

Salazar v Hudson Valley Hosp. Ctr.
2021 NY Slip Op 32013(U)
April 13, 2021
Supreme Court, Westchester County
Docket Number: 63666/2015
Judge: Terry Jane Ruderman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
MADELYN SALAZAR,

Plaintiff,

In Limine Motions
Ruling

-against-

Index No. 63666/2015

HUDSON VALLEY HOSPITAL CENTER,

Defendant.
-----X

RUDERMAN, J.

The following decision addresses the parties' in limine motions filed on April 9, 2021, and the opposition filed on April 12, 2021, taking into account the oral argument heard on April 12, 2021.¹

Plaintiff's Motion

Plaintiff has submitted a motion in limine seeking

- 1) to preclude defendant's experts from testifying to opinions not based on scientifically reliable methods, or regarding matters outside of their qualifications, and from merely reciting hearsay from unreliable records or testimony of others, and for a Frye hearing;
- 2) to preclude evidence or comment on plaintiff's citizenship or immigration status; and
- 3) to preclude hearsay portions of the hospital record as it relates to acts and occurrences not relevant to diagnosis or treatment of the patient.

Inquiry into a plaintiff's immigration status is only permissible where it is a "legitimate factor" in the issues to be considered by the jury (*see Balbuena v IDR Realty LLC*, 6 NY3d 338

¹ Issues raised on the afternoon of April 13, 2021 regarding the videotaped trial testimony of Dr. John Galeno will be addressed subsequently when the Court rules on objections made in the course of that testimony.

[2006]; *Angamarca v New York City Partnership Hous. Dev. Fund, Inc.*, 87 AD3d 206, 209 [1st Dept 2011]). Defendant has not advanced a legitimate basis for the admission of evidence regarding plaintiff's immigration status, beyond the identification of her home country. Questions regarding when plaintiff arrived in this country, whether she has returned to her home country, and whether she has any children there, are potentially prejudicially and are not relevant to the issue of plaintiff's credibility. Defendant's indication that it intends to inquire into plaintiff's "medical history" in her home country is also rejected, given defendant's failure to specify any such information that would be relevant to the legitimate issues to be addressed at trial. Accordingly, the parties are precluded from submitting evidence of, commenting on, or questioning plaintiff regarding her immigration circumstances beyond the identity of her home country.

The remainder of plaintiff's motion must be addressed by rulings at trial, since a blanket ruling cannot be issued regarding the permissible extent of the expert witnesses' opinion testimony, whether a proper foundation exists for their testimony and whether hearsay exceptions are applicable. The portion of the notice of motion seeking a Frye hearing is denied; there is no indication that defendant's experts intend to use or rely on a novel scientific method or theory.

Defendant's Motion

Defendant has submitted motions in limine seeking

1) to preclude plaintiff from offering an x-ray report or any testimony regarding the August 22, 2013 x-ray taken by John Galeno, M.D., due to plaintiff's alleged non-compliance with CPLR 4532-a, and based on application of the best evidence rule, and

2) to preclude plaintiff's experts from testifying as to any departures from accepted standards of practice, due to the lack of expert disclosure pursuant to CPLR 3101 (d) as to their opinions in that regard, and further precluding plaintiff's experts from testifying that plaintiff's injuries are permanent, in the absence of any such statement in their reports, and in the absence of a supplemental report as contemplated by 22 NYCRR § 202.17 (g).

Since CPLR 4532-a applies only to the actual x-ray film, which the parties appear to agree is not within plaintiff's possession or control, the issue to be addressed is not compliance with that statute, but whether a foundation has been laid for the admission of secondary evidence describing it.

Wagman v Bradshaw (292 AD2d 84 [2d Dept 2002]) establishes that while "generally, the original X-ray film must be produced before testimony can be adduced as to its diagnostic significance[,] [s]econdary evidence of such a diagnostic interpretive report will be permitted . . . if the proponent thereof (1) sufficiently explains the X-ray films' unavailability and (2) establishes that the secondary evidence accurately and reliably portrays the original" (292 AD2d at 88). The determination of whether the missing x-ray film is sufficiently explained and whether the secondary evidence discussing accurately and reliably portrays the original, must await trial.

The testimony of plaintiff's treating physicians will not be precluded. Nor will the court rule in advance that they are limited to the four corners of their reports. They may testify to their (pre-2021) examinations of plaintiff and the substance of those reports, and everything logically flowing from that information. Plaintiff's claim to a need for further treatment was sufficiently raised in her bill of particulars, and she will not be precluded from making such a claim.

The parties' motions are therefore denied to the extent they seek preclusion or an

evidentiary limitation in advance of trial, except to the extent of the above ruling regarding information related to plaintiff's immigration to this county.

Dated: White Plains, New York
April 13, 2021


HON. TERRY JANE RUDERMAN, J.S.C.