

NY CLS CPLR § 3041

Current through 2025 released Chapters 1-207

New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

§ 3041. Bill of particulars in any case

Any party may require any other party to give a bill of particulars of such party's claim, or a copy of the items of the account alleged in a pleading. As used elsewhere in this article, the term "bill of particulars" shall include "copy of the items of an account."

History

Add, L 1962, ch 308; amd, L 1994, ch 562, § 1, eff Jan 1, 1995.

Annotations

Notes

Prior Law:

Earlier rules: RCP 115.

Editor's Notes:

Laws 1994, ch 562, § 4, eff Jan 1, 1995, provides as follows:

§ 4. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, it shall apply only to actions commenced on or

after the effective date of this act. Actions commenced prior to the effective date of this act shall be governed by the provisions of rule 3042 of the civil practice law and rules then in effect.

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I. Under CPLR

A. In General

1. In general

Neither certificate of merit served pursuant to CLS CPLR § 3012-a nor verified bill of particulars obviates need to provide affidavit of merit from medical expert in medical malpractice action since certificate of merit merely ensures that counsel has satisfied himself that there is reasonable basis for commencement of action and bill of particulars does nothing more than amplify pleadings. *George v Sastic*, 166 A.D.2d 838, 563 N.Y.S.2d 178, 1990 N.Y. App. Div. LEXIS 12788 (N.Y. App. Div. 3d Dep't 1990).

Defendant should have been permitted to cross-examine personal injury plaintiff concerning inconsistency between original bill of particulars and amended bill of particulars since bill of particulars can be considered statement and admission by party, and amendment of bill would not preclude its use for impeachment purposes; however, error was harmless where potential for impeachment was not sufficiently significant to have influenced different verdict. *Esner v Janiszewski*, 180 A.D.2d 991, 580 N.Y.S.2d 551, 1992 N.Y. App. Div. LEXIS 2922 (N.Y. App. Div. 3d Dep't 1992).

Each defendant is entitled to separate bill of particulars specifying acts or omissions on which plaintiff's claim of negligence against him is based, as distinguished from those claimed against other defendants. *Laukaitis v Ski Stop*, 202 A.D.2d 554, 609 N.Y.S.2d 285, 1994 N.Y. App. Div. LEXIS 2659 (N.Y. App. Div. 2d Dep't 1994).

If plaintiffs lack present knowledge of relevant information requested by demand for bill of particulars, they should be as responsive as possible, stating their inability to respond, and on acquiring information after disclosure, they should serve supplemental bill of particulars. *Miccarelli v Fleiss*, 219 A.D.2d 469, 631 N.Y.S.2d 159, 1995 N.Y. App. Div. LEXIS 9143 (N.Y. App. Div. 1st Dep't 1995).

Court properly allowed testimony of 2 physicians concerning permanency of plaintiff's injuries where plaintiff alleged permanency in her bill of particulars, and thus defendants were neither surprised nor prejudiced by that testimony. *Connors v Sowa*, 251 A.D.2d 989, 674 N.Y.S.2d 544, 1998 N.Y. App. Div. LEXIS 6999 (N.Y. App. Div. 4th Dep't 1998).

Party's inadvertent failure to mention issue in expert disclosure notice does not justify precluding expert testimony on that issue where party's adversary has received notice of issue from bill of particulars. *Gallo v Linkow*, 255 A.D.2d 113, 679 N.Y.S.2d 377, 1998 N.Y. App. Div. LEXIS 11650 (N.Y. App. Div. 1st Dep't 1998).

In personal injury action, evidence of injury to plaintiff's left knee was admissible, even though no such injury was indicated in his bill of particulars, absent showing of prejudice or surprise. *Loadholt v Rams Beer & Soda, Inc.*, 273 A.D.2d 446, 712 N.Y.S.2d 364, 2000 N.Y. App. Div. LEXIS 7374 (N.Y. App. Div. 2d Dep't 2000).

Hospital and 2 individual defendants were not entitled to summary judgment dismissing medical malpractice against them where affidavits of their medical experts were conclusory and did not attempt to refute, by specific factual reference, allegations of negligence in bills of particulars. *Kenny v Parkway Hosp.*, 281 A.D.2d 596, 722 N.Y.S.2d 167, 2001 N.Y. App. Div. LEXIS 3111 (N.Y. App. Div. 2d Dep't 2001).

Court properly denied plaintiffs' motion to compel defendants to accept their bill of particulars where (1) case was stricken from trial calendar, not restored within one year, and thus deemed abandoned and automatically dismissed under CLS CPLR § 3404, (2) fact that note of issue might have been stricken on consent was of no moment, and (3) plaintiffs neither specifically sought restoration nor addressed factors relevant to that issue. *Gray v Jim Cuttita Agency Inc.*, 281 A.D.2d 785, 722 N.Y.S.2d 289, 2001 N.Y. App. Div. LEXIS 2499 (N.Y. App. Div. 3d Dep't 2001).

Proceeding before Commission for Human Rights is not a civil judicial proceeding as defined by CPLR 105(d), so as to make applicable the provision for a bill of particulars in all cases. *Marrano*

Constr. Co. v State Com. for Human Rights, 45 Misc. 2d 1081, 259 N.Y.S.2d 4, 1965 N.Y. Misc. LEXIS 2061 (N.Y. Sup. Ct. 1965).

There being no specific provision in the Family Court Act relating to bills of particulars, the provisions of the CPLR should be considered as controlling in a support proceeding to the extent the Family Court deems them appropriate. Swift v Swift, 65 Misc. 2d 1014, 319 N.Y.S.2d 655, 1971 N.Y. Misc. LEXIS 1852 (N.Y. Fam. Ct. 1971).

The authority and procedure for furnishing bills of particulars are contained in Civil Practice Law and Rules §§ 3041 and 3044 and are applicable to every type of civil action. The statutes with reference to bills of particulars are applicable to a paternity proceeding. Jesmer v Beyma, 66 Misc. 2d 323, 321 N.Y.S.2d 173, 1971 N.Y. Misc. LEXIS 1659 (N.Y. Fam. Ct. 1971).

In suit against, inter alia, manufacturer and hospital for injuries allegedly due to defects in neurostimulator implanted in patient in which manufacturer instituted cross claim for apportionment of damages against named codefendants, including hospital, hospital, which had not shown any prejudice or special circumstances requiring service of separate and distinct bill of particulars, was entitled only to copy of same bill of particulars served upon manufacturer by plaintiffs and not to separate and distinct bill of particulars from manufacturer. Rufe v St. Barnabas Hospital, 87 Misc. 2d 583, 386 N.Y.S.2d 325, 1976 N.Y. Misc. LEXIS 2258 (N.Y. Sup. Ct. 1976), overruled, Bernardo v Begos, 70 A.D.2d 582, 416 N.Y.S.2d 199, 1979 N.Y. App. Div. LEXIS 11985 (N.Y. App. Div. 2d Dep't 1979).

A bill of particulars is permissible in a summary proceeding without leave of court so long as it is used for the purpose of amplifying the pleadings, but not as a disguised disclosure device designed to disclose evidentiary matters, and so long as it is not used as a tactic to delay the speedy summary remedy to recover possession of real property which is at the heart of article 7 of the Real Property Actions and Proceedings Law. Tower Properties, Inc. v Castro, 99 Misc. 2d 405, 416 N.Y.S.2d 508, 1979 N.Y. Misc. LEXIS 2301 (N.Y. County Ct. 1979).

In injured worker's personal injury action against manufacturer of machinery he was using when injured, in which third party action against workers' employer had been brought by manufacturer, employer was entitled to demand bill of particulars from worker even though employer was third-party defendant and worker asserted no claims directly against it; it was possible that worker would make assertions against employer at trial, and employer should have right to know what worker intended to prove against it. *Rodriguez v Scovill, Inc.*, 171 Misc. 2d 840, 656 N.Y.S.2d 120, 1997 N.Y. Misc. LEXIS 74 (N.Y. Sup. Ct. 1997).

Juvenile delinquent housed in limited secure facility was entitled to discovery prior to extension of placement proceeding where petition contained no sworn statements to support agency's claims that he was in need of continued confinement; therefore, law guardian's request for bill of particulars and additional disclosure was reasonable and necessary to formulate defense for his client, and conditional order of preclusion was appropriate. *In re Michael J.*, 180 Misc. 2d 538, 691 N.Y.S.2d 277, 1999 N.Y. Misc. LEXIS 172 (N.Y. Fam. Ct. 1999).

2. Purpose and scope

Order which properly precluded defendants from proceeding on their counterclaims when they failed to provide bill of particulars regarding those claims should not be given effect of barring defendants from raising defenses that were factually interwoven with counterclaims, and thus would not entitle plaintiff to summary judgment, where plaintiff demanded particulars only with respect to counterclaims. Bill of particulars amplifies pleading by setting forth in greater detail nature of allegations and what party making them intends to prove, and thus bill of particulars relates to burden of proof; however, party, in answer, need not particularize general denials since these are matters on which party making allegations—not party denying them—has burden of proof. *Northway Engineering, Inc. v Felix Industries, Inc.*, 77 N.Y.2d 332, 567 N.Y.S.2d 634, 569 N.E.2d 437, 1991 N.Y. LEXIS 219 (N.Y. 1991).

The purpose of a bill of particulars is that of specification by amplifying the pleading, defining the issues and limiting the proof thereby enabling the adversary to prepare for trial, while secure

from surprise, and at the same time aiding the court in the expeditious conduct of the trial; the purpose is not to produce evidence or to supply evidentiary detail. *Holland v Baker*, 30 A.D.2d 136, 290 N.Y.S.2d 651, 1968 N.Y. App. Div. LEXIS 3824 (N.Y. App. Div. 3d Dep't 1968).

Bills of particulars are devices whereby limited disclosure is had as to causes of action or defenses as well as serving the function of limiting issues. *Paticopoulos v Slocum House, Inc.*, 33 A.D.2d 960, 306 N.Y.S.2d 844, 1970 N.Y. App. Div. LEXIS 5668 (N.Y. App. Div. 3d Dep't 1970).

A party may be required to furnish a bill of particulars only with respect to issues upon which he has the burden of proof. *In re Will of Reynolds*, 38 A.D.2d 788, 328 N.Y.S.2d 155, 1972 N.Y. App. Div. LEXIS 5582 (N.Y. App. Div. 4th Dep't 1972).

The purpose of a bill of particulars is to amplify the pleadings and give the party an opportunity to secure information concerning his opponent's case. *Belott v State*, 40 A.D.2d 729, 336 N.Y.S.2d 468, 1972 N.Y. App. Div. LEXIS 3716 (N.Y. App. Div. 3d Dep't 1972).

The bill of particulars, the purpose of which is to amplify the pleadings, limit the proof, and prevent surprise at trial, may add specific statements of fact to a general allegation in the pleading, but cannot add or substitute a new theory or cause of action. *B. & F. Leasing Co. v Ashton Cos.*, 42 A.D.2d 652, 345 N.Y.S.2d 687, 1973 N.Y. App. Div. LEXIS 4043 (N.Y. App. Div. 3d Dep't 1973).

Function of a demand for a bill of particulars is to amplify pleadings and not to supply evidentiary material. *Harding v Spofford Laundry Corp.*, 44 A.D.2d 804, 355 N.Y.S.2d 590, 1974 N.Y. App. Div. LEXIS 5024 (N.Y. App. Div. 1st Dep't 1974).

Purpose of a bill of particulars is to amplify the pleadings, limit the proof, and prevent surprise at trial, but not to provide evidentiary material. *Cirelli v Victory Memorial Hospital*, 45 A.D.2d 856, 358 N.Y.S.2d 537, 1974 N.Y. App. Div. LEXIS 4390 (N.Y. App. Div. 2d Dep't 1974).

Where party makes statement in verified bill of particulars which is contrary to his proof at trial, it may be used as evidence. In personal injury action, wherein defendant had requested bill of particulars as to injuries and response consisted of hospital and medical records, permitting defendant's reference to records on summation was error, since statements were not made by plaintiff or furnished or made for purpose of establishing cause of action. *O'Hearn v O'Hearn*, 55 A.D.2d 766, 389 N.Y.S.2d 651, 1976 N.Y. App. Div. LEXIS 15552 (N.Y. App. Div. 3d Dep't 1976).

In a damages action arising from an automobile accident, the court committed reversible error in permitting testimony on personal injuries and loss of employment which were beyond the scope of the plaintiff's bill of particulars. *Solomon v Stroler*, 82 A.D.2d 756, 440 N.Y.S.2d 200, 1981 N.Y. App. Div. LEXIS 14395 (N.Y. App. Div. 1st Dep't 1981).

The trial court erred in denying plaintiff's motion to vacate a demand for a bill of particulars served by defendants where the demand for a bill of particulars was 36 pages long, contained 141 sub-demands set forth in 19 numbered questions, 16 of the sub-demands required plaintiff to supply the "source of its information and belief," 35 sub-demands called for the production of documents, 73 sub-demands required plaintiff to "specify in detail the factual basis" of various allegations of the complaint and to "state specifically" or to "state in detail" various other matters. *Philipp Bros. Export Corp. v Acero Peruano S.A.*, 88 A.D.2d 529, 450 N.Y.S.2d 28, 1982 N.Y. App. Div. LEXIS 16662 (N.Y. App. Div. 1st Dep't 1982), rev'd, *Levin v Murawski*, 59 N.Y.2d 35, 462 N.Y.S.2d 836, 449 N.E.2d 730, 1983 N.Y. LEXIS 3024 (N.Y. 1983).

Sole purpose of bill of particulars is to amplify pleadings, limit proof, and prevent surprise at hearing; accordingly, motion directed at allegation of bill of particulars is improper vehicle for examination of merits and evidentiary support for claims made in bill. *Sentowski v Boulevard Hospital*, 109 A.D.2d 878, 487 N.Y.S.2d 71, 1985 N.Y. App. Div. LEXIS 47397 (N.Y. App. Div. 2d Dep't 1985).

Where plaintiff's bill of particulars averred that among manufacturer's acts of negligence was failure "to provide adequate warning as to proper and safe use" of product but complaint only

alleged causes of action for negligent design and manufacture, strict liability in tort and breach of express and implied warranties, court properly excluded any testimony regarding manufacturer's failure to warn since that theory was not included in complaint and could not be added through bill of particulars. *Leete v Applied Power, Inc.*, 126 A.D.2d 796, 510 N.Y.S.2d 298, 1987 N.Y. App. Div. LEXIS 41947 (N.Y. App. Div. 3d Dep't 1987).

Bill of particulars does not serve function of providing evidentiary information that is more properly subject of disclosure; bill's purpose is to amplify pleadings, limit proof, and prevent surprise at trial. *Havens v Tucker*, 136 A.D.2d 814, 523 N.Y.S.2d 648, 1988 N.Y. App. Div. LEXIS 272 (N.Y. App. Div. 3d Dep't 1988).

1985 amendment to CLS CPLR § 3101(d) which provides for disclosure of expert testimony in preparation for trial, to encourage prompt settlements, does not change rule that evidentiary matter may not be obtained by demand for bill of particulars. *Coleman v Richards*, 138 A.D.2d 556, 526 N.Y.S.2d 138, 1988 N.Y. App. Div. LEXIS 3142 (N.Y. App. Div. 2d Dep't 1988).

Court erred in denying defendants' motion to strike doctor's testimony as to diagnosis of torn ligaments of spine inasmuch as that diagnosis did not flow immediately and necessarily from plaintiff's bill of particulars, which ascribed plaintiff's condition to nerve damage, concussion and shock, not to muscle or connective tissue injury, especially since defendants were unduly surprised and prejudiced by doctor's testimony; thus, given that evidence did not otherwise indicate that plaintiff suffered serious injury, new trial on issue of damages was warranted. *Holbrook v Jamesway Corp.*, 141 A.D.2d 905, 528 N.Y.S.2d 946, 1988 N.Y. App. Div. LEXIS 14897 (N.Y. App. Div. 3d Dep't 1988).

Dismissal of defenses with subsequent requirement of repleading for alleged lack of particularity is disapproved since bills of particulars can be had to amplify defense. *Schmidt's Wholesale, Inc. v Miller & Lehman Constr., Inc.*, 173 A.D.2d 1004, 569 N.Y.S.2d 836, 1991 N.Y. App. Div. LEXIS 6701 (N.Y. App. Div. 3d Dep't 1991).

Purpose of bill of particulars is to amplify pleadings, limit proof, and prevent surprise at trial. *Miccarelli v Fleiss*, 219 A.D.2d 469, 631 N.Y.S.2d 159, 1995 N.Y. App. Div. LEXIS 9143 (N.Y. App. Div. 1st Dep't 1995).

The scope of a bill of particulars is limited to matters on which the party upon whom demand is made has the burden of proof, and it is not to be used to obtain evidence, since appropriate pre-trial disclosure procedures are available therefor. *Johnson, Drake & Piper, Inc. v State*, 43 Misc. 2d 513, 251 N.Y.S.2d 500, 1964 N.Y. Misc. LEXIS 1565 (N.Y. Ct. Cl. 1964).

In furtherance of objects of bill of particulars, courts are quite liberal in requiring party to furnish his adversary all necessary information to limit scope of evidence on trial and to enable him to know definitely what he intends to claim under his pleading. CPLR 3041. *Arsenault v Mittnight*, 90 Misc. 2d 539, 394 N.Y.S.2d 554, 1977 N.Y. Misc. LEXIS 2104 (N.Y. County Ct. 1977).

Purpose of a bill of particulars is to amplify the pleadings, limit the proof and prevent surprise at trial. *Smith v King*, 91 Misc. 2d 151, 397 N.Y.S.2d 523, 1977 N.Y. Misc. LEXIS 2265 (N.Y. Sup. Ct. 1977).

In a medical malpractice action wherein defendant served a demand for a verified bill of particulars requesting 25 items of particulars containing 22 subdivisions, which demand then served further notice that upon completion of pretrial discovery proceedings and at least 20 days prior to the filing of a note of issue, plaintiff is required to serve a further bill of particulars setting forth 8 more items with 16 subdivisions contained therein, a motion by plaintiff to vacate the demand for a bill of particulars in its entirety is granted, since the defendant is seeking to extend and broaden the principles of bifurcated trials to the area of bifurcated bills of particulars; there is no sanction or provision for this split relief and CPLR 3041 provides for a single bill of particulars, with no reservation or caveat for a subsequent bill of particulars (see *Patterson v Jewish Hospital & Medical Center* (1978) 94 Misc 2d 680, 405 NYS2d 194, affd (2d Dept) 65 AD2d 553, 409 NYS2d 124, lv to app den NYLJ, Nov. 13, 1978, p 13, col 6). *Herskovitz v. Shay*, 99 Misc. 2d 894, 417 N.Y.S.2d 442, 1979 N.Y. Misc. LEXIS 2354 (N.Y. Sup. Ct. 1979).

It is clear that the Legislature did not intend to provide a party in an action based upon negligence with the unfettered right to conduct an examination before trial as well as to serve interrogatories when it amended CPLR 3130 (L 1979, ch 197), which provides that a party may not serve written interrogatories on another party and also demand a bill of particulars pursuant to CPLR 3041 nor, in the case of an action to recover damages for an injury to property or a personal injury resulting from negligence or wrongful death, take a deposition pursuant to CPLR 3107 without leave of court, but intended a showing by the party seeking discovery that the use of both discovery devices is reasonably necessary; mere application to the court, without more, is insufficient. Accordingly, in a medical malpractice action, plaintiffs' cross motion for an order directing the defendant to respond to interrogatories was denied and defendant's motion for an order striking plaintiffs' interrogatories was granted where an examination of the papers submitted by plaintiffs did not establish to the satisfaction of the court that it was reasonably necessary for the plaintiffs to avail themselves of the disclosure device of interrogatories when they had previously been afforded a complete examination before trial. *Yandolino v Cohen*, 102 Misc. 2d 38, 422 N.Y.S.2d 614, 1979 N.Y. Misc. LEXIS 2820 (N.Y. Sup. Ct. 1979).

In a contested accounting proceeding related to a decedent's revocable trust, co-trustees were not entitled to compel the production of paper documents in response to a bill of particulars issued to objectant nephews because the bill of particulars was not a discovery device but a demand for an amplification of a pleading on those matters upon which a party has the burden of proof under N.Y. C.P.L.R. § 3041. *Matter of O. Winston Link Revocable Trust*, 877 N.Y.S.2d 874, 24 Misc. 3d 768, 241 N.Y.L.J. 78, 2009 N.Y. Misc. LEXIS 872 (N.Y. Sur. Ct. 2009).

3. Sufficiency

In action to recover damages for medical malpractice, statement contained in plaintiffs' bill of particulars, that "said injuries, upon information and belief are permanent and progressive in nature, except those which may be superficial," was insufficient and defendants were entitled to

know which injuries would be claimed to be permanent. *Robeznieks v Mishrick*, 52 A.D.2d 580, 382 N.Y.S.2d 531, 1976 N.Y. App. Div. LEXIS 12158 (N.Y. App. Div. 2d Dep't 1976).

In a personal injury action against two infants and their parents, bill of particulars is insufficient where it provides an undifferentiated aggregation of the claimed negligent acts and omissions of all defendants, notwithstanding an affidavit by plaintiffs' attorney asserting that the infants were acting in concert. *McLaughlin v Charles*, 91 A.D.2d 1119, 458 N.Y.S.2d 333, 1983 N.Y. App. Div. LEXIS 16458 (N.Y. App. Div. 3d Dep't 1983).

In a medical malpractice action, defendants' motion for an order of preclusion would be granted to the extent of striking from plaintiff's bill of particulars certain general language, since the object of a bill of particulars is to amplify the pleadings, limit the proof and prevent surprise at trial, and the mentioned language in plaintiff's bill is inconsistent with these purposes because of its open-ended character. *Padro v Boulevard Hospital*, 92 A.D.2d 888, 459 N.Y.S.2d 875, 1983 N.Y. App. Div. LEXIS 17275 (N.Y. App. Div. 2d Dep't 1983).

In a medical malpractice action, defendant's motion for an order of preclusion regarding certain items of plaintiffs' further bill of particulars or in the alternative for a direction that plaintiffs serve a supplemental further bill of particulars with respect to those items would be granted insofar as defendants sought a supplemental further bill of particulars, and plaintiffs would be directed to serve the same on defendants, since plaintiffs' responses were vague and overbroad, the unnecessarily broad responses failed to particularize and amplify the pleadings and would not limit proof or prevent surprise at trial, and plaintiffs were capable of providing more specific responses. *Gannotta v Long Island College Hospital*, 92 A.D.2d 930, 460 N.Y.S.2d 352, 1983 N.Y. App. Div. LEXIS 17338 (N.Y. App. Div. 2d Dep't 1983).

In medical malpractice action, plaintiff would be required to serve further bill of particulars because her response concerning nature of condition which defendant physician agreed to treat was too vague and open-ended in its use of phrase "and all conditions arising therefrom." *Ohnemus v Rosenthal*, 126 A.D.2d 614, 511 N.Y.S.2d 54, 1987 N.Y. App. Div. LEXIS 41749 (N.Y. App. Div. 2d Dep't 1987).

Court did not abuse its discretion in granting plaintiff's motion to serve second amended and supplemental bill of particulars, although plaintiff had filed note of issue and certificate of readiness 2 months earlier, where plaintiff demonstrated that special circumstances existed supporting grant of relief. *Glionna v Kubota, Ltd.*, 154 A.D.2d 920, 546 N.Y.S.2d 992, 1989 N.Y. App. Div. LEXIS 12949 (N.Y. App. Div. 4th Dep't 1989).

Disposition of motion addressed solely to alleged defects in bill of particulars does not establish law of the case with respect to substantive evidentiary issues subsequently raised. *Levitt v Lenox Hill Hosp.*, 184 A.D.2d 427, 585 N.Y.S.2d 401, 1992 N.Y. App. Div. LEXIS 8595 (N.Y. App. Div. 1st Dep't 1992).

In products liability action against motorcycle manufacturer, plaintiff's bill of particulars adequately specified parts of motorcycle claimed to be defective and their particular defects where plaintiff alleged that defective part was kickstand, and isolated defect as spring mechanism which failed to prevent kickstand from falling down during operation and failed to cause it to retract on impact with ground. *Cramer v Kuhns*, 192 A.D.2d 893, 597 N.Y.S.2d 184, 1993 N.Y. App. Div. LEXIS 4040 (N.Y. App. Div. 3d Dep't 1993).

In medical malpractice action for wrongful death, item in plaintiff's bill of particulars stating that date of alleged malpractice was "from February 20, 1984 through and including February 21, 1991" was inadequate; plaintiff was required to give specific dates for acts which were alleged to constitute malpractice and, if specific dates were unavailable, to state unavailability of information. Plaintiff's bill of particulars was vague, unnecessarily broad and improper in that it alleged that each defendant was vicariously liable for acts of agents, servants, associates, staff, etc.; plaintiff was required to distinguish between alleged acts of defendants and their purported agents. *Berger v Feinerman*, 203 A.D.2d 407, 610 N.Y.S.2d 556, 1994 N.Y. App. Div. LEXIS 3971 (N.Y. App. Div. 2d Dep't 1994).

In medical malpractice action in which defendant physicians demanded bill of particulars specifying acts and omissions on which plaintiffs' claims of negligence were based, plaintiffs' response was inadequate where it set forth only vague, non-responsive allegations of

negligence that covered every conceivable medical malpractice claim without distinguishing physicians' separate alleged acts and omissions. *Miccarelli v Fleiss*, 219 A.D.2d 469, 631 N.Y.S.2d 159, 1995 N.Y. App. Div. LEXIS 9143 (N.Y. App. Div. 1st Dep't 1995).

Affirmation and claim of permanency, as alleged in plaintiff's bill of particulars, that "damage to [his] ankle will have permanent effects," was insufficient to notify defendants of claim for loss of future earnings. *Seargent v Berben*, 235 A.D.2d 1024, 652 N.Y.S.2d 904, 1997 N.Y. App. Div. LEXIS 765 (N.Y. App. Div. 3d Dep't 1997).

In medical malpractice action, hospital was not entitled to have verdict for plaintiffs set aside on ground that plaintiffs' counsel, during second day of summation, argued entirely novel theory of liability based on delay where plaintiffs' verified bill of particulars asserted that hospital was careless and negligent "in failing to timely and properly examine the mother of the infant plaintiff...in failing to timely and properly treat the prolapsed cord and fetal distress [and] in failing to perform a timely Ceasarean [sic] section," and both sides adduced testimony on that issue. *Altman v Alpha Obstetrics & Gynecology, P.C.*, 255 A.D.2d 276, 679 N.Y.S.2d 642, 1998 N.Y. App. Div. LEXIS 11582 (N.Y. App. Div. 2d Dep't 1998), app. denied, 93 N.Y.2d 801, 687 N.Y.S.2d 625, 710 N.E.2d 272, 1999 N.Y. LEXIS 80 (N.Y. 1999).

Parts of medical malpractice plaintiff's bill of particulars referring to fraudulent conduct were properly stricken where they described physician's concealment or failure to disclose his own malpractice, and plaintiff did not allege available, efficacious, medical remedy or cure for injuries allegedly caused by diversion from treatment as result of concealment. *Congero v Sider*, 255 A.D.2d 415, 680 N.Y.S.2d 563, 1998 N.Y. App. Div. LEXIS 12018 (N.Y. App. Div. 2d Dep't 1998).

Bill of particulars served by plaintiff, who alleged that her former attorney and his law firm failed to identify and value all marital assets in her divorce action, was inadequate for failure to particularize those assets which were not properly identified and valued in underlying action. *Allen v Krna*, 282 A.D.2d 946, 723 N.Y.S.2d 730, 2001 N.Y. App. Div. LEXIS 4155 (N.Y. App. Div. 3d Dep't 2001).

Bill of particulars served in a malpractice case which restated the general laws of negligence and malpractice but which failed to isolate the particular acts complained of was improper. *Alpert v Birnbaum*, 61 Misc. 2d 615, 307 N.Y.S.2d 22, 1969 N.Y. Misc. LEXIS 1018 (N.Y. Sup. Ct. 1969).

Bill of particulars which was responsive and sufficiently amplified plaintiffs' pleadings so that defendants might properly meet the issues raised was adequate. *Shack v Holland*, 89 Misc. 2d 78, 389 N.Y.S.2d 988, 1976 N.Y. Misc. LEXIS 2818 (N.Y. Sup. Ct. 1976).

Party is required to serve bill of particulars as to those matters for which he has burden of proof; thus, upon appropriate demand, defendant is required to particularize his affirmative defenses. CPLR 1412, 3041. Where plaintiff in negligence action for property damages served demand for bill of particulars upon defendant requiring him to furnish detailed statement of acts, specific items or omissions constituting claimed contributory negligence on part of plaintiff, defendant's response that he would "rely upon the negligence of the plaintiff revealed by the evidence presented at the trial by all the parties and witnesses to the accident referred to in the complaint" was entirely inadequate and defendant would be directed to file proper bill of particulars; since defendant had opportunity to raise plaintiff's culpable conduct as affirmative defense to reduce damages, plaintiff should be entitled to know in what manner, it would be alleged, he was culpable. CPLR 1411 et seq., 1412, 3041. *Arsenault v Mitnigh*, 90 Misc. 2d 539, 394 N.Y.S.2d 554, 1977 N.Y. Misc. LEXIS 2104 (N.Y. County Ct. 1977).

4. Demand

The length of a demand for particulars does not and of itself make the demand oppressive and it does not cast an unreasonable burden on compliance, if the complaint is lengthy and prolix the demand for particulars must, of necessity, be extensive. *Malan Constr. Corp. v Allis-Chalmers Mfg. Co.*, 35 A.D.2d 788, 315 N.Y.S.2d 258, 1970 N.Y. App. Div. LEXIS 3564 (N.Y. App. Div. 1st Dep't 1970).

Complaint, in action for damages to property and for business losses as result of fire, set forth sufficient facts with respect to where in defendants' building the fire started, approximate time and place of occurrence, and negligent acts complained of, and thus, demands for bill of particulars as to such items would be vacated. But plaintiff did not sufficiently answer demand in bill of particulars as to nature, type, and location of fire extinguishing equipment available at site of fire by setting forth information that fire extinguishers at site were empty and that heads on sprinkler system were fused, and thus, he would be required to supply information sought. *Whirl Knits, Inc. v Adler Business Machines, Inc.*, 54 A.D.2d 760, 387 N.Y.S.2d 699, 1976 N.Y. App. Div. LEXIS 14422 (N.Y. App. Div. 2d Dep't 1976).

In matrimonial action, wife was not entitled to vacation of demand for specified items sought in husband's bill of particulars, even though she alleged that she would be unable to provide precise dates and locations with respect to certain items, since she could provide approximations of information to best of her ability. *Warminski v Warminski*, 127 A.D.2d 831, 512 N.Y.S.2d 344, 1987 N.Y. App. Div. LEXIS 43326 (N.Y. App. Div. 2d Dep't 1987).

Defendants' bill of particulars demand should have been vacated where it comprised 40 pages and 161 paragraphs, many of which sought evidentiary material, including names and addresses of witnesses, or otherwise inappropriate information such as details pertaining to matters on which defendants bore burden of proof, and where improper requests were in many instances interwoven in single paragraph with other permissible queries. *Bardi v Mosher*, 197 A.D.2d 797, 602 N.Y.S.2d 974, 1993 N.Y. App. Div. LEXIS 10073 (N.Y. App. Div. 3d Dep't 1993).

Nothing in CPLR limits use of demand for bill of particulars until after disclosure. *Foster v Moses Ludington Hosp.*, 223 A.D.2d 905, 636 N.Y.S.2d 220, 1996 N.Y. App. Div. LEXIS 388 (N.Y. App. Div. 3d Dep't 1996).

In law firm's action to recover fee from client, with counterclaim by client for legal malpractice, firm's demand for bill of particulars was properly vacated, despite untimeliness of client's motion for relief therefrom, where demand was replete with palpably improper requests for evidentiary

materials. *Franklin, Weinrib, Rudell & Vassallo, P.C. v Stellato*, 240 A.D.2d 301, 658 N.Y.S.2d 622, 1997 N.Y. App. Div. LEXIS 6661 (N.Y. App. Div. 1st Dep't 1997).

In action brought by pro se plaintiff, court would deny defendants' motion to preclude or dismiss for plaintiff's failure to respond to their bill of particulars, notwithstanding plaintiff's default on motion, since demand was overly broad and requested inappropriate information, and defendants' discovery demands displayed effort to take advantage of plaintiff's vulnerability; under circumstances, defendants's motion would be denied without prejudice to service of appropriate demand for bill of particulars or other disclosure device. *Bolshakov v McCarthy*, 182 Misc. 2d 477, 702 N.Y.S.2d 748, 1999 N.Y. Misc. LEXIS 487 (N.Y. Civ. Ct. 1999).

5. Particular items discoverable

Where the issue in dispute was whether an insured satisfied certain conditions precedent to the commencement of coverage on his life under an insurance policy issued one day before the insured's death, defendant's demand for a bill of particulars concerning the insured's acquaintances and a description of the functions of the insured's employment performed by him on the day of his death was granted. *Mass v Manhattan Life Ins. Co.*, 23 A.D.2d 585, 256 N.Y.S.2d 843, 1965 N.Y. App. Div. LEXIS 4805 (N.Y. App. Div. 2d Dep't 1965).

In claim arising out of an appropriation, the State, because of a lack of specificity of alleged right of way and lands claimed to be consequentially damaged, was entitled to a bill of particulars relating thereto. *Van Dusen v State*, 28 A.D.2d 211, 284 N.Y.S.2d 233, 1967 N.Y. App. Div. LEXIS 3050 (N.Y. App. Div. 3d Dep't 1967).

Bill of particulars is not a proper means of obtaining disclosure of evidence or for the identity of witnesses. *State v Horsemen's Benevolent & Protective Ass'n*, 34 A.D.2d 769, 311 N.Y.S.2d 511, 1970 N.Y. App. Div. LEXIS 4811 (N.Y. App. Div. 1st Dep't 1970).

Surrogate erred in requiring contestants to comply with proponents' demand for bill of particulars requiring contestants to state facts which they intended to offer as proof on trial to support their

objections including matters related to issues of testamentary capacity, since proponents had burden of proof concerning testamentary capacity; a party may be required to furnish a bill of particulars only with respect to issues upon which he has burden of proof. In re Will of Reynolds, 38 A.D.2d 788, 328 N.Y.S.2d 155, 1972 N.Y. App. Div. LEXIS 5582 (N.Y. App. Div. 4th Dep't 1972).

In a defamation action brought by a public official against a newspaper publishing company the trial court properly refused to strike those items in defendant's demand for a bill of particulars which related to matters as to which plaintiff bore the burden of proving malice, where the complaint was stated largely in generalities; however, the trial court erred in failing to strike one item which related to the ad damnum clause in plaintiff's complaint, although the clause was also stated in general terms, where no particularization was necessary in that no special damages were alleged. *Miller v Village Voice, Inc.*, 79 A.D.2d 571, 434 N.Y.S.2d 26, 1980 N.Y. App. Div. LEXIS 13892 (N.Y. App. Div. 1st Dep't 1980).

In tort actions where a statutory violation is being asserted, it is incumbent upon the suing party to identify the particular statute, law, ordinance, rule or regulation claimed to have been violated. *Johnson v National Railroad Passenger Corp.*, 83 A.D.2d 916, 442 N.Y.S.2d 526, 1981 N.Y. App. Div. LEXIS 15344 (N.Y. App. Div. 1st Dep't 1981).

In an action pursuant to Real P Actions & Pr Law art 15 to determine a claim to real property and to declare certain covenants, restrictions, and easements void, the trial court erred in granting plaintiff's motion to vacate certain items of defendants' demand for a bill of particulars where, from the complaint as it existed, defendants were unable to reasonably ascertain what it was plaintiff intended to prove at trial, and in soliciting a statement of the reasons or grounds underlying plaintiff's conclusory allegations, defendants were justifiably attempting to obtain a more expensive statement of plaintiff's contentions rather than a description of the evidence to be adduced at trial, and where there was no proof that compliance with defendants' demand would require disclosure of any work product or material prepared for litigation, that the demands were palpably improper, or that the demands were so burdensome to supply that

compliance would have entailed an unreasonable task. *Forte v Perry*, 108 A.D.2d 895, 485 N.Y.S.2d 777, 1985 N.Y. App. Div. LEXIS 43226 (N.Y. App. Div. 2d Dep't 1985).

In divorce action alleging that husband committed adultery with named person and was physically and verbally abusive, husband's demand for bill of particulars was proper to extent that it sought details as to times, dates, and places of various acts referred to in wife's complaint. *Fiorella v Fiorella*, 132 A.D.2d 643, 518 N.Y.S.2d 17, 1987 N.Y. App. Div. LEXIS 49191 (N.Y. App. Div. 2d Dep't), app. dismissed, 70 N.Y.2d 796, 522 N.Y.S.2d 113, 516 N.E.2d 1226, 1987 N.Y. LEXIS 19370 (N.Y. 1987).

In medical malpractice action alleging that defendants treated infant plaintiff without first obtaining informed consent, burden of proving affirmative defenses set forth in CLS Pub Health § 2805-d rested with defendants, and thus defendants were required to respond to plaintiff's demand for verified bill of particulars seeking amplification of issues in connection therewith. *Forney v Huntington Hospital*, 134 A.D.2d 405, 520 N.Y.S.2d 872, 1987 N.Y. App. Div. LEXIS 50594 (N.Y. App. Div. 2d Dep't 1987).

Plaintiffs would not be directed to furnish further bill of particulars with respect to items of expense which they would incur in future to remedy alleged damage and destruction caused by defendant construction company's negligence and unworkmanlike performance where plaintiffs asserted that expenses were currently unascertainable; however, plaintiffs would be ordered to provide information when it became available and, at any event, at reasonable time before trial. *Havens v Tucker*, 136 A.D.2d 814, 523 N.Y.S.2d 648, 1988 N.Y. App. Div. LEXIS 272 (N.Y. App. Div. 3d Dep't 1988).

Where there are allegations of negligent and improper design, manufacturer is entitled to statement sufficiently particularizing specific acts of negligence which gave rise to asserted defect. *Laukaitis v Ski Stop*, 202 A.D.2d 554, 609 N.Y.S.2d 285, 1994 N.Y. App. Div. LEXIS 2659 (N.Y. App. Div. 2d Dep't 1994).

Complaint in special action based on CLS Gen Mun § 205-a must specify or identify statute, ordinances, rules, orders, or requirements with which defendant allegedly failed to comply, manner in which injuries complained of occurred, and facts from which it appears that said neglect or failure directly or indirectly caused injuries; thus, defendant was within its rights to seek such information through bill of particulars. *Brannigan v City of New York*, 224 A.D.2d 340, 638 N.Y.S.2d 59, 1996 N.Y. App. Div. LEXIS 1467 (N.Y. App. Div. 1st Dep't 1996).

On grant of plaintiff's motion to amend his bill of particulars to reflect current state of his physical injuries sustained in traffic accident, defendants were entitled to have their own doctors conduct independent physical evaluation. On grant of plaintiff's motion to amend his bill of particulars to add claim for lost earnings as accountant, defendants were entitled to conduct further discovery concerning plaintiff's accounting position. *Abdelnabi v New York City Transit Auth.*, 273 A.D.2d 114, 709 N.Y.S.2d 548, 2000 N.Y. App. Div. LEXIS 7177 (N.Y. App. Div. 1st Dep't 2000).

Although it is not the proper function of a bill to disclose names and addresses of persons present at the making of an oral agreement, since both parties are on equal footing, a widow alleging an oral agreement between her and decedent to cancel an ante-nuptial agreement in Surrogate's Court will be required to furnish a bill disclosing names and addresses of persons present at cancellation, since the decedent's representatives are not on equal footing with widow. *In re Estate of Cohn*, 41 Misc. 2d 36, 244 N.Y.S.2d 669, 1963 N.Y. Misc. LEXIS 1354 (N.Y. Sur. Ct. 1963).

Plaintiff alleging in his complaint that defendant negligently violated ordinances and laws "relative to speed and caution required of the operator of a motor vehicle" must respond to demand for a bill of particulars identifying each and every such ordinance and law so violated. *Kozak v Berger*, 42 Misc. 2d 119, 247 N.Y.S.2d 174, 1964 N.Y. Misc. LEXIS 2038 (N.Y. Sup. Ct. 1964).

Plaintiff was not entitled to bill of particulars where defendant's answer consisted of mere denials and omissions and set forth no defenses of claims on which defendant could have burden of proof, despite fact that plaintiff was alone in vehicle and defendant's vehicle contained

passengers which might serve as his witnesses. *McLure v Greco*, 56 Misc. 2d 1067, 291 N.Y.S.2d 733, 1968 N.Y. Misc. LEXIS 1372 (N.Y. Sup. Ct. 1968).

In action for wrongful death against state based on negligence, state was entitled to names of dependents of decedents and information relating to activities of representatives of the state in planning and conducting trip out of which deaths arose. *Mintz v State*, 57 Misc. 2d 726, 293 N.Y.S.2d 371, 1968 N.Y. Misc. LEXIS 1646 (N.Y. Ct. Cl. 1968).

Legatee objecting to executor on the basis of fraud was entitled to examination of said executor before filing requested bill of particulars, and thus said objections could not be precluded for failure to file said bill. *Will of Bayley*, 72 Misc. 2d 312, 339 N.Y.S.2d 129, 1972 N.Y. Misc. LEXIS 2249 (N.Y. Sur. Ct.), *aff'd*, 40 A.D.2d 843, 337 N.Y.S.2d 500, 1972 N.Y. App. Div. LEXIS 3414 (N.Y. App. Div. 2d Dep't 1972).

A party is required to serve a bill of particulars as to those matters for which he has the burden of proof; accordingly, in a negligence action, the plaintiff, upon appropriate demand, is entitled to a bill of particulars on the affirmative defense of culpable conduct in order that the plaintiff can more properly prepare to litigate the issue. *Bycel v Freeman*, 95 Misc. 2d 270, 406 N.Y.S.2d 975, 1978 N.Y. Misc. LEXIS 2415 (N.Y. Sup. Ct. 1978).

In will contest, objectant who made generalized claim of lack of testamentary capacity and due execution would be required to furnish bill of particulars as to which requirements of CLS EPTL § 3-2.1 (respecting execution and attestation) were allegedly not complied with, and as to details of mental illness allegedly suffered by decedent; although proponent has burden of proof concerning due execution and testamentary capacity, it was objectant who placed those requirements at issue. *In re Estate of Sheehan*, 137 Misc. 2d 310, 520 N.Y.S.2d 342, 1987 N.Y. Misc. LEXIS 2693 (N.Y. Sur. Ct. 1987).

In personal injury action, questions in demand for bill of particulars regarding plaintiff's age and date of birth were acceptable, since party's age is factor which determines life and work expectancies. And, request in demand for bill of particulars that plaintiff specify statutes which

defendant allegedly violated was not improper, and appropriate response would include statement that no such violations are claimed or now known, subject to subsequent amendment or supplement to response if any such violation is later claimed. *Eaton v Chahal*, 146 Misc. 2d 977, 553 N.Y.S.2d 642, 1990 N.Y. Misc. LEXIS 118 (N.Y. Sup. Ct. 1990).

6. Particular items not discoverable

In action for conversion of property which had been assigned as collateral in connection with financing construction of large housing development in Texas where complaint alleged that under law of Texas if creditor or beneficiary under a deed of trust bids on the property in foreclosure for a grossly inadequate price coupled with misconduct, fraud, unfairness, oppressiveness, or the taking of undue advantage, then the creditor beneficiary may be held liable in damages to the debtor or mortgagor for the malfeasance, defendants would not be allowed to demand particulars setting forth true and correct copies of the statutes and cases upon which these allegations of law were based together with the complete official citation of the same, since the allegations suggest that particularization would be a time-consuming futility, and defendants would have ample opportunity in pretrial discovery to establish whatever it was they needed to know. *Gevinson v Kirkeby-Natus Corp.*, 26 A.D.2d 71, 270 N.Y.S.2d 989, 1966 N.Y. App. Div. LEXIS 3997 (N.Y. App. Div. 1st Dep't 1966).

In an action alleging libel and slander, where the defendant bore the burden of proof as to the affirmative defenses of truth and privilege, the plaintiff's demand for a bill of particulars requesting the names of witnesses to the alleged libel and slander was denied, as such information need not be disclosed before trial, but plaintiff's demand was granted for the names of those persons to whom the alleged slanderous comment was made or to whom the alleged libelous letter was shown. *Bounds v Mutual of Omaha Ins. Co.*, 37 A.D.2d 1008, 325 N.Y.S.2d 573, 1971 N.Y. App. Div. LEXIS 3087 (N.Y. App. Div. 3d Dep't 1971).

Where plaintiff was suing to recover attorney's fee based on quantum meruit, involving conduct of single case, defendant was not entitled to details pertaining to each and every item of legal

services claimed to have been performed, as sought by demand for bill of particulars, but was entitled to enumeration of general services performed and overall time spent thereon. *McLaughlin & Stern, Ballen & Miller v Gottlieb*, 52 A.D.2d 765, 382 N.Y.S.2d 776, 1976 N.Y. App. Div. LEXIS 12525 (N.Y. App. Div. 1st Dep't 1976).

In a defamation action brought by a public official against a newspaper publishing company the trial court properly refused to strike those items in defendant's demand for a bill of particulars which related to matters as to which plaintiff bore the burden of proving malice, where the complaint was stated largely in generalities; however, the trial court erred in failing to strike one item which related to the ad damnum clause in plaintiff's complaint, although the clause was also stated in general terms, where no particularization was necessary in that no special damages were alleged. *Miller v Village Voice, Inc.*, 79 A.D.2d 571, 434 N.Y.S.2d 26, 1980 N.Y. App. Div. LEXIS 13892 (N.Y. App. Div. 1st Dep't 1980).

In a town's action to recover from the state damages for its appropriation of 14 miles of town roads, the trial court erred in failing to issue a protective order as to certain demands in the state's bill of particulars where the demands requested either opinion evidence or evidence by which the town sought to prove its claim. *New Windsor v State*, 81 A.D.2d 681, 437 N.Y.S.2d 803, 1981 N.Y. App. Div. LEXIS 11225 (N.Y. App. Div. 3d Dep't 1981).

In an action brought to recover a referral fee, Special Term properly vacated defendant's entire demand for a bill of particulars where the individual demands were designed to elicit plaintiff's evidence in support of his claim, rather than to obtain the details of his claim, containing requests for the names of potential witnesses as well as for the details of the work which plaintiff had performed pursuant to an alleged oral contract, in that both types of demands were unacceptable as calling for evidentiary information. *Clark v Vicinanzo*, 108 A.D.2d 984, 484 N.Y.S.2d 971, 1985 N.Y. App. Div. LEXIS 43312 (N.Y. App. Div. 3d Dep't 1985).

In action for breach of fire insurance contract, insured's 17-page demand for bill of particulars, consisting of 41 paragraphs and at least 170 requests for information, was unduly burdensome and oppressive and would be vacated in its entirety where many requests for information

improperly sought (1) names and addresses of witnesses without showing of special circumstances, (2) discovery and inspection of documents, (3) evidentiary material, or (4) grounds for insurer's legal arguments. *176-178 Ashburton Ave. Corp. v New York Property Ins. Underwriting Asso.*, 125 A.D.2d 653, 510 N.Y.S.2d 12, 1986 N.Y. App. Div. LEXIS 62934 (N.Y. App. Div. 2d Dep't 1986).

In breach of contract action, plaintiff's demand for bill of particulars was unduly burdensome and oppressive where it improperly requested (1) evidentiary material, (2) names and addresses of prospective witnesses with no showing of special and unusual circumstances warranting such disclosure, and (3) matter regarding which plaintiff had burden of proof. *Simpson Electric Corp. v Leucadia, Inc.*, 130 A.D.2d 738, 516 N.Y.S.2d 39, 1987 N.Y. App. Div. LEXIS 46750 (N.Y. App. Div. 2d Dep't 1987).

In divorce action alleging that husband committed adultery with named person and was physically and verbally abusive, husband's demand for bill of particulars was improper insofar as it sought particulars concerning evidentiary matters relating to merits of matrimonial causes of action. *Fiorella v Fiorella*, 132 A.D.2d 643, 518 N.Y.S.2d 17, 1987 N.Y. App. Div. LEXIS 49191 (N.Y. App. Div. 2d Dep't), app. dismissed, 70 N.Y.2d 796, 522 N.Y.S.2d 113, 516 N.E.2d 1226, 1987 N.Y. LEXIS 19370 (N.Y. 1987).

In medical malpractice action, court correctly struck plaintiffs' demand for bill of particulars as to defenses contained in CLS Pub Health § 2805-d(4) where defendant never pleaded such defenses. *Sollazzo v Edelman*, 142 A.D.2d 572, 529 N.Y.S.2d 907, 1988 N.Y. App. Div. LEXIS 7306 (N.Y. App. Div. 2d Dep't 1988).

Attorneys who commenced action to recover fee for legal services rendered were entitled to bill of particulars on affirmative defense claiming that their service was inferior and of no monetary value, but were not entitled to bill of particulars on counterclaim for overcharging and legal malpractice, since malpractice insurer retained its own counsel to defend on counterclaims; any burden on defendant resulting from having to answer 2 sets of disclosure demands by different counsel was brought about by manner in which defendant chose to frame his pleadings, not by

fact that attorneys had separate counsel on their claim and counterclaims. *Canino v Bozza*, 144 A.D.2d 127, 534 N.Y.S.2d 638, 1988 N.Y. App. Div. LEXIS 10156 (N.Y. App. Div. 3d Dep't 1988).

In wrongful death action commenced by administratrix of her husband's estate to recover for alleged medical malpractice, it was error to require plaintiff to respond to item in defendant's demand for bill of particulars that she set forth those known and material risks and hazards surrounding treatment of decedent; demand was palpably improper as it called for expert information and was purely evidentiary. *Scalone v Phelps Memorial Hosp. Center*, 184 A.D.2d 65, 591 N.Y.S.2d 419, 1992 N.Y. App. Div. LEXIS 13639 (N.Y. App. Div. 2d Dep't 1992).

Court properly directed medical malpractice plaintiffs to serve further response to item of demand for bill of particulars requesting plaintiffs to identify procedure and treatment performed without their informed consent, but it was improper to require plaintiffs to state content of warnings that should have been disclosed as well as alternative medical procedure they would have chosen had they been given such warnings. *Liddell v Cree*, 233 A.D.2d 593, 649 N.Y.S.2d 101, 1996 N.Y. App. Div. LEXIS 11441 (N.Y. App. Div. 3d Dep't 1996).

7. Items of account

In an action for a judicial separation, where a wife counterclaimed for money she allegedly was required to expend for her own maintenance and necessities, the plaintiff was entitled to details with respect to an aggregate figure expressed in the counterclaim. *Olena v Olena*, 24 A.D.2d 636, 262 N.Y.S.2d 404, 1965 N.Y. App. Div. LEXIS 3494 (N.Y. App. Div. 2d Dep't 1965).

14.5. Family offense petitions

Wife was entitled to an order compelling the husband to serve a bill of particulars in response to her demand because the demand concerned the family offense petition filed in the proceeding and leave of court was unnecessary to serve a demand for a bill of particulars, regardless of

whether a family offense proceeding constituted a “special proceeding” where the purpose of a bill of particulars was to amplify the pleadings, limit the proof, and prevent surprise at trial. *Matter of Carlos L. v Sandy C.*, 51 Misc. 3d 506, 25 N.Y.S.3d 822, 2016 N.Y. Misc. LEXIS 194 (N.Y. Fam. Ct. 2016).

B. Amended or Supplemental Bills of Particular

8. Generally

Stating that the defendant’s original bill of particulars had been inadequate in certain respects, the court listed in detail the information to be contained in a supplemental bill of particulars. *Pacific Lime, Inc. v Lowenberg Corp.*, 35 A.D.2d 754, 314 N.Y.S.2d 858, 1970 N.Y. App. Div. LEXIS 3723 (N.Y. App. Div. 3d Dep’t 1970).

Special Term did not abuse its discretion in compelling defendant to accept service of plaintiffs’ supplemental bill of particulars or in refusing to strike the action from the Trial Calendar. However, since the supplemental bill of particulars was inadvertently served some three days after the time fixed by the order of the court, plaintiffs’ attorney would be required to pay \$500 to defendant’s attorney as condition of that acceptance. *Varan v Tri-City Rentals, Inc.*, 90 A.D.2d 501, 454 N.Y.S.2d 740, 1982 N.Y. App. Div. LEXIS 18530 (N.Y. App. Div. 2d Dep’t 1982).

The trial court improperly disallowed an amended verified bill of particulars, enumerating injuries which were sufficiently documented in the original bill of particulars and the medical record served upon defendant prior to trial to apprise them of the existence of these injuries; however, defendants’ motion to vacate would be granted as to there particular injuries which had been added to the amended bill of particulars, since defendants could show prejudice. *Boggi v Murphy*, 105 A.D.2d 768, 481 N.Y.S.2d 423, 1984 N.Y. App. Div. LEXIS 20890 (N.Y. App. Div. 2d Dep’t 1984).

Motions to amend or supplement a bill of particulars are governed by same standards as those applying to motions to amend pleadings; permission to amend or supplement bill of particulars should be freely given, and decision to allow or disallow amendment is committed to court's discretion. *Koch v St. Francis Hospital*, 112 A.D.2d 142, 490 N.Y.S.2d 782, 1985 N.Y. App. Div. LEXIS 56428 (N.Y. App. Div. 2d Dep't 1985).

In personal injury action, trial court properly permitted plaintiff to introduce evidence of neck injuries and psychological damage included in supplemental bill of particulars, but not specified in original bill, where medical testimony at trial directly linked neck injuries and psychological damage to physical injuries sustained in accident so that supplemental bill was properly utilized to expand on extent of continuing disability. *Schnarch v Owen*, 124 A.D.2d 372, 507 N.Y.S.2d 315, 1986 N.Y. App. Div. LEXIS 61389 (N.Y. App. Div. 3d Dep't 1986).

Defendant was entitled to additional discovery when served with amended bills of particulars alleging new injuries after case had been marked off trial calendar during jury selection at plaintiff's request; however, discovery would be limited to any new matter alleged in bills. *Germana v Chase Manhattan Bank, N. A.*, 124 A.D.2d 500, 508 N.Y.S.2d 11, 1986 N.Y. App. Div. LEXIS 61823 (N.Y. App. Div. 1st Dep't 1986).

It was not abuse of discretion to deny personal injury plaintiff leave to serve amended bills of particulars on eve of trial, over 6 ½ years after accident and more than 2 years after note of issue was filed. *Fucci v Long Island R. Corp.*, 126 A.D.2d 700, 511 N.Y.S.2d 304, 1987 N.Y. App. Div. LEXIS 41844 (N.Y. App. Div. 2d Dep't 1987).

Plaintiff was not excused from answering defendant's demand for further bill of particulars by claim that defendant had full knowledge of facts. *Draper v Zamara*, 126 A.D.2d 941, 511 N.Y.S.2d 986, 1987 N.Y. App. Div. LEXIS 42044 (N.Y. App. Div. 4th Dep't 1987).

Court properly denied plaintiff's motion to amend bill of particulars where proposed amended bill sought to inject new theory of negligence 6 years after accident, over 3 years after commencement of action, and almost one year following plaintiffs' filing of note of issue and

certificate of readiness; under circumstances, defendant would clearly be prejudiced by allowing amendment, especially since plaintiffs failed to show extraordinary circumstances justifying their failure to seek amendment until eve of trial. *Reynolds v A. C. Towne Corp.*, 132 A.D.2d 952, 518 N.Y.S.2d 528, 1987 N.Y. App. Div. LEXIS 49410 (N.Y. App. Div. 4th Dep't), app. denied, 70 N.Y.2d 613, 524 N.Y.S.2d 431, 519 N.E.2d 342, 1987 N.Y. LEXIS 19905 (N.Y. 1987).

Court should have granted plaintiffs' motion to amend their bill of particulars to assert claim of future institutional care for injured plaintiff as element of damages since defendants would not be prejudiced inasmuch as plaintiffs' medical reports clearly apprised defendants of injured plaintiff's deteriorating condition and possibility of institutional care. *Horvatis v Norfolk W. Railroad*, 133 A.D.2d 545, 519 N.Y.S.2d 1019, 1987 N.Y. App. Div. LEXIS 50065 (N.Y. App. Div. 4th Dep't 1987).

It was proper to allow plaintiff to serve amended bill of particulars in light of difficulty in ascertaining full extent of plaintiff's injuries, expeditious manner in which leave to serve amended bill was sought, and right to further discovery which had been afforded to defendants. *Corwin v Babylon*, 137 A.D.2d 579, 524 N.Y.S.2d 470, 1988 N.Y. App. Div. LEXIS 1011 (N.Y. App. Div. 2d Dep't 1988).

In action which has long been certified ready for trial, judicial discretion in allowing amended bills of particulars and additional medical reports should be discrete, circumspect, prudent and cautious. In action to recover for personal injuries, court properly granted motion of plaintiffs to serve third amended bill of particulars and additional medical reports where no inordinate delay in seeking amendment was evident and defendants failed to demonstrate how they would be prejudiced by service of amended bill or medical reports. *Kim v Cohen*, 146 A.D.2d 747, 537 N.Y.S.2d 69, 1989 N.Y. App. Div. LEXIS 898 (N.Y. App. Div. 2d Dep't 1989).

In action to recover for personal injuries, court did not improvidently exercise its discretion in denying plaintiffs' motion to amend their bill of particulars where (1) plaintiffs made no effort to explain delay when seeking leave on eve of trial some 6 ½ years after accident, 3 ½ years after original bill of particulars was served, and 2 ½ years after completion of examinations before

trial, and (2) proposed amendment sought to add new theory of recovery which was not readily discernible from allegations in original complaint and bill of particulars. *Simpson v Browning-Ferris Industries Chemical Services, Inc.*, 146 A.D.2d 769, 537 N.Y.S.2d 73, 1989 N.Y. App. Div. LEXIS 877 (N.Y. App. Div. 2d Dep't 1989).

Court properly denied plaintiff leave to amend bill of particulars to include new injuries and new theory of recovery where (1) leave was requested 8 years after lawsuit commenced, one year after matter was placed on trial calendar, and subsequent to selection of jury, (2) plaintiff failed to offer explanation for delay in seeking amendment, and (3) defendant would have been substantially prejudiced by amendment. *Masterson v New York Hosp.*, 181 A.D.2d 451, 580 N.Y.S.2d 352, 1992 N.Y. App. Div. LEXIS 3077 (N.Y. App. Div. 1st Dep't 1992).

Amended bill of particulars was nullity where it was not served prior to note of issue, and plaintiffs did not seek leave of court to amend bill of particulars. *Leon v First Nat'l City Bank*, 224 A.D.2d 497, 637 N.Y.S.2d 482, 1996 N.Y. App. Div. LEXIS 1186 (N.Y. App. Div. 2d Dep't 1996).

It was abuse of discretion to deny plaintiff's motion to amend her bill of particulars where proposed amendment was merely embellishment of theory of liability contained in original bill of particulars. *Dent v Siara Mgmt.*, 225 A.D.2d 1032, 639 N.Y.S.2d 768, 1996 N.Y. App. Div. LEXIS 2850 (N.Y. App. Div. 4th Dep't 1996).

Court properly denied third-party plaintiff's motion for leave to amend its bill of particulars in third-party action where motion was brought 9 years after occurrence which caused primary plaintiff's injuries, 5 years after third-party complaint was filed, and one year after third-party defendant filed note of issue, there was no affidavit of merit for proposed amendment or affidavit showing reasonable excuse for extensive delay, amendment asserted new theory of liability based on different factual aspects of incident, and there was possibility that evidence had been lost. *Carranza v Brooklyn Union Gas Co.*, 233 A.D.2d 287, 649 N.Y.S.2d 464, 1996 N.Y. App. Div. LEXIS 11602 (N.Y. App. Div. 2d Dep't 1996).

Court properly denied plaintiffs' motion for leave to amend their bill of particulars to claim that all statutes alleged in their notice of claim had been violated by defendants since statutes sought to be referenced were not in plaintiffs' complaint, bill of particulars, or in any other pleading, notice of claim was served over 5 years earlier than their motion for leave to amend, note of issue and certificate of readiness had been served, and no discovery as to any of claims in question was ever conducted. *Hedlund v County of Tompkins*, 235 A.D.2d 980, 652 N.Y.S.2d 877, 1997 N.Y. App. Div. LEXIS 744 (N.Y. App. Div. 3d Dep't), app. dismissed, 89 N.Y.2d 1086, 659 N.Y.S.2d 859, 681 N.E.2d 1306, 1997 N.Y. LEXIS 1233 (N.Y. 1997), app. denied, 90 N.Y.2d 808, 664 N.Y.S.2d 269, 686 N.E.2d 1364, 1997 N.Y. LEXIS 3086 (N.Y. 1997).

Court abused its discretion in granting plaintiff's motion for leave to serve amended bill of particulars where she failed to offer reasonable excuse for her inordinate delay in seeking to add new injuries, and her medical affidavit failed to sufficiently show nexus between new injuries and her accident. *Smith v Plaza Transp. Ambulance Serv.*, 243 A.D.2d 555, 665 N.Y.S.2d 513, 1997 N.Y. App. Div. LEXIS 9828 (N.Y. App. Div. 2d Dep't 1997).

In action under CLS Labor § 241(6), court properly denied plaintiff's motion to amend bill of particulars to allege defendant's violation 12 NYCRR § 23-1.7(e)(1) and (2) since those regulations did not apply to instant situation involving out-of-doors worn dirt pathway. *Gavigan v Bunkoff Gen. Contrs.*, 247 A.D.2d 750, 669 N.Y.S.2d 69, 1998 N.Y. App. Div. LEXIS 1577 (N.Y. App. Div. 3d Dep't), app. denied, 92 N.Y.2d 804, 677 N.Y.S.2d 779, 700 N.E.2d 318, 1998 N.Y. LEXIS 1868 (N.Y. 1998).

Court improperly denied plaintiffs' motion for leave to amend their bill of particulars and complaint to assert action under CLS Gen Mun § 205-a against individual defendant in order to identify statutes or ordinances which defendant allegedly violated, and court should not have granted defendant's motion to dismiss plaintiffs' action under CLS Gen Mun § 205-a on ground that plaintiffs failed to identify such statutes or ordinances. *Shelton v City of New York*, 256 A.D.2d 611, 683 N.Y.S.2d 123, 1998 N.Y. App. Div. LEXIS 14102 (N.Y. App. Div. 2d Dep't

1998), app. denied, 93 N.Y.2d 907, 691 N.Y.S.2d 377, 713 N.E.2d 412, 1999 N.Y. LEXIS 1181 (N.Y. 1999).

Personal injury plaintiff was not entitled to serve second bill of particulars as of right after note of issue was filed where his additional injuries listed in second bill predated accident that was subject of suit, and his allegation that prior condition had been aggravated presented new theory not raised in original bill or complaint. Court improvidently exercised its discretion in granting personal injury plaintiff leave to amend his bill of particulars to assert additional injuries where plaintiff failed to offer reasonable excuse for delay until 3 years after accident and after note of issue was filed, proposed amendment would require defendants to reorient their strategy, and plaintiff failed to provide medical affidavit to establish merits of new theory that accident aggravated previous injuries. *Barrera v City of New York*, 265 A.D.2d 516, 697 N.Y.S.2d 132, 1999 N.Y. App. Div. LEXIS 10825 (N.Y. App. Div. 2d Dep't 1999).

Plaintiff's motion for leave to amend bill of particulars to include new theories of liability was properly denied where motion was made 5 months after filing of note of issue and nearly 5 years after accident, and plaintiff did not show special or extraordinary circumstances. *De Ordio v Golembieski*, 269 A.D.2d 861, 703 N.Y.S.2d 807, 2000 N.Y. App. Div. LEXIS 1824 (N.Y. App. Div. 4th Dep't 2000).

Amended bill of particulars alleging that accident occurred one week earlier than originally alleged was not new claim of which original pleadings did not give notice within meaning of CLS CPLR § 203(f) such that action should therefore be dismissed as time-barred. *Drwal v 101 Ltd. Pshp.*, 271 A.D.2d 227, 706 N.Y.S.2d 385, 2000 N.Y. App. Div. LEXIS 3841 (N.Y. App. Div. 1st Dep't 2000).

Court abused its discretion in granting plaintiff's motion to amend her bill of particulars to allege violations of various regulations where motion was made approximately 6 months after note of issue had been filed and 3 years after accident, and proposed amendment lacked merit. *Cerni v Zambrana*, 271 A.D.2d 566, 706 N.Y.S.2d 153, 2000 N.Y. App. Div. LEXIS 4325 (N.Y. App. Div. 2d Dep't 2000).

Defendants were not entitled to summary judgment dismissing CLS Labor § 241(6) claim where claim was not plainly lacking in merit, there was no showing of prejudice to defendants, and motion court properly allowed plaintiff to submit supplemental bill of particulars that merely expanded previous one by specifying Industrial Code sections relied on. *Baten v Wehuda*, 281 A.D.2d 366, 722 N.Y.S.2d 534, 2001 N.Y. App. Div. LEXIS 3200 (N.Y. App. Div. 1st Dep't 2001).

9. Attorney malpractice

Amendment of plaintiffs' bill of particulars to add allegations of negligence in legal malpractice case was properly denied where motion was made 5 months after note of issue was filed, more than 7 years after vehicular accident on which defendants had represented plaintiffs, and nearly 3 years after action was commenced, and plaintiffs made no showing of special or extraordinary circumstances. *Mc Kenna v Forsyth & Forsyth*, 280 A.D.2d 79, 720 N.Y.S.2d 654, 2001 N.Y. App. Div. LEXIS 1126 (N.Y. App. Div. 4th Dep't), app. denied, 96 N.Y.2d 720, 733 N.Y.S.2d 372, 759 N.E.2d 371, 2001 N.Y. LEXIS 3058 (N.Y. 2001).

10. Bailment

Court properly denied plaintiff's motion for leave to amend its bill of particulars, which limited scope of damages to 65 checked items of inventory out of 1,060 contained in warehouse reconciliation report, to include all 1,060 items where motion was not made until eve of trial, nearly 7 years after filing original bill, even though it could have done so from outset, especially given severe prejudice to defendants due to lack of discovery as to remaining items in report. *Baby Togs, Inc. v Faleck & Margolies, Inc.*, 239 A.D.2d 278, 658 N.Y.S.2d 842, 1997 N.Y. App. Div. LEXIS 5422 (N.Y. App. Div. 1st Dep't 1997).

11. Construction site accident

In an action by an employee struck at a construction site by beams being transported by defendant company under a construction contract with plaintiff's employer, in which a bill of

particulars had been served and a note of issue and certificate of readiness had been filed, plaintiff was properly denied an order allowing service of a supplemental bill of particulars, since leave to serve an amended bill of particulars should not be granted where a certificate of readiness has been filed except upon a showing of special and extraordinary circumstances, and since the necessary circumstances were not provided by a hearsay affidavit of plaintiff's attorney alleging that he had recently learned from employees of defendant company that it had supervisory responsibilities with regard to plaintiff and that the company had built and was under a duty to maintain a roadway where the accident occurred. *Sampson v Barber Salvage Co.*, 78 A.D.2d 977, 433 N.Y.S.2d 676, 1980 N.Y. App. Div. LEXIS 13742 (N.Y. App. Div. 4th Dep't 1980).

Injured construction worker's cross motion for permission to serve amended complaint and bill of particulars on subcontractor was academic where, after completion of disclosure and filing of note of issue, worker failed to adduce evidence sufficient to defeat any part of subcontractor's summary judgment motion. *Vieira v Tishman Constr. Corp.*, 255 A.D.2d 235, 679 N.Y.S.2d 618, 1998 N.Y. App. Div. LEXIS 12422 (N.Y. App. Div. 1st Dep't 1998).

Injured construction worker alleging violation of CLS Labor § 241(6) was entitled to amend his bill of particulars for further specificity where he did not allege any new facts, and viable claim of prejudice or surprise could not be asserted, especially because further discovery was allowed. *McGuire v Independent Cement Corp.*, 255 A.D.2d 646, 679 N.Y.S.2d 745, 1998 N.Y. App. Div. LEXIS 11667 (N.Y. App. Div. 3d Dep't 1998).

Industrial Code regulation under 12 NYCRR § 23-2.7(b) did not apply to wooden staircase leading from trailer, notwithstanding that both trailer and staircase leading up to its door were located on construction site; thus, court properly denied plaintiffs' motion to amend their bill of particulars to assert violation of regulation. *Painton v Cosco Wholesale, Inc.*, 267 A.D.2d 288, 700 N.Y.S.2d 197, 1999 N.Y. App. Div. LEXIS 12868 (N.Y. App. Div. 2d Dep't 1999).

12. Damages; Ad damnum clause

In a personal injuries action, the trial court properly denied plaintiff's motion to amend her bill of particulars to allege permanent injury and to increase her ad damnum clause where the motion was made over eight years from the date of the accident, five years after filing the first statement of readiness and nine months after the last, and at least one year after the last significant doctor's examination, where there was no reasonable excuse offered for the long delay, and where the affidavit of a physician failed to demonstrate the prospective consequences of plaintiff's alleged injuries, her resulting disabilities, and the causal relationship between the disabilities and the original injuries sustained. *Lycett v Niagara Frontier Transit Systems, Inc.*, 81 A.D.2d 1034, 440 N.Y.S.2d 123, 1981 N.Y. App. Div. LEXIS 11796 (N.Y. App. Div. 4th Dep't 1981).

Plaintiff's motion to amend bill of particulars in action to recover for personal injuries did not seek to increase ad damnum clause of complaint, and therefore submission of physician's affidavit was not required. *Miller v Danchak*, 144 A.D.2d 825, 534 N.Y.S.2d 784, 1988 N.Y. App. Div. LEXIS 10968 (N.Y. App. Div. 3d Dep't 1988).

It was abuse of discretion to grant plaintiff's motion for leave to supplement his bill of particulars in connection with retrial on issue of damages where plaintiff first moved to supplement bill 3 years after original trial and about 12 years after commencement of action, he offered no reasonable excuse for such delay, and he sought to supplement bill with new claims of permanent injuries and lost earnings. *Reape v City of New York*, 272 A.D.2d 533, 708 N.Y.S.2d 131, 2000 N.Y. App. Div. LEXIS 5796 (N.Y. App. Div. 2d Dep't 2000).

13. —Emotional and psychological damages

It was abuse of discretion to deny defendant's motion to strike supplemental bill of particulars, which set forth new claim of negligent infliction of emotional distress, where plaintiffs had sought to recover only property damages against defendant, defendant had no prior notice of such claim, and no reason was offered for delay in asserting it. *Cippitelli v Town of Niskayuna*, 203 A.D.2d 632, 610 N.Y.S.2d 622, 1994 N.Y. App. Div. LEXIS 3631 (N.Y. App. Div. 3d Dep't 1994).

Plaintiffs were not relieved of requirement of seeking leave to amend bill of particulars under CLS CPLR § 3042 to include psychological injuries on ground that such injuries allegedly sustained by plaintiff were merely “logical sequelae” of physical injuries recited in earlier bill of particulars. *Thomas v Mat Power, Inc.*, 205 A.D.2d 525, 613 N.Y.S.2d 55, 1994 N.Y. App. Div. LEXIS 5991 (N.Y. App. Div. 2d Dep't 1994).

In medical malpractice action, it was abuse of discretion to grant defendant's motion to strike and to deny plaintiffs' cross motion to compel acceptance of their supplemental bill of particulars setting forth additional elements of damage, including claim that plaintiff's wife, who asserted derivative cause of action, experienced severe mental and emotional trauma causing adverse physiological and psychological effects as result of injury to plaintiff, since no new cause of action had been stated, and defendant conceded that “certain elements of emotional distress are taken into consideration and are therefor inherent in a derivative claim for loss of consortium on behalf of a spouse in a personal injury action.” *Sagar v Son*, 208 A.D.2d 1092, 617 N.Y.S.2d 409, 1994 N.Y. App. Div. LEXIS 9780 (N.Y. App. Div. 3d Dep't 1994).

Medical malpractice defendant waived his right to conduct psychiatric examination of injured plaintiff where (1) motion to compel examination was made almost 3 years after service of plaintiffs' amended bill of particulars and narrative reports of injured plaintiff's treating psychotherapist, almost 2 years after service of note of issue and certificate of readiness, and beyond 45-day period set forth in stipulation for arrangement for such examination, (2) defendant did not move to vacate note of issue within 20 days as required by CLS Unif Tr Ct Rls § 202.21 (22 NYCRR § 202.21), (3) after service of plaintiffs' amended bill of particular, plaintiffs did not allege new or additional injuries or that nature and extent of existing injuries had changed dramatically, and (4) defendant failed to show that “unusual and unanticipated circumstances” developed after filing of note of issue and certificate of readiness that would require psychiatric examination. *Schenk v Maloney*, 266 A.D.2d 199, 697 N.Y.S.2d 332, 1999 N.Y. App. Div. LEXIS 11142 (N.Y. App. Div. 2d Dep't 1999).

In medical malpractice action, court properly struck, as prejudicial to defendants, part of plaintiff's supplemental bill of particulars alleging injuries related to his social withdrawal, depression, and anxiety where any such injuries were not sequela of original injury involving orthopedic surgery and, if alleged to be "mental anguish," were not amplified until over 10 years after acts of malpractice alleged therein and in original bill of particulars. *Watson v City of New York*, 273 A.D.2d 115, 709 N.Y.S.2d 546, 2000 N.Y. App. Div. LEXIS 7130 (N.Y. App. Div. 1st Dep't 2000).

14. —Future earnings as element of damages

It was error to preclude plaintiff from supplementing his bill of particulars by increasing his alleged current loss of earnings and anticipated loss of future earnings on his claim that his injuries rendered him physically unable to continue his practice of obstetrical medicine, since (1) he had been instructed to file "supplemental bill of particulars" as to any such damages in preliminary conference order, (2) he was entitled to rely on provisions of CLS CPLR § 3043(b), and (3) defendants failed to show any prejudice by failure to supplement bill of particulars at earlier date. *Berman v Wheels, Inc.*, 207 A.D.2d 704, 616 N.Y.S.2d 498, 1994 N.Y. App. Div. LEXIS 8818 (N.Y. App. Div. 1st Dep't 1994).

Plaintiff injured in traffic accident was entitled to amend his bill of particulars to add claim for lost earnings as accountant, even though he was employed as bicycle delivery person at time of accident, where defendants had notice that he had bachelor's degree in accounting, had previously worked as accountant, and intended to resume that career. *Abdelnabi v New York City Transit Auth.*, 273 A.D.2d 114, 709 N.Y.S.2d 548, 2000 N.Y. App. Div. LEXIS 7177 (N.Y. App. Div. 1st Dep't 2000).

15. Insurance matter

In an action to recover money damages against an insurance company by an assignee of an insured's rights, arising out of the company's alleged bad faith refusal to settle within policy limits

a previous action between the plaintiff and the company's insured, which refusal had resulted in a verdict in excess thereof, it was an abuse of discretion to grant to plaintiffs leave to file a supplemental bill of particulars despite their assertion that they had had considerable difficulty in obtaining a new attorney after their original attorney had been disqualified by court order, where there had been a lapse of six months from the changing of attorneys to the time the plaintiff offered the bill of particulars in defending against the defendant's motion for summary judgment. *Shumalski v Government Employees Ins. Co.*, 80 A.D.2d 975, 438 N.Y.S.2d 609, 1981 N.Y. App. Div. LEXIS 10885 (N.Y. App. Div. 3d Dep't), *aff'd*, 54 N.Y.2d 671, 442 N.Y.S.2d 508, 425 N.E.2d 897, 1981 N.Y. LEXIS 2620 (N.Y. 1981).

16. Medical malpractice, generally

The trial court in a medical malpractice action properly denied plaintiffs' motion for leave to serve an amended bill of particulars on the eve of trial where the addition of new allegations of medical malpractice as contained in plaintiffs' proposed amended bill, at a point in time remote from the original injury, would have resulted in substantial prejudice to defendant, and where plaintiffs failed to submit an affidavit from the physician who allegedly discovered the alleged new acts of negligence contained in the amended bill so as to present a reasonable excuse for their delay in asserting such claims and to explain their merits. *Eggeling v County of Nassau*, 97 A.D.2d 395, 467 N.Y.S.2d 218, 1983 N.Y. App. Div. LEXIS 19975 (N.Y. App. Div. 2d Dep't 1983).

In medical malpractice action, plaintiff's motion to serve supplemental bill of particulars was properly granted where proposed supplemental bill set forth injuries which, according to plaintiff's medical expert, were "continuing and maturing injuries which are listed and set forth in the original verified bill of particulars," rather than presenting any unrelated "new" injuries. *Bermas v Long Beach Memorial Hospital*, 131 A.D.2d 619, 516 N.Y.S.2d 703, 1987 N.Y. App. Div. LEXIS 48088 (N.Y. App. Div. 2d Dep't 1987).

Court improperly allowed medical malpractice plaintiff to amend her bill of particulars for first time on eve of trial to include claim for impairment of earning capacity since defendant was

thereby deprived of opportunity for discovery and preparation on that issue. *Dooley v Skodnek*, 138 A.D.2d 102, 529 N.Y.S.2d 569, 1988 N.Y. App. Div. LEXIS 7055 (N.Y. App. Div. 2d Dep't 1988).

Plaintiffs were not entitled to amend their bill of particulars in medical malpractice action to embrace alleged acts of malpractice which occurred prior to those originally set forth in complaint where (1) complaint alleged that decedent came under care of defendants on or about specific date, (2) bill of particulars and supplemental bills of particulars alleged acts of malpractice occurring on or after that date, and (3) plaintiffs proposed new amendment to bill of particulars after note of issue had been filed and on eve of trial; record disclosed no satisfactory explanation for belatedness of amendment, which sought to expand theory of liability, and amendment would prejudice defendants by requiring them, almost 8 years after commencement of lawsuit, to confront claims of malpractice occurring some 10 years earlier. *Bosch v New York*, 143 A.D.2d 607, 533 N.Y.S.2d 425, 1988 N.Y. App. Div. LEXIS 10374 (N.Y. App. Div. 1st Dep't 1988).

Court properly denied medical malpractice plaintiff's motion for leave to amend his bill of particulars so as to include claim for damages to compensate for custodial, supervisory and housekeeping care where neither original bill of particulars nor amended bill served 2 years later (when note of issue and statement of readiness were filed) alleged such special damages, and it was not until 5 years thereafter (after jury selection was aborted and adjournments granted) that plaintiff attempted to serve what he labeled "supplemental bill" which included such items; moreover, there was no acceptable excuse offered for delay in raising such claim. *Pearce v Booth Memorial Hospital*, 152 A.D.2d 553, 543 N.Y.S.2d 157, 1989 N.Y. App. Div. LEXIS 9691 (N.Y. App. Div. 2d Dep't 1989).

In medical malpractice action arising from allegedly inept back surgery which caused plaintiff to lose both right leg and ability to ejaculate, court properly denied defendant's motion to vacate plaintiff's "supplemental bill of particulars" which added claims of malpractice resulting in additional listed injuries and asserted claims for special damages, since note of issue had not

been filed at time bill was filed, and “supplemental bill” was more in nature of amended bill as contemplated by CLS CPLR 3042(g), under which party may amend bill of particulars once as of course before trial and prior to filing of note of issue. *Torre v Cifarelli*, 157 A.D.2d 713, 549 N.Y.S.2d 812, 1990 N.Y. App. Div. LEXIS 516 (N.Y. App. Div. 2d Dep't 1990).

Plaintiffs were not entitled to amend their bill of particulars in medical malpractice action to assert claim for failure to prescribe proper medications where (1) original bill and earlier amended bill claimed failure to diagnose and to properly interpret diagnostic tests, failure to advise on and perform laser therapy, and failure to obtain informed consent, (2) medical malpractice panel reached unanimous finding of no liability, (3) one year later and on eve of trial, plaintiffs made instant motion and alleged that claim was left out due to inadvertent typographical error, (4) court denied motion, and (5) plaintiffs then moved for renewal or re-argument and alleged that they did not move earlier to amend because they had lacked good faith basis to proceed on new theory; prejudice to defendants was clear, there was no good excuse for delay, and plaintiffs would not be permitted to advance second excuse after first excuse was rejected as inadequate. *Hausmann v Wolf*, 187 A.D.2d 371, 589 N.Y.S.2d 481, 589 N.Y.S.2d 483, 1992 N.Y. App. Div. LEXIS 13108 (N.Y. App. Div. 1st Dep't 1992).

In medical malpractice action, it was abuse of discretion to grant defendant's motion to strike and to deny plaintiffs' cross motion to compel acceptance of their supplemental bill of particulars setting forth additional elements of damage, including claim that plaintiff's wife, who asserted derivative cause of action, experienced severe mental and emotional trauma causing adverse physiological and psychological effects as result of injury to plaintiff, since no new cause of action had been stated, and defendant conceded that “certain elements of emotional distress are taken into consideration and are therefor inherent in a derivative claim for loss of consortium on behalf of a spouse in a personal injury action.” *Sagar v Son*, 208 A.D.2d 1092, 617 N.Y.S.2d 409, 1994 N.Y. App. Div. LEXIS 9780 (N.Y. App. Div. 3d Dep't 1994).

It was error for court to deny medical malpractice plaintiff's motion for order permitting service of third supplemental bill of particulars where there was no allegation of “new” injury, and

defendants were on notice from prior supplemental bill as to particular injury in question. *Clarke v Yonkers Gen. Hosp.*, 228 A.D.2d 152, 643 N.Y.S.2d 545, 1996 N.Y. App. Div. LEXIS 6355 (N.Y. App. Div. 1st Dep't 1996).

Court properly denied medical malpractice plaintiffs' motion for leave to serve amended bill of particulars where motion was made on eve of trial, there was inordinate, unexplained delay in bringing motion, and they were seeking to make material amendment to their bill of particulars. *Rosa v Westchester County Medical Ctr.*, 233 A.D.2d 311, 649 N.Y.S.2d 179, 1996 N.Y. App. Div. LEXIS 11612 (N.Y. App. Div. 2d Dep't 1996).

Motion to amend bill of particulars was properly denied where it was made on eve of trial, 10 years after alleged medical malpractice and 8 years after service of original bill of particulars, plaintiffs failed to offer adequate explanation for such delay, and proposed amendment propounded material changes. *Vega v Lenox Hill Hosp.*, 235 A.D.2d 302, 652 N.Y.S.2d 293, 1997 N.Y. App. Div. LEXIS 440 (N.Y. App. Div. 1st Dep't 1997).

Medical malpractice defendant waived his right to conduct psychiatric examination of injured plaintiff where (1) motion to compel examination was made almost 3 years after service of plaintiffs' amended bill of particulars and narrative reports of injured plaintiff's treating psychotherapist, almost 2 years after service of note of issue and certificate of readiness, and beyond 45-day period set forth in stipulation for arrangement for such examination, (2) defendant did not move to vacate note of issue within 20 days as required by CLS Unif Tr Ct Rls § 202.21 (22 NYCRR § 202.21), (3) after service of plaintiffs' amended bill of particular, plaintiffs did not allege new or additional injuries or that nature and extent of existing injuries had changed dramatically, and (4) defendant failed to show that "unusual and unanticipated circumstances" developed after filing of note of issue and certificate of readiness that would require psychiatric examination. *Schenk v Maloney*, 266 A.D.2d 199, 697 N.Y.S.2d 332, 1999 N.Y. App. Div. LEXIS 11142 (N.Y. App. Div. 2d Dep't 1999).

Court improperly denied medical malpractice defendant's motion to strike plaintiffs' "supplemental verified bill of particulars" and to direct plaintiffs to serve further bill of particulars

where alleged malpractice occurred in 1991, action was commenced in 1993, original bills of particulars were served in 1993, so-called “supplemental verified bill of particulars,” which was in fact amended bill of particulars, was served in 1998, supplemental verified bill of particulars alleged as additional injuries, inter alia, that injured plaintiff’s right leg had been amputated, which occurred in 1994, plaintiff failed to offer reasonable excuse for delay in seeking to add amputation as new injury until 1998, and he failed to submit medical affidavit showing nexus between new injury and alleged malpractice. *DeNicola v Mary Immaculate Hosp.*, 272 A.D.2d 505, 708 N.Y.S.2d 152, 2000 N.Y. App. Div. LEXIS 5838 (N.Y. App. Div. 2d Dep’t 2000).

In medical malpractice action, plaintiff’s “supplemental” bill of particulars was properly characterized as “amended” bill and was properly stricken as prejudicial to defendants where plaintiff sought to extend period of liability from 3-month period in 1987-1988 corresponding to his first hospital admission to 5 years following into 1993, and amended bill was not served until eve of trial more than 4 years after original bill was served. *Watson v City of New York*, 273 A.D.2d 115, 709 N.Y.S.2d 546, 2000 N.Y. App. Div. LEXIS 7130 (N.Y. App. Div. 1st Dep’t 2000).

In medical malpractice action, defendants were entitled to grant of their unopposed motion to strike plaintiff’s amended bill of particular where that bill was served without leave of court, after note of issue had been filed, and thus was nullity under CLS CPLR § 3042(b). *Golub v Sutton*, 281 A.D.2d 589, 723 N.Y.S.2d 59, 2001 N.Y. App. Div. LEXIS 3098 (N.Y. App. Div. 2d Dep’t 2001).

17. —Obstetrics

In malpractice action arising out of incidents surrounding birth of infant plaintiff, wherein, during presentation of direct case, plaintiffs attempted to introduce theory of liability different from their original theory and mistrial was declared, trial term properly granted plaintiffs’ motion for leave to serve amended bill of particulars incorporating the new theory of liability, upon condition that plaintiffs’ attorneys pay costs to various defendants. *Lopez v Lutheran Medical Center*, 56

A.D.2d 592, 391 N.Y.S.2d 632, 1977 N.Y. App. Div. LEXIS 10659 (N.Y. App. Div. 2d Dep't 1977).

Court properly granted medical malpractice plaintiffs' motion for leave to serve amended bill of particulars alleging, inter alia, that infant plaintiff, while in utero, suffered from hypoxia and anoxia, which in turn, inter alia, made her more susceptible to damage from excessive bilirubin in her blood after birth, since those allegations were, according to main theory of recovery, inter alia, natural and necessary result of defendants' alleged failure to diagnose and treat Rh incompatibility while infant plaintiff was in utero and to recognize and act on signs of fetal distress, 2 allegations that were made from inception of action. *Scheuerman by Scheuerman v Health & Hosps. Corp.*, 243 A.D.2d 553, 663 N.Y.S.2d 123, 1997 N.Y. App. Div. LEXIS 9816 (N.Y. App. Div. 2d Dep't 1997).

18. —Surgery

Court erred in denying defendants' motions to strike from supplemental bill of particulars allegation that physician defendant was negligent "in failing to advise (plaintiff's conservatee) of the risks associated with intubation without prior insertion of a naso-gastric tube, and of the reason for insertion of a naso-gastric tube," since complaint was based solely on medical malpractice and did not contain separate action for lack of informed consent, and surgery herein was of emergency nature. *Connelly v Warner*, 248 A.D.2d 941, 670 N.Y.S.2d 293, 1998 N.Y. App. Div. LEXIS 2973 (N.Y. App. Div. 4th Dep't 1998).

19. Motor vehicle accidents, generally

Plaintiff injured in traffic accident was entitled to amend his bill of particulars to reflect current state of his physical injuries, event though his motion was made 5 years after accident, absent prejudice to defendants. *Abdelnabi v New York City Transit Auth.*, 273 A.D.2d 114, 709 N.Y.S.2d 548, 2000 N.Y. App. Div. LEXIS 7177 (N.Y. App. Div. 1st Dep't 2000).

20. —Automobiles

In automobile accident case, special term did not abuse its discretion in granting plaintiff's motion for leave to serve supplemental bill of particulars, despite lengthy and unexplained delay in serving supplemental bill, where moving papers themselves established that new consequential damages might have developed as result of accident; and any potential prejudice was cured by requirement that plaintiff undergo new physical examination to be conducted by defendant's physician and by special term's imposition of full bill of costs on plaintiff for her lengthy delay. There was no necessity for inclusion of affidavit of merits with motion for leave to serve supplemental bill of particulars, where moving papers contained sufficient medical affidavit which formed complete basis for plaintiff's attempt to serve supplemental bill of particulars and plaintiff was passenger in vehicle which collided with automobile owned and operated by defendants. *Hornung v Mucci*, 52 A.D.2d 904, 383 N.Y.S.2d 379, 1976 N.Y. App. Div. LEXIS 12752 (N.Y. App. Div. 2d Dep't 1976).

In automobile accident case, defendant vehicle manufacturer was not entitled to amend its bill of particulars to include defense of defective joinder, even though plaintiff failed to obtain judicial permission to add manufacturer as new party as required by CLS CPLR § 1003 and manufacturer in its initial answer asserted affirmative defense of lack of personal jurisdiction, where manufacturer's bill of particulars limited its defense to that of long-arm jurisdiction without raising issue of defective joinder; any objection to plaintiff's failure to properly join manufacturer as party was waived by its limited bill of particulars and by its failure to promptly move for dismissal. *Gavigan v Gavigan*, 123 A.D.2d 823, 507 N.Y.S.2d 439, 1986 N.Y. App. Div. LEXIS 60953 (N.Y. App. Div. 2d Dep't 1986).

Plaintiff was entitled to amend and supplement his bill of particulars prior to filing note of issue for new trial on damages in automobile accident case where (1) he alleged that there had been significant alteration in his personality due to accident, and allegation was supported by physician's affirmation as well as authorization to inspect plaintiff's hospital records and offer to make him available for psychiatric examination by defendant's expert, and (2) defendant was

not prejudiced given facts that it had notice of plaintiff's claim of emotional injury for several years and there was opportunity to conduct further discovery. *Cepeda v Hertz Corp.*, 141 A.D.2d 394, 529 N.Y.S.2d 760, 1988 N.Y. App. Div. LEXIS 6875 (N.Y. App. Div. 1st Dep't 1988).

Supreme Court properly refused to allow defendants to serve, 2 weeks before trial, supplemental bills of particulars alleging that plaintiff in automobile accident case had been intoxicated and was thus negligent and assumed risk of injury, where defendants contended that late service was unavoidable because deposition of passenger in defendants' car had not previously been available, but record revealed that passenger's deposition testimony was merely cumulative to deposition testimony of one defendant, whose deposition had been taken 11 months earlier. *Pitcher v Quinn*, 144 A.D.2d 115, 534 N.Y.S.2d 231, 1988 N.Y. App. Div. LEXIS 10114 (N.Y. App. Div. 3d Dep't 1988).

Court abused its discretion in refusing to permit plaintiff to amend bill of particulars in action for injuries sustained in automobile accident where (1) bill of particulars was served in July, 1985 and specified injuries, (2) in October, 1985, plaintiff's physician diagnosed additional injury which was reduced to writing in January, 1986 and served on defendants in February, 1986, and (3) notes of issue and certificates of readiness were filed in September, 1986; defendants had actual notice of additional claimed injury within reasonably short time after diagnosis, need for additional discovery or additional time to prepare defense was not sufficient to constitute prejudice sufficient to deny motion, and defendants had not shown that they had been hindered in preparation of their case. *Rutz v Kellum*, 144 A.D.2d 1017, 534 N.Y.S.2d 293, 1988 N.Y. App. Div. LEXIS 14576 (N.Y. App. Div. 4th Dep't 1988).

In action arising from collision in which driver backed his truck into plaintiffs' car, which was traveling behind truck in same direction before truck stopped and backed up, plaintiffs were entitled to partial summary judgment on issue of truck driver's negligence, defendants' counterclaim was properly dismissed, and defendants' motion for additional time to serve amended bill of particulars was properly denied where truck driver never noticed whether vehicles were traveling behind him in same direction, he was fully aware of many potential

hazards associated with backing up, including existence of blind spot in rear, he neither exited truck nor sounded horn despite lack of rear movement warning devices, and he was issued violation for unsafe backing of vehicle to which he later pleaded guilty. *Weather v North Am. Recycling Corp.*, 255 A.D.2d 666, 679 N.Y.S.2d 213, 1998 N.Y. App. Div. LEXIS 11675 (N.Y. App. Div. 3d Dep't 1998).

21. —Motorcycles

In a negligence action to recover damages for personal injuries the plaintiff should have been granted leave to serve and file a supplemental bill of particulars alleging that the defendant, in addition to having negligently operated his motorcycle and failed to keep it under proper control, was driving it on the wrong side of the road at the time of the accident where granting leave would have served to prevent any technical claim of surprise at trial and to avert the necessity of moving to conform the pleadings to the proof, all without apparent prejudice to the defendant, where it did not seek to change the theory of the plaintiff's case, and where the delay of six weeks in applying for permission to serve the supplemental bill was not so inordinate as to mandate refusal. *Sparke v McGuire*, 81 A.D.2d 861, 442 N.Y.S.2d 528, 1981 N.Y. App. Div. LEXIS 11547 (N.Y. App. Div. 2d Dep't 1981).

22. —Trucks

In action arising from collision in which driver backed his truck into plaintiffs' car, which was traveling behind truck in same direction before truck stopped and backed up, plaintiffs were entitled to partial summary judgment on issue of truck driver's negligence, defendants' counterclaim was properly dismissed, and defendants' motion for additional time to serve amended bill of particulars was properly denied where truck driver never noticed whether vehicles were traveling behind him in same direction, he was fully aware of many potential hazards associated with backing up, including existence of blind spot in rear, he neither exited truck nor sounded horn despite lack of rear movement warning devices, and he was issued

violation for unsafe backing of vehicle to which he later pleaded guilty. *Weather v North Am. Recycling Corp.*, 255 A.D.2d 666, 679 N.Y.S.2d 213, 1998 N.Y. App. Div. LEXIS 11675 (N.Y. App. Div. 3d Dep't 1998).

23. Municipal law, generally

Court properly denied plaintiff's motion to amend bill of particulars to include claim for permanent psychological injury where (1) motion was made just prior to retrial on issue of damages and nearly 4 years after original bill of particulars was served, (2) neither original pleadings nor testimony at first trial presented municipal defendant with notice of claim that plaintiff was seeking to add, (3) plaintiff affirmatively stated in original bill of particulars that he suffered no permanent injuries, and (4) plaintiff failed to offer reasonable excuse for delay in asserting claim. *Young v New York City Transit Authority*, 172 A.D.2d 607, 568 N.Y.S.2d 147, 1991 N.Y. App. Div. LEXIS 4612 (N.Y. App. Div. 2d Dep't 1991).

24. —Housing Authority cases

In action by plaintiff who was injured in shootout that occurred in her apartment between intruders and 2 New York City Housing Authority (NYCHA) police officers, court properly granted plaintiff's motion on eve of trial for leave to serve further supplemental bill of particulars to allege that NYCHA was negligent in reacting to 911 telephone call placed by her sister, since NYCHA had been familiar with underlying facts of shooting incident for many years and thus was not prejudiced by delay. *Salcedo v New York City Housing Authority*, 179 A.D.2d 440, 577 N.Y.S.2d 859, 1992 N.Y. App. Div. LEXIS 169 (N.Y. App. Div. 1st Dep't 1992).

25. Negligence generally

In negligence action to recover damages for personal injuries, plaintiffs should have been permitted to amend their bill of particulars, except as to future lost earnings, since proposed amendment served to clarify claim for damages and to update recurring expenses of one

plaintiff's treatment for injuries sustained. But, plaintiffs could not be permitted to revise their evaluation of future lost earnings, where revised figure was based in part upon assertion of loss of an employment which was never before alleged in a prior bill or in complaint and new claim for damages must have been known to plaintiffs long before eve of trial as to issue of damages, since seven years had passed since accident occurred. *Liggieri v Pasternack*, 51 A.D.2d 731, 379 N.Y.S.2d 137, 379 N.Y.S.2d 381, 1976 N.Y. App. Div. LEXIS 11224 (N.Y. App. Div. 2d Dep't 1976).

In negligence action to recover damages for personal injuries, motion to serve further supplemental bill of particulars was properly granted since proposed supplemental bill updated claim of injuries on basis of further medical tests conducted due to injured plaintiff's continuing complaints; absent any indication that defendants have been hindered in preparation of their case or prevented from taking some measure in support of their position, they have failed to demonstrate how they will be prejudiced by service of proposed supplemental bill. *Bossert v Jay Dee Transp., Inc.*, 114 A.D.2d 833, 494 N.Y.S.2d 744, 1985 N.Y. App. Div. LEXIS 53841 (N.Y. App. Div. 2d Dep't 1985).

Supplemental bills of particulars is limited to "claims of continuing special damages and disabilities" (CLS CPLR § 3043(b)); thus, court properly struck additional allegations of negligence asserted in response to question in defendant's demand. *Sagar v Son*, 208 A.D.2d 1092, 617 N.Y.S.2d 409, 1994 N.Y. App. Div. LEXIS 9780 (N.Y. App. Div. 3d Dep't 1994).

In personal injury action by teenage plaintiff with no apparent history of ankle problems prior to initial fracture, supplemental bill of particulars describing second ankle fracture, which occurred 20 months later when he stood up from seated position, was not "amended" bill involving new injury so as to require court leave to be served; given innocuous circumstances and documentary indications that ankle was bothering plaintiff more than 7 months after initial injury, it appeared more likely than not that second fracture was causally related to first. *Maisonet v New York City Hous. Auth.*, 276 A.D.2d 260, 713 N.Y.S.2d 728, 2000 N.Y. App. Div. LEXIS 9880 (N.Y. App. Div. 1st Dep't 2000).

26. Products liability

Trial court abused its discretion in permitting plaintiffs to amend their bill of particulars to set forth an entirely new theory of product defect, where the amendment came almost eight years after service of the original bill of particulars, two years after service of the supplemental bill of particulars, and 22 months after the filing of a statement of readiness. *Gutierrez v Enright*, 91 A.D.2d 972, 457 N.Y.S.2d 343, 1983 N.Y. App. Div. LEXIS 16263 (N.Y. App. Div. 2d Dep't 1983).

In action for injuries to child when Halloween costume, which her mother made by gluing cosmetic puffs to exterior of pajamas to create appearance of white fur, ignited and caused serious permanent injuries, court would permit plaintiff to amend bill of particulars to delineate claim relating to injuries caused by flammability of pajamas since, although excuse for failure to include claim in original bill amounted largely to inadvertence, there was sufficient proof of merit to claim and lack of prejudice to defendants. *Trivino v Jamesway Corp.*, 148 A.D.2d 851, 539 N.Y.S.2d 123, 1989 N.Y. App. Div. LEXIS 3847 (N.Y. App. Div. 3d Dep't 1989).

27. Real property matters, generally

Court properly denied plaintiffs' request to supplement bill of particulars with new category of damages in malicious prosecution action, which was brought after defendant commenced action against plaintiffs for specific performance of alleged real estate sales contract, wherein defendant also filed notice of pendency of action which prevented plaintiffs from completing sales contracts with developers; contrary to plaintiffs' contention, their agreement to pay developer's construction loan, as negotiated term of termination agreement, was not amplification of item of damages previously listed in original bill of particulars. *Griffin v Tedaldi*, 248 A.D.2d 438, 669 N.Y.S.2d 378, 1998 N.Y. App. Div. LEXIS 2291 (N.Y. App. Div. 2d Dep't 1998).

In action against owner of housing complex and general contractor for breach of contract in connection with roof replacement project, owner was not entitled to dismissal of general contractor's answer to owner's cross claim where general contractor's repeated failure to comply with court's order to submit responsive supplemental bill of particulars providing cost/time breakdowns for alleged increased costs did not affect its defense to owner's cross claim, which required only general denial, and there was no willful or contumacious disregard of discovery by general contractor pertaining to owner's cross claim. General contractor's cross claim against owner for causing delay and increased construction costs was properly dismissed where general contractor had 3 opportunities and each time failed to comply with court's order to submit responsive supplemental bill of particulars providing cost/time breakdowns for alleged increased costs. *Tempforce Inc. by Anton Wood Assocs. v Municipal Hous. Auth.*, 263 A.D.2d 926, 694 N.Y.S.2d 240, 1999 N.Y. App. Div. LEXIS 8449 (N.Y. App. Div. 3d Dep't), app. dismissed, 94 N.Y.2d 838, 702 N.Y.S.2d 586, 724 N.E.2d 378, 1999 N.Y. LEXIS 3850 (N.Y. 1999).

28. —Landlord and tenant cases

In lessor's action for breach of covenant to repair, court properly denied lessor's motion to amend its bill of particulars during trial to increase repair damages from \$200,000 to over \$1,311,000 where only excuse offered for approximate 2-year delay in seeking leave to amend was that tenants and subtenants never requested further proof of damages, and such substantial increase in repair damages would prejudice subtenant, which had prepared its case in response to original bill of particulars. *JHL Associates v Frank*, 137 A.D.2d 655, 524 N.Y.S.2d 749, 1988 N.Y. App. Div. LEXIS 1791 (N.Y. App. Div. 2d Dep't 1988).

Landlord's treasurer did not establish any personal knowledge regarding the matters about which he testified because the monies the treasurer testified were owed in lost rent were based upon an exhibit that was prepared for litigation; the trial court incorrectly concluded that just because the amounts claimed owed were set forth in the landlord's verified bill of particulars, the

treasurer could competently testify to those amounts. 345 E. 69th St. Owners Corp. v Platinum First Cleaners, Inc., 158 A.D.3d 452, 72 N.Y.S.3d 42, 2018 N.Y. App. Div. LEXIS 892 (N.Y. App. Div. 1st Dep't 2018).

29. Slip and fall

In action to recover for personal injuries arising from slip and fall on defendant's premises, plaintiff was not entitled to amend her bill of particulars to include new claim for lost earnings, since she failed to satisfy requirements that she make some showing of merits of new claim and explain delay in seeking to impose it, where (1) in 1983 bill of particulars, plaintiff claimed she could not return to work, asserted that demand for particulars concerning self employment was not applicable, and did not respond to demand concerning total amount of lost wages, (2) in support of 1986 request to amend bill of particulars, plaintiff asserted that her condition had deteriorated to extent that she was "advised" that she would never work again, and that her lost earnings could exceed \$5,000,000, and (3) according to proposed amended bill of particulars, dollar figure was based on 1983 attempt to open business and on "advice" that, had she worked full time, she would have netted \$40,000 per year until age 70. *Le Pore v R. H. Macy & Co.*, 145 A.D.2d 544, 536 N.Y.S.2d 98, 1988 N.Y. App. Div. LEXIS 13667 (N.Y. App. Div. 2d Dep't 1988).

In action to recover for broken ankle sustained in fall while plaintiff was walking up back lawn of church during fair and barbecue held by church, plaintiff would not be permitted to amend bill of particulars to assert that tree in lawn caused or contributed to her fall where such theory was never mentioned in her examination before trial or in her husband's deposition; plaintiff would not be permitted to advance inconsistent version of accident, especially where no factual support for theory was shown. *Torani v First United Methodist Church*, 163 A.D.2d 641, 558 N.Y.S.2d 272, 1990 N.Y. App. Div. LEXIS 8139 (N.Y. App. Div. 3d Dep't), app. denied, 76 N.Y.2d 713, 563 N.Y.S.2d 769, 565 N.E.2d 518, 1990 N.Y. LEXIS 3742 (N.Y. 1990).

In janitor's action for slip and fall, while mopping washroom floor, on water that had leaked from toilet, he was not entitled to amend his bill of particulars to allege various statutory violations on

theory that his employer, who was commercial tenant in building, was running factory or mercantile establishment where amendment was requested 3 years after he commenced action and 5 months after he filed note of issue, and thus request was untimely and prejudicial. *Del Rosario v 114 Fifth Ave. Assocs.*, 266 A.D.2d 162, 699 N.Y.S.2d 19, 1999 N.Y. App. Div. LEXIS 12372 (N.Y. App. Div. 1st Dep't 1999).

30. Wrongful death

In a wrongful death action, the court properly allowed a lost earnings claim to be asserted as an element of decedent's damages, where defendants were apprised of the supporting facts of the lost earnings claim at plaintiff's deposition and were afforded opportunity through further discovery in order to prepare for trial on this issue. *O'Neill v Schlessinger*, 86 A.D.2d 842, 447 N.Y.S.2d 453, 1982 N.Y. App. Div. LEXIS 15465 (N.Y. App. Div. 1st Dep't 1982).

In a wrongful death claim, an order of the Court of Claims which denied claimant's motion to file an amended bill of particulars would be reversed, where, although there was substantial delay by claimant in seeking such amendment, the State would not be prejudiced by such relief since it was apprised at the outset of the facts and nature of the claim and claimant's proposed amendment involved the same transactions and set of facts, and did not seek to add new causes of action. *Scarangelo v State*, 111 A.D.2d 798, 490 N.Y.S.2d 781, 1985 N.Y. App. Div. LEXIS 50043 (N.Y. App. Div. 2d Dep't 1985).

II. Under Former Civil Practice Laws

A. In General

31. Generally

Recitals in bill of particulars do not constitute proof. *In re Court & Remsen Bldg. Corp.*, 303 N.Y. 358, 102 N.E.2d 696, 303 N.Y. (N.Y.S.) 358, 1951 N.Y. LEXIS 673 (N.Y. 1951), reh'g denied, 303 N.Y. 803, 104 N.E.2d 362, 303 N.Y. (N.Y.S.) 803, 1952 N.Y. LEXIS 1293 (N.Y. 1952).

Whether plaintiff should serve a bill of particulars must be determined from the complaint, not from the defendant's particulars of a counterclaim. *Fickinger v Ives*, 109 A.D. 684, 96 N.Y.S. 396, 1905 N.Y. App. Div. LEXIS 3635 (N.Y. App. Div. 1905).

A motion for a bill of particulars which is really an attempt to have the complaint made more definite and certain, or to compel the disclosure of the defendant's evidence, should be denied. *Ingraham v International Salt Co.*, 114 A.D. 791, 100 N.Y.S. 192, 1906 N.Y. App. Div. LEXIS 2189 (N.Y. App. Div. 1906).

The granting of a bill of particulars should not be conditioned on a waiver of a right to a physical examination. *Baker v New York C. R. Co.*, 116 A.D. 858, 102 N.Y.S. 276, 1907 N.Y. App. Div. LEXIS 47 (N.Y. App. Div. 1907).

An order for a bill of particulars should under no circumstances stay all proceedings in the action; the penalty for noncompliance with an order for a bill of particulars is to be determined when such failure has been established; a provision therefor in the original order is improper. *Prym v Peck & Mack Co.*, 136 A.D. 566, 121 N.Y.S. 57, 1910 N.Y. App. Div. LEXIS 75 (N.Y. App. Div. 1910).

The adoption of RCP 115 rendered the former practice, under which a plaintiff might move to strike out a demand for a bill of particulars, obsolete. A defendant might serve a demand for a bill of particulars for the purpose of laying the groundwork for motion costs, under RCP 115, upon a motion to be subsequently made. *Utica Trust & Deposit Co. v Sutton*, 235 A.D. 98, 256 N.Y.S. 205, 1932 N.Y. App. Div. LEXIS 7892 (N.Y. App. Div. 1932).

It was improper in an action of negligence for the defendant to move under RCP 102 (Rule 3024 herein) that the complaint be made more definite and certain in respect to certain allegations of

the defendant's negligence; the proper remedy was for a bill of particulars. *Mullen v Hall*, 99 N.Y.S. 841, 51 Misc. 59, 1906 N.Y. Misc. LEXIS 226 (N.Y. App. Term 1906).

Even if defendants might have procured the information asked for by a bill of particulars, they had a right to obtain it under an order for plaintiff's examination as a party before trial. *Tirpak v Hoe*, 103 N.Y.S. 795, 53 Misc. 532, 1907 N.Y. Misc. LEXIS 282 (N.Y. App. Term 1907).

Where defendant seeks information outside pleadings to enable him to establish affirmative defense not yet pleaded, and to enable him to bring in additional party, such information is beyond limits of bill of particulars. *Townsend v Halbert*, 54 N.Y.S.2d 501, 194 Misc. 1033, 1944 N.Y. Misc. LEXIS 1492 (N.Y. Sup. Ct. 1944).

Proper method of limiting issues with respect to cross complaint is by demand for bill of particulars. *MacArthur Concrete Pile Corp. v Kew Queens Corp.*, 92 N.Y.S.2d 200, 196 Misc. 426, 1949 N.Y. Misc. LEXIS 2793 (N.Y. Sup. Ct. 1949), modified, 276 A.D. 1015, 95 N.Y.S.2d 392, 1950 N.Y. App. Div. LEXIS 5570 (N.Y. App. Div. 1950).

Bill of particulars is statement of claim, not evidence in support of one, but such statement may be admission against interest. *In re Richfil Estates*, 97 N.Y.S.2d 824, 197 Misc. 248, 1950 N.Y. Misc. LEXIS 1709 (N.Y. Sup. Ct.), rev'd, 277 A.D. 765, 97 N.Y.S.2d 547, 1950 N.Y. App. Div. LEXIS 3200 (N.Y. App. Div. 1950).

When a plaintiff found upon taking deposition of defendant's chauffeur that the latter did not have requisite knowledge, the proper procedure was not to serve a demand for bill of particulars but to move for further examination and to have the defendant supply an officer or other person having knowledge of the facts. *Zone Oil Trucking Corp. v Anthony Grace & Sons, Inc.*, 9 Misc. 2d 295, 167 N.Y.S.2d 879, 1957 N.Y. Misc. LEXIS 2358 (N.Y. Sup. Ct. 1957).

Repetitious and burdensome demand for bill of particulars was vacated in its entirety without prejudice to service of proper demand. *Lindly & Co. v Telephonics Corp.*, 19 Misc. 2d 518, 196 N.Y.S.2d 143, 1959 N.Y. Misc. LEXIS 2877 (N.Y. Sup. Ct. 1959).

To compel more definite and certain statement of pleading, under RCP 102 (Rule 3024 herein), or alternatively, pursuant to RCP 115, to compel service of bill of particulars, it was better practice to invoke RCP 102 where permissible and expedient. *Roach v Welles*, 127 N.Y.S.2d 138, 1954 N.Y. Misc. LEXIS 1937 (N.Y. Sup. Ct. 1954).

32. Purpose of rule

The office of a bill of particulars is to apprise a party of the specific demands of his adversary. *Matthews v Hubbard*, 47 N.Y. 428, 47 N.Y. (N.Y.S.) 428, 1872 N.Y. LEXIS 39 (N.Y. 1872).

If the purpose of the party is to obtain a more particular statement of his opponent's claim, for the purpose of narrowing the issues at the trial or to prevent surprise, his remedy is by an application for a bill of particulars. *Dumar v Witherbee, Sherman & Co.*, 88 A.D. 181, 84 N.Y.S. 669, 1903 N.Y. App. Div. LEXIS 3119 (N.Y. App. Div. 1903).

Bill of particulars will not be granted merely to enable a party to know whether to admit or deny an allegation, or whether to deny it positively or upon information and belief, or by denying knowledge or information sufficient to form a belief. *Bracken v Toland*, 153 A.D. 57, 137 N.Y.S. 1043, 1912 N.Y. App. Div. LEXIS 10473, 1912 N.Y. App. Div. LEXIS 9216 (N.Y. App. Div. 1912).

The office of a bill of particulars is to advise the defendant of the items which plaintiff intends to establish upon the trial, and to restrict plaintiff's proof to the items specified. *Smiley Steel Co. v Schmoll*, 200 A.D. 655, 193 N.Y.S. 522, 1922 N.Y. App. Div. LEXIS 8248 (N.Y. App. Div. 1922), *aff'd*, 235 N.Y. 520, 139 N.E. 718, 235 N.Y. (N.Y.S.) 520, 1923 N.Y. LEXIS 1230 (N.Y. 1923).

The office of a bill of particulars is to advise the defendant of the items which plaintiff intends to establish upon the trial, and to restrict plaintiff's proof to the items specified. *Smiley Steel Co. v Schmoll*, 200 A.D. 655, 193 N.Y.S. 522, 1922 N.Y. App. Div. LEXIS 8248 (N.Y. App. Div. 1922), *aff'd*, 235 N.Y. 520, 139 N.E. 718, 235 N.Y. (N.Y.S.) 520, 1923 N.Y. LEXIS 1230 (N.Y. 1923).

The provisions of CPA §§ 288 et seq. for examination of a party before trial did not provide a remedy alternate to that established by RCP 115 to meet the needs of a party who required proof in the sole possession of his opponent, in order adequately to prepare his defense. *Sands v Comerford*, 211 A.D. 406, 207 N.Y.S. 398, 1925 N.Y. App. Div. LEXIS 10636 (N.Y. App. Div. 1925).

One object of a bill of particulars being to specifically advise the opposing party as to what subjects of proof he must anticipate, plaintiff should be confined to proof within its limits. *Walker v Bradt*, 225 A.D. 415, 233 N.Y.S. 388, 1929 N.Y. App. Div. LEXIS 11653 (N.Y. App. Div. 1929).

Defendant entitled to bill of particulars in order that he may be apprised of what plaintiff "claimed" in order that issues of trial may be narrowed and unnecessary surprise avoided. *Elmore v Chester*, 235 A.D. 854, 257 N.Y.S. 896, 1932 N.Y. App. Div. LEXIS 10092 (N.Y. App. Div. 1932).

The office of a bill of particulars is to amplify the pleading, to limit the proof and to prevent surprise at the trial. *Solomon v Travelers Fire Ins. Co.*, 5 A.D.2d 1017, 174 N.Y.S.2d 85, 1958 N.Y. App. Div. LEXIS 6170 (N.Y. App. Div. 2d Dep't), reh'g denied, 6 A.D.2d 802, 175 N.Y.S.2d 575, 1958 N.Y. App. Div. LEXIS 5624 (N.Y. App. Div. 2d Dep't 1958).

Matters of time, place and circumstance, unless they are material parts of the cause of action or defense alleged, must be obtained by a bill of particulars of which the purpose is to prevent surprise on the trial or hearing. *In re Mechler's Estate*, 221 N.Y.S. 606, 129 Misc. 549, 1927 N.Y. Misc. LEXIS 763 (N.Y. Sur. Ct. 1927).

The modern conception is that, within reasonable limits, a litigant should reveal, rather than conceal, his case, to the end that his opponent may not be taken by surprise. *Doblin v Hebrew Children's Home*, 243 N.Y.S. 120, 135 Misc. 229, 1929 N.Y. Misc. LEXIS 1120 (N.Y. City Ct. 1929).

Purpose of bill of particulars is to limit proof to be offered at trial and to prevent surprise; it accomplishes its purpose by requiring one party to apprise his adversary of facts he intends to

prove and by restricting proofs to matters so specified. *In re Kadar's Estate*, 3 Misc. 2d 471, 151 N.Y.S.2d 1002, 1956 N.Y. Misc. LEXIS 1969 (N.Y. Sur. Ct. 1956).

Purpose of bill of particulars is to obtain statement of what opponent claims to be facts. *Dougherty v Hugunin*, 78 N.Y.S.2d 313, 1947 N.Y. Misc. LEXIS 3747 (N.Y. Sup. Ct. 1947).

Purpose is not to afford party opportunity to cross-examine opposing party, as by cross-interrogatories, but to limit allegations in pleading. *Louis Gerber & Son Carpet Corp. v Cunard White Star Ltd.*, 91 N.Y.S.2d 434, 1949 N.Y. Misc. LEXIS 2618 (N.Y. Civ. Ct. 1949).

One function of bill of particulars is to limit allegations of pleading in respect to which it is served. *Nassau Suffolk Lumber & Supply Corp. v Feldman*, 125 N.Y.S.2d 27, 1953 N.Y. Misc. LEXIS 2269 (N.Y. Sup. Ct. 1953).

The object of a bill of particulars is to amplify the pleading, to limit proof, and prevent surprise to the adverse party with respect to the claim he is called upon to meet. Thus where complaint is silent as to place where defendant held himself out to public for practice of system of treating nervous disorders, plaintiff was required to state such place. *Granger v Leaf*, 128 N.Y.S.2d 410, 1954 N.Y. Misc. LEXIS 2284 (N.Y. Sup. Ct. 1954).

33. Courts

Under the provisions of the Buffalo City Court Act, the provisions of RCP 115 did not apply to the practice in that court. *Judge v Milligan*, 229 N.Y.S. 287, 131 Misc. 925, 1928 N.Y. Misc. LEXIS 881 (N.Y. Sup. Ct. 1928).

In a discovery proceeding in the Surrogate's Court a bill of particulars will not be ordered as to other property claimed by the administrator to belong to the decedent since the proceeding is merely inquisitorial in its nature. *In re Carraher's Estate*, 255 N.Y.S. 434, 142 Misc. 675, 1931 N.Y. Misc. LEXIS 1782 (N.Y. Sur. Ct. 1931).

A bill of particulars may be ordered to be furnished by the petitioner in discovery proceedings in the Surrogate's Court. *In re Leary's Estate*, 24 N.Y.S.2d 79, 175 Misc. 253, 1940 N.Y. Misc. LEXIS 2433 (N.Y. Sur. Ct. 1940).

The rule of evidence respecting a bill of particulars is no different in the Municipal Court of the City of New York than it is in other courts of record, and the proof must be in consonance with it. *Kaplan v Lanzner*, 193 N.Y.S. 2, 1922 N.Y. Misc. LEXIS 1051 (N.Y. App. Term 1922).

34. Claims as to which particulars may be required

The power of the supreme court to order bills of particulars extends to all descriptions of actions; and it may be exercised as well in behalf of the plaintiff as of the defendant. The word "claim," includes not merely a ground or cause of action, upon which affirmative relief is asked, but also, in case of a defendant, whatever is set up by him, based upon facts alleged, as the reason why judgment should not be taken against him. *Tilton v Beecher*, 59 N.Y. 176, 59 N.Y. (N.Y.S.) 176, 48 How. Pr. 175, 1874 N.Y. LEXIS 401, 1874 N.Y. Misc. LEXIS 127 (N.Y. 1874).

In action against city and employee impleaded under indemnity agreement, employee was not entitled to particulars of negligence claimed by city where city's cross-claim rested solely on such indemnity agreement. *Langelotti v New York*, 264 A.D. 878, 35 N.Y.S.2d 595, 1942 N.Y. App. Div. LEXIS 5220 (N.Y. App. Div. 1942).

The word "claim," is that ground of fact which he alleges in his answer as the reason why judgment should not go against him. *Swan v Swan*, 89 N.Y.S. 794, 44 Misc. 163, 1904 N.Y. Misc. LEXIS 274 (N.Y. Sup. Ct. 1904).

Power of court to order bill of particulars is very broad. *In re Kadar's Estate*, 3 Misc. 2d 471, 151 N.Y.S.2d 1002, 1956 N.Y. Misc. LEXIS 1969 (N.Y. Sur. Ct. 1956).

Plaintiff, who had taken a deposition of defendant's chauffeur, could not thereafter serve a demand for a bill of particulars as to the specifications of defendant's truck and trailer, on the grounds that the chauffeur did not have knowledge thereof. *Zone Oil Trucking Corp. v Anthony*

Grace & Sons, Inc., 9 Misc. 2d 295, 167 N.Y.S.2d 879, 1957 N.Y. Misc. LEXIS 2358 (N.Y. Sup. Ct. 1957).

Plaintiff seeking judgment declaring that an assignment of an interest in a corporation was valid, bill of particulars of evidentiary matter, which will not amplify the complaint, limit the proof or prevent surprise, will not be allowed. Nicolosi v Christopher, 20 Misc. 2d 641, 189 N.Y.S.2d 756, 1959 N.Y. Misc. LEXIS 3514 (N.Y. Sup. Ct. 1959).

In action for annulment based on false misrepresentations wife is not entitled to the exact language of the representations, but merely to the substance thereof. Scheinwald v Scheinwald, 23 Misc. 2d 175, 205 N.Y.S.2d 296, 1960 N.Y. Misc. LEXIS 3052 (N.Y. Sup. Ct. 1960).

In an action for personal injuries received when stepping upon a grating in a sidewalk, plaintiff could not be precluded from giving evidence under his complaint, notwithstanding an insufficient compliance with an order to give particulars "as to the object and purpose for which he stepped upon the grating," his purpose in stepping upon the grating being no part of his "claim." McKeown v Foster, 153 N.Y.S. 983 (N.Y. App. Term 1915).

In action to compel defendant to discharge satisfied mortgage, defendant's motion to preclude for failure of plaintiff to serve particulars following service of written demand was granted, unless plaintiff served verified bill covering items demanded within specified time or stated sworn inability to do so. Glenwood Cemetery Ass'n v Shaeffer Bros. Co., 44 N.Y.S.2d 757, 1943 N.Y. Misc. LEXIS 2512 (N.Y. Sup. Ct.), aff'd, 266 A.D. 901, 43 N.Y.S.2d 279, 1943 N.Y. App. Div. LEXIS 5090 (N.Y. App. Div. 1943).

35. Third party

Third-party defendant, impleaded for indemnity by third-party plaintiff sued for personal injuries, was granted particulars of negligence alleged in third-party complaint. Pike v Balmar Const. Co., 106 N.Y.S.2d 644, 200 Misc. 374, 1951 N.Y. Misc. LEXIS 2184 (N.Y. Sup. Ct. 1951).

Where a third party defendant has squarely put in issue allegations of plaintiff's complaint, such party entitled to a bill of particulars of plaintiff's complaint. *Sorrentino v New York*, 14 Misc. 2d 78, 178 N.Y.S.2d 500, 1958 N.Y. Misc. LEXIS 2734 (N.Y. Sup. Ct. 1958).

An impleaded defendant may demand particulars from plaintiff, particularly where such defendant asserts position contrary to that of plaintiff. *Cohen v City Bank Farmers Trust Co.*, 65 N.Y.S.2d 841, 1946 N.Y. Misc. LEXIS 2944 (N.Y. Sup. Ct. 1946).

36. As affected by burden of proof

A bill of particulars will not be ordered where the affirmative is upon the person demanding the particulars. *In re Carraher's Estate*, 255 N.Y.S. 434, 142 Misc. 675, 1931 N.Y. Misc. LEXIS 1782 (N.Y. Sur. Ct. 1931).

A party to an action cannot be compelled to furnish particulars as to those matters which are part of the affirmative case of the other party. *In re Mullin's Will*, 256 N.Y.S. 519, 143 Misc. 256, 1932 N.Y. Misc. LEXIS 990 (N.Y. Sur. Ct. 1932), *aff'd*, 240 A.D. 996, 268 N.Y.S. 948, 1933 N.Y. App. Div. LEXIS 7819 (N.Y. App. Div. 1933).

Motion of contestant to vacate or modify demand for bill of particulars granted to extent of denying items concerned, with testamentary capacity on which proponent has the affirmative. *In re Draisin's Will*, 11 Misc. 2d 281, 170 N.Y.S.2d 368, 1958 N.Y. Misc. LEXIS 3896 (N.Y. Sur. Ct. 1958).

A bill of particulars may be demanded of a party as to issues on which he has the burden of proof and specific facts may be demanded. *In re Will of Boyle*, 12 Misc. 2d 354, 173 N.Y.S.2d 699, 1958 N.Y. Misc. LEXIS 3353 (N.Y. Sur. Ct. 1958).

In a discovery proceeding, where respondent conceded that title had been in the decedent but that it since devolved upon respondent, petitioner was held entitled to bill of particulars as to facts of devolution from decedent. *In re Estate of Boyhan*, 27 Misc. 2d 770, 210 N.Y.S.2d 942, 1960 N.Y. Misc. LEXIS 2165 (N.Y. Sur. Ct. 1960).

37. Particulars as to unnecessary allegations

Although the answer in a judgment creditor's action to set aside fraudulent transfers, after denying the allegations of the complaint, unnecessarily alleges that the defendant at the time of the transfer was the owner of property of a certain value over and above any indebtedness then owing, he will not be required to give a bill of particulars of the property then owned by him. *Wilks v Greacen*, 120 A.D. 311, 105 N.Y.S. 246, 1907 N.Y. App. Div. LEXIS 1165 (N.Y. App. Div. 1907).

A defendant will not be ordered to furnish a bill of particulars of allegations in his answer which are wholly superfluous. *Nickel v Ayer*, 141 A.D. 576, 126 N.Y.S. 321, 1910 N.Y. App. Div. LEXIS 3916 (N.Y. App. Div. 1910).

When matter provable under general denial is unnecessarily pleaded as defense, plaintiff is entitled to particulars thereof. *Kanter v Cooper*, 277 A.D. 1143, 101 N.Y.S.2d 310, 1950 N.Y. App. Div. LEXIS 4772 (N.Y. App. Div. 1950).

Plaintiff may be required to give a bill of particulars as to matters set out in his complaint, though it was not necessary for him to plead them because by his own pleading he assumes or admits that they are material. *Adams v Dodge*, 187 N.Y.S. 688, 114 Misc. 565, 1921 N.Y. Misc. LEXIS 1268 (N.Y. Sup. Ct. 1921), *aff'd*, 196 A.D. 957, 188 N.Y.S. 908, 1921 N.Y. App. Div. LEXIS 6364 (N.Y. App. Div. 1921), *aff'd*, 201 A.D. 846, 193 N.Y.S. 923, 1922 N.Y. App. Div. LEXIS 6560 (N.Y. App. Div. 1922).

Bill of particulars not insufficient where it did not demand particulars as to plaintiff's assurances concerning itemized account showing specific expenditures where such assurances not material to the issues of the case. *Woodard v Southampton Federal Sav. & Loan Asso.*, 10 Misc. 2d 229, 167 N.Y.S.2d 154, 1957 N.Y. Misc. LEXIS 2838 (N.Y. Sup. Ct. 1957).

In action by father as administrator of deceased son to recover for the death of his son, father's earning capacity was immaterial to issues involved, and a demand for particulars thereof was

denied. *Holdridge v Watts*, 24 Misc. 2d 976, 205 N.Y.S.2d 749, 1960 N.Y. Misc. LEXIS 2356 (N.Y. Sup. Ct. 1960).

38. As to defenses

It is not the province of a bill of particulars to require the dates of the execution and delivery of an instrument pleaded as a defense. *Pigone v Lauria*, 115 A.D. 286, 100 N.Y.S. 976, 1906 N.Y. App. Div. LEXIS 3675 (N.Y. App. Div. 1906).

Where an answer instead of making a general denial denies the complaint in haec verba as alleged, it is a negative pregnant, and is no denial of the complaint; on such a pleading the defendant's motion for a bill of particulars should be denied. A motion for minute and unnecessary particulars is an imposition on the court, which is not obliged to pick out from among unnecessary requests those to which the plaintiff would have been entitled. *Shepard v Wood*, 116 A.D. 861, 102 N.Y.S. 306, 1907 N.Y. App. Div. LEXIS 49 (N.Y. App. Div. 1907).

A bill of particulars of defenses not involving a counterclaim may be ordered, as a matter pleaded in justification of libel. *Reader v Haggin*, 123 A.D. 489, 107 N.Y.S. 963, 1908 N.Y. App. Div. LEXIS 93 (N.Y. App. Div. 1908).

Where complaint complied with CPA § 255-a (§§ 3013, 3014, 3017; Rule 3016 herein) defendant's general denial was insufficient and bill of particulars was denied him. *Dairymen's League Co-op. Ass'n v Levy Dairy Co.*, 225 A.D. 475, 233 N.Y.S. 433, 1929 N.Y. App. Div. LEXIS 11671 (N.Y. App. Div. 1929).

Particulars of acquiescence alleged as defense in reply denied, since acquiescence as defense is based on silence or inaction and party will not be asked to particularize a negative. *Pepsi-Cola Co. v Coca-Cola Co.*, 261 A.D. 928, 25 N.Y.S.2d 481, 1941 N.Y. App. Div. LEXIS 8123 (N.Y. App. Div. 2d Dep't 1941).

Defendant is not required to furnish bill of particulars as to denials or admissions contained in answer. *Silberfeld v Swiss Bank Corp.*, 263 A.D. 1017, 33 N.Y.S.2d 961, 1942 N.Y. App. Div. LEXIS 7903 (N.Y. App. Div. 2d Dep't 1942).

Defendant is not required to furnish particulars as to denials or admissions in his answer. *Reiner v Kane*, 25 Misc. 2d 477, 187 N.Y.S.2d 840, 1959 N.Y. Misc. LEXIS 4675 (N.Y. Sup. Ct. 1959).

39. —Affirmative defense

Plaintiff was entitled to particulars of defense of special promise to answer for debt of another, exact bill of exchange as to which defendant claims there was failure to protest and give notice of dishonor, laws of Germany governing appointment of receiver, and partial defense of part payment. *McQuade v Szytkgold*, 1 A.D.2d 872, 149 N.Y.S.2d 378, 1956 N.Y. App. Div. LEXIS 6090 (N.Y. App. Div. 1st Dep't), reh'g denied, 1 A.D.2d 950, 151 N.Y.S.2d 599, 1956 N.Y. App. Div. LEXIS 5711 (N.Y. App. Div. 1st Dep't 1956).

Where matter is pleaded as a separate and distinct defense, a plaintiff is entitled to a bill of particulars although the defense could be proved under a general denial. *Solomon v Travelers Fire Ins. Co.*, 5 A.D.2d 1017, 174 N.Y.S.2d 85, 1958 N.Y. App. Div. LEXIS 6170 (N.Y. App. Div. 2d Dep't), reh'g denied, 6 A.D.2d 802, 175 N.Y.S.2d 575, 1958 N.Y. App. Div. LEXIS 5624 (N.Y. App. Div. 2d Dep't 1958).

In action for wrongful death where defendant alleged contributory negligence as affirmative defense, and it appears that plaintiff administratrix has no knowledge thereof and defendant may have some knowledge thereof, defendant was required to state particulars within his knowledge, and if he does not possess information requested as to any specific item, he should so state under oath, and not serve inadequate bill of particulars. *Quashnofsky v Davies Bldg., Inc.*, 4 Misc. 2d 38, 152 N.Y.S.2d 732, 1956 N.Y. Misc. LEXIS 1861 (N.Y. Sup. Ct. 1956).

In action for wrongful death, defendant was required to comply with demand for particulars of his affirmative defense that accident was caused by negligence of third person in order to avoid

preclusion of evidence to support such defense. *Quashnofsky v Davies Bldg., Inc.*, 4 Misc. 2d 38, 152 N.Y.S.2d 732, 1956 N.Y. Misc. LEXIS 1861 (N.Y. Sup. Ct. 1956).

Where no special circumstances are shown in papers submitted entitling plaintiff to bill of particulars of affirmative defense of payment, motion to vacate demand granted. *Ferrarese v Washington Restaurant of Rochester, Inc.*, 11 Misc. 2d 256, 176 N.Y.S.2d 418, 1958 N.Y. Misc. LEXIS 3350 (N.Y. County Ct. 1958).

Defendant may not demand particulars of his own affirmative defense. *Frank v Frederick Loeser & Co.*, 25 N.Y.S.2d 918, 1941 N.Y. Misc. LEXIS 1515 (N.Y. App. Term 1941).

Plaintiff may demand particulars of affirmative defense. *Esposito v Consolidated Edison Co.*, 68 N.Y.S.2d 868, 1947 N.Y. Misc. LEXIS 2169 (N.Y. Mun. Ct. 1947).

When a matter which could be proved under a general denial was unnecessarily pleaded as a separate and distinct defense, the plaintiff was entitled to a bill of particulars under RCP 115. *Kelly v Kaiser*, 158 N.Y.S.2d 5 (N.Y. Sup. Ct. 1956).

Purpose of RCP 115 was not to require a bill of particulars for permissive, but only for affirmative, defenses, generally counterclaims. *Rockwood Co. v Northwestern Fire & Marine Ins. Co.*, 26 F.2d 824, 1928 U.S. Dist. LEXIS 1272 (D.N.Y. 1928).

40. —Counterclaim

In an action to recover moneys expended for the benefit of the real estate of a client, a bill of particulars should be required as to matter alleged as a counterclaim. *Washburn v Graves*, 117 A.D. 343, 101 N.Y.S. 1043, 1907 N.Y. App. Div. LEXIS 252 (N.Y. App. Div. 1907).

A bill of particulars will not be directed as to matters alleged in a counterclaim to which no reply has been made. *Paul v Nahl*, 119 A.D. 880, 104 N.Y.S. 233, 1907 N.Y. App. Div. LEXIS 3484 (N.Y. App. Div. 1907).

Defendant may be required to furnish a bill of particulars of acts alleged in a counterclaim. *American Mutoscope & Biograph Co. v Film Import & Trading Co.*, 134 A.D. 958, 119 N.Y.S. 1112, 1909 N.Y. App. Div. LEXIS 3505 (N.Y. App. Div. 1909).

One defendant may not serve upon another an answer to the latter's answer, and a bill of particulars cannot be granted of a counterclaim attempted to be set up in an answer to an answer. *Strauss v Hanover Realty & Constr. Co.*, 124 N.Y.S. 757, 67 Misc. 572, 1910 N.Y. Misc. LEXIS 311 (N.Y. Sup. Ct. 1910).

Plaintiff was entitled to amplification of allegations of counterclaim but not entitled to evidentiary details. *Frohman v Samuel Stores, Inc.*, 255 N.Y.S. 606, 142 Misc. 479, 1932 N.Y. Misc. LEXIS 1383 (N.Y. Sup. Ct. 1932).

41. Effect of bill on pleading to which it refers

Admissions in the bill of particulars inconsistent with the party's pleadings are conditional. *Case v Pharis*, 106 N.Y. 114, 12 N.E. 431, 106 N.Y. (N.Y.S.) 114, 8 N.Y. St. 548, 1887 N.Y. LEXIS 865 (N.Y. 1887).

A bill of particulars is an amplification of a pleading; but when served after service of an answer it does not have the effect of making the complaint bad or the answer good. It simply explains and makes definite allegations in the pleading and limits proof at the trial. *Harmon v Alfred Peats Co.*, 243 N.Y. 473, 154 N.E. 314, 243 N.Y. (N.Y.S.) 473, 1926 N.Y. LEXIS 774 (N.Y. 1926).

A verified bill of particulars served upon demand or compliance with an order is before the court and is a paper to be included in the judgment roll. *Steiger v London*, 138 A.D. 246, 122 N.Y.S. 1028, 1910 N.Y. App. Div. LEXIS 1502 (N.Y. App. Div. 1910).

A bill of particulars forms part of the pleadings. *Maxherman Co. v Alper*, 210 A.D. 389, 206 N.Y.S. 233, 1924 N.Y. App. Div. LEXIS 6735 (N.Y. App. Div. 1924).

A bill of particulars cannot change the cause of action set forth in the complaint. *James Talcott, Inc. v Greenstein*, 210 A.D. 633, 206 N.Y.S. 471, 1924 N.Y. App. Div. LEXIS 6811 (N.Y. App. Div. 1924).

Although a complaint, standing alone, stated a good cause of action, a motion by defendant for judgment on the pleadings under former RCP 112, should be granted where the bill of particulars showed a contrary situation, the bill controlling in case of variance. *All-American Sec. Co. v Foundation Co.*, 211 A.D. 684, 208 N.Y.S. 328, 1925 N.Y. App. Div. LEXIS 10676 (N.Y. App. Div. 1925).

The complaint may be amplified by the bill of particulars. *Flynn v Brooklyn Improv. Co.*, 226 A.D. 765, 234 N.Y.S. 790, 1929 N.Y. App. Div. LEXIS 9847 (N.Y. App. Div. 2d Dep't 1929).

A bill of particulars is an amplification of the complaint and a part thereof which is always before the court, hence need not be offered in evidence. *Continental Leather Co. v Liverpool, Brazil & River Plate Steam Navigation Co.*, 228 A.D. 707, 239 N.Y.S. 229, 1930 N.Y. App. Div. LEXIS 12585 (N.Y. App. Div. 1930).

Change of cause of action was not effected by supplemental bill of particulars stating that plaintiff has suffered broken arm after commencement of action. *Rasa v New York*, 277 A.D. 780, 97 N.Y.S.2d 520, 1950 N.Y. App. Div. LEXIS 3292 (N.Y. App. Div. 2d Dep't 1950).

Plaintiff's bill of particulars was required to be considered a part of the pleadings on defendant's motion for judgment on the pleadings and where it appeared therefrom that the plaintiff failed to comply with the time limitations for notice and presentment of claim against defendant board of education, an order denying defendant's motion for judgment on the pleadings as to such causes of action reversed. *Kinner v Board of Education*, 6 A.D.2d 204, 175 N.Y.S.2d 707, 1958 N.Y. App. Div. LEXIS 5123 (N.Y. App. Div. 4th Dep't 1958), *aff'd*, 9 N.Y.2d 845, 216 N.Y.S.2d 92, 175 N.E.2d 460, 1961 N.Y. LEXIS 1336 (N.Y. 1961).

Bill of particulars will not cure deficiencies in the complaint. *American Surety Co. v Loomis*, 229 N.Y.S. 62, 132 Misc. 62, 1928 N.Y. Misc. LEXIS 865 (N.Y. Sup. Ct. 1928).

Where plaintiff, being in doubt as to which defendants are liable, joins several, bill of particulars is proper to make more definite and certain. *Winslow Bros. & Smith Co. v Grace S.S. Co.*, 233 N.Y.S. 448, 133 Misc. 902, 1929 N.Y. Misc. LEXIS 709 (N.Y. City Ct. 1929).

The bill of particulars is an amplification or delineation of the pleading and fixes the boundaries of admissible evidence and nearly rises to the dignity of a pleading. *Thoma v Koeppen*, 240 N.Y.S. 190, 136 Misc. 346, 1930 N.Y. Misc. LEXIS 1050 (N.Y. City Ct. 1930).

Bill of particulars may limit rights under the pleadings but may not enlarge them. *Warshawsky v Ward*, 248 N.Y.S. 309, 139 Misc. 793, 1931 N.Y. Misc. LEXIS 1120 (N.Y. Sup. Ct.), rev'd, 233 A.D. 390, 253 N.Y.S. 246, 1931 N.Y. App. Div. LEXIS 11306 (N.Y. App. Div. 1931).

Defendant's remedy for amplification of charges in complaint, is motion for bill of particulars. *Walker v Man*, 253 N.Y.S. 458, 142 Misc. 277, 1931 N.Y. Misc. LEXIS 1505 (N.Y. Sup. Ct. 1931).

A bill of particulars will not be ordered where the effect is merely to make the complaint more definite and certain. *Hespe v Corning Glass Works, Inc.*, 9 F. Supp. 725, 1935 U.S. Dist. LEXIS 1899 (D.N.Y. 1935).

42. Withdrawal of part of pleading

The court may permit the withdrawal of that part of a pleading about which particulars are demanded. *Dyett v Seymour*, 8 NYSR 429; and the other party, cannot then, without new notice, obtain a bill as to other allegations. *Lambert v Perry*, 1 N.Y.S. 152, 48 Hun 621, 1888 N.Y. Misc. LEXIS 1234 (N.Y. Sup. Ct. 1888).

B. Particular Actions and Proceedings

43. Accounting

Complaint in an action for an accounting by a corporation, which, holding a majority of stock of another corporation, had brought about the insolvency of the latter, considered and a bill of particulars denied. *Ingraham v International Salt Co.*, 114 A.D. 791, 100 N.Y.S. 192, 1906 N.Y. App. Div. LEXIS 2189 (N.Y. App. Div. 1906).

When in an action for a partnership accounting the right was admitted, the plaintiff was not required to give a bill of particulars that the defendant used the partnership for his own purposes. *Child v O'Rourke*, 122 A.D. 325, 106 N.Y.S. 884, 1907 N.Y. App. Div. LEXIS 2427 (N.Y. App. Div. 1907).

In an action for the dissolution of a partnership and an accounting, the plaintiff should not be required to give a bill of particulars of allegations of misappropriation of the firm moneys. *Kellogg v Griffiths*, 124 A.D. 513, 108 N.Y.S. 962, 1908 N.Y. App. Div. LEXIS 2130 (N.Y. App. Div. 1908).

For particulars in actions for accounting see also *Boskowitz v Sulzbacher*, 124 A.D. 682, 109 N.Y.S. 186, 1908 N.Y. App. Div. LEXIS 2183 (N.Y. App. Div. 1908).

In equity actions for an accounting it is not the practice of the court to order defendant to furnish a bill of particulars, but where it appears that plaintiff is entitled to a full statement of expenses alleged to have been incurred and of moneys alleged to have been received by the defendant, the orderly practice would be for plaintiff to secure an interlocutory decree requiring defendant to state his account fully. *Baum v Lamborn*, 203 A.D. 86, 196 N.Y.S. 478, 1922 N.Y. App. Div. LEXIS 7133 (N.Y. App. Div. 1922).

In action by wife separated from defendant husband seeking an accounting for income from property owned jointly, with answer alleging that her fraudulent acts, etc., had caused him great expense which exceeded the income, plaintiff was entitled to a bill of particulars. *Cester v Cester*, 226 A.D. 620, 237 N.Y.S. 93, 1929 N.Y. App. Div. LEXIS 8792 (N.Y. App. Div. 1929).

In action for accounting based on fraudulent acts under agreement, plaintiff may not be required to furnish particulars as to matters on which defendant has duty to account in first instance.

Sirota v Abko Products, Inc., 277 A.D. 899, 98 N.Y.S.2d 78, 1950 N.Y. App. Div. LEXIS 3772 (N.Y. App. Div. 1950).

Bill of particulars might be required in a special proceeding under CPA Art 79 (CPLR Art 77) for judicial settlement of intermediate account of inter vivos trustee. *In re Thoms' Trust*, 9 A.D.2d 186, 192 N.Y.S.2d 632, 1959 N.Y. App. Div. LEXIS 6120 (N.Y. App. Div. 4th Dep't 1959).

Special Term was held to have authority to require service of bills of particulars in a special proceeding for the settlement of intermediate accounts of a trustee instituted pursuant to CPA Art 79 (CPLR Art 77). *In re Thoms' Trust*, 9 A.D.2d 186, 192 N.Y.S.2d 632, 1959 N.Y. App. Div. LEXIS 6120 (N.Y. App. Div. 4th Dep't 1959).

Attorney who collects money for client and retains it is bound to render an account thereof when called upon to do so, and in client's action for accounting, client is not required to furnish bill of particulars before such account has been rendered. *Kleckner v Levine*, 12 A.D.2d 788, 209 N.Y.S.2d 671, 1961 N.Y. App. Div. LEXIS 13450 (N.Y. App. Div. 2d Dep't 1961).

Bill of particulars in a proceeding for an accounting as to relationship which two groups of heirs claim to decedent denied where there is no issue as to such relationship and it will not be necessary for respondents to present any proof thereof. *In re Caterson's Will*, 256 N.Y.S. 159, 143 Misc. 115, 1932 N.Y. Misc. LEXIS 1424 (N.Y. Sur. Ct. 1932).

44. —As to attorneys' fees

A bill of particulars is required from an attorney on a temporary administrator's accounting, and an associate who is to get one-third of the fee who subsequently became a coadministrator must file a separate bill of particulars even though he has filed objections to the amount of the attorney's fee. *In re Meerbaum's Estate*, 7 Misc. 2d 981, 166 N.Y.S.2d 144, 1957 N.Y. Misc. LEXIS 2512 (N.Y. Sur. Ct. 1957), *aff'd*, 5 A.D.2d 833, 170 N.Y.S.2d 1001 (N.Y. App. Div. 2d Dep't 1958).

An attorney must furnish the following bill of particulars where he and his associate claim a fee: 1, an itemized statement of the legal services rendered by him and his remaining associate; 2, if any service was performed by way of a writing, identify such writing and state the substance thereof, and 3, a statement of the value of the services claimed to have been rendered with reference to each separate matter in its entirety. *In re Meerbaum's Estate*, 7 Misc. 2d 981, 166 N.Y.S.2d 144, 1957 N.Y. Misc. LEXIS 2512 (N.Y. Sur. Ct. 1957), *aff'd*, 5 A.D.2d 833, 170 N.Y.S.2d 1001 (N.Y. App. Div. 2d Dep't 1958).

45. Arbitration

No statutory authority exists for the ordering of a bill of particulars in arbitration proceedings. *Smyth v Board of Education*, 217 N.Y.S. 231, 128 Misc. 49, 1925 N.Y. Misc. LEXIS 1213 (N.Y. Sup. Ct. 1925).

46. Assault and battery

In an action for assault and battery against a street railway, the plaintiff should be required to give a bill of particulars naming the exact place, time of day and also the direction in which the car was going. He should also be required to give the number of the car, the line and the badge number of the motorman and conductor, if he knows them. He should not be required to give an exact statement of the injuries sustained, or the nature of the same when there is no allegation of permanent injuries; if the plaintiff be unable to furnish these particulars, he should state his lack of knowledge or inability as a substitute for the information required. *Ferris v Brooklyn H. R. Co.*, 116 A.D. 892, 102 N.Y.S. 463, 1907 N.Y. App. Div. LEXIS 59 (N.Y. App. Div. 1907).

Where a complaint sets out separate causes of action charging two defendants with assault, the plaintiff will not be required to give the names of the various persons by whom he was formerly employed, or the names of the police officers who arrested him; an order for a bill of particulars should not direct that the plaintiff be precluded from giving evidence in case he fails to give the

particulars required. *Loscher v Hager*, 124 A.D. 568, 109 N.Y.S. 562, 1908 N.Y. App. Div. LEXIS 2154 (N.Y. App. Div. 1908).

In an action to recover damages for assault and battery, plaintiff, who was ordered to furnish a bill of particulars stating the names of the persons who committed the assault and the names of those who seized and searched him as well as the names of those in whose presence such acts were committed, served a bill of particulars giving the name of the defendant's officer who committed the assault and stating that beyond giving said name he had no knowledge of the names of the other. *Schepps v Japanese Fan Co.*, 145 A.D. 418, 131 N.Y.S. 1015, 1911 N.Y. App. Div. LEXIS 1802 (N.Y. App. Div. 1911).

Where the complaint in an action to recover for assault and battery does not allege any permanent injury to the plaintiff, but simply contains a general allegation that the plaintiff suffered damages in a specific sum, it is improper to require him to serve a bill of particulars itemizing in detail his injuries, and his pecuniary loss. *Renz v Lugt*, 147 A.D. 638, 132 N.Y.S. 522, 1911 N.Y. App. Div. LEXIS 2934 (N.Y. App. Div. 1911).

47. Attorney's services

Where, on a motion for substitution of attorneys, the attorney originally retained asserted a lien upon papers for services, and the court ordered a reference to determine the amount due, it is improper before the hearing to require the attorney to furnish a bill of particulars of his claim. *Dacey v Fogel*, 144 A.D. 160, 128 N.Y.S. 750, 1911 N.Y. App. Div. LEXIS 1648 (N.Y. App. Div. 1911).

In an action for legal services against copartnership and individual, separate itemized statement of services rendered to each ordered. *Goldstein v Wright*, 264 A.D. 836, 35 N.Y.S.2d 753, 1942 N.Y. App. Div. LEXIS 4933 (N.Y. App. Div. 1942).

Attorney who collects money for client and retains it is bound to render an account thereof when called upon to do so, and in client's action for accounting, client is not required to furnish bill of

particulars before such account has been rendered. *Kleckner v Levine*, 12 A.D.2d 788, 209 N.Y.S.2d 671, 1961 N.Y. App. Div. LEXIS 13450 (N.Y. App. Div. 2d Dep't 1961).

Plaintiff, attorney, entitled to bill of particulars where a defendant claims that services were rendered by another attorney connected with plaintiff and to which attorney defendant made payment. *Rosenzweig v Larkin*, 270 N.Y.S. 787, 151 Misc. 105, 1934 N.Y. Misc. LEXIS 1210 (N.Y. City Ct. 1934).

In action by one attorney against another for accounting for legal services in joint litigation, particulars of services rendered denied; particulars of dates when plaintiff commences and completes services and of principal steps taken, granted. *Block v Fisk*, 28 N.Y.S.2d 910, 176 Misc. 720, 1941 N.Y. Misc. LEXIS 1953 (N.Y. Sup. Ct. 1941).

Where counsel in good faith furnished the fullest bill which circumstances permitted and stated their inability to particularize further as to specific time spent on each item of service, as to date on which each service was rendered, or as to name of each person with whom they conferred or corresponded, their bill of particulars was sufficient. *Runals v Niagara University*, 16 Misc. 2d 853, 185 N.Y.S.2d 315, 1959 N.Y. Misc. LEXIS 3768 (N.Y. Sup. Ct. 1959).

For services on corporation reorganization, attorney need not evaluate daily items or services or in any divisible period. *Langan v Cabot*, 67 N.Y.S.2d 783, 1947 N.Y. Misc. LEXIS 2008 (N.Y. Sup. Ct. 1947).

48. Bills and notes

In a suit by plaintiff as the assignee of a holder in due course of a promissory note, wherein the defense is fraud in the inception of the note, defendant is entitled to a bill of particulars as to the consideration from the alleged holder in due course to his transferor. *Starr v Yvette Co.*, 212 N.Y.S. 204, 126 Misc. 35, 1925 N.Y. Misc. LEXIS 1099 (N.Y. Sup. Ct. 1925), modified, 215 A.D. 810, 213 N.Y.S. 913, 1926 N.Y. App. Div. LEXIS 11213 (N.Y. App. Div. 1926).

In action on note, where complaint failed to show how plaintiff obtained it, bill of particulars properly ordered. *H. Rubenstein Co. v Tucker*, 255 N.Y.S. 211, 142 Misc. 626, 1932 N.Y. Misc. LEXIS 1339 (N.Y. App. Term 1932).

A motion by plaintiff in an action on a promissory note for a bill of particulars with respect to the defenses that the note was made for the accommodation of the plaintiff, and that the parties agreed not to hold the defendant liable, is granted. *Bay Parkway Nat'l Bank v Shalom*, 261 N.Y.S. 347, 146 Misc. 431, 1932 N.Y. Misc. LEXIS 1703 (N.Y. Sup. Ct.), *aff'd*, 236 A.D. 798, 261 N.Y.S. 933, 1932 N.Y. App. Div. LEXIS 7096 (N.Y. App. Div. 1932).

In an action on a promissory note, an application by defendant for a bill of particulars with reference to the matter of consideration denied. *Bay Parkway Nat'l Bank v Shalom*, 261 N.Y.S. 347, 146 Misc. 431, 1932 N.Y. Misc. LEXIS 1703 (N.Y. Sup. Ct.), *aff'd*, 236 A.D. 798, 261 N.Y.S. 933, 1932 N.Y. App. Div. LEXIS 7096 (N.Y. App. Div. 1932).

49. Conspiracy

Where complaint charges conspiracy, wherein acts of some defendants are sought to bind others, defendants are entitled to extensive particulars. *Dwyer v Byrne*, 280 A.D. 832, 113 N.Y.S.2d 859, 1952 N.Y. App. Div. LEXIS 3853 (N.Y. App. Div. 2d Dep't), *modified*, 280 A.D. 864, 113 N.Y.S.2d 859, 1952 N.Y. App. Div. LEXIS 3946 (N.Y. App. Div. 2d Dep't 1952).

In action based on conspiracy bill of particulars should be confined to requests for particulars as to time, place and participants in respect of the alleged conspiracy and acts in furtherance thereof. *Penn-Texas Corp. v Glickman*, 9 A.D.2d 749, 193 N.Y.S.2d 178, 1959 N.Y. App. Div. LEXIS 5908 (N.Y. App. Div. 1st Dep't 1959).

In conspiracy action, demand for particulars of the "means" by which defendants are alleged to have acted is improper. *Penn-Texas Corp. v Glickman*, 9 A.D.2d 749, 193 N.Y.S.2d 178, 1959 N.Y. App. Div. LEXIS 5908 (N.Y. App. Div. 1st Dep't 1959).

Bill of particulars is more appropriate medium for stating specific acts charged to each defendant than complaint which sets up separate cause of action against each named defendant. *Paliotto v Hartman*, 148 N.Y.S.2d 164, 1956 N.Y. Misc. LEXIS 2283 (N.Y. Sup. Ct.), modified, 2 A.D.2d 866, 156 N.Y.S.2d 220, 1956 N.Y. App. Div. LEXIS 4133 (N.Y. App. Div. 2d Dep't 1956).

50. Contracts generally

A plaintiff, a trust company, having a large number of officers and employees, bringing an action upon an underwriting agreement and collateral notes, of which it is assignee, and the defendant alleging that the underwriting agreement and notes were not to be operative except under certain conditions of which plaintiff had knowledge and notice, the plaintiff is entitled to a bill of particulars. *Knickerbocker Trust Co. v Packard*, 109 A.D. 421, 96 N.Y.S. 412, 1905 N.Y. App. Div. LEXIS 3570 (N.Y. App. Div. 1905).

Defendant was entitled to bill of particulars stating nature of agreement not to sell property received for storage. *Taylor v Metropolitan Fireproof Storage Warehouse Co.*, 140 A.D. 321, 125 N.Y.S. 137, 1910 N.Y. App. Div. LEXIS 2929 (N.Y. App. Div. 1910).

In an action for breach of contract, an order granting defendant's motion for a bill of particulars is modified and granted as to certain details. *Burndy Engineering Co. v Bridgeport Brass Co.*, 238 A.D. 241, 264 N.Y.S. 265, 1933 N.Y. App. Div. LEXIS 9473 (N.Y. App. Div. 1933).

In action for breach of contract to pay plaintiff percentage of towel service rendered tenants in two office buildings, particulars ordered as to names of tenants served, their room numbers, and dates and kinds of service. *Midtown Service Co. v Koehler*, 261 A.D. 785, 27 N.Y.S.2d 106, 1941 N.Y. App. Div. LEXIS 7439 (N.Y. App. Div. 1941).

Defendant was entitled to particulars whether oral agreement relied on in amended complaint preceded or followed writing signed by parties, and whether it was substantially statement in prior bill. *Steppan v Leir*, 276 A.D. 995, 95 N.Y.S.2d 639, 1950 N.Y. App. Div. LEXIS 5462 (N.Y. App. Div. 1950).

Plaintiff, seeking to recover deposit under a contract to purchase real property, which provided for the return of the deposit if purchaser was unable to procure mortgage loan, who alleged performance on her part and her inability to obtain the loan was required to furnish particulars as to the banks and other lending institutions to which she had applied and the dates of such applications. *Hyman v Bisceglia*, 8 A.D.2d 617, 185 N.Y.S.2d 69, 1959 N.Y. App. Div. LEXIS 9323 (N.Y. App. Div. 2d Dep't 1959).

In an action to recover a deposit made to bind a contract for the sale of real property, the plaintiff will be ordered to furnish a bill of particulars as to certain alleged incumbrances and defects and also as to an alleged payment for examination of title. *Markowitz v Teichman*, 102 N.Y.S. 469, 52 Misc. 458, 1907 N.Y. Misc. LEXIS 44 (N.Y. App. Term 1907).

Where complaint alleges agreement between plaintiff and “defendants” and answer alleged an agreement with a particular named defendant, held that defendants were entitled to a bill of particulars. *Adams v Dodge*, 187 N.Y.S. 688, 114 Misc. 565, 1921 N.Y. Misc. LEXIS 1268 (N.Y. Sup. Ct. 1921), *aff'd*, 196 A.D. 957, 188 N.Y.S. 908, 1921 N.Y. App. Div. LEXIS 6364 (N.Y. App. Div. 1921), *aff'd*, 201 A.D. 846, 193 N.Y.S. 923, 1922 N.Y. App. Div. LEXIS 6560 (N.Y. App. Div. 1922).

Defendant having obligated himself to make good any loss of goods or money while manager of plaintiff's store was entitled to a bill of particulars when sued for an alleged loss. *Schaffer Stores Co. v Sweet*, 228 N.Y.S. 599, 132 Misc. 38, 1928 N.Y. Misc. LEXIS 834 (N.Y. Sup. Ct. 1928).

Plaintiff not entitled to bill of particulars showing what agreement required to be done where it is annexed to complaint. *Jacobson v Peiser*, 264 N.Y.S. 601, 148 Misc. 297, 1933 N.Y. Misc. LEXIS 1551 (N.Y. Sup. Ct. 1933).

In this action to reform a written contract on the ground that it was entered into through mutual mistake or mistake on the part of the plaintiff and fraud on the part of the defendants, the demand by defendants for particulars as to who, in behalf of the corporate plaintiff, entered into the agreement will be granted, where the defendants deny entering into any such contract. First

Trust & Deposit Co. v Rubin, 280 N.Y.S. 747, 155 Misc. 454, 1935 N.Y. Misc. LEXIS 1274 (N.Y. Sup. Ct. 1935).

Bill of particulars setting forth copy of agreement (if written) or its substance (if oral) is proper. Hanson v Hanson, 119 N.Y.S.2d 11, 203 Misc. 396, 1953 N.Y. Misc. LEXIS 1492 (N.Y. Sup. Ct. 1953).

Where action was brought on a contract, particulars might be demanded from the party having the burden of proving the performance of the terms of the contract. RCP 92 (§ 3015 herein) specifically indicated that the pleading of this kind of denial did not shift the burden of proof to the defendant. Di Mino v Old Town Corp., 4 Misc. 2d 962, 157 N.Y.S.2d 649, 1956 N.Y. Misc. LEXIS 1424 (N.Y. Sup. Ct. 1956).

Particulars of manner and date of alleged cancellation of contract for correspondence course, consideration and name of person acting for plaintiff, were proper. Sackman v Williams, 51 N.Y.S.2d 915, 1944 N.Y. Misc. LEXIS 2637 (N.Y. Sup. Ct. 1944).

Particulars of allegations of due performance were refused where defendant merely denied such allegations. Klapper v Greenfield, 100 N.Y.S.2d 921, 1948 N.Y. Misc. LEXIS 3999 (N.Y. Sup. Ct. 1948).

Old agreement, allegedly made twenty-two years ago, entitled defendant, who was first apprised of it when action was begun, to fullest possible disclosure of pertinent facts. Cedar v Furst, 112 N.Y.S.2d 712, 1951 N.Y. Misc. LEXIS 2847 (N.Y. Sup. Ct. 1951).

In action for breach of contract where plaintiff alleged that he performed each and every act on his part to be performed under agreement except as performance was excused by agreement, photostat of which was attached to bill, defendant could not compel plaintiff to set forth specifically in what respects he claims to have performed his agreement, where defendant did not specifically deny allegation of performance. Chesapeake Industries, Inc. v Selznick Releasing Organization, Inc., 148 N.Y.S.2d 736, 1956 N.Y. Misc. LEXIS 2318 (N.Y. Sup. Ct.),

aff'd, 2 A.D.2d 666, 153 N.Y.S.2d 545, 1956 N.Y. App. Div. LEXIS 5062 (N.Y. App. Div. 1st Dep't 1956).

51. —Construction contracts

For particulars in actions concerning building contracts, see *Breslauer Realty Co. v Cohen*, 115 A.D. 360, 100 N.Y.S. 775, 1906 N.Y. App. Div. LEXIS 3693 (N.Y. App. Div. 1906).

52. —Services and materials

A plaintiff suing to recover services in effecting a sale of business will be required to state whether the agreement was in writing and the particulars concerning the agreement and also to specify what services were rendered that were of the value claimed. *Rhodes v Rice*, 113 A.D. 304, 98 N.Y.S. 913, 1906 N.Y. App. Div. LEXIS 1414 (N.Y. App. Div. 1906).

When a plaintiff sues on a breach of contract of employment as assistant superintendent of the defendant, and the latter alleges justification because “for a long time . . . he had persisted in a course of conduct antagonistic to the defendant’s superintendent and injurious to and destructive of discipline among the employees,” the plaintiff is entitled to a bill of particulars specifying the nature and items of the “course of conduct” referred to in the answer. A verbal statement of the conduct complained of, previously made by the defendant, does not take the place of a bill of particulars, and is no ground for refusing one. *Burhans v Hudson River Wood Pulp Mfg. Co.*, 116 A.D. 132, 101 N.Y.S. 271, 1906 N.Y. App. Div. LEXIS 2617 (N.Y. App. Div. 1906).

Where in an action for services as architects there is a counterclaim based upon the failure of plaintiffs to perform, the plaintiffs are not entitled to a bill of particulars stating the particular items of erroneous advice claimed to have been given, the respects in which they were negligent, the items of the general damages claimed to have been occasioned thereby, and the items making up the cost of the building upon which the services were rendered. *Radcliffe v*

New York Cab Co., 134 A.D. 450, 119 N.Y.S. 251, 1909 N.Y. App. Div. LEXIS 2884 (N.Y. App. Div. 1909).

Where in an action to recover for services rendered, defendant sets up a counterclaim for damages arising out of plaintiff's negligence, the plaintiff is not entitled to a bill of particulars as to his own negligence and failure to perform, as he is bound to show performance on his part. *Herrman v Leland*, 148 A.D. 641, 133 N.Y.S. 271, 1912 N.Y. App. Div. LEXIS 5956 (N.Y. App. Div. 1912).

In an action to recover damages for breach of a contract of employment, an order requiring defendant, if such contract was oral, to state "its exact and complete terms and conditions," merely requires the statement, as an ultimate fact, of the agreement reached as the result of the conversations, and is properly granted. *Gaudry v Todd Shipyards Corp.*, 204 A.D. 250, 197 N.Y.S. 742, 1923 N.Y. App. Div. LEXIS 9450 (N.Y. App. Div. 1923).

Where defendant in an action for damages for wrongful discharge from employment set up by way of affirmative defense facts upon which he relied to show nonperformance on the part of plaintiff, he might properly be required, under RCP 115 to give particulars where because of their nature plaintiff could not otherwise be prepared to meet them at the trial. *Burns v Lipson*, 204 A.D. 643, 198 N.Y.S. 810, 1923 N.Y. App. Div. LEXIS 9541 (N.Y. App. Div. 1923).

In an action to recover for work, labor, and services, wherein the complaint sets out the dates between which the services were performed, defendant is not entitled to a bill of particulars for the purpose of pleading the statute of limitations. *Lippitt v American Agricultural Chemical Co.*, 209 A.D. 853, 205 N.Y.S. 335, 1924 N.Y. App. Div. LEXIS 9288 (N.Y. App. Div. 1924).

Where the complaint in an action for breach of contract for personal services entitled plaintiff to produce evidence on the theory of a special contract or of quantum meruit, the defendant was entitled to a bill of particulars on the theory of contract and also on the theory of quantum meruit in the absence of a stipulation that plaintiff would not produce evidence on the quantum meruit

theory. *Kallus v Fleischer Studios, Inc.*, 255 A.D. 812, 7 N.Y.S.2d 233, 1938 N.Y. App. Div. LEXIS 5407 (N.Y. App. Div. 1938).

In action for work, labor and services, defendant is not entitled to a verified bill of particulars where it appears that the demand therefor, both in its form and extent, is unreasonable, meticulous, unnecessarily repetitious and burdensome and should be denied in its entirety as a plain abuse of the right to a bill of particulars. *American Mint Corp. v Ex-Lax, Inc.*, 260 A.D. 576, 23 N.Y.S.2d 268, 1940 N.Y. App. Div. LEXIS 4659 (N.Y. App. Div. 1940).

In action for labor and materials furnished, particulars of allegations of performance were granted. *Friendly Television, Inc. v Frost Refrigeration, Inc.*, 279 A.D. 599, 107 N.Y.S.2d 530, 1951 N.Y. App. Div. LEXIS 3149 (N.Y. App. Div. 1951).

In action for services under contract, defendant's demand for particulars should require plaintiff to itemize every act of service rendered by plaintiff, specifying substance of each act. *Storer v Bion Exhibits, Inc.*, 279 A.D. 1098, 112 N.Y.S.2d 801, 1952 N.Y. App. Div. LEXIS 5971 (N.Y. App. Div. 1952).

In action for work, labor and services, wherein disobedience of orders by an employee was set up as a separate defense, plaintiff was entitled to a bill of particulars stating the specific acts of disobedience complained of. *Doblin v Hebrew Children's Home*, 243 N.Y.S. 120, 135 Misc. 229, 1929 N.Y. Misc. LEXIS 1120 (N.Y. City Ct. 1929).

In action for commissions under employment contract, particulars of contract, oral or written, terms, services rendered and orders procured, were granted. *Shargel v Gulland*, 52 N.Y.S.2d 142, 1944 N.Y. Misc. LEXIS 2679 (N.Y. Sup. Ct. 1944).

In action for work and materials, plaintiff's bill should particularize items of work and number of hours of labor for each item, and items of material furnished, together with sum charged as cost or reasonable value of each item of labor and material. *Hirsch v Marks*, 125 N.Y.S.2d 760, 1953 N.Y. Misc. LEXIS 2367 (N.Y. Sup. Ct. 1953).

53. —Specific performance

A bill of particulars in an action for specific performance of the contract to sell lands will be granted to show the incumbrances and damages, but not the respects in which defendants are alleged to have refused to comply with the terms of the contract. *Gross v Conner*, 114 A.D. 32, 99 N.Y.S. 569, 1906 N.Y. App. Div. LEXIS 2019 (N.Y. App. Div. 1906).

In an action for specific performance, the plaintiff will be required to furnish copies of so much of the alleged agreement as is in writing. *Fischel v Fischel*, 121 A.D. 868, 106 N.Y.S. 815, 1907 N.Y. App. Div. LEXIS 1921 (N.Y. App. Div. 1907).

54. —Telegraphs and telephones

In action for defendant's delay in delivering telegraphic money order to plaintiff's bank, where plaintiff furnished particulars stating that loss of business "consisted of dealers refusing to accept checks," he was required to serve further bill specifying names of such dealers and extent of his damage. *Bostelman v Western Union Tel. Co.*, 37 N.Y.S.2d 662, 179 Misc. 121, 1942 N.Y. Misc. LEXIS 2084 (N.Y. Sup. Ct. 1942).

55. Conversion

Where a defendant's answer in conversion alleged that the property had been placed in his hands to use and invest in transactions on joint account and that heavy losses had been incurred, a bill of particulars of such losses was properly ordered. *Cunard v Francklyn*, 111 N.Y. 511, 19 N.E. 92, 111 N.Y. (N.Y.S.) 511, 19 N.Y. St. 641, 1888 N.Y. LEXIS 1042 (N.Y. 1888).

In an action for the conversion of stock where the complaint alleges that the plaintiff was the owner and entitled to the immediate possession and that between certain dates defendants, being then in possession unlawfully converted the same to their own use, she should not be required to give a bill of particulars stating the date she delivered the stock or parted with possession, or the date the stock was taken from her possession without her consent, and

specifying whether the stock was delivered by the plaintiff or taken without her consent. *Farwell v Boody*, 112 A.D. 493, 98 N.Y.S. 385, 1906 N.Y. App. Div. LEXIS 712 (N.Y. App. Div. 1906).

Bill of particulars ordered in action for conversion showing upon what transactions the plaintiff claims that the defendant has been guilty. *Mayer v Commonwealth Trust Co.*, 124 A.D. 932, 109 N.Y.S. 27, 1908 N.Y. App. Div. LEXIS 2607 (N.Y. App. Div. 1908).

In an action for conversion between and upon certain specified dates the defendant is not entitled to a bill of particulars of the dates, the plaintiff seeks only to recover the value of the chattel without damages for the retention thereof, the defendant is not entitled to a bill of particulars of the items of damages; but where the defendant in such action denies a demand for the return of the goods and claims to be without knowledge thereof, it is entitled to a bill of particulars stating whether or not the demand was in writing, and, if so, to have a copy of it. *Kalina v American Label Co.*, 146 A.D. 718, 131 N.Y.S. 410, 1911 N.Y. App. Div. LEXIS 3349 (N.Y. App. Div. 1911).

Particular acts constituting alleged conversion were granted. *Dougherty v Hugunin*, 78 N.Y.S.2d 313, 1947 N.Y. Misc. LEXIS 3747 (N.Y. Sup. Ct. 1947).

56. Corporations

In stockholders' derivative action, further particulars were granted as to dates of oral demands to account and as to time and place where demand was made. *Sovik v Civic Broadcasting Corp.*, 45 N.Y.S.2d 161, 1943 N.Y. Misc. LEXIS 2580 (N.Y. Sup. Ct. 1943).

57. Discovery proceedings

Where respondents in discovery proceeding instead of moving for preclusion order on petitioner's failure to comply with demand for bill of particulars, moved for order requiring petitioner to comply with demand previously served, motion treated as if bill were sought in first

instance by motion pursuant to RCP 115(b) (CPLR Rule 3042 herein). In re Kuster's Estate, 12 Misc. 2d 239, 152 N.Y.S.2d 742, 1956 N.Y. Misc. LEXIS 1798 (N.Y. Sur. Ct. 1956).

Where a demand for a bill of particulars in a discovery proceeding made where answer alleges gift, demand seeking actual words said at time gift allegedly made seeks evidentiary matter which is improper and demand denied. In re Grotsky's Estate, 12 Misc. 2d 385, 174 N.Y.S.2d 522, 1958 N.Y. Misc. LEXIS 3271 (N.Y. Sur. Ct. 1958).

In discovery proceeding where demand for bill of particulars seeks names and addresses of all persons present at time gift allegedly made, since where witnesses are merely passive observers, their names will not ordinarily be disclosed, such item accordingly modified to entitle petitioner to names and addresses of individuals who participated in alleged inter vivos gift. In re Grotsky's Estate, 12 Misc. 2d 385, 174 N.Y.S.2d 522, 1958 N.Y. Misc. LEXIS 3271 (N.Y. Sur. Ct. 1958).

Bills of particulars may be had in a discovery proceeding and where affirmative answer alleges a gift from the decedent, the burden is upon the party asserting that fact and he will be required to furnish a bill of particulars. In re Grotsky's Estate, 12 Misc. 2d 385, 174 N.Y.S.2d 522, 1958 N.Y. Misc. LEXIS 3271 (N.Y. Sur. Ct. 1958).

58. Ejectment

Tenant denied particulars in landlord's action for ejectment as to failure to renew lease since tenant knew as much about it as landlord. Slingerland v Corwin, 105 A.D. 310, 93 N.Y.S. 953, 1905 N.Y. App. Div. LEXIS 2063 (N.Y. App. Div. 1905).

Where a landlord brings an action in ejectment against a tenant, claiming violation of conditions of the lease and that tenant is not entitled to any renewal thereof or to continue in the premises, and that the lease has not been renewed, the tenant is entitled to particulars specifying the conditions and covenants of the lease claimed to have been violated, and how and when they were violated and what action the landlord took which deprived the tenant of his right to renew

the lease and when such action was taken; the tenant is not, however, entitled to a bill of particulars concerning the allegation that the lease has not been renewed, as he has as much knowledge upon the subject as the landlord. *Slingerland v Corwin*, 105 A.D. 310, 93 N.Y.S. 953, 1905 N.Y. App. Div. LEXIS 2063 (N.Y. App. Div. 1905).

Where, by the answer to a complaint in ejectment, the defendant alleges that the deed under which the plaintiff claims was obtained by deception, fraud and undue influence exerted on the grantor by the plaintiff at a time she was unable to resist the same, the defendant should be required to give a bill of particulars. *Jones v McDonough*, 143 A.D. 178, 127 N.Y.S. 695, 1911 N.Y. App. Div. LEXIS 793 (N.Y. App. Div. 1911).

59. Foreclosure of mechanic's lien

In mechanic's lien foreclosure action, based on monies due under cost-plus contract for construction of development of residential homes in which plaintiff obligated itself to make available to defendant all bills and other items showing expenses, defendant was entitled to bill as to details of transactions between plaintiff and its subcontractors, including their names and addresses, nature of work they performed, materials they furnished, amount of obligations incurred, various dates of payment and amounts, and manner of payment. *Zummo Constr. Co. v Campbell Realty Corp.*, 27 Misc. 2d 607, 213 N.Y.S.2d 125, 1961 N.Y. Misc. LEXIS 3347 (N.Y. Sup. Ct. 1961).

60. Fraud

Fraud can only be pleaded by specifically alleging the facts constituting it; particulars will be granted stating the facts constituting such fraud. *Douthitt v Nassau Fire Ins. Co.*, 115 A.D. 902, 101 N.Y.S. 94, 1906 N.Y. App. Div. LEXIS 3431 (N.Y. App. Div. 1906).

In an action by an administrator to set aside an agreement dissolving a partnership on the ground of fraud, the plaintiff should not be required to furnish particulars of matters pertinent

upon an accounting, but should be required to give particulars of the fraud. *Boskowitz v Sulzbacher*, 124 A.D. 682, 109 N.Y.S. 186, 1908 N.Y. App. Div. LEXIS 2183 (N.Y. App. Div. 1908).

In an action against an agent for an accounting, the principal alleged that a certain account by the agent was fraudulent and that a receipt was obtained by fraud and asked that the accounting be set aside; the defendant was entitled to a bill of particulars of the facts relating to the alleged fraud but not of property transferred by her to the defendant and received by him as agent or trustee, for if an interlocutory judgment for an accounting is rendered the defendant must file an account to which the plaintiff may file objections, whereupon the issues so raised will be referred. *Barnes v Gardiner*, 133 A.D. 576, 118 N.Y.S. 120, 1909 N.Y. App. Div. LEXIS 2229 (N.Y. App. Div. 1909).

Where a complaint in replevin alleges a wrongful taking and detention merely, while the affidavit showed there was a sale by plaintiffs, which they claim to be void for fraud, they will be required to give a bill of particulars of the facts constituting fraud. *Deimel v Olney*, 18 Abb NC 248.

61. Injunction

Suit to restrain city from interfering with plaintiff's business by constructing a subway; contractor constructing brought in and moves for bill of particulars; proper for city to make cross-motion for bill similar to that demanded in the moving papers. *Eighth & N. A. R. Co. v New York*, 224 A.D. 467, 231 N.Y.S. 259, 1928 N.Y. App. Div. LEXIS 10038 (N.Y. App. Div. 1928).

In action to enjoin former employee and his present employer from using trade secrets acquired while in plaintiff's employ and restrain infringement of plaintiff's products, defendant was entitled to particulars as to names and addresses of any persons or firms alleged to have been deceived into believing that defendant's products were those of plaintiff as an exception to the general rule against compelling disclosure of witnesses. *Merit Enterprises, Inc. v Gerson*, 20 Misc. 2d 917, 194 N.Y.S.2d 869, 1959 N.Y. Misc. LEXIS 2374 (N.Y. Sup. Ct. 1959).

Plaintiff seeking to enjoin use by former employee of trade secrets allegedly learned while in his employ was required to describe, without divulging any trade secret, wherein his techniques and machinery differed from those in general use in the trade. *Merit Enterprises, Inc. v Gerson*, 20 Misc. 2d 917, 194 N.Y.S.2d 869, 1959 N.Y. Misc. LEXIS 2374 (N.Y. Sup. Ct. 1959).

In action by former employer to enjoin former employee and his present employer from using trade secrets acquired while in plaintiff's employ, defendants were entitled to particulars as to time when, and manner in which alleged trade secrets were imparted to former employee and as to person imparting them. *Merit Enterprises, Inc. v Gerson*, 20 Misc. 2d 917, 194 N.Y.S.2d 869, 1959 N.Y. Misc. LEXIS 2374 (N.Y. Sup. Ct. 1959).

62. Insurance

The Court may require an insurance company to serve particulars specifying in what respect a policy was a wager policy and who were interested in the wager. *Taylor v Security Mut. Life Ins. Co.*, 73 A.D. 319, 76 N.Y.S. 671, 1902 N.Y. App. Div. LEXIS 1561 (N.Y. App. Div. 1902).

In an action on an insurance policy, particulars should be required as to notice of death and facts upon which an alleged waiver is based. *Cunningham v United States Casualty Co.*, 125 A.D. 916, 109 N.Y.S. 1014, 1908 N.Y. App. Div. LEXIS 3089 (N.Y. App. Div. 1908).

Where, in an action on a policy of fire insurance, the parties differ as to value of goods and amount of loss, the plaintiffs are not entitled to an itemized statement. *Herzig v Washington Fire Ins. Co.*, 143 A.D. 386, 128 N.Y.S. 565, 1911 N.Y. App. Div. LEXIS 837 (N.Y. App. Div. 1911).

In action on policy, plaintiff was entitled to be informed by bill of particulars of disease for which defendant claimed decedent had been medically or surgically treated. *Dunst v Standard Acc. Ins. Co.*, 230 A.D. 855, 245 N.Y.S. 1, 1930 N.Y. App. Div. LEXIS 10072 (N.Y. App. Div. 1930).

In action on fire policy, defendant ordered to furnish particulars of defense of increase of hazard, such as acts of plaintiff claimed to have increased hazard, and facts and circumstances

misrepresented. *Lockwood v Automobile Ins. Co.*, 261 A.D. 1032, 26 N.Y.S.2d 16, 1941 N.Y. App. Div. LEXIS 8605 (N.Y. App. Div. 1941).

In executor's action on life policy, clinics, hospitals, physicians or practitioners, not named in insurance application, alleged in answer to have been consulted by insured preceding application, were subject of demand by plaintiff for particulars of affirmative defense. *Dimmock v Metropolitan Life Ins. Co.*, 277 A.D. 851, 98 N.Y.S.2d 154, 1950 N.Y. App. Div. LEXIS 3537 (N.Y. App. Div. 1950).

Where town, sued for injuries sustained in accident on allegedly defective town bridge, filed a third party complaint against insurance company and the issue of whether bridge was covered by the policy turned on the amount of premiums town paid, insurance company was entitled to a bill of particulars as to the original premium paid and the adjusted premium. *Shapiro v Thompson*, 9 A.D.2d 995, 194 N.Y.S.2d 748, 1959 N.Y. App. Div. LEXIS 5315 (N.Y. App. Div. 3d Dep't 1959).

In action on accident insurance policy bill of particulars granted showing specific kind of poisoning plaintiff will claim was sole procuring cause of death. *Aiello v Prudential Ins. Co.*, 259 N.Y.S. 335, 144 Misc. 786, 1932 N.Y. Misc. LEXIS 1242 (N.Y. Sup. Ct. 1932).

Defense of cancellation interposed in an action on a policy of liability insurance should be amplified by a bill of particulars. *Rubin v Maryland Casualty Co.*, 268 N.Y.S. 528, 150 Misc. 224, 1934 N.Y. Misc. LEXIS 1039 (N.Y. Mun. Ct.), rev'd, 13 N.Y.S.2d 641, 1934 N.Y. Misc. LEXIS 1013 (N.Y. App. Term 1934).

In action on a policy of burglary insurance a motion by the plaintiff for particulars was granted with respect to the defense of the insurer that the books were not so kept that the exact amount of loss could be accurately determined therefrom by the insurer. *Del Monte Dress Co. v Royal Indem. Co.*, 277 N.Y.S. 11, 154 Misc. 751, 1934 N.Y. Misc. LEXIS 1929 (N.Y. Sup. Ct.), aff'd, 242 A.D. 756, 274 N.Y.S. 1019, 1934 N.Y. App. Div. LEXIS 7238 (N.Y. App. Div. 1934).

63. Landlord and tenant

In an action by a landlord against tenants to recover damages to the freehold and the value of articles wrongfully removed and advertised for sale the plaintiff should be required to give particulars stating which articles have been wrongfully removed, together with the value of each, as well as a statement of the character and nature of the damages to the building itself. *Chisolm v Straus*, 110 A.D. 552, 97 N.Y.S. 258, 1905 N.Y. App. Div. LEXIS 3940 (N.Y. App. Div. 1905).

Bills of particulars under the emergency rent laws; see *Application of Rector, Church Wardens & Vestrymen of Trinity Church*, 281 A.D. 873, 120 N.Y.S.2d 516, 1953 N.Y. App. Div. LEXIS 3608 (N.Y. App. Div. 1953).

In action by landlord against tenant for breach of lease, including damages for cost of repairs to theater, necessitated by tenant's removal of felt from theater and its placement on roof, tenant was entitled to particulars of cost of repairs. *Tomasino v Prudential Westchester Corp.*, 1 A.D.2d 781, 147 N.Y.S.2d 601, 1956 N.Y. App. Div. LEXIS 6692 (N.Y. App. Div. 2d Dep't 1956).

Where damages are claimed for loss of rental, a bill of particulars of the amount and period of the rent lost, and the portions of the premises plaintiff was prevented from renting, should be ordered. *McKenzie v Fox*, 8 N.Y.S. 460, 55 Hun 608, 1890 N.Y. Misc. LEXIS 1617 (N.Y. Sup. Ct. 1890).

Where in action for rent, tenant counterclaims for plaintiff's breach of oral contract disabling tenant to sublease, landlord was denied disclosure of name and address of sublessee. *Schafrann v Ruthberg*, 43 N.Y.S.2d 614, 1943 N.Y. Misc. LEXIS 2281 (N.Y. City Ct. 1943).

64. Libel and slander

In an action for libel, in which both general and special damages are sought the court may require the plaintiff to serve a bill of particulars of the special but not of the general damages. *Bell v Heatherton*, 66 A.D. 603, 73 N.Y.S. 242, 1901 N.Y. App. Div. LEXIS 2457 (N.Y. App. Div. 1901).

In libel the court will not require a bill of particulars where the sole reason for it is to narrow the issues. *Kuster v New York Times Co.*, 79 A.D. 39, 79 N.Y.S. 978, 1903 N.Y. App. Div. LEXIS 206 (N.Y. App. Div. 1903).

As to particulars of matter pleaded in justification of libel see *Reader v Haggin*, 123 A.D. 489, 107 N.Y.S. 963, 1908 N.Y. App. Div. LEXIS 93 (N.Y. App. Div. 1908).

In action for slander based on letter allegedly read by numerous people, bill of particulars was required. *Cromwell v Norton*, 235 A.D. 546, 257 N.Y.S. 788, 1932 N.Y. App. Div. LEXIS 8013 (N.Y. App. Div. 1932).

Where the complaint in slander charges that the defamatory matter was uttered “in the presence and hearing of divers persons including agents and representatives of firms with whom plaintiffs had been dealing and with whom they had good credit,” the defendant’s motion for a bill of particulars as to the names of the persons the plaintiffs claim heard the defamatory matter was granted. *Kleiman v Beech-Nut Packing Co.*, 259 A.D. 593, 20 N.Y.S.2d 196, 1940 N.Y. App. Div. LEXIS 6212 (N.Y. App. Div. 1940).

The date when and place where libel published, and other particulars, were granted. *O'Brien v Wicklow*, 67 N.Y.S.2d 521, 1947 N.Y. Misc. LEXIS 1985 (N.Y. Sup. Ct. 1947).

In action for libel where concededly not all of statements contained in five lengthy articles are false and untrue, plaintiff was required to specify what portions of publications he relies on as false, malicious and defamatory, and was not entitled to vacate demand for particulars on ground that each article as whole is libelous. *Alexander v Brooklyn Eagle, Inc.*, 154 N.Y.S.2d 199 (N.Y. Sup. Ct. 1956).

65. Malicious prosecution

A plaintiff suing for malicious prosecution may, in the discretion of the court, be required to give a bill of particulars of special damages. *Smith v Bradstreet Co.*, 134 A.D. 567, 119 N.Y.S. 487, 1909 N.Y. App. Div. LEXIS 2918 (N.Y. App. Div. 1909).

In an action for malicious prosecution, probable cause and absence of malice may be shown under a specific denial; they need not be alleged as a separate defense; the mere fact that they are affirmatively alleged as a partial defense and in mitigation of damages does not entitle plaintiff to a bill of particulars. *Hayes v Hoyt*, 138 A.D. 573, 123 N.Y.S. 357, 1910 N.Y. App. Div. LEXIS 1583 (N.Y. App. Div. 1910).

66. Matrimonial actions

In an action for divorce, which alleges as a separate defense certain general allegations as to the plaintiff not precisely known to the defendant, the defendant should be compelled to give a bill of particulars even though the answer demands no affirmative relief. *Weis v Weis*, 123 A.D. 409, 107 N.Y.S. 1061, 1908 N.Y. App. Div. LEXIS 74 (N.Y. App. Div. 1908).

In husband's action for separation wherein wife counterclaimed for separation and divorce, defendant was directed to serve particulars setting forth approximate dates when, and precise address or location of places where, plaintiff is alleged to have committed adultery, and approximate time of day when acts of adultery were committed. *Arguimbau v Arguimbau*, 263 A.D. 871, 32 N.Y.S.2d 190, 1942 N.Y. App. Div. LEXIS 7149 (N.Y. App. Div. 1942).

In wife's action for divorce wherein husband counterclaimed for divorce, order directing him to serve bill of particulars of acts of conduct from which it is claimed that adultery is to be inferred, did not warrant order precluding him from giving evidence to establish adultery unless he served bill of particulars as to claimed acts of adultery. *Ohms v Ohms*, 282 A.D. 1078, 126 N.Y.S.2d 532, 1953 N.Y. App. Div. LEXIS 5863 (N.Y. App. Div. 1953).

In divorce action where plaintiff alleges ignorance of details of time and place of adultery, and intention to rely on course of conduct and admissions to establish it, preclusion from offering proof of adultery for failure to particularize times and places will be denied. *Plucer v Plucer*, 8 A.D.2d 713, 186 N.Y.S.2d 76, 1959 N.Y. App. Div. LEXIS 8511 (N.Y. App. Div. 1st Dep't 1959).

In wife's separation action where defendant husband counterclaiming for divorce deposes that he will rely upon a course of conduct, admissions, and blood-grouping test, wife is not entitled to particulars of time, date, place and circumstances of each alleged adulterous act. *Hoff v Hoff*, 13 A.D.2d 505, 212 N.Y.S.2d 30, 1961 N.Y. App. Div. LEXIS 12333 (N.Y. App. Div. 2d Dep't 1961).

In wife's action for separation wherein defendant interposed defense that she had been guilty of adultery, she was entitled to particulars as to dates, time of day and specific addresses of acts of adultery. *Krstulja v Krstulja*, 104 N.Y.S.2d 751, 200 Misc. 186, 1951 N.Y. Misc. LEXIS 1808 (N.Y. Sup. Ct. 1951).

In action for separation, where plaintiff alleges in her complaint that defendant "threatened her with physical violence" without setting forth such threats, she was required to set forth particularly nature of charges against defendant, stating approximate times and places. *Shanik v Shanik*, 140 N.Y.S.2d 33, 207 Misc. 685, 1955 N.Y. Misc. LEXIS 3060 (N.Y. Sup. Ct. 1955).

In action for separation, where complaint alleges in conclusory form that defendant "applied insulting, degrading and abusive language toward plaintiff", without setting forth such language, plaintiff wife was required to set forth particularly nature of charges against defendant, stating times and places approximately. *Shanik v Shanik*, 140 N.Y.S.2d 33, 207 Misc. 685, 1955 N.Y. Misc. LEXIS 3060 (N.Y. Sup. Ct. 1955).

In action for annulment based on false misrepresentations wife is not entitled to the exact language of the representations, but merely to the substance thereof. *Scheinwald v Scheinwald*, 23 Misc. 2d 175, 205 N.Y.S.2d 296, 1960 N.Y. Misc. LEXIS 3052 (N.Y. Sup. Ct. 1960).

In action for divorce for wife's adultery with unknown man wearing uniform of U. S. Navy on particular dates at "112 NW Second Avenue, Miami, Florida," plaintiff was ordered to state precise place or room where each act of adultery was committed, time of day, and detailed description of correspondent and of his uniform. *Boelsen v Boelsen*, 45 N.Y.S.2d 556, 1943 N.Y. Misc. LEXIS 2658 (N.Y. Sup. Ct. 1943), *aff'd*, 267 A.D. 993, 48 N.Y.S.2d 803, 1944 N.Y. App. Div. LEXIS 5967 (N.Y. App. Div. 2d Dep't 1944).

Where complaint alleged deceased was survived by widow by ceremonial marriage, defendant was granted further particulars of time and place of marriage and copy of any agreement between parties. *Evans v Delaware, L. & W. R. Co.*, 88 N.Y.S.2d 132, 1949 N.Y. Misc. LEXIS 2063 (N.Y. Sup. Ct. 1949).

In separation action, defendant wife precluded from giving evidence at trial unless bill of particulars in compliance with plaintiff's demand is furnished. *Levine v Levine*, 92 N.Y.S.2d 180, 1949 N.Y. Misc. LEXIS 2788 (N.Y. Sup. Ct. 1949).

In husband's action for adultery outside state, his statements in his bill of particulars that defendant committed adultery throughout summer every week-end at her home, and in November, 1952, at trailer camp in Miami, Florida, was insufficient, and he was required to serve amended bill of particulars. *Berger v Berger*, 123 N.Y.S.2d 188, 1953 N.Y. Misc. LEXIS 1936 (N.Y. Sup. Ct. 1953).

67. Money loaned

Where it is answered that the property in question, a claim, was assigned for money advanced and a further sum named, particulars of such advances will be ordered stating date and amount whether made by check or otherwise and whether made to the nominal owner and by which of the defendants. *Witkowski v Paramore*, 93 N.Y. 467, 93 N.Y. (N.Y.S.) 467, 1883 N.Y. LEXIS 303 (N.Y. 1883).

In an action for money loaned, the defendant is entitled to a bill of particulars but is not entitled to have the bill specify the manner in which the loan was made. *Dunn v Dunn*, 108 A.D. 308, 95 N.Y.S. 719, 1905 N.Y. App. Div. LEXIS 3175 (N.Y. App. Div. 1905).

68. Negligence; property damage

In personal injury and property damage action defendant is entitled to particulars of specific acts of negligence claimed, unless plaintiff intends to rely solely on doctrine of *res ipsa loquitur*, and

order should so provide. *Schnell v New York Tel. Co.*, 12 A.D.2d 523, 207 N.Y.S.2d 316, 1960 N.Y. App. Div. LEXIS 7032 (N.Y. App. Div. 2d Dep't 1960).

In action for damage to automobile, defendant is entitled to a statement of the period of time and amount claimed for loss of use of vehicle. *Desimone v Robertson*, 19 Misc. 2d 80, 189 N.Y.S.2d 70, 1959 N.Y. Misc. LEXIS 3234 (N.Y. Sup. Ct. 1959).

In action for damage to automobile defendant is not entitled to copy of the repair bill, although he should be given a list of the parts of the vehicle damaged and the cost of repair or replacement thereof. *Desimone v Robertson*, 19 Misc. 2d 80, 189 N.Y.S.2d 70, 1959 N.Y. Misc. LEXIS 3234 (N.Y. Sup. Ct. 1959).

In action for damage to automobile, request for information which relates to collision insurance which plaintiff may have on his automobile, is improper. *Desimone v Robertson*, 19 Misc. 2d 80, 189 N.Y.S.2d 70, 1959 N.Y. Misc. LEXIS 3234 (N.Y. Sup. Ct. 1959).

In action for property damage particulars as to whether the repair of such damage has been paid for, and to whom, are improper. *Adair v Young*, 205 N.Y.S.2d 463 (N.Y. Sup. Ct. 1959).

69. Probate proceeding

Proponent of will denied bill of particulars as to when, in what manner, where, and by whom execution of will was procured by undue influence, fraud, duress and deceit. *In re Siembida's Will*, 255 N.Y.S. 239, 142 Misc. 394, 1931 N.Y. Misc. LEXIS 1768 (N.Y. Sur. Ct. 1931).

Provisions of RCP 115 were applicable in a probate proceeding. *In re Mullin's Will*, 256 N.Y.S. 519, 143 Misc. 256, 1932 N.Y. Misc. LEXIS 990 (N.Y. Sur. Ct. 1932), *aff'd*, 240 A.D. 996, 268 N.Y.S. 948, 1933 N.Y. App. Div. LEXIS 7819 (N.Y. App. Div. 1933).

In a probate proceeding a bill of particulars may not be had concerning execution of will, its validity and decedent's testamentary capacity. *In re Swim's Will*, 258 N.Y.S. 458, 144 Misc. 206, 1932 N.Y. Misc. LEXIS 1463 (N.Y. Sur. Ct. 1932).

Particulars may be required as to undue influence. In re Swim's Will, 258 N.Y.S. 458, 144 Misc. 206, 1932 N.Y. Misc. LEXIS 1463 (N.Y. Sur. Ct. 1932).

Motion in a probate proceeding for bill of particulars as to undue influence denied. In re Fraser's Estate, 271 N.Y.S. 115, 150 Misc. 588, 1934 N.Y. Misc. LEXIS 1241 (N.Y. Sur. Ct. 1934).

Application in probate proceeding for bill of particulars granted in part. In re Herle's Estate, 283 N.Y.S. 588, 157 Misc. 352, 1935 N.Y. Misc. LEXIS 1575 (N.Y. Sur. Ct. 1935).

In contested probate proceeding it is better practice to require contestant to furnish bill of particulars after opportunity is afforded him to conduct his examination before trial. In re Will of Veeder, 7 Misc. 2d 662, 159 N.Y.S.2d 871, 1957 N.Y. Misc. LEXIS 3629 (N.Y. Sur. Ct. 1957).

In a discovery proceeding, where respondent conceded that title had been in the decedent but that it since devolved upon respondent, petitioner was held entitled to bill of particulars as to facts of devolution from decedent. In re Estate of Boyhan, 27 Misc. 2d 770, 210 N.Y.S.2d 942, 1960 N.Y. Misc. LEXIS 2165 (N.Y. Sur. Ct. 1960).

70. Proceeding to review tax assessment

Bill of particulars may be had in special proceeding for review of a tax assessment on real property. Rakov v Gingold, 23 Misc. 2d 725, 194 N.Y.S.2d 17, 1959 N.Y. Misc. LEXIS 2461 (N.Y. Sup. Ct. 1959).

71. Proceeding under Art 78, CPA

Petitioner under CPA Art 78 (CPLR Art 78) to compel defendants to list her as a permanent instead of a temporary social investigator, was not entitled to a bill of particulars, where it not only appeared that it would cause unnecessary hardship on defendants without any resulting advantage to petitioner, but also that specifications demanded could be ascertained by petitioner from the records of defendants. In any event, the production of all relevant civil service

records may be commanded by subpoena duces tecum at the trial. *Gilbert v Kern*, 255 A.D. 525, 7 N.Y.S.2d 836, 1938 N.Y. App. Div. LEXIS 4793 (N.Y. App. Div. 1938).

72. Sales

Where the defendant in an action for goods sold and delivered alleges various agreements extending the time of payment, he will be required to give a bill of particulars of the time and place of the agreements. *Bluthenthal & Bickart, Inc. v Crowley*, 138 A.D. 843, 123 N.Y.S. 519, 1910 N.Y. App. Div. LEXIS 1643 (N.Y. App. Div. 1910).

In an action by seller's assignee against buyer for refusal to accept goods, plaintiff cannot limit defendant's proof, under a denial of performance by plaintiff's assignor, by requiring a bill of particulars. *London Produce Co. v Poels & Brewster, Inc.*, 199 A.D. 623, 192 N.Y.S. 80, 1922 N.Y. App. Div. LEXIS 8064 (N.Y. App. Div. 1922).

Defendants, who have interposed a denial in an action brought for goods sold and delivered, are entitled to a bill of particulars as to what goods the plaintiff claims it sold and delivered. *Enamel Products Co. v Segal*, 237 A.D. 888, 261 N.Y.S. 547, 1933 N.Y. App. Div. LEXIS 10935 (N.Y. App. Div. 1933).

Particulars granted of time of discovering breach of warranty and notification to defendant, with notice itself. *Hainbach v York Feather & Down Corp.*, 273 A.D. 814, 76 N.Y.S.2d 96, 1948 N.Y. App. Div. LEXIS 4762 (N.Y. App. Div. 1948).

Administratrix, suing for nonpayment of goods, was entitled to know who represented her deceased defendant, and particulars as to statement of accounts and payment thereunder, and performance by defendant of modification agreement. *Piven v Resiloid Corp.*, 274 A.D. 1074, 85 N.Y.S.2d 757, 1949 N.Y. App. Div. LEXIS 6120 (N.Y. App. Div. 1949).

In action for goods sold, where plaintiff does not number items in schedule attached to complaint, particulars of such items are proper. *Rothschild Bros. v Redman*, 75 N.Y.S.2d 600, 190 Misc. 1041, 1947 N.Y. Misc. LEXIS 3442 (N.Y. Sup. Ct. 1947).

73. Setting aside conveyance

In action against the trustee to set aside a conveyance of a part of the properties upon which bonds had been issued, a bill of particulars was proper upon presentation of an adverse claim. *Empire State Pickling Co. v Bennett*, 238 N.Y.S. 344, 135 Misc. 482, 1929 N.Y. Misc. LEXIS 1034 (N.Y. Sup. Ct. 1929).

74. Summary proceedings to recover property

In summary proceedings to recover possession where defendant counterclaimed for damages for breach of agreement to convey, plaintiff was granted a bill of particulars. *Clark v Newton*, 250 N.Y.S. 745, 140 Misc. 510, 1931 N.Y. Misc. LEXIS 1398 (N.Y. App. Term 1931).

75. Supplementary proceedings

In supplementary proceedings, judgment creditor was denied particulars of claim of ownership of property under former CPA § 696. *Union Nat'l Bank v Winchell*, 276 A.D. 284, 94 N.Y.S.2d 419, 1950 N.Y. App. Div. LEXIS 4846 (N.Y. App. Div. 1950).

76. Wills

In a discovery proceeding, where respondent conceded that title had been in the decedent but that it since devolved upon respondent, petitioner was held entitled to bill of particulars as to facts of devolution from decedent. *In re Estate of Boyhan*, 27 Misc. 2d 770, 210 N.Y.S.2d 942, 1960 N.Y. Misc. LEXIS 2165 (N.Y. Sur. Ct. 1960).

Where will proponent demands particulars of objectant's claim of fraud and undue influence, seeking information as to times and places at which acts took place and course of conduct alleged to have constituted undue influence, and objectant fails after proper demand for bill of

particulars to furnish same, court properly precluded him from giving particulars at trial. In re Penaluna's Will, 136 N.Y.S.2d 582, 1954 N.Y. Misc. LEXIS 3473 (N.Y. Sur. Ct. 1954).

In will contest, where contestant's bill of particulars partially complied with demand but did not sufficiently particularize objections to probate of will so as fairly to apprise proponent of issues to be litigated, it was better procedure to require further bill than to preclude contestant accordingly. In re Ludlam's Will, 154 N.Y.S.2d 989 (N.Y. Sur. Ct. 1956).

77. Work, labor, and services

In action for reasonable value of labor, and materials furnished in construction of house, in the light of the complaint allowance of particulars as to the cost of each and every item used was unreasonable and plaintiff was required only to state value of each item as to which it intended to offer proof. American Associates Enterprises, Inc. v Ungerman, 10 A.D.2d 758, 197 N.Y.S.2d 603, 1960 N.Y. App. Div. LEXIS 11202 (N.Y. App. Div. 3d Dep't 1960).

78. Wrongful death

A motion by one of co-defendants in death action to vacate plaintiff's demand that he particularize affirmative defense of contributory negligence denied where plaintiff sues in representative capacity and it was not present at accident and can therefore have no personal knowledge of occurrence. Fox v Greenberg, 14 Misc. 2d 120, 178 N.Y.S.2d 919, 1958 N.Y. Misc. LEXIS 2667 (N.Y. Sup. Ct. 1958).

In action by father as administrator of deceased son to recover for the death of his son, father's earning capacity was immaterial to issues involved, and a demand for particulars thereof was denied. Holdridge v Watts, 24 Misc. 2d 976, 205 N.Y.S.2d 749, 1960 N.Y. Misc. LEXIS 2356 (N.Y. Sup. Ct. 1960).

C. Items of Account

79. Generally

In an action for an accounting where the answer alleges that accounts were stated between the parties from time to time and that one of such accounts showed a balance due by the plaintiff to the defendant, the plaintiff was entitled to a copy of the alleged account stated. *Keyes v George C. Flint Co.*, 69 A.D. 141, 74 N.Y.S. 483, 1902 N.Y. App. Div. LEXIS 398 (N.Y. App. Div. 1902).

When the defendant's answer pleads an account without setting forth the items, the plaintiff is entitled to a copy of the account; the court may in its discretion preclude the defendant giving evidence of the account unless copies are furnished within the time specified. *Smith v Irvin*, 116 A.D. 359, 101 N.Y.S. 904, 1906 N.Y. App. Div. LEXIS 2672 (N.Y. App. Div. 1906).

The right to demand a copy of an account alleged in a pleading is not limited to the case of an account stated. 27 Hun 515.

In an action upon an account stated without items, and where defendant stated that the account ran back twenty-five years and there had been no full adjustment thereof, and that he desired to offer judgment if upon full examination an indebtedness existed against him, a bill of particulars should be ordered without allowing plaintiffs to withhold it if they would stipulate to stand by their complaint on an account stated. *Wells v Van Aken*, 39 Hun 315 (N.Y.).

80. Necessity for bill

When, in an action by a judgment creditor to set aside a conveyance by the judgment debtor as fraudulent, the defendant answers that the conveyance which reserved a life interest to the judgment creditor was made in consideration for services rendered by the grantee, and it appears that the judgment creditor has never attempted to collect his judgment from the reserved life interest, the defendant should not be required to file a bill of particulars of the services rendered by the grantee when no special reason is shown therefor by the judgment creditor. *Allter v Jerome*, 110 A.D. 813, 97 N.Y.S. 243, 1906 N.Y. App. Div. LEXIS 84 (N.Y. App. Div. 1906).

Where the complaint in a broker's action for commissions is based upon a specific contract entitling him to a certain percentage, the plaintiff will not be required to give a bill of particulars stating the amount of time used by him in procuring the lease. *Fragner v Fischel*, 141 A.D. 869, 126 N.Y.S. 478, 1910 N.Y. App. Div. LEXIS 3979 (N.Y. App. Div. 1910).

Where the language of each count in a complaint is, that the "defendant is indebted to this plaintiff," and thence follow the particulars of such indebtedness in each instance, the causes of action therein are sufficiently stated. *Tracy v Tracy*, 12 N.Y.S. 665, 59 Hun 1, 1891 N.Y. Misc. LEXIS 829 (N.Y. Sup. Ct. 1891).

81. Time for demand

Where an amended answer setting forth a defense of payment was served on Jan. 29, and the case was on the calendar on three subsequent circuits, and finally on Oct. 20 set down for trial on Nov. 6 following, and on Oct. 21, one day after it was so set down, the plaintiff demanded a bill of particulars, setting forth the items, amounts and dates of all payments alleged to have been made. Held, that the plaintiff had not lost her right to such bill of particulars by laches; that the affidavit in support of the demand for a bill of particulars being sufficient, and there being no evidence of any vexatious delay, the demand should stand, and an order setting it aside should be reversed. *Klock v Brennan*, 13 N.Y.S. 171, 59 Hun 617, 1891 N.Y. Misc. LEXIS 1015 (N.Y. Sup. Ct. 1891).

82. Requiring defendant to furnish bill

Where it appeared without contradiction that plaintiff, upon demand, had furnished defendant with a bill of particulars, and therein had given him credit for every payment known to plaintiff to exist, and that without a bill of particulars from defendant the plaintiff would be in complete ignorance of the sums of money, terms, dates, etc., by which defendant's answer indicated that he would attempt to prove payments to, and accountings with plaintiff's assignor, the court will order such bill. *Baremore v Taylor*, 52 Super Ct (20 Jones & S) 448.

83. Sufficiency of bill

A defendant sued for labor performed and materials furnished, who admits that some work was done but alleges that it was so improperly done that he had to do it over again and counterclaims for the expense thereof, will not be required to furnish a bill of particulars of the work actually done by the plaintiff. *Bennett v G. & W. Mfg. Co.*, 135 A.D. 798, 120 N.Y.S. 133, 1909 N.Y. App. Div. LEXIS 4068 (N.Y. App. Div. 1909).

An order for a bill of particulars of an account stated having a balance of over \$36,000 is complied with, where the bill states that on the account stated the defendant is indebted to the plaintiff in that sum, for an account stated may consist of a single item. *Stein v Stein*, 140 A.D. 306, 125 N.Y.S. 244, 1910 N.Y. App. Div. LEXIS 2923 (N.Y. App. Div. 1910).

A plaintiff, suing upon an account, will not be compelled to give a bill of particulars stating the persons who were present at the transactions between the parties. *Wilson & Baillie Mfg. Co. v Dumary*, 140 A.D. 838, 125 N.Y.S. 803, 1910 N.Y. App. Div. LEXIS 3053 (N.Y. App. Div. 1910).

In an action against a carrier, the plaintiff should furnish a bill of particulars stating the amount claimed to have been paid on a lost bond required to obtain the reissue of certain shares of stock, and the items going to make up the same claimed to have been the cost of procuring it. *McIntosh v Pullman Co.*, 103 N.Y.S. 223, 53 Misc. 286, 1907 N.Y. Misc. LEXIS 213 (N.Y. App. Term 1907).

Items need not be included where not intended to be proved although in the answer. *Tallmadge v Press Pub. Co.*, 7 N.Y.S. 895, 55 Hun 605, 1889 N.Y. Misc. LEXIS 1365 (N.Y. Sup. Ct. 1889).

The bill should state both sides of the account: *Candee v Daying*, 66 How. Pr. 452, 1884 N.Y. Misc. LEXIS 41 (N.Y.C.P. Mar. 1, 1884).

84. —In action by attorney for legal services

In an action by an attorney against his client to recover the value of legal services a bill of particulars should not be granted giving the valuation of each detail in each proceeding, though the attorney should specify the lump sum charged for each suit or proceeding and other services rendered so as to indicate the method of computing the bill. *Aub v Hoffmann*, 120 A.D. 50, 104 N.Y.S. 913, 1907 N.Y. App. Div. LEXIS 1114 (N.Y. App. Div. 1907).

In an action by an attorney to recover for professional services, a bill of particulars consisting mainly of dates of interviews, consultations, etc., and a single item for services in seventeen foreclosure actions covering a year and for bankruptcy proceedings, is not sufficiently definite. *Squires v Kissam*, 121 A.D. 607, 106 N.Y.S. 373, 1907 N.Y. App. Div. LEXIS 1858 (N.Y. App. Div. 1907).

A bill in a suit for attorney's services is sufficient if it shows the number of briefs prepared, without stating the time employed thereon, and the number of appearances and interviews without the exact length of each. *Thompson v Knickerbocker Ice Co.*, 2 N.Y.S. 18, 1888 N.Y. Misc. LEXIS 8 (N.Y.C.P. 1888).

Where a reference was ordered on a substitution of attorneys, the attorneys discharged will not be compelled to furnish a bill of particulars as to service, etc. *Mellen v Mellen*, 17 N.Y.S. 866, 63 Hun 631, 1892 N.Y. Misc. LEXIS 554 (N.Y. Sup. Ct. 1892).

85. Further account

A copy of a receipt is not an account or bill of particulars and the defendant is entitled to a further account or bill of particulars. *Beirne v Sanderson*, 83 A.D. 62, 82 N.Y.S. 493, 1903 N.Y. App. Div. LEXIS 1426 (N.Y. App. Div. 1903).

When a bill of particulars of a counterclaim for moneys advanced for the plaintiff states that the defendant expended on plaintiff's account ten dollars per week for 141 weeks between certain specified dates for theatre tickets, meals, etc., and also two dollars per week for trips and excursions during four months of each year for five years, and is unable to furnish a more

detailed statement because no such statement was kept, a motion for further particulars should be denied. *Kindberg v Chapman*, 115 A.D. 153, 100 N.Y.S. 685, 1906 N.Y. App. Div. LEXIS 3644 (N.Y. App. Div. 1906).

A further bill will not be required where an attorney renders a bill of particulars of items under one contract without putting a separate value to each but a lump sum to the whole. *Phillips v Stanton*, 9 N.Y. St. 503.

A further account may be required if the one served is defective. *Schuloff v Co-operative Dress Asso.*, 31 Hun 42 (N.Y. 1883).

86. Exclusion of evidence

A party could be precluded from giving evidence of any account alleged in his pleadings of which he refused to furnish a copy upon demand; and if he refused to obey an order of the court requiring him to furnish a copy thereof or of the particulars of his claim, his proceedings may be stayed or his pleadings stricken out and his action dismissed; and this common law power of the court was not superseded by the Code. *Dwight v Germania Life Ins. Co.*, 84 N.Y. 493, 84 N.Y. (N.Y.S.) 493, 1881 N.Y. LEXIS 423 (N.Y. 1881).

The provisions of requiring the party alleging an account in his pleadings to deliver to the adverse party within ten days after a written demand therefor, a copy of the account, and declaring that "if he fails to do so he is precluded from giving evidence of the account" was executed by means of an order made on application preliminary to the trial, or to the disposition of the question of the admissibility of the evidence offered, so that the purpose and mandate of the statute could be effectuated without surprise or unnecessary prejudice to any of the parties. *Gebhard v Parker*, 120 N.Y. 33, 23 N.E. 982, 120 N.Y. (N.Y.S.) 33, 1890 N.Y. LEXIS 1221 (N.Y. 1890).

The exclusion of evidence was dependent upon an order of the court by both the early Codes, and the proper practice was to move to preclude a party giving evidence of his demand if he

failed to serve a copy of the account sued on. *Gebhard v Parker*, 120 N.Y. 33, 23 N.E. 982, 120 N.Y. (N.Y.S.) 33, 1890 N.Y. LEXIS 1221 (N.Y. 1890).

The question had to be settled and the order obtained to serve an account or particulars before trial. *Gebhard v Parker*, 120 N.Y. 33, 23 N.E. 982, 120 N.Y. (N.Y.S.) 33, 1890 N.Y. LEXIS 1221 (N.Y. 1890).

Where an account was pleaded and the plaintiff failed to furnish a copy of such account within ten days after a notice, the court could preclude the defendant from giving evidence of the account, but it had no power to preclude him from giving evidence of his cause of action because he failed to serve a bill of particulars until required so to do by the court. *Fischer-Hansen v Stierngranat*, 65 A.D. 162, 72 N.Y.S. 593, 1901 N.Y. App. Div. LEXIS 2099 (N.Y. App. Div. 1901).

The service of a written demand for a bill of particulars was not sufficient to preclude plaintiff from giving evidence of the items demanded and which he has failed to supply; an order of the court was necessary. *Hein v Honduras Syndicate*, 138 A.D. 786, 123 N.Y.S. 431, 1910 N.Y. App. Div. LEXIS 1631 (N.Y. App. Div. 1910).

An order precluding a party from introducing evidence of the particulars of an account was granted, where a demand for particulars had been made, and the party had neglected to comply with the demand *Remer v Bishop*, 161 N.Y.S. 410 (N.Y. Sup. Ct. 1916).

A plaintiff was not precluded from giving evidence as to account where a copy had been demanded, except where there was a total failure to serve one. Failure to serve a copy of account when demanded, was a sufficient answer to a motion for reference on the ground that the action involved a long account, except where plaintiff had served a paper which he claimed was a copy of the account. *Schuloff v Co-operative Dress Asso.*, 31 Hun 42 (N.Y. 1883).

To entitle a party to avail himself on the trial of an action to demand the exclusion of evidence of an account set up by the other party in his pleading, on the ground that a bill of particulars had not been furnished, he must not only have made a demand for a bill of particulars but an order

must have been previously obtained as prescribed by § 246. *Bartow v Sidway*, 25 N.Y.S. 179, 72 Hun 435 (1893).

87. Particular actions

In an action to recover for goods sold, the complaint alleged that the defendants, at the time of the sale, were copartners. Defendants denied the copartnership, averring that the firm was dissolved prior to the sale; that plaintiffs had notice of such dissolution, and that the credit was given to defendant F. The latter did not answer. P made written demand for “a bill of items of matters set forth in the complaint . . . as the foundation of the plaintiff’s claim against the defendants.” The demand not having been complied with, P objected on trial to proof of the sale and delivery of the goods; this was overruled and the evidence received. Held no error. *Gebhard v Parker*, 120 N.Y. 33, 23 N.E. 982, 120 N.Y. (N.Y.S.) 33, 1890 N.Y. LEXIS 1221 (N.Y. 1890).

An action to recover the amount of certain assessments, made by a casualty association against a member, is not an action upon an account, and a demand for a bill of particulars is a nullity and may properly be disregarded. *Stone v Hudson V. R. Co.*, 95 N.Y.S. 220, 47 Misc. 5, 1905 N.Y. Misc. LEXIS 159 (N.Y. Sup. Ct. 1905).

And in an action to recover for work done, defendant should be required to furnish a bill of particulars of the work claimed to have been done in a careless, unskillful, and unworkmanlike manner; and it is no objection that plaintiff must know more about his own claim than defendant. *Cunningham v Massena Springs & F. C. R. Co.*, 3 N.Y.S. 98, 50 Hun 605, 1888 N.Y. Misc. LEXIS 487 (N.Y. Sup. Ct. 1888).

A bill of particulars of a counterclaim for services rendered and money expended is required almost as a matter of course. *Ward v Littlejohn*, 6 N.Y.S. 170, 53 Hun 634, 1889 N.Y. Misc. LEXIS 475 (N.Y. Sup. Ct. 1889).

So in an action for literary services, a bill of particulars showing the number of articles, addresses, letters, and resolutions written, and their appropriate dates, will be ordered. *McLaughlin v Kelly*, 6 N.Y.S. 574, 1889 N.Y. Misc. LEXIS 691 (N.Y. Sup. Ct. 1889).

A complaint alleging the rendition of service and advances of money to a certain amount, an adjustment of accounts and promise to make provision for the balance by will states an action upon account upon which a bill of particulars of its items will be ordered. *Hunter v Stender*, 10 N.Y.S. 147, 56 Hun 648, 1890 N.Y. Misc. LEXIS 2003 (N.Y. Sup. Ct. 1890).

In an action for the price of goods sold, the answer alleged that divers articles had been returned to, and accepted and retained by plaintiffs; that defendant never purchased or received divers articles mentioned in plaintiff's bill of particulars, and that defendant had paid more than the price of the goods alleged to have been delivered. And it was held that defendants could not be required to serve a bill of particulars indicating what articles in plaintiff's bill of particulars he was willing to admit had been delivered to him, but could only be required to serve a bill stating the articles declined and returned. *Thoesen v Crowe*, 10 N.Y.S. 177, 56 Hun 649, 1890 N.Y. Misc. LEXIS 2019 (N.Y. Sup. Ct. 1890).

Where in an action for board and attendance the defendant alleges payment, the plaintiff is entitled, upon a demand, to a bill of particulars of the items, amounts and date of such payments, and an order setting aside a demand therefor made by him is unauthorized. *Klock v Brennan*, 13 N.Y.S. 171, 59 Hun 617, 1891 N.Y. Misc. LEXIS 1015 (N.Y. Sup. Ct. 1891).

A plaintiff will be compelled to furnish a bill of particulars where the complaint alleges the delivery of wood from time to time, and various payments on account. 27 Hun 515.

Where a plaintiff sues for a balance between advances made by letter of credit and the proceeds of the sale of teas shipped him and sold upon defendant's account as not being of the grade ordered, a bill of particulars of the sale made by plaintiff will be ordered. *Boardman v Trotter*, 6 N.Y.S. 519, 1889 N.Y. Misc. LEXIS 663 (N.Y.C.P.), app. dismissed, 117 N.Y. 636, 22 N.E. 1130, 117 N.Y. (N.Y.S.) 636, 1889 N.Y. LEXIS 1499 (N.Y. 1889).

So in an action for wages and expenses as manager of an apartment house, a bill of particulars of alleged commissions and percentage, alleged in the answer to have been improperly exacted and received, will be required. *Liscomb v Agate*, 4 N.Y.S. 167, 51 Hun 288, 1889 N.Y. Misc. LEXIS 234 (N.Y. App. Term 1889).

Where plaintiff, a mutual benefit association, sued defendant treasurer of its grand lodge for the conversion of moneys received from branch lodges, by the financial secretary, which it was defendant's duty to collect from him, plaintiff was properly ordered to furnish a bill of particulars of moneys received and paid by defendant, and also by said financial secretary showing dates, amounts, names of branch, etc. *Orden Germania v Devender* (N.Y.C.P. June 30, 1884).

In a suit against agents to recover the price of goods sold by them, less their commission, under a contract of exclusive agency with certain exceptions, defendants cannot have a bill of particulars of sales under a contract alleged to have been entered into prior to the agreement for such exclusive agency, under their counterclaim for commissions upon goods sold in violation of such agreement. *John S. Way Mfg. Co. v Corn*, 66 How. Pr. 152, 1883 N.Y. Misc. LEXIS 190 (N.Y. Sup. Ct. Oct. 1, 1883).

Research References & Practice Aids

Cross References:

This section referred to in § 3130.

Federal Aspects:

Pretrial conference; formulating issues, USCS Court Rules, Federal Rules of Civil Procedure, Rule 16.

General provisions governing discovery, USCS Court Rules, Federal Rules of Civil Procedure, Rule 26.

Jurisprudences:

1 NY Jur 2d Accounts and Accounting §§ 7.— 9. .

6A NY Jur 2d Article 78 and Related Proceedings § 323. .

22A NY Jur 2d Contracts § 477. .

23 NY Jur 2d Conversion, and Action for Recovery of Chattel § 83. .

44A NY Jur 2d Disclosure § 184. .

48 NY Jur 2d Domestic Relations § 2150. .

84 NY Jur 2d Pleading §§ 288, 292.

61A Am Jur 2d, Pleading §§ 720&.ndash; 744.

16B Am Jur PI & Pr Forms (Rev), Libel and Slander, Forms 137 et seq.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3041, Bill of Particulars in Any Case.

2 Carrieri, Lansner, New York Civil Practice: Family Court Proceedings § 19.08.

2 Lansner, Reichler, New York Civil Practice: Matrimonial Actions § 34.02.

3 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶1404.11; 4 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 1807.06, 1808.10; 5 Cox, Arenson, Medina, New York Civil Practice: SCPA ¶ 2103.12, 2104.08, 2210.12, 2211.04.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 19.15. Construction of pleadings.

CPLR Manual § 19.17. Bill of particulars.

Matthew Bender's New York Evidence:

1 Bender's New York Evidence 101AppA.06. Persons From Whom Disclosure May Be Obtained.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 2601:1 et seq.

LexisNexis Forms FORM 75-CPLR 3042:1.—Demand for a Bill of Particulars Skeleton Form.

LexisNexis Forms FORM 75-CPLR 3042:10.—Particulars Demanded in Action by Minority Shareholder of Closely Held Corporation for Dissipation of Corporate Assets.

LexisNexis Forms FORM 75-CPLR 3042:11.—Particulars Demanded as to Defense of Plaintiff's Culpable Acts.

LexisNexis Forms FORM 75-CPLR 3042:12.—Demanded Particulars of Defenses of Justification for Discharge and of Fraudulent Representations in Action for Wrongful Discharge from Employment.

LexisNexis Forms FORM 75-CPLR 3042:13.—Particulars Demanded in Action Against Store for Damages for Detention of Customer as Shoplifter.

LexisNexis Forms FORM 75-CPLR 3042:14.—Particulars Demanded as to Goods Sold and Delivered.

LexisNexis Forms FORM 75-CPLR 3042:15.—Particulars Demanded as to Publication in Libel Action.

LexisNexis Forms FORM 75-CPLR 3042:16.—Particulars Requested by Defendant as to Publication in Libel Action.

LexisNexis Forms FORM 75-CPLR 3042:17.—Demanded Particulars in Action by Attorney Against Client for Unpaid Legal Fees.

LexisNexis Forms FORM 75-CPLR 3042:18.—Particulars Demanded in Action for Salesman's Commissions; Defense of Unfair Competition and Breach of Fidelity.

LexisNexis Forms FORM 75-CPLR 3042:19.—Particulars Demanded as to Warranty.

LexisNexis Forms FORM 75-CPLR 3042:1A.—Demand for a Verified Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3042:2.—Demand for Items of Account.

LexisNexis Forms FORM 75-CPLR 3042:20.—Particulars Demanded as to Work Performed.

LexisNexis Forms FORM 75-CPLR 3042:21.—Bill of Particulars; General Form.

LexisNexis Forms FORM 75-CPLR 3042:22.—Copy of Items of Account; General Form.

LexisNexis Forms FORM 75-CPLR 3042:23.—Order to Show Cause on Motion for Extension of Time to Serve Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3042:24.—General Form of Affidavit on Motion for Extension of Time to Serve Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3042:25.—Affidavit on Motion for Extension of Time to Serve Bill of Particulars; Personal Injury Action.

LexisNexis Forms FORM 75-CPLR 3042:26.—Order Extending Plaintiff's Time to Serve Bill of Particulars.

LexisNexis Forms FORM 75-CPLR 3042:27.—Introductory Statement Bill of Particulars Amended as of Course.

LexisNexis Forms FORM 75-CPLR 3042:28.—Affidavit in Support of Motion to Amend Bill of Particulars to Prove Negligence and Defective Design.

LexisNexis Forms FORM 75-CPLR 3042:29.—Plaintiff's Affidavit in Support of Motion to Amend Bill of Particulars for the Purpose of Proving Negligence and Defective Design .

LexisNexis Forms FORM 75-CPLR 3042:3.—Particulars Demanded in an Action for Improper Performance of Auditing and Accounting Procedures.

LexisNexis Forms FORM 75-CPLR 3042:30.—Engineer's Affidavit in Support of Motion to Amend Bill of Particulars for the Purpose of Proving Negligence and Defective Design .

LexisNexis Forms FORM 75-CPLR 3042:4.—Particulars Demanded in Action for Damages Where Automobile Was Stolen While Being Repaired at Automobile Repair Shop.

LexisNexis Forms FORM 75-CPLR 3042:5.—Particulars Demanded in Action for Broker's Commission.

LexisNexis Forms FORM 75-CPLR 3042:6.—Demand for a Bill of Particulars Contract Action.

LexisNexis Forms FORM 75-CPLR 3042:7.—Particulars Requested by Defendant in Breach of Employment Contract by Employer.

LexisNexis Forms FORM 75-CPLR 3042:8.—Particulars Demanded as to Services Performe.

LexisNexis Forms FORM 75-CPLR 3042:9.—Particulars Demanded in Action for Injunction Against Corporation for Action Taken at Shareholder's Meeting.

LexisNexis Forms FORM 75-CPLR 3043:1.—Demand for a Verified Bill of Particulars Personal Injury Actions.

LexisNexis Forms FORM 75-CPLR 3043:10.—Particulars Demanded in Medical Malpractice Action .

LexisNexis Forms FORM 75-CPLR 3043:11.—Particulars Demanded in Medical Malpractice Action; Another Form .

LexisNexis Forms FORM 75-CPLR 3043:1A.—Particulars Requested in Personal Injury Action; Automobile Accident.

LexisNexis Forms FORM 75-CPLR 3043:2.—Statement as to Serious Injury in Bill of Particulars for Personal Injuries Arising Out of Negligent Use or Operation of Motor Vehicle.

LexisNexis Forms FORM 75-CPLR 3043:3.—Statement as to Economic Loss Greater than Basic Economic Loss in Bill of Particulars in Action for Personal Injuries Arising Out of Negligent Use or Operation of Motor Vehicle.

LexisNexis Forms FORM 75-CPLR 3043:4.—Particulars Demanded in Negligence Action; Injury to Infant Guest of Tenant.

LexisNexis Forms FORM 75-CPLR 3043:5.—Particulars Demanded in Personal Injury Action; Injuries to Child as a Result of a Fall from Gymnastic Rings Onto Defective Mat.

LexisNexis Forms FORM 75-CPLR 3043:6.—Particulars Demanded in Personal Injury Action; Fall Over Obstruction in Showroom.

LexisNexis Forms FORM 75-CPLR 3043:7.—Particulars Demanded in Personal Injury Action; Plaintiff Struck by Defective Revolving Door.

LexisNexis Forms FORM 75-CPLR 3043:8.—Particulars Demanded in Personal Injury Action; Plaintiff Slipped and Fell in Store.

LexisNexis Forms FORM 75-CPLR 3043:9.—Demand for Bill of Particulars in Personal Injury Action; Slip and Fall on Ice.

LexisNexis Forms FORM 75-CPLR 3044:1.—Verification By Party of Bill of Particulars.

LexisNexis Forms FORM 140-644.2.—Answer with Demand for Bill of Particulars and Jury Demand in Nonpayment Proceeding Omnibus Form.

LexisNexis Forms FORM 1434-19148.—CPLR 3042: Demand for a Bill of Particulars - Skeleton Form.

LexisNexis Forms FORM 1434-19149.—CPLR 3042: Demand for a Verified Bill of Particulars - Skeleton Form.

LexisNexis Forms FORM 1434-19150.—CPLR 3042: Demand for a Bill of Particulars - Contract Action.

LexisNexis Forms FORM 1434-19151.—CPLR 3042, 3043: Demand for a Bill of Particulars - Skeleton Form for Personal Injury Actions.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq .(remedies and pleadings).

Texts:

1 Frumer & Biskind, Bender's New York Evidence—CPLR § 1.14.

Hierarchy Notes:

NY CLS CPLR, Art. 30

Forms

Forms

Form 1

Demand For Bill Of Particulars By County In Action Alleging Negligence And Wrongful Death Against Defendants County and County Medical Center *

[Caption]

PLEASE TAKE NOTICE that, pursuant to Article 30 of the Civil Practice Law and Rules, you are hereby required to serve a verified Bill of Particulars upon the undersigned within Thirty (30) days after the receipt of this Demand.

* This form was submitted courtesy of Montgomery L. Effinger, Esq., O'Connor, McGuiness, Conte, Doyle, Oleson & Collins, White Plains, New York. CPLR 3042 was amended by L.1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect. This form is applicable only to motions commenced after January 1, 1995.

In the event of your failure to comply with this Demand for a Bill of Particulars, within that time, a motion will be made for an Order precluding you from offering any evidence concerning the items below:

1. State the date and place of birth of the plaintiff and the residence address of the plaintiff at the time this action was commenced.
2. A general statement of each and every act or omission which you will claim as the basis of the alleged malpractice of the answering defendant(s) herein setting forth, if it is so claimed:
 - (a) The plaintiff's complaints, signs and symptoms that the answering defendant(s) ignored.
 - (b) In what respects the diagnosis of the plaintiff's condition was erroneous and incorrect.
 - (c) The improper treatment that was afforded to the plaintiff and in what manner the answering defendant(s) neglected and failed to treat the plaintiff.
 - (d) The surgical procedures that were allegedly performed in an improper manner, identifying same by name.
 - (e) The manner in which the aforesaid surgical procedures were improperly performed.
 - (f) Those medicines defendant(s) prescribed and/or administered and which were contra-indicated under the circumstances, identifying same by generic and chemical name.
 - (g) Those tests defendant(s) either failed to perform or which, if performed, were contra-indicated.
 - (h) Any other procedure or treatment allegedly performed improperly by the answering defendant(s) herein.
3. A statement of the accepted medical practices, customs and medical standards which it is claimed were violated by the answering defendant(s) in each of the acts or omissions claimed to be the basis of liability against him/them.
4. State the manner in which the answering defendant(s) departed from each of the above accepted medical practices, customs and standards.
5. If there are any claims of vicarious liability against the answering defendant(s) herein, state the names of each and every person who performed the acts or failed to act and if the names

are not known, describe them by physical appearance or occupation with sufficient clarity to make ready identification.

6. State the first and last dates on which it is claimed the defendant(s) treated or advised for the conditions complained of herein.

7. State the condition or conditions which it is claimed the defendant(s) undertook to treat.

8. If loss of services, society, companionship and consortium is claimed, specifically set forth the nature, extent and duration of each claimed loss.

9. Specifically and separately set forth the manner in which each defendant (if more than one defendant) was careless and negligent, and set forth the accepted standards and procedures each defendant departed from and failed to follow. (If the alternative, furnish a copy of the Bill of Particulars served upon the other defendants).

10. If it is claimed that the defendant(s) failed to perform his/their professional duties in accordance with any manuals, rules and regulations, laws and ordinances, set forth the specific manuals, rules and regulations, laws and ordinances claimed to have been violated with specific citation to title, volume and page number.

11. State each and every alleged warranty, agreement or contract claimed to have been entered into by plaintiff and defendant(s) if any is claimed.

12. Set forth:

(a) Whether the alleged warranty, agreement or contract was oral or written;

(b) If oral, the substance, place and date and who was present when made;

(c) If written, set forth an exact copy;

(d) The acts or omissions claimed to have constituted the breach of warranty agreement or contract and the dates of said breach.

13. If it is claimed that defendant(s) failed to obtain plaintiff's informed consent, set forth those known and material risks and hazards surrounding the treatment of the plaintiff which it is claimed defendant(s) failed to disclose to the plaintiff.

14. Set forth a list of injuries claimed to have been caused by the defendant's/s' malpractice or wrongdoing.

15. Set forth the hospitalizations claimed to have been caused by the defendant's(s') malpractice or wrongdoing, giving the names of the hospitals and the dates of confinements or treatments, if any.

16. Set forth the length of time confined to:

(a) bed and house,

(b) house.

17. Set forth:

(a) The length of time it will be claimed plaintiff was incapacitated from employment.

(b) The last date on which plaintiff actually worked prior to the time of the alleged malpractice, negligence or other wrongdoing.

(c) The name(s) and addresses(s) of the plaintiff's employer on the dates set forth in (b) above.

(d) Any and all other usual functions plaintiff was incapacitated from performing, and nature, extent and duration of incapacity.

18. Set forth all special damages claimed (omitting therefrom any expenses or loss caused by conditions pre-existing the claimed malpractice or wrongdoing) for:

(a) Hospitals,

(b) Physicians,

(c) Nurses,

(d) Medical supplies and appliances,

(e) Loss of earnings,

(f) Any other special damages claimed.

19. Set forth the names and addresses of those physicians who rendered medical services to the plaintiff and the total amount of their bills to date.

20. Set forth the names and address of any other persons who rendered services to the plaintiff, and identify the service furnished and the sum of the bills to date.

21. State whether the plaintiff(s) has/have been indemnified in whole or in part from a collateral source (except Medicare benefits) for the cost of medical care, custodial care or rehabilitative services, loss of earnings or other economic loss claimed by plaintiff(s) as a result of the alleged acts of the defendant(s) and state the amounts that plaintiff(s) has/have been so indemnified (CPLR 4010).

[Indorsement. address and telephone number]

Form 2

Demand For Bill of Particulars By Hospital In Action Alleging Negligence And Wrongful Death Against Defendant Hospital *

[Caption]

PLEASE TAKE NOTICE, that pursuant to CPLR 3042 you are hereby required to serve upon _____, _____, _____, & _____, P.C., attorneys for the defendant, within Thirty (30) days after the service of a copy of this Demand, a Verified Bill of Particulars of the Complaint, setting forth in detail the following:

1. a. The dates of first and last services rendered by the answering defendant;
- b. The place or places where the services were rendered by the answering defendant;
2. The exact location of each of the alleged negligent acts and/or omissions charged against the answering defendant.
3. If it will be claimed that the aforesaid injuries necessitated any hospitalizations or treatments at other institutions, set forth the following:

* This form was submitted courtesy of Montgomery L. Effinger, Esq., O'Connor, McGuiness, Conte, Doyle, Oleson & Collins, White Plains, New York. CPLR 3042 was amended by L.1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect. This form is applicable only to motions commenced after January 1, 1995.

- a. The name and address of each hospital or institution with the dates of confinement or outpatient treatment;
 - b. The nature, duration, location and extent of each injury which, it will be claimed, was caused by the alleged negligence and/or malpractice of the answering defendant. If any injuries are claimed to be permanent, so state.
4. Set forth all the acts and/or omissions on the part of the answering defendant which the plaintiff will claim constitutes negligence or malpractice.
5. State whether the alleged malpractice or wrongdoing claimed herein against the answering defendant includes the following:
- a. Failure to perform a test or diagnostic procedure;
 - b. Failure to medicate, treat or operate;
 - c. Misdiagnosis or failure to diagnose correctly;
 - d. Giving a contra-indicated medicine or performing a contra-indicated test or surgical procedure.
6. In the event the answer to the preceding item or any of its subdivisions thereof is in the affirmative, set forth the following with respect to the answering defendant:
- a. The tests and/or diagnostic procedures the answering defendant should have performed;
 - b. The specific treatment which the answering defendant should have rendered;
 - c. The specific type of medication that the answering defendant should have prescribed and administered;
 - d. The specific misdiagnosis made by the answering defendant herein and, further, a statement as to what the proper diagnosis should have been;
 - e. The specific operation and/or operations that the answering defendant should have performed on the plaintiff;

f. Identify each medication, treatment or operative procedure which, it will be claimed, have been performed by the answering defendant herein in a manner contrary to accepted and good standards of medical practice.

7. If it will be claimed that the aforesaid injuries necessitated treatment by any physicians, set forth the name and address of each and the dates of treatment or visits.

8. If it will be claimed that the aforesaid injuries necessitated confinement to bed or home, set forth the following:

a. The dates of confinement to bed;

b. The dates of confinement to home;

9. With respect to plaintiff's decedent, state the following:

a. Occupation;

b. Name and address of his employer; if self-employed state the address of his place of employment and type of business or occupation in which he was engaged immediately prior to the occurrence.

c. The length of time plaintiff's decedent was unable to attend to his employment;

d. The amount of money plaintiff's decedent was alleged to have earned during the year prior to the occurrence;

e. The amount of earnings the plaintiff's decedent was alleged to have lost as a result of the occurrence.

10. With respect to pecuniary loss sustained by the next of kin as a result of the death of the decedent, state:

a. The names and addresses of the next of kin who received financial support from the deceased during the five year period immediately prior to his death;

b. The specific amount received by each of the next of kin from the deceased during the five year period immediately prior to his death;

c. The approximate dates when each sum of money was allegedly paid the next of kin of the deceased during the five year period immediately prior to his death.

11. State whether it will be claimed that the answering defendant herein failed to advise or inform the plaintiff's decedent of dangers referable to any medical or surgical treatment rendered on behalf of said decedent. If so, state the following:

- a. Date and/or dates on which plaintiff's decedent's informed consent was not obtained;
- b. A statement of the alleged dangers that decedent's plaintiff claims should have been advised of.

12. Set forth the particulars which decedent's plaintiff will rely upon to establish her lack of informed consent, including but not limited to the following:

- a. Date and/or dates on which plaintiff's decedent's informed consent was not obtained;
- b. Names of all physicians decedent's plaintiff will claim failed to obtain his informed consent;
- c. The nature of the information and/or substance of the representations that decedent's plaintiff will claim was required in order for him to be in a position to give an informed consent.

13. The date of birth and place of birth of the plaintiff's decedent.

14. State the residence address of the decedent's plaintiff at:

- a. The time the cause of action herein arose;
- b. The time of plaintiff's decedent's death;
- c. The present time.

15. Set forth the full caption of each and every lawsuit instituted by the decedent's plaintiff herein involving in any way the injuries alleged in the within malpractice action including the following:

- a. Court;
- b. Index number;
- c. Calendar number;
- d. Names and addresses of all litigants;
- e. Names and addresses of all attorneys appearing for litigants;

f. Status of lawsuit:

- (1) If noticed for trial, specify date;
- (2) If settled, annex a copy of each release delivered, indicating the amounts contributed by each defendant;
- (3) If discontinued without payment, annex a copy of each stipulation so delivered to each defendant;
- (4) If tried, annex a copy of the judgment with notice of entry;
- (5) If judgment was satisfied, set forth the date and amount of payment and annex a copy of satisfaction of judgment.

16. If applicable, state each and every alleged warranty, agreement and/or contract claimed to have been entered into by plaintiff-decedent and the answering defendant herein. If applicable set forth the following:

- a. Whether the alleged warranty, agreement or contract was oral or written;
- b. If oral, the substance, place and date and who was present when made;
- c. If written, set forth an exact copy;
- d. Set forth the acts or omissions claimed to have constituted the breach of the warranty, agreement or contract and the dates of said breach.

17. Set forth the social security number of plaintiff's decedent.

18. Set forth an itemized statement of the funeral expenses.

[Indorsement, address and telephone number]

Form 3

Demand For Bill of Particulars in Action Alleging Negligence Against Owner of Premises Where Plaintiff Was Injured *

* This form was submitted courtesy of Paul B. Zuydhoek, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York. CPLR 3042 has been amended by L.1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect. This form is applicable only to actions commenced after January 1, 1995.

[Caption]

PLEASE TAKE NOTICE that defendant hereby demands that you serve upon the undersigned, within Thirty (30) days after the receipt of this Demand, a verified bill of particulars of the claim of plaintiffs, specifying:

1. The age, address and marital status of each of the plaintiffs.
2. The time of day and location within the _____ plant of defendant of the accident referred to in the complaint.
3. A statement setting forth each and every statute, ordinance, rule and regulation which plaintiffs claim to have been violated by defendant, together with each subdivision, subsection or part thereof.
4. A statement of each and every act or omission upon which plaintiffs will rely to show negligence of defendant.
5. A statement of the injuries alleged to have been sustained by plaintiff _____; as to each, state the location, extent, duration and permanence thereof.
6. The dates that plaintiff _____ was confined to the hospital, his home, and his bed; as to the hospital, specify its name and address.
7. The names of each physician or other medical attendant who provided medical services to plaintiff for the injuries alleged in the complaint; specify the date that each attendant provided services.
8. A statement of the amounts of money which plaintiffs have expended for physicians, nurses, ambulance, service, hospitals, x-rays and medicines.
9. State the amount of time plaintiff has lost from work as a result of the injuries alleged in the complaint together with the amount of any lost wages.
10. If it is claimed defendant had notice of the conditions which caused plaintiff _____'s injuries, specify whether actual or constructive notice is claimed. If actual notice is claimed, specify by whom and to whom it was given. If constructive notice is

claimed, state each and every fact upon which plaintiffs will claim the constructive notice is based.

11. State the loss of services and companionship alleged by plaintiff _____.

12. State each and every other item of loss or damage claimed by plaintiffs.

[Indorsement, address and telephone number]

Form 4

Demand for Bill of Particulars in Action for Medical Malpractice by Orthopedist–Failure to Properly Diagnose Injury *

[Caption]

PLEASE TAKE NOTICE that, pursuant to Section 3041, Rules 3042, 3043, 3118 and Section 3044 and 4545 of the Civil Practice Law and Rules, you are hereby required to serve a verified Bill of Particulars upon the undersigned attorneys for the defendant, _____, M.D., within thirty (30) days of service of this demand.

In the event of your failure to comply with this demand for a Bill of Particulars within that time, a Motion will be made for an Order precluding you from offering any evidence at trial concerning the items below:

1. State the date and place of birth of the plaintiff, the residence address of the plaintiff at the time this action was commenced, and the present post office and residence address of the plaintiff.
2. Set forth with particularity a statement of each and every negligent or other tortious act or omission which is claimed as a basis of liability of the defendant on whose behalf this demand is made.

* Please note that this form is applicable only to actions commenced on or after January 1, 1995. For actions commenced prior to January 1, 1995 the time to respond to a demand for a bill of particulars is 20 days. The new period of time to respond to the demand is 30 days.

3. If there is any claim of vicarious liability against said defendant, state the name(s) of each and every person or entity whose act or omission is charged against said defendant and specify each of the act(s) or omission(s) set forth in response to Item 2 allegedly committed by each. If the name of any such person is unknown, describe said person by job title or physical description so as to permit identification.
4. State the nature of the condition or conditions which it is claimed the said defendant undertook to treat.
5. State the date and approximate time of day of each of the alleged negligent or otherwise tortious acts and/or omissions which is claimed against the said defendant, as set forth in response to Item 2.
6. State the location of each of the alleged negligent or otherwise tortious acts and/or omissions which is claimed against the said defendant, as set forth in response to Item 2.
7. If loss of service, society, companionship, or consortium is claimed, specifically set forth the nature, extent, and duration of each claimed loss and by whom it has been suffered.
8. If it is claimed that the defendant on whose behalf this demand is made failed to perform his or her professional duties in accordance with any manual, rule, regulation, statute, law or ordinance, set forth the specific manual(s), rules(s), regulation(s), statute(s), law(s) or ordinance(s) claimed to have been violated with specific citation to title, volume, and page number.
9. If it is claimed that the said defendant failed to obtain the informed consent of plaintiff(s), set forth the procedure or treatment performed as to which said defendant failed to obtain informed consent, those known or reasonably foreseeable risks surrounding the said procedure or treatment of the plaintiff(s) which it is claimed said defendant failed to disclose, the alternative modes of treatment, if any, which it is claimed said defendant failed to disclose indicating which, if any would have been chosen had such disclosure been made, and the date(s) on which it is claimed informed consent should have been obtained.

10. Set forth with particularity each and every injury to the plaintiff(s) claimed to have been caused by the alleged malpractice or other tortious conduct of the defendant on whose behalf this demand is made, indicating nature, anatomical location and degree.

11. Set forth each and every such injury claimed to be permanent.

12. Set forth the past, present, and future hospitalizations of the plaintiff(s) claimed to have been caused by the malpractice or other tortious conduct of said defendant, giving the names and addresses of the hospitals, the dates of confinements or treatments, if any, and the total amount of each hospital bill to date, where applicable.

13. Set forth the names and addresses of all treating and/or consulting physicians who rendered or who are expected to render medical services to the plaintiff(s) as a consequence of the malpractice or other tortious conduct complained of and the total amount of each of their bills to date, where applicable.

14. Set forth the length of time confined to

a. bed

b. house as a result of the claimed malpractice or other tortious conduct of said defendant.

15. Set forth all past, present and future special damages claimed, and the names and addresses of the payees, where applicable with respect to:

a. nurses

b. psychologists or other mental health professionals

c. medical supplies and appliances

d. ambulance services

e. loss of earnings

f. special educational, emotional, or vocational training or schooling

g. any other special damages claimed, except as set forth in response to Items 12, 13, and 15

a.–f.

16. For each and every item claimed in special damages, itemize those damages for which plaintiff(s) have been indemnified in whole or in part from any collateral source such as insurance, social security(except those benefits provided under Title XVIII of the Social Security Act), Worker's Compensation or employee benefit programs, except such collateral sources entitled by law to liens against any recovery of plaintiff(s), and by whom such indemnification was made.

17. Set forth the Social Security number(s) of the plaintiff(s).

18. Set forth the alleged malpractice, negligence, or other tortious conduct of all other defendants, or in the alternative, furnish a copy of the Bill of Particulars supplied by plaintiff(s) to said defendant.

19. State whether any action and/or claim has been brought or filed against any other person or entity for the injuries claimed herein. If so, set forth:

- a. the court, if any, in which the action or claim is or was pending.
- b. the name and address of each party to the action or claim.

20. If loss of earnings or incapacity from employment is claimed, set forth:

- a. the occupation of the allegedly injured plaintiff(s).
- b. the last date upon which said plaintiff(s) worked prior to the alleged malpractice or other tortious conduct of said defendant and the name and address of said plaintiff's(s') employer on that date.
- c. the first date of return to employment, if any by said plaintiff(s) following the alleged malpractice or other tortious conduct of said defendant and the name and address of said plaintiff's(s') employer on that date.

21. If loss or interruption of education is claimed, set forth:

- a. the last date upon which the allegedly injured plaintiff(s) attended an educational institution prior to the alleged malpractice or other tortious conduct of said defendant and the name and address of the educational institution attended on that date.

b. the first date upon which the allegedly injured plaintiff(s) attended an educational institution following the alleged malpractice or other tortious conduct of said defendant and the name and address of the educational institution attended on that date.

[Indorsement, address and telephone number]

Form 5

Verified Bill of Particulars In Action Alleging Negligence and Wrongful Death Against Hospital *

[Caption and introductory paragraph]

1. a. Plaintiff's decedent was treated from on or about _____, 20_____ to on or about _____, 20_____.

b. Plaintiff's decedent was treated at _____ Hospital, _____ Avenue, _____, New York.

2. a. Plaintiff's decedent was also confined to _____ County Medical Center from on or about _____, 20_____ to on or about _____, 20_____ and _____, 20_____ to _____, 20_____, and received outpatient care on or about _____, 20_____ to _____, 20_____.

b. As a result of the negligence of defendant, _____ Hospital, plaintiff's decedent suffered anaphylactic reactions including but not limited to respiratory arrest, heart failure and respiratory insufficiency. All injuries are permanent as plaintiff's decedent is deceased.

* This form was submitted courtesy of Montgomery L. Effinger, Esq., O'Connor, McGuiness, Conte, Doyle, Oleson & Collins, White Plains, New York. It should be noted that CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified. CPLR 3042 has been amended by L.1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

3. The defendant, _____ Hospital failed to properly diagnose and treat plaintiff's decedent in that they prescribed drugs which were contra-indicated for plaintiff's decedent due to his history, known to defendant of allergies to said drugs.

4. Plaintiff does not have information at this time to Answer this demand. When discovery is complete plaintiff will amend or supplement this bill of particulars if necessary.

5. Plaintiff's decedent was treated by Dr. _____, Dr. _____, Dr _____ and other doctors to be found in the _____ County Medical Center records.

6. a. Confined to bed: _____ to death.

b. Confined to home: _____, 20_____ to _____, 20_____.

7. a. Plaintiff's decedent was employed as a _____.

b. Plaintiff's decedent was employed by the _____, _____ Avenue, _____, New York

c. Plaintiff's decedent was unable to work from on or about _____, 20_____ to _____, 20_____.

d. Plaintiff's decedent earned \$_____ for the year 19_____.

e. Plaintiff's decedent lost approximately \$_____ in earnings as a result of the occurrence, for each year he would have worked, plus death, pension and retirement benefits which would have been provided as a result of his employment.

8. When discovery is complete, plaintiff will amend or further supplement this answer to the bill of particulars.

9. Plaintiff's decedent was born in _____ on _____, 20_____.

10. Plaintiff's Social Security Number is _____.

11. Total Funeral Expenses were _____ (Bill to be supplied).

[Indorsement, address, telephone number and verification]

Form 6

Verified Bill of Particulars In Action Alleging Negligence and Wrongful Death Against Physician *

[Caption and introductory paragraph]

1. As of _____, 20_____, plaintiff's decedent was _____ years old and resided at _____ Avenue, _____, New York.

2. Plaintiff's decedent was suffering from acute massive pulmonary embolus versus acute myocardial infarction. Admission diagnosis was congestive heart failure when defendant PHYSICIAN treated him. The defendant PHYSICIAN treated plaintiff's decedent from on or about _____, 20_____ to on or about _____, 20_____.

3. Defendant PHYSICIAN failed to properly diagnose and treat plaintiff's decedent in that he prescribed drugs which were contra-indicated for plaintiff's decedent due to his history known to defendant PHYSICIAN, of allergies to said drugs. As a result of the negligence of defendant PHYSICIAN, the patient suffered anaphylactic reactions including but not limited to respiratory arrest, heart failure and respiratory insufficiency.

4. Plaintiff's decedent was treated by defendant PHYSICIAN at _____ Hospital, _____ Avenue, _____, New York from on or about _____, 20_____ to on or about _____, 20_____. As a result of the negligent treatment of defendant PHYSICIAN, the patient

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suffered anaphylactic reactions including but not limited to respiratory arrest, heart failure and respiratory insufficiency. All injuries are permanent as plaintiff's decedent is deceased.

5. The plaintiff's executrix _____ is _____ years of age.

6. The next of kin of the deceased are: _____(wife),
_____ Avenue, _____, New York;
_____(son), _____ Avenue,
_____, New York; _____,
_____(daughter), and her children, _____ and
_____, Avenue, _____, New York.

7. _____ lived with decedent but upon information and belief did not receive support from the decedent. _____, and her children, upon information and belief, did receive some financial assistance from her father and plaintiff's decedent. _____, upon information and belief was not dependent upon the decedent for support.

8. Expenses:

(a) Hospital Expenses: To be supplied.

(b) Physician Expenses: To be supplied.

(c) Nursing Costs: To be supplied.

(d) Medical Expenses: To be supplied.

(e) Plaintiff's decedent lost approximately \$_____ in earnings as a result of the occurrence for each year he would have worked, plus death, pension and retirement benefits which would have been provided as a result of his employment.

(f) Special Damages.

9. Decedent's employer was _____, _____ Avenue,
_____, New York.

10. Decedent's Social Security Number is _____.

[Indorsement, address, telephone number and verification]

Form 7

**Verified Bill of Particulars In Action Alleging Negligence and Wrongful Death Against
County And County Medical Center ***

[Caption and introductory paragraph]

1. Plaintiff's decedent was born _____, 20_____ and resided at _____ Avenue, _____, New York.
2. (a) Plaintiff is presently unaware of the complaints, signs and symptoms ignored by defendant COUNTY. This answer is subject to amendant pending further discovery.

(b) Plaintiff makes no claim with respect to erroneous and incorrect diagnosis of plaintiff's decedent's condition. (This answer is subject to amendment pending further discovery.)

(c) The improper treatment afforded plaintiff by defendant COUNTY included, but was not limited to, administration of prescribed drugs that were contraindicated for plaintiff's decedent due to history of allergies to drugs which was known to defendant. This answer is subject to amendment pending further discovery.
3. The accepted and customary medical standards which defendant COUNTY violated included but were not limited to the prescribing and administration of drugs which were contra-indicated.
4. The manner in which defendant COUNTY deviated from accepted and customary medical standards was to prescribed, to plaintiff's decedent, medication which was contra-indicated. The answers to this demand and 3 above, is subject to being supplemented or amended pending further discovery.

* This form was submitted courtesy of Montgomery L. Effinger, Esq., O'Connor, McGuinness, Conte, Doyle, Oleson & Collins, White Plains, New York. It should be noted that CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified. CPLR 3042 has been amended by L.1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

5. Plaintiff's decedent was admitted for treatment to defendant COUNTY MEDICAL CENTER on _____, 20_____, and _____, 20_____, and died _____, 20_____.

6. The conditions which plaintiff's decedent suffered from, and which defendant County undertook to treat, were respiratory insufficiency, obstructive pulmonary disease and congestive heart failure.

7. As a result of the medical treatment administered by defendant COUNTY, plaintiff's decedent died.

8. Hospitalizations caused by defendant's negligence and malpractice were the first and second admissions to COUNTY Medical Center.

9. (a) Plaintiff was incapacitated from his employment from on or about _____, 20_____ to date of his death on _____, 20_____.

(b) The last date which decedent worked prior to the malpractice was _____, 20_____.

(c) Decedent's average weekly wage was \$_____ based on previous year's earnings.

(d) Plaintiff was employed by _____, _____ Avenue, _____, New York.

(e) Decedent was rendered unable to perform any of his usual functions.

10. Special Damages:

(a) Decedent's medical expenses were paid by employer.

(b) Medical supplies – The Cost for the rental of oxygen equipment in the amount of \$_____.

(c) Approximately \$_____ in earnings were lost for each workable year plus pension and benefits.

(d) The cost of private duty nurses in the amount of \$_____.

11. Dr. _____ of the COUNTY Medical Center supervised decedent's out-patient care when decedent was released from the COUNTY Medical Center on _____, 20_____ until _____, 20_____ when decedent was readmitted. Dr _____ supervision continued from the date of decedent's being readmitted until the date of death. The bills will be supplied.

12. Private duty nurses attended to the decedent and bills will be supplied.

13. Medical benefits were paid through decedent's employer. Benefits included the costs for doctors, hospitalizations, medication and private duty nurses. Bills will be supplied.

[Indorsement, address, telephone number and verification]

Form 8

Verified Bill of Particulars in Personal Injury Action Alleging Negligence Against Owner of Premises *

[Caption and introductory paragraph]

1. Plaintiff _____ was born _____, 20_____, resides at _____ Avenue, _____, New York, and is married.

2. The accident happened on or about _____, 20_____ at approximately _____ a.m./p.m. in the _____ Section, _____ Floor, in the area of the _____ Section.

3. Upon information and belief, the defendants violated Section 200, 240(1) and 241(6) of the New York State Labor Law, as well as Code Sections 23:1.3, 23:1.5, 23:1.7(e), 1926:10, 1926:20, 1926:25. The plaintiffs will request a trial court to take notice of and charge each and

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every statute and ordinance shown upon the trial of this action to have been violated by the defendants.

4. Upon information and belief, the defendants violated Sections 200, 240(1) and 241(6) of the New York State Labor Law; they failed to provide plaintiff with a safe place to work; they failed to have the elements and tubes and other such areas properly and adequately secured; they failed to have a proper and adequate amount of people with which to work on said job; they failed to properly and adequately secure said area; they failed to provide plaintiff with an area in which to walk and to do his work; failed to provide plaintiff with an area which was large enough with which to move around in with which to do the work that he was doing; they failed to properly and adequately set up the tubes to be utilized and worked upon; they failed to properly and adequately secure said tubes; and they were otherwise careless and negligent.

5. Upon information and belief, the plaintiff _____ sustained the following injuries: fractures of the left arm, wrist and hand; causation of a distal radio-ulnar joint disruption with subluxed ulna; damage and injury to the motion and movement of the wrist and hand; compound fracture; damage and injury to the radial artery and the nerves; extensive soft tissue injuries of said areas; bruises on left upper chest and lower back; strain and sprain of the cervical dorsal lumbar sacral spine.

All of the above injuries were accompanied by tearing, irritation and injury to the discs, tendons, ligaments, muscles, blood vessels, cartilages, nerves and soft tissues of said areas, affected the blood supply of said areas, and were accompanied by pain and limitation of motion.

All of the above injuries are permanent and progressive, except those of a superficial nature. Plaintiff is presently unable to estimate the degree of same.

6. Plaintiff _____ was confined to _____ Memorial Hospital from _____, 20_____ to _____, 20_____ and since his discharge from the hospital, plaintiff _____ has been generally and partially confined to home.

7. This demand is improper since it seeks evidentiary material properly discoverable via Article 31 of the CPLR.

8. Plaintiff's special damages to date are as follows:

a) Hospital bills, approximately \$_____ to date.

b) Plaintiff is not in receipt of any doctors bills at this time, but we will supplement this answer once we are in receipt of same.

9. At the time of the accident, plaintiff was employed as a welder/boilermaker for _____ Engineering, _____ Steam Station, _____, New York, earning \$_____ per week. Plaintiff has been off work since the date of the accident to date and is claiming \$_____ in lost wages to date and continuing.

10. It is claimed that the defendant _____ had various overseers, safety inspectors, as well as construction service and safety inspectors, none of whose names plaintiff has knowledge of, who is claimed were around the job from time to time and they, at a minimum, had constructive notice of the dangerous conditions of the premises. As to dates and times, plaintiff claims such individuals were present in and around the premises every day. Plaintiff lacks knowledge to answer demand 10 more fully and completely at this time.

11. It is claimed that plaintiff _____'s loss of services included lack of ability to work, losses with respect to working and employment; an inability to perform chores around the house that he would normally perform in the absence of the injuries suffered; and due to the injuries suffered, further impairment of social, family, and marital activities.

12. Plaintiffs' other items of damage are pain and suffering, permanency of injuries, loss of enjoyment of life, loss of services, society, support and consortium.

13. Plaintiff is presently unable to estimate future hospital bills, doctor bills and future loss of wages.

[Indorsement, address, telephone number and verification]

Form 9

**Verified Supplemental Bill of Particulars in Personal Injury Action Alleging Negligence
Against Owner of Premises ***

[Caption]

Plaintiffs, above named, for their verified Supplemental Bill of Particulars herein, allege upon information and/or knowledge and/or knowledge:

Upon information and belief, the defendant violated § 200, § 240(1) and § 241(6) of the New York State Labor Law, as well as Code § 23:1.3, § 23:1.5, § 23:1.7(e), § 1926:10, § 1926:20 and § 1926:25. The plaintiffs will request a Trial Court to take notice of and charge each and every statute, ordinance, rule and regulation shown upon the trial of this action to have been violated by the defendant.

In connection with the injuries alleged, the plaintiff, _____, suffers from shoulder-hand type syndrome; Colles' type fracture; loss of motion and muscle atrophy; reduced function of left arm and hand and contracture of elbow and fingers.

In addition, it is claimed that the plaintiff has suffered the following psychological injuries: post-traumatic stress; depression; anxiety; loss of enjoyment of life; and emotional and psychological pain and suffering.

All of the above injuries were accompanied by tearing, irritation, and injury to the discs, tendons, ligaments, muscles, blood vessels, cartilages, nerves, and soft tissues of said areas, affected the blood supply of said areas, and were accompanied by pain and limitation of motion; causation, precipitation and activation of arthritis in the appropriate injured areas above which is causally related to the aforementioned accident.

All of the above injuries are permanent and progressive, except those of a superficial nature. Plaintiff is presently unable to estimate the degree of same.

* This form was submitted courtesy of Paul B. Zuydhoek, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York. It should be noted that CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

The plaintiff, _____, incurred additional expenses:

- a) Hospital bills, approximately \$_____ to date.
- b) Physicians, approximately \$_____ to date.
- c) Physical therapy, approximately \$_____ to date.

At the time of the accident, the plaintiff, _____, was employed as a _____ with earnings approximately \$_____ per week. The plaintiff was unable to work from the date of the accident until _____, 20_____ and is claiming \$_____ in lost wages to date, and continuing. The plaintiff has continued to lose periodic days off from work for physicians' appointments and other medical care and treatment. Further, the plaintiff also has lost fringe benefits, the amount of which we are unable to determine at the present time.

The plaintiff is presently unable to estimate future bills for medical care or future loss of wages.

Plaintiffs' other items of damages are pain, suffering, permanency of injury and anxiety, loss of services, society, support, consortium and diminishment of the enjoyment of life, loss of earning capacity and earning ability and loss of earnings, past, present and future.

[Indorsement, address, telephone number and verification]

Form 10

Verified Supplemental Bill of Particulars in Personal Injury Action Alleging Negligence Against Owner of Premises *

[Caption]

Plaintiffs, above named, for their verified Supplemental Bill of Particulars herein, allege upon information and/or knowledge and/or knowledge:

* This form was submitted courtesy of Paul B. Zuydhoek, Esq., Phillips, Lytle, Hitchcock, Blaine & Huber, Buffalo, New York. It should be noted that CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

In connection with the injuries previously alleged, plaintiff, _____ required surgery on _____, 20_____ at _____ General Hospital at which time a portion of his distal ulna was excised. Plaintiff suffers with a continued and progressive atrophy of the left hand, continued and progressive strain and degeneration of the rotator cuff in the left arm which may require future surgery. Plaintiff has permanent restriction of range of motion of his hands, fingers, wrist, shoulder and deformity of the distal radius.

His injuries have resulted in calcification and pseudarthrosis of the wrist joints.

Plaintiff will need future surgery of the left wrist including arthrodesis with future hand therapy post-operatively for rehabilitation.

In addition, it is claimed that the plaintiff has suffered the following psychological injuries: post-traumatic stress; depression; anxiety; loss of enjoyment of life; and emotional and psychological pain and suffering.

All of the above injuries were accompanied by tearing, irritation, and injury to the discs, tendons, ligaments, muscles, blood vessels, cartilages, nerves, and soft tissues of said areas, affected the blood supply of said areas, and were accompanied by pain and limitation of motion; causation, precipitation, and activation of arthritis in the appropriate injured areas above which is causally related to the aforementioned accident.

All of the above injuries are permanent and progressive, except those of a superficial nature. Plaintiff is presently unable to estimate the degree of same.

The plaintiff is presently unable to estimate future bills for medical care or future loss of wages.

[Indorsement, address, telephone number and verification]

Form 11

Verified Bill of Particulars—Medical Malpractice Action Against Orthopedist *

[Caption and introductory paragraph]

* This form was submitted courtesy of John T. Melella, Esq., Law Firm of James A. Steinberg, Poughkeepsie, New York.

1. Plaintiff was born _____, 20_____, in _____, New York. She resides at _____ Avenue, _____, New York.

2. Defendant was negligent, reckless and careless in the following respects:

- a. Failing to timely, properly and appropriately treat the fractures sustained by the plaintiff;
- b. Improperly performing closed reduction of fractured tibia and fibula;
- c. Improperly performing repeat closed reduction of fractures;
- d. Failing to obtain proper anatomical alignment of the fracture;
- e. Reckless infliction of pain;
- f. Failing to timely and accurately diagnose medial displacement of the distal fragment; and
- g. Intentional and/or reckless infliction of emotional distress.

3. Plaintiff suffered a comminuted fracture of the tibia and fibula of her left leg.

4. Plaintiff obtained medical treatment as a result of her injuries on [set forth dates of treatment].

5. Plaintiff received treatment for her injuries on the dates set forth in paragraph 5, supra at _____ Hospital and the medical offices of the Defendant.

6. Plaintiff sustained the following injuries as a result of Defendant's negligence:

Misalignment of fractured left tibia and fibula; medial displacement of the distal fragment; partial loss of use and function of left leg; extreme pain and suffering, swelling, loss of blood; loss of physical tone, extreme emotional distress.

7. Plaintiff was treated by the following physicians and medical institutions and was billed in the following amounts:

Dr. _____

_____ Avenue, _____, New York

\$ _____

Dr. _____

_____ Avenue, _____, New York

\$_____

_____ Hospital

_____ Avenue, _____, New York

\$_____

8. Plaintiff's past lost earnings are in the amount of \$_____

9. Plaintiff's future lost earnings total \$_____.

10. Plaintiff's health insurance provider is Blue Cross/Blue Shield of Greater New York

11. Plaintiff's social security number is _____.

12. Plaintiff's occupation is _____ Hostess

13. Plaintiff was employed by _____.

14. Plaintiff is permanently disabled.

[Indorsement, address, telephone number and verification]

Form 12

Demand For Bill Of Particulars Where Plaintiff Slipped And Fell on Snow and Ice in Parking Lot *

[Caption]

PLEASE TAKE NOTICE that each party we represent in this action Demands, pursuant to CPLR 3041-3044, that each plaintiff furnish a Verified Bill of the following particulars:

A. Liability Issues:

1. The date and approximate time of day of the occurrence.
2. Its approximate location.
3. A general statement of the acts or omissions constituting any negligence or other culpable conduct claimed against any party we represent.

* CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

4. If actual notice is claimed, a statement of when, by whom and to whom actual notice was given and whether such notice was in writing; also, if such notice was in writing, the statement is to include the name and address of anyone who has any copy of it.
5. If constructive notice is claimed, a statement of how long any allegedly dangerous or defective condition existed before the occurrence and who has first-hand knowledge of any such facts.
6. If any violation is claimed, a citation to each statute, ordinance, regulation, and other federal, state, or local rule which any plaintiff claims that any defendant we represent has violated.
7. If any prior similar occurrence is claimed, a statement of its date, approximate time of day and approximate location.
8. If any subsequent repair or other remedial action is claimed, a statement of its date, approximate time of day, approximate location, who made such repair or took such other action and who has first-hand knowledge of either.
9. If product liability is claimed, as to any product manufactured or sold by any defendant we represent, a statement of:
 - (a) its physical description (including the product's color, dimensions, weight, and geometric shape)
 - (b) its identification, model, and serial numbers;
 - (c) its trade name;
 - (d) its graphics, including instructions and warnings;
 - (e) the date when any defendant we represent sold it;
 - (f) all changes made to the product after that date, including the name and address of anyone who made any such change.

B. Damage Issues – Personal Injury:

10. A statement of the injuries claimed and a description of any injuries claimed to be permanent.

11. In any action under Insurance Law, Section 5104(a), for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect and to what extent any plaintiff has sustained:

- (a) serious injury, as defined by Insurance Law, Section 5102(d);
- (b) economic loss greater than basic economic loss, as Insurance Law, Section 5102(a).

12. A statement of any length of time each plaintiff was:

- (a) confined to bed;
- (b) confined to house;
- (c) incapacitated from employment.

13. Total amounts each plaintiff claims as special damages:

- (a) for physician's services;
- (b) for medical supplies;
- (c) for loss of earnings, with the name and address of that plaintiff's employer;
- (d) for hospital expenses;
- (e) for nurses' services;
- (f) for domestic help.

14. If any plaintiff claims loss of services:

- (a) set forth exactly what services are claimed to have been lost.
- (b) is the spouse (claiming the lost services) ill, infirmed or disabled at the present time?
- (c) was the spouse (claiming the lost services) ill, infirmed or disabled at the time of the accident?
- (d) set forth any amounts claimed for medical services, domestic or home care or other special damages, specifying to whom said money was or will be paid.
- (e) set forth the illness, infirmity or disability claimed by said spouse.

15. If any plaintiff claims damages for wrongful death, that plaintiff is to serve with the Bill of Particulars, pursuant to Uniform Court Rules, Section 202.17(d), copies of:

(a) the reports of all treating and examining physicians whose testimony will be offered at the trial; pursuant to Uniform Rules, Section 202.17(b)(1), such reports shall include a detailed recital of the injuries and conditions as to which testimony will be offered at the trial, referring to and identifying those x-ray and other technicians' reports which will be offered at the trial;

(b) authorizations to examine and obtain copies of all hospital records, autopsy, or post-mortem reports, and, as provided in Uniform Court Rules, Section 202.17(b)(2): all hospital records and such other records, including x-ray and technicians' reports, as may be referred to or identified in the reports of physicians who treated or examined the decedent.

(c) Damage Issues – Property Damage:

16. As to each item of property allegedly lost or damaged:

(a) the date on which the plaintiff claiming for its loss acquired the item;

(b) the amount which that plaintiff paid for the item;

(c) if that plaintiff was a donee of the item, the name and address of the donor and the donor's cost;

(d) the age of the item on the day of the occurrence;

(e) its market value just before the occurrence;

(f) its market value just after the occurrence;

(g) the cost to repair it after the occurrence; and,

(1) as to any item of property repaired as of the date of this Demand, attach to the Bill of Particulars a copy of each invoice issued for repairs that have been made and a copy of any repair estimate given before any repairs were made;

(2) as to any item of property not repaired as of the date of this Demand attached to the Bill of Particulars a copy of any repair estimate given to this date.

17. As to any motor vehicle allegedly lost or damaged:

(a) its make, model, and year;

(b) all optional equipment with which it was fitted on the day of the occurrence;

(c) its mileage (and, if different, its odometer reading) on that day.

18. As to any item of allegedly damaged property sold in a damaged condition after the date of the occurrence:

(a) the name and address of the buyer;

(b) whether the item was sold at auction;

(c) whether it was sold separately or as part of a lot;

(d) the gross sales proceeds realized on the sale of:

(1) the item, if it was sold separately;

(2) the lot, if the item was sold as part of a lot.

[Indorsement, address and telephone number]

Form 13

Verified Bill of Particulars in Medical Malpractice Action Against Physician *

[Caption and introductory paragraph]

1. The negligent acts occurred _____, 20_____ until about _____, 20_____.

2. The negligent acts occurred at the offices of defendant Dr. _____ and at _____ Hospital.

3. The defendant Dr. _____, his agents, servants and/or employees were careless and negligent in failing to perform the polypectomy of _____, 20_____, in a careful, skillful and proper manner; in failing to properly advise the patient of the risks, hazards and alternatives of the polypectomy so that an informed consent could be obtained; in failing to avoid injury to the bowel; in failing to properly tent the polyp; in improperly tenting the polyp; in using excessive amounts and duration of currant; in fulgurating healthy _____

* CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified. CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

tissue; in improperly damaging the submucosa, muscularis and serosa of the bowel; in failing to recognize the presence of nearby or adjacent diverticula; in improperly fulgurating a diverticulum; in improperly causing, allowing and/or failing to avoid a perforation of the bowel; in failing to recognize that the bowel had been injured; in failing to properly examine and question the patient prior to discharge; in improperly and prematurely discharging the patient; in failing to properly follow up on the patient's complaints; in improperly prescribing a contraindicated enema over the telephone without a proper examination; in failing to timely repair the injury; in failing to timely commence proper antibiotic therapy.

4. Upon information and belief, the person who performed such acts or failed to act was the above named defendant

5. Improper demand.

6. Improper demand.

7. Plaintiffs are without knowledge as to this item.

8. Improper demand.

9. Improper demand.

10. Plaintiff _____ sustained the following injuries and complications which were caused, contributed to and/or aggravated by the defendant's negligence:

Perforation of sigmoid colon, requiring exploratory surgery with bowel resection and colostomy;

Closure of colostomy;

Abdominal pain, discomfort and scarring;

Wound infection and fistula;

Emotional distress;

It will be claimed that the above injuries and complications are permanent, protracted and progressive.

11. (a) & (b) Plaintiff _____ was confined to his bed and home surroundings for about six weeks;

(c) Plaintiff was admitted to _____ Hospital from _____, 20____ to _____, 20____ and from _____, 20____ to _____, 20____.

12. Plaintiffs claim the following as special damages:

(a) Physicians' services, about \$_____ to date and continuing;

Dr. _____

_____ Hospital

_____ Avenue, _____, New York

Dr. _____

_____ Avenue, _____, New York

(b) Nurses' services, about \$_____

(c) Medical supplies, about \$_____

(d) Hospital expenses, about \$_____ to date and continuing;

_____ Hospital

_____ Avenue, _____, New York

(e) Loss of earnings – none

(f) Other:

Laboratory, about \$_____

Anesthesia, about \$_____

X-rays, about \$_____

13. Not applicable. Plaintiff was not employed at the time of the occurrence.

14. Plaintiffs were partially reimbursed for the above expenses by New York State Claims Unit,

_____ Life Insurance Company, _____, New York,

under Certificate No. _____ Group No. _____; by _____

Blue Cross & Blue Shield, _____, New York, under Identification No. _____.

15. Plaintiff _____ was born on _____, 20____ and plaintiff _____ was born on _____, 20____. Plaintiffs reside at _____ Avenue, _____, New York.

16. Plaintiff _____'s social security number is _____ and plaintiff _____'s social security number is _____.

17. (a) The polypectomy was performed without the informed consent of the plaintiff on _____, 20____;

(b) None;

(c) There was a failure to properly advise the patient of the risks, hazards and alternatives of the polypectomy;

(d) Plaintiffs are without knowledge as to this item;

(e) Plaintiffs are without knowledge as to this item;

(f) Plaintiffs are without knowledge as to this item;

(g) Plaintiffs are without knowledge as to this item except that a consent, albeit not a properly informed one, was given.

[Indorsement, address, telephone number and verification]

Form 14

Supplemental Bill of Particulars in Medical Malpractice Action Against Physician*

[Caption]

Plaintiffs, as and for their verified supplemental bill of particulars, pursuant to the demand of defendant Dr., respectfully allege:

* CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

3. The defendant Dr. _____, his agents, servants and/or employees were careless and negligent in failing to perform the colonoscopy of _____, 20_____ in a careful, skillful and proper manner; in failing to properly advise the patient of the risks, hazards and alternatives of the colonoscopy so that an informed consent could be obtained; in failing to avoid injury to the bowel; in failing to properly pass the colonoscope; in the use of excessive force and misdirection in the passage of the colonoscope; in improperly damaging the submucosa, muscularis and serosa of the bowel; in failing to recognize the presence of nearby or adjacent diverticula; in improperly causing, allowing and/or failing to avoid a perforation of the bowel; in failing to recognize that the bowel had been injured; in failing to properly examine and question the patient prior to discharge; in improperly and prematurely discharging the patient; in failing to properly follow up on the patient's complaints; in improperly prescribing a contraindicated enema over the telephone without a proper examination; in failing to timely repair the injury; in failing to timely commence proper antibiotic therapy.

17. (a) The colonoscopy was performed without the informed consent of the plaintiff on _____, 20_____;

(c) There was a failure to properly advise the patient of the risks, hazards and alternatives of the colonoscopy.

[Indorsement, address, telephone number and verification]

Form 15

Demand for Bill of Particulars in Action Arising Out of Automobile Accident*

[Caption]

PLEASE TAKE NOTICE, that the defendants _____ and _____ Insurance Company hereby demand that plaintiff serve upon the

* This form was provided courtesy of Margaret J. Fowler, Esq., Chernin & Gold, Binghamton, New York. CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

undersigned attorneys, within thirty (30) days after the receipt by you of this demand, a verified Bill of Particulars of the following:

1. The exact day, month and year, and the approximate time of day, when the accident is alleged to have occurred.
2. The exact place and location where it is claimed the alleged accident occurred.
3. Describe all vehicles involved in the accident, stating their registration number, state of registration, manufacturer's name or designation, year and model.
4. A general statement of the alleged negligent acts or omissions of the defendants _____ and _____ Insurance Company to which plaintiff attributes the alleged accident, including a statement as to which, if any, statutes, ordinances, regulations or rules, including the title and section, it is claimed were violated by the defendants _____ and _____ Insurance Company.
5. The names and addresses of all persons claimed by the plaintiff to have either witnessed the accident or to have first-hand knowledge of the occurrence of the accident.
6. A general statement of the injuries claimed to have been sustained by the plaintiff, including the nature, location, extent, duration, and effects form same, and which, if any, of said injuries are claimed to be permanent.
7. The length of time plaintiff claims to have been confined by reason of the alleged accident:
 - (a) To a hospital
 - (b) To bed
 - (c) To houseand in each instance the days and dates thereof.
8. The nature of the occupation and duties, if any, of the plaintiff, and the names and addresses of plaintiff's employer or employers for one year preceding the accident, if any; the weekly wages or income of plaintiff, if any; the length of time, including days and dates, it is claimed plaintiff has been and will be incapacitated and prevented from carrying on his or her usual occupation and duties.

9. An itemized statement of any and all damages claimed to have been sustained by the plaintiff by reason of the alleged accident, including:

(a) Loss of earnings, if any, including the days and dates upon and between which same occurred.

(b) The amount expended, or for which plaintiff has been obligated to pay, if any, for physicians' services, medical supplies and hospital expenses, including the days and dates upon and between which same were incurred, and the names and addresses of each physician and hospital; the number of visits made by plaintiff at the offices of his/her physicians, and the date of the first visit to or by the doctor and the date of the last visit.

(c) Nurses services, if any, including the days and dates upon and between which same were incurred.

(d) Any other alleged bills or special damages, including the amounts, the days and dates upon and between which same were or will be incurred, and the nature thereof.

10. The date and place of birth and marital status of plaintiff.

11. State in what respect plaintiff sustained a "serious injury" within the meaning of Section 5102(d) of the Comprehensive Automobile Insurance Reparations Act, including an exact statement of the injury or injuries, and a precise description of any dismemberment; significant disfigurement; fracture; permanent loss of use of a body organ, member, function, or system; permanent consequential limitation of use of a body organ or member; significant limitation of use of a body function or system; or a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all daily activities for not less than ninety days during the one hundred eighty days immediately following the occurrence of the injury or the impairment, if qualification is claimed under Section 5102(d).

12. Set forth a listing of the medical expenses, including the days and dates upon which the same were incurred, the party issuing the charge, and the services performed, if qualification is claimed under Section 5102(d) of said Act.

AND YOU WILL PLEASE FURTHER NOTICE, that in the event of your failure to serve said Bill of Particulars within thirty (30) days from receipt by you of this demand, the same defendant will deem it a refusal on your part to serve and furnish the same.

[Indorsement, address and telephone number]

Form 16

Demand for Bill of Particulars in Action Alleging Medical Malpractice Against Doctor For Failure To Properly Diagnose Plaintiff's Condition *

[Caption]

PLEASE TAKE NOTICE that, pursuant to Section 3041, Rules 3042 and 3043 and Section 3044 of the Civil Practice Law and Rules, you are hereby required to serve a verified Bill of Particulars upon the undersigned within thirty (30) days after the receipt of this Demand.

In the event of your failure to comply with this Demand for a Verified Bill of Particulars within that time, motion will be made for an Order precluding you from offering any evidence on the causes of action alleged in the Complaint concerning the following items:

1. The dates and times of day of the alleged negligent acts and/or omissions which will be alleged and claimed against the answering defendant herein.
2. The exact location of the alleged negligent acts and/or omissions charged against the answering defendant herein.
3. A statement of each and every act of negligence or omission which constituted the alleged malpractice complained of with the date of each if different from the dates in paragraph one.
4. State the names of each and every person who performed such acts or failed to act; if the names are not known, describe the physical appearances with sufficient clarity for ready identification.

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5. State the occupation of each such person.
6. A statement of the accepted medical practices, customs and medical standards which it is claimed were violated in each of the above acts or omissions.
7. State whether or not any claim is made as to improper, unavailable or defective equipment, and if so, identify the equipment and state the defective conditions.
8. State what laws of the State of New York were allegedly violated by the answering defendant herein as to:
 - (a) The performance of the operation.
 - (b) The parts of the body operated upon, and
 - (c) Any other procedure or treatment performed by the answering defendant herein.
9. List any operation, procedure or therapy which is claimed to be improper.
10. Describe the manner of the alleged impropriety referred to in item nine.
11. State:
 - (a) The injuries the plaintiff suffered as the result of the alleged negligence and/or malpractice of each defendant responsible. State which injuries are claimed to be permanent.
12. State the dates the plaintiff was confined to each of the following;
 - (a) Bed,
 - (b) House,
 - (c) Hospital with names.
13. State separately the total amounts claimed by the plaintiff as special damages for each of the following:
 - (a) Physicians' services,
 - (b) Nurses' services,
 - (c) Medical supplies,
 - (d) Hospital expenses, with the names and addresses of all hospitals.
 - (e) Loss of earnings,

(f) Any other expense

14. State the:

(a) Occupation of the plaintiff.

(b) Name and address of his employer; if self-employed, state the address of his place of employment and the type of business or occupation in which he was engaged immediately prior to the occurrence.

(c) The length of time plaintiff was unable to attend to his employment, with dates.

(d) The amount of money plaintiff was alleged to have earned during the year prior to the occurrence.

(e) The amount of earnings the plaintiff was alleged to have lost as a result of the occurrence.

(f) The plaintiff's Social Security number.

15. State the date of birth of the plaintiff.

16. State the residence address of the plaintiff.

17. (a) If wrongful death is claimed:

i) State date of birth and date of death of decedent.

ii) State decedent's domicile at death.

iii) State cause of death of decedent.

iv) State decedent's Social Security number.

(b) If wrongful death is claimed with respect to pecuniary loss sustained by the next of kin as a result of the death of decedent, state:

i) The names and addresses of the next of kin who received financial support from the deceased at the time of his death.

ii) The specific amount received by each of the next of kin from the deceased during the five year period immediately prior to his death.

iii) The approximate dates when each sum of money was allegedly paid the next of kin of the deceased during the five year period immediately prior to this death.

18. List the name and address of all hospitals and physicians that treated plaintiff during his entire life.

19. Set forth any statutory violations that will be claimed, with proper citations thereof.

20. Set forth all amounts which have been received from collateral sources and identify the source thereof.

[Indorsement, address and telephone number]

Form 17

Verified Bill of Particulars In Personal Injury Action Arising Out Of Collision Between Fire Truck and Automobile Where Plaintiff was a Passenger in Fire Truck *

[Caption and introductory paragraph]

1. Plaintiff resides at _____ Avenue, _____, New York.

2. The accident occurred on _____, _____, 20_____, at approximately _____ a.m./p.m.

3. The accident occurred in the general area of _____ Avenue and _____ Avenue in _____, New York.

4. Defendants were negligent in the ownership, maintenance, operation, supervision, repair, and control of their vehicles; in that defendant City of New York operated Fire Apparatus with unsafe steering and with no safety straps-bucket seats-standing area-as indicated Fire Department, City of New York, Repair Requisition No. 26 dated _____, 20_____; in that defendant City of New York violated Fire Department Safety Bulletin No. 44 issued December, 1969; in that defendant City of New York violated Fire Department Order No. 239 dated December 12, 1968, effective December 15, 1968, requiring department vehicles to "Stop before entering an intersection against red light stop sign, or yield sign to

* This form was submitted courtesy of Bruce A. Bendix, Esq., Rivkin, Radler & Kremer, Uniondale, New York. CPLR 3044 requires that a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

assure that the right of way was being yielded by all intersection traffic”; in that defendant City of New York violated Fire Department All Units Circular No. 102(K) dated March 31, 1977; in that defendant City of New York violated Fire Department Safety Bulletin 1983 1st Issue, Safety Tips 1982 4th Issue, Training Bulletins 1981 3rd Issue, Ladder Bulletins 1968 2d Issue, and Division Safety & Training Coordinator Communications; in that defendant City of New York violated Fire Department Safety Bulletin No. 1, “Use of Sirens,” issued October, 1964, and Section 11.1.16 of the Regulations; in that defendants failed to keep their vehicles under proper control and take such steps as were necessary to avoid collision; in that defendants operated their vehicles at dangerous and excessive speed, in that defendants operated their vehicle in disregard of existing traffic control devices; in that defendants failed to keep a proper and adequate lookout for other vehicles; in that defendants failed to give notice or warning of the approach of their vehicles; in that, upon information and belief, defendants operated their vehicles with defective and/or inadequate brakes, tires, and/or steering apparatus, inadequate to control the movements of their vehicles properly, carefully, and lawfully; in that defendants failed to observe and act according to conditions and the circumstances of the traffic in the general area of _____ Avenue and _____ Avenue in _____, New York; in that defendants failed to observe and act according to the flow of vehicles in front and around their own vehicles; in that defendants failed to slow down and stop so as to avoid smashing into one another and causing plaintiff serious and permanent injuries; in that defendants operated their vehicles against the flow of traffic; in that defendant City of New York failed to provide Fire Apparatus with proper and adequate safety equipment, lap belts and harnesses; in that defendants failed to comply with traffic signs, signals, and/or lights existing at the intersection of _____ Avenue and _____ Avenue in _____, New York; in that defendant City of New York proceeded through an intersection against a red light without first stopping and without using lights, a siren, or an air-horn; in that defendants violated the Vehicle and Traffic Law of the State of New York, Sections: 375, 376, 1101, 1110, 1111, 1113, 1116, 1140, 1141, 1142, 1144, 1160, 1163, 1164, 1165, 1172, 1180, 1190; in that defendants violated the traffic

regulations of City of New York, Sections: 21, 30, 50, 60, 70, 110; in that defendant City of New York violated the Vehicle and Traffic Law of the State of New York, Section 1104 and the traffic regulations of City of New York, Sections: 22, 23; in that defendant _____ operated his motor vehicle in such a manner that he was served with Summons No. 72979050 3 issued by Ladder Company _____ of the New York City Fire Department for violation of Vehicle and Traffic Law Section 1144 and failure to yield right of way; in that defendant _____ violated the Administrative Code of City of New York, Fire Department, Sections: 487b-2.0, 487b-5.1; in that defendant City of New York is liable to plaintiff pursuant to General Municipal Law Section 50-c; in that, at all times herein mentioned, plaintiff was and remains a firefighter employed by the New York City Fire Department and at the time of the accident was on full duty status, engaged in due preparation for and in due performance of fire suppression duties imposed by law, the Fire Commissioner, the fire chief, or other supervisory officers of the New York City Fire Department, and in such preparation and performance was injured and his injuries were caused directly or indirectly by defendants' failure, omission, and/or neglect to comply with applicable statutes, ordinances, rules, regulations, and requirements of the federal, state, city, county, village, and town governments or their departments, divisions, and as a result of defendants neglect, omission, and/or culpable negligence in violating certain statutes, ordinances, rules, orders, and other provisions of law, including the above-stated sections, plaintiff sustained severe and permanent personal injuries and defendants are liable under the provisions of General Municipal Law Section 205-a.

5. As a result of this accident plaintiff sustained the following serious and permanent injuries: painful shoulder and right hand; soreness in left scapula; fractured right wrist, bone chip right small knuckle, muscle pull left shoulder, sprained neck, sprained back; trauma to the soft tissue; neck spasm; fractures in the right hand; severe pain in cervical spine with severe limitation of motion with radicular component to left upper extremity; anti-inflammatory medication, muscle relaxants; cervical sprain, contusion and strain of the right hand and wrist; total disability; a fracture of the right wrist and a chipped bone in the fifth metacarpal of the right hand; injury to the right knee; a soft cast on the right wrist; tenderness at the medial joint line of the right knee

posterioral medially; synovial swelling; contusion sprain of the right knee, and a history of a fracture of the right wrist and right knuckle fifth metacarpal; a knee immobilizer for the right knee and a course of intensive physical therapy; a chip at the distal radius at the radial carpal joint; narrowing of the height of the lateral joint space of the right knee; multiple injuries; pain in the cervical spine; numbness of the left thumb and the right knee with swelling and pain in the right wrist region; limitation of motion of the cervical spine, flexion to 20 degrees extension 5 degrees, right lateral flexion 15 degrees left lateral flexion 30 degrees; swelling on the dorsal aspect of the right wrist with limited range of motion; decreased sensation over the left thumb; effusion in the right knee; limited range of motion of the right knee; two oval shaped bony ossicles measuring 12 and 8 mm. respectively in diameter interposed between the posterior surface of the patella and the anterior surface of the femur; loose bodies in the knee interposed between the patella and the femur; a 3 mm. oval shaped calcification near the medial aspect at the distal radius of the right wrist; trauma to the calcific tendon bursitis; medial meniscal tear; a chip of the distal radius of the radio carpal joint; soreness of the right fifth metacarpal; tenderness of the right knee medially; soreness in the neck; tenderness and spasm in the posterior cervical area with limitation of motion to 60% normal; continued physical therapy to the neck including cervical traction; physical therapy to the right knee; pain in the neck radiating to the left hand, numbness in the left first finger constantly, and pins and needles in the left hand; cervical radiculopathy; pain in the neck radiating to the left upper limb down to the hand episodically, and about 10 times initially and several times recently daily, accompanied by numbness in the left first finger constantly and episodic pins and needles in the left hand; pain on pressure of the right fifth knuckle; neck pain aggravated by movements of the head; pain in the right knee; hypoactive biceps and triceps jerks; radiating sensation to the fingers bilaterally on percussion of the median nerve at the wrist; radiating sensation to the fingers on percussion of the right ulnar nerve of the wrist; a rigid and tender cervical spine on percussion; sensation to pinprick less in the left arm than the right; sensation to touch and pinprick less in the left first finger compared with the left fifth finger or right first finger; cervical radiculopathy with pain radiating down the left fingers with parasthesias; positive EMG's on the left side at C6 to C8; muscle spasm with

radiculopathy in the left upper extremity; spasm on the left side of the upper extremity; spasm in the posterior cervical area, primarily the side with restricted cervical range of motion, and decreased sensation in the left thumb; headaches steroid iontophoresis; T.E.N.S. unit; Decadron iontophoresis treatment; spasms down the posterior neck left side, shoulder and numbness to fingers with numbness of the left thumb with parasthesias to index and middle finger on the left side; left paravertebral cervical spasm with trapezius spasm; abduction limited to about 90 degrees in the left shoulder with pain thereafter; limited range of motion of the cervical spine to about half normal due to spasms; gleno humeral abduction painful at 90 degrees after 90 degrees of abduction on the left; degenerative ridges and a narrow spinal canal, and a herniated disc, left side at C5, 6; aggravation of degenerative ridges and a narrow spinal canal, and a herniated disc, left side at C5, 6; pain and intermittent spasm radiating down the left upper extremity with numbness along the area of the left thumb; future surgery to remove the disc and/or an anterior cervical fusion; magnetic resonance imaging of the cervical spine; a congenitally narrow canal with ventral osteophytic encroachment on the dural tube at C5-6 and C6-7; aggravation of a congenitally narrow canal with ventral osteophytic encroachment on the dural tube at C5-6 and C6-7; a soft tissue density in the left lateral recess at C5-6; aggravation of a soft tissue density in the left lateral recess at C5-6; herniated disc; aggravation of herniated disc; deformity of the existing roots; aggravation of deformity of the existing roots; narrow spinal canal with degenerative ridges and herniated discs on the left at C5-6; aggravation of narrow spinal canal with degenerative ridges and herniated disc on the left at C5-6; trace tenderness at the base of the cervical spine over the trapezius left side; transitory dislocation or subluxation of the right knee with subsequent pain and inability to walk on it; sprain of the cervical spine, injuries of dorsal spine and the right knee; tenderness at the left clavicle; left-sided neck pain extending into the scapula area and intermittently down the arm with numbness of the left thumb and intermittent tingling dysesthasias in other fingers including the small finger; electrodiagnostic testing; pain extending from neck through shoulder and arm approximately 5 lbs. of lifting, in turning the neck to extreme; daily pain; awakening at night due to pain; sleeping with the neck in an extended posture achieved by placing a pillow under the

lumbar area; the use of a cervical collar; tightness, spasm, and tenderness of the left cervical paraspinal superficial muscle group; tenderness of the C6 spinous process; left-sided neck and scapular pain in tilt of the neck to the right and the extreme of rotation of the neck to the right and left; pain at the base of the neck on the left while in tilt left and in neck extension with compression and in neck flexion; weakness in the left triceps; symmetrically suppressed triceps jerks; decrease in touch perception in the left thumb mainly on the ventral surface but some on the dorsal; dull pinprick on the palmar surface of the left thumb; radiculopathy at the left C6 level; disc material protruded to the left at the C5-6 level; disability from doing regular fire department duty and a very prognosis for return to that type of duty; mental and emotional anguish; inability to perform firefighting duties as he did prior to this accident; restriction of athletic, recreational, and social activities; disability.

6. As a result of this accident plaintiff was confined to bed and house from _____, 20_____, to _____, 20_____. Plaintiff is informed and believes that due to the severity of the injuries sustained he will suffer further, to include permanent, confinement to bed and house.

7. As a result of this accident plaintiff was confined to _____ Medical & Mental Health Center, _____ Avenue, _____, New York for emergency medical treatment on _____, 20_____.

8. At the time of this accident plaintiff was employed as a firefighter earning approximately \$32,000 per year in base pay and approximately \$4,000 per year in overtime.

9. At the time of this accident plaintiff was employed as a firefighter by the New York City Fire Department, _____ Avenue, _____, New York. Plaintiff held the rank of Firefighter First Grade, Badge No. _____, and was assigned to Ladder Company _____, _____ Avenue, _____, New York. As a result of this accident plaintiff was incapacitated from employment from _____, 20_____, to _____, 20_____. Plaintiff is informed and believes that due to the severity of the injuries sustained, he will suffer further, to include permanent, incapacitation from

employment. As a result of this accident plaintiff has been incapacitated from performing firefighting duties from _____, 20_____, to present and continuing. Plaintiff is informed and believes that due to the severity of the injuries sustained, he is or will become permanently incapacitated from performing firefighting duties.

10. As a result of this accident plaintiff was totally disabled from _____, 20_____, to _____, 20_____. Plaintiff is informed and believes that due to the severity of the injuries sustained, he will suffer further, to include permanent, total disability. As a result of this accident plaintiff has been partially disabled from _____, 20_____, to present and continuing. Plaintiff is informed and believes that due to the severity of the injuries sustained, he is or will become permanently partially disabled.

11. Plaintiff was born on _____, 20_____, and is presently 29 years of age.

12. Special damages are claimed for:

(a) Physicians' services: To date, medical care has been provided and medical expenses have been paid by the New York City Fire Department and plaintiff has not been presented a bill.

(b) Medical supplies: See paragraph (a)

(c) Loss of earnings: At the time of this accident plaintiff was employed as a firefighter by the New York City Fire Department, _____ Avenue, _____, New York, Plaintiff held the rank of Firefighter First Grade, Badge No. _____ and was assigned to Ladder Company _____, _____ Avenue, _____, New York. Plaintiff's base pay was approximately \$32,000 per year. In addition, plaintiff earned approximately \$4,000 per year in overtime. Although plaintiff continues to receive his base pay from the New York City Fire Department during his incapacitation from employment and during his incapacitation from performing firefighting duties, he has sustained a loss of overtime earnings of approximately \$2,666 to date (\$4,000 per year multiplied by $\frac{8}{12}$ year). Plaintiff is

informed and believes that due to the severity of the injuries sustained he will be terminated as a member of the New York City Fire Department and suffer an additional loss of earnings of approximately \$1,260,000 over his lifetime (\$36,000 per year multiplied by 35 years). Total loss of earnings claimed is \$1,262,666.

(d) X-rays: See paragraph (a).

(e) Hospital expenses: See paragraph (a),

(f) Nursesservices: See paragraph (a).

(g) Other: none at present.

13. Defendants violated statutes and ordinances as stated at length in paragraph 4.

14. Plaintiff was not a student at the time of the accident_____.,

15. Loss of services is not claimed.

16. Plaintiff submitted an application for no fault benefits to City of New York, Office of the Comptroller, Municipal Building, Room _____, _____ Avenue, _____, New York, File No. _____.

17. At approximately _____ P.M. on _____, _____, 20_____, a 1980 Chevrolet Monte Carlo two-door sedan bearing Plate No. _____ registered in the State of New York and owned and operated by defendant _____, _____ Avenue, _____, New York, was traveling west on _____ Avenue when it collided with Fire Apparatus Ladder _____, a 1979 Mack TL bearing Registration No. _____ registered in the State of New York and owned by defendant City of New York, _____ Avenue, _____, New York, and operated by _____, Ladder Company _____, _____ Avenue, _____, New York, traveling south on _____ Avenue at the intersection of _____ Avenue and _____ Avenue in _____, New York, thereby causing plaintiff passenger in Fire

Apparatus Ladder _____ to suffer serious and permanent personal injuries.

18. Property damage is not claimed.

[Indorsement, address, telephone number and verification]

Form 18

Verified Supplemental Bill of Particulars In Personal Injury Action Arising Out Of Collision Between Fire Truck and Automobile Where Plaintiff was a Passenger in Fire Truck *

[Caption]

Plaintiff, by his attorney, _____, P.C., as and for his Supplemental Verified Bill of Particulars and Answer to Demand, alleges as follows:

1. In addition to all of the injuries stated in his Verified Bill of Particulars, plaintiff sustained the following serious and permanent injuries as a result of this accident: cervical sprain, herniated cervical disc, injury to the right medial meniscus, contusion left shoulder and right wrist; persistent numbness in the thumb and index finger; pain in the right knee quadriceps atrophy; limited range of motion of the cervical spine flexion to 300, extension 5 degrees, lateral flexion 20 degrees; diminished sensation of the thumb and index finger; the use of a cervical collar; a herniated disc, left side, C5, 6; spasm in the left side of his neck associated with tingling of his left hand; diminished sensation on the left thumb; range of motion of the cervical spine limited, flexion to 30 degrees, extension to 5 degrees, lateral flexion 10 degrees with spasm on the left side; diminished sensation over the left thumb area; exacerbation of chronic neck pain; aggravation of preexisting physical conditions and ailments of the neck, back, spine and knees; twisted right ankle; giving way of the right knee and ankle; left neck spasm with pain radiating to left arm and numbness of the left hand; herniated discs/neck strain; right knee pairright knee

* This form was submitted courtesy of Bruce A. Bendix, Esq., Rivkin, Radler & Kremer, Uniondale, New York. It should be noted that CPLR 3044 requires that a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

strain; calcification within the supra patella pouch; intra-articular loose bodies in the right knee; an intra-articular loose body, postero-medial synovial plica in the region; chondromalacia patella; popliteal cyst; tenderness medially and laterally at the joint lines and under the patella of the right knee; loose bodies of the right knee; chondromalacia patella Grade IV; removal of loose body, shaving chondroplasty, partial synovectomy, right knee; surgical scarring and disfigurement of the right knee; Grade IV chondromalacia of patella and hypertrophic synovium medially and laterally around the knee; loose body trapped in the medial gutter; hypertrophy of the ligamentum mucosin; chondral deficit of the patella; removal of hypertrophic synovium in the medial and lateral aspects of the joint; tear of the medial collateral ligament or medial meniscus; internal derangement of right knee; partial tear of right anterior cruciate ligament, loose body right knee, osteochondral fracture lateral tibial plateau and chondromalacia patella Grade III; removal of loose body, abrasion chondroplasty patella; ACL injury on the left side; a left knee which gives way; cervical spine injury; C6 to C8 abnormalities; a HNP at the left C5-C6 level with degenerative ridges and changes in the canal significant for narrowing; restricted range of motion of the cervical spine, extension 5 degrees, rotation 20 degrees right and left; numbness of the left thumb and index finger; snapping of the ilio tibial band of the right knee; quadriceps atrophy; deep pain in the knee joint on flexion beyond 140 degrees; severe neck pain with radiation down into his left thumb with numbness at the dorsum of the left hand; a very numb left thumb; relapse and severe pain; reflexes muted symmetrically in his upper extremities; C-6 and C-7 muscle groups weaker on the left than on the right; sensation decreased in the C-6 distribution; degenerative spurs at C5-6 and C6-7; aggravation of degenerative spurs at C5-6 and C6-7; discoid tendency; irregularity of the undersurface in the posterior horn consistent with fraying or a tear; bone bruises; osteonecrosis; recurrent patella dislocations which have led to loose body formation and two surgical procedures for loose body removal; marked quadriceps atrophy and limp; physical therapy to regain quadriceps strength and tone; the use of a patella restraining brace; recurrent episodes of locking during bending maneuvers; knee problem which include trouble going up and down stairs because of retropatella knee pain; stiffness of the knee after sitting for long periods; a feeling that the leg is weak; buckling of the knee; neck problems

which include cervical disc herniation; restriction of both flexion and extension but particularly flexion in the terminal 10 degrees of the range of motion; markedly positive patella apprehension test; patella subluxable laterally; femoral crepitus with knee extension against resistance; patella instability; herniated disc at C5-6; abnormal lateral meniscus of the right knee; degenerative changes cervical spine; aggravation of degenerative changes cervical spine; right patellar subluxation/dislocation proximal patellar realignment and lateral release; general anesthesia; significantly degenerated articular surface of the patella with areas of fibrocartilage growth and areas of significant Grade 2 and Grade 3 chondromalacia; markedly shallow femoral sulcus; patellofemoral dysplasia; a lateral release from the level of vastus lateralis muscle, extending distally along the lateral aspect of the patella through the patellar retinaculum, extending down to the level of the tibial tubercle; status post right patella realignment; chronic synovitis; parasthesias in fingers of left upper extremity and loss of sensation in left thumb; decreased sensation over radial aspect of the left thumb and radial aspect of left wrist; decreased grip strength left hand; surgery, anterior cervical decompression at C5/6 and fusion for osteophytic compression; pins and needles in left fingers and loss of sensation left thumb; spasm on the left arm; severely limited rotation flexion, extension and lateral bending left neck; pain worse with motion of head or lateral bending; severe chronic left arm pain; inability to keep neck straight (pulls to left); severe pain, numbness and tingling in all five digits; involuntary muscle movement left; incisional pain; trouble opening and closing hand; severe effusion with crepitation on flexion and extension; persistent pain; peripheral tear of the medial meniscus of the right knee; cervical discectomy and fusion; reconstructive right knee surgery; a C5-6 extra-dural defect with deformity of the root sleeves bilaterally at this level and in addition an extra-dural defect at C3-4; ventral ridge ta C2-3 centrally; ridges at C3-4; more extension ridges at C5-6 bilaterally with effacement of the subarachnoid space anteriorly; deformity of the nerve root sleeves bilaterally; bilateral ridges at C6-7; upon entry into the C5-6 intervertebral disc, the disc material was removed and the procedure extended to remove the posterior longitudinal ligament at this level, exposing the dura, then bone graft from bone bank was inserted into the disc space while distraction was instituted and once the position was deemed satisfactory the procedure was

concluded and closed; pain on the left side of the neck, shoulder, scapula and arm with intermittent muscle twitching in the arm and forearm and pain extending to the hand; pins-and-needles sensation in all fingers; persistent small finger dysesthesias; inability to tolerate physiotherapy because of pain; head held significantly tilted toward the left; left shoulder in a posture of elevation as compared to the right with physical and marked trapezius muscle spasm present on the left; very marked limitation of range of neck movement in all directions except moderate capacity to do flexion; painful movements; extreme tenderness in the cervical paraspinal muscles; right muscles in spasm; tenderness over the C6-7 spinous processes and pain extending into the left arm on finger pressure at the C6 spinous process level; atrophy of the left biceps and forearm muscles; left hand colder than the right with fingers white as compared to a distinctly red color on the right side; diminished sensation in the left thumb and first digit; a right-sided anterior neck surgical scar; scar on the right knee; very severe compromise of the cervical spine on a mechanical basis; very significant tension on the left C6 nerve root which was not alleviated by surgery in a protracted sense; a disc fragment compromising the C6 nerve root; further surgical intervention; complete disability from pursuing any gainful employment; post operative changes at C5-C6 consistent with prior anterior cervical decompression and fusion; herniated disc fragment at C6-C7 posteriorly, with flattening of the cervical cord; right kneecap dislocation, a fracture of the right wrist and a fracture of the right fifth finger; major knee reconstruction; diskectomy and fusion for treatment of neck and arm pain; removal of the disc between C5-6 and insertion of a bone graft; continued pain and difficulty in the neck as well as the knee; a left hand which is cold, white and sometimes mottled; a scar anteriorly in the region of the neck about an inch and a half in length; markedly limited range of motion of the neck with practically no extension, flex-ion only about 10 degrees or 15 degrees, rotation to the right and left about 30% of the normal range; anterior scar on the knee; knee lacking a degree or two of full extension and about 5 degrees or 10 degrees full flexion with pain at the extremes of flexion and extension; a series of difficulties resulting from this accident, three operations on the knee and a cervical fusion; a fair knee with some pain, giving way and some difficulty; future knee replacement; a very bad result regarding the neck; total disability;

herniated disc in the neck and complex osteochondro fracture of the right knee; continued physical therapy for the neck.

2. As a result of this accident plaintiff was confined to _____ Medical & Mental Health Center, _____ Avenue, _____, New York, for emergency medical treatment on _____, 20_____, _____ Hospital for Joint Diseases, Orthopedic Institute, _____ Avenue, _____, New York, for surgery on _____, 20_____ and _____, 20_____; _____ Hospital, _____ Avenue, _____, New York, from _____, 20_____, to _____, 20_____; and _____ University Medical Center, _____ Avenue, _____, New York, from _____, 20_____, to _____, 20_____. Plaintiff is informed and believes that due to the severity of the injuries sustained he will suffer further confinement to hospital(s) in the future.

3. As a result of this accident plaintiff was confined to bed from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, and from _____, 20_____, to present and continuing. As a result of this accident plaintiff has been confined to house from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____.

§ 3041. Bill of particulars in any case

_____, 20_____, from _____,
20_____, to _____, 20_____, from
_____, 20_____, to _____,
20_____, from _____, 20_____, to
_____, 20_____, and from _____,
20_____, to present and continuing. Plaintiff is informed and believes that due to the severity of the injuries sustained he is permanently confined to bed and house.

4. As a result of this accident plaintiff has been incapacitated from employment from _____, 20_____, to _____, 20_____. from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, from _____, 20_____, to _____, 20_____, and from _____, 20_____, to present and continuing. As a result of this accident plaintiff has been incapacitated from performing firefighting duties from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, from _____, 20_____, to _____, 20_____, and from _____, 20_____, to present and continuing plaintiff is informed and believes that due to the severity of the injuries sustained he is permanently incapacitated from employment and from performing firefighting duties.

5. As a result of this accident plaintiff has been totally disabled from _____, 20_____, to _____, 20_____, from

§ 3041. Bill of particulars in any case

_____, 20_____, to _____,
20_____, from _____, 20_____, to
_____, 20_____, 20_____, from
_____, 20_____, to _____,
20_____, from _____, 20_____, to
_____, 20_____, and from _____,
20_____, to present and continuing. As a result of this accident plaintiff was partially
disabled from _____, 20_____, to _____,
20_____, from _____, 20_____. to
_____, 20_____, from _____,
20_____, to _____, 20_____, from
_____, 20_____, to _____,
20_____, and from _____, 20_____, to
_____, 20_____. Plaintiff is informed and believes that due to the
severity of the injuries sustained he is permanently totally or partially disabled.

6. The following are experts: _____, M.D., F.A.C.S.,
_____ Avenue, _____, New York, who will testify
based on his examination, his review of medical records, and plaintiff's testimony, that plaintiff's
problems began on _____, 20_____, when he was on a fire truck,
facing backward in a seat not equipped with a seat belt, there was a collision and plaintiff was
thrown backwards crashing into a so-called "crash bar", the lack of the seat belt was the cause
of the injuries which he sustained, he was taken to _____ Medical Center
where X-rays were taken, plaintiff was told he had a right kneecap dislocation, a fracture of the
right wrist and a fracture of the right fifth finger, a cast was applied to his wrist and hand in the
emergency room, he also sustained an injury to his neck, X-rays were taken which were
negative for fracture, plaintiff was told he had a cervical sprain and was allowed to go home, he
then continued under the care of both the Fire Department's physicians and his own private
physicians, specifically, he was under the care of Dr. _____, he received

therapy to his neck and his knee, he also had an electromyogram done, plaintiff was told he had a probable disc between C5-6, he was seen by an orthopedist who felt that he should have arthroscopic surgery on his knee, plaintiff did have the surgery and it was performed on _____, 20_____, at which time a loose body was removed from the knee, plaintiff did not do well following this procedure and a second arthroscopy was done on _____, 20_____, which also failed to result in improvement, plaintiff was told that he required major knee reconstruction which is an open operation and this was done, concurrently with all of the work being done on his knee plaintiff continued to have pain and difficulty in his neck and ultimately he was told that he should have a discectomy and fusion for treatment of his neck and arm pain which was done on _____, 20_____, consisting of removal of the disc between C5-6 and insertion of a bone graft, plaintiff continued to complain of pain and difficulty in the neck as well as the knee, plaintiff complains that his left hand is cold white and sometimes it is mottled, this apparently does not have any relationship to the outside temperature, physical examination revealed a well-developed, medium-built man who has a small scar anteriorly in the region of the neck about an inch and a half in length, the range of motion of the neck is markedly limited, he has practically no extension, he flexes only about 10 or 15 degrees, rotation to the right and left are about 30% of the normal range, plaintiff does not have any particular tenderness in the neck, he has a pretty normal range of motion of all joints of the upper extremities, Dr. _____ was unable to detect any color changes or difficulty in the upper extremities on the left as compared to the right, reflexes, sensation, and motor power in the upper extremities was normal, examination of the right knee revealed no particular swelling, there was an anterior scar, the knee lacked a degree or two of full extension and lacked about 5 or 10 degrees of full flexion, there was pain at the extremes of flexion and extension, the knee was stable, both anteroposteriorly and laterally there was no fluid or particular localizing tenderness, in conclusion, plaintiff had a series of difficulties resulting from this accident, he has had three operations of the knee and has had a cervical fusion, regarding the knee operations, it was seen that all of the surgeries were indicated, plaintiff does have a fair knee with some pain,

giving way and some difficulty, however, it is Dr. _____'s opinion that all that can or should be done to the knee has been done, regarding the neck, plaintiff has a very bad result and has not been improved by the operation, and is worse off now than before the operation, plaintiff is totally disabled and the diagnosis is herniated disc in the neck and complete osteochondro fracture of the right knee; _____, M.D., P.C., _____ Avenue, _____, New York, who will testify based on his examination, his review of medical records, and plaintiff's testimony that he examined plaintiff neurologically at his office on _____, 20_____, after having previously examined the plaintiff on _____, 20_____, at which time plaintiff informed Dr. _____ that he was on a fire truck seated backward in the cab when a collision occurred at the intersection at the front end of the vehicle and plaintiff was thrown, a seatbelt was not provided and he therefore did not have one on, at the conclusion of the history and examination done on that date it was Dr. _____'s opinion that plaintiff had a left C6 radiculopathy, also noted was that an MRI cervical scan of _____, 20_____ pursuant to his injury of _____, 20_____, was reported a congenitally narrowed canal with a ventral osteophyte encroaching on the canal at C5-6 and C6-7 together with a soft tissue density in the lateral recess of C5-6 suspicious of a herniated disc with slight deformity of exiting roots, plaintiff informed Dr. _____ that he did not have any relief from the pain after Dr. _____ had seen him and that he ultimately had cervical discectomy and fusion at University Hospital on _____, 20_____, which was in addition to orthopedic admission regarding his right knee, two occurred at the Hospital for Joint Diseases on _____, 20_____ and _____, 20_____ for arthroscopic surgery and another hospitalization for reconstructive right knee surgery and an admission to Lenox Hill Hospital on _____, 20_____, for bracing of an unstable patella, the University Hospital record indicated that a myelogram of _____, 20_____, disclosed at the cervical level a C5-6 extra-dural defect with deformities of root sleeves

bilaterally at this level and in addition an extra-dural defect at C3-4, a CT scan was done post-myelogram, it was noted that at C2-3 a small ventral ridge was present centrally with no cord compression, small ridges were noted at C3-4 without evidence of cord compression, at C5-6 more extension ridges were noted bilaterally with effacement of the subarachnoid space anteriorly, there was some deformity of the nerve root sleeves bilaterally, cord compression was noted, at C6-7 bilateral ridges were also identified with no evidence of cord compression, according to the operative report of _____, 20_____, upon entry into the C5-6 intervertebral disc, the disc material was removed and the procedure extended to remove the posterior longitudinal ligament at this level, exposing the dura, then bone graft from bone bank was inserted into the disc space while distraction was instituted and once the position was deemed satisfactory plaintiff's procedure was concluded and closed, plaintiff informed Dr. _____ that for several weeks he had marked reduction of pain and then a severe flare-up occurred of the same symptoms and he had previously with no remission to date, these symptoms include pain on the left side of the neck, shoulder scapula and arm with intermittent muscle twitching noted in the arm and forearm and pain extending to the hand, the left thumb numbness previously noted never went away post-surgery and remains to date but the flare-up included pins-and-needles sensations in all fingers except the thumb, the small finger dysesthesias persist to date, plaintiff was unable to tolerate physiotherapy because of pain, plaintiff has had follow-up X-rays ordered by his surgeon, Dr. _____, and the fusion is said to be all right, however, because of ongoing symptoms plaintiff is to have another MRI scan of his neck, during the examination of _____, 20_____, plaintiff was noted to hold his head significantly toward the left, the left shoulder was in a position of elevation as compared to the right with physical and marked trapezius muscle spasm present in the left, plaintiff has very marked limitation of range of neck movement in all directions except moderate capacity to do flexion, the movements were painful, plaintiff was very tender in the cervical paraspinal muscle, the right muscles were in spasm, plaintiff was tender over the C6-7 spinous processes and finger pressure at the C6 spinous process level produced pain extending into the left arm, plaintiff had atrophy of the left biceps

and forearm muscles, the left hand was colder than the right and the fingers were white as compared to a distinctly red color on the right side, the radial pulses were equal, plaintiff did not have a Horner's syndrome, plaintiff had diminished sensation on the left thumb and first digit, plaintiff had a right-sided anterior neck surgical scar, there was also a scar at the right knee, there were no long tract signs referable to the legs so that no spinal cord signs were noted, the impression at the time of the examination was that plaintiff had very severe compromise of the cervical spine on a mechanical basis due to on-going very significant tension on the left C6 nerve root which was not alleviated by the surgery in a protracted sense, amongst considerations for the on-going tension there must be included the presence of a disc fragment compromising the C6 nerve root, at the time of examination his condition is permanent on an anatomic basis and from a symptomatic viewpoint plaintiff has had no relief and Dr. _____ can see no expectancy of relief without further surgical intervention, the lack of seatbelt availability was the cause of plaintiff's injuries, there is no question that plaintiff is completely disabled from pursuing any gainful employment; _____, M.D., _____ & _____ Medical Associates, P.C., _____ Avenue, _____, New York, who will testify based on his examination and treatment, his review of medical records, and plaintiff's testimony, that plaintiff was evaluated in the office on _____, 20_____, plaintiff states that he was injured on the job and the injury involved the right knee, post-motor vehicle accident while on the job and sustained injury to the right knee when collision occurred, physical examination showed tenderness at the medial and lateral joint lines and under the patella, ligaments were intact, impression was loose body and the recommendation was operative arthroscopy, MRI which was brought to the office and which was performed _____, 20_____, by the _____ Magnetic Resonance Imaging Center located _____ Avenue, _____, New York, showed a CT arthrogram of the right knee demonstrated an intra-articular loose body, there was also a suggestion of chondromalacia patella, a moderate size popliteal cyst was also present, plaintiff

was taken to the operating room on _____, 20_____, where an operative arthroscopy was performed and loose bodies of the right knee were removed, re-examination on _____, 20_____, showed that plaintiff was making an excellent recovery, sutures were removed and physical therapy instructions given subsequently a new accident occurred while plaintiff was working and that occurred on _____, 20_____, examination in the office on _____, 20_____, 30-year-old male, status post arthroscopy of the right knee for loose bodies, four months prior, examination after plaintiff twisted the right knee while on the job three days prior to this visit on _____, 20_____, pain and swelling of the right knee, a severe effusion was noted with crepitation on flexion and extension, X-rays were negative, impression was foreign meniscus and the recommendation to have the kneecap rescoped, arthroscopy and possible meniscectomy, on _____, 20_____, arthroscopy was performed at which time an osteochondral fracture of the lateral tibial plateau was noted and a tear of the anterior cruciate ligament all on the right knee, the osteochondral fracture which arose from

7. In addition to the negligence alleged in his Verified Bill of Particulars, defendant City of New York was negligent in violating Fire Department policy requiring that all seats in riding positions on apparatus be equipped with working seat belts, that all members use seat belts when riding on apparatus to prevent injury to accidents, sudden stops or swerving of apparatus, and that inoperative or missing seat belts be repaired or replaced promptly for the safety of members; in that defendant City of New York failed to comply with rules and regulations and Fire Department Safety Bulletin No. 6 revised _____, 20_____ and Fire Department Safety Bulletin No. 67 issued _____, 20_____; in that defendant City of New York failed to comply with Fire Department rules and regulations, Section 13.3.4, Section 13.4.2, Section 13.4.3, and Training Bulletin "Apparatus C-2", Section 1.1, Section 3.2.8; in that defendant City of New York violated immutable procedures which must invariably be followed in the operation of fire apparatus; in that defendant City of New York

caused or allowed plaintiff to be placed in an unsafe position in case of an accident and the missing seat belt contributed to his injury.

8. Plaintiff has attached copies of the records of _____ Medical & Mental Health Center; the Hospital for Joint Diseases Orthopedic Institute; Lenox Hill Hospital; New York University Medical Center; and the New York City Fire Department Medical Division, which includes the reports of Dr. _____, Dr. _____, Dr. _____, _____ Medical Imaging, Faculty Practice Radiology, Dr. _____, _____ Magnetic Resonance Imaging, Dr. _____, Hospital for Diseases Orthopedic Institute, Dr. _____, and Lenox Hill Hospital; and reports of Dr. _____, Dr. _____, Dr. _____, Faculty Practice Radiology, and _____.

9. Plaintiff has attached duly executed written authorizations to enable defendants to inspect and obtain copies of the records of _____ Medical & Mental Health Center, the Hospital for Joint Diseases Orthopedic Institute, Lenox Hill Hospital, New York University Medical Center, the New York City Fire Department Medical Division, Dr. _____, Dr. _____, Dr. _____, _____ Medical Imaging, Faculty Practice Radiology, Dr. _____, _____ Magnetic Resonance Imaging, Dr. _____, Dr. _____, Dr. _____, Dr. _____, and Dr. _____.

[Indorsement, address, telephone number and verification]

Verified Second Supplemental Bill of Particulars In Personal Injury Action Arising Out Of Collision Between Fire Truck and Automobile Where Plaintiff was a Passenger in Fire Truck *

[Caption]

Plaintiff, by his attorney, _____, P.C, as and for his Second Supplemental Verified Bill of Particulars and Answer to Demand, alleges as follows:

1. In addition to all the injuries stated in his Verified Bill of Particulars and Supplemental Verified Bill of Particulars, plaintiff sustained the following serious and permanent injuries as a result of this accident: cervical discectomy at the level of C6 and C7 by means of an anterior approach; pain in his left arm and hand and numbness in the left thumb and tips of his fingers; severe pain in his neck and shoulder; a knee which buckles and has caused him to fall; headaches; markedly limited range of motion of neck which moves only about 3 degrees in all planes; lateral instability of the knee; right knee which measures ½ inch more than the left; right thigh measures ½ inch less than the left; need for physical therapy; anterior discectomy together with fusion at C6-7; herniated disc; absent left biceps reflex; a ventral extra-dural defect at C6-7 with thickening of the C7 roots bilaterally; osteophyte formation on the left at C5-6 and at C6-7 with encroachment upon the foramina with a posterior ridge at C6-7 and some canal narrowing; progressive, very severe pain in the left neck extending to shoulder, triceps area and the dorsal forearm; middle three-digit tingling on the right; holding the neck tilted to the left; pain especially at night and in the morning; use of Tylenol #3; Valium 10 mg. at night; wearing of a cervical collar; marked decrease in range of all neck movements and the neck painful on tilt to the left with the upright position; tenderness of the left cervical paraspinal area; atrophy of muscles in the left forearm and weakness in left triceps, finger extension, pronation and supination (left forearm); suppressed arm deep tendon reflexes; decreased sensation in the left thumb and in right middle three digits; status-post discectomy at C6-7; bilateral radiculopathy at C7 and on the left, C6 radiculopathy; complete disability; very guarded prognosis; left thumb and neck pain

* This form was submitted courtesy of Bruce A. Bendix, Esq., Rivkin, Radler & Kremer, Uniondale, New York. CPLR 3044 requires that a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

radiating down the spine; left upper extremity weakness; decreased sensation over C6 distribution on the left; positive Lhermitte's sign; 1+ biceps reflex on the left, motor ? on the left; C6/C7 herniation; C6-C7 anterior microdiscectomy and anterior spinal fusion at C6-7; herniated disc, C6-7, on the left; anterior cervical discectomy (microscopic) and fusion using allograft Code #6307522554; general anesthesia; surgical scarring and disfigurement; anterior fusion at C5-6 with a bone plug within these vertebral bodies; a left posterolateral osteophyte causing left C5-6 neural foraminal encroachment; posterior osteophyte ridge at C6-7 level which is narrowing the spinal canal; left sided C6-7 neural foraminal encroachment; status post anterior fusion with a bone plug at C5-6; a ventral extradural defect at the C6-7 level causing distortion of the C6 nerve roots and thickening of the C7 nerve roots bilaterally; straightening of the normal cervical lordosis; fusion of the C5 and C6 vertebral bodies; fixation device with the uppermost bar overlying the anterior C5 vertebral body; numbness, tingling, pins and needles and spasms to his left upper extremity; pain from base of neck down back; numbness to last three fingers of his right hand; right knee buckling; leaning neck to the left; anxiety.

2. Plaintiff was also confined to New York University Medical Center, _____ Avenue, _____, New York, from _____, 20_____, to _____, 20_____, for surgery. Plaintiff is informed and believes that due to the severity of the injuries sustained he will suffer further confinement to hospital in the future.

3. The following is additional expert information: _____, M.D., _____ Avenue, _____, New York, who will also testify that plaintiff was seen in his office on _____, 20_____, since his last visit on _____, 20_____ plaintiff had a cervical discectomy performed at the level C5 and C7 by means of an anterior approach which was done on _____, 20_____, plaintiff said that he improved for a while following this surgery but he developed pain in his left arm and hand and numbness in the left thumb and tips of his fingers and also had severe pain in his neck and shoulder, plaintiff then had a second operation performed by Dr. _____ at New York University,

following this, plaintiff is better, however he still has some pain in his neck and shoulders, plaintiff states that his knee still buckles and he has fallen on two occasions, this happens four or five times a day, he has headaches, examination on _____, 20_____ revealed the neck had a markedly limited range of motion moving only about 3 degrees in all planes, the knees showed some lateral instability with minimal drawer sign, the knee measured ½ inch more than the left, the thigh measured ½ inch less than the left this is a complicated and difficult case, to add to what has been previously stated, plaintiff has had two operations on his neck Dr. _____ believes that plaintiff should have intensive physical therapy, plaintiff's knee is still no better and Dr. _____ does not believe that anything further can be expected to improve the status of this knee, all of these problems date from the original accident and plaintiff is severely disabled as a result thereof; _____, M.D., P.C., _____ Avenue, _____, New York, who will also testify that here-examined plaintiff neurologically on _____, 20_____, since he last saw plaintiff in April plaintiff has undergone further surgery done by Dr. _____ at University Hospital, the hospital record indicates that prior surgery was done from the anterior approach at the C5-6 disc space in _____, 20_____ and that on _____, 20_____ during an admission from _____, 20_____, anterior discectomy was done together with effusion at C6-7, the sign-out diagnosis was herniated disc, it was noted that the left biceps reflex was absent, the myelogram showed a ventral extra-dural defect at C6-7 with thickening of the C7 roots bilaterally, a post-myelogram CT scan showed osteophyte formation on the left at C5-6 and at C6-7 with encroachment upon the foramina with a posterior ridge present at C6-7 and some canal narrowing, plaintiff informed Dr. _____ that that which led up to the second surgery was progressive, very severe pain in the left neck extending into shoulder, triceps area and the dorsal forearm, on the right, some middle three-digit tingling was noted, this did not change post-operatively but much pain relief occurred although pain is still present in the left neck and shoulder and plaintiff holds the neck tilted to the left, plaintiff does

not have the arm or forearm pain, pain is especially noted at night and in the morning, plaintiff uses Tylenol #3 with some benefit, also he has found that Valium 10 mg. helps at night, plaintiff is still wearing a cervical collar but now a soft collar rather than the hard one and is to be seen again by Dr. _____, on examination there was marked decrease in range of all neck movements and the neck was tilted to the left with the upright position a painful one, the left cervical paraspinal area was tender, plaintiff had atrophy of muscle in the left forearm and had weakness in the left triceps, finger extension, pronation and supination (left forearm), all the arm deep tendon reflexes were suppressed, plaintiff had decreased sensation in left thumb and in the right middle three digits, plaintiff is status-post discectomy at C6-7, he has not had complete resolution of his problem and he continues to show evidence of radiculopathy which is bilateral at C7 and on the left, antedating the second surgery, CS radiculopathy, plaintiff is completely disabled, the prognosis is very guarded, he is seeing Dr. _____ again, no doubt follow-up x-ray and perhaps MRI scanning will be done to determine the status of the C6-7 fusion and all nerve roots at the C5-6 and C6-7 levels.

4. The following is an additional expert: _____, P.E., C.S.P., Technical Medical Forensic Consultants, Inc., _____ Avenue, _____, New York, who will testify based on plaintiff's testimony, the reports of motor vehicle accident of _____ and _____, the apparatus accident report of Capt. _____, the summons report-court record examined by Capt. _____ and service by Firefighter First Grade _____, Police Accident Report No. 806 of the 79th Precinct prepared by Officer Wright, Summary of Court Action, City of New York Fire Department Repair Requisition No. 26 dated _____, 20_____, Fire Department Safety Bulletin No. 44 issued _____, 20_____, Fire Department All Units Circular No. 102 (R) dated _____, 20_____, Division of Training, Fire Department, City of New York, Uniform File System No 4.1.4, Lesson Plan, Subject: "Safety II - Reduction of Apparatus Accidents", Fire Department Safety Bulletin No. 1 issued _____, 20_____, Fire Department Safety Bulletin No. 6 revised

_____, 20_____, Fire Department Safety Bulletin No. 67 issued _____, 20_____, examinations before trial, and other evidence that according to police accident report Vehicle #1 is a 1986 GMC fire truck, plaintiff _____ is at position #6 and belted, defendant _____, driving a 1980 Chevrolet, 2-door, sustained left side damage, truck was southbound and Chevrolet was westbound, fire truck outline appears to have shaded front bumper on left side, according to EBT of plaintiff _____, rig was moving at 50 MPH, impact occurred on the “chauffeur’s side of the right, right in the front bumper”, he was looking out of the right window, he did not hear brakes, there were no seat belts, the car was going as fast as the rig, he was thrown forward, his left arm was on crash bar, right arm was on a piece of metal which was driven forward into his ribs and hand, left shoulder went into the crash bar, he hit left shoulder and head on left side of cab, he extended his right leg to a step and hurt it, rig stopped in the intersection, its front was in the beginning, just past the crosswalk, he felt braking, other car was on a two (2) way street, bill of particulars specifies as against NYC unsafe steering, no safety straps, bucket seats, did not stop before entering intersection against the light, violated “use of sirens” regulation, excessive speed, failed to slow injuries consisted in sore left scapula, fractured right wrist, bone chip right small knuckle, muscle pull left shoulder, sprained neck, sprained back, herniated disc C5-C6, plaintiff _____ is 5 feet 10 inches tall and weighs 185 pounds, plaintiff was seated facing to the rear of the vehicle, a frontal impact is indicated, this would initially push his head back against the seat-back, thereafter because of rebound his body would be propelled toward the rear of the vehicle, the bar on his left side was struck by his left shoulder, in addition his defense of extension of his right knee caused it to be dislocated apparently due to compression forces, his neck injury was due to the head impact and was also preventable by use of seat belts, the back injury is preventable by an automotive type 3-point lap/shoulder belt, this would have been the desired installation, without examination of this vehicle or an exemplar _____ is unable to say whether it was technologically feasible to install this type of belt at the seating location, however, installation of a simple lap belt would have presented no problem, the bar which was impacted thereby

causing the left shoulder injury was presumably installed to assist in entry and exit of the vehicle and as a hold-on during the ride to the fire (presumably to prevent ejection), its location as an entry/exit assist is clearly improper, in addition, this type of device should not be used as a hold-on to prevent ejection, quick release seat belts are much better suited for this purpose, in addition, seat belts would have prevented injuries resulting from fire truck impact with other vehicles and objects, the grab bar has no useful application during the crash because of the high forces generated and often serves to create unnecessary injuries, the mechanics of the right wrist fracture is not described, it appears to have been caused by the door bar, however, _____ is not clear as to its geometry with respect to the plaintiff's seating position, the "grab bar" on the left side of the plaintiff was incorrectly located, if intended as an entry/exit aid, this bar served no useful purpose during a crash, and as is evident in this case, will cause unnecessary injuries, this bar has very limited utility as a means of preventing ejection during the ride to the fire, however, a simple lap belt would better serve this purpose, and in addition, would prevent most crash injuries, a quick release lap belt or, if possible, a combination belt should have been installed at this seating position, the grab bar should have been removed, this would have prevented the left shoulder and knee injury, the right wrist fracture appears to have been caused by the door bar, pending examination of this installation, the preliminary opinion is that it should have been redesigned and/or relocated, neck injury is due to blunt trauma caused by failure to install a seat belt, proper cab design, including installation of seat belt, would have prevented all blunt trauma injuries.

5. Plaintiff has attached copies of the reports of Dr. _____ and Dr. _____ and the record of New York University Medical Center and the report of _____ P.E., C.S.P.

6. Plaintiff has attached duly executed written authorizations to enable defendants to inspect and obtain copies of the records of New York University Medical Center, Dr. _____, and Dr. _____.

[Indorsement, address, telephone number and verification]

Form 20

**Demand for Bill of Particulars in Automobile Accident Case Against Operator and
Automobile Manufacturer ***

[Caption]

PLEASE TAKE NOTICE, that pursuant to Rule 3042 CPLR, the defendants
_____ and _____ Motors Corporation, Formerly
_____ Corporation, s/h/a _____ Corporation hereby
demand that the plaintiff furnish said defendants with a written verified bill of particulars of his
claims against said defendants within thirty days after the service of this notice, specifying in
detail:

1. The date and approximate time of the occurrence.
2. The approximate location of the occurrence.
3. An itemized and detailed statement specifying in detail the acts or omission constituting the
negligence claimed.
4. Where notice of a condition is prerequisite, specify whether actual or constructive notice is
claimed.
5. If actual notice is claimed, a statement of when and to whom it was given, specifying in detail
that actual notice which the plaintiff alleges was given.
6. An itemized and detailed statement of each and every injury suffered by the plaintiff.
7. An itemized and detailed statement of each and every injury which the plaintiff alleges will be
permanent, specifying the character, degree and cause of the permanency
8. State the length of time the plaintiff was totally disabled.
9. State the length of time the plaintiff was partially disabled.
10. State the length of time the plaintiff was confined to the hospital.
11. State the length of time plaintiff was confined to bed.

* This form was provided courtesy of James A. Resila, Esq., carter, Conboy, Case, Napierski & Maloney, P.C., Albany, New York.

12. State the length of time the plaintiff was confined to house.
13. State the length of time plaintiff was incapacitated from employment.
14. An itemized and detailed statement specifying in detail each and every expense incurred or to be incurred, for (a) physicians' services (b) medical supplies (c) hospital expenses (d) nurses services and (e) other care or treatment rendered the plaintiff, further specifying the names and addresses of each and every person with whom such expense has been incurred or is to be incurred.
15. State the total amount claimed as special damages for loss of earnings, further specifying the plaintiff's business and/or occupation; name and address of employer; amount of wages and/or salary per day, week or month; length of time plaintiff was prevented from performing said business and/or occupation, further specifying the date the plaintiff returned to work.
16. Specify the particular sections of the (a) laws (b) statutes (c) ordinances (d) rules and (e) regulations which the plaintiff will claim defendant violated and in what respect, all as alleged in the complaint.
17. State the age and date of birth of each plaintiff.
18. If an action designated in subdivision (a) of Section 5104 of the Insurance Law for personal injuries arising out of negligence in the use and operation of a motor vehicle in the State of New York, an itemized and detailed statement specifying in detail each and every way in which it is alleged that plaintiff has sustained a serious injury as defined in subdivision (d) of Section 5102 of the Insurance Law.
19. If an action designated in subdivision (a) of Section 5104 of the Insurance Law for personal injuries arising out of negligence in the use and operation of a motor vehicle in the State of New York, an itemized and detailed statement specifying in detail each and every way in which it is alleged that plaintiff has sustained economic loss greater than basic economic loss as defined in subdivision (a) of Section 5102 of the Insurance Law.

20. Describe in detail each and every way in which the plaintiff alleges the defendants were otherwise reckless, careless and negligent at those times mentioned and described in the plaintiff's complaint.

21. Describe in detail each and every way in which the plaintiff alleges he was otherwise injured and damaged by reason of those matters mentioned and described in the plaintiff's complaint.

[Indorsement, address and telephone number]

Form 21

Verified Bill of Particulars in Automobile Accident Case Against Operator and Automobile Manufacturer *

[Caption and introductory paragraph]

1. The accident occurred on _____, 20_____, at about 5:10 p.m.
2. The accident occurred on Route _____ about one-tenth of a mile north of _____ Road in the Town of _____, _____ County, New York.
3. The defendants were negligent in operating their motor vehicle at a high and dangerous rate of speed under the prevailing conditions; in failing to keep their said motor vehicle under proper control; in failing to keep a proper lookout on the road ahead; in failing to observe or take notice of the plaintiff's vehicle upon the highway; in failing to properly apply the braking mechanism, the steering mechanism and any other system of said motor vehicle so as to avoid striking and colliding into plaintiff's automobile; in failing to be alert to conditions upon the roadway; in operating defendants' motor vehicle at such a rate of speed that it could not be stopped within the visible area of the road ahead of it and the defendants were otherwise negligent.
- 4, 5. Notice is not applicable.
6. The plaintiff sustained the following injuries:

* This form was provided courtesy of James A. Resila, Esq., carter, Conboy, Case, Napierski & Maloney, P.C., Albany, New York. This verified bill of particulars is in response to the preceding demand in Form 16.

UNCONSCIOUSNESS FOR SIX DAYS:

BRAIN INJURY, INCLUDING INJURY TO BRAINSTEM AND

PARENCHYMAL HEMORRHAGES IN THE RIGHT FRONTAL OCCIPITAL AND PARIETAL REGIONS;

RIGHT PARENCHYMAL HEMORRHAGE WITH EDEMA AND VENTRICULAR SHIFT FROM RIGHT TO LEFT;

UNILATERAL DECEREBRATION ON THE LEFT WITH RIGHT HEMISPHERE INTRAPARENCHYMAL HEMORRHAGE;

LEFT HEMIPARESIS;

HEMATOMA ON RIGHT FRONTAL PORTION AND OCCIPITAL REGION OF HEAD;

LACERATION OF RIGHT SHOULDER;

LEFT SIDED WEAKNESS;

TRACHEOSTOMY;

SPEECH DEFECT SECONDARY TO BRAIN INJURY;

SEVERE MEMORY LOSS;

PERSONALITY CHANGE;

INAPPROPRIATE VERBAL RESPONSES;

DECREASED POWER IN ALL EXTREMITIES, DECREASED EXTENSION ALL EXTREMITIES, SECONDARY TO BRAIN INJURY, PARTICULARLY RIGHT SHOULDER AND LEFT LEG;

WEAKNESS IN RIGHT DELTOID AREA, INABILITY TO MOVE RIGHT SHOULDER;

DIFFICULTY IN WALKING WITH BALANCE UNCERTAIN, LACK OF COORDINATION;

CAT SCAN REVEALED INCREASED SUB-ARACHNOID

BLOOD LOCATED IN THE INFERIOR HEMORRHAGIC

FISSURE AS WELL AS IN THE SULCI OF THE FRONTAL, OCCIPITAL AND PARIETAL LOBES;

SEVERE HEADACHES;

CONTINUAL APPREHENSION;

ATAXIA;

SEVERE DEPRESSION WITH SUICIDAL IMPULSES;

LOSS OF SENSE OF SMELL.

7. Upon information and belief, all of the injuries set forth in paragraph "6" are permanent and the plaintiff will continue to suffer from same in varying degrees.

8. Plaintiff was totally disabled for at least nine (9) months.

9. Plaintiff is partially disabled to date and continuing.

10. Plaintiff was confined to hospitals for four (4) months.

11. Plaintiff was confined to bed, including hospital confinement, for approximately four and one-half months.

12. Plaintiff was confined to home for two (2) months. He was able to leave the home only with the attendance of others.

13. Plaintiff was a student at _____ School and was incapacitated for nine (9) months from school.

14. Plaintiff is obtaining the various bills for medical expenses and will provide amounts as soon as possible. Cost of treatment exceeds \$50,000. Treatment is ongoing.

15. Not applicable.

16. The complaint does not allege a statutory violation. Should it be discovered that defendants violated any applicable statute, etc., the Court will take judicial notice thereof.

17. Plaintiff is now 19 years of age. He was born on _____,
20_____.

18. See paragraph "6" above for itemization of serious injuries.

19. See paragraph "14" above.

20. See paragraph "3" above.

21. See paragraph "6" and "14" above.

[Indorsement, address and telephone number]

Form 22

Demand for Bill of Particulars in Automobile Accident Case Against Automobile Dealership and Employees

PLEASE TAKE NOTICE, that pursuant to Rule 3042 CPLR, the defendants _____ and _____ Corporation, hereby demand that the plaintiff furnish said defendants with a written verified bill of particulars of his claims against said defendants within thirty days after the service of this notice, specifying in detail the following:

1. State the date and time of day of the occurrence.
- 2a. State the exact location of the occurrence.
- 2b. If the occurrence took place of premises, set forth the location therein giving floor number and location thereon, so as to be readily identified; if upon a sidewalk or exterior of premises, the distance from the curb and building line and other fixed object.
3. If an automobile accident, state the street or streets, including reference to intersections, crosswalks, corners or curbs, where necessary to accurately locate the place; and the direction in which each vehicle involved was traveling.
4. State how it is claimed the accident occurred.
5. State all the acts and/or omissions constituting the negligence claimed.
6. State any and all laws, rules, regulations and ordinances that are claimed to be either applicable to the occurrence or to have been violated by the defendant(s).
- 7a. If actual notice is claimed, state when, where and to whom such notice was given and whether such notice was oral or in writing.

7b. If it is claimed that constructive notice is chargeable to the defendant(s), state exactly how long it is claimed the dangerous condition existed prior to the time of the accident.

8. State nature and extent of all injuries claimed.

9. Specify those claimed to be permanent.

10. Accurately state length of time confined to bed.

11. Accurately state length of time confined to home.

12. State name of each and every hospital, clinic, or institution where any treatment or examination was rendered and length of time, if any, confined there. If not confined to any hospital, etc., so state.

13. If it is claimed the plaintiff(s) was treated by a physician other than one at the hospital and/or clinic, give the name of said physician and his address. Accurately state the number of visits it is claimed the plaintiff(s) made to each of the physicians, if any, specified above.

14. Does the plaintiff(s) claim that there were any witnesses to the accident?

15. State nature of employment.

16. State name and address of employer.

17. State length of time incapacitated from employment.

18. State the nature and/or type of work customarily performed by the plaintiff(s).

19. If self-employed, state nature of self-employment and business address.

20. State total amount claimed as loss of earnings, including detailed statement as to how such lost earnings were computed.

21. If the plaintiff(s) was a student, give the name and address of the school attended, at or about the time of the accident, and accurately state the length of time incapacitated from attending said school.

22. State the total amounts claimed as special damages for:

a. Physicians' expenses.

b. Medical expenses

c. Nurses' expenses

d. Hospital expenses

e. Any other expenses which it is claimed resulted from this occurrence.

23. State the residence address of the plaintiff(s) and date of birth of the plaintiff(s).

24. If this accident involves an automobile(s), give the year, make and model of each vehicle involved.

25. If a claim for property damage is being asserted, accurately state cost of property alleged to have been damaged and its value before and after the occurrence.

26. Itemized list of the property damage claimed, including the cost of repairing and each and every item.

27. In what respect plaintiff has sustained a serious injury, defined in subdivision four of section fifty one hundred and two of the insurance law, or economic loss greater than basic economic loss, as defined in subdivision one of section fifty one hundred and two of the insurance law.

28. What part of the defendant's automobile is claimed struck the plaintiff.

29. If loss of services is claimed, the pecuniary loss alleged and in what respects there was a loss of services and/or consortium, and amount claimed for medical or other expenses as a result thereof.

30. (a) The date, time and place of the making of the alleged contract.

(b) Whether oral or written:

(i) If oral, set forth the substance thereof.

(ii) If written, set forth a copy thereof.

(c) The name of the person entering into the alleged contract on behalf of the plaintiff.

(d) The name of the person entering into the alleged contract on behalf of the defendant.

(e) Each and every act constituting the performance by the plaintiff.

(f) The consideration for the alleged contract.

(g) List each item of damage resulting from the alleged breach with the amount thereof.

(h) List any other damages general or special which it is claimed resulted from the alleged breach.

(i) The date, time and place of the alleged breach.

PLEASE TAKE FURTHER NOTICE, that if the above demands are not complied with within the next ten days, an application will be made to preclude the plaintiff(s) from giving any evidence thereof upon the trial of this action, pursuant to the aforementioned rules.

[Indorsement, address and telephone number]

Form 23

Statement of Items of Account

SUPREME COURT, _____ COUNTY

Statement of Items of Account

[Title of cause]

Index No. _____ [if assigned]

_____ [name of defendant],

In account with _____ [name of plaintiff].

Debit

_____ 5.

January 29,

Cash

February 26,

Cash

July 31,

Cash

Total

Credit

June 19,

By cash

Balance

PLEASE TAKE NOTICE that the above is an itemized copy of the account relied on in this action, which is hereby served on you pursuant to your demand of _____,

20_____.

Dated _____, 20_____.

Attorney for Plaintiff

Office and Post Office Address

Telephone No.

To _____

Attorney for Defendant

Form 24

Verification by Party of Copy of Items of Account

STATE OF NEW YORK

COUNTY OF _____

SS

_____, being duly sworn, deposes and says he is the plaintiff in the above entitled action; he has read the foregoing copy of the items of the account alleged in the complaint; said copy of the items of the account is true to the knowledge of deponent, except as to the items therein stated upon information and belief, and as to those items he believes it to be true.

[Print signer's name below signature]

Form 25

Verification by Agent or Attorney of Copy of Items of Account

STATE OF NEW YORK

COUNTY OF _____

ss

_____ being duly sworn deposes and says: I am the attorney for the plaintiff in the above entitled action; the reason why this verification is made by me and not by plaintiff is that plaintiff is not at the present time within _____ County, the County where I have my office; the above copy of the items of the account alleged in the complaint is true to my knowledge, except as to the items therein stated to be on information and belief, and as to those items I believe it to be true. The grounds of my belief are statements made to me by plaintiff, correspondence between plaintiff and defendant, my general investigation of the facts of this case, and my comparison of the items of account with the plaintiff's books of account.

[Signature]

[Print signer's name below signature]

[Jurat]

Form 26

Body of Notice of Motion for Further Bill of Particulars

PLEASE TAKE NOTICE that upon the annexed demand for a bill of particulars of items alleged generally in a complaint dated the _____ day of _____, 20_____, a copy of the bill of particulars served pursuant thereto and dated the _____ day of _____, 20_____, and upon the annexed affidavit of

_____, sworn to the _____ day of _____, 20_____, and upon all the pleadings and papers heretofore had and filed herein, a motion will be made at a Motion Term of this court to be held in and for the County of _____, at the County Courthouse in the City of _____, on the _____ day of _____, 20_____, at _____ o'clock in the _____ noon of that day or as soon thereafter as counsel can be heard for an order directing the plaintiff to furnish the defendant with a further bill of particulars of _____ [state items as to which further particularization is desired] together with such other and further relief as may be just and proper, with the costs of this motion.

Form 27

Body of Order Directing Further Bill of Particulars

A motion having been made by the defendant herein for an order directing the plaintiff to furnish a bill of particulars and said motion having regularly come on to be heard,

NOW, on reading and filing the notice of motion herein, dated the _____ day of _____, 20_____ with proof of due service thereof, the affidavit of _____, sworn to the _____ day of _____, 20_____, and upon the order of this court dated the _____ day of _____, 20_____, the copy of the bill of particulars verified by the plaintiff the _____ day of _____, 20_____, and on the pleadings and all papers and proceedings in this action, and after hearing _____, attorney for the defendant in support of said motion and _____, attorney for the plaintiff in opposition thereto,

NOW, upon motion of _____, attorney for the defendant, it is

ORDERED that the plaintiff, within _____ days after the service of a copy of this order with notice of entry thereof on the attorney for the plaintiff, serve on the attorney for the defendant a further bill of particulars of the following items:

(1) a statement of _____ [as “the name and address of the plaintiff’s employer at the time of the accident”].

(2) a statement of _____ [as “the length of time the plaintiff will claim he was confined to the hospital, to his bed, and to his home”], and it is further

ORDERED that further proceedings on the part of the plaintiff, be and the same are hereby stayed until the service of said further bill of particulars, and it is further

ORDERED that the defendant recover of the plaintiff \$10.00 cost of this motion.

Form 28

Demand for Verified Bill of Particulars in Action On Account Stated for Goods, Services and Wares Delivered *

[Caption]

PLEASE TAKE NOTICE, that you are hereby required to serve upon us within thirty (30) days from the date of service of this Demand, a Verified Bill of Particulars of the matters alleged in the Complaint, giving:

1. An exact statement of the request or special instance made by the defendants as alleged in paragraph 3. If oral, to whom made, by whom made, when and where made, and the gist of said instance. If in writing, please attach a copy thereof.

* This form was submitted courtesy of Cummings, McGuire, Dunkel & Company, Lowville, New York. CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

2. The certain goods and wares and services alleged to have been engaged for, giving a full description thereof, including, if a food product, the exact ingredients by name, nomenclature, percentage of content, and if minerals are included, the source of said minerals.
3. Set forth the agreed upon price and the terms thereof. Again, if in writing, please produce a copy thereof. If oral, to whom made, by whom made, when made, where made, and the gist of said oral statement.
4. An itemized statement of the times when and the place where and to whom delivery of such goods, wares and services were made, and a statement as to whether there was a change in the quantity, quality, ingredients of any of the materials so delivered.
5. Copies of the alleged accounts stated.
6. Copies of any written documents indicating an objection by the defendants to the goods, wares, and services allegedly delivered by the plaintiff to the defendants by the defendants during the period _____, 20_____ through _____, 20_____.
7. A statement by the plaintiff as to when it is alleged that an account was stated and agreed to between the plaintiff and defendants as alleged in paragraph 5.

PLEASE TAKE FURTHER NOTICE, that in the event of your failure to serve a Verified Bill of Particulars as herein demanded, a motion therefore, or for a preclusion order, will be made in accordance with the provisions of CPLR 3041 to 3044, inclusive.

[Indorsement, address, telephone number and verification]

Form 29

Verified Bill of Particulars in Action On Account Stated for Goods, Services and Wares Delivered *

[Caption and introductory paragraph]

* This form was submitted courtesy of Cummings, McGuire, Dunkel & Company, Lowville, New York. CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified.

1. Requests for the delivery of individual items were made by the defendants or on behalf of the defendants orally. No writing from the defendants are known at the present time.
2. In response to the defendants' demand for bill of particulars, paragraphs "2", "3", "4", "5" and "6", are attached copies of monthly bills and copies of invoices representing invoices for goods, wares and materials sold, the subject of this litigation and monthly statements showing the amounts owed by the defendants, payments and balances covering the periods the subject of this litigation.
3. Statements of account were made between the plaintiff and the defendants monthly by the mailing of accounts monthly from the plaintiff to the defendants.
4. In response to paragraph "6" of the defendants' demand for bill of particulars, it is acknowledged by the plaintiff that verbal complaints were made by the defendants to the plaintiff regarding the goods, wares and materials delivered. However, the existence of any written notices of objections or claim other than those involved in this litigation are unknown to the plaintiff.
5. In partial answer to paragraph "4" of the defendants' demand for bill of particulars, it can be seen from the attached copies that items delivered varied from paper products to insulation to cattle feed to soda, lime, plumbing parts, hedge shears, etc. A quantity of these items would of course vary. The quality as alleged by the plaintiff was always the same, good. The ingredients of the various deliveries must vary since the items delivered vary.

[Indorsement, address, telephone number and verification]

Form 30

Demand for Bill of Particulars in Action Against Attorney for Negligent Execution of Decedent's Will *

[Caption]

* This form was submitted by Howard Garfinkel, Esq., Lauterbach and Garfinkel, Yonkers, New York. CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

PLEASE TAKE NOTICE that the defendant hereby demands that you serve upon the undersigned, within thirty (30) days after the date of the service of this demand, a bill of particulars of the complaint in which there shall be stated and set forth the following:

1. With respect to the paragraph numbered THIRD, state where in the County of _____ plaintiff _____ resides.

2. With respect to the paragraph numbered FIFTH, state:

(a) when the decedent, _____, employed and engaged the defendant as alleged in said paragraph;

(b) where the decedent so employed the defendant;

(c) who on the part of the decedent so employed the defendant; and

(d) whether said employment was oral or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

3. With respect to the paragraph numbered SIXTH, state:

(a) when the defendant accepted the retainer and undertook the employment as alleged in said paragraph;

(b) who on the part of the defendant accepted such retainer and undertook such employment; and

(c) whether the defendant accepted said retainer and undertook said employment orally or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

4. With respect to the paragraph numbered EIGHTH, state:

(a) how the defendant knew that the primary object of the decedent's bounty was plaintiff _____;

(b) when the defendant obtained such knowledge;

(c) from whom the defendant obtained such knowledge; and

(d) whether the defendant received and obtained such knowledge orally or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

5. With respect to the paragraph numbered NINTH, state how the defendant caused _____ to act as a witness as alleged in said paragraph and whether the defendant did so orally or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

6. With respect to the paragraph numbered ELEVENTH, state:

(a) when the defendant gave the direction alleged in said paragraph;

(b) where the defendant gave said direction;

(c) who on the part of the defendant gave such direction;

(d) to whom the defendant gave said direction; and

(e) whether the defendant gave said direction orally or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

7. With respect to the paragraph numbered THIRTEENTH, state the value of the residual legacy alleged therein, setting computation thereof by item and dollar amount.

8. With respect to the paragraph numbered FOURTEENTH, state:

(a) when, by date, between _____, 20_____ and _____, 20_____, the defendant performed "various legal services" for the decedent as alleged in said paragraph; and

(b) each such legal service allegedly performed by the defendant for the decedent, specifying the same with sufficient particularity so as to make the same identifiable.

9. With respect to the paragraph numbered FIFTEENTH, state when (i) _____ and (ii) _____ died as alleged in said paragraph.

10. With respect to the paragraph numbered NINETEENTH, state:

- (a) when the agreement of retainer alleged in said paragraph was made;
- (b) who on the part of the decedent entered into such agreement;
- (c) who on the part of the defendant entered into said agreement; and
- (d) whether said agreement was oral or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

11. With respect to the paragraph numbered TWENTIETH, state:

- (a) when the defendant held himself out to be an expert as alleged in said paragraph;
- (b) where the defendant so held himself out;
- (c) to whom the defendant so held himself out; and
- (d) whether such holding out was oral or in writing; if oral, or partly oral, set forth the substance thereof; if in writing, or partly in writing, set forth a copy thereof.

12. With respect to the paragraph numbered TWENTY-SECOND, state how each of the plaintiffs have been damaged as alleged in said paragraph, specifying the same with sufficient particularity so as to make the same identifiable.

[Indorsement, address and telephone number]

Form 31

Verified Bill of Particulars in Action Against Attorney for Malpractice in Connection with Alleged Negligent Preparation and Execution of Decedent's Will *

[Caption and introductory paragraph]

1. Plaintiff _____ resides at _____ Avenue,
_____, New York

2. (a) On information and belief, in the month of _____, 20_____.

(b) By telephone to defendant.

* This form was submitted by Howard Garfinkel, Esq., Lauterbach and Garfinkel, Yonkers, New York. CPLR 3044 requires that, if a pleading is verified, a subsequent bill of particulars must also be verified. Further, a bill of particulars of any pleading with respect to a cause of action for negligence must always be verified.

(c) Defendant orally agreed to prepare decedent's Will.

(d) On information and belief, decedent orally conveyed her wishes to defendant at decedent's home.

2. (a) _____, 20_____.

(b) Decedent's home.

(c) Defendant orally agreed to prepare decedent's will.

4. (a) By provisions of the Will defendant drafted, and information conveyed to plaintiff _____ by decedent.

(b) At meeting with decedent.

(c) Decedent.

(d) Orally - See above.

5. Plaintiff _____ was told to come to decedent's house pursuant to instructions decedent received from defendant.

6. (a) At date and time of Will signing.

(b) At decedent's home.

(c) Defendant.

(d) _____.

(e) Orally - Defendant told _____ he does not sign as a witness.

7. In the month of _____, 20_____ a contract was signed to sell decedent's realty for \$115,000.00, and that constitutes the residual estate. There are legacies which must be paid totaling \$6,000.00, and the attorney's fees and executor's commissions are estimated at \$10,000.00. The funeral expense was approximately \$3,700.00, so that the net distributable residual estate will be \$95,300.00.

8. (a) In _____, 20_____ and thereafter.

(b) Landlord-Tenant matter in _____, 20_____.

9. (i) _____, 20_____

(ii) _____, 20_____

10. (a) _____, 20_____

(b) Decedent.

(c) Defendant.

(d) Oral - See above.

11. (a) On information and belief, defendant advised decedent he would draw a Will in accordance with decedent's wishes.

(b) At his office and in decedent's home.

(c) Decedent.

(d) Oral.

12. Plaintiffs have been damaged in that plaintiff _____ was caused to lose her residual legacy under the laws of the State of New York, since she had to give her testimony as a subscribing witness in order that the Will be admitted to probate. Plaintiff Estate of _____ stands in the shoes of the decedent, _____, and the defendant thwarted the wishes of decedent by virtue of defendant's negligence, malpractice and breach of contract, all as alleged in the Complaint herein; the decedent's estate will not be distributed in accordance with her expressed wishes.

[Indorsement, address, telephone number and verification]

Form 32

Demand for Bill of Particulars in Action Alleging Negligence Against Defendant Lawyers and Law Firm for Personal Injuries Suffered As a Result of Defendants Having Compelled Plaintiff's Attendance in Court By Service of Judicial Subpoena *

[Caption]

* This form was submitted courtesy of Mulholland, Minion and Roe, Williston Park, New York. CPLR 3042 was amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 3041, 3042, 3043 and 3044, you are hereby required to serve a verified bill of particulars upon the undersigned within thirty (30) days after receipt of this demand, setting forth the following:

1. The address and residence of the plaintiff pursuant to Rule 3118 CPLR; the age of plaintiff; the Social Security number of plaintiff.
2. The date and approximate time of the occurrence.
3. The place or a description of the place where the alleged incident occurred.
 - (a) State specifically the defect or dangerous condition alleged to have existed.
 - (b) If a staircase, state the step or other precise location of the alleged defect.
 - (c) If a defect or dangerous condition is claimed, state whether the defect or dangerous condition is one of maintenance or of construction or structural in nature.
 - (d) If the claim is one of defective equipment, state specifically the equipment and its condition which is claimed to be defective or dangerous.
4. The ways, respects and manner in which the defendant was guilty of any negligence, passive or active, which caused or contributed to the alleged injuries or property damage.
5. What duty or duties, if any, it is claimed that the defendant owed to plaintiff at the time and place, and on the occasion referred to, which the defendant omitted to do and perform, which caused the accident, the injuries complained of herein, or the property damage.
6. If any statute, ordinance or regulation is alleged to have been violated, state the particular chapter and section of said statute, ordinance, or regulation and in what manner defendant violated it.
7. State the length of time plaintiff was confined to:
 - (a) Hospital
 - (b) Bed
 - (c) House
 - (d) Incapacitated from employment, household duties or school.

8. Where notice of a condition is a prerequisite to defendant's liability, state whether actual or constructive notice is claimed.

(a) If actual, state when and to whom such notice was given, and whether written or oral.

(b) If constructive notice is claimed, state the length of time the condition is alleged to have existed.

(c) State the name and address of notice witnesses, if any, or if none, so state.

9. The nature, location, extent, duration, and effects of each and every injury or property damage claimed to have been sustained, and a description of those claimed to be temporary and those claimed to be permanent, and as to those claimed to be temporary, the duration of time such temporary injuries continued.

10. An itemized statement of damages claimed for:

(a) Doctor's services

(b) Medicines

(c) Nurses' services

(d) Hospital expenses

(e) Loss of earnings, stating name and address of employer or business

(f) X-rays

(g) Any other items of special damage, including loss of services.

11. State with particularity the ways, respects and manner in which it will be claimed that the defendants compelled the plaintiff's attendance in Court at a time when his presence was unnecessary.

12. State with particularity the ways, respects and manner in which it will be claimed that the defendants compelled the plaintiff's attendance in Court contrary to medical advice.

13. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to heed medical advice, including what actual notice they allegedly had of same.

14. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to take steps and measures in a timely and reasonable manner as would have avoided the occurrence made the subject of this Complaint.

15. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to provide for the safety of the plaintiff.

16. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to provide the necessary assistance to the plaintiff.

17. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to provide a proper escort.

18. State with particularity the ways, respects and manner in which it will be claimed that the defendants failed to take measures and precautions that would have otherwise prevented this occurrence.

PLEASE TAKE FURTHER NOTICE that upon failure of the plaintiff to comply with this demand within the time specified, defendant will move for an order of preclusion, precluding the plaintiff from presenting any evidence at the trial of this action as to any of the items for which a bill of particulars has been demanded, with costs.

[Indorsement, address and telephone number]

Form 33

Demand For Bill of Particulars in Action Against Accounting Firm For Negligence and Professional Malpractice Whereby Defendants' Misrepresentation of Financial Condition of Company Induced Plaintiffs to Further Extend Credit to Company *

[Caption]

* CPLR 3042 was been amended by L. 1994, c. 562 to provide that, for actions commenced on or after January 1, 1995, the party on whom a demand for a bill of particulars is made is required to serve a bill of particulars within 30 days of service of the demand. Actions commenced prior to January 1, 1995 are governed by the provisions of CPLR 3042 then in effect.

PLEASE TAKE NOTICE, that pursuant to C.P.L.R. 3041 to 3044, plaintiff(s) are required to serve upon the undersigned, within 30 days hereof, a verified Bill of Particulars Concerning the following matters:

1. With respect to the allegations contained in paragraph "11" of the complaint, state whether it will be claimed that when _____ Textile Corporation "retained" the defendants, _____ & Company, _____ and _____, it was by writing or whether it was oral.

a. If in writing, set forth a full true and complete copy;

b. If oral, set forth the following:

1. On what date were the defendants, "retained";

2. Where was said retainer entered into;

3. Who acted on behalf of each party;

4. Set forth with particularity the terms and conditions of said retainer; and;

5. Identify the individual representative of _____ Textile Corp. who "retained" the defendants.

c. Specify for what period of time the defendants, _____ & Company, _____ and _____, were "retained" for;

d. Detail with specificity each and every accounting and auditing service that the defendants, _____ & Company, _____ and _____, were "retained" to perform;

e. State the amount of compensation to be paid the defendants, _____ & Company, _____ and _____, specifying the period of time in which payments were made.

2. With respect to the allegations contained in paragraph "15" and "27" of the complaint, state whether it will be claimed that, when each of the plaintiffs "relied" on the defendants, _____ & Company, _____ and _____, it was by writing or whether it was oral.

a. If in writing, set forth a full true and complete copy for each plaintiff.

b. If oral, set forth the following:

1. On what date was the reliance upon the defendants, _____ & Company, _____ and _____, established for each plaintiff;
2. Where was said reliance established for each plaintiff;
3. Who acted on behalf of each party; for each plaintiff;
4. Set forth with particularity all of the terms and conditions of said reliance for each plaintiff; and
5. Identify the individual representatives of each of the plaintiffs who established the reliance with the defendants.

c. Specify for what period of time the defendant, _____ & Company, _____ and _____, was being relied upon by each plaintiff.

d. Detail with specificity each and every accounting and auditing service that the defendants, _____ & Company, _____ and _____, were being relied upon by the plaintiffs to perform.

e. State the amount of compensation, if any, to be paid the defendants, _____ & Company, _____ and _____, by each of the plaintiffs, specifying the period of time in which payments were made.

3. With respect to the allegations contained in paragraph “13” of the complaint, give the following particulars:

- a. Define what the term “sound financial condition” means;
- b. Define what the term “working capital” means;
- c. Define what the term “positive net worth” means;

d. After the above definitions have been detailed, then detail with specificity as to how the plaintiffs arrive at working capital in excess of \$600,000 and positive net worth in excess of \$500,000.

4. With respect to the allegations contained in paragraph "14" of the complaint, give the following particulars:

a. State with specificity as to how each of the plaintiffs received the 1990 financial statements and defendants' opinion.

b. State with specificity as to which person(s) sent to each of the plaintiffs the 1990 financial statements in defendants' opinion.

c. State with specificity as to which individuals that each of the plaintiffs had requested the 1990 financial statements and defendants' opinion from.

5. With respect to the allegations contained in paragraph "15" of the complaint, give the following particulars:

a. State with specificity as to what reliance was placed on defendants' opinion concerning the audited 1990 financial statements.

b. State with specificity what factoring arrangements had been made with the plaintiffs' various clients.

c. State with specificity as to what continued extension of credit was given to _____ Textile Corp.

6. With respect to the allegations contained in paragraph "16" of the complaint, state with specificity as to what representations had been made by _____ with reference to _____ Textile Corp.'s financial condition.

7. With respect to the allegations contained in paragraph "20" of the complaint, give the following particulars:

a. State with specificity as to what substantial discrepancies and misrepresentations were present in the 1990 financial statements.

- b. State with specificity as to what non-conformities with generally accepted accounting principals had been determined in reference to the 1990 financial statements.
- c. Set forth in detail what steps were taken to ascertain the items contained in a, b, c and d of paragraph "20" of the complaint.
8. With respect to the allegations contained in paragraph "21" of the complaint, set forth in detail the agreement between _____ Textile Corp., _____ and _____ Textile's Corp.'s creditors.
9. With respect to the allegations contained in paragraph "25" of the complaint, give the following particulars:
- a. Set forth in detail the accounts payable and other liabilities of _____ Textile Corp. that was understated and by how much, and how certain of _____ Textile Corp.'s assets, including income and net worth were grossly overstated and by how much.
- b. State with specificity as to what representations were made by defendants regarding the 1990 financial statements that had been recklessly made and known to be false.
- c. State with specificity as to how the 1990 financial statements had been blatantly misrepresented.

[Indorsement, address and telephone number]

Form 34

Body of Order Granting Motion Precluding Evidence on Behalf of Plaintiff

A motion having been regularly made by the defendant above named to preclude the plaintiff from giving testimony at the trial of this action, in relation to the allegations contained in the paragraphs of the complaint numbered _____ and _____ of the complaint, because of failure of the plaintiff to comply with the order of this court to furnish a verified bill of particulars as to said allegations, and said motion having come on regularly to be heard,

Now, on reading the summons and complaint and answer duly filed in the office of the clerk of the County of _____, the order of this court duly filed in the office of the clerk of the County of _____ on the _____ day of _____, 20 _____, and upon reading and filing the notice of motion and the affidavit of _____, sworn to the _____ day of _____, 20 _____, with due proof of service of said motion, and on reading and filing the affidavit of _____, sworn to the _____ day of _____, 20 _____, in opposition thereto, and after hearing _____, attorney for the plaintiff in opposition thereto, and due deliberation having been had, it is, on motion of _____, attorney for the defendant, hereby

ORDERED, that the plaintiff be and hereby is precluded from giving any testimony upon the trial of this action in relation to the allegations contained in the paragraphs of the complaint herein marked _____ and _____, and it is

ORDERED, that this order shall be effective unless the plaintiff herein, within _____ days after the service of this order upon his attorney, with notice of entry thereof, serve on the attorney for the defendant a proper bill of particulars in accordance with the order of _____, 20 _____; and it is

ORDERED, that the plaintiff pay to the defendant ten dollars costs of this motion.

Form 35

Affidavit to Obtain Order to Show Cause Why Preclusion Order Should Not Be Granted Because of Insufficiency of Bill of Particulars

[Caption and introductory paragraph]

1. He is an attorney at law and a member of the firm of _____, attorneys for the plaintiff herein.

2. There are two causes of action herein; the first cause of action is for moneys had and received by the defendant to and for the use and benefit of the plaintiff, and the second cause of action is for the conversion of the same moneys.

3. On _____, 20_____, after joinder of issue, an order was duly granted by this court whereby the defendant was required to serve a verified bill of certain specified particulars within _____ days after service of a copy of said order with notice of entry thereof. A copy of this order is annexed hereto and made a part hereof.

4. A copy of this order with notice of entry was served on the plaintiff's attorney on _____, 20_____, as more fully appears from the affidavit of _____ annexed hereto and made a part hereof.

5. On _____, 20_____, the defendant served on the plaintiff's attorney a so-called bill of particulars dated the _____ day of _____, 20_____ a copy of which is annexed hereto and made a part hereof.

6. The particulars as to which deponent believes that defendant's said bill was inadequate, are _____ [show wherein bill of particulars is defective or insufficient].

7. Unless a further bill of particulars is served as required herein or the plaintiff is precluded from giving evidence of such items the defendant will be unable to defend the said action and will be irreparably damaged in being compelled to meet claims of the plaintiff as to which he has not been fully advised.

8. No previous application has been made for this order or for a similar order.

9. The reason an order to show cause is sought is that the plaintiff cannot proceed by an eight-day notice of motion for the reason that _____.

An order is asked requiring the defendant to show cause why an order should not be entered precluding it from giving any evidence on the trial in support of the allegation or matters set forth

in its answer or counterclaim, as to which it has failed to give the particulars required by the said order of _____, 20_____.

[Print signer's name below signature]

Address

Telephone No.

[Jurat]

Form 36

Body of Order Granting Motion Precluding Evidence on Behalf of Defendant as to Certain Matters as to Which Bill of Particulars Defective

The plaintiff having moved this court for an order precluding the defendant from giving any evidence on the trial in support of the allegations or matters set forth in its answer as to which it had failed to give the particulars required by the order of this court dated _____, 20 _____, and said motion having duly come on to be heard,

Now, on reading and filing the plaintiff's notice of motion, dated _____, 20 _____, with proof of due service thereof, the affidavit of _____, sworn to _____, 20 _____, the defendant's bill of particulars, served _____, 20 _____, and upon the order herein dated _____, 20 _____, and upon the pleadings and upon all proceedings heretofore had herein, all submitted in support of the plaintiff's motion; and after hearing _____, of counsel for the plaintiff, in support of said motion, and _____, of counsel for the defendant, in opposition thereto, and due deliberation having been had, it is

ORDERED that the plaintiff's motion to preclude the defendant from giving any evidence on the trial with respect to the allegations or matters contained in the answer, is granted in the following respects:

1. The plaintiff's motion to preclude the defendant from giving any evidence on the trial with respect to the allegations contained in paragraph _____ of the answer, is granted, unless on or before _____, 20 _____, the plaintiff serve upon the defendant a further bill of particulars, specifying with respect to said paragraph _____ whether the agreement alleged therein was oral or in writing; if oral, the time and place of the making of the same, and the names of the officers or representatives by whom the parties to the agreement acted in making the same; if in writing setting forth copies of all writings claimed to constitute such agreement, and if neither oral nor in writing, then setting forth what the defendant intends to rely upon at the trial in support of such allegations.

2. The defendant is precluded from giving any evidence on the trial with respect to the following allegation or matter contained in paragraph _____ of the answer: _____; and it is further

ORDERED that the defendant have leave to serve a further bill of particulars in compliance with the order of the court within fifteen days after service upon the plaintiff's attorney of a copy of this order with notice of entry thereof, and with leave, in the event that the plaintiff has served a proper bill to move to be relieved from this order of preclusion; and it is further

ORDERED that the plaintiff pay to the defendant \$10 costs of this motion.

New York Consolidated Laws Service

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