

Piazza v Dobri

2025 NY Slip Op 33992(U)

October 15, 2025

Supreme Court, New York County

Docket Number: Index No. 805158/2021

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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LYNNE PIAZZA and AUGUST PIAZZA,

Plaintiff,

- v -

GEORGIANA A. DOBRI, M.D., WEILL CORNELL
NEUROLOGICAL SURGERY, NEW YORK-
PRESBYTERIAN/WEILL CORNELL MEDICAL CENTER,
and THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendants.

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INDEX NO. 805158/2021
MOTION DATE 10/15/2025
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for LEAVE TO FILE.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, and loss of spousal consortium, the plaintiffs move pursuant to CPLR 3042(b) and 3043(c) for leave to serve an amended bill of particulars adding a claim for loss of earnings. The defendants oppose the motion. The motion is granted, on the condition that,

- (a) on or before November 28, 2025, the plaintiffs shall provide the defendants with all of the plaintiff Lynne Piazza’s relevant federal and state tax returns, W2 wage statements, and other documentation in the plaintiffs’ possession reflecting her earnings, beginning in the tax year 2014 until the present, as well as authorizations permitting the defendants to obtain her work records for that same period of time, and
- (b) on or before December 31, 2025, the plaintiff Lynne Piazza shall submit to a further deposition, limited to the issue of her claim for loss of earnings.

Where a plaintiff seeks to assert new theories of recovery or new claims for damages, he or she may do so in an amended bill of particulars (*see Stovall v Lenox Hill Hosp.*, 200 AD3d 570, 571 [1st Dept 2021]). Hence, service of an amended bill of particulars is required where a plaintiff in a personal injury or medical malpractice action seeks to assert a claim for loss of

earnings that had not previously been asserted (*see Bauch v Verrilli*, 176 AD2d 1116, 1117 [3d Dept 1991]; *Pearce v Booth Mem. Hosp.*, 152 AD2d 553, 554 [2d Dept 1989]). Pursuant to CPLR 3042(b), “a party may amend the bill of particulars once as of course prior to the filing of a note of issue.” Hence, where, as here, the note of issue already has been filed, leave of court is required before the plaintiffs may amend their bill of particulars (*see Matias v West 16th Realty, LLC*, 197 AD3d 1043, 1043 [1st Dept 2021]).

“Leave to amend pleadings, including a bill of particulars, is to be freely given, absent prejudice or surprise” (*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364, 365 [1st Dept 2007]; *see* CPLR 3025[b]; *McCaskey, Davies and Assocs., Inc v New York City Health & Hospitals Corp.*, 59 NY2d 755, 757 [1983]; *360 West 11th LLC v ACG Credit Co. II, LLC*, 90 AD3d 552, 553 [1st Dept 2011]; *Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d 809, 811 [1st Dept 2008]; *Sahdala v New York City Health & Hosps. Corp.*, 251 AD2d 70, 70 [1998] [“motion court properly exercised its discretion in granting plaintiff leave to amend his bill of particulars to include a claim premised upon the decedent’s lost earnings”]). Indeed, “leave to amend a bill of particulars following the filing of a note of issue . . . is ordinarily freely given absent surprise or prejudice to the defendants” (*Henchy v VAS Express Corp.*, 115 AD3d 478, 479 [1st Dept 2014]; *see Spiegel v Gingrich*, 74 AD3d 425, 427 [1st Dept 2010]). The court must examine the sufficiency of a proposed amendment only to determine whether the proposed amended pleading is “palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1st Dept 2010]; *see Smith-Hoy v AMC Prop. Evaluations, Inc.*, 52 AD3d at 811). The court concludes that the proposed amendment here is not palpably insufficient or clearly devoid of merit.

As the Appellate Division, First Department, has explained,

“‘[i]n the absence of prejudice, mere delay is insufficient to defeat the amendment’ (*Sheppard v Blitman/Atlas Bldg. Corp.*, 288 AD2d 33, 34 [2001]). Prejudice requires ‘some indication that the defendant has been hindered in the preparation of his case or has been prevented from taking some measure in

support of his position' (*Loomis v Civetta Corrino Constr. Corp.*, 54 NY2d 18, 23, [1981])”

(*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d at 365). “The amendment, although belated, did not prejudice defendants since, from the inception of the action, defendants were aware that [plaintiff] worked” (*Sahdala v New York City Health & Hosps. Corp.*, 251 AD2d at 70). In any event, any delay here was not inordinate. On August 26, 2025, this court issued its order denying, in part, the defendants’ motion for summary judgment dismissing the complaint (MOT SEQ 001), and the plaintiffs made the instant motion on September 12, 2025.

Moreover, the court is mitigating any potential prejudice to the preparation of a defense to this action by scheduling the commencement of trial for June 3, 2026, almost eight months hereafter, and directing the plaintiffs to produce documentary discovery, provide authorizations, and submit to a further limited deposition while the action remains on the trial calendar (see *Samuelson v Wollman Rink Operations, LLC*, 196 AD3d 408, 408-409 [1st Dept 2021]; *WVH Hous. Dev. Fund Corp. v Brooklyn Insulation & Soundproofing, Inc.*, 193 AD3d 523, 523 [1st Dept 2021]; 22 NYCRR 202.21[d]), with all of that discovery to be completed no later than five months before the commencement of jury selection.

Accordingly, it is,

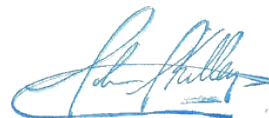
ORDERED that the plaintiff’s motion for leave to serve an amended bill of particulars to assert a claim for damages arising from loss of earnings is granted, and the proposed amended bill of particulars uploaded by the plaintiffs to the New York State Court Electronic Filing system as Docket Entry No. 61 is deemed to be served upon the defendants upon the entry of this decision and order, on condition that

- (a) on or before November 28, 2025, the plaintiffs shall provide the defendants with all of the plaintiff Lynne Piazza’s relevant federal and state tax returns, W2 wage statements, and other documentation in the plaintiffs’ possession reflecting her earnings, beginning in the tax year 2014 until the present, as well as authorizations permitting the defendants to obtain her work records for that same period of time, and

(b) on or before December 31, 2025, the plaintiff Lynne Piazza shall submit to a further deposition, limited to the issue of her claim for loss of earnings.

This constitutes the Decision and Order of the court.

10/15/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE