

<b>Fuentes v 65 Franklin LLC</b>
2026 NY Slip Op 31839(U)
April 27, 2026
Supreme Court, New York County
Docket Number: Index No. 152496/2020
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

FERNANDO CRUZ FUENTES,

Plaintiff,

- v -

65 FRANKLIN LLC, HAP CONSTRUCTION LLC, NOBLE  
CONSTRUCTION GROUP, LLC,

Defendants.

-----X

65 FRANKLIN LLC

Plaintiff,

-against-

HAP CONSTRUCTION LLC, NORDEST SERVICES LLC

Defendant.

-----X

65 FRANKLIN LLC

Plaintiff,

-against-

BELLEEEYE LLC

Defendant.

-----X

65 FRANKLIN LLC, HAP CONSTRUCTION LLC

Plaintiff,

-against-

NY ORTHO, SPORTS MEDICINE & TRAUMA P.C.,, JEFFREY  
KAPLAN, JOSEPH WEINSTEIN, JOSEPH WEINSTEIN, D.O.,  
P.C. D/B/A COMPREHENSIVE ORTHOPEDIC & SPINE CARE

Defendant.

-----X

INDEX NO. 152496/2020

MOTION DATE 04/24/2026

MOTION SEQ. NO. 005 006

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595312/2020

Second Third-Party  
Index No. 595508/2021

Third Third-Party  
Index No. 596193/2025

The following e-filed documents, listed by NYSCEF document number (Motion 005) 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 170, 171, 172, 173, 174, 175, 189, 198

were read on this motion to/for SPECIAL PREFERENCE.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 177, 178, 179, 180, 181, 182, 190, 199, 200, 201, 202

were read on this motion to/for SEVER ACTION.

Motion Sequence Numbers 005 and 006 are consolidated for disposition. Plaintiff's motion (MS005) and third third-party defendants' motion (MS006), both of which seek to sever the third third-party action, are granted.

**Background**

This Labor Law case arises out of an accident that took place on February 11, 2020. Plaintiff points out that he filed a note of issue on November 13, 2024. This Court issued a decision on defendants' summary judgment motion in August 2025 and the case is currently awaiting a trial date. It has a pre-trial conference scheduled for April 29, 2026.

Plaintiff observes in MS005 that on December 22, 2025, defendants 65 Franklin LLC and HAP Construction, LLC filed a third third-party complaint. He insists that to permit this additional third-party action to proceed would require the parties to reset discovery from "square one" even though this case has been on the trial calendar for a year and a half.

Third third-party defendants make similar arguments in support of their motion (MS006). They contend that the third third-party plaintiffs had more than enough time to bring this new pleading and should not be permitted to do so at its current stage.

In opposition, the third third-party plaintiffs contend that their new complaint, a medical malpractice complaint, was based on IMEs that show that plaintiff did not suffer the severe

injuries he cites. They point out that although there were little initial signs of accident-related trauma, plaintiff suddenly needed surgery. Their claim, essentially, is that the third third-party defendants (all medical providers for plaintiff) are responsible for all of plaintiff's injuries and for the aggravation of any injuries he may have suffered from the Labor Law accident at issue in the initial complaint.

### Discussion

There are several factors that compel the Court to grant the instant motions. Most important is that the third third-party complaint was uploaded more than a year after the note of issue was filed and after the Court had already decided a dispositive motion (*c.f. Garcia v Geshel Realty Corp.*, 280 AD2d 440, 440, 721 NYS2d 343 [1st Dept 2001] [granting severance of third party action filed after the note of issue was filed]). The current procedural posture is that this case is scheduled for a pre-trial conference in late April 2026. Permitting this third third-party action to proceed within this case will only ensure that the trial is either indefinitely delayed or that third third-party plaintiffs will understandably complain they were not afforded the right to do discovery in the brand new pleading.

As best this Court can tell, the allegations in the third third-party complaint suggest that the surgeries plaintiff received were either not necessary or were performed poorly by plaintiff's doctors, the third third-party defendants. That sort of contention is not directly related to the allegations in this case. A claim for medical malpractice involving plaintiff's doctors is not inherently or inextricably intertwined with a Labor Law action involving an accident at a job site. Plus, nothing in this third third-party complaint has anything to do with the amount of damages plaintiff might be able to recover—it simply concerns the allocation of those damages should plaintiff prevail. And, of course, a delay would absolutely prejudice plaintiff as a trial nears.

Moreover, the basis for this claim was well known to third third-party plaintiffs years ago. Third third-party plaintiffs' opposition references IME reports (purportedly detailing plaintiff's lack of serious injury) from as far back as October 2022. And yet they waited to file the instant pleading until December 2025. No adequate reason was offered for this extraordinary delay.

Plaintiff has waited long enough—there is no reason to add more years to this case based on a new third-party action that could have been commenced years ago.

Accordingly, it is hereby


ORDERED that the motions to sever the third third-party action are granted; and it is further

ORDERED that the Clerk is directed to sever the third third-party action from the main action and the third-party action shall proceed as a separate action and the Clerk of the Court shall issue an index number to the severed third-party action upon the payment of the appropriate fees by the third-party plaintiffs; and it is further

ORDERED that movants shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119) who shall mark their records to reflect the severance; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “efiling” page on this court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

<u>4/27/2026</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE	