

<b>Cherry v State of New York</b>
2021 NY Slip Op 33040(U)
March 15, 2021
Court of Claims
Docket Number: Claim No. 123649
Judge: Judith A. Hard
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CHERRY v. STATE OF NEW YORK, # 2021-032-025, Claim No. 123649, Motion No. M-96012

## Synopsis

Motion amend the claim denied. Claimant failed to include proposed amended claim.

## Case information

UID: 2021-032-025  
Claimant(s): CHARLES CHERRY  
Claimant short name: CHERRY  
Footnote (claimant name) :  
Defendant(s): STATE OF NEW YORK  
Footnote (defendant name) :  
Third-party claimant(s):  
Third-party defendant(s):  
Claim number(s): 123649  
Motion number(s): M-96012  
Cross-motion number(s):  
Judge: JUDITH A. HARD  
Claimant's attorney: Charles Cherry, Pro Se  
Defendant's attorney: Hon. Letitia James, Attorney General  
By: Shadi Masri, AAG  
Third-party defendant's attorney:  
Signature date: March 15, 2021  
City: Albany  
Comments:  
Official citation:  
Appellate results:  
See also (multcaptioned case)

## Decision

Claimant, an proceeding pro se, filed the instant claim on December 12, 2013, seeking damages for injuries sustained as the result of negligent medical treatment. Claimant now seeks to amend the claim to increase the amount of the ad damnum clause to one million dollars. Defendant opposes the motion.

Pursuant to CPLR Rule 3025 (b) and § 206.7 (b) of the Uniform Rules for the Court of Claims, a party may amend a pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of Court. It is well settled that leave to amend a pleading ' "shall be freely given' absent prejudice or surprise resulting directly from the delay" (McCaskey, Davies & Assoc. v New York City Health & Hosps. Corp., 59 NY2d 755, 757 [1983], quoting CPLR 3025 [b] and Fahey v County of Ontario, 44 NY2d 934, 935 [1978]) or a showing that the proposed amendment plainly lacks merit (see Thomas Crimmins Contr. Co. v City of New York, 74 NY2d 166 [1989]).

CPLR 3025 (b) requires that "any motion to amend or supplement pleadings . . . be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading." Here, claimant submits a Notice of Motion and what appears to be two affidavits in support of the motion, titled "Affidavit of Motion proposed amended claim, ad damnum of dollars" and "Motion of proposed to ad damnum amended claim upon the dollars." A proposed amended claim is not included with these documents. As claimant failed to submit a proposed amended claim, the Court must deny the motion (Rodriguez v State of New York,

UID No. 2020-038-556 [Ct Cl, DeBow, J., Oct. 6, 2020]; McLean v State of New York, UID No. 2016-040-098 [Ct Cl, McCarthy, J., Nov. 15, 2016].<sup>(1)</sup>

Accordingly, claimant's motion to amend the claim (M-96012) is **DENIED**.<sup>(2)</sup>

March 15, 2021

Albany, New York

JUDITH A. HARD

Judge of the Court of Claims

Papers Considered:

1. Notice of Motion, undated; Affidavit of Motion, sworn to by claimant on October 1, 2020; Affidavit, sworn to by claimant on October 1, 2020.
2. Affirmation in Opposition to Motion to Amend Pleading, affirmed by Shadi Masri, AAG on November 2, 2020.

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1. Unpublished decisions and selected orders of the Court of Claims are available at <http://www.nyscourtofclaims.state.ny.us>.

2. Claimant attempted to file a reply, which was received by the Court on February 11, 2021, well past the motion's November 4, 2020 return date. The Court did not consider the reply in rendering its decision, but notes that the reply also did not include a proposed amended claim.

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