

<b>Cochin v Metropolitan Tr. Auth.</b>
2015 NY Slip Op 32950(U)
October 14, 2015
Supreme Court, New York County
Docket Number: 159331/2013
Judge: Michael D. Stallman
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: Hon. MICHAEL D. STALLMAN**  
*Justice*

**PART 21**

Index Number : 159331/2013  
COCHIN, LAURIE  
vs.  
METROPOLITAN TRANSIT AUTHORITY  
SEQUENCE NUMBER : 001  
COMPEL

**INDEX NO. 159331/2013**

**MOTION DATE 10/1/15**

**MOTION SEQ. NO. 001**

The following papers, numbered 12-14, 16-20, were read on this motion to compel

- Notice of Motion —Affirmation — Exhibit A—Affidavit of Service | No(s). 12-14
- Affirmation in Opposition—Affirmation of Service— Exhibit A | No(s). 16-17
- Reply Affirmation — Exhibit B—Affidavit of Service | No(s). 18-20

Upon the foregoing papers, it is ordered that plaintiff’s motion to compel defendants Metropolitan Transit Authority, the New York City Transit Authority, and Manhattan and Bronx Surface Transit Operating Authority to produce documents responsive to plaintiff’s notice for discovery and inspection dated March 11, 2014 is granted in part, and it is further

**ORDERED** that, within 60 days, the New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority shall produce copies of all records pertaining to the service, maintenance, and repair of the rear doors of the bus at issue in this action for a period of six months after April 15, 2013.

In this action, plaintiff alleges that, on April 15, 2013, she was a passenger on a westbound M72 bus, and that, in the process of attempting to exit the bus through the rear doors, she fell out of the bus

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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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and landed on the ground, coming into contact with a raised metal barrier for a tree. (Gosin Opp. Affirm., Ex A [Notice of Claim].) According to the notice of claim, defendants were negligent “in failing to have the rear doors in a proper operating condition; in allowing said doors to be in a state of disrepair; in failing to inspect the rear doors”, among other things. (*Id.*)

By a notice for discovery and inspection dated March 11, 2013, plaintiff demanded service, maintenance and repair records of the rear doors of the subject bus for a period of two years prior to the date of the alleged incident, i.e., April 15, 2013. Plaintiff also demanded records for a six month period subsequent to the alleged occurrence. Defendants Metropolitan Transit Authority, the New York City Transit Authority, and Manhattan and Bronx Surface Transit Operating Authority (collectively, the Authorities) object to production of post-accident records, arguing that they are irrelevant and generally not discoverable.

Generally speaking, “evidence of subsequent repairs is not discoverable or admissible in a negligence case” (*Hualde v Otis El. Co.*, 235 AD2d 269, 270 [1<sup>st</sup> Dept 1997], quoting *Klatz v Armor El. Co.*, 93 AD2d 633 [2d Dept 1983].) However, there are several limited exceptions: (1) where there is an issue of maintenance or control (*see Del Vecchio v Danielle Assoc., LLC*, 94 AD3d 941 [2d Dept 2012]); (2) where the discovery sought is to show that a particular condition was dangerous (*see e.g. Albino v New York City Hous. Auth.*, 52 AD3d 321 [1<sup>st</sup> Dept 2008] [repairs of hot water system]); (3) where alleged defective condition on the date of the alleged occurrence could not otherwise be proven (*Mercado v St. Andrews Hous. Dev. Fund Co.*, 289 AD2d 148 [1<sup>st</sup> Dept 2001]); or (4) where the discovery sought is to ascertain the condition of the instrumentality that allegedly caused the plaintiff’s injuries, prior to any admitted subsequent modifications. (*Kaplan v Einy*, 209 AD2d 248, 252 [1<sup>st</sup> Dept 1994].)

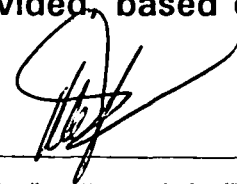
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Here, the Court is persuaded that this case falls under the two latter exceptions. Plaintiff believes that the rear doors of the bus malfunctioned. The existence of a mechanical defect might only come to light after the bus doors are repaired post-accident. The discovery sought is therefore reasonably calculated to lead to admissible evidence that could either prove or rule out the existence of a mechanical defect. Therefore, the branch of plaintiff's motion to compel production of post-accident records is granted.

The branch of plaintiff's motion to compel production of pre-accident records is denied as academic. According to the Authorities' counsel, bus maintenance and repair records for two years prior and up to the date of the alleged occurrence were provided, based on the bus number retrieved from plaintiff's metrocard.

Dated: 10/14/15  
New York, New York



\_\_\_\_\_, J.S.C.  
**HON. MICHAEL D. STALLMAN**

- 1. Check one:.....
- 2. Check if appropriate:..... MOTION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED                       NON-FINAL DISPOSITION
- GRANTED     DENIED     GRANTED IN PART     OTHER
- SETTLE ORDER                       SUBMIT ORDER
- DO NOT POST     FIDUCIARY APPOINTMENT     REFERENCE