

Yacsavilca v Goldman Sachs Headquarters LLC

2025 NY Slip Op 34042(U)

October 20, 2025

Supreme Court, New York County

Docket Number: Index No. 451708/2015

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 5M

Justice

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JUAN JESUS YACSAVILCA,

Plaintiff,

INDEX NO. 451708/2015

MOTION DATE 09/04/2025

MOTION SEQ. NO. 006

- v -

GOLDMAN SACHS HEADQUARTERS LLC, BATTERY
PARK CITY AUTHORITY D/B/A HUGH L. CAREY
BATTERY PARK CITY AUTHORITY

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221

were read on this motion to AMEND CAPTION/PLEADINGS.

Plaintiff Juan Jesus Yacsavilca (“Plaintiff”) moves for (1) a judicial determination that the Supplemental/Amended Bill of Particulars dated August 8, 2025 (which identifies and itemizes the May 13, 2025 Laparoscopic Sleeve Gastrectomy with EGD (hereafter, “bariatric surgery” or “weight-loss surgery”) as continuing special damages and medical sequelae of the June 6, 2013 accident) is a permissible supplemental bill of particulars under CPLR § 3043(b), and (2) alternatively, in the event the court deems the filing to constitute an amendment asserting new injuries, for leave to amend the Bill of Particulars pursuant to CPLR § 3025. Plaintiff also seeks related relief (production of surgery records and expert disclosures already furnished). Defendants oppose the motion, arguing the supplementation is untimely, unrelated to the 2013 accident, and prejudicial given the proximity of trial (originally scheduled for September 15, 2025), and they contend the bariatric surgery derives from pre-existing obesity, not the accident.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a June 6, 2013 incident in which Plaintiff, while working at premises owned or controlled by the defendants, allegedly tripped over a raised metal plate and fell, sustaining injury to his left knee. Over the ensuing years, Plaintiff underwent multiple medical interventions, including a left knee arthroscopy on August 20, 2013, a right knee arthroscopy on November 3, 2021, and a lumbar fusion surgery on November 2, 2023. He also received multiple epidural injections for chronic pain between 2016 and 2018.

According to Plaintiff’s treating physicians, the combination of knee and back injuries significantly restricted his ability to exercise, leading to progressive weight gain that ultimately rendered him ineligible for total knee replacement surgery until he could reduce his body mass index. On May 13, 2025, Plaintiff underwent a Laparoscopic Sleeve Gastrectomy with EGD at the

direction of his bariatric surgeon, Dr. Wen-Ting Jeffery Chiao, as a medical precondition to future knee replacement.

Plaintiff served operative reports and related expert disclosures on June 13, 2025. On August 8, 2025, more than thirty days before the original scheduled trial date of September 15, 2025,¹ he served his Supplemental Bill of Particulars identifying the bariatric surgery as a continuing special damage arising from the original accident.

Defendants oppose this characterization, maintaining that Plaintiff's longstanding obesity predates the accident and that the 2025 surgery reflects an unrelated medical issue, not a consequence of the 2013 fall.

ARGUMENTS

Plaintiff argues that the May 13, 2025 bariatric procedure is a foreseeable and medically necessary sequela of the injuries sustained in 2013. He asserts that the accident-induced limitations on mobility directly contributed to his weight gain, which in turn complicated his orthopedic prognosis. His treating orthopedist, Dr. Daniel O'Connor, opines that total knee replacement surgery cannot proceed until Plaintiff achieves sufficient weight reduction. In that context, the bariatric procedure was not a new, independent injury, but rather a continuation of the course of treatment necessitated by the accident.

Plaintiff further contends that the supplement was served in full compliance with CPLR § 3043(b)—more than thirty days prior to trial—and that defendants were given prompt disclosure of the operative reports and expert opinions. Plaintiff emphasizes that no prejudice arises from the supplementation, and that defendants' own examining physician, Dr. Daniel Feuer, acknowledged in his report that Plaintiff should pursue weight-loss measures.

Relying on *Matter of Bolds v. Precision Health, Inc.*, 16 AD3d 1007 (3d Dept 2005), and *Matter of Laezzo v. New York State Thruway Authority*, 71 AD3d 1252 (3d Dept 2010), Plaintiff argues that courts routinely allow recovery for weight-loss procedures when such treatment is medically indicated as a natural outgrowth of accident-related injury.

Defendants counter that the bariatric surgery bears no proximate connection to the accident and is instead attributable to pre-existing obesity. They argue that the twelve-year interval between the accident and the surgery severs any causal chain and renders the supplement a new injury requiring leave to amend. Defendants further contend that the timing of the filing—on the eve of trial—creates undue prejudice, depriving them of an opportunity to conduct discovery or secure their own medical rebuttal evidence. Finally, they insist that the surgery introduces an entirely new category of damages and thus cannot be treated as a mere “continuing” condition within the meaning of CPLR § 3043(b).

DISCUSSION

¹ The matter is now scheduled for trial before the undersigned jurist on October 22, 2025.

The issue before the court is whether Plaintiff's August 8, 2025 Supplemental Bill of Particulars properly falls within CPLR § 3043(b) as continuing special damages and disabilities, or whether it constitutes a substantive amendment requiring leave of court under CPLR § 3025(b).

A. Timeliness Under CPLR § 3043(b)

CPLR § 3043(b) expressly permits a plaintiff to serve a supplemental bill of particulars "at any time, but not less than thirty days prior to trial," for the limited purpose of updating claims of continuing special damages and disabilities. The rule exists to accommodate the evolving nature of medical treatment in personal injury actions.

Here, the record establishes that Plaintiff served the supplement thirty-eight days before trial, well within the statutory period. The trial date was subsequently adjourned, and the matter is now scheduled for jury selection on Wednesday October 22, 2025, further undermining any argument that the supplement is untimely. The court therefore rejects defendants' argument that the submission was untimely (*see Alicino v. Rochdale Village, Inc.*, 142 AD3d 937 [2d Dept 2016][holding that supplemental bills of particulars served more than thirty days before trial to reflect ongoing treatment were proper]).

B. The Bariatric Surgery as a Sequela of the Original Injury

The more substantive question is whether the May 13, 2025 bariatric procedure constitutes a new injury or a foreseeable sequel to the 2013 accident. The answer lies in the principle of foreseeability and proximate cause.

In *Hain v. Jamison*, 28 NY3d 524 (2016), the Court of Appeals observed that proximate cause is a mixed question of law and fact, turning on whether the intervening event was "extraordinary under the circumstances, not foreseeable in the normal course of events, or independent of or far removed from the defendant's conduct" (*id.* at 529). Similarly, in *Bolds v. Precision Health, Inc.*, *supra*, the Appellate Division, Third Department, held that a weight-loss surgery performed as a medical necessity following accident-related immobility could be considered a natural consequence of the injury. And in *Laezzo v. New York State Thruway Authority*, *supra*, the same court found a sufficient causal nexus between the plaintiff's orthopedic injuries and a subsequent weight-loss program recommended as part of his medical care.

Applying those principles, the court concludes that Plaintiff's bariatric surgery is properly characterized as a continuation of medical treatment arising from the injuries alleged in this action. The record contains treating physician affirmations linking Plaintiff's progressive weight gain to his inability to exercise due to knee and back impairments. The medical necessity of weight reduction as a prerequisite for future total knee replacement is clearly documented.

While defendants may contest whether the accident in fact caused or contributed to plaintiff's weight gain, that question is one for the finder of fact, not the court on a procedural motion of this nature. The present determination does not resolve the ultimate question of causation; it merely recognizes that Plaintiff has articulated a plausible causal link between his

accident and the subsequent surgical treatment, sufficient to warrant inclusion in his bill of particulars.

C. Leave to Amend Is Unnecessary

Because the court finds the supplementation to be a proper notice of continuing special damages under CPLR § 3043(b), leave to amend is unnecessary. The surgery does not assert a new cause of action or a fundamentally distinct injury, but instead reflects a medical progression consistent with the course of Plaintiff's treatment since the accident (*see Ali v. JS 39, LLC*, 208 AD3d 544 [2d Dept 2022][holding that supplementation, not amendment, was proper where plaintiff sought to update injuries already encompassed within the scope of original pleadings]).

Even were the court to treat the submission as an amendment, it would freely grant leave under CPLR § 3025(b), as defendants have had ample notice of Plaintiff's weight-related limitations and the potential need for weight-loss intervention (*see Loomis v. Civetta Corinno Constr. Corp.*, 54 NY2d 18, 23 [1981][leave to amend should be freely given absent prejudice or surprise]; *Ackerman v. City of New York*, 22 AD2d 790 [2d Dept 1964][same]). Defendants' own medical expert recommended weight reduction, which significantly undermines any claim of surprise.

D. Prejudice and Discovery Considerations

Defendants have failed to demonstrate any concrete prejudice. Prejudice amounts to some special right lost in the preparation of one's case, not merely exposure to greater damage (*see Loomis, supra*). Here, defendants received operative reports and expert disclosures two months before trial and were offered further discovery, including an opportunity to depose the bariatric surgeon and treating orthopedist. Prejudice is further mitigated by the fact that the original September trial date was adjourned, and the matter is now scheduled for trial before this court on Wednesday, October 22, 2025, thereby evincing that defendants were afforded additional time to conduct any limited discovery they deemed necessary and elected not to pursue it.

Accordingly, the court finds that Plaintiff's August 8, 2025 submission is a timely and proper supplemental bill of particulars under CPLR § 3043(b). It presents a plausible and foreseeable causal link between the 2013 accident and the subsequent medical procedure, such that leave to amend is unnecessary. Whether Plaintiff can ultimately prove that causal connection remains a factual matter for the jury to determine at trial.

Accordingly, it is hereby

ORDERED that Plaintiff's motion is granted to the extent that the court deems the August 8, 2025 Supplemental Bill of Particulars to be a valid supplement pursuant to CPLR § 3043(b); and it is further

ORDERED that leave to amend is unnecessary, as the claimed treatment constitutes a permissible continuation of medical care and not a new injury; and it is further

ORDERED that the parties shall appear at 60 Centre Street, New York, NY 10013 for jury selection on Wednesday October 22, 2025, as previously directed.

This constitutes the decision and order of the court.

10/20/2025
DATE

HASA A. KINGO, 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