



Evidence and Practice Tips

Jonathan L. Federman

Gordon Rees Scully Mansukhani, LLP, Chicago

Paula K. Villela

BatesCarey LLP, Chicago

How to Use a Bill of Particulars

You just received a new complaint that may have enough facts to survive a motion to dismiss but not enough to effectively know what the plaintiff is claiming or how to begin defending the case. While this may be frustrating, Illinois law does permit a solution whereby a defendant may request a more detailed pleading, namely a bill of particulars.

Specifically, 735 ILCS 5/2-607 provides:

Bills of particulars.

(a) Within the time a party is to respond to a pleading, that party may, if allegations are so wanting in details that the responding party should be entitled to a bill of particulars, file and serve a notice demanding it. The notice shall point out specifically the defendants complained of or the details desired. The pleader shall have 28 days to file and serve the bill of particulars, and the party who requested the bill shall have 28 days to plead after being served with the bill.

(b) If the pleader does not file and serve a bill of particulars within 28 days of the demand, or if the bill of particulars delivered is insufficient, the court may, on motion and in its discretion, strike the pleading, allow further time to furnish the bill of particulars or require a more particular bill to be filed and served.

(c) If a bill of particulars, in an action based on a contract, contains the statement of items of indebtedness and is verified by oath, the items thereof are admitted except in so far as the opposite party files an affidavit specifically denying them, and as to each item denied states the facts upon which the denial is based, unless the affidavit is excused by the court.

(d) If the party on whom a demand for a bill of particulars has been made believes that the party demanding it is not entitled to the particulars asked for, he or she may move the court that the demand be denied or modified.

A party is entitled to a bill of particulars when the “allegations of a pleading are wanting in details.” *In Interest of Walton*, 79 Ill. App. 3d 485, 488 (3d Dist. 1979). Clearly, the purpose of a bill of particulars is to request additional information so that a defendant can properly begin to defend the allegations and develop a strategy for the litigation. This tool can be especially useful when it is apparent from the face of the complaint and/or after written discovery that a

plaintiff may survive a dispositive motion, but the factual allegations, or the plaintiff's theories, are too vague for an answer that preserves the defendant's position and avoids an inadvertent factual admission or legal concession.

For instance, in *Hemingway v. Skinner Engineering Co.*, the defendant in a breach of contract action sought a bill of particulars that included more specific allegations about the type of service the plaintiff allegedly rendered, the details of the work allegedly performed, and the exact terms of the plaintiff's agreement with the defendant. 117 Ill. App. 2d 452, 460–61 (2d Dist. 1969). Once the bill was filed, the case was tried and the appellate court found that, while the allegations and answers were brief, the parties established their positions with sufficient specificity to establish a viable action.

In *Bejda v. SGL Industries, Inc.*, a personal injury action, the defendant manufacturer of certain equipment that allegedly caused the plaintiff's injury, sought a bill of particulars after the plaintiff failed to answer certain written discovery about that defendant's role. 82 Ill. 2d 322, 326-27 (1980). Once the plaintiff ultimately responded to the bill of particulars, the defendant reviewed but determined that the bill of particulars was not responsive. *Bejda*, 82 Ill. 2d at 326-27. After the plaintiff failed to file an amended bill, the court dismissed the plaintiff's claim against the defendant. *Id.* at 327-28.

A bill of particulars is clearly a tool that a defense attorney needs to keep ready to develop an appropriate litigation theory when a complaint lacks details or a plaintiff is being unresponsive in discovery. The ramifications of a failure to respond to a bill of particulars can be devastating to a plaintiff.

The dismissal of a plaintiff's complaint with prejudice is not an appropriate sanction for the failure to provide a bill of particulars pursuant to § 2-607. *Kling v. Landry*, 292 Ill. App. 3d 329, 338 (2d Dist. 1997). The "most severe sanction authorized is the striking of the pleading to which the bill of particulars relates." *Kling*, 292 Ill. App. 3d at 338. "A dismissal of a complaint with prejudice cannot be equated with the striking of a pleading and is not permitted under this section." *Id.* However, a court does have discretion and the inherent authority to control its business. *Id.* at 339. A plaintiff's failure to take action as ordered by a court may evidence want of prosecution, which does permit a court to dismiss an action. *Id.* As such, the failure to file a bill of particulars in disobedience of a trial court's order "may be a ground for dismissal with prejudice." *Id.* (citing *Bejda*, 82 Ill. 2d at 329).

Thus, while a plaintiff's mere failure to respond to a bill of particulars will not warrant a dismissal of the complaint, the failure to submit to an order of compliance can lead to a dismissal. Accordingly, it is imperative for a defense attorney to become familiar with the requirements of a bill of particulars and to follow through once it becomes apparent that the defense lacks adequate information and the plaintiff's counsel has ignored all prior requests.

About the Authors

Jonathan L. Federman is senior counsel at *Gordon Rees Scully Mansukhani, LLP*. His practice focuses on insurance coverage litigation, appeals, commercial litigation, and general litigation defense. Mr. Federman's practice includes representation of insurance company clients in disputes arising out of commercial general liability, professional liability, business auto, directors and officer and many other types of policies of insurance. Mr. Federman earned his J.D., *summa cum laude*, from the John Marshall Law School, and served as a judicial law clerk for Justice Thomas L. Kilbride at the Illinois Supreme Court.

Paula K. Villela of *BatesCarey LLP* in Chicago is a seasoned insurance litigator and appellate advocate, focusing her practice on challenges involving commercial general liability, professional liability and first-party property insurance



disputes. Ms. Villela earned her J.D., with High Honors, from Chicago-Kent College of Law, and served as a law clerk for Justices Joseph Gordon and William H. Taylor, II at the Appellate Court for the First District of Illinois.

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