

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

INDEX #: 35122/2012

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SILVIA MENDOZA as guardian ad litem of
AMALIA OLIVEROS and SANTOS OLIVEROS
individually,

Petitioner,

**AFFIRMATION
IN SUPPORT**

-against-

FURY, KENNEDY & GRIFFIN, ESQS., DORFMAN,
KNOEBEL, CONWAY, FURY & GRIFFIN, LLP,
DORFMAN, KNOEBEL, CONWAY & FURY, LLP,
MICHAEL H. FURY, ESQ., F. HOLLIS GRIFFIN,
ESQ., BURTON DORFMAN, ESQ., ROBERT S.
KNOEBEL, ESQ., and KEVIN T. CONWAY, ESQ.,

Respondents.

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JEFFREY M. ADAMS, an attorney duly admitted to practice before the Courts of
the State of New York affirms the following:

1. I am an attorney for the petitioners/plaintiffs; am fully familiar with the
facts and circumstances of this matter; and submit the following in support of the
application to compromise and settle this matter.

2. This is an action for legal malpractice that emanates from a motor vehicle
collision that occurred on November 19, 2005. AMALIA OLIVEROS, "AMALIA", was a
pedestrian struck by a motor vehicle.

3. As a result of the injuries sustained by the plaintiff, AMALIA, a guardian ad
litem, SYLVIA MENDOZA, has been appointed to act on her behalf.

4. Following the motor vehicle collision, AMALIA retained defendant, F. HOLLIS GRIFFIN, ESQ., "GRIFFIN", and his law firm to represent her. That lawsuit was dismissed due to a failure to prosecute. A legal malpractice action was commenced. That action has been subsumed by this action.

4. The proposed settlement agreement will conclusively resolve all litigation in this matter.

5. To maintain privacy and confidentiality, and to protect the best interests of the plaintiffs, limited particulars of this litigation shall be set-forth in this Affirmation. Should the Court require a clarification of any issue, it is requested that an *ex parte* conference be conducted.

6. This settlement and compromise is being recommended by your affirmant for the following reasons:

a. AMALIA, a native of Mexico, not conversant in English, was struck by a motor vehicle while crossing a street in Pearl River, New York. Her last recollection before the incident was leaving the sidewalk. She has no recollection where in the roadway the impact occurred;

b. The operator of the vehicle that struck her stated to the investigating police officer that she did not see AMALIA until the impact;

c. There were two alleged eyewitnesses to the incident, one a relation of AMALIA, corroborates that she was in the cross-walk when struck, and the vehicle

d. The other alleged witness, not related to the parties, and who has testified pursuant to subpoena in the underlying action, states that AMALIA ran directly into the path of the vehicle that struck her and that the vehicle had no opportunity to avoid the impact;

e. Should a jury accept this individual's testimony, the legal malpractice action may not survive. At best, there presently exists an issue of comparative negligence;

f. AMALIA testified in depositions that, while she has no recollection of the incident, she walked "fast" while trying to cross the street;

g. As such, this testimony supports the defendants' contention that this is a "dart-out" case and the collision was unavoidable;

h. AMALIA'S cost of future care, as calculated by a defense expert, based upon the presumption she will return to Mexico once the case concludes, are less than \$100,000. Expenses incurred by AMALIA for her care the last several years were limited which supports the defendants' claims that her future care expenses are limited;

i. Reports prepared by the defendants' medical witnesses reflect that AMALIA'S condition, at least in part, pre-date the underlying collision, as she had exhibited conditions of Alzheimer's disease;

j. AMALIA's medical records that pre-date the underlying accident support the defendants' contention that she had a prior hearing loss and she had signs of Alzheimer's disease;

k. The motor vehicle that struck AMALIA was coming from her right.

This is significant as she had hearing loss in her right ear before the occurrence;

l. GRIFFIN was essentially the only attorney who was responsible for the handling of the file. This is significant as will be addressed below;

m. It has been judicially determined that GRIFFIN is responsible for legal malpractice that resulted in the underlying action being dismissed. (Please reference the Order of the Hon. Linda Jamieson dated May 2, 2012). A question of fact exists as to the other defendants;

n. No dispute exists that the dismissal of the underlying action occurred after GRIFFIN left the DORFMAN firm, and while in his own practice, and without a policy of professional liability insurance;

o. The contention is that GRIFFIN's former law partners and his former firms (the Dorfman firm) had no responsibility to AMALIA for malpractice that occurred after GRIFFIN left the DORFMAN firm, and while in his own practice;

p. GRIFFIN's prior firm (the Dorfman firm) did have a policy of professional malpractice insurance. That carrier has been defending these litigations under a reservation of rights in which they, among other things, disclaim responsibility for any loss payment. Should this settlement not be approved, your affirmant has been advised that a proceeding to fully deny and disclaim coverage will be instituted;

q. In all five law firms have represented AMALIA at one time or

another during the pendency of the underlying action. The common denominator in the

last four firms was GRIFFIN. The malpractice, however, accrued at the last firm – GRIFFIN’s own – and he did not have a policy of professional malpractice insurance;

r. While GRIFFIN will most certainly be held liable for malpractice should AMALIA prove she would have prevailed in the underlying action, GRIFFIN, a recently disbarred (unrelated to these proceedings) legal aid lawyer, is without professional malpractice insurance and in all probability is judgment proof;

s. GRIFFIN’S partner in the original firm, MICHAEL F. FURY, is not engaged in the practice of law, in very poor health and residing in an assisted living facility. This has been confirmed by his attorney;

t. The professional liability is providing a defense in this litigation, is an “eroding” policy. Simply put, all defense costs and expenses are deducted from the available coverage;

u. Should this matter proceed to verdict and through post-trial proceedings (it is reasonably anticipated that in addition to the one appeal presently pending, there will be two more appeals, a declaratory judgment action, and the continued expense of three (3) defense firms; all eroding the same insurance policy), the available coverage, assuming the insurer does not prevail in its declaratory proceeding, likely could be less than the settlement amount;

7. For these compelling reasons; including the defenses’ contentions that AMALIA will be unable to meet her burden of proof that she would have prevailed in the underlying accident, that her damages may not be found to be substantial, that the

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