

File Number SUR-P-C-85518

Case Basics

Parties

Documents

Hearings and Results

Transfers

Date File Opened: 04Sep2019

Style of Cause: YANIV, Jessica v H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.

Location: Surrey Provincial Court

Level of Court: Provincial

Class of Court: Small Claims

Initiating Document(s): Notice of Claim

File Number SUR-P-C-85518

Case Basics

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Transfers

Last Name, First Name Middle Name	Role of Party On File	Counsel Name Counsel Phone
<u>H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.</u>	Defendant	J MacDonald
<u>KOR INNOVATIONS INC.</u>	Third Party	Andrea McNeill
<u>MEDELCO INC.</u>	Third Party	
<u>YANIV, Jessica</u>	Claimant	

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Details for H MORRIS & N SZUCS PHYSIOTHERAPIST CORP. (Defendant)

[Close](#)

Date Entered: 04Sep2019

Counsel's Name: J MacDonald

Counsel's Phone:

Last Name, First Name Middle Name	Role of Party On File	Counsel Name Counsel Phone
H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.	Defendant	J MacDonald
KOR INNOVATIONS INC.	Third Party	Andrea McNeill
MEDELCO INC.	Third Party	
YANIV, Jessica	Claimant	

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Details for KOR INNOVATIONS INC. (Third Party)

[Close](#)

Date Entered: 10Oct2019

Counsel's Name: Andrea McNeill

Counsel's Phone:

Last Name, First Name Middle Name	Role of Party On File	Counsel Name Counsel Phone
<u>H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.</u>	Defendant	J MacDonald
<u>KOR INNOVATIONS INC.</u>	Third Party	Andrea McNeill
<u>MEDELCO INC.</u>	Third Party	
<u>YANIV, Jessica</u>	Claimant	

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Details for MEDELCO INC. (Third Party)

Close

Date Entered: 10Oct2019

Counsel's Name:

Counsel's Phone:

Last Name, First Name Middle Name	Role of Party On File	Counsel Name Counsel Phone
<u>H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.</u>	Defendant	J MacDonald
<u>KOR INNOVATIONS INC.</u>	Third Party	Andrea McNeill
<u>MEDELCO INC.</u>	Third Party	
<u>YANIV, Jessica</u>	Claimant	

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Details for YANIV, Jessica (Claimant)

Close

Date Entered: 04Sep2019


Counsel's Name:

Counsel's Phone:

Last Name, First Name Middle Name	Role of Party On File	Counsel Name Counsel Phone
<u>H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.</u>	Defendant	J MacDonald
<u>KOR INNOVATIONS INC.</u>	Third Party	Andrea McNeill
<u>MEDELCO INC.</u>	Third Party	
<u>YANIV, Jessica</u>	Claimant	

File Number SUR-P-C-85518

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Initiating Document	Amended Document	#	Document Description	Date Document Filed	Claim Amount	Document Request
		14	Reply to Third Party Notice	20Jan2020		Request
		13	Notice of Settlement Conference	19Dec2019		Request
		12	Reply to Third Party Notice	02Dec2019		Request
		11	Certificate of Service	04Nov2019		Request
		10	Certificate of Service	04Nov2019		Request
		9	Correspondence	28Oct2019		Request
		8	Certificate of Readiness	11Oct2019		
		7	Company Search	10Oct2019		Request
		6	Company Search	10Oct2019		Request
		5	Third Party Notice	10Oct2019	\$35,000.00	View
		4	Reply	17Sep2019		View
		3	Company Search	04Sep2019		Request
		2	Company Search	04Sep2019		Request
		1	Notice of Claim	04Sep2019	\$35,000.00	View

NOTICE OF CLAIM

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

8-5518

REGISTRY LOCATION

SURREY

FROM:

This person has made a claim against you in Small Claims Court.

NAME Jessica Yaniv

CLAIMANT(S)

ADDRESS 505 - #265 - 8840 210 St.

CITY, TOWN, MUNICIPALITY Langley

BC

V1M 2Y2

TEL. # 604 729 4690

PROV.

POSTAL CODE

TO:

NAME H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.

DEFENDANT(S)

ADDRESS 15240 56 Ave #106 1200 - 1075 W Georgia St

CITY, TOWN, MUNICIPALITY ~~Surrey~~ VANCOUVER

BC

V6P 3C9 V3S 5K7

TEL. # (778) 574-1919

PROV.

POSTAL CODE

WHAT

HAPPENED?

This is what the claimant says led to the claim.

On June 26, 2019 I had an appointment booked for physiotherapy at Surrey Hwy 10 Physiotherapy & Massage Clinic located at 15240 56 Ave #106 in Surrey, BC. I came in with my mobility scooter and was told to go to the first bed when you enter the treatment area. I was told by the physiotherapist to sit and lie down on the bed. I was then told to scootch back. When I began to do this, the bed cracked and broke in two. My lower back was still on the bed with my head and upper back facing towards the floor. I believe I received a seizure during this time as I do not remember what happened after the bed broke. However, I was in significant pain and all the physiotherapist said was "oops the bed is broken lets go to the other bed." I did then proceed with the booked physiotherapy treatment (For balance) on the other bed, however, I did not feel well nor comfortable during this physiotherapy appointment.

To this day, I experience significant pain in my hip and lower back and the pain has not subsided. I have spoken with Howard, the owner of this clinic to which he admitted that this incident did in fact occur to how I describe it, and also admitted that this is negligence of the physiotherapist not checking the equipment before a patient uses it. Due to the negligence of Surrey Hwy 10 Physiotherapy & Massage Clinic and this physiotherapist, I am enduring extreme pain to which treatment is required. Due to the fact that there doesn't seem to be a near-future resolution in sight is also reason for the substantial damages claimed due to negligence. They simply neglected to exercise reasonable care for my health and safety.

☐ If this box is checked the "what happened" section is continued on a another page. Be sure you have been given a copy of it.

WHERE?

This is where the claimant says it happened.

CITY, TOWN, MUNICIPALITY Surrey

PROV. BC

WHEN?

This is when the claimant says it happened.

June 26, 2019

HOW

MUCH?

This is what the claimant is asking for.

a	Negligence to properly check medical equipment causing significant bodily harm and injury.	\$	35,000.00
b		\$	
c		\$	
d		\$	
e		\$	

TIME LIMIT FOR A DEFENDANT TO REPLY

The defendant must complete and file the attached reply within 14 days from being served with this notice, unless the defendant settles this claim directly with the claimant. If the defendant does not reply, a court order may be made against the defendant without any further notice to the defendant. Then the defendant will have to pay the amount claimed plus interest and further expenses.

The Court Address for filing documents is:

Provincial Court of British Columbia
14340 57 Ave, Surrey, BC V3X 1B2

TOTAL	35,000.00
+ FILING FEES	156.00
+ SERVICE FEES	80.00
= TOTAL CLAIMED	\$ 35,236.00

☐ DEBT
☒ OTHER THAN DEBT

Pl

defendant's copy
COURT

defendant's copy

NOTICE OF CLAIM

Case Basics

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Details for Document: 12 - Reply to Third Party Notice[Close](#)

Date Filed: 02Dec2019

Filing Parties

Third Party: MEDELCO INC.

Hearings For Document

Initiating Document	Amended Document	#	Document Description	Date Document Filed	Claim Amount	Document Request
		12	Reply to Third Party Notice	02Dec2019		Request
		11	Certificate of Service	04Nov2019		Request
		10	Certificate of Service	04Nov2019		Request
		9	Correspondence	28Oct2019		Request
		8	Certificate of Readiness	11Oct2019		
		7	Company Search	10Oct2019		Request
		6	Company Search	10Oct2019		Request
		5	Third Party Notice	10Oct2019	\$35,000.00	View
		4	Reply	17Sep2019		View
		3	Company Search	04Sep2019		Request
		2	Company Search	04Sep2019		Request
<input checked="" type="checkbox"/>		1	Notice of Claim	04Sep2019	\$35,000.00	View

REPLY TO THIRD PARTY NOTICE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER 85518
REGISTRY LOCATION Surrey

TO:

Copy the name, address and telephone number of the defendant from the Third Party Notice:

H Morris & N Szucs Physiotherapist Corp.

DEFENDANT

NAME c/o Carnello & Company, Barristers & Solicitors (Attention: Jill MacDonald)

ADDRESS 200 - 10388 Whalley Boulevard

Surrey

British Columbia

V3T 4H4

604-589-0999

CITY, TOWN, MUNICIPALITY

PROV.

POSTAL CODE

TEL. #

FROM:

Fill in the name, address and telephone number of the third party filing this reply.

Medelco Inc.

THIRD PARTY

NAME c/o Alexander Holburn Beaudin + Lang LLP (Attention: Justin Abrioux)

ADDRESS 2700 - 700 West Georgia Street

Vancouver

British Columbia

V7Y 1B8

604-484-1787

CITY, TOWN, MUNICIPALITY

PROV.

POSTAL CODE

TEL. #

CLAIMANT

NAME Jessica Yaniv

ADDRESS 505 - #265 - 8842 210 Street

Langley

British Columbia

V1M 2Y2

604-729-4690

CITY, TOWN, MUNICIPALITY

PROV.

POSTAL CODE

TEL. #

DISPUTE:

Using the "HOW MUCH" section of the Third Party Notice as a guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.

a See attached Schedule "A"

b

c

d

e

Surrey

02-Dec-19

REGISTRY

AGREEMENT WITH THE CLAIM:

If you agree to pay all or part of what is claimed, make a proposal.

I could make the following payments:

NAME

agree to pay \$

1. Complete the REPLY. To complete the form, use a typewriter or print clearly. For more help there is a booklet called "Replying to a Claim".
2. File the REPLY by taking or mailing it to the court registry at the address shown on the NOTICE OF CLAIM. The fee for filing is \$26 for claims up to and including \$3,000 and \$50 for claims over \$3,000 unless you have agreed to pay all of the claim. The staff will check your form and if it is in order accept it for filing. The REPLY must be filed in the registry within the time limit shown on the Third Party Notice.
3. Then the court will send a copy of your Reply to the other parties and in most cases set a date for a settlement conference. You will receive a notice telling you the date and place of the conference. Some cases will go directly to trial and you will receive a notice telling you the date and place.
4. When the date is set, you can prepare for the conference or trial. For more help there is a booklet called "Getting Ready for Court".
5. If the defendant agrees with your proposal, you may file a consent order.

REPLY TO THIRD PARTY NOTICE

SCHEDULE A
TO THE RESPONSE OF MEDELCO INC.
TO THIRD PARTY NOTICE OF H MORRIS & N SZUCS PHYSIOTHERAPIST CORP.

1. This Third Party adopts the defined terms as set out in the Notice of Claim and the Third Party Notice.
2. Except where hereinafter expressly admitted, Medelco Inc. (this "Third Party") denies each and every allegation of fact in the Notice of Claim and the Third Party Notice.
3. This Third Party denies that the Claiming Party is entitled to contribution and indemnity, apportionment of fault, costs, interest, or judgement from this Third Party.
4. This Third Party denies that the incident, as claimed in the Notice of Claim (the "Accident") occurred as alleged, or at all, and puts the Claimant to the strict proof thereof.
5. This Third Party denies that the Claimant suffered any injury, loss, damage, or expense as a result of the Accident, as alleged or at all, and puts the Claimant to the strict proof thereof.
6. This Third Party is a warehouser and supplier of physiotherapy equipment and supplies.
7. In response to paragraph 4 of the Third Party Notice, on or about May of 2012, this Third Party purchased a Euro Lift EL2003 massage table from the Third Party Kor Innovations Inc. ("Kor") for the purpose of immediate resale to Surrey HWY 10 Physiotherapy & Massage Clinic (the "Clinic") which is a sole proprietorship of the Defendant H Morris & N Szucs Physiotherapist Corp.
8. In further response to paragraph 4 of the Third Party Notice, this Third Party says that the Clinic purchased a Euro Lift EL2003 massage table from this Third Party in 2012, which was in turn purchased from Kor, however it is outside this Third Party's knowledge whether this was the table involved in the alleged Accident.
9. In further response to paragraph 4 of the Third Party Notice, this Third Party says that the Clinic's order to Medelco for the Euro Lift EL2003 massage table was shipped directly from Kor to the Clinic, and was not physically handled by this Third Party at any time.
10. In response to paragraph 5 of the Third Party Notice, if this Third Party sold to the Clinic the Table involved in the Accident, then this Third Party denies that it was negligent, or in breach of any duty, statutory, contractual, or otherwise, as alleged or at all, and further says that:
 - (a) the table sold to the Clinic was free from any defects and reasonably fit for its intended purpose;

- (b) the table sold to the Clinic was durable for a reasonable period of time having regard to the use it would normally be put;
 - (c) this Third Party did not breach any implied warranties of fitness or merchantability under the *Sale of Goods Act*, RSBC 1996 c 410 or the *Sale of Goods Act*, RSO 1990 c s1, or any other statute, if any; and
 - (d) such further and other particulars as counsel may advise.
11. In the alternative, and in further response to paragraph 5 of the Third Party Notice, if this Third Party was negligent, or breached any implied warranties of fitness or merchantability, statutory or otherwise, as alleged or at all, and if the Claimant suffered injury, loss, damage, or expense, in the alleged Accident occasioned by the table sold by this Third Party to the Clinic, as alleged or at all, all of which is denied, then such injury, loss, damage, or expense was caused or contributed to by the breach of duty, statutory, contractual or otherwise of the Third Party Kor, the particulars of which include, but are not limited to:
- (a) Those particulars of negligence or breach of duty as set out at paragraph 6 of the Third Party Notice, which are hereby pleaded and relied upon as they apply to the Third Party Kor and not this Third Party;
 - (b) In particular, breaching the statutory implied warranties of fitness and merchantability in Kor's sale of the table allegedly involved in the Accident to this Third Party; and
 - (c) Such further and other particulars as counsel may advise.
12. In the alternative, if the Claimant suffered any injury, loss, damage, or expense as a result of the Accident, as alleged or at all, then this Third Party says that same was caused or contributed to by the negligence of the Claimant, the particulars of which are set out at paragraph 3 of the Notice of Claim, or was caused or contributed to by subsequent or previous incidents involving the Claimant and further the Accident did not aggravate any pre-existing injuries.
13. In the alternative, if the Claimant suffered any injury, loss, damage, or expense, as a result of the Accident, as alleged or at all, then the Claimant has failed to mitigate.

WHEREFORE this Third Party respectfully submits that the claim against it be dismissed with costs

Case Basics**Parties****Documents****Hearings and Results****Transfers****Details for Document: 14 - Reply to Third Party Notice**[Close](#)

Date Filed: 20Jan2020

Filing Parties

Third Party: KOR INNOVATIONS INC.

Hearings For Document

Initiating Document	Amended Document	#	Document Description	Date Document Filed	Claim Amount	Document Request
		14	Reply to Third Party Notice	20Jan2020		Request
		13	Notice of Settlement Conference	19Dec2019		Request
		12	Reply to Third Party Notice	02Dec2019		Request
		11	Certificate of Service	04Nov2019		Request
		10	Certificate of Service	04Nov2019		Request
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		5	Third Party Notice	10Oct2019	\$35,000.00	View
		4	Reply	17Sep2019		View
		3	Company Search	04Sep2019		Request
		2	Company Search	04Sep2019		Request
<input checked="" type="checkbox"/>		1	Notice of Claim	04Sep2019	\$35,000.00	View

REPLY TO THIRD PARTY NOTICE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

85518

REGISTRY LOCATION

Surrey

TO:

Copy the name, address and telephone number of the defendant from the Third Party Notice:

H Morris & Szuca Physiotherapist Corp.

DEFENDANT

NAME c/o Camello & Company (Attn: Jillian MacDonald)

ADDRESS #200 - 10388 Whalley Boulevard

Surrey

British Columbia

V3T 4H4

604-588-0999

CITY, TOWN, MUNICIPALITY

PROV

POSTAL CODE

TEL #

FROM:

Fill in the name, address and telephone number of the third party filing this reply.

Kor Innovations Inc.

THIRD PARTY

NAME c/o Intact Insurance (Attn: Legal Department, Andrea McNeill)

ADDRESS 1100-999 W. Hastings Street

Vancouver

British Columbia

V6C 2W2

604-699-3653

CITY, TOWN, MUNICIPALITY

PROV

POSTAL CODE

TEL #

CLAIMANT

NAME

ADDRESS

British Columbia

CITY, TOWN, MUNICIPALITY

PROV

POSTAL CODE

TEL #

DISPUTE:

Using the "HOW MUCH" section of the Third Party Notice as a guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.

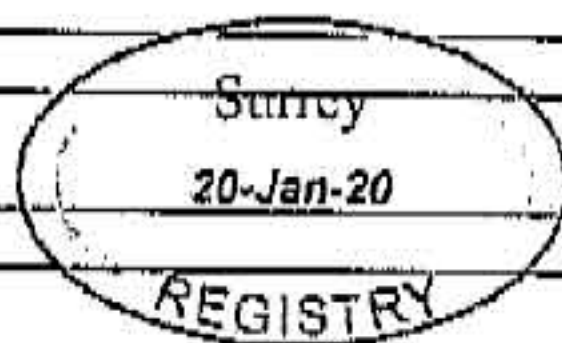
a See Schedule A

b

c

d

e

**AGREEMENT WITH THE CLAIM:**

If you agree to pay all or part of what is claimed, make a proposal.

I could make the following payments: NAME DATE DATES AND AMOUNTS

agree to pay \$

1. Complete the REPLY. To complete the form, use a typewriter or print clearly. For more help there is a booklet called "Replying to a Claim".
2. File the REPLY by taking or mailing it to the court registry at the address shown on the NOTICE OF CLAIM. The fee for filing is \$26 for claims up to and including \$3,000 and \$50 for claims over \$3,000 unless you have agreed to pay all of the claim. The staff will check your form and if it is in order accept it for filing. The REPLY must be filed in the registry within the time limit shown on the Third Party Notice.
3. Then the court will send a copy of your Reply to the other parties and in most cases set a date for a settlement conference. You will receive a notice telling you the date and place of the conference. Some cases will go directly to trial and you will receive a notice telling you the date and place.
4. When the date is set, you can prepare for the conference or trial. For more help there is a booklet called "Getting Ready for Court".
5. If the defendant agrees with your proposal, you may file a consent order.

REPLY TO THIRD PARTY NOTICE

Schedule A

1. This Third Party adopts the definitions used in the Third Party Notice; however such use of the Third Party Notice definitions does not constitute an admission of any sort.
2. This Third Party denies each and every allegation of fact contained in the Third Party Notice filed by H Morris & N Szucs Physiotherapist Corp., unless specifically admitted herein, and puts the Claiming Party to the strict proof thereof.
3. In answer to the whole of the Third Party Notice, this Third Party says that it was not negligent in the manufacturing of the Table, and it did not breach any duty of care.
4. This Third Party says that the maintenance of the Table was the responsibility of the Claiming Party.
5. This Third Party further says that it is the responsibility of the Claiming Party and/or its management, employees, agents and/or servants to notify this Third Party of any issues with the Table being used at its premises.
6. Further, this Third Party says that it is the responsibility of the Claiming Party and/or its management, employees, agents and/or servants to make sure any patient, including the Claimant, is cared for when using the Table and moving the head rest from one position to another.
7. In the alternative, and in further answer to the whole of the Third Party Notice, this Third Party says that if the Claimant has suffered or will suffer any losses, damages or expenses as alleged in the Notice of Claim, or at all, which is not admitted but expressly denied, such losses, damages or expenses were not caused by any acts, omissions, negligence, faults, or breaches of duty, statutory or otherwise, on the part of this Third Party, nor were any such acts or omissions the direct or proximate cause or contributory to the cause of the losses, damages or expenses alleged in the Notice of Claim and Third Party Notice.

Schedule A

8. In the alternative, and in further answer to the whole of the Third Party Notice, this Third Party says that if the Claimant has suffered or will suffer any losses, damages or expenses, either as alleged or at all, which is not admitted but expressly denied, then such losses, damages or expenses were caused wholly or contributed to by the negligence and otherwise tortuous conduct of Claiming Party, and/or its management, employees, agents and/or servants and/or parties not yet named in this litigation and this Third Party further says that It is entitled to contribution and indemnity from these persons.
9. In the alternative and in further answer to the whole of the Notice of Civil Claim and Third Party Notice, this Third Party says that if the Claimant has suffered or will suffer any losses, damages or expenses, either as alleged or at all, which is not admitted but denied, then such losses, damages or expenses were caused wholly or contributed to by the Claimant's own negligence, particulars of which are set out in the Claiming Party's Reply filed September 17, 2019 and this Third Party hereby repeat and adopts those particulars of negligence as against the Claimant.
10. This Third Party:
 - a. denies that it is a "wrongdoer" within the meaning of the *Health Care Costs Recovery Act*, [2008] R.S.B.C. c. 27 and amendments to it (collectively referred to as the "HCCRA") and is therefore not liable for any past or future health care costs of the Claimant.
 - b. in the alternative, the amounts being claimed, by virtue of the *HCCRA*, did not arise by reason of, nor were they incurred by reason of the incident and this Third Party is therefore not liable for them; and
 - c. any amounts being claimed by virtue of the *HCCRA*, whether for costs incurred in the past or to be incurred in the future, are costs that would have arisen in any event of the Incident and this Third Party is therefore not liable for them.

Schedule A

11. This Third Party pleads and will rely upon the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333.

File Number SUR-P-C-85518

Case Basics

Parties

Documents

Hearings and Results

Transfers

Hearing Date: 28Feb2020

Hearing Time: 2:00 PM

Hearing Location: Surrey Provincial Court

List Type for the Hearing: Small Claims Court List

#	Document Description	Reason	Result	Canc.
1	Notice of Claim	Settlement Conference		
5	Third Party Notice	Settlement Conference		