

**Nunez v Nalco Co.**

2023 NY Slip Op 34473(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 155519/2017

Judge: Erika M. Edwards

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the cannister. There were photographs indicating that the metal band with the clamp from the cannister was bent and there appeared to be foam on the floor.

Plaintiffs relied on an expert's report and alleged in substance that the cap exploded off of the sock filter cannister because Defendant Nalco's Trasar 3DT controller malfunctioned and caused the system to go offline. This resulted in the overfeeding of Nalco's treatment chemicals into the water system, which caused an over pressurization of the filter canister that exceeded the 150 p.s.i. holding capacity of the ring clamp securing the cap and caused the explosion.

Defendant Nalco disputed Plaintiffs' theories of liability and relied on its own expert report to argue that there was no chemical overfeed that caused over pressurization beyond the normal pressure in the system. Defendant Nalco further argues that it is likely that the cap flew off of the cannister because Plaintiff Nunez failed to properly secure it tightly when he replaced it onto the cannister.

The court conducted a *Frye* hearing regarding Plaintiffs' expert's opinions and in a decision and order, dated May 4, 2022, the court denied Defendant Nalco's motions for summary judgment dismissal of Plaintiffs' complaint and exclusion of Plaintiffs' expert's report and testimony at trial.

Defendant Nalco now moves for a bifurcated trial under motion sequence 006. Defendant Nalco argues in substance that the court should bifurcate the liability and damages phases of the trial and try the liability portion of the trial first. Defendant Nalco argues in substance that the liability phase would have approximately ten witnesses and there are approximately thirteen damages witnesses. Only Plaintiff Nunez would testify at both trials. Defendant Nalco further argues that a joint trial would unduly prejudice Defendant Nalco. Defendant Nalco further argues that if it is found not to be liable for Plaintiffs' injuries and damages, then the testimony of the

damages witnesses would be unnecessary, a waste of time and resources, and could confuse the jury. Defendant Nalco further argues that a bifurcated trial would further judicial economy and prevent undue prejudice to Defendant Nalco.

Plaintiffs oppose the motion and argue in substance that the court should deny Defendant Nalco's motion and conduct a unified trial because the issues of liability and damages are closely intertwined. Plaintiffs argue in substance that the medical evidence is probative of Plaintiffs' claims that Nunez's injuries were caused by a high velocity explosion at extreme pressure, rather than a pop off of the cap at normal pressure. Plaintiffs further argue that a unified trial would serve the purposes of judicial economy and that a bifurcated trial would unduly prejudice Plaintiffs.

In rebuttal, Defendant Nalco disputes that the issues of liability and damages are closely intertwined and refutes the remainder of Plaintiffs' arguments.

Pursuant to CPLR 603, a court may sever and order a separate trial of any claims or issues "[i]n furtherance of convenience or to avoid prejudice" and "[t]he court may order the trial of any claim or issue prior to the trial of the others" (CPLR 603). Trial judges "are encouraged to order a bifurcated trial of the issues of liability and damages in any action for personal injury where it appears that bifurcation may assist in a clarification or simplification of issues and a fair and more expeditious resolution of the action" (22 NYCRR § 202.42[a]).

The question of whether to bifurcate a trial is generally committed to the discretion of the trial court (*Gogatz v New York City Tr. Auth.*, 288 AD2d 115 [2001]). Courts have held that "unified trials should only be held where the nature of the injuries has an important bearing on the issue of liability" (*Wright v New York City Tr. Auth.*, 142 AD3d 1163, 1163 [2d Dept 2016] [internal citations and quotations omitted]; *Castro v Malia Realty, LLC*, 177 AD3d 58, 64-65 [2d

Dept 2019]). It has been found that “the trial court improvidently exercised its discretion in bifurcating the trial” where “[t]he nature and extent of plaintiff’s burns were inextricably intertwined with the question of defendant’s liability, thus requiring medical proof to show the causal connection between the subject incident and the injury in order to establish liability” (*Shea v 5008 Broadway Assocs.*, 292 AD2d 292, 292 [1<sup>st</sup> Dept 2002]).

Here, the court exercises its discretion and denies Defendant Nalco’s motion. The court finds that Plaintiffs demonstrated that their arguments regarding the nature of Plaintiff Nunez’s injuries are probative of, significantly related to, and inexplicably intertwined with the issue of Defendant Nalco’s liability. Here, Plaintiffs demonstrated that their arguments regarding the force of the explosion and excessive pressurization, along with the severity of Plaintiff Nunez’ injuries are intertwined. Additionally, Plaintiffs showed that the alleged damages are probative as to how and why the accident occurred, including whether Defendant Nalco is liable for the alleged chemical overfeed which resulted in the over-pressurization and explosion. The court also finds that judicial economy and fairness are served by a unified trial.

Therefore, the court denies Defendant Nalco’s motion for a bifurcated trial.

The court has considered any additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional requests for relief which were not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Defendant Nalco Company’s motion for a bifurcated trial in this matter.

This constitutes the decision and order of the court.

  
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12/20/2023  
DATE

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: