

Guzman v Delta Air Lines, Inc.

2025 NY Slip Op 33786(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 156237/2021

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

WILMER GUZMAN, KARLA RODAS

Plaintiff,

- v -

DELTA AIR LINES, INC., TURNER CONSTRUCTION COMPANY,

Defendant.

-----X

INDEX NO. 156237/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 86, 87, 88, 89, 90

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 91, 92

were read on this motion to/for STRIKE PLEADINGS

FACTUAL AND PROCEDURAL BACKGROUND

This personal injury action arises from a June 15, 2021 accident in which Plaintiff Wilmer Guzman allegedly "fell off of a lift which tipped over" while working at a Delta Air Lines/Tuner Construction site. Plaintiff seeks damages under Labor Law §§ 200, 240(1), 241(6), and related Industrial Code provisions.

Verified Bill of Particulars (Nov. 15, 2021)

Plaintiffs first served a Verified Bill of Particulars ("BP") detailing multiple fractures and surgeries. Among other injuries, Plaintiff alleged the following injuries: (1) Mid femoral shaft fracture with medial displacement and angulation (2) Type 3 open fracture of the left femoral shaft (3) Closed fracture of left tibial shaft. Plaintiff also alleged the following surgeries which

allegedly occurred on June 16, 2021: (1) left posterior thigh irrigation and debridement (2) closed reduction retrograde intramedullary nailing of the left femoral shaft (3) closed reduction intramedullary nailing of left tibial shaft. At this stage, no lumbar spine injury or knee surgery was referenced.

Supplemental Verified Bill of Particulars (Nov. 10, 2022)

Plaintiffs thereafter served a Supplemental BP, which significantly expanded the scope of injuries. In addition to the orthopedic injuries noted above, it alleged: (1) Thin linear tear of the inferior articular surface of the posterior horn of the medial meniscus, left (2) Partial tear of the anterior cruciate ligament, left (3) Posterior disc herniations at L3-4 and L4-5 impinging upon the thecal sac (4) Disc bulge L5-S1 (5) Atrophy to the left thigh and lower leg, post-traumatic lumbar pain, and psychological sequelae.

Thus, the Supplemental BP introduced the lumbar spine and knee soft tissue injuries, though it did not yet claim surgery related to those areas.

Amended Verified Bill of Particulars (dated June 14, 2024; postmarked Oct. 17, 2024)

After service of the Note of Issue on June 17, 2024, Plaintiffs submitted an Amended BP which, according to Defendants, was mailed four months later. The Amended BP reasserted earlier injuries but for the first time alleged (1) anticipated left knee surgery (2) an increase in past lost earnings to \$55,000 (3) a new claim for “diminished future earning capacity (4) An increase in hospital service expenses to \$75,500.

Defendants move in Motion Sequence 003 to strike the Amended BP as untimely and improperly expanding the claims. Plaintiffs opposed, contending that the affidavit of service established timely mailing on June 14, 2024, prior to the Note of Issue; that the claimed damages

were continuations of injuries already pled; and that updating economic damages is expressly permitted under CPLR 3043(b).

Second Supplemental Verified Bill of Particulars (dated Sept. 30, 2024; received Jan. 16, 2025)

Finally, Plaintiffs served a Second Supplemental BP, which confirmed that Plaintiff had in fact undergone the left knee procedure referenced earlier claiming: (1) Left knee arthroscopy with extensive debridement of arthrofibrosis (2) “Partial medial meniscectomy, left knee” (performed Sept. 4, 2024 at Manhattan Surgery Center).

The Second Supplement BP further updated lost earnings and hospital expenses, while reiterating lumbar, orthopedic, and psychological injuries.

Defendants move in Motion Sequence 004 to strike this Second Supplemental BP as an impermissible “backdoor” amendment to add new injuries post–Note of Issue. Plaintiffs opposed, asserting that the knee was pled as injured since 2022, and that supplementation for continuing treatment and updated special damages is proper under CPLR 3043(b).

LEGAL STANDARD

Under CPLR 3042(b), a party may serve an amended Bill of Particulars once as of right prior to the filing of the note of issue. After that, amendment requires leave of court under CPLR 3025(b).

CPLR 3043(b) permits a party, without leave, to serve a supplemental Bill of Particulars “with respect to claims of continuing special damages and disabilities without leave of court at any time, but not less than thirty days prior to trial. Provided however that no new cause of action may be alleged or new injury claimed and that the other party shall upon seven days

notice, be entitled to newly exercise any and all rights of discovery but only with respect to such continuing special damages and disabilities.”

Once a Note of Issue is filed, certifying the case as trial ready, amendments that inject new injuries or damages are generally disallowed absent leave of court and a showing of unusual or unanticipated circumstances (22 NYCRR 202.21[d]); *see Cintron v New York City Tr. Auth.*, 77 AD3d 410, 908 NYS2d 190 (1st Dept 2010) (striking post–Note of Issue amendments alleging new theories and code violations). Courts distinguish, however, between impermissible amendments adding new injuries and permissible supplements updating continuing damages.

DISCUSSION

Motion to Strike the Amended Bill of Particulars (Motion Sequence 003)

Defendants contend that the Amended BP is untimely, having been mailed months after the June 2024 Note of Issue, and improperly alleges new damages including anticipated knee surgery, new economic loss claims, and enhanced hospital expenses. Plaintiffs argue that the affidavit of service establishes timely service, that the knee was already in issue since the 2022 Supplemental BP, and that increased wage loss and medical bills fall within CPLR 3043(b).

On this record, the Court finds Plaintiffs’ argument more persuasive. The 2022 Supplemental BP squarely alleged knee injuries, including a meniscus tear and ACL tear, thereby placing the left knee in issue well before the Amended BP. The reference to an anticipated surgery does not constitute a new injury, but rather a foreseeable progression of an existing condition. Similarly, increases in lost wages and hospital expenses are the type of continuing special damages that CPLR 3043(b) contemplates and allows.

While Defendants rely on the postmark date of October 17, 2024, Plaintiffs have produced an affidavit of service reflecting mailing on June 14, 2024. Even if there were irregularities in mailing, the Court finds no prejudice to Defendants where the body parts and injuries were previously pled, and where Defendants had ongoing notice of economic losses and medical treatment. Under these circumstances, striking the Amended BP would elevate form over substance. Accordingly, Motion Sequence 003 is denied.

Motion to Strike the Second Supplemental Bill of Particulars (Motion Sequence 004)

By contrast, the Second Supplemental BP does not add a new body part but reflects surgical treatment of the same left knee injuries (meniscus tear, ACL tear) that were pled since November 2022. Under CPLR 3043(b), supplementation to update continuing special damages—including surgeries, medical expenses, and lost earnings—is permissible so long as served more than 30 days before trial. The absence of a trial date further eliminates prejudice.

Defendants' argument that the Second Supplemental merely attempts to "backdoor" the proposed stricken Amended BP is unavailing. The 2022 Supplemental BP squarely placed the knee at issue, and the September 2024 surgery is a foreseeable continuation of that injury. Accordingly, Motion Sequence 004 is denied, as the court finds that the proffered amendment does not allege new injuries or damages.

The court has considered the remaining arguments of the parties and finds such unavailing.

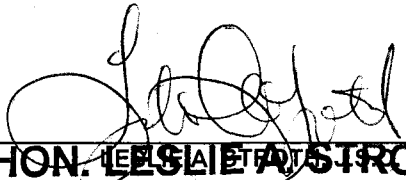
Accordingly; it is hereby

ORDERED that Motion Sequence 003 to strike the Supplemental Bill of Particulars is denied; and it is further

ORDERED that Motion Sequence 004 to strike the Second Supplemental Bill of Particulars is denied; and it is further

The foregoing constitutes the decision and order of the court.

10/6/2025
DATE


HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	