

**Colon v Vargas**

2020 NY Slip Op 33662(U)

October 26, 2020

Supreme Court, Kings County

Docket Number: 025444/2010

Judge: Lawrence S. Knipel

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**SUPREME COURT OF THE STATE OF NEW YORK  
360 Adams Street, Room 295  
Brooklyn, New York 11201**

**DIFFERENTIATED CASE MANAGEMENT PROGRAM**

**PRESENT:** Hon. Lawrence Knipel, Justice

**Part CDCP** 25

**Index Number.:** 025444/2010

COLON, CARELYS

\_\_\_\_\_  
**PLAINTIFF,**

- against -

VARGAS, JUAN & AWILDA

\_\_\_\_\_  
**DEFENDANT.**

**CASE SCHEDULING ORDER - CITY CASES**

A request for a preliminary conference having been filed or the court having acted on its own initiative,

IT IS HEREBY ORDERED that this case is designated a Standard matter pursuant to Uniform Rule §202.19(b) and disclosure not already furnished shall proceed in accordance with the deadlines set forth below. However, a party claiming to be prejudiced by this Order may seek a modification of the Standard matter designation or the schedule by contacting, the City Discovery Part Clerk, by email at [KSCCVDCP@nycourts.gov](mailto:KSCCVDCP@nycourts.gov), or phone (347) 401-9264 within 20 DAYS FROM THE DATE OF THIS ORDER. The City Discovery Part Clerk will provide an opportunity to the parties to be heard on the request at a court conference and the court will take such action as is appropriate. Failure to contact the City Discovery Part Clerk in a timely manner shall constitute a waiver of any objection to the designation or schedule. The parties shall not contact the Justice assigned.

1. **Notification:** After this Case Scheduling Order has been signed, it will be posted to the New York State Courts Electronic Filing System ("NYSCEF") if this is an e-filed case. All e-filing counsel are expected to monitor the NYSCEF docket and their e-mail addresses for access to this Order and other e-filings in the case. If this is a hard-copy case, a copy of this Order will be posted at Web Civil Supreme, which is accessible at no charge on the court's website, <https://iapps.courts.state.ny.us/webcivil/FCASMain>. Counsel must consult Web Civil Supreme to obtain a copy of this Order; no copy will be mailed by the court. Attorneys may obtain, at no charge, e-mail notification of the issuance of this Order and all other court developments in this and other cases by listing them with e-Track, the court system's case tracking service, which is accessible at <https://iapps.courts.state.ny.us/webcivil/etrackLogin> or by means of the e-Track link at [www.nycourts.gov](http://www.nycourts.gov). In addition, counsel for plaintiff shall, within ten days after the posting of this Order to Web Civil Supreme in a hard-copy case, serve copies on all counsel and all self-represented parties and shall file with the County Clerk an affidavit of service. In an e-filed case in which at least one party is exempt from e-filing, counsel for the first-named participating plaintiff or, if there is none, the first named participating defendant shall, within ten days after the e-filing of this Order, serve a hard copy on all exempt counsel and self-represented parties and shall e-file proof of such service.

2. Insurance Coverage: The defendant City of New York and any other defendant represented by Corporation Counsel are uninsured. All defendants (if applicable), excluding the City shall furnish to all parties evidence of primary and excess coverage and Certificate of Insurance within 30 days from the date of this Order.
3. Bill of Particulars: If not previously served, plaintiff is to serve all parties with a bill of particulars within 30 days of this Order. Any party seeking additional particulars (including as to affirmative defenses, if any) shall serve a demand for a bill within 21 days from the date of this Order. The party receiving the demand shall serve a verified bill of particulars within 60 days from the date of this Order.
4. Medical Records and Authorizations:
- (a) Plaintiff(s) shall provide authorizations to obtain copies of the actual records of all treating and examining health care providers, including diagnostic tests, x-rays, MRIs, EMGs, CT Scans, for injuries specified in the bill of particulars, within 30 days from the date of this Order.
- (b) Plaintiff(s) shall provide an authorization for collateral source information, if any, within 30 days from the date of this Order.
- (c) If plaintiff is claiming a loss of income or wages, within 30 days from the date of this Order, plaintiff shall provide authorizations for W-2 forms or employment records for the year of, year before and year after the date of the alleged accident, as well as for the period of time lost from work as a result of the alleged accident, or IRS records if provided by law.
- (d) If plaintiff was a student at the time of the alleged accident, within 30 days from the date of this Order, plaintiff shall provide an authorization for school attendance records for the period of time lost from school as a result of the alleged accident.
- (e) For cases alleging police misconduct including false arrest, malicious prosecution or excessive force, IT IS HEREBY ORDERED by this court that all records maintained by law enforcement agencies, criminal courts, and/or district attorney's offices in relation to the underlying incident are hereby unsealed, and all governmental agencies, bodies and employees having custody of any records are permitted to release such records to the Office of the Comptroller or the Office of the Corporation Counsel of the City of New York, or its authorized agent or employee. This Order specifically authorizes the New York City Police Department; the relevant District Attorney's Office; the relevant New York State Supreme Court, Criminal Term; and the relevant New York City Criminal Court to disclose any and all records in their possession relating to the underlying arrest and/or prosecution to the Office of the Corporation Counsel of the City of New York, or its authorized agent or employee. Corporation Counsel of the City of New York shall provide copies of such records to the plaintiff within 30 days of receipt.
5. Depositions:
- (a) The depositions of all parties shall take place on PL. 2/23/21, 3rd PTY PLTF JUAN VARGAS-3/2/21  
3rd PTY Awila Vargas-3/9/21 & City-3/9/21. Plaintiff is to contact the Office of the Corporation Counsel for the location of the depositions, which are to be conducted remotely during the pendency of the pandemic, or in-person at the Office of Corporation Counsel, 350 Jay Street, Brooklyn, New York 11201 once such office has been reopened for this purpose. Absent prior court approval, any EBT which is not held as scheduled in this Order must be promptly rescheduled for a date which is not later than 60 days after the original date.
- (b) Defendant(s)' right to a further deposition of plaintiff(s) is reserved as to any new injuries or damages claimed in any supplemental bill of particulars served by plaintiff(s) following the plaintiff's deposition.
- (c) Defendant(s) waive(s) the right to a General Municipal Law §50-h hearing.  yes  no

6. Physical Examination:

- (a) A physical examination of the plaintiff(s) shall be noticed within 60 days after the completion of the examination before trial of the plaintiff(s) and conducted within 60 days of such notice.
- (b) A copy of the physician's report shall be furnished to plaintiff(s) within 45 days after the examination.
- (c) Defendant(s)' right to a further physical examination is reserved as to any new injuries claimed in any supplemental bill of particulars served by plaintiff(s).

7. Other Disclosure:

- (a) All parties shall provide the names and addresses of any witnesses to the occurrence and notice witnesses; accident reports; party statements; photographs; and video footage taken in the ordinary course of business and/or to be presented at trial, within 90 days from the date of this Order.
- (b) All parties shall supply expert witness disclosure pursuant to the CPLR.
- (c) All defendants other than those listed in Item 7(d) shall, within 90 days from the date of this Order, provide to all parties copies of maintenance and repair records for 2 years prior to and including the date of the occurrence.
- (d) The City of New York and/or other defendants represented by Corporation Counsel, if any, shall provide the following Additional Disclosure to all parties within 90 days from the date of this Order, subject to the date and location specified in the notice of claim:

**Slip and Fall Cases (Department of Sanitation):**

- i. District Operation Log (carting book) for period of two weeks prior to and including the date of occurrence;
- ii. District Snow Operation Book for the above period of time;
- iii. Snow Removal Operation Report (SR-2) and spreading or plowing operation card for the above period of time, if the occurrence took place in the roadway.

**Trip and Fall Cases (Department of Transportation):**

- i. Applications for permits and permits for 2 years prior to, and including, the date of occurrence;
- ii. Cut forms, repair orders and repair records for 2 years prior to, and including, the date of occurrence;
- iii. Violations issued for 2 years prior to, and including, the date of occurrence;
- iv. A copy of the title and signature pages, and insurance declaration sheets and/or certificates, for all contracts in effect for two years prior to, and including, the date of occurrence;
- v. Contracts and all related contract documents (i.e. progress reports) for two years prior to, and including, the date of occurrence will be made available for inspection and copying at either the Office of the Corporation Counsel designated by said Counsel, or the appropriate City agency, upon a mutually convenient appointment, but in no event more than 90 days hereafter or after a subsequent request for same by plaintiff;
- vi. Complaints made for 2 years prior to, and including, the date of occurrence;

vii. A copy of the most recent Big Apple Pothole and Sidewalk Protection Corporation map filed for the area in issue and, if the incident at issue occurred six months or less after the filing of the most recent such map, then the City shall also produce the last such map filed before the most recent such map for that location.

**ADDITIONAL DISCLOSURE ITEM 7(d) CONTINUED:**

**Trip and Fall Cases (Tree Well) (Department of Parks):**

- i. Applications for permits and permits for 2 years prior to, and including, the date of occurrence;
- ii. Repair orders and repair records for 2 years prior to, and including, the date of occurrence;
- iii. Violations issued for 2 years prior to, and including, the date of occurrence;
- iv. Complaints made for 2 years prior to, and including, the date of occurrence.

**Cases involving allegations of defective traffic signals (DOT):**

- i. Maintenance and repair records for 30 days prior to, and including, date of occurrence;
- ii. Complaints made for 30 days prior to, and including, date of occurrence;
- iii. The name and addresses of the contractor responsible for maintenance of the traffic signals on date of the occurrence;
- iv. A copy of title and signature pages, and insurance declaration sheets and/or certificates, for all contracts in effect for two years prior to, and including, the date of the occurrence;
- v. Contracts and all related contract documents (i.e., progress reports) for two years prior to, and including, the date of the occurrence will be made available for inspection and copying at either the Office of the Corporation Counsel designated by said Counsel, or the appropriate City agency, upon a mutually convenient appointment, but in no event more than 90 days hereafter or after a subsequent request for same by plaintiff.

**Cases involving allegations of police misconduct:**

The City will provide the following within 90 days from the date of this order or within 60 days of receipt of the records as outlined in Section 4(e):

- i. Complaint Report;
- ii. Complaint Follow Up Report(s);
- iii. Arrest Report;
- iv. Memo Book entries for incident in question;
- v. On-line Booking Sheet;
- vi. Copies of the applicable Patrol Guide shall be made available by the City for inspection and copying within 90 days from the date of this Order;
- vii. Copies of all 911 tapes, if still in existence, and all sprint printouts for any 911 calls and radio transmissions related to the events of the action.

**Inmate assault cases (Department of Correction):**

- i. Department of Correction incident report, subject to redaction of privileged information, including any information regarding criminal acts of other inmates and/or personal information regarding DOC employees;
- ii. Injury to inmate report (within 90 days after receipt of an authorization from plaintiff);

**ADDITIONAL DISCLOSURE ITEM 7(d) CONTINUED:**

- iii. In camera review of redactions to be made upon request of plaintiff's attorney.

**Premises Liability Cases:**

- i. Departmental accident/incident report from respective City agency;
- ii. For non-transitory conditions (including recurrent condition), maintenance and repair records and written complaints regarding the condition complained of for 18 months prior to and including the date of occurrence;
- iii. For transitory conditions, maintenance records and written complaints regarding the condition complained of for one month prior to and including the date of the occurrence;
- iv. If applicable, lease and/or sublease for the City-owned building.

**Department of Education Cases:**

- i. Department of Education Comprehensive Accident Report for the occurrence, subject to redaction of privileged information pursuant to the Family Education and Privacy Act, 20 U.S. Code Ch. 31. Extent and nature of the redaction, if questioned, are subject to motion under the statute;
- ii. Witness statements, subject to redaction of privileged information pursuant to the Family Education and Privacy Act. Extent and nature of the redaction, if questioned, are subject to motion under the statute;
- iii. For non-transitory conditions (including recurrent conditions), maintenance and repair records, written complaints and, to the extent applicable, related contracts for the situs of plaintiff's accident, regarding the condition complained of for 18 months prior to, and including, the date of occurrence.
- iv. For transitory conditions, maintenance records and written complaints regarding the condition complained of for two months prior to, and including, the date of the occurrence.
- v. Defendants shall furnish to the court the records for all students alleged to be involved in an incident/accident for an in camera inspection within 60 days from the date of this Order.

**Motor vehicle accidents involving City-owned vehicles:**

- i. Departmental Accident Report from respective City agency;
- ii. Maintenance and repair records for the department vehicle involved for one year prior to, and including, the date of the occurrence, if a vehicular defect is alleged in either the departmental accident report or the MV-104;
- iii. Photos of damage to City vehicle;
- iv. Record regarding post-accident repairs shall be supplied by the City unless determined by the court not to be relevant an issue in the case.

**Department of Environmental Protection Cases:**

- i. Accident/Incident report for the occurrence, including any photos;
  - ii. Applications for permits and permits for two (2) years prior to, and including, the date of occurrence;
  - iii. Repair orders for two (2) years prior to, and including, the date of occurrence;
  - iv. Complaints made for two (2) years prior to, and including, the date of occurrence.
7. Other Disclosure (CONTINUED):
- (e) Surveillance videos to be provided in accordance with CPLR §3101(i).
  - (f) Any party who wishes to obtain prior notices of claim, pursuant to GML §50-g, may do so by contacting the Division Chief of Claims Support at (212) 669-4118 to set up an appointment to search the index maintained at 1 Centre Street, New York, New York.
  - (g) The New York City Police Department no longer maintains MV-104s beyond 30 days for accidents occurring after April 15, 1995.
  - (h) All searches shall be conducted based upon the date and location as described in the notice of claim.
8. Third-Party Actions/Impleader: Shall be completed within 60 days of the last Examination Before Trial.
9. Compliance Conference: Shall be held remotely on:  
 (Insert date and time) 5/25/21.
10. Note of Issue Date: Shall be filed upon the completion of all discovery.
11. Plaintiff shall, within 15 days after the note of issue is filed and request from defense counsel is received, provide HIPAA-compliant authorizations to defense counsel for medical records, to be attached to subpoenas directing that those records be sent to the courthouse. If there is any dispute, it shall be promptly brought to the attention of the Case Management Office for resolution.
12. Summary Judgment Motions: Shall be filed no later than 90 days after filing of the Note of Issue unless otherwise directed by the court.
13. Summary Jury Trials: Parties are encouraged to consider a Summary Jury Trial. Summary Jury Trial Procedures can be found at <http://ww2.nycourts.gov/courts/2jd/kings/civil/SummaryJuryTrialRules.shtml>.
14. ADR: Parties are encouraged to utilize one of the various Alternative Dispute Resolution options available to resolve the matter as early, equitably and efficiently as possible. Information regarding ADR can be found at <https://www.nycourts.gov/LegacyPDFS/courts/2jd/kings/civil/PRESUMPTIVE-ADR-PLAN.pdf> and by contacting Kelechi Acholonu, ADR Coordinator, at [kacholon@nycourts.gov](mailto:kacholon@nycourts.gov).

This Case Scheduling Order supersedes any and all prior combined demands, notices of discovery and inspection, and discovery orders and is the singular governing discovery order to date.

If disputes arise about compliance with this Order, the parties shall promptly confer in an effort to resolve them. If that effort fails, the parties or any party aggrieved shall, in advance of deadlines and prior to initiating motion practice, bring the dispute to the attention of the City Discovery Part Clerk who will schedule a conference shortly thereafter to resolve the dispute. The parties may adjourn the deadlines set forth in Items 5 through 8 above provided that all disclosure called for by this Order shall be furnished prior to the compliance conference set forth in Item 9. The date of the compliance conference will normally not be adjourned and any adjournment requires advance permission of the court. Absent good cause, failure to comply with this Order may result in the imposition of penalties upon the offending party and, where warranted, upon counsel. Such penalties may include waiver of discovery, preclusion, dismissal, striking of an answer, costs, sanctions, and attorney's fees.

This constitutes the Order of the court.

Dated: October 26, 2020



HON. LAWRENCE KNIPPEL  
ADMINISTRATIVE JUDGE  
Hon. Lawrence Knipel JSC