/or employees knew or should have known that John A. Behler was under the legal drinking age.

64. That the aforesaid serving of alcohol to John A Behler by defendant, VALJON INC. d/b/a HACIENDA, its agents, servants and employees constituted an unlawful sale of alcoholic beverages under Section 65 of the Alcoholic Beverage Control Law.

65. On February 2, 2013, at 12:01A.M. after decedent, John A. Behler, had consumed alcoholic beverages at the aforesaid bar known as, HACIENDA, John A. Behler, while highly intoxicated, suddenly and without warning lost control of the motor vehicle he was operating, struck the guardrail on SR17 eastbound, 500 feet west of Exit 125, in the Town of Goshen, County of Orange and State of New York.

66. That by reason of the aforesaid acts of defendant, VALJON INC. d/b/a HACIENDA, its agents, servants and employees, the plaintiff, MATTHEW FERBER, has a right to recover actual and exemplary damages under Section 11-101 of the General Obligations Law of the State of New York.

67. As a result of the foregoing, the plaintiff MATTHEW FERBER, sustained catastrophic injuries.

68. By reason of the foregoing defendant, VALJON INC. d/b/a HACIENDA is liable to the plaintiff, MATTHEW FERBER, for compensatory, punitive, and exemplary damages.

69. The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction

WHEREFORE, plaintiff demands judgment against the defendants, OLDE ERIE BREW PUB & GRILL, LLC d/b/a DeSTEFANO'S OLD ERIE, CHESTER LANES, LLC d/b/a COLONIAL LANES and GW'S AMERICAN BURGERS, VALJON INC. d/b/a HACIENDA and

JOHN J. BEHLER, JR., on the First, Second, Third, Fourth and Fifth Causes of Action, together with interest and the appropriate costs and disbursements of these actions.

Dated: New York, New York
April 11, 2013

Yours, etc.,

SMILEY & SMILEY, LLP

By: _____
ANDREW J. SMILEY
Attorneys for Plaintiff
60 East 42nd Street
New York, New York 10165
(212) 986-2022

STATE OF NEW YORK
COURT OF CLAIMS

-----X
MATTHEW FERBER,

Claimant,

VERIFIED CLAIM

-against-

THE STATE OF NEW YORK and THE NEW YORK
STATE DEPARTMENT OF TRANSPORTATION

Respondents.

-----X
TO: CLERK, COURT OF CLAIMS

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

TO: NEW YORK STATE DEPARTMENT OF TRANSPORTATION

The Claimant in the above entitled claim, MATTHEW FERBER, by his attorneys, SMILEY & SMILEY, LLP, respectfully shows to this Court:

1. The post office address of the Claimant, MATTHEW FERBER, is 2817 Whispering Hills, Chester, New York 10918.
2. The attorney for the Claimant herein is: Guy I. Smiley, Esq., SMILEY & SMILEY, LLP, 60 East 42nd Street, Suite 950, New York, NY 10165.
3. The time when and the place where such claim arose and the nature of the same are as follows:

On February 2, 2013, the claimant, Matthew Ferber, aged 27 years, was a passenger in a motor vehicle operated by John A. Behler that was traveling on SR17 in an eastbound direction in the Town of Goshen, in the County of Orange and State of New York. At approximately 12:01a.m., the aforesaid motor vehicle crashed into a box-beam median barrier or guardrail (hereinafter referred to as "The Guardrail") on roadway SR17

eastbound approximately 500 feet west of the off-ramp at Exit 125, in the vicinity of Mile Marker 368.7, 17 8310 1135 and Mile Marker 368.8, 17 8310 1136, in the Town of Goshen, County of Orange and State of New York. The Guardrail collapsed and broke resulting in a jagged piece of The Guardrail penetrating the motor vehicle, resulting in, *inter alia*, the traumatic amputation of both legs of the Claimant, MATTHEW FERBER. This accident was caused, in part, by the negligence of the Respondents as hereinafter stated.

4. At the time of this occurrence the Respondents owned the aforementioned roadway and The Guardrail.

5. At the time of this occurrence, the Respondents maintained the aforementioned roadway and The Guardrail.

6. It was the duty of the Respondents to construct the aforementioned roadway and the appurtenances thereto, including The Guardrail, in a reasonably safe manner and in accordance with the accepted Standards of Care of Highway Safety.

7. It was the duty of the Respondents to install the aforementioned roadway and the appurtenances thereto, including The Guardrail, in a reasonably safe manner and in accordance with the accepted Standards of Care of Highway Safety.

8. It was the duty of the Respondents to maintain the aforementioned roadway and the appurtenances thereto, including The Guardrail, in a reasonably safe condition and in accordance with the accepted Standards of Care of Highway Safety.

9. The Respondents, their agents, servants and/or employees, were negligent in failing to construct, install and maintain the aforementioned roadway and The Guardrail in a reasonably safe condition; in installing The Guardrail too low for the existing terrain;

in failing to properly inspect The Guardrail and the height of The Guardrail; in failing to maintain the road and The Guardrail in a reasonably safe condition; in failing to properly locate The Guardrail on the aforesaid roadway; in failing to properly install The Guardrail on the aforesaid roadway; in failing to do a proper trajectory analysis to determine the correct height of The Guardrail; in failing to upgrade The Guardrail to include changes made to the aforementioned roadway; in failing to maintain the appropriate height of The Guardrail along the roadway; in failing to properly construct, install and maintain The Guardrail to properly deflect a vehicle back onto the roadway; in permitting The Guardrail to break and penetrate the motor vehicle in which Claimant was a passenger; in failing to construct, install and maintain The Guardrail in compliance with the appropriate and applicable Codes, Regulations, Plans and Specifications; in creating a trap; in creating a nuisance; in failing to properly pave and/or repave the aforesaid roadway; in creating, causing, maintaining and permitting the aforesaid roadway and The Guardrail to remain in a dangerous and defective condition; and in failing to construct, install, maintain and inspect the aforesaid roadway and The Guardrail in accordance with the accepted standard of care for highway safety.

10. The Respondents had actual and constructive notice of the foregoing dangerous and defective condition of the aforesaid roadway and The Guardrail.

11. By reason of the foregoing, Claimant, MATTHEW FERBER, sustained catastrophic injuries including the traumatic amputation of both legs.

12. All of the foregoing was caused by reason of the negligence and carelessness of the Respondents herein and MATTHEW FERBER in no way contributed to same.

13. A Notice of Intention to File a Claim was served on the Respondents on April 16, 2013 which was within ninety (90) days of accrual of this claim.

14. This claim has not been assigned either in whole or in part.

15. By reason of the foregoing, the Claimant, MATTHEW FERBER, has been damaged in the amount of SEVENTY-FIVE MILLION (\$75,000,000.00) DOLLARS.

16. WHEREFORE, Claimant demands judgment against the Respondents, THE STATE OF NEW YORK and NEW YORK STATE DEPARTMENT OF TRANSPORTATION in the amount of SEVENTY-FIVE MILLION (\$75,000,000.00) DOLLARS, together with the costs and disbursements of this claim.

Dated: New York, New York
October 4, 2013

MATTHEW FERBER

SMILEY & SMILEY, LLP
Attorneys for Claimant
60 East 42nd Street, Suite 950
New York, New York 10165
(212) 986-2022

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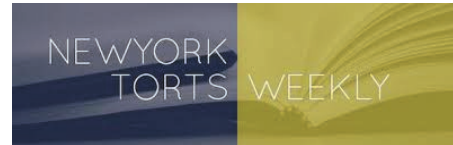
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