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THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

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May 27, 2004

By Facsimile

Richard Cardinale, Esq.
Cardinale, Hueston & Marinelli
26 Court Street, Suite 600
Brooklyn, NY 11242

Re: Spinner v. City of New York, CV 01 2715, CV 02 1039, CV 01 8264,
CV 02 2899 (CPS) (CLP)

Dear Mr. Cardinale:

In an effort to facilitate discussions at tomorrow's settlement conference before Magistrate Pollak, please be advised of the following authority which we will raise and believe should be taken into account during settlement negotiations.

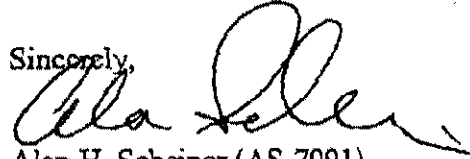
The Prison Litigation Reform Act, 42 U.S.C.S. §1997e(e) (2004), states: "Limitation on recovery. No federal civil action may be brought by a prisoner¹ confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." This statute has been held to apply with equal force to both plaintiffs who bring suit while confined as well as those who bring suit after they are released. See Cox v. Malone, 199 F. Supp.2d 135, 140 (S.D.N.Y. 2002) (where the court stated "[t]he fortuity of release [] does not affect the kind of damages that must be alleged in order to survive the gate-keeping function of section 1997e(e). Because plaintiff's suit alleges only emotional injuries, it is barred by the PLRA irrespective of his status as a parolee at the time of filing."), aff'd, 56 Fed. Appx. 43 (2d Cir. 2003). We also intend to argue that the attorney-fee limitation of 42 U.S.C.S. §1997e(d) applies with the same force as the 1997e(e) limitation on damages.

¹ 42 U.S.C.S. §1997e(h) states: "As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."

As you are aware, your clients only claim emotional damages (and not physical injuries) and thus would be precluded from recovering compensatory damages pursuant to the above authority from this Circuit.

We look forward to discussing this and other points at the settlement conference tomorrow.

Sincerely,



Alan H. Scheiner (AS-7991)
Assistant Corporation Counsel

cc. The Honorable Cheryl L. Pollak
(via fax) (718) 260-2358



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
FACSIMILE TRANSMISSION

TO: The Honorable Cheryl L. Pollak
United States District Court

FROM: Alan H. Scheiner, Esq.
Senior Counsel

FAX #: (718) 260-2358

DATE: May 27, 2004

You should receive 3 page (s), including this one.
Please contact me if you do not receive all pages.

This facsimile contains CONFIDENTIAL INFORMATION which may also be LEGALLY PRIVILEGED. It is intended only for use of the addressee(s) named above. If you are neither the intended recipient of this facsimile nor the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that disseminating or copying this facsimile is prohibited. If you have received this facsimile in error, please notify this office by telephone and return the original to the address set forth by the United States Postal Service. Thank you.

Message:

Please see attached correspondence.
Re: Spinner, et al. v. City of New
York, et al.

D/F

AO 88 (Rev. 1/94) Subpoena in a Civil Case - SONY WEB 4/99

Issued by the UNITED STATES DISTRICT COURT

Eastern

DISTRICT OF

New York

MICHAEL SPINNER, ET AL.,

SUBPOENA IN A CIVIL CASE

V.

CASE NUMBER: 1 01 CV 2715 (CPS) (CLP)

CITY OF NEW YORK, ET. AL..

TO: City of New York
New York City Police Department
New York City Fire Department /EMS Division

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

Form with fields: PLACE OF TESTIMONY, COURTROOM, DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

Form with fields: PLACE OF DEPOSITION, DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

The arrest, criminal court, and Brooklyn Central Booking records of the individuals listed in Exhibit 1, annexed hereto.

Form with fields: PLACE, DATE AND TIME, New York City Law Department, 100 Church Street, NY, NY 10007: Attention: Alan Scheiner, February 13, 2004

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

Form with fields: PREMISES, DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Form with fields: ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT), DATE, ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER, Honorable Cheryl L. Pollak, U.S. Magistrate Judge, 225 Cadman Plaza East, Brooklyn, NY 11201, (718) 260-2360

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

1 If action is pending in district other than district of issuance, state district under case number.

EXHIBIT 1

1. Carmen Philizaire

39 Tiger Court, Staten Island, New York 10314

DOB: 6/20/65

Arrest and date of confinement in Brooklyn Central Booking ("BCB"): 2/25/01 to 2/26/01

2. Kadian McBean

192 East 96th Street, Brooklyn, New York 11212

DOB: 7/3/83

Arrest and BCB incarceration: 5/29/02 to 5/30/02 and 4/12/03 to 4/13/03

3. Marsha Wilson

589 East 89th Street, Apt. # 2, 11236

DOB: 9/15/89

Arrest and BCB incarceration: 9/13/01 to 9/14/01

4. Sharene Montecier

136 St. Pauls Place, Apt. # 3C, Brooklyn, New York 11226

DOB: 1/8/70

Arrest and BCB incarceration: 10/24/03 to 10/25/03.

5. Benjamin Peker

1745 East 12th Street, Apt. # 2A, Brooklyn, New York 11229

DOB: 6/30/83

Arrest and BCB incarceration: 7/11/01 to 7/12/01

6. Kiah Finney

303 Gates Avenue, Brooklyn, New York 11216

DOB: 1/16/69

Arrest and BCB incarceration: 5/27/02 to 5/28/02

CARDINALE HUESTON & MARINELLI
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26 COURT STREET, SUITE 600
BROOKLYN, NEW YORK 11242
(718) 624-9391
Facsimile (718) 522-2026

Richard J. Cardinale
Michael Hueston
Robert J. Marinelli

February 4, 2004

By Facsimile (718) 260-2358
The Honorable Cheryl L. Pollak
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Spinner v. City of New York, CV 01 2715 (CPS)(CLP)

Your Honor:

I request that the Court sign the enclosed subpoena so that defense counsel can obtain the records of the six non-party witnesses in the next few days. As Your Honor may recall, such a subpoena was signed in this action in 2002, which resulted in document production in just a few days. If we proceed instead with releases signed by the witnesses (as defense counsel desires), defense counsel will not obtain the documents for weeks or perhaps even months. This will provide defense counsel with reason to seek an extension of the February 20, 2004 discovery deadline.

As soon as the subpoena is signed, I will pick it up and deliver it to defense counsel.

Respectfully,



Richard J. Cardinale (RC 8507)

Copy: Alan Scheiner (by fax)