

Johnson v Singh
2023 NY Slip Op 35243(U)
October 17, 2023
Supreme Court, Queens County
Docket Number: Index No. 713311/2018
Judge: Phillip Hom
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
QUEENS COUNTYPRESENT: HON. PHILLIP HOM PART 14*Justice*

-----X

NICHOLE JOHNSON,

Plaintiff,

- v -

BHOOPENDRA SINGH, AMERICAN AIRFREIGHT
TRUCKING CORP., AMERICAN AIRFREIGHT TRUCKING
CORP.,

Defendants.

-----X

INDEX NO. 713311/2018MOTION DATE 10/17/2023MOTION SEQ. NO. 003DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 51, 52, 53, 54 were read on this motion to/for Preclude Biomechanical Expert.

Upon the foregoing documents, and after oral arguments, it is ordered that this motion in limine by Plaintiff Nichole Johnson ("Plaintiff") to preclude Defendants' biomechanical expert, Sorin Siegler ("Siegler") is determined as follows:

The Court heard oral arguments on October 16, 2023, regarding Plaintiff's motion to preclude Defendants' biomedical expert, or in the alternative, to schedule a *Frye* hearing. Defendants, Bhoopendra Singh ("Singh"), American Airfreight Trucking Corp., American Airfreight Trucking Corp. (collectively "Defendants") opposed.

Although Plaintiff's papers seek a *Frye* hearing, "[a]bsent a novel or experimental scientific theory, a *Frye* hearing is generally unwarranted" (*People v Brooks*, 31 NY3d 939, 941 [2018]). The Appellate Division, Second Department has held "that biomechanical engineering is a scientific theory accepted in the field" (*Guerra v Ditta*, 185 AD3d 667, 668 [2d Dept 2020]). Thus, a *Frye* hearing is unwarranted.

However, Plaintiff's papers seemingly seek a hearing, under *Parker v Mobil Oil Corp.*, to determine whether Siegler had a proper foundation for his findings (7 NY3d 434 [2006]). The Court adjourned oral arguments to October 17, 2023, to allow Defendants to oppose Plaintiff's application for a *Parker* hearing. As such, further oral arguments were heard on October 17, 2023.

The Court of Appeals held in *Parker* that "[t]he *Frye* inquiry is separate and distinct from the admissibility question applied to all evidence—whether there is a proper foundation—to determine whether the accepted methods were appropriately employed in a particular" (*Parker*, 7 NY3d at 447). "The focus moves from the general reliability concerns of *Frye* to the specific reliability of the procedures followed to generate the evidence proffered and whether they establish a foundation for the reception of the evidence at trial" (*id.*, quoting *People v Wesley*, 83 NY2d

417, 429 [1994]). This analysis is necessary because “[a]s with any other type of expert evidence, we recognize the danger in allowing unreliable or speculative information (or ‘junk science’) to go before the jury with the weight of an impressively credentialed expert behind it. But, it is similarly inappropriate to set an insurmountable standard that would effectively deprive [a party] of their day in court. It is necessary to find a balance between these two extremes” (*Parker*, 7 NY3d at 447).

In her papers and during oral arguments, Plaintiff argues that Siegler’s report and testimony are speculative because he failed to analyze factors, including, among others, the crush depth, the crush width, the speed of the vehicles, and the angle of impact between the vehicles. Plaintiff further argues that Siegler failed to conduct a first-hand examination of, among other things, the vehicles to determine damage, the composition of roadway, the condition and type of tires on the vehicles, the materials the vehicles are made of and type and condition of vehicles’ brakes.

Defendants argue that the deficiencies cited by Plaintiff go to the weight of Siegler’s evidence and not to its admissibility. Defendants also argue it would have been impossible to obtain some of the data because the crash occurred on November 30, 2017 and Defendants were not aware of the lawsuit until after August 29, 2018.

Siegler’s report, dated August 3, 2023 (EF Doc 41), states that in formulating his conclusions, he reviewed, among other documents:

- MV-104AN NYS DMV Police Accident Report dated November 30, 2017;
- Plaintiff’s Bill of Particulars dated November 29, 2018;
- Supplemental Bill of Particulars dated November 25, 2020 and January 21, 2021;
- EBT transcript of Plaintiff Nichole Johnson dated March 13, 2020;
- EBT transcript of Defendant Bhoopendra Singh dated December 16, 2020;
- Plaintiff’s medical records;
- Hartford Underwriters Insurance Company’s damage estimate report for Plaintiff’s 2011 Dodge Avenger Express dated January 18, 2018;
- Dimensional Data for the 2005 International DuraStar 4300 Box Truck (Defendants’ vehicle);
- Expert auto stats data sheets for a 2011 Dodge Avenger Express;
- Reproductions of photos of the 2005 International DuraStar 4300 Box Truck and Dodge Avenger Express; and
- Google Street View of the incident scene.

Using this data, Siegler conducted an incident analysis, where he determined the dynamic conditions that the vehicle occupants experienced in the November 30, 2017 using Newton’s Three Laws of Motion. In his incident analysis, he used the Police Accident Report, testimony of the parties and description of the crash scene. To determine the severity of the crash, Siegler applied laws of physics, generally accepted published numerical engineering data on low-speed collisions and crush test experiments conducted on similar vehicles from the National Highway Traffic Safety Administration. Siegler states his methodology is in accord with methods routinely used in engineering and vehicle crash analysis and reconstruction.

Plaintiff relies upon *Imran v R. Barany Monuments, Inc.*, to argue that there is no proper foundation to admit Siegler's expert opinion (167 AD3d 304 [2d Dept 2018]). Here, unlike in *Imran*, Siegler relies upon facts in the record. Furthermore, here, there is conflicting testimony between the parties regarding how many vehicles were involved in the subject crash, i.e., Singh testified that there were only two vehicles involved and Plaintiff testified that there was an unknown and an unidentifiable third vehicle involved. She testified that when the police responded to the scene of the accident and asked how the accident occurred, she "told them that [Defendants'] truck came into [her] lane like [she] wasn't there." Plaintiff said that she told the police about the unknown third vehicle; however, Plaintiff said that the police officer said that she was not going to include a third vehicle in the report, because there was no third vehicle or third-party on the scene of the accident. Plaintiff further testified that she did not try to amend the Police Accident Report after reading it. Furthermore, Siegler merely relied upon information from the Police Accident Report that was substantiated by Plaintiff's EBT testimony and/or Singh's EBT testimony.

Additionally, Siegler relied upon photographs, which Plaintiff testified to have taken at the time and scene of the accident. The Court rejects Plaintiff's attorney's argument that she testified that said photographs "may not accurately depict the full extent of what they are purported to represent" (EF Doc 46—Attorney Affirmation). Plaintiff's testimony that her attorney was referring to was regarding two close-up photographs of the damage of her driver's side door panel. The question was whether there was other damage not depicted in those two pictures, and Plaintiff testified that she was not sure; however, she then testified to taking the remaining photographs, at least one of which shows the entire driver's side of her vehicle.

In his biomechanical analysis, Siegler reviewed the Plaintiff's EBT, Bill of Particulars and medical records for her injuries and Doctors' assessment of various injuries. Using these reports of Plaintiff's injuries, Siegler compares the inertial forces in the subject incident to the published literature.

Using his incident analysis and biomechanical injury analysis, Siegler concluded that, among other things, the average acceleration experienced by Plaintiff was within the limits of human tolerance and there was no causal link between Plaintiff's back, right ankle and right lower extremity injuries and the November 30, 2017 crash.

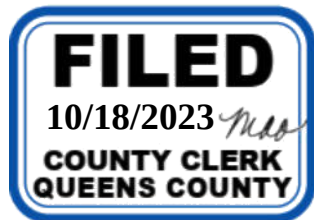
Balancing the danger of allowing unreliable or speculative information to go before the jury and not setting an insurmountable standard for Defendants, the Court finds that Siegler's August 3, 2023 report, which describes the methods, data and published authority used in formulating his conclusions, sets a proper foundation for his findings and that a *Parker* hearing is unnecessary.

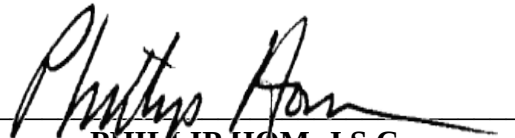
In accordance with the foregoing, it is hereby **ORDERED** that Johnson's motion in limine (Seq. No. 3) to preclude Defendants' expert witness, Sorin Siegler is denied; and it is further

ORDERED that Defendants shall serve, via NYSCEF, a copy of this Order with Notice of Entry on Plaintiff, within five (5) days of entry.

This constitutes the Decision and Order of this Court.

Dated: October 17, 2023




PHILLIP HOM, J.S.C.