

**Hatuka v Gelco Fleet Trust**

2021 NY Slip Op 31135(U)

April 9, 2021

Supreme Court, New York County

Docket Number: 150571/2017

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

<p><b>PRESENT:</b>    <u>HON. GENERAL WAITING LIST</u></p> <p style="text-align: right; margin-right: 50px;"><i>Justice</i></p> <p>-----X</p> <p>CARLOS HATUKA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>GELCO FLEET TRUST, INGERSOLL-RAND COMPANY, GREGORY PULIS</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p><b>PART</b></p> <p>INDEX NO.        <u>150571/2017</u></p> <p>MOTION DATE    <u>10/06/2020</u></p> <p>MOTION SEQ. NO. <u>005</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>
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The following e-filed documents, listed by NYSCEF document number (Motion 005) 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is hereby ORDERED that the defendants' motion is granted in part as delineated herein. The plaintiff has filed opposition with supporting documents. Defendants filed a reply affirmation.

Here, the defendants move this court to compel plaintiff to provide discovery demanded in the March 27, 2020 Notice of Discovery & Inspection; or in the alternative pursuant to *CPLR §3126* to preclude the plaintiff from offering any evidence regarding the life care plan and opinions of his expert witness Dr. Stuart Kahn in support at trial.

Specifically, defendants seeks to compel plaintiff to produce materials regarding Dr. Stuart Kahn. Defendants argue that plaintiff, for the first time on March 19, 2020, disclosed that Dr. Kahn would be providing testimony as a treating physician, and as a life care planner expert witness. Moreover, defendants assert that Dr. Khan was not a treating physician, and plaintiff failed to disclose such information at discovery. Dr. Khan's life care plan claims more than a million dollars in damages. So notably, in the Notice of Discovery & Inspection, defendants demanded, *inter alia*,

the credentials of Dr. Kahn to demonstrate that he engaged in life care planning and to list cases he provided expert testimony in for the last ten years. Defendants assert that plaintiff's responses to such demand was "overbroad and palpably improper", and without further explanation. Defendants also assert that he submitted a good faith letter to plaintiff's counsel.

In opposition, plaintiff asserts that the defendants' demand for a ten-year history of testimony of Dr. Kahn is palpably improper, and defendants have no authority for such demand. Plaintiff further asserts that they have served defendants with a proper expert disclosure pursuant to *CPLR §3101(d)*, which includes the plaintiff's life care plan prepared by Dr. Kahn, and Dr. Khan's *curriculum vitae*. Plaintiff argues that the expert disclosure was accepted by defendants. Further, plaintiff argues that Dr. Khan's Life Care Plan report include his pricing information, which was reviewed by defendants' expert witness, Kimberly Kushner, who is a registered pediatric nurse and a life care planner. Finally, plaintiff claims that they duly executed a HIPAA authorization permitting defendants to obtain medical records from Dr. Khan, and they have fully complied with their obligation by serving the proper expert disclosure and authorization.

In their reply, defendant argues that Dr. Kahn's life care plan lacks appropriate documentation as to how he determined his costs in the plan, and which treating physicians were the basis for his opinions that plaintiff requires over \$1 million in future medical care and living expenses. Defendants also assert that they objected to Dr. Khan's expert disclosure, and the correspondence of same was provided in the motion papers.

A party may move to compel further discovery under this provision when the movant demonstrates that it has made a "good faith effort to bring about a non-judicial resolution to any remaining discovery disputes." *Barber v. Ford Motor Co.*, 250 A.D.2d 552, 553 (1st Dep't 1998). "While the disclosure provisions of the CPLR are ordinarily to be construed liberally, the scope of

permissible discovery is not entirely unlimited and the trial court is invested with broad discretion to supervise discovery and to determine what is 'material and necessary' as that phrase is used in *CPLR 3101(a)*." *Auerbach v. Klein*, 30 A.D.3d 451, 452 (2d Dep't 2006).

*CPLR §3101(d)(1)* states in part: "[u]pon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion." *See, CPLR §3101 (McKinney)*. Here, the main issue of contention is the demand for a ten-year history of Dr. Kahn's expert testimony. This court agrees with plaintiff that such demand is overbroad. Plaintiff provided the *curriculum vitae* of Dr. Khan, which should serve the purpose of reviewing Dr. Khan's professional history. Moreover, defendants' life planner expert witness, Kimberly Kushner's, purpose is to review Dr. Khan's report and qualifications. However, in the interest of justice and clarity of Dr. Khan's calculation of medical care and living expenses, this court is ordering plaintiff to submit supplemental documentation as to how Dr. Khan determined his costs in the plan, and which treating physicians were the basis for his opinions that plaintiff requires over \$1 million in future medical care and living expenses, if not already submitted.

Therefore, the Court, is within its discretion, and hereby compels plaintiff to provide defendant with the following: a) supplemental documentation as to how Dr. Khan determined his costs in the plan, and which treating physicians were the basis for his opinions that plaintiff requires over \$1 million in future medical care and living expenses.

Consequently, the defendants' motion is granted to compel plaintiff to provide the above-mentioned discovery. Defendant's motion is denied as to the demand for a ten-year history of Dr. Kahn's expert testimony.

Accordingly, it is

ORDERED that the relief sought in defendant's motion to compel to provide a ten-year history of Dr. Kahn's expert testimony is denied; and it is further

ORDERED that the relief sought in defendant's motion to compel plaintiff to provide outstanding discovery is granted; and plaintiff shall provide the discovery as stated herein; and it is further

ORDERED that plaintiff provide the above-mentioned outstanding discovery as listed above within 45 days of the date of this order; and it is further

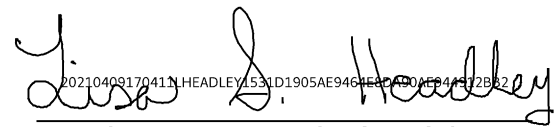
ORDERED that the parties shall proceed with all further discovery expeditiously and in good faith; and it is further

ORDERED that the parties shall contact the court's law clerk for a status conference after due diligence in complying with the demands have been made; and it is further

ORDERED that within 30 days of entry, plaintiff shall serve a copy of this decision/order upon defendant with notice of entry; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered.

This Constitutes the Decision/Order of the Court.

4/9/2021 DATE  2021040917041N HEADLEY, LISA D 1905AE946 HEADLEY, LISA D 1905AE946  
GENERAL WAITING LIST, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>