

**McCarthy v JPMorgan Chase & Co.**

2019 NY Slip Op 32895(U)

August 1, 2019

Supreme Court, Bronx County

Docket Number: 25639/2017

Judge: Laura G. Douglas

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX  
PART 11

Index No. 25639/2017

GLORIA McCARTHY,

Plaintiff,

**DECISION/ORDER**

-against-

**Present:**  
**Hon. Laura G. Douglas**  
**J.S.C.**

JPMORGAN CHASE & CO., CHASE MANHATTAN  
BANKING CORPORATION, and  
JONES LANG LASALLE AMERICAS, INC.,

Defendants.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to dismiss complaint and related relief and cross-motion to strike answers:

<u>Papers</u>	<u>Numbered</u>
<b>Notice of Motion by Defendant Jones Lang Lasalle Americas, Inc., Good Faith Affirmation of Mary Frances G. Marino, Esq. dated May 27, 2019, Affirmation of Mary Frances G. Marino, Esq. dated May 27, 2019 in Support of Motion, and Exhibits (“A” through “F”).....</b>	<b>1</b>
<b>Affirmation of Christina A. Marshall, Esq. dated June 20, 2019 in Support of Motion.....</b>	<b>2</b>
<b>Plaintiff’s Notice of Cross-Motion, Good Faith Affirmation of John P. Grill, Esq. dated May 30, 2019, Affirmation of John P. Grill, Esq. dated June 7, 2019 in Support of Cross-Motion and in Opposition to Motion, and Exhibits (“A” through “C”).....</b>	<b>3</b>
<b>Affirmation of Christina A. Marshall, Esq. dated June 20, 2019 in Partial Opposition to Cross-Motion and Exhibits (“A” through “E”).....</b>	<b>4</b>
<b>Affirmation of Mary Frances G. Marino, Esq. dated July 12, 2019 in Reply and in Opposition to Cross-Motion.....</b>	<b>5</b>

*This motion and cross-motion are consolidated for purposes of Decision/Order and, upon the foregoing papers and after due deliberation, the Decision/Order on this motion and cross-motion is as follows:*

Defendant Jones Lang Lasalle Americas, Inc. (“Jones Lang”) seeks an order dismissing the plaintiff’s complaint or, alternatively, precluding the plaintiff from offering any related evidence at trial as a penalty for her purported failure to comply with Jones Lang’s demand for a supplemental bill of particulars and authorizations dated November 29, 2018, compelling the plaintiff to comply with said demand, postponing depositions until the plaintiff complies, striking certain of the plaintiff’s supplemental bill of particulars dated August 13, 2018, and directing that all party depositions be held at the Manhattan office of counsel for defendant JPMorgan Chase & Co. and Chase Manhattan Banking Corporation (“JPMorgan Chase”). The plaintiff cross-moves for an order striking, or conditionally striking, the defendants’ answers as a penalty for their purported failure to appear for depositions and provide court-ordered disclosure. The motion is granted solely as ordered below and is denied in all other respects. The cross-motion is denied in its entirety as moot.

The plaintiff seeks monetary damages for personal injuries purportedly sustained following a trip and fall on April 13, 2016 at a bank office branch owned, operated, managed, and/or controlled by the respective defendants. Jones Lang contends that the plaintiff’s bill of particulars did not set forth a statement of her injuries with a description of those claimed to be permanent or exacerbations of pre-existing injuries., a delineation of the total amounts claimed as to special damages for physicians’ services and medical supplies, loss of earnings, hospital expenses, and nurses’ services as required by CPLR Rule 3043. In addition, Jones Lang objects to the plaintiff’s incorporating by reference an electronically annexed operative report of Sun Jin Kim, M.D. dated April 10, 2018 and related medical record as part of her supplemental bill of particulars.

By letter dated November 29, 2018, Jones Lang demanded that the plaintiff provide a supplemental bill of particulars supplying this missing information. In addition, Jones Lang requested that the plaintiff furnish HIPAA-compliant authorizations permitting the release of her medial records and diagnostic reports from all healthcare providers regarding treatment to her right knee, left knee, right shoulder, back, and neck from the date of the first treatment to the present, her collateral source records from the accident date to present, her prescription records from all pharmacies used in connection with her alleged injuries,

her medical records from Dr. Sun, and original copies of plaintiff's photographs of the accident location to replace the unclear copies furnished by the plaintiff. Jones Lang contends that these items remain outstanding.

In response to the demand for a statement of the injuries alleged, the plaintiff's bill of particulars dated August 13, 2018 names symptoms (such as "pain" and "difficulty ambulating") and medical procedures (such as "physical therapy", "steroid injection", and "knee replacement"), but no actual injury. Simply referring to a multi-page report by a physician is an improper substitute for the clear statement of the nature and extent of the claimed injuries required by CPLR Rule 3043 (*see Sobel v. Midchester Jewish Center*, 52 AD2d 944 [2<sup>nd</sup> Dept 1976]). Therefore, the plaintiff shall provide a supplemental verified bill of particulars setting forth a clear statement of the actual injuries alleged to have been sustained as a result of the underlying accident. However, the inclusion of certain medical reports need not be stricken from the plaintiff's supplemental bill of particulars/Rule 202 exchange dated August 13, 2018 (*id.*). The remaining objections to the bill of particulars are unavailing, since it does state that the plaintiff makes no claim for lost earnings and no claim for special damages, other than a Medicaid lien (the amount of which has been provided to the defendants).

As to the location of the party depositions, Jones Lang proposes that they be held in the Manhattan offices of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, counsel for co-defendant JPMorgan Chase, since they have the technical capabilities to view a certain video recording apparently made on special software that captured the subject accident. Counsel for all parties appeared at said office to view the recording for themselves. JPMorgan Chase has apparently agreed, but the plaintiff has declined. This Court has already directed that depositions be conducted in Bronx County, as the venue of this action (*see* Compliance Conference order dated February 28, 2019). Therefore, counsel shall make the necessary arrangements to conduct the depositions in Bronx County.

With respect to the allegedly outstanding authorizations, the plaintiff has submitted copies of authorizations that she has furnished for Dr. Kim, Montefiore Medical Center, ambulance records, and Medicaid. In its reply papers, Jones Lang fails to demonstrate why these authorizations are insufficient. However, it appears that an authorization to obtain the plaintiff's pharmaceutical records has not been furnished.

With respect to additional copies of the plaintiff's photographs depicting the accident location, plaintiff's counsel avers that he does not have electronic copies of said photographs. Therefore, the plaintiff shall furnish duplicate original color photographs to the defendants at their cost.

The plaintiff's cross-motion is denied as moot. The plaintiff requested the same relief in a different

motion filed on May 14, 2019, which this Court decided in a separate Decision/Order of today's date.

Accordingly, it is hereby

ORDERED that the plaintiff shall provide the defendants with a verified supplemental bill of particulars setting forth a clear statement of the actual injuries alleged to have been sustained as a result of the underlying accident no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that party depositions shall take place in Bronx County; and it is further

ORDERED that the plaintiff shall provide the defendants with a HIPAA-complaint authorization specifically to obtain her pharmaceutical records generated as a result of the underlying accident no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall supply the defendants with duplicate original color photographs of the underlying accident location, to be paid for by the defendants, no later than 30 days following service of a copy of this Order with notice of entry

The foregoing constitutes the Decision and Order of this Court.

DATED: 8-1-19  
Bronx, New York

LGD  
HON. LAURA G. DOUGLAS  
J.S.C.