

NY CLS CPLR R 3043

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New York

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

R 3043. Bill of particulars in personal injury actions

(a) Specified Particulars. In actions to recover for personal injuries the following particulars may be required:

- (1)** The date and approximate time of day of the occurrence;
- (2)** Its approximate location;
- (3)** General statement of the acts or omissions constituting the negligence claimed;
- (4)** Where notice of a condition is a prerequisite, whether actual or constructive notice is claimed;
- (5)** If actual notice is claimed, a statement of when and to whom it was given;
- (6)** Statement of the injuries and description of those claimed to be permanent, and in an action designated in subsection (a) of section five thousand one hundred four of the insurance law, for personal injuries arising out of negligence in the use or operation of a motor vehicle in this state, in what respect plaintiff has sustained a serious injury, as defined in subsection (d) of section five thousand one hundred two of the insurance law, or economic loss greater than basic economic loss, as defined in subsection (a) of section five thousand one hundred two of the insurance law;
- (7)** Length of time confined to bed and to house;
- (8)** Length of time incapacitated from employment; and

(9) Total amounts claimed as special damages for physicians' services and medical supplies; loss of earnings, with name and address of the employer; hospital expenses; nurses' services.

(b) Supplemental Bill of Particulars Without Leave. A party may serve a supplemental bill of particulars with respect to claims of continuing special damages and disabilities without leave of court at any time, but not less than thirty days prior to trial. Provided however that no new cause of action may be alleged or new injury claimed and that the other party shall upon seven days notice, be entitled to newly exercise any and all rights of discovery but only with respect to such continuing special damages and disabilities.

(c) Discretion of Court. Nothing contained in the foregoing shall be deemed to limit the court in denying in a proper case, any one or more of the foregoing particulars, or in a proper case, in granting other, further or different particulars.

History

Add, L 1962, ch 308, eff Sept 1, 1963; amd, L 1974, ch 575, § 2; L 1979, ch 590, § 1, eff Sept 1, 1979; L 1984, ch 805, § 10, eff Sept 1, 1984.

Annotations

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Earlier rules: RCP 116.

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I. Under CPLR

A. In General

1. Generally

It was improvident exercise of discretion to deny plaintiffs leave to serve supplemental bill of particulars; where plaintiffs showed prima facie basis for their additional claims, and defendants claimed no prejudice, leave to supplement bill of particulars should have been freely given.

Jesselli v New York, 59 A.D.2d 755, 398 N.Y.S.2d 701, 1977 N.Y. App. Div. LEXIS 13780 (N.Y. App. Div. 2d Dep't 1977).

Personal injury plaintiffs were entitled to serve defendant with supplemental bill of particulars since it alleged no new injuries and was timely served. Portnow v Shelter Rock Public Library, 125 A.D.2d 382, 509 N.Y.S.2d 106, 1986 N.Y. App. Div. LEXIS 62663 (N.Y. App. Div. 2d Dep't 1986).

In personal injury action, court acted properly in striking amended bill of particulars served by plaintiffs after they obtained vacatur of prior default judgment against them, since amended bill improperly set forth new cause of action and new injuries where it contained allegations that were substantially similar to those previously rejected by court on plaintiffs' prior motion to amend complaint to add new cause of action, and it alleged previously unmentioned injuries. Marrero v 720 DeGraw Funding Corp., 150 A.D.2d 762, 542 N.Y.S.2d 211, 1989 N.Y. App. Div. LEXIS 7241 (N.Y. App. Div. 2d Dep't 1989).

Trial court in personal injury action did not abuse its discretion in granting plaintiff leave under CLS CPLR § 3043(c) to file supplemental bill of particulars on condition that he submit to further neurological examination where plaintiff sought to amend bill of particulars—which originally alleged that he suffered one-year employment disability—by attempting to serve supplemental bill approximately 3 months later claiming 5 ½ -year working disability with consequential increase in special damages. Lopez v Reiff, 156 A.D.2d 184, 548 N.Y.S.2d 228, 1989 N.Y. App. Div. LEXIS 15282 (N.Y. App. Div. 1st Dep't 1989).

Court properly refused to strike that portion of plaintiff's supplemental bill of particulars which itemized damages for lost earnings where her prior bill of particulars and amended bill of particulars fully set forth elements supporting her lost earnings claim. Pines v Muss Dev. Co., 172 A.D.2d 600, 568 N.Y.S.2d 422, 1991 N.Y. App. Div. LEXIS 4632 (N.Y. App. Div. 2d Dep't 1991).

Statements contained in defendant's bill of particulars, served in its third-party action against third-party defendant, constituted informal judicial admissions, which were not conclusive but were merely evidence of fact or facts admitted, and thus defendant was not estopped from denying that defects complained of by plaintiff existed. *Hill v King Kullen Grocery Co.*, 181 A.D.2d 812, 581 N.Y.S.2d 378, 1992 N.Y. App. Div. LEXIS 3913 (N.Y. App. Div. 2d Dep't 1992).

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).

It was abuse of discretion to refuse to direct injured plaintiff to submit to physical examination where, after end of liability trial, plaintiffs served supplemental bill of particulars, alleging for first time that injured plaintiff would require "total knee replacement," and, at commencement of damages trial, defendants moved for physical examination, but their application was denied for failure to give 7 days' prior notice (CLS CPLR § 3043(b)). *Sparrock v City of New York*, 219 A.D.2d 705, 631 N.Y.S.2d 769, 1995 N.Y. App. Div. LEXIS 9587 (N.Y. App. Div. 2d Dep't 1995).

Award for future chiropractic services would be vacated where plaintiffs' bill of particulars did not allege need for such services, and proof thereof was first adduced only on plaintiffs' rebuttal case when chiropractor was called for no apparent reason other than avoidance of missing witness charge. *Iasello v Frank*, 257 A.D.2d 362, 683 N.Y.S.2d 49, 1999 N.Y. App. Div. LEXIS 3 (N.Y. App. Div. 1st Dep't 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).

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).

Because a patient's second supplemental bill of particulars, alleging various statutory violations, did not simply amplify the patient's prior response to a demand, but added new allegations that had not been asserted in the complaint, it violated N.Y. C.P.L.R. 3043(b); therefore, the trial court erred in denying a doctor's motion to strike the second supplemental bill of particulars. *Jurado v Kalache*, 93 A.D.3d 759, 940 N.Y.S.2d 300, 2012 N.Y. App. Div. LEXIS 2071 (N.Y. App. Div. 2d Dep't 2012).

Bills of particulars are intended to amplify pleadings, limit the proof and scope of the inquiry, prevent surprise at trial, and make known plaintiff's claim. *Blustein v Shop--Rite Supermarkets, Inc.*, 81 Misc. 2d 563, 364 N.Y.S.2d 709, 1975 N.Y. Misc. LEXIS 2426 (N.Y. Sup. Ct. 1975).

Where several quonset huts were being erected and complaint failed to allege on which one plaintiff was injured, he was required to specify particular hut. *Sher v Roth-Schenker Corp.*, 72 N.Y.S.2d 684, 1947 N.Y. Misc. LEXIS 2836 (N.Y. Sup. Ct. 1947).

2. Act or omission

In a negligence action, where the language of the complaint setting forth the allegations of negligence on the part of the defendant infers a violation of duties imposed on the defendant, a proper case is presented for the court in its discretion to grant the particulars sought by the defendant as to the statutes, local laws, ordinances, or rules and regulations, claimed to have

been violated by the defendants. *Sacks v Thompson*, 33 A.D.2d 627, 304 N.Y.S.2d 729, 1969 N.Y. App. Div. LEXIS 2988 (N.Y. App. Div. 3d Dep't 1969).

Bill of particulars in a medical malpractice action, as in any action for personal injuries, requires only a general statement of facts or omissions constituting the negligence claimed. *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).

Bill of particulars which restated all the personal injuries listed in complaint and which alleged that "on information and belief, some and-or all of the foregoing injuries are believed to be permanent" was defective for failure to apprise defendant of what plaintiff intended to prove upon trial; although plaintiff was under treatment, so that the exact nature of the injuries might not be known at the time that bill of particulars was filed, and would find it advisable to seek permission from the court to supplement his particulars at a later date, in the meantime he was required to state his claim as he knew it. *Barlow v Fusco*, 49 A.D.2d 1032, 374 N.Y.S.2d 498, 1975 N.Y. App. Div. LEXIS 11395 (N.Y. App. Div. 4th Dep't 1975).

A bill of particulars in a medical malpractice action, as in any action for personal injuries, requires a general statement of acts or omissions constituting the negligence claimed. *Randall v Pech*, 51 A.D.2d 864, 380 N.Y.S.2d 172, 1976 N.Y. App. Div. LEXIS 11480 (N.Y. App. Div. 4th Dep't 1976).

Attempted introduction in negligence action of testimony concerning design of trash baskets from which trash allegedly leaked onto sidewalks only went to show that liquid matter could escape from cans and was not attempt to introduce new theory of recovery against defendant, who had been apprised before trial that condition of trash baskets was at issue on question of his negligence, and it was therefore error to dismiss complaint but, in the interest of orderly procedure, plaintiffs would be required to serve supplemental bill of particulars that included statement of alleged defective design of trash baskets. *Iskovitz v Arrathoon*, 57 A.D.2d 546, 393 N.Y.S.2d 62, 1977 N.Y. App. Div. LEXIS 11487 (N.Y. App. Div. 2d Dep't 1977).

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 a medical malpractice action against a hospital and three doctors with different specialties, the court would strike identical bills of particulars served on all defendants, where plaintiff had a duty to be as responsive as possible, and where not all the specific acts of negligence detailed in the bills were applicable to each defendant. *Brynes v New York Hospital*, 91 A.D.2d 907, 457 N.Y.S.2d 531, 1983 N.Y. App. Div. LEXIS 16181 (N.Y. App. Div. 1st Dep't 1983).

In a personal injury action against two infants and their parents, the trial court improperly denied defendants' motion for an order directing plaintiffs to serve a further bill of particulars, where in response to an earlier demand for a bill of particulars plaintiffs had served a list of acts and omissions attributable to both infants and a second list attributable to both sets of parents, where an undifferentiated aggregation of the claimed negligent acts and omissions of all defendants did not serve those purposes, and where an affidavit by plaintiffs' attorney asserting that the infants were acting in concert was insufficient to defeat defendants' motion. *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 wrongful death action by the executrix of a man who injured his knee while walking down a ramp from a dock to a boat yard and subsequently died of massive pulmonary thrombosis secondary to an operation on the knee, testimony by plaintiff's expert as to the proper slope of the ramp and the necessity for handrails would require reversal of a judgment in plaintiff's favor, where plaintiff's bill of particulars specifically suggested that the defects in the ramp that caused the injury were unsupported steps and rounded edges of lower planks, and where had defendants known that plaintiff would present expert testimony as to the slope and necessity of handrails on the ramp they almost certainly would have produced their own expert. *Sharkey v*

Locust Valley Marine, Inc., 96 A.D.2d 1093, 467 N.Y.S.2d 61, 1983 N.Y. App. Div. LEXIS 19747 (N.Y. App. Div. 2d Dep't), app. dismissed, 61 N.Y.2d 669, 1983 N.Y. LEXIS 6832 (N.Y. 1983).

There was no showing that plaintiff in medical malpractice action was improperly prevented by trial court from direct examination of his medical expert on issue of whether defendant physician had negligently delayed performing operation where trial court did not prevent expert from testifying as to possibility of delay, and plaintiff's counsel apparently decided on his own, not as result of court ruling, not to pursue issue on direct examination; since plaintiff's bill of particulars made no reference to delay as issue and bill was not broad enough to apprise defendant of claim based on delay, trial court's eventual ruling allowing case to proceed to jury on issue of delay was, in fact, favorable to plaintiff by affording him greater latitude in making out prima facie case than he was entitled to under pleadings. *Schneider v Montefiore Hospital & Medical Center*, 122 A.D.2d 735, 511 N.Y.S.2d 608, 1986 N.Y. App. Div. LEXIS 59262 (N.Y. App. Div. 1st Dep't 1986).

In medical malpractice action in which plaintiff served identical bills of particulars on hospital, nurse, and 8 doctors with different specialties, court should have granted doctor's demand for bill of particulars specifying acts or omissions on which plaintiff's claim against him was based, as distinguished from plaintiff's claims against other defendants; purpose of bill of particulars is to amplify pleadings, limit proof, and prevent surprise at trial. But, doctor was not entitled to particulars regarding alleged negligent conduct of other defendants in absence of allegation that he was vicariously liable for their claimed negligence. *Lamb v Rochester General Hospital*, 130 A.D.2d 963, 516 N.Y.S.2d 379, 1987 N.Y. App. Div. LEXIS 46946 (N.Y. App. Div. 4th Dep't 1987).

In personal injury action, plaintiff was properly allowed to complete discovery before providing particulars as to acts of negligence and omissions which constituted his cause of action, where alleged malpractice occurred when he was approximately 3 weeks old. *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).

In medical malpractice action, court properly denied motion by plaintiff for order directing defendant hospital to modify its request for verified bill of particulars, even though 4 items in demand for bill required expert medical evidence and opinion, since complaint gave no clue as to specific wrongs alleged to have been committed by hospital. *Bellen v Baghei-Rad*, 148 A.D.2d 827, 538 N.Y.S.2d 663, 1989 N.Y. App. Div. LEXIS 2370 (N.Y. App. Div. 3d Dep't 1989).

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).

Responses to demand for bill of particulars must clearly detail specific acts of negligence attributed to each defendant. *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).

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).

Court erred in granting defendant's summary judgment motion dismissing action brought under CLS Labor § 241(6) merely because plaintiff neglected to set forth Industrial Code violation either in his complaint or bill of particulars where plaintiff's service, without leave of court, of

supplemental bill of particulars identifying 12 NYCRR § 23-1.12(c) was proper under CLS CPLR § 3043(b), and plaintiff's belated identification of that Code provision entailed no new factual allegations, raised no new theories of liability, and had caused no prejudice to defendant. *Noetzell v Park Ave. Hall Hous. Dev. Fund Corp.*, 271 A.D.2d 231, 705 N.Y.S.2d 577, 2000 N.Y. App. Div. LEXIS 3889 (N.Y. App. Div. 1st Dep't 2000).

A motion by plaintiff, who was injured in an automobile accident, to amend his complaint and bill of particulars pursuant to CPLR §§ 3025, 3043 to assert a new cause of action against a town consisting of allegations that when town police officers arrived at the scene they ignored plaintiff, who was unconscious and whose face was lying against the hot exhaust system, resulting in serious facial burns, would be granted since the duty of the municipality arose at the time the police arrived voluntarily assuming to render assistance, and the officers' failure to exercise reasonable care, which caused a separate and distinct injury to plaintiff, constituted a breach of that duty. *Ramundo v Guilderland*, 124 Misc. 2d 83, 475 N.Y.S.2d 752, 1984 N.Y. Misc. LEXIS 3155 (N.Y. Sup. Ct. 1984), *aff'd*, 108 A.D.2d 995, 485 N.Y.S.2d 388, 1985 N.Y. App. Div. LEXIS 43324 (N.Y. App. Div. 3d Dep't 1985).

3. Statement and description of injury

Where a supplemental bill of particulars spoke of an "asymmetrical looking chest" and the original bill listed as permanent a dislocation of the spine, a displaced, overriding fracture of the midshaft of the right clavicle and resulting shoulder and clavicular "deformation" affecting the thoracic and spinal areas, the trial court did not admit evidence of a "new injury" without plaintiff having obtained leave of court to include it in the supplemental bill pursuant to CPLR § 3043(c); moreover, in light of the dynamics of maturing injuries, the later and more definitive statement in the supplemental bill of essentially the same permanent injuries recited in the original bill could not have come as a surprise. *Tate v Colabello*, 58 N.Y.2d 84, 459 N.Y.S.2d 422, 445 N.E.2d 1101, 1983 N.Y. LEXIS 2827 (N.Y. 1983).

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).

Color photographs annexed to bill of particulars allegedly depicting plaintiff's personal injuries, did not constitute a "statement" or a "description", within the intent of the statutory provision requiring a "statement of the injuries and description of those claimed to be permanent." *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).

Plaintiff's motion to increase the *ad damnum* clause of his complaint was granted upon condition plaintiff serve an additional bill of particulars specifying all injuries and a description of those injuries claimed to be permanent. *Gaeta v Rizzo*, 32 A.D.2d 653, 300 N.Y.S.2d 687, 1969 N.Y. App. Div. LEXIS 3936 (N.Y. App. Div. 2d Dep't 1969).

Plaintiff in personal injury action sufficiently answered item requesting statement of injuries by describing nature and extent of injuries and incorporating all medical records in bill of particulars. *Sobel v Midchester Jewish Center*, 52 A.D.2d 944, 383 N.Y.S.2d 635, 1976 N.Y. App. Div. LEXIS 12808 (N.Y. App. Div. 2d Dep't 1976).

Plaintiffs in personal injury action should have been permitted to amend their bill of particulars where injuries listed in original bill were alleged to be permanent and proposed changes concerned the only medical expenses and losses of earnings which had accrued since service of original bill of particulars. *Cippitelli v Hower*, 54 A.D.2d 954, 388 N.Y.S.2d 633, 1976 N.Y. App. Div. LEXIS 14859 (N.Y. App. Div. 2d Dep't 1976).

Where plaintiff allegedly sustained personal injury on stairway located in hospital at which plaintiff was student attending classes, where action against hospital was placed on trial calendar after plaintiff's initial hospitalization, where plaintiff was subsequently hospitalized but report of second hospitalization was not sent by hospital to plaintiff's counsel, resulting in delay

in applying for increase in ad damnum and attendant supplemental bill of particulars, allowing increase in ad damnum as well as service of supplemental bill of particulars was provident exercise of judicial discretion. *Pacheco v Presbyterian Hospital in New York*, 55 A.D.2d 552, 389 N.Y.S.2d 846, 1976 N.Y. App. Div. LEXIS 15230 (N.Y. App. Div. 1st Dep't 1976).

Personal injury plaintiffs were entitled to amend bill of particulars where proposed amendments serve to update the continuing expenses of one plaintiff's treatment for the injuries and for the additional lost earnings. *Veneski v Clark Transfer, Inc.*, 55 A.D.2d 603, 389 N.Y.S.2d 627, 1976 N.Y. App. Div. LEXIS 15313 (N.Y. App. Div. 2d Dep't 1976).

Personal injury plaintiff did not sufficiently furnish bill of particulars as to injuries claimed to be permanent by stating merely that all of his injuries were permanent except those which healed and except for "superficial bruises and contusions." Bill of particulars furnished by personal injury plaintiff in response to request for information as to extent of injuries claimed should have omitted the valuation of injuries by named physician. *Anderson v Costa*, 55 A.D.2d 942, 391 N.Y.S.2d 137, 1977 N.Y. App. Div. LEXIS 10222 (N.Y. App. Div. 2d Dep't 1977).

Plaintiffs in personal injury action were properly permitted to supplement their bill of particulars by alleging headaches as an additional injury and including special damages and lost wages sustained between the date of the original bill and the date of the supplemental bill. *Bart v Warhus*, 56 A.D.2d 736, 392 N.Y.S.2d 746, 1977 N.Y. App. Div. LEXIS 10917 (N.Y. App. Div. 4th Dep't 1977).

In order to serve supplemental bill of particulars in February 1977 alleging further injuries, it was incumbent upon longshoreman, who suffered injuries while loading ship in December 1970 and who served bill of particulars alleging only orthopedic injuries in November 1972, to obtain leave of court upon proper showing of need for such relief; papers on such motion must contain affidavit showing merits of action and reasons for delay and medical affidavit demonstrating causal connection between resulting disabilities and original injuries. Longshoreman, who suffered injuries while loading ship in December 1970 and who served bill of particulars alleging only orthopedic injuries in November 1972, did not make requisite showing to justify service of

supplemental bill of particulars in February 1977 alleging that 1970 injuries caused him to suffer traumatic neurosis characterized by dizzy spells and personality change; however, he had sufficiently demonstrated causal connection between resulting disability and original injuries to warrant affording him opportunity to make proper showing to justify such service, and thus motions to preclude him from offering any evidence concerning particulars alleged in supplemental bill of particulars were premature. *Kolanovic v Astro Crecido Cia. Nav. S. A.*, 59 A.D.2d 695, 398 N.Y.S.2d 689, 1977 N.Y. App. Div. LEXIS 13640 (N.Y. App. Div. 1st Dep't 1977).

In medical malpractice action, a physician's affidavit showing a causal relation between negligence complained of and the proposed amendment was required before bill of particulars could be amended so as to allege a detached retina which was asserted to have been caused by a blow from instrument used in treating plaintiff for the rhytidectomy originally complained of, in light of fact that the amendment related to a condition which developed subsequently and for which no claim was asserted in original complaint. *Simpson v Canick*, 59 A.D.2d 738, 398 N.Y.S.2d 570, 1977 N.Y. App. Div. LEXIS 13741 (N.Y. App. Div. 2d Dep't 1977).

Special Term erred in permitting plaintiffs to incorporate a "new" injury into their supplemental bill of particulars in absence of the requisite medical affidavit. *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).

In a negligence action to recover damages for personal injuries, it was an improvident exercise of discretion resulting in prejudice to defendants third-party plaintiffs for the trial court to have permitted plaintiff to amend his bill of particulars to include an injury he allegedly was aware of soon after the original accident which took place approximately nine years earlier and approximately seven years after service of the original and supplemental bills of particulars and after the action was restored to the trial calendar where the plaintiff failed to submit a physician's affidavit showing with specificity a causal connection between the alleged injury and the original injuries sustained and also failed to submit an affidavit of reasonable excuse for delay in making

the motion to amend the bill of particulars. *Roman v Binder*, 100 A.D.2d 541, 473 N.Y.S.2d 236, 1984 N.Y. App. Div. LEXIS 17514 (N.Y. App. Div. 2d Dep't 1984).

In a medical malpractice action in which failure to diagnose a skull fracture was the only claim of malpractice in plaintiff's bill of particulars, the trial court erred in permitting plaintiff's expert to testify that plaintiff had suffered not a skull fracture but a tear in the window of his inner ear, since the new theory of liability not only exceeded the scope of the bill of particulars, but actually contradicted it. *Reich v Prager*, 107 A.D.2d 555, 483 N.Y.S.2d 295, 1985 N.Y. App. Div. LEXIS 42565 (N.Y. App. Div. 1st Dep't 1985).

Portion of supplemental bill of particulars which elaborated further upon plaintiff's injuries was properly allowed, as it expanded on extent of continuing disability rather than on nature of injuries. *Hauch v Padula*, 114 A.D.2d 807, 495 N.Y.S.2d 177, 1985 N.Y. App. Div. LEXIS 53812 (N.Y. App. Div. 1st 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).

In personal injury action arising from accident which occurred in 1979, defendants were not entitled to vacatur of 1987 supplemental bill of particulars regarding back surgery performed on plaintiff in 1983 since plaintiff was entitled to serve supplemental bill at least 30 days before trial without obtaining leave of court, inasmuch as she had alleged from outset of action that she had sustained herniated disc. *Rodriguez v Port Authority of New York & New Jersey*, 147 A.D.2d 625, 538 N.Y.S.2d 33, 1989 N.Y. App. Div. LEXIS 2018 (N.Y. App. Div. 2d Dep't 1989).

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).

Plaintiff was entitled to serve supplemental bill of particulars to show additional injuries where (1) record established that defendant was aware of injuries 2 years earlier and was provided with copies of medical records related to additional surgery before plaintiff was examined by defendant's physician, and (2) affidavit of merit submitted by surgeon sufficiently established causal relationship between original injuries and subsequent surgery. *Skerencak v Fischman*, 182 A.D.2d 1127, 583 N.Y.S.2d 333, 1992 N.Y. App. Div. LEXIS 7021 (N.Y. App. Div. 4th Dep't 1992).

In medical malpractice action for personal injuries sustained by infant, plaintiff had no right to serve supplemental bill of particulars pursuant to CLS CPLR § 3043(b) so as to add new claim for custodial care, therapy, and equipment in amount of \$200 million. *Aversa v Taubes*, 194 A.D.2d 580, 598 N.Y.S.2d 801, 1993 N.Y. App. Div. LEXIS 5589 (N.Y. App. Div. 2d Dep't 1993).

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).

In medical malpractice action alleging that defendants failed to properly diagnose and treat plaintiff's appendicitis, assertion in supplemental bill of particulars that defendants' negligence caused abdominal infection, which substantially reduced plaintiff's chances of conceiving children naturally, was not too speculative to be compensable. *Traina v Grello Pediatrics*, 250 A.D.2d 667, 673 N.Y.S.2d 163, 1998 N.Y. App. Div. LEXIS 5502 (N.Y. App. Div. 2d 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).

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).

Supplemental bill of particulars served by plaintiff was proper. The supplemental bill of particulars did not allege any new injuries so as to constitute a de facto amended bill of particulars which was improperly served without leave of court, but instead properly set forth the continuing consequences of the same injuries that were alleged in the original bill of particulars. *Alicino v Rochdale Vil., Inc.*, 142 A.D.3d 937, 37 N.Y.S.3d 557, 2016 N.Y. App. Div. LEXIS 5856 (N.Y. App. Div. 2d Dep't 2016).

Application for a general preference would be denied, without prejudice to renewal on the submission of a proper bill of particulars, as the bill of particulars submitted in the support of the application contained no clear statement of the claimed injuries nor a proper description of the injuries claimed to be permanent nor a proper statement of special damages. *Blustein v Shop--Rite Supermarkets, Inc.*, 81 Misc. 2d 563, 364 N.Y.S.2d 709, 1975 N.Y. Misc. LEXIS 2426 (N.Y. Sup. Ct. 1975).

A motion bottomed on a bill of particulars to strike as defective plaintiffs' statement of injuries where plaintiffs allege that the full extent of their injuries "are not presently known and will be submitted at a later date" is not the proper point in the action to test whether plaintiffs have

satisfied the requirement that their bill of particulars set forth in what respect they sustained a “serious injury” under the no-fault insurance law (CPLR 3043, subd [a], par [6]) since the bill of particulars procedure does not involve adequate proof and a proceeding stronger in context in which substantial evidence such as a physician’s affidavit revealing the extent of the injuries may be required to be submitted, is necessary before a court can render a definitive ruling on the seriousness of the injuries. *Apostolico v Benigno*, 98 Misc. 2d 764, 414 N.Y.S.2d 659, 1979 N.Y. Misc. LEXIS 2143 (N.Y. Sup. Ct. 1979).

Plaintiff’s “Second Supplemental Bill of Particulars” regarding “traumatic brain injury” and “traumatic myofascial pain syndrome” was stricken because the initial Bill of Particulars, as well as the Supplemental Bill of Particulars, did not indicate such injuries, and replacing the descriptive symptoms with an actual diagnosis was not permissible. *Nieto v Deveau*, 51 Misc. 3d 1027, 29 N.Y.S.3d 121, 2016 N.Y. Misc. LEXIS 1013 (N.Y. Civ. Ct. 2016).

4. Special damages

Plaintiffs in personal injury action were properly permitted to supplement their bill of particulars by alleging headaches as an additional injury and including special damages and lost wages sustained between the date of the original bill and the date of the supplemental bill. *Bart v Warhus*, 56 A.D.2d 736, 392 N.Y.S.2d 746, 1977 N.Y. App. Div. LEXIS 10917 (N.Y. App. Div. 4th Dep’t 1977).

An order granting plaintiff’s request to, inter alia, amend the bill of particulars to include a claim for alleged lost earnings previously expunged from the original bill of particulars, would be affirmed where the record failed to demonstrate that plaintiff personally and deliberately withheld information as to injuries sustained in a subsequent accident at the time substituted counsel submitted the motion that resulted in the order and where defendant failed to demonstrate any prejudice as a result of granting the relief sought. *Mizrachi v Mizrachi*, 87 A.D.2d 837, 449 N.Y.S.2d 265, 1982 N.Y. App. Div. LEXIS 16306 (N.Y. App. Div. 2d Dep’t 1982).

Defendant city in a personal injury action would be entitled to a new trial on the issue of impairment of future earnings, where, in response to defendant's demand for particulars, plaintiff's bill had stated "No loss of earnings is claimed as infant plaintiff was a student," where the trial court permitted evidence of lost earnings over the defendant's objection on the basis of plaintiff's explanation that the demand had not sought disclosure of any claim for lost future earnings, and where defendant city was prejudiced by the lack of an opportunity to prepare for plaintiff's claim of lost future earnings. *Zapata v New York*, 96 A.D.2d 779, 465 N.Y.S.2d 729, 1983 N.Y. App. Div. LEXIS 19374 (N.Y. App. Div. 1st Dep't), app. dismissed, 60 N.Y.2d 860, 1983 N.Y. LEXIS 6533 (N.Y. 1983).

In personal injury action, defendants were entitled to new trial on issue of damages where trial court admitted evidence on plaintiff's disc injuries, and on loss of sexual relations with respect to his wife's loss of consortium claim, since neither item was specified in plaintiff's bill of particulars and there was no indication that defendants should have known of such injuries. *Porter v Shapiro*, 124 A.D.2d 794, 508 N.Y.S.2d 516, 1986 N.Y. App. Div. LEXIS 62114 (N.Y. App. Div. 2d Dep't 1986).

Medical malpractice plaintiff had no right to serve "supplemental" bill of particulars under CLS CPLR § 3043(b) where he was not merely updating allegations of special damages previously asserted but was rather adding wholly new category of special damages; under circumstances, leave to serve "supplemental" bill was necessary. *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 for personal injuries sustained by infant, plaintiff had no right to serve supplemental bill of particulars pursuant to CLS CPLR § 3043(b) which sought to increase plaintiff's claimed loss of future earning capacity from \$2 million to \$21 million, since plaintiff's loss of future earning capacity was apparent at commencement of action given that she was so physically incapacitated that she was unable to take care of her basic needs, and thus could not be considered claim of continuing special damages and disabilities. *Aversa v Taubes*, 194 A.D.2d 580, 598 N.Y.S.2d 801, 1993 N.Y. App. Div. LEXIS 5589 (N.Y. App. Div. 2d Dep't 1993).

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).

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).

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).

Trial court did not abuse its discretion in permitting a terminated school district employee to amend the employee's bill of particulars to increase the amount of alleged past lost wages and to allege future lost wages because, although the employee did not move to amend the bill of particulars until after a mistrial was declared in the first trial, the employee did so with enough time before the second trial so that the school district and certain of its officials were able to conduct further discovery. *Wilcox v Newark Val. Cent. School Dist.*, 129 A.D.3d 1230, 11 N.Y.S.3d 703, 2015 N.Y. App. Div. LEXIS 4807 (N.Y. App. Div. 3d Dep't 2015).

Under subdivision (a)(9) hereof, plaintiff must furnish the name of his employer to defendant. In view of mandated liberal construction and emphasis in CPLR on furnishing to an opponent as much factual information as possible to secure just, speedy and inexpensive determination of civil judicial proceedings, CPLR Rule 3043(a)(9) would be construed so as to render a demand for the number of house calls made to plaintiff by his physician and the number of visits by plaintiff to the physician's office, a proper demand. *Baldwin v Tinker*, 48 Misc. 2d 362, 264 N.Y.S.2d 855, 1965 N.Y. Misc. LEXIS 1358 (N.Y. Sup. Ct. 1965).

Because a patient's allegation of loss of future earnings constituted a claim of "continuing special damages and disabilities" under N.Y. C.P.L.R. § 3043(b) that could be asserted as of right, the trial court improvidently struck the patient's supplemental bill of particulars. *Fortunato v Personal Woman's Care, P.C.*, 31 A.D.3d 370, 817 N.Y.S.2d 649, 2006 N.Y. App. Div. LEXIS 8706 (N.Y. App. Div. 2d Dep't 2006).

5. Degree of specificity required; matters discoverable

Denial of defendant's motion for an order directing plaintiff to serve a further bill of particulars in medical malpractice action was not an abuse of discretion, despite claim that defendant would be prejudiced in defense of action without additional particulars, where all pretrial discovery had been completed, including a physical and oral examination of plaintiff, and sufficient particulars had been given in response to original demand so as to limit proof, assist in preparation of trial,

and avoid surprise. *Karlitz v Midtown Hospital*, 50 A.D.2d 756, 376 N.Y.S.2d 164, 1975 N.Y. App. Div. LEXIS 11547 (N.Y. App. Div. 1st Dep't 1975).

Where complaints were wholly uninformative and failed to meet elementary requirement of providing notice of matters intended to be proved, court was proper in granting in entirety defendant's demand for extremely detailed bill of particulars and in requiring plaintiff to furnish supplemental bill of particulars subsequent to pretrial discovery. *Nelson v New York University Medical Center*, 51 A.D.2d 352, 381 N.Y.S.2d 491, 1976 N.Y. App. Div. LEXIS 11079 (N.Y. App. Div. 1st Dep't 1976).

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).

Under CPLR § 3043 a defendant is entitled, upon a service of a supplemental bill of particulars, to newly exercise any and all rights of discovery possessed with regard to the original bill of particulars but only with respect to subject matter of amended bill. *Fleming v Chris Craft Industries, Inc.*, 97 A.D.2d 730, 469 N.Y.S.2d 3, 1983 N.Y. App. Div. LEXIS 20457 (N.Y. App. Div. 1st 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).

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).

In action for personal injuries sustained in motor vehicle accident, defendant was entitled to discovery of names and addresses of physicians treating plaintiff, cost of treatment, and acts and places of treatment, as demanded in demand for bill of particulars, since such information was relevant to injuries sustained by plaintiff, as well as to threshold issue of serious injury. *Burch v Gould*, 149 A.D.2d 784, 539 N.Y.S.2d 577, 1989 N.Y. App. Div. LEXIS 4377 (N.Y. App. Div. 3d Dep't 1989).

Plaintiff's supplemental bill of particulars adequately apprised ladder manufacturer of alleged acts or omissions constituting plaintiff's claim where bill claimed, inter alia, that design of ladder was defective in that aluminum used was of poor quality and subject to kinking, that such defect caused ladder to be manufactured in manner that increased likelihood of kinking, and that manufacturer should have warned public of possible danger of kinking and collapse. *Zigata v R.D. Werner Co.*, 225 A.D.2d 484, 639 N.Y.S.2d 797, 1996 N.Y. App. Div. LEXIS 3171 (N.Y. App. Div. 1st Dep't 1996).

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).

In malpractice action against hospital which was unable to produce copies of nursing notes relating to infant plaintiff's hospitalization, paragraphs of plaintiffs' bill of particulars alleging that hospital failed to keep appropriate medical records and properly record physical findings, and

did not possess requisite medical knowledge involved in treatment of infant plaintiff or properly supervise hospital employees to adequately monitor infant, were not overly broad. Felock by Felock v Albany Med. Ctr. Hosp., 258 A.D.2d 772, 685 N.Y.S.2d 844, 1999 N.Y. App. Div. LEXIS 1172 (N.Y. App. Div. 3d Dep't 1999).

In a patient's medical malpractice action, the patient's "supplemental" bill of particulars adequately set forth the theory of negligent diagnosis, as it was more of an "amendment" to the original bill of particulars rather than a supplemental bill, and his mistake in labeling it as a "supplemental" bill was disregarded because there was no prejudice to the medical defendants' substantial rights. Mackauer v Parikh, 148 A.D.3d 873, 49 N.Y.S.3d 488, 2017 N.Y. App. Div. LEXIS 1770 (N.Y. App. Div. 2d Dep't 2017).

Upon defendant's request for a bill of particulars, plaintiff must furnish information regarding damage to vehicle, but defendant is not entitled to a copy of the repair bill. Baldwin v Tinker, 48 Misc. 2d 362, 264 N.Y.S.2d 855, 1965 N.Y. Misc. LEXIS 1358 (N.Y. Sup. Ct. 1965).

In action for personal injuries sustained in vehicular accident, defendants' motion for summary judgment dismissing the complaint on ground that neither plaintiff had sustained a serious injury would be granted, in view of fact that plaintiffs offered no proof that their injuries were serious and that defendants submitted medical examination reports totally negating conclusory statements contained in bill of particulars. Insurance Law § 671, subds. 4, 4(a, b). Weaver v Ware, 89 Misc. 2d 710, 392 N.Y.S.2d 550, 1977 N.Y. Misc. LEXIS 1964 (N.Y. Sup. Ct. 1977).

Even though cross-claiming defendant could obtain indemnification against codefendant only if defendant were first found liable because the negligence alleged by cross-claiming defendant could conceivably be different from the negligence relied on by the plaintiff, corporate defendant was ordered to serve bill of particulars itemizing the negligence charged to codefendant to the extent that such negligence was separate and distinct from that alleged by plaintiff. 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 an action for conscious pain and suffering and wrongful death arising out of alleged medical malpractice of the State's physicians, the defendant may, in its demand for a bill of particulars, request a statement detailing the particulars of each and every act of negligence which will be relied upon; the fact that CPLR 3043 (subd [a], par [3]) permits a demand for a "[g]eneral statement of the acts or omissions constituting the negligence claimed" does not preclude the asking of specific questions directed at areas raised by the complaint, since the bill of particulars in a personal injury action is an intermediate step between the complaint and discovery and must be sufficiently informative to be of some value in sharpening the issues before proceeding to examinations before trial or other disclosure devices, and specific questions are far more valuable in sharpening the issues and less likely to evoke vague and conclusory responses. *Kupferberg v State*, 97 Misc. 2d 519, 411 N.Y.S.2d 790, 1978 N.Y. Misc. LEXIS 2829 (N.Y. Ct. Cl. 1978).

In a medical malpractice action against 25 defendants, the plaintiff may not rely on a general statement of the acts of professional negligence in response to one defendant's demand for a detailed bill of particulars, since the complaint was so general and uninformative that ascertaining the alleged malpractice of that defendant is impossible, and the number of defendants renders such a general statement meaningless as to that one defendant. *Suskin v Long Island Jewish Hillside Medical Center*, 99 Misc. 2d 1023, 417 N.Y.S.2d 836, 1979 N.Y. Misc. LEXIS 2381 (N.Y. Sup. Ct. 1979).

In a personal injury action where the injured party's bill of particulars was found to be defective, he would be directed to serve a supplemental bill setting forth with more particularity such matters as the location of the accident, a specific computation of loss of earnings, and specific amounts for physicians' expenses, hospital expenses, and any other relevant special damages and, if the special damages are continuing, the party may so indicate and serve a supplemental bill prior to the case being placed on the calendar indicating the specific amounts incurred. *Mastey v Mancusi*, 122 Misc. 2d 119, 469 N.Y.S.2d 890, 1983 N.Y. Misc. LEXIS 4084 (N.Y. Sup. Ct. 1983).

In the victims' personal injury action against the housing authority as a result of a fire that occurred in the victims' apartment, the trial court erred in denying the housing authority's motion to compel the victims to provide a supplemental bill of particulars showing what statutes, rules, and ordinances were violated; the vague, ambiguous, non-specific, and open-ended assertions contained in the victims' bill of particulars failed to satisfy the purpose of a bill of particulars. *Alvarado v N.Y. City Hous. Auth.*, 302 A.D.2d 264, 756 N.Y.S.2d 6, 2003 N.Y. App. Div. LEXIS 1549 (N.Y. App. Div. 1st Dep't 2003).

Although, in a wrongful death action, an ambulance company, a private corporation, was not entitled to rely on General Municipal Law N.Y. Gen. Mun. Law §§ 50-e, 50-i as a basis for relief, the trial court properly struck certain paragraphs of an administratrix's supplemental bill of particulars pursuant to N.Y. C.P.L.R. 3043(b) because those paragraphs contained new theories of liability not previously alleged in the complaint and initial bill of particulars; the paragraphs stricken pertaining to the ambulance company alleged that the ambulance company's employees acted negligently in the hiding or spoliation of evidence related to a 911 call and the treatment of the decedent. Although the complaint and initial bill of particulars against the ambulance company asserted numerous theories of negligence, none of those theories related to the ambulance company's handling or withholding of evidence. *Clare-Hollo v Finger Lakes Ambulance EMS, Inc.*, 99 A.D.3d 1199, 952 N.Y.S.2d 350, 2012 N.Y. App. Div. LEXIS 6622 (N.Y. App. Div. 4th Dep't 2012).

6. —Evidentiary materials

Various items would be stricken from demands for bills of particulars where demands sought much irrelevant matter and directed the production of evidentiary materials as opposed to a general statement of the acts or omissions constituting the negligence claimed. *Palazzo v Abbate*, 45 A.D.2d 760, 357 N.Y.S.2d 128, 1974 N.Y. App. Div. LEXIS 4652 (N.Y. App. Div. 2d Dep't 1974).

A bill of particulars in a medical malpractice action is not intended to assist party in securing evidentiary matters. *Randall v Pech*, 51 A.D.2d 864, 380 N.Y.S.2d 172, 1976 N.Y. App. Div. LEXIS 11480 (N.Y. App. Div. 4th Dep't 1976).

Automobile manufacturer's request that it be furnished with information from third-party plaintiffs regarding tensile, compression, torsion, or bending strength of metal which it had allegedly used in its vehicles was beyond scope of information which third-party plaintiffs were required to furnish in bill of particulars in personal injury action in which it was alleged that "A-pillar" and door assembly were not impact resistant, and that metal used was of lesser grade in thickness than that found in other vehicles; bill of particulars is not form of disclosure, and may not be used to obtain evidentiary material. *Tully v North Hempstead*, 133 A.D.2d 657, 519 N.Y.S.2d 764, 1987 N.Y. App. Div. LEXIS 51697 (N.Y. App. Div. 2d Dep't 1987).

In medical malpractice case, court abused its discretion in granting plaintiffs' cross motion to strike, from defendants' demand for bill of particulars, item seeking statement of "how it will be claimed each of said injuries was caused by the alleged negligence," since such item did not seek evidentiary information, but only general explanation of causation, and in any event plaintiffs conceded that they had not timely objected to item. *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).

In a wrongful death action, the defendant may not, in its demand for a bill of particulars, request the specific amounts received by each of the next of kin from the deceased during the five-year period immediately prior to death and the dates upon which the sums of money were received, since although the defendant is entitled to know the basis for the claim for damages, the specific amounts and dates of any payments to relatives is manifestly evidentiary in nature and is properly the subject of examinations before trial or other disclosure devices. *Kupferberg v State*, 97 Misc. 2d 519, 411 N.Y.S.2d 790, 1978 N.Y. Misc. LEXIS 2829 (N.Y. Ct. Cl. 1978).

7. — —Expert medical opinion

Defendant's demand for a bill of particulars in a medical malpractice action was improper where it requested evidentiary material and expert medical opinion. *Rockefeller v Hwang*, 106 A.D.2d 817, 484 N.Y.S.2d 206, 1984 N.Y. App. Div. LEXIS 21727 (N.Y. App. Div. 3d Dep't 1984).

Court properly denied medical malpractice defendants' motion to compel plaintiff to provide further bill of particulars seeking statements of accepted medical practices, customs, and standards that defendants allegedly violated, and specific ways in which they did so, since such demands were beyond scope of bill of particulars in that plaintiff would have to provide evidentiary material in form of, or gleaned from, expert testimony. *Heyward v Ellenville Community Hosp.*, 215 A.D.2d 967, 627 N.Y.S.2d 167, 1995 N.Y. App. Div. LEXIS 5596 (N.Y. App. Div. 3d Dep't 1995), dismissed, *People v Marin*, 88 N.Y.2d 931, 647 N.Y.S.2d 162, 670 N.E.2d 446, 1996 N.Y. LEXIS 1611 (N.Y. 1996).

In medical malpractice action, doctor's request for subject matter and substance of facts and opinions on which plaintiff's experts were expected to testify, contained in demand for bill of particulars, would be denied without prejudice; in amending CLS CPLR § 3101 to permit disclosure of expert opinion testimony, legislature did not intend to change requirements for bill of particulars pursuant to CLS CPLR § 3043, and although doctor was entitled to disclosure, he could not seek evidentiary matter in demand for bill of particulars. *Galtman v Edelman*, 134 Misc. 2d 599, 511 N.Y.S.2d 1011, 1987 N.Y. Misc. LEXIS 2073 (N.Y. Sup. Ct. 1987).

Supplemental expert exchange submissions were not in contravention of N.Y. C.P.L.R. 3101(d)(1) or late under N.Y. C.P.L.R. 3043(b) and were properly allowed since they merely exposed the E coli contaminated meat butcher/processor, distributor, and supermarket to greater liability; they did not advanced a new basis for recovery that could not be considered a natural progression or complication of the medical conditions advanced in the plaintiffs' bills of particulars. *Cillo v Resjefal Corp.*, 13 A.D.3d 292, 787 N.Y.S.2d 269, 2004 N.Y. App. Div. LEXIS 15656 (N.Y. App. Div. 1st Dep't 2004).

8. —Irrelevant matters

Where plaintiff stated she was unable to state whether specified injuries were permanent and reserved right to make future claim for permanent injuries, on trial it was improper to permit plaintiff to prove permanent injuries not specified in bill of particulars but stated to have resulted from those specified. *Brett v Simon*, 277 A.D. 890, 98 N.Y.S.2d 54, 1950 N.Y. App. Div. LEXIS 3747 (N.Y. App. Div. 1950).

Various items would be stricken from demands for bills of particulars where demands sought much irrelevant matter and directed the production of evidentiary materials as opposed to a general statement of the acts or omissions constituting the negligence claimed. *Palazzo v Abbate*, 45 A.D.2d 760, 357 N.Y.S.2d 128, 1974 N.Y. App. Div. LEXIS 4652 (N.Y. App. Div. 2d Dep't 1974).

Court was empowered to deny request for information relating to giving of notice by plaintiff to respondent in medical malpractice action where no notice requirement existed in malpractice action either as condition precedent or prerequisite to maintaining such action and any response, beyond that given by plaintiff that demand was not relevant or applicable to medical malpractice action, would require simple recapitulation of applicable statute of limitations. *Vicat v Jamaica Hospital*, 110 A.D.2d 896, 488 N.Y.S.2d 449, 1985 N.Y. App. Div. LEXIS 48800 (N.Y. App. Div. 2d Dep't 1985).

In an action for conscious pain and suffering and wrongful death arising out of alleged medical malpractice, the defendant may not, in its demand for a bill of particulars, request the Social Security number of the decedent, since it is not material to any element of the causes of action alleged, and would not serve to amplify any aspect of the pleadings; since the primary usefulness of the decedent's Social Security number is as a tool for acquiring evidence, and evidence itself is not the proper subject of a bill of particulars, a mere device for its acquisition is a fortiori inappropriately requested. *Kupferberg v State*, 97 Misc. 2d 519, 411 N.Y.S.2d 790, 1978 N.Y. Misc. LEXIS 2829 (N.Y. Ct. Cl. 1978).

9. — —Collateral source rule; insurance

In personal injury action, insofar as defendant's demand for bill of particulars called for specifics as to manner in which underlying accident occurred, detailed information pertaining to plaintiff's medical care, insurance benefits received by plaintiff, and amount of alcohol served to codefendant, they were unduly burdensome and called for information beyond proper scope of bill of particulars, thereby entitling plaintiff to protective order. *Dimarco v Consolidated Rail Corp.*, 131 A.D.2d 627, 516 N.Y.S.2d 712, 1987 N.Y. App. Div. LEXIS 48094 (N.Y. App. Div. 2d Dep't 1987).

All items of special damages of which plaintiff is presently informed, required to be stated in bill. *Levine v Rosenman*, 80 N.Y.S.2d 90, 192 Misc. 1010, 1948 N.Y. Misc. LEXIS 2497 (N.Y. Sup. Ct. 1948).

In an action for conscious pain and suffering and wrongful death arising out of alleged medical malpractice, the defendant may not, in its demand for a bill of particulars, request information concerning whether the plaintiff has received reimbursement for economic loss from any collateral sources, since although evidence that the plaintiff in a malpractice action has been compensated in whole or in part for economic loss from sources such as insurance is admissible upon trial (CPLR 4010), such evidence is offered by the defendant for the purpose of mitigating damages, and a party may not demand particulars concerning matters upon which it possesses the burden of proof. *Kupferberg v State*, 97 Misc. 2d 519, 411 N.Y.S.2d 790, 1978 N.Y. Misc. LEXIS 2829 (N.Y. Ct. Cl. 1978).

10. —Notice of claim

Plaintiff in action for injuries sustained in fall on ice or snow on defendant's parking lot would be required to respond to defendant's demand for particulars as to whether actual or constructive notice was claimed and, if actual notice is claimed, when and to whom it was given. *Kaplan v Valle's Steak House, Inc.*, 90 Misc. 2d 1010, 396 N.Y.S.2d 579, 1977 N.Y. Misc. LEXIS 2210 (N.Y. Sup. Ct. 1977).

11. —Specific statutory violation

Where plaintiffs did not allege in their medical malpractice complaint that there had been a statutory violation, plaintiffs were not required to amplify complaint by specifying statutory violation relied upon, particularly in view of fact that plaintiffs indicated willingness to furnish specific statement of statutory violations relied upon after completion of pretrial examination, so that failure to specify statute relied upon did not warrant granting of motion to preclude before completion of pretrial examination. *Coughlin v Festin*, 53 A.D.2d 800, 385 N.Y.S.2d 166, 1976 N.Y. App. Div. LEXIS 13600 (N.Y. App. Div. 3d Dep't 1976).

In personal injury action, defendants were entitled to particulars as to statutes, ordinances, rules, and regulations allegedly violated. *Liga v Long Island Rail Road*, 129 A.D.2d 566, 514 N.Y.S.2d 61, 1987 N.Y. App. Div. LEXIS 45232 (N.Y. App. Div. 2d Dep't 1987).

Plaintiff was not required to respond to defendant's demand for further bill of particulars regarding violation of statute or ordinance where plaintiff made no claim in his complaint of any such violation in his personal injury action; however, should plaintiff ascertain after completion of discovery that there had been such violation, he should serve further bill of particulars as to that item, and he should not, as he purported to do in his bill of particulars, simply defer issue to trial court to take judicial notice of any applicable statutes. *Kwang Sik Kim v A & K Plastic Products, Inc.*, 133 A.D.2d 219, 519 N.Y.S.2d 24, 1987 N.Y. App. Div. LEXIS 49720 (N.Y. App. Div. 2d Dep't 1987).

12. —Unavailable information

In a malpractice action, if a plaintiff does not have certain information, plaintiff may give merely a frank and honest statement that plaintiff does not have the information, to be followed by a supplemental bill of particulars giving the information when it is obtained, presumably before the statement of readiness. *Coughlin v Festin*, 53 A.D.2d 800, 385 N.Y.S.2d 166, 1976 N.Y. App. Div. LEXIS 13600 (N.Y. App. Div. 3d Dep't 1976).

In a personal injury action based on negligence, strict liability and breach of warranty, plaintiff would not be allowed to present evidence at trial with respect to an item of defendant's demand for a verified bill of particulars where plaintiff's responses to that item were unsatisfactory in that they were general, conclusory and failed to adequately inform the defendant of the nature of the alleged defects, but plaintiff would be required to furnish a supplementary bill of particulars containing the requested information if, at a later time, plaintiff obtained the information sought. *Gaye v Griffith*, 83 A.D.2d 956, 443 N.Y.S.2d 25, 1981 N.Y. App. Div. LEXIS 15409 (N.Y. App. Div. 2d Dep't 1981).

In action for medical malpractice, defendants' motion to strike plaintiff's bills of particulars and to direct service of further bills of particulars was properly denied where bills served by plaintiff, at early stage of litigation, apprised defendants that their liability was based, inter alia, on their alleged failure to timely diagnose lung cancer of plaintiff's decedent, and also stated that plaintiff would not be able to provide other information until completion of disclosure, at which time bills would be supplemented; such procedure is especially acceptable in medical malpractice cases, where defendants often have more information than plaintiffs, but denial of defendants' motion should be without prejudice to renewal if plaintiff failed to serve supplemental bills within reasonable time after completion of disclosure proceedings. *Baldinger v Bloom*, 123 A.D.2d 340, 506 N.Y.S.2d 352, 1986 N.Y. App. Div. LEXIS 60115 (N.Y. App. Div. 2d Dep't 1986).

B. Particular Applications

13. Assault

In action against city for assault and battery by city police in 1982, city was entitled to strike supplemental bill of particulars as to claim for injuries suffered in 1987 when plaintiff allegedly heard footsteps of group of people in stairway of his apartment building and jumped out of window thinking that police were after him, even though it was shown that plaintiff suffered from schizophrenia late in 1982, since there was no proof that plaintiff was suffering from

schizophrenia at time of original assault or that jump in 1987 was causally related to 1982 assault. *Mazzilli v New York*, 154 A.D.2d 355, 545 N.Y.S.2d 833, 1989 N.Y. App. Div. LEXIS 12281 (N.Y. App. Div. 2d Dep't 1989).

14. Automobile accident

Defendants were not entitled to order striking supplemental bill of particulars as untimely and improper where, in her original bill of particulars, plaintiff alleged that she had suffered injuries to her spine as result of car accident, and she served supplemental bill elaborating on her spinal injuries and offered to undergo another physical examination. *Pauling v Glickman*, 232 A.D.2d 465, 648 N.Y.S.2d 339, 1996 N.Y. App. Div. LEXIS 10221 (N.Y. App. Div. 2d Dep't 1996).

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).

In personal injury action arising from motor vehicle accident wherein plaintiff called, as witness, passenger who had previously sued him and served verified bill of particulars alleging that he negligently attempted to make right turn from left-hand turn lane, court should have allowed bill of particulars into evidence where it contained sworn statement which was materially inconsistent with testimony given by plaintiff's passenger at trial. *Mantuano v Mehale*, 258 A.D.2d 566, 685 N.Y.S.2d 467, 1999 N.Y. App. Div. LEXIS 1257 (N.Y. App. Div. 2d Dep't 1999).

Plaintiff injured in traffic accident was entitled to amend his bill of particulars to reflect current state of his physical injuries, even though his motion was made 5 years after accident, absent prejudice to defendants. Plaintiff injured in traffic accident was also 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).

Since the trial was adjourned without objection by defendants and they were afforded ample opportunity to conduct further discovery at plaintiffs' expense, the trial court did not err in excusing plaintiffs' untimely disclosures in a personal injury case; N.Y. Comp. Codes R. & Regs. tit. 22, § 202.17(h) did not compel preclusion where there was no prejudice and a contrary order was made. Similarly, as for a supplemental bill of particulars, if it alleged new injuries as defendants asserted, then its untimeliness was also excusable given the postponement, the lack of any prejudice, and the public policy favoring the resolution of cases on their merits. *Jessmer v Martin*, 46 A.D.3d 1059, 847 N.Y.S.2d 288, 2007 N.Y. App. Div. LEXIS 12640 (N.Y. App. Div. 3d Dep't 2007).

Plaintiffs' claim that they were only seeking to supplement under N.Y. C.P.L.R. 3043(b) rather than to amend under N.Y. C.P.L.R. 3042(b) the bill of particulars was rejected; this was at odds with the form and content of the motion and with their proposed amended bill of particulars. *Diaz v Ford Motor Co.*, 29 A.D.3d 339, 814 N.Y.S.2d 606, 2006 N.Y. App. Div. LEXIS 5906 (N.Y. App. Div. 1st Dep't 2006).

In a motorist's action, arising from a vehicle accident when a driver's vehicle rear-ended the vehicle that the motorist was operating, the trial court erroneously found that the motorist raised triable issues of fact on the significant disfigurement category of serious injury, as that "new injury" was improperly asserted in the motorist's "supplemental verified bill of particulars" and improperly raised for the first time in opposition to the driver's summary judgment motion.

Stamps v Pudetti, 137 A.D.3d 1755, 28 N.Y.S.3d 539, 2016 N.Y. App. Div. LEXIS 2248 (N.Y. App. Div. 4th Dep't 2016).

15. Medical malpractice, generally

It was an abuse of discretion to permit a further bill of particulars to be served in medical malpractice and wrongful death action some ten years after service of the first bill of particulars. Mausler v Health Ins. Plan, Inc., 59 A.D.2d 700, 398 N.Y.S.2d 174, 1977 N.Y. App. Div. LEXIS 13647 (N.Y. App. Div. 2d Dep't), app. dismissed, 43 N.Y.2d 835, 1977 N.Y. LEXIS 5290 (N.Y. 1977).

In a medical malpractice action, plaintiff would be allowed to amend a further bill of particulars filed four years after initiation of the suit, but only if plaintiff's attorney personally paid \$250 to each defendant, and if the attorney failed to do so, a later supplemental bill of particulars would be quashed, even though plaintiffs had no right to amend the further bill with a new claim of special damages for lost earnings and lost pension benefits since the losses must have appeared before the action was commenced but plaintiff in all previous bills, in effect, denied the existence of any such claims, where any prejudice that might have been caused to defendants by plaintiff's delay in moving to amend the bill could be eliminated by granting leave to defendants to undertake and expeditiously complete discovery relating to the new claim, and where the delay in moving to amend was inordinant and inexcusable. Kurnitz v Croft, 91 A.D.2d 972, 457 N.Y.S.2d 560, 1983 N.Y. App. Div. LEXIS 16264 (N.Y. App. Div. 2d Dep't 1983).

In medical malpractice action, Special Term properly denied motion to strike plaintiff's allegations of sterility from her bill of particulars predicated on claim that damages for sterility are too speculative to be compensable, since admissibility of proof of damages is for trial court to decide, not Special Term. Rosini v Cunanan, 130 A.D.2d 956, 516 N.Y.S.2d 146, 1987 N.Y. App. Div. LEXIS 46937 (N.Y. App. Div. 4th Dep't 1987).

In action to recover for personal injuries, plaintiff was entitled to amend bill of particulars to include operation performed on his shoulder approximately one year after incident giving rise to

action, notwithstanding defendants' contention that they were prejudiced by delay in that they could not obtain independent medical examination as to pre-surgery nature of plaintiff's injuries, since (1) plaintiff had no affirmative obligation to inform defendants prior to surgery and there was nothing in defendants' papers explaining why examination shortly after surgery would have yielded more information than one conducted later, (2) case had been inactive due to fact that defendants' insurance carrier had been in rehabilitation and defendants failed to point to anything done in preparation for trial that would be affected by amendment, and (3) plaintiff's original bill of particulars alleged serious and permanent injury to his shoulder and, therefore, revelation of subsequent shoulder surgery did not result in unfair surprise to defendants. *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).

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).

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, 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. 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).

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).

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).

In a medical malpractice action, a trial court properly denied a doctor's motion to compel an estate administratrix to provide further particulars as to the first demand as it sufficiently set forth how the doctor was alleged to have been negligent, and as to the second demand since defendant improperly sought more than generalized allegations of negligence, sufficient to

narrow the issues for discovery and trial; defendant improperly demanded information regarding what diagnosis or treatment should have been made or given, which calls for expert testimony and purely evidentiary. *Stidham v Clerk*, 57 A.D.3d 1369, 870 N.Y.S.2d 682, 2008 N.Y. App. Div. LEXIS 10010 (N.Y. App. Div. 4th Dep't 2008).

It was error to grant a physician's and hospital's motions in limine to bar testimony of the physician's negligence in not placing a decedent in a telemetry unit to monitor the decedent's heart condition post-operatively because (1) the theory was disclosed in survivors' bills of particulars, (2) the survivors served expert disclosures regarding this theory, and (3) the physician's and hospital's supplemental expert witness disclosures indicated awareness of the theory. *Shanoff v Golyan*, 139 A.D.3d 932, 34 N.Y.S.3d 78, 2016 N.Y. App. Div. LEXIS 3719 (N.Y. App. Div. 2d Dep't 2016).

In a medical malpractice and wrongful death action against, inter alia, 12 doctors, the trial court did not abuse its discretion in ordering preclusion unless the administrator provided more specificity in her bills of particulars because the language “and the effects thereof” rendered the responses vague and insufficiently informative, and the responses did not particularize the acts or omissions the 12 doctors, who practiced in discrete medical specialties, alleged to have committed. *Stoddard v New York Oncology Hematology, P.C.*, 172 A.D.3d 1504, 99 N.Y.S.3d 468, 2019 N.Y. App. Div. LEXIS 3414 (N.Y. App. Div. 3d Dep't 2019).

In a medical malpractice action, the trial court properly granted the motions to strike plaintiff's “supplemental” bills of particulars because the documents that plaintiff labeled “supplemental” bills of particulars were actually “amended” bills of particulars that listed a new injury, specifically, hypovolemic shock. *Jeannette S. v Williot*, 179 A.D.3d 1479, 118 N.Y.S.3d 329, 2020 N.Y. App. Div. LEXIS 813 (N.Y. App. Div. 4th Dep't), reh'g denied, 185 A.D.3d 1480, 125 N.Y.S.3d 620, 2020 N.Y. App. Div. LEXIS 4176 (N.Y. App. Div. 4th Dep't 2020).

Trial court erred in granting the motions for judgment as a matter of law filed by a hospital and a doctor and in limiting the doctor's damages in a patient's medical malpractice action because the motions for judgment as a matter of law were made before the close of the patient's case

and were not based upon admissions by the patient, and a fair reading of the bills of particulars set forth a claim for damages. *Fuchs v Long Beach Med. Ctr.*, 199 A.D.3d 762, 157 N.Y.S.3d 499, 2021 N.Y. App. Div. LEXIS 6211 (N.Y. App. Div. 2d Dep't 2021).

16. —Dental matters

Plaintiff in malpractice action against dentist was not entitled to preclusion of defense testimony on possible role of plaintiff's alleged culpable conduct in contributing to her injuries, even though CLS CPLR § 3101(d) notice referred to culpable conduct somewhat vaguely as "factors outside of the control" of dentist, where bill of particulars gave plaintiff full warning of details to which that phrase referred. *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).

Trial court properly granted summary judgment to defendants as to plaintiff's dental malpractice claims, because a claim alleging negligent treatment of a tooth, which was first raised in a so-called supplemental bill of particulars served without leave of the court after the note of issue had been filed, was properly rejected as improperly raising a new injury, N.Y. C.P.L.R. 3043(b). *Marrone v Klein*, 33 A.D.3d 546, 823 N.Y.S.2d 371, 2006 N.Y. App. Div. LEXIS 12811 (N.Y. App. Div. 1st Dep't 2006).

17. Negligence generally

In a negligence action to recover damages for personal injuries, denial of defendant's motion to dismiss the complaint for failure to serve a proper bill of particulars, or, in the alternative, to preclude the plaintiff from presenting proof at the trial as to certain matters, was proper where the bill of particulars did not contain a new cause of action and did not alter the cause of action set forth in the complaint. *Rack v Mary Immaculate Hospital, Div. of Catholic Medical Center*, 80 A.D.2d 830, 436 N.Y.S.2d 346, 1981 N.Y. App. Div. LEXIS 10642 (N.Y. App. Div. 2d Dep't 1981).

In an action to recover damages for negligence, breach of warranty, and strict products liability, denial of defendant vehicle manufacturer's demand for a bill of particulars was erroneous and the demand would be deemed valid where the items requested therein were not palpably improper. *Gargano v Rosenthal*, 100 A.D.2d 534, 473 N.Y.S.2d 225, 1984 N.Y. App. Div. LEXIS 17505 (N.Y. App. Div. 2d Dep't 1984).

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).

Appellate Division would treat complaint, which alleged common-law negligence and violation of CLS Labor § 241(6), as if it had been amended de facto to add claims for violations of CLS Labor §§ 200 and 240(1) where bill of particulars referred to latter claims, parties' motions for summary judgment were made and addressed on assumption that latter claims were properly pleaded and before Supreme Court, and parties could stipulate to amended complaint alleging causes of action under §§ 200 and 240(1). *Sebring v Wheatfield Props. Co.*, 255 A.D.2d 927, 680 N.Y.S.2d 383, 1998 N.Y. App. Div. LEXIS 12154 (N.Y. App. Div. 4th Dep't 1998).

Contrary to a newspaper's contention, the allegation of negligent hiring was not newly asserted in the passenger's supplemental bill of particulars inasmuch as the original complaint clearly stated that it sought damages for the negligent hiring and retention of a driver; accordingly, the trial court properly exercised its discretion in granting that branch of the passenger's cross motion which was for leave to serve a supplemental bill of particulars with respect to so much of the complaint as alleged negligent hiring. *Chuchuca v Chuchuca*, 67 A.D.3d 948, 890 N.Y.S.2d 573, 2009 N.Y. App. Div. LEXIS 8607 (N.Y. App. Div. 2d Dep't 2009).

Trial court properly granted plaintiff's motion pursuant to N.Y. C.P.L.R. 3043 (2003) to amend a bill of particulars in a personal injury action against a company, because leave to amend a bill of particulars was to be freely given in the absence of prejudice or surprise to the opposing party, and the company failed to show how it was surprised or how it would be prejudiced by the

proposed amendment. *Ancona v Waldbaum, Inc.*, 305 A.D.2d 436, 758 N.Y.S.2d 816, 2003 N.Y. App. Div. LEXIS 5414 (N.Y. App. Div. 2d Dep't 2003).

City's failure to challenge an administratrix's notice of claim as deficient did not prohibit the city from arguing that the allegations in the administratrix's supplemental bill of particulars exceeded the scope of the notice of claim; because certain of the theories of liability were not contained in the notice of claim and a late notice of claim asserting such theories would in any event have been time-barred, the administratrix was not entitled to raise them in her supplemental bill of particulars. Furthermore, inasmuch as the administratrix sought to assert new substantive theories of liability, she was unable to amend her notice of claim under N.Y. Gen. Mun. Law § 50-e(6). *Clare-Hollo v Finger Lakes Ambulance EMS, Inc.*, 99 A.D.3d 1199, 952 N.Y.S.2d 350, 2012 N.Y. App. Div. LEXIS 6622 (N.Y. App. Div. 4th Dep't 2012).

In a personal injury action, the plaintiffs improperly added new allegations in their December 2019 supplemental bill of particulars by asserting violations of statutes, ordinances, and regulations. *L.R. v Evergreen Charter Sch.*, 232 A.D.3d 920, 223 N.Y.S.3d 187, 2024 N.Y. App. Div. LEXIS 6356 (N.Y. App. Div. 2d Dep't 2024).

18. Products liability

At the least, defendant was entitled to specification, in bill of particulars, of claimed defects in product and to be informed whether the claimed defects were those of design or manufacture. Person who was injured by explosion of compressor was entitled to an examination of the compressor and the opportunity to test the compressor before completing answer to demand for bill of particulars stating whether claimed defects in the compressor were those of design or manufacture. *Barlow v Fusco*, 49 A.D.2d 1032, 374 N.Y.S.2d 498, 1975 N.Y. App. Div. LEXIS 11395 (N.Y. App. Div. 4th Dep't 1975).

Order striking certain items from drug company's demand for bill of particulars in wrongful death action brought against drug company and others erroneously struck certain items from the demand but properly struck from demand certain items by which drug company sought

explanation of how its promotion and advertising of drug were improper. *Mullen v Brennan*, 58 A.D.2d 597, 395 N.Y.S.2d 243, 1977 N.Y. App. Div. LEXIS 12639 (N.Y. App. Div. 2d Dep't 1977).

In a personal injury action against an automobile manufacturer, the 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 an action to recover damages for negligence, breach of warranty, and strict products liability, denial of defendant vehicle manufacturer's demand for a bill of particulars was erroneous and the demand would be deemed valid where the items requested therein were not palpably improper. *Gargano v Rosenthal*, 100 A.D.2d 534, 473 N.Y.S.2d 225, 1984 N.Y. App. Div. LEXIS 17505 (N.Y. App. Div. 2d Dep't 1984).

In a personal injury action in which plaintiff claimed she was injured by a defect in a seat manufactured by a carmaker, plaintiff's responses to the manufacturer's bill of particulars were insufficient where they failed to specify the manner in which the seat was defective. *Hughes v General Motors Corp.*, 106 A.D.2d 703, 484 N.Y.S.2d 174, 1984 N.Y. App. Div. LEXIS 21654 (N.Y. App. Div. 3d Dep't 1984).

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).

In personal injury action alleging negligent and improper design of automobile, manufacturer was entitled to further bill of particulars identifying specific parts claimed to be defective, and nature of defect claimed as to each part, where plaintiffs specified allegedly defective parts as “steering system, braking system, floor mats and back seat cushions” and, with respect to “braking system,” listed various parts of wheel which were purportedly defective. *Ferrigno v General Motors Corp., Cadillac Motor Car Div.*, 134 A.D.2d 479, 521 N.Y.S.2d 263, 1987 N.Y. App. Div. LEXIS 50675 (N.Y. App. Div. 2d Dep’t 1987).

In products liability action arising from plaintiff being burned by chemical cleaning product or combination of products, defendant was entitled to further verified bill of particulars containing (1) indication of specific name of product or products, or any combination thereof, referred to in each particular, (2) specification of allegedly defective nature of product or products, and (3) present amount of special damages which were claimed. *Gross v Edmer Sanitary Supply Co.*, 154 A.D.2d 652, 546 N.Y.S.2d 657, 1989 N.Y. App. Div. LEXIS 13725 (N.Y. App. Div. 2d Dep’t 1989).

In products liability action arising from plaintiff being burned by chemical cleaning product or combination of products, attachment of and reference to material safety data sheet was not so improper as to warrant striking it from plaintiffs’ bill of particulars, but plaintiffs should have set forth specific warnings contained in data sheet which they claimed should have been given by defendant. *Gross v Edmer Sanitary Supply Co.*, 154 A.D.2d 652, 546 N.Y.S.2d 657, 1989 N.Y. App. Div. LEXIS 13725 (N.Y. App. Div. 2d Dep’t 1989).

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).

In products liability action against manufacturer of page folder, court properly denied defense motion to strike plaintiff’s expert information statements indicating that experts would testify, inter alia, that machine’s clamp guard became disengaged from guard due to “inadequate weld,”

since bill of particulars had already advised defendant of plaintiff's claim that clamp securing guard had failed and was not securely mounted, and thus there was no material variance between bill of particulars and experts' opinions; it was not necessary for bill of particulars to set forth precise manner in which clamp failed. *Avery v Rockwell Int'l Corp.*, 204 A.D.2d 1044, 612 N.Y.S.2d 730, 1994 N.Y. App. Div. LEXIS 6885 (N.Y. App. Div. 4th Dep't 1994).

Trial court in a medical malpractice case correctly denied that branch of a hospital's motion which was to preclude a patient from offering evidence at trial of certain economic damages set forth in the patient's supplemental bill of particulars; the patient was allowed to serve a supplemental bill of particulars containing continuing special damages and disabilities without leave of the court if it alleged no new cause of action or new injury. Where, as here, the patient sought to allege continuing consequences of the injuries suffered and described in a previous bill of particulars, rather than new and unrelated injuries, the bill was supplemental, and leave of the court was not required. *Shahid v New York City Health & Hosps. Corp.*, 47 A.D.3d 798, 850 N.Y.S.2d 521, 2008 N.Y. App. Div. LEXIS 471 (N.Y. App. Div. 2d Dep't 2008).

19. Slip and fall

In tenant's action against landlord for fall on landlord's premises, landlord's "supplemental" bill of particulars, which actually was amended bill of particulars, alleging for first time that tenant was intoxicated at time of accident, was nullity where it was served without leave of court and after filing of note of issue. *Boland v Koppelman*, 251 A.D.2d 176, 674 N.Y.S.2d 349, 1998 N.Y. App. Div. LEXIS 7305 (N.Y. App. Div. 1st Dep't 1998).

In tenant's action against landlord for fall on landlord's premises, landlord's motion for leave to file amended bill of particulars would be denied where delay in asserting new defense—that tenant was intoxicated at time of accident—until 2 months before scheduled start of trial was both inexcusable and prejudicial because (1) landlord's prior counsel had been given authorization for hospital record, on which landlord relied for his allegation of intoxication, almost immediately on commencement of action, and (2) passage of 4 years since hospital test was

taken and almost 2 years since authorization was given severely undermined tenant's ability to investigate validity of test. *Boland v Koppelman*, 251 A.D.2d 176, 674 N.Y.S.2d 349, 1998 N.Y. App. Div. LEXIS 7305 (N.Y. App. Div. 1st Dep't 1998).

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).

II. Under Former Civil Practice Laws

A. In General

20. Generally

A bill of particulars will be ordered where the complaint in a negligence action merely sets out general allegations of negligence. *Causullo v Lenox Const. Co.*, 106 A.D. 575, 94 N.Y.S. 639, 1905 N.Y. App. Div. LEXIS 2633 (N.Y. App. Div. 1905).

When the negligence charged against the defendant is that the locomotive which exploded and killed plaintiff's intestate was in a dangerous, defective and unsafe condition, and unfit because out of repair, a plaintiff who has been allowed with her expert an inspection of the locomotive by the defendant should be required to give a bill of particulars stating in what respect the locomotive was defective. *Heslin v Lake C. & M. R. Co.*, 109 A.D. 814, 96 N.Y.S. 761, 1905 N.Y. App. Div. LEXIS 3662 (N.Y. App. Div. 1905).

Answer alleging that decedent's death was caused solely by his own negligence merely pleaded conclusion and court could require bill of particulars. *Ithaca Trust Co. v Driscoll Bros. & Co.*, 163 A.D. 54, 148 N.Y.S. 775, 1914 N.Y. App. Div. LEXIS 6981 (N.Y. App. Div. 1914).

Plaintiff's bill of particulars precludes him from introducing evidence of injuries not set forth therein or in complaint. *Kondas v Gallo Original Iron Works, Inc.*, 8 A.D.2d 955, 190 N.Y.S.2d 602, 1959 N.Y. App. Div. LEXIS 7547 (N.Y. App. Div. 2d Dep't 1959).

In action for personal injury, plaintiff was ordered to state city ordinances, regulations and statutes which he claims defendant violated. *Rubin v New York*, 84 N.Y.S.2d 344, 192 Misc. 745, 1948 N.Y. Misc. LEXIS 3575 (N.Y. Sup. Ct. 1948).

General statement of injuries to plaintiff's body, in action for personal injuries, was insufficient, and defendant was entitled to more specific statement. *Sammons v Mahern*, 141 N.Y.S.2d 216, 207 Misc. 781, 1955 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1955).

An attempted reservation in a bill of particulars to prove further injuries is of no effect since injuries not specified in a bill of particulars or in a timely approved amended bill are not provable on the trial. *McGrath v Calabrese*, 13 Misc. 2d 267, 176 N.Y.S.2d 431, 1958 N.Y. Misc. LEXIS 3323 (N.Y. Sup. Ct. 1958).

Motion to preclude made more than seven months after the bill of particulars was served was deemed as untimely. *Attia v Koelling*, 17 Misc. 2d 500, 187 N.Y.S.2d 289, 1959 N.Y. Misc. LEXIS 3626 (N.Y. Sup. Ct. 1959).

Preclusion order was denied where plaintiff had furnished a bill of particulars sufficient to meet requirements of rule and to permit defendant to prepare for trial where demands for information had exceeded what was required by law or what judicial discretion should allow. *Attia v Koelling*, 17 Misc. 2d 500, 187 N.Y.S.2d 289, 1959 N.Y. Misc. LEXIS 3626 (N.Y. Sup. Ct. 1959).

A party may reserve the right in a bill of particulars to prove further and additional damages and all competent sequelae as are associated with such injuries, and the condition may be imposed

by the court that any such supplemental bill shall be served at least ten days before trial. *Lesser v Kennedy*, 19 Misc. 2d 812, 193 N.Y.S.2d 63, 1959 N.Y. Misc. LEXIS 2893 (N.Y. Sup. Ct. 1959).

Generalized conclusory statements in bill of particulars concerning acts of negligence, as for example, that defendant operated his vehicle in a careless and reckless manner in failing to keep his vehicle under proper control, do not meet function of bill of particulars. However, their condemnation is justified only when they stand alone and unrelated to particularized acts of negligence. When they are used in combination with specific allegations of negligence, their inclusion is permitted either as surplusage or as amplification of claimed negligent acts. *Rotondi v Vaughan*, 28 Misc. 2d 656, 220 N.Y.S.2d 213, 1961 N.Y. Misc. LEXIS 3601 (N.Y. Sup. Ct. 1961).

Where plaintiff in personal injury action claims local traffic rules, regulations and ordinances were violated, he must identify them in his bill of particulars. *Rotondi v Vaughan*, 28 Misc. 2d 656, 220 N.Y.S.2d 213, 1961 N.Y. Misc. LEXIS 3601 (N.Y. Sup. Ct. 1961).

Plaintiff's reservation, in his bill of particulars, of the right to make additional claims is unauthorized and will be stricken therefrom. *Rotondi v Vaughan*, 28 Misc. 2d 656, 220 N.Y.S.2d 213, 1961 N.Y. Misc. LEXIS 3601 (N.Y. Sup. Ct. 1961).

Clause reserving right to prove further injury will be stricken from bill of particulars; if future injury is sustained, plaintiff may apply for leave to amend bill. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

Where the negligence alleged is that the running gear of a car plaintiff was driving was unsafe, dangerous and defective, defendant should give a bill of particulars thereof. *Keairns v Coney Island & B. R. Co.*, 1 N.Y.S. 906, 49 Hun 608, 1888 N.Y. Misc. LEXIS 1647 (N.Y. Sup. Ct. 1888).

The complaint in an action for negligence alleged that the death of plaintiffs' intestate was caused by the negligence of defendants in shutting down the doors over a certain shaft or

elevator way, from the negligent and improper construction, management and operation of said elevator thereat by defendants, and it was held that defendant was entitled to a bill of particulars showing in what respect the elevator was negligently or improperly constructed, managed or operated. *O'Hara v Ehrich*, 11 N.Y.S. 52, 58 N.Y. Super. Ct. 250, 1890 N.Y. Misc. LEXIS 598 (N.Y. Super. Ct. 1890).

Statutes, ordinances, rules and regulations, claimed to have been violated by defendant, were required to be stated in bill of particulars. *Roden v Bond Stores, Inc.*, 80 N.Y.S.2d 88, 1944 N.Y. Misc. LEXIS 2815 (N.Y. Sup. Ct. 1944).

Where complaint alleged negligent failure to guard circular saw, plaintiff was required to name section of law violated. *Wasserman v Charles H. Finch & Co.*, 80 N.Y.S.2d 88, 1945 N.Y. Misc. LEXIS 2877 (N.Y. Sup. Ct. 1945).

Particulars granted of defendant's failure to exercise care. *Meyer v Triboro Coach Corp.*, 66 N.Y.S.2d 494, 1946 N.Y. Misc. LEXIS 3092 (N.Y. Sup. Ct. 1946).

21. Discretion of court

Order denying modification of particulars "which plaintiff will contend constituted negligence" and of nature of his injuries sustained in automobile accident held discretionary, and should be affirmed. *Kot v Counrtyman*, 262 A.D. 1054, 30 N.Y.S.2d 244 (N.Y. App. Div. 1941).

In negligence cases, in the absence of extraordinary and exceptional circumstances established by affidavits in the case, it is an abuse of discretion to grant relief from a preclusion order for failure to serve bills of particulars. *Gonsa v Licitra*, 6 A.D.2d 755, 174 N.Y.S.2d 144, 1958 N.Y. App. Div. LEXIS 5910 (N.Y. App. Div. 4th Dep't 1958).

If pleading needed particularization as to RCP subds (a) to (i) adverse party was entitled to such particulars; if particularization was not needed, court had discretion to disallow such particulars. *Sher v Roth-Schenker Corp.*, 72 N.Y.S.2d 684, 1947 N.Y. Misc. LEXIS 2836 (N.Y. Sup. Ct. 1947).

22. Reliance on res ipsa loquitur

In an action for damages resulting from negligence of defendant gas company, defendant is not entitled to bill of particulars as to acts of negligence unless plaintiff stipulate to rely only upon doctrine of res ipsa loquitur. *Haines v Newburgh*, 234 A.D. 389, 255 N.Y.S. 167, 1932 N.Y. App. Div. LEXIS 10445 (N.Y. App. Div. 1932).

Where complaint in wrongful death action does not clearly indicate that plaintiff intends to rely upon res ipsa loquitur doctrine, defendant is entitled to particulars of specific acts of negligence as plaintiff will claim them to be, however, if plaintiff cannot furnish such particulars because of lack of knowledge, she will not be compelled to elect, at this time, to rely on res ipsa. *Cherhit v General Lumber Corp.*, 12 A.D.2d 637, 208 N.Y.S.2d 730, 1960 N.Y. App. Div. LEXIS 6494 (N.Y. App. Div. 2d Dep't 1960).

Plaintiff may be required to state in bill of particulars intention to rely upon doctrine of res ipsa loquitur, as condition to eliminating particulars of specific acts of negligence. *Richardson v Long I. R. Co.*, 70 N.Y.S.2d 876, 189 Misc. 161, 1947 N.Y. Misc. LEXIS 2482 (N.Y. Sup. Ct. 1947).

Motion to strike from bill of particulars reservation of right to rely upon res ipsa loquitur, and to compel plaintiff to elect between that doctrine and affirmative acts of negligence was denied, since it was not the pleading of the affirmative acts, but the attempted proof thereof at trial, that would deprive plaintiff of benefit of doctrine. *Fischer v John A. Johnson & Sons, Inc.*, 20 Misc. 2d 891, 198 N.Y.S.2d 470, 1955 N.Y. Misc. LEXIS 2363 (N.Y. Sup. Ct. 1955).

Where the complaint is such that plaintiff is not necessarily confined to the theory of res ipsa loquitur, but may rely on it, then plaintiff is bound by the same rules applicable to any other negligence action. *Caivana v Spohn*, 29 Misc. 2d 183, 217 N.Y.S.2d 624, 1961 N.Y. Misc. LEXIS 2576 (N.Y. Sup. Ct. 1961).

In action for death in airplane crash, particulars of acts of negligence should not be required where complaint is based on res ipsa doctrine. *La Tour v United Air Lines, Inc.*, 65 N.Y.S.2d 839, 1946 N.Y. Misc. LEXIS 2943 (N.Y. Sup. Ct. 1946).

23. Contributory negligence

In absence of allegation that plaintiff is without knowledge of facts of accident or that information thereof is wholly in possession of defendant, particulars of contributory negligence are not required. *Murray v Wilson Line, Inc.*, 266 A.D. 179, 41 N.Y.S.2d 689, 1943 N.Y. App. Div. LEXIS 3515 (N.Y. App. Div. 1943).

In view of plaintiff's positive denial of any knowledge of the facts surrounding the accident in which intestate was killed, defendant was ordered to supply particulars as to the defense of contributory negligence so far as known to it without prejudice to rely upon such additional facts establishing such defense as might appear from plaintiff's proofs. *Conklin v Erie R. Co.*, 244 N.Y.S. 538, 137 Misc. 569, 1930 N.Y. Misc. LEXIS 1520 (N.Y. Sup. Ct. 1930).

A motion for bill of particulars will be granted to plaintiff in a death action where defendant pleads as a defense the contributory negligence of the decedent. *McGann v Adler*, 268 N.Y.S. 170, 149 Misc. 745, 1933 N.Y. Misc. LEXIS 1891 (N.Y. Sup. Ct. 1933), *aff'd*, 241 A.D. 726, 270 N.Y.S. 915, 1934 N.Y. App. Div. LEXIS 9212 (N.Y. App. Div. 1934).

Right to require particulars as to defenses of contributory negligence and assumption of risk in action under Federal Employers' Liability Act. *Peterson v Lehigh V. R. Co.*, 190 N.Y.S. 883 (N.Y. Sup. Ct. 1921).

In action for personal injuries and wrongful death, where administratrix had no knowledge of facts surrounding the accident, defendant was required to furnish bill of particulars as to its separate defenses of decedent's contributory negligence or if it did not possess such knowledge, to so state it under oath. *Rodriguez v Surface Transit, Inc.*, 218 N.Y.S.2d 696 (N.Y. Sup. Ct. 1961).

24. Employee against employer

A bill of particulars will be required in an action where the complaint alleges that the death of the plaintiff's intestate was caused by the negligence of her master in failing to furnish a reasonably safe place to work. *Bjork v Post & McCord*, 125 A.D. 813, 110 N.Y.S. 206, 1908 N.Y. App. Div. LEXIS 2902 (N.Y. App. Div. 1908).

A servant in a negligence action will be required to state what he was doing at the time of the accident, and how his hand was caught, and also what duty owing to him was disregarded. *Clum v Federal Sugar Refining Co.*, 136 A.D. 355, 120 N.Y.S. 975, 1910 N.Y. App. Div. LEXIS 25 (N.Y. App. Div. 1910).

In an action by an employee against his employer for damages for injuries sustained in operating a button machine, the plaintiff should be required to state in a bill of particulars whether or not he claimed that, at the time of the accident, he was put to work to operate the machine. *Kaplan v Sher*, 106 N.Y.S. 1094, 56 Misc. 432, 1907 N.Y. Misc. LEXIS 793 (N.Y. App. Term 1907), modified, 109 N.Y.S. 20 (N.Y. App. Term 1908).

In action for negligent death where the complaint alleged, generally, that defendant was careless in not providing a safe place to work; in failing to supply a sufficient number of fellow servants, etc., a bill of particulars was ordered. *Slocum v Erie R. Co.*, 36 F.2d 277, 1929 U.S. Dist. LEXIS 1678 (D.N.Y. 1929).

F. Specific Clauses of Rule

25. Clauses (a)(1) through (a)(3)

Omnibus statement that defendants were "careless, reckless and negligent in other respects" required no specification. *Levine v Rosenman*, 80 N.Y.S.2d 90, 192 Misc. 1010, 1948 N.Y. Misc. LEXIS 2497 (N.Y. Sup. Ct. 1948).

In personal injury action where plaintiff alleged a negligent condition “on each step” of the stairway, defendant was held entitled to know what particular step plaintiff will claim at the trial caused her fall. *Guilizio v Rios*, 14 Misc. 2d 513, 184 N.Y.S.2d 205, 1958 N.Y. Misc. LEXIS 2565 (N.Y. Sup. Ct. 1958).

Exact location of an accident need not be specified, but place of occurrence should be identified by reference to some object, thus, statement that accident happened “. . . in the roadway leading to stores adjacent to” a particular address was held too indefinite, and was ordered amplified to identify particular area of roadway claimed to be defective. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

26. Clauses (a)(4) and (a)(5)

Defendant was not deprived of protection of RCP 116(d) where notice was required, if plaintiff was unable to provide information sought. *Conner v Fulton*, 104 N.Y.S.2d 77, 1951 N.Y. Misc. LEXIS 1712 (N.Y. Sup. Ct. 1951).

Defendant was not deprived of protection of RCP 116(e) if plaintiff was unable to provide information sought, and order should have provided that plaintiff furnish to defendant, at time cause reached day calendar for trial, with any further information on subject as plaintiff then possessed. *Conner v Fulton*, 104 N.Y.S.2d 77, 1951 N.Y. Misc. LEXIS 1712 (N.Y. Sup. Ct. 1951).

27. Clauses (a)(6) through (a)(8)

In action for personal injuries received three years ago, defendant was entitled to have plaintiff state in bill of particulars which injuries would be claimed to be permanent and their nature and extent. *Meyer v Grand Union Co.*, 264 A.D. 795, 35 N.Y.S.2d 260, 1942 N.Y. App. Div. LEXIS 4762 (N.Y. App. Div. 1942).

In action for personal injuries, testimony of plaintiff and other witnesses as to brain injury and convulsions was inadmissible where no such injuries had been asserted in bill of particulars served four years before trial and not amended since. *Kaywood v Webb & Knapp, Inc.*, 286 A.D. 994, 144 N.Y.S.2d 447, 1955 N.Y. App. Div. LEXIS 4878 (N.Y. App. Div. 1955).

Plaintiff was required to state nature and extent of prior head injury which he claims was aggravated by present injury. *Rubin v New York*, 84 N.Y.S.2d 344, 192 Misc. 745, 1948 N.Y. Misc. LEXIS 3575 (N.Y. Sup. Ct. 1948).

Length of time plaintiff will claim he was incapacitated from his employment required to be stated by plaintiff. *Rubin v New York*, 84 N.Y.S.2d 344, 192 Misc. 745, 1948 N.Y. Misc. LEXIS 3575 (N.Y. Sup. Ct. 1948).

In action for personal injury, where plaintiff stated he suffers from "possible herniated intervertebral disc" and is unable to state whether operation will be required, defendant was entitled to order requiring plaintiff to specify whether he has herniated intervertebral disc and whether operation is required, if known, and if he has no such information, he may state under oath in lieu thereof, together with reason why such information cannot be given. *Sammons v Mahern*, 141 N.Y.S.2d 216, 207 Misc. 781, 1955 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1955).

In action for personal injury, fact that plaintiff was "partially incapacitated," does not prevent him from stating dates and periods of time when he has been required to remain home as result of injury claimed, and monetary loss sustained thereby. *Sammons v Mahern*, 141 N.Y.S.2d 216, 207 Misc. 781, 1955 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1955).

Plaintiff was required to particularize the nature and extent of claimed damage to blood vessels, tissues, muscles and ligaments at the site of the injury, and to specify the duties or activities which he claimed he was unable to perform. *Rotondi v Vaughan*, 28 Misc. 2d 656, 220 N.Y.S.2d 213, 1961 N.Y. Misc. LEXIS 3601 (N.Y. Sup. Ct. 1961).

Statement in bill of particulars that all injuries are permanent except those of a superficial nature was ambiguous, and did not satisfy the requirements of RCP 116. *Rotondi v Vaughan*, 28 Misc. 2d 656, 220 N.Y.S.2d 213, 1961 N.Y. Misc. LEXIS 3601 (N.Y. Sup. Ct. 1961).

Statement that all injuries “except those of a superficial nature may well be permanent” is insufficient, injuries claimed to be permanent must be particularized. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

Statement that plaintiff sustained “exacerbation of prior arthritic condition” must be amplified by specifying portion of body affected by the prior condition. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

Evidence of injuries not set forth in bill of particulars is inadmissible. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

Statement that plaintiff had been confined to bed for “a few days” and to home “about two months” was ordered to be made more definite. *Dusing v Rosasco*, 31 Misc. 2d 825, 220 N.Y.S.2d 987, 1961 N.Y. Misc. LEXIS 2276 (N.Y. Sup. Ct. 1961).

A demand which calls for “exact” injuries is improper. *Adair v Young*, 205 N.Y.S.2d 463 (N.Y. Sup. Ct. 1959).

28. Clause (a)(9)

In an action to recover for an injury to the back, the defendant is entitled to a bill of particulars as to the nature and extent of the injuries, the amount expended for medicine, medical aid, nurses, etc., but not as to the names of her physicians, druggists and nurses. *Green v Johnson*, 126 A.D. 33, 110 N.Y.S. 104, 1908 N.Y. App. Div. LEXIS 3285 (N.Y. App. Div. 1908).

In action for personal injury, plaintiff must state medical expenses incurred, and number of treatments by physician which have been required, up to time of verification of bill of particulars;

he should also particularize any other special damages suffered up to that date. *Sammons v Mahern*, 141 N.Y.S.2d 216, 207 Misc. 781, 1955 N.Y. Misc. LEXIS 2502 (N.Y. Sup. Ct. 1955).

Defendant in personal injuries case is not entitled to the names of persons to whom plaintiffs became obligated to pay for medical supplies, physicians' and nurses' services, and hospital expenses. *Desimone v Robertson*, 19 Misc. 2d 80, 189 N.Y.S.2d 70, 1959 N.Y. Misc. LEXIS 3234 (N.Y. Sup. Ct. 1959).

Defendant in personal injuries action is not entitled to a statement of the number of house calls made on plaintiffs by their doctors, or of the number of office visits made by plaintiffs to their doctors. *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 the exercise of discretion bill of particulars as to number of house and office visits made on plaintiff by doctor, was granted. *Sakolish v Lilga*, 25 Misc. 2d 205, 206 N.Y.S.2d 849, 1960 N.Y. Misc. LEXIS 2264 (N.Y. Sup. Ct. 1960).

Expenses of hospital or for physician's services are properly required in bill of particulars in personal injury action. *Slawson v Murphy*, 37 N.Y.S.2d 930, 1942 N.Y. Misc. LEXIS 2115 (N.Y. Sup. Ct. 1942).

Names of witnesses, of physician or hospital, are not required to be given in bill of particulars. *Slawson v Murphy*, 37 N.Y.S.2d 930, 1942 N.Y. Misc. LEXIS 2115 (N.Y. Sup. Ct. 1942).

Knowledge of defendant of amount paid for medical care, in that he paid for same, did not bar particulars. *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 personal injury action, it is improper to demand names of witnesses or physicians. *Adair v Young*, 205 N.Y.S.2d 463 (N.Y. Sup. Ct. 1959).

In personal injury action plaintiff may be required to state the number of visits to or by a doctor, without denoting which are office or home calls, and without giving the dates thereof. *Adair v Young*, 205 N.Y.S.2d 463 (N.Y. Sup. Ct. 1959).

29. Clause (b)

In personal injury action motion to amend bill of particulars so as to add new matter to action eight years after the accident and two years after judgment on the first trial had been reversed must be denied because of inexcusable and prejudicial laches. *McCormick v West Tremont Estates, Inc.*, 12 A.D.2d 474, 207 N.Y.S.2d 553, 1960 N.Y. App. Div. LEXIS 6964 (N.Y. App. Div. 1st Dep't 1960).

A party might demand information not specifically enumerated in any of the subdivisions of RCP 116. *Lesser v Kennedy*, 19 Misc. 2d 812, 193 N.Y.S.2d 63, 1959 N.Y. Misc. LEXIS 2893 (N.Y. Sup. Ct. 1959).

Research References & Practice Aids

Federal Aspects:

Pleading time and place, USCS Court Rules, Federal Rules of Civil Procedure, Rule 9(f).

Pleading special damage, USCS Court Rules, Federal Rules of Civil Procedure, Rule 9(g).

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.

Tort claims procedure, 28 USCS §§ 2671 et seq.

Jurisprudences:

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

36 NY Jur 2d Damages §§ 191, 193, 194, 195, 198.

36 NY Jur 2d Damages §§ 197, 205, 206, 209.

44 NY Jur 2d Disclosure §§ 96., 97. .

44A NY Jur 2d Disclosure § 266. .

76 NY Jur 2d Malpractice § 273. .

84 NY Jur 2d Pleading §§ 288, 298, 312, 318.

18A Am Jur PI & Pr Forms, (Rev), Negligence, Forms 21 et seq.

23A Am Jur PI & Pr Forms (Rev), Torts, Forms 1.– 14., 19.– 23.

3 Am Jur Proof of Facts 491., Damages.

6 Am Jur Trials 1., Presenting Plaintiff's Medical Proof—Common Injuries and Conditions.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3043, Bill of Particulars in Personal Injury Actions.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 19.09. Particular pleading requirements in certain actions.

CPLR Manual § 19.17. Bill of particulars.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Negligence § 5.27. Drafting Bill of Particulars.

LexisNexis AnswerGuide New York Civil Litigation § 6.07. Using Bill of Particulars in Personal Injury Actions.

LexisNexis AnswerGuide New York Civil Litigation § 8.06. Seeking a Trial Preference.

LexisNexis AnswerGuide New York Negligence § 2.17. Preparing Answer.

LexisNexis AnswerGuide New York Negligence § 4.21. Examining Exemption for Owners of One and Two-Family Dwellings.

LexisNexis AnswerGuide New York Negligence § 7.25. Defining Elements of Cause of Action and Necessary Allegations.

LexisNexis AnswerGuide New York Negligence § 7.28. Responding to Complaint.

Matthew Bender's New York Checklists:

Checklist for Bill of Particulars LexisNexis AnswerGuide New York Civil Litigation § 6.02.

Checklist for Moving for Trial Preference LexisNexis AnswerGuide New York Civil Litigation § 8.05.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3043:1 et seq.

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 521-27-15.—Verified Bill of Particulars in Action Where Plaintiff Fell on Sidewalk.

LexisNexis Forms FORM 521-27-10.—Complaint in Action Against Amusement Park Where Child Drowned.

LexisNexis Forms FORM 521-27-11.—Complaint in Action Where Plaintiff Was Injured on Amusement Ride.

LexisNexis Forms FORM 521-27-12.—Complaint in Action Against Municipality Where Child Was Injured in Public Playground.

LexisNexis Forms FORM 521-27-13.—Complaint in Action For Injuries Plaintiff Sustained on a Defective Tennis Court.

LexisNexis Forms FORM 521-27-14.—Verified Bill of Particulars in Action Where Plaintiff Fell in Bus Shelter Under Construction.

LexisNexis Forms FORM 521-27-16.—Verified Bill of Particulars in Action Where Plaintiff Was Injured in Damaged and Defective Elevator.

LexisNexis Forms FORM 521-27-2A.—Complaint in Action Against Landlord and Tenant Storefront for Negligence Where Plaintiff Fell in Hole on Sidewalk Abutting Premises.

LexisNexis Forms FORM 521-27-2B.—Complaint in Action Where Plaintiff Fell on Slippery Surface in Shopping Center in Front of Entranceway to Retail Store.

LexisNexis Forms FORM 521-27-3A.—Complaint in Action Against Landlord and Construction Business for Negligence Where Plaintiff Fell on Third Floor Corridor of Building Where Work was Being Performed.

LexisNexis Forms FORM 521-31-46.—Demand for Bill of Particulars.

LexisNexis Forms FORM 521-31-47.—Verified Bill of Particulars.

LexisNexis Forms FORM 521-33-7B.—Municipality's Demand for Verified Bill of Particulars.

LexisNexis Forms FORM 521-37-13.—Plaintiff's Demand for a Bill of Particulars.

LexisNexis Forms FORM 521-15-4.—Demand for Bill of Particulars Personal Injury Action.

LexisNexis Forms FORM 521-15-5.—Plaintiff's Bill of Particulars in Personal Injury Action Automobile Accident.

LexisNexis Forms FORM 521-26-2.—Complaint in Action Involving Nonphysical Tort With Allegations Structured to Assure Tax-free Treatment of Damages Recovered.

LexisNexis Forms FORM 521-27-1.—Complaint in Action Against Business Owner for Negligence Where Plaintiff Fell on Ice Covered Parking Lot.

LexisNexis Forms FORM 521-27-2.—Complaint in Action Against Supermarket by Customer Who Slipped and Fell on a Lettuce Leaf.

LexisNexis Forms FORM 521-27-3.—Complaint in Action Against Landlord by Tenant Who Slipped and Fell on an Unlighted Stairway.

LexisNexis Forms FORM 521-27-4.—Complaint in Action Where Plaintiff Was Injured on an Escalator.

LexisNexis Forms FORM 521-27-5.—Complaint in Action by Tenant Against Landlord for Failing to Properly Maintain Elevator.

LexisNexis Forms FORM 521-27-6.—Complaint in Action by Tenant Against Landlord for Injuries Sustained When He Fell Off a Defective Ladder.

LexisNexis Forms FORM 521-27-7.—Complaint in Action Against Architect for Negligent Design of Floor.

LexisNexis Forms FORM 521-27-8.—Complaint in Action by Construction Worker for Improper Safeguarding of Roof.

LexisNexis Forms FORM 521-27-9.—Complaint in Action Against Railroad; Child Injured by Moving Freight Car.

LexisNexis Forms FORM 521-35-6.—Demand for Verified Bill of Particulars.

LexisNexis Forms FORM 521-27-10A.—Complaint in Action for Wrongful Death Where Plaintiff's Intestate Drowned in Swimming Pool of Defendant's Hotel.

LexisNexis Forms FORM 521-27-13A.—Third-Party Complaint in Action by Subtenant Against Landlord and Tenant for Damages Based Upon Negligence; Lease Provision Holding Landlord Harmless Held Void.

LexisNexis Forms FORM 521-27-13B.—Complaint in Action by House Guest for Injuries Sustained on Pool Deck.

LexisNexis Forms FORM 521-27-13C.—Answer in Action Against Country Club Where Plaintiff Fell While Tobogganing on Golf Course.

LexisNexis Forms FORM 521-27-13D.—Affirmative Defense That Defendant Had No Duty to Keep the Premises Safe for Entry or Use, and Other Affirmative Defenses.

LexisNexis Forms FORM 521-27-16A.—Verified Bill of Particulars Where Plaintiff Fell on Damaged and Unlighted Stairway.

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., 4.12.

Warren's Negligence in the New York Courts § 11.07. Bill of particulars required when pleading diminution of damages.

Warren's Negligence in the New York Courts § 232.05. Damages must be stated in bill of particulars.

Hierarchy Notes:

NY CLS CPLR, Art. 30

New York Consolidated Laws Service

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