SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: GEORGE J. SILVER PART 10
Justice

LEO HINDERY, JR. and MARY PATRICIA WHEELER,

Plaintiffs,

- v -

OHENEBA BOACHIE ADJEI, M.D., HOSPITAL FOR SPECIAL SURGERY and JOHN DOE,

Defendants.

MOTION INDEX NO. 805359/2014E

MOTION DATE

MOTION SEQ. NO. 002

Cross-Motion: ☐ **Yes** ■ **No**

Defendants OHENEBA BOACHIE ADJEI, M.D. ("Dr. Boachie"), HOSPITAL FOR SPECIAL SURGERY, and JOHN DOE, ("defendants") move, by order to show cause, and pursuant to CPLR § 3025, for leave to amend their Answer to include as affirmative defenses (1) superseding, intervening, and independent causes, (2) CPLR § 4545 collateral source offset, and (3) failure to mitigate damages. Defendants also seek leave to conduct discovery including (1) a physical examination of plaintiff LEO HINDERY, JR. ("plaintiff"), (2) a further deposition of plaintiff regarding additional surgeries and treatment from his last deposition on July 6, 2016 to the present, (3) authorizations for (a) United Healthcare, (b) Farah Hameed, M.D., ("Dr. Hameed"), and (c) New York Columbia Presbyterian Hospital ("NYPH"), (4) *Arons* authorizations for subsequent treating spine surgeons George DiGiacinto, M.D. ("Dr. DiGiacinto"), Lawrence Lenke, M.D. ("Dr. Lenke"), and Daniel Riew, M.D. ("Dr. Riew"), and (5) a copy of plaintiff, MARY PATRICIA WHEELER'S ("Mrs. Wheeler") Facebook account.

Plaintiffs LEO HINDERY, JR. and MARY PATRICIA WHEELER ("plaintiffs") oppose the application. For the reasons discussed below, the motion is granted.

BACKGROUND AND ARGUMENTS

This action was commenced with the filing of plaintiffs' Summons and Complaint on October 7, 2014. Thereafter, defendants filed an answer on November 12, 2014. On June 5, 2015, plaintiffs served a bill of particulars.

On January 23, 2015, the parties appeared for a preliminary conference. Per the preliminary conference order that followed, plaintiff was to appear for a physical examination at least 30 days before filing a note of issue, and provide health insurance and Medicare information within 30 days of the order. Defendants conducted partial discovery based on Medicare and Aetna authorizations. Defendants allege that updated Aetna records indicate that plaintiff terminated that policy in 2016, but failed to provide authorizations for plaintiff's new health insurer. On September 19, 2016, a status conference order directed plaintiff's physical examination to be held within 120 days of the order.

At his first deposition, plaintiff testified about his health insurance coverage, and during his second deposition on September 4, 2015, plaintiff testified that Medicare and Aetna were his insurance policies. At plaintiff's third deposition on July 6, 2016, after he had several additional surgeries, plaintiff testified that "United" (presumably United Healthcare) was his secondary policy. On September 16, 2016, plaintiffs filed a note of issue.

On March 21, 2017, plaintiffs served defendants with expert responses, including one by a physiatrist, Barry Root, M.D. At a meeting on April 12, 2017, defendants outlined their defense to plaintiffs' claims against Dr. Boachie, and explained that plaintiff's subsequent surgeries were

undertaken by different surgeons based on their own medical and/or surgical judgments, and they were not required or caused by any wrongdoing by defendants. Plaintiffs also highlighted that if plaintiff incurred any injury during those surgeries, those injuries were not caused by defendants, but by the superseding, intervening, and independent decisions, medical judgments, and operative skills of Dr. Lenke. Plaintiffs were disinclined to stipulate to defendants' assertion of superseding, intervening, and independent causes as an affirmative defense in their Answer.

A judicial mediation was held on April 17, 2017, but did not result in a settlement. The parties continued to communicate about whether plaintiffs would stipulate to defendants' request to amend their Answer. On November 2, 2017, another mediation failed to settle the case. On February 12, 2018, plaintiffs confirmed that they would neither stipulate to defendants' request for an amendment nor submit to a physical examination of plaintiff.

At a conference before this court on February 13, 2018, plaintiffs declined to stipulate to defendants' affirmative defenses of superseding, intervening, and independent causes, CPLR § 4545 collateral source offset, and plaintiffs' failure to mitigate damages. A trial was scheduled for June 18, 2018. On February 26, 2018, defendants sent plaintiffs an e-mail requesting revised authorizations for NYPH since the prior authorizations were improper. By letter dated March 2, 2018, defendants demanded an authorization for United Healthcare, *Arons* authorizations for plaintiff's subsequent treating surgeons, Drs. DiGiacinto, Lenke, and Riew, and a copy of Mrs. Wheeler's Facebook account. Plaintiffs have not responded to this letter.

Defendants argue that they should be permitted to amend their Answer since their proposed amendments are not palpably insufficient or patently devoid of merit and does not prejudice plaintiffs. Specifically, defendants contend that an amendment of superseding, intervening, and independent causes is not prejudicial or surprising to plaintiffs since plaintiffs' counsel has been

aware of these defenses in discussions and exchanges of emails since as early as April 12, 2017. Defendants also argue that since prior discovery establishes that plaintiff's pre-note of issue surgeries were paid for by collateral sources, an amendment to assert CPLR § 4545 collateral source offset is not prejudicial. Defendants further highlight that because plaintiff's past medical treatment was covered by Medicare and Aetna, and his future medical treatment will be covered by Medicare and a private insurance policy (most likely United Healthcare) or some other secondary payer health insurance policy, defendants are entitled to a collateral source offset for plaintiff's past and future medical care. Moreover, defendants aver that they should be permitted to assert failure to mitigate damages as an affirmative defense since discovery revealed that plaintiff could have obtained care that would have minimized his injuries.

Defendants also request a physical examination of plaintiff since there is sufficient time to conduct the examination and provide the physician's report to plaintiffs. Defendants contend that after plaintiff left Dr. Boachie's care in October 2013, he had seven additional spine surgeries between 2013 and 2017 and eight hand surgeries. Specifically, defendants highlight that three of the spine surgeries and four of the hand surgeries took place after plaintiff's last deposition on July 3, 2016 and after the filing of the note of issue on September 16, 2016. Defendants also assert that because plaintiff had additional surgeries during the course of litigation, it was difficult for defendants to find an appropriate window within which to conduct a physical examination, particularly since plaintiffs are expected to include the additional surgeries in their claim of damages. Defendants further argue that because plaintiff has had four hand surgeries and three spine surgeries after filing the note of issue, plaintiff should be deposed with respect to those surgeries since such treatment after the filing of the note of issue is unusual and unanticipated, and would prevent prejudice. Moreover, defendants proffer that under CPLR § 4545, they are entitled

to updated information, as well as an opportunity to calculate offsets applicable in the future with respect to plaintiff's medical bills. Specifically, defendants request authorizations for United Healthcare or whichever company has provided plaintiff with health care coverage in addition to Medicare from 2016 on, and will continue to provide coverage in the future.

In addition, defendants request *Arons* authorizations for subsequent treating physicians in order to interview these physicians regarding the medical treatment they provided, especially since plaintiffs have indicated that these physicians may testify at trial. Furthermore, defendants request an authorization for Dr. Hameed since plaintiffs disclosed that plaintiff had been treated by Dr. Hameed for the first time in their expert response after filing the note of issue. Defendants also request properly executed authorizations for NYPH since plaintiff underwent two spine surgeries by Dr. Lenke and three additional spine surgeries by Dr. Riew. Lastly, defendants demand a copy of Mrs. Wheeler's Facebook account to determine whether plaintiff's activities displayed on his wife's Facebook are consistent with his claims of functional limitations, including limitations of physical activity.

In opposition, plaintiffs argue that defendants' request to amend their Answer should be denied since defendants offer no excuse for their undue delay in seeking leave to amend. Specifically, plaintiffs contend that defendants' request to add superseding, intervening, and independent causes should be denied because defendants failed to offer an affidavit of merit or show that the subsequent surgeries are "extraordinary and unforeseeable" to the extent that the they break the chain of causation. In support of their motion, plaintiffs submit a Declaration of Jens Chapman, M.D. ("Dr. Chapman"), who asserts that the surgery performed by Dr. Lenke was clinically indicated, performed within the standard of care, and that the injuries sustained during the same were foreseeable. Plaintiffs also argue that defendants should not be permitted to assert

a defense of collateral source offset since defendants have not established that any medical expenses, lost wages, or other economic loss have been or will be paid with the "reasonable certainty." Additionally, plaintiffs argue that defendants have not provided documentary evidence indicating any category of damages that may fall under CPLR § 4545, nor have they acknowledged the categories of collateral source payments which could be subject to a lien. Plaintiffs further aver that defendants should not be permitted to assert a mitigation of damages defense since defendants have not made an evidentiary showing by a medical professional establishing that any action of plaintiff in seeking to repair the damage caused by Dr. Boachie's negligence was unreasonable, or that any post-negligence surgery plaintiff sought was unnecessary.

Moreover, plaintiffs argue that defendants' request for a physical examination of plaintiff should be denied since defendants failed to show "special, unusual, or extraordinary" circumstances to warrant such examination, and because defendants knew about plaintiff's subsequent surgeries since 2015. Plaintiffs also argue that defendants' request for *Arons* authorizations for treating physicians should be denied since plaintiffs have disclosed each of these physicians as expert witnesses for plaintiffs. However, plaintiffs maintain that defendants' request for authorizations for United Healthcare, Dr. Hameed, and NYPH are moot since plaintiffs have already provided those authorizations. Finally, plaintiffs agreed to provide Mrs. Wheeler's Facebook pages and present plaintiff for a third deposition, limited to plaintiff's subsequent surgeries and treatment from July 6, 2017 to present.

In reply, defendants note that although plaintiffs agreed to the produce plaintiff for a further deposition so long as it was limited to a single three-to-four hours session, plaintiffs withdrew the offer when defendants reserved their right to additional sessions. Plaintiffs also agreed to a physical

examination of plaintiff subject to their approval of the physician, and provided that the examination will not involve invasive testing, including EMG or radiographic imaging.

Defendants also reiterate that there is no prejudice by their request to amend the Answer to assert affirmative defenses. Defendants argue that they are not required to make an evidentiary showing of merit by an affidavit and are not required to oppose Dr. Chapman's affirmation of merit because it is irrelevant and defective as it was executed out-of-state and not accompanied by a certificate of conformity as required by CPLR § 2309(c). Defendants also assert that Dr. Chapman's affirmation only goes to the merits of plaintiffs' theories of the case, and not to the sufficiency or merits of defendants' proposed amendments.

Defendants further argue that they are entitled to *Arons* authorizations for Drs. DiGiacinto, Lenke, and Riew since a treating physician may be questioned even if he or she has also been retained as an expert wtiness, so long as the interview is limited to the facts of his or her treatment, and not his or her opinion on matters involving alleged departures from accepted medical practice. Both parties agree to trial in the fall of 2018.

DISCUSSION

I. *Defendants' Application for Leave to Amend Answer*

"Leave to amend pleadings should be freely granted in the absence of prejudice or surprise to the opposing party [or] unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Lucido v. Mancuso*, 49 A.D.3d 220, 226–27 [2d Dept. 2008]; CPLR 3025[b]). "Prejudice has been defined as a special right lost in the interim, a change in position, or significant trouble or expense that could have been avoided had the original pleading contained the proposed amendment" (*Ward v. City of Schenectady*, 204 A.D.2d 779, 781 [3d Dept. 1994]). "Mere lateness

is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side" (*Edenwald Contracting Co. v. City of New York*, 60 N.Y.2d 957, 959 [1983]; *see also Sheppard v. Blitman/Atlas Bldg. Corp.*, 288 A.D.2d 33, 34 [1st Dept. 2001] ["In the absence of prejudice, mere delay is insufficient to defeat the amendment."]). "A motion for leave to amend is committed to the sound discretion of the trial court" (*Colon v. Citicorp Inv. Servs.*, 283 A.D.2d 193, 193 [1st Dept. 2001]).

Here, although defendants waited one year and eight months after the filing of the note of issue to seek leave to amend their Answer, defendants have offered a reasonable excuse for their delay with respect to the affirmative defense of superseding, intervening, and independent causes. Defendants have sufficiently explained that it was not until March 2017 that plaintiffs first articulated in their expert disclosure that their experts would testify that plaintiff's right-hand injuries were causally related to departures associated with Dr. Boachie's surgeries. Defendants assert that these injuries did not exist at the time of joinder of issue in November 2014. Defendants also indicate that because plaintiff underwent multiple additional surgeries post-note of issue in December 2016, and January, February, March, July, and August of 2017, they were not able to assert this defense sooner (*Sheets v. Liberty Alls., LLC*, 37 A.D.3d 170, 171 [1st Dept. 2007] [granting defendant leave to amend answer where defendant reasonably explain that it "hesitated to move until plaintiffs' supplemental expert disclosure transformed what had been only a suspicion of fraud into a demonstrable claim"]).

Although defendants have not proffered any excuse for their delay in seeking leave to amend their Answer with respect to collateral source offset or mitigation of damages, defendants have demonstrated their proposed amendments are sufficient and have merit (*Greco v. Grande*, 160 A.D.3d 1345 [4th Dept. 2018] [granting leave to amend answer since "'[w]here no prejudice

is shown, the amendment may be allowed during or even after trial'"]; *Carvajal v. Madison*, 297 A.D.2d 550, 551 [1st Dept. 2002] [granting defendants' request to amend answer approximately 16 months after discovery was completed and the note of issue was filed]; *Edenwald Contracting Co*, 60 N.Y.2d at 959, *supra*). Contrary to plaintiffs' assertion, "On a motion for leave to amend, [the movant] need not establish the merit of its proposed new allegations" (*MBIA Ins. Corp. v. Greystone & Co.*, 74 A.D.3d 499, 500 [1st Dept. 2010] *citing Lucido v. Mancuso*, 49 A.D.3d 220, 229 [2d Dept. 2008]). "No evidentiary showing of merit is required under CPLR 3025(b). The court need only determine whether the proposed amendment is "palpably insufficient" to state a cause of action or defense, or is patently devoid of merit" (*Lucido*, 49 A.D.3d at 229, *supra*). "The rationale for adopting this rule is that the liberal standard for leave to amend that was adopted by the drafters of the CPLR is inconsistent with requiring an evidentiary showing of merit on such a motion. If the opposing party [on a motion to amend] wishes to test the merits of the proposed added cause of action or defense, that party may later move for summary judgment [or to dismiss] upon a proper showing" (*Nyahsa Servs., Inc., Self-Ins. Tr. v. People Care Inc.*, 156 A.D.3d 99, 102 [3d Dept. 2017]). Although defendants need not show the merits of their proposed amendments, defendants have nonetheless demonstrated through defense counsel's affirmation, deposition testimony, and plaintiffs' own concessions that plaintiff underwent multiple surgeries by other physicians after his treatment with Dr. Boachie (*Edwards v. 1234 Pac. Mgmt., LLC*, 139 A.D.3d 658, 659 [2d Dept. 2016] [granted leave to amend where the proposed amended pleading was not palpably insufficient or patently devoid of merit]); *Favia v. Harley-Davidson Motor Co.*, 119 A.D.3d 836, 837 [2d Dept. 2014] [same]; *MBIA Ins. Corp.* 74 A.D.3d at 500, *supra* ["The proposed amendment was supported by a sufficient showing of merit through the submission of an affirmation by counsel, along with a transcript of relevant deposition testimony"]). For example,

defendants highlight that the fact that plaintiff's subsequent surgery by Dr. Lenke went far beyond the cervical levels at which Dr. Boachie operated establishes that their superseding, intervening, and independent causes amendment is not palpably insufficient or patently devoid of merit. Defendants also assert plaintiffs' allegation that the surgeries by Drs. DiGiacinto, Lenke, and Riew were causally related to Dr. Boachie's surgeries permtis defendants to assert that these surgeries were not causally connected to Dr. Boachie's treatment and, in fact, were undertaken based on their own medical judgment.

Similarly, defendants' affirmative defense of collateral source offset is not palpably insufficient or devoid of merit. Defendants have adequately established that prior authorizations and deposition testimony show that plaintiff's pre-note of issue surgeries were paid for by collateral sources (*Wooten v. State of New York*, 302 A.D.2d 70, 72 [4th Dept. 2002] [defendant's answer should have been amended to assert collateral source offset as an affirmative defense where defendant sought discovery concerning reimbursement from collateral sources, notified claimant after the verdict of its calculation of the CPLR 4545 offset, and moved to fix the amount of that offset; and where there is no prejudice or surprise to claimant]). Likewise, defendants have sufficiently shown merit to their mitigation of damages defense by noting that plaintiffs have submitted a life care plan with an estimated total dollar value for plaintiff's future life care and that plaintiffs' expert life care planner intends to testify about plaintiff's future medical expenses. Defendants explain that they intend to demonstrate that plaintiffs' life care estimate is excessive, and because such expenses can be reduced dramatically for the same, if not better quality of care, plaintiffs have a duty to mitigate their future expenses for plaintiff's life care plan (*Edwards*, 139 A.D.3d at 659, *supra*; *Favia*, 119 A.D.3d at 837, *supra*). Accordingly, since defendants have sufficiently established the merits of their proposed amendments, defendants' request for leave to

amend their Answer to assert affirmative defenses must be granted (*Lucido*, 49 A.D.3d at 245, *supra; Ward v. City of Schenectady*, 204 A.D.2d 779, 781 [3d Dept. 1994]) [granting defendant leave to amend its answer to assert an affirmative defense]).

Most significantly, plaintiffs have failed to allege or demonstrate that the proposed amendments would be prejudicial or surprising (*Greco*, 160 A.D.3d at 1345, *supra* [granting leave to amend answer where the record is devoid of any potential prejudice flowing from the proposed amendment"]; *Brunetti v. City of New York*, 286 A.D.2d 253, 253 [1st Dept. 2001] [motion to amend answer was properly granted absent a showing of prejudice]; *Powe v. City of Albany*, 130 A.D.2d 823, 823 [1st Dept. 1987] ["There being no prejudice or surprise occasioned directly by defendants' delay in amending their answer, the proposed amendment should have been granted."]). Indeed, plaintiffs' counsel has been aware of at least some these defenses in discussions and exchanges of emails since as early as April 12, 2017. To be sure, defendants outlined their superseding, intervening, and independent causes defense to plaintiffs and requested that plaintiffs stipulate to an amendment for the same. Additionally, defendants' proposed amendment for a collateral source offset is hardly a surprise since plaintiffs knew or should have known that some of plaintiff's surgeries were paid for by collateral sources. Likewise, mitigation of damages is not surprising or prejudicial since plaintiffs submitted plaintiff's future life care plan and apprised defendants of their expert's intent to testify about plaintiff's future medical expenses (*Carvajal*, 297 A.D.2d at 551, *supra* [1st Dept. 2002] [granting defendants' request to amend answer where there was "no showing of prejudice or surprise resulting from the delay since plaintiff knew or should have known, as evidenced by the competing documentary evidence, that [defendant] may have been her actual employer at the time of the subject incident"]; *Sheppard v. Blitman/Atlas Bldg. Corp.*, 288 A.D.2d 33, 34 [1st Dept. 2001] [granting leave to amend where

opposing party did not demonstrated prejudice from the delay since it had notice of the claim]). Accordingly, defendants' request to amend their Answer to assert affirmative defenses of superseding, intervening, and independent causes, collateral source offset, and mitigation of damages must be granted.

II. *Defendants' Request for Additional Discovery*

N.Y.C.R.R. § 202.01(d) provides, in pertinent part, that a court, "in its discretion, may grant permission to conduct additional discovery after the filing of a note of issue and certificate of readiness, where the moving party demonstrates that 'unusual or unanticipated circumstances' developed subsequent to the filing requiring additional pretrial proceedings to prevent substantial prejudice" (*Karakostas v. Avis Rent A Car Sys.*, 306 A.D.2d 381, 382 [2d Dept. 2003]).

A. Physical Examination

The multiple subsequent surgeries plaintiff underwent to his spine and hands after the note of issue present an "unusual or unanticipated" circumstance to justify a physical examination of plaintiff (*Cabrera v. Abaev*, 150 A.D.3d 588, 588 [1st Dept. 2017] ["Trial courts are authorized, as a matter of discretion, to permit post-note of issue discovery without vacating the note of issue, so long as neither party will be prejudiced"]; *Stock v. Morizzo*, 92 A.D.3d 672, 672 [2d Dept. 2012]; *Everhardt v. Klotzbach*, 306 A.D.2d 869, 870 [4th Dept. 2003] [filing the note of issue "is not a bar to re-examination because the additional surgery is a sufficient 'special, unusual, or extraordinary circumstance to justify the relief requested'"]). Moreover, since both parties concede to plaintiff's physical examination and consent to trial in the fall, there is sufficient time to permit such physical examination. Accordingly, defendants' demand is granted.

However, plaintiffs' request to choose the physician and/or approve the physician designated by defendant is denied. Defendants correctly highlight that there is no basis for plaintiffs to refuse a non-invasive physical examination by a licensed physician in good standing, and any doubts about the learning, training, or experience of such physician can be raised during cross-examination at trial.

B. Authorizations for United Healthcare, Dr. Hameed, and NYPH

Because plaintiffs have agreed to provide authorizations for United Healthcare executed on the company's form authorizations, Dr. Hameed, and NYPH, and have already provided such authorizations, defendants' request is moot. To the extent that these authorizations are defective and/or declined by the providers, plaintiffs are directed to submit revised authorizations for said providers within 30 days of this order.

C. *Arons* authorizations for Drs. DiGiacinto, Lenke, and Riew

Generally, a plaintiff may not shield treating physicians by designating them as experts after *Arons* authorizations are demanded by the defense (*Probala v. Rian Holding Co., LLC*, 26 Misc.3d 1201 [Sup. Ct. 2009] ["Plaintiff cannot, intentionally or unintentionally, circumvent the law allowing defense counsel to interview plaintiff's treating physicians by designating every single treating physician as an expert."]). Here, however, plaintiffs served their expert witness disclosure on defendants on March 21, 2017, identifying Drs. DiGiancinto, Lenke, and Riew as expert witnesses, and defendants did not serve their demand for *Arons* authorizations to speak with these physicians until March 2, 2018—almost a year after they were disclosed as experts. Although plaintiffs designated these physicians as expert witnesses prior to defendants' request for *Arons* authorizations, such discovery "pertains to the treatment of plaintiff's alleged injuries," and is

"material and necessary for defendants to prepare their defense" (*id.*). Accordingly, plaintiff is directed to provide *Arons* authorizations for these physicians for interviews regarding the medical treatment they provided to plaintiff within 30 days of this order.

D. Further Deposition of Plaintiff

Plaintiffs have agreed to produce plaintiff for another deposition under certain conditions and limitations. The court grants defendants' request to the extent that plaintiff is directed to appear for a further deposition limited to his subsequent surgeries, treatment, and condition from July 6, 2017 to the present without any time restrictions.

E. "Mrs. Wheeler" Facebook Account

As plaintiffs have agreed to produce Mrs. Wheeler's Facebook Account from 2013-2017, they are directed to produce the same within 30 days of this order.

As such, it is hereby

ORDERED that defendants shall amend their Answers to include the affirmative defenses of superseding, intervening and independent causes, collateral source offset, and mitigation of damages within 30 days of this order; and it is further

ORDERED that defendants are directed to serve the amended Answer within 20 days of service of a copy of the order of this court with notice of entry; and it is further

ORDERED that defendants are directed to designate a physician on or before September 6, 2018, not subject to plaintiffs' approval as previously indicated; and it is further

ORDERED that plaintiff is directed to appear for a physical examination on or before September 24, 2018; and it is further

ORDERED that plaintiff is directed to provide *Arons* authorizations for Drs. DiGiacinto, Lenke, and Riew within 30 days of this order as previously indicated; and it is further

ORDERED that plaintiff is directed to appear for a further deposition on or before August 28, 2018 as previously indicated; and it is further

ORDERED that plaintiffs are directed to provide a copy of Mrs. Wheeler's Facebook account within 30 days of this order; and it is further

ORDERED that due to the significant delay of this 2014 case by both parties, there are to be no adjournments of the court's directives without permission; and it is further

ORDERED that the parties are directed to appear for a compliance conference on October 2, 2018 at 9:30 A.M. at 111 Centre Street, Room 1227 (Part 10) New York, New York 10013 to ensure compliance with this court's order and to further facilitate discovery.

This constitutes the decision and order of the court.

Dated: July 20, 2018

HON. GEORGE J. SILVER

Check one: ☐ FINAL DISPOSITION ■ NON-FINAL DISPOSITION