

**Jimenez v Tei Group, Inc.**

2025 NY Slip Op 34957(U)

December 17, 2025

Supreme Court, New York County

Docket Number: Index No. 155937/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

-----X

IGNACIO JIMENEZ,

Plaintiff,

- v -

TEI GROUP, INC.,

Defendant.

-----X

INDEX NO. 155937/2018

MOTION DATE N/A

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Defendant’s motion to strike the note of issue is denied.

**Background**

In this personal injury action, plaintiff contends that he was hurt when an elevator in which he was a passenger suddenly dropped multiple stories. Plaintiff filed a note of issue (as directed by the Court) on June 15, 2022. In two prior motions from 2022, both parties sought to do post-note of issue discovery (NYSCEF Doc. No. 101). Plaintiff sought to do an elevator inspection and defendant sought records from authorizations; defendant also sought to strike the note of issue all those years ago but this Court denied that portion of the motion (*id.*).

Now defendant moves to strike the note of issue on the ground that it has been unable to conduct an IME or further deposition of plaintiff. It adds that plaintiff has exchanged numerous discovery information since the note of issue was filed, including multiple supplemental bills of particular. Defendant contends that it finally got plaintiff to show up for a supplemental

deposition in September 2025 but that counsel for plaintiff interrupted the deposition so extensively that defendant shut down the deposition. Defendant wants to complete that deposition and to conduct additional IMEs regarding the additional medical treatment plaintiff has received post note of issue.

In opposition, plaintiff explains that the additional exchanges relate to the subject matter of this litigation—plaintiff’s injuries from the accident and, specifically, injuries to his lumbar spine. He insists that defendant waived its right to the further deposition by asking irrelevant questions but acknowledges that defendant is entitled to a further IME and that one is scheduled for December 1, 2025. Plaintiff emphasizes that he has always disclosed back injuries arising from the subject incident.

In reply, defendant contends that plaintiff served numerous supplemental bills of particular, ten authorizations for medical records and disclosed that he underwent two additional surgeries. It concludes it is therefore entitled to a continued deposition, an IME and to strike the note of issue.

### **Discussion**

As a preliminary matter, defendant is correct that given the voluminous additional discovery disclosed by plaintiff, it was entitled to a deposition and an IME. However, that deposition should necessarily be limited in scope to the additional information (*Lewis v Verizon New York Inc.*, 199 AD3d 572, 158 NYS3d 71 [1st Dept 2021] [permitting a limited post note of issue deposition but declining to strike the note of issue as it would prejudice plaintiff]).

A review of the recent deposition transcript reveals that defendant’s counsel did not treat the additional deposition as limited in scope to the recent disclosures. At one point, she insisted that she is “entitled to ask about every injury in all seven BPs” (NYSCEF Doc. No. 135 at 17)

despite the fact that some of these BPs were served prior to the filing of the note of issue. Counsel for defendant also attempted to inquire about “all body parts” for which plaintiff sought treatment (*id.* at 13). And, for some reason, there were questions about plaintiff’s wife’s employment and income (*id.* at 10). That does not evince a limited deposition—rather it shows an attempt to ask broad questions that should have been asked prior to the note of issue.

To be clear, the Court is not impressed with the conduct of either party’s attorney at the deposition. Although attorneys are expected to zealously represent their clients, the disagreements evident in the transcript did not demonstrate the requisite civility this Court expects. Attorneys can disagree, even vehemently, without disrespecting each other.

The Court finds that there is no reason for a further deposition given the procedural posture of this case. The note of issue was filed on June 15, 2022 and the parties have had seven pre-trial conferences scheduled (although they have adjourned the vast majority of them). Clearly, this case should proceed to an actual pre-trial settlement conference and then, if necessary, to trial. It is unclear what a further deposition will accomplish. The defendant is well aware of the extent of plaintiff’s claimed injuries given the extensive discovery disclosures about his surgeries and treatment. Asking plaintiff to reiterate that he has an ongoing back injury is, at this point, cumulative and unnecessary. Plus, it is unlikely to be productive given what happened at the last deposition.

In the papers, it seems plaintiff was scheduled for an IME on December 1, 2025. The Court assumes that this took place. If it did not, defendant is entitled to another IME about plaintiff’s back. That will yield all the necessary information.


**Summary**

It is a common occurrence that injured plaintiffs continue to seek treatment while on the trial calendar. Their obligation is to disclose the relevant records so that defendant can properly evaluate the scope of the claimed damages. A plaintiff who has undergone extensive treatment is often required to submit to an additional IME so that defendant can have a medical professional reach his or her own conclusions about the medical treatment. And a further deposition may also be necessary, provided that it is limited to the additional medical treatment disclosed. That deposition is not a chance to ask questions that should have been asked a pre-note of issue; it is not a second bite at the apple. Here, defendant’s counsel improperly treated that limited deposition as a free-for-all and therefore is not entitled to any further deposition of plaintiff based on the information known to date. (If plaintiff has another surgery and discloses it, then nothing precludes defendant from seeking additional discovery).

Accordingly, it is hereby

ORDERED that defendant’s motion to strike the note of issue and to require a further deposition is denied.

Defendant is entitled to an IME, but the Court assumes that already took place.

<u>12/17/2025</u> DATE					 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
APPLICATION:	<input type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE