

**Eisenberg v Amazon Logistics, Inc.**

2025 NY Slip Op 33782(U)

October 3, 2025

Supreme Court, New York County

Docket Number: Index No. 150852/2022

Judge: Debra A. James

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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**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

ERIC EISENBERG,

Plaintiff,

**INDEX NO.** 150852/2022

**MOTION DATE** 09/24/2025

**MOTION SEQ. NO.** 009 010

- v -

AMAZON LOGISTICS, INC., ALPHA CARTING COMPANY,  
BETA CARTING COMPANY, BERNARD WILSON,  
ANTONIO DOE, and KURT ROE,

Defendants.

**RESETTLED ORDER dated July  
2, 2025, and  
DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 299, 300, 301, 302, 303, 304, 305, 338, 339, 340, 341, 342, 343, 348, 349, 350, 357, 358

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

ORDER

Upon the foregoing documents, it is

ORDERED that the Order dated July 2, 2025, resolving motion sequence number 004 in this action (NYSCEF Document No 282), is VACATED, RESETTLED, AND CORRECTED, nunc pro tunc, pursuant to CPLR § 5019(a) [see Kiker v Nassau County, 85 NY2d 879 (1995)] as follows:

Upon the foregoing documents, it is

ORDERED that the motion of plaintiff for leave to reargue defendant Bernard Wilson's motion for a protective order (mot seq no 004) is granted; and it is further

ORDERED that, upon reargument, the Court modifies the prior order, dated January 30, 2025, only to the extent that it vacates the "Protective Order" dated January 30, 2025, which is inapplicable to this action for intentional tort, but directs that any personal identifying information, such as social security numbers and home addresses be redacted from the records produced, and grants plaintiff leave to reissue and serve the Subpoena upon non-party N-Quad Logistics, Inc., delineating and itemizing the records sought: the contract in effect on March 21, 2021, between Amazon Logistics, Inc. and N-Quad Logistics, Inc.; employee time and attendance records of defendant Bernard Wilson; reports or written correspondence, including e-mail messages concerning interaction between defendant Bernard Wilson and plaintiff on March 21, 2021; license agreements, in effect as of March 21, 2021, redacted for any proprietary information, that pertain to the use of "OPERATED BY:/AMAZON LOGISTICS, INC", on truck bearing New York license plate number 23901MM or on clothing worn by employees of N-Quad Logistics, Inc and/or defendant Amazon Logistics, Inc., present during the incident; any violations for idling truck issued to Amazon Logistics, Inc. and/or N-Quad Logistics, Inc. from December 1, 2019 through and including June 21, 2022; any

directives issued to employees concerning New York City Citizens Air Complaint Program and the recording by third parties of vehicles or personnel delivering packages; and it is further

ORDERED, except as to the foregoing, the court adheres the order dated January 30, 2025, which directed that N-Quad Logistics, Inc. need not produce items numbers 1 or 4 through 12; and it is further

ORDERED that except as exhibits to motions or for demands for bills of particulars and responses thereto (as latter constitute an amplification of the pleadings), counsel shall refrain from posting on NYSCEF discovery demands or responses thereto, as same unnecessarily and improperly clutters the docket, and should be exchanged among counsel only (see In Re Westchester Rockland Newspapers, Inc., 66 AD2d 335, 338 [2nd Dept 1979]); and it is further

ORDERED that counsel shall post on NYSCEF a joint proposed discovery status conference order or dueling proposed discovery status discovery conference order(s) at least two days before October 9, 2025, on which date counsel shall appear via Microsoft Teams, unless, by joint request sent to IAS Part 59 Clerk (SFC-Part59-Clerk@nycourts), such appearance be waived by the court.

DECISION

Motion sequence numbers 004 was fully submitted and sub judice before Justice Headley, as of October 7, 2024, which was about three months before the herein action was assigned to the undersigned. On such basis Warburg, Pincus & Co v QoS Networks Ltd, 25 AD3d 468 (1<sup>st</sup> Dept 2006), wherein the subject case was never properly assigned to the judge that determined the motion, is distinguishable on its facts.

However, the decision and order dated January 30, 2025, of Headley, J., overlooked the controlling case law with respect to non-party subpoenas. In Kapon v Koch, 23 NY3d 32, 38 (2014), the Court of Appeals stated:

"An application to quash a subpoena should be granted '[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious' ... or where the information sought is 'utterly irrelevant to any proper inquiry'".

Defendant Bernard Wilson failed to show that certain of the N-Quad Logistics, Inc. records sought were "utterly irrelevant to the proper inquiry", and therefore the order resolving his motion to quash should be modified accordingly. However, this court agrees with the prior decision to the extent that plaintiff's non-party Subpoena seeks "communications", as same is overbroad and must be redrafted to specifically delineate records likely to be in the possession of the non-party. See Sawyer v 1120 Fifth Avenue Corp, 238 AD3d 525 (1<sup>st</sup> Dept 2025). To the extent such specifically

delineated records exist but the search for same is unsuccessful, non-party N-Quad Logistics, Inc. shall provide an affidavit of the custodian of records or other person with knowledge setting forth the specific details of such search pursuant to Jackson v City of New York, 185 AD2s 768 (1<sup>st</sup> Dept 1992); and it is further

**ORDERED that, upon the foregoing papers on the herein motions sequence numbers 009 and 010, it is**

ORDERED that the motion, pursuant to CPLR 2221(d), of defendant Bernard Wilson to reargue the Order dated July 2, 2025, as resettled above (mot seq no 009), is granted, and upon reargument, the Court adheres to its Decision and Order, dated July 2, 2025, as resettled above; and it is further

ORDERED that the motion, pursuant to CPLR 2221(d), of defendant Amazon Logistics, Inc. to reargue the Order dated July 2, 2025, as resettled above (mot seq no 010), is granted, and upon reargument, the Court adheres to its Decision and Order, dated July 2, 2025, as resettled above; and it is further

ORDERED that to the extent that it seeks to compel non-party N-Quad Logistics LLC to comply with the Subpoena Duces Tecum dated July 12, 2025 to produce

1. contract between you and Amazon Logistics, Inc.;
2. personnel file, redacted of personal confidential information, of Bernard Wilson;

3. e-mail messages or written communication concerning any interaction between Bernard Wilson and Eric Eisenberg on March 21, 2021;

4. license, redacted for proprietary information, for use of sign reading "OPERATED BY/AMAZON LOGISTICS, INC./US DOT 2881058" on March 21, 2021 on the truck bearing NY license plate number 23901MM;

5. license, redacted for proprietary information, for use of clothing bearing the words "amazon logistics", "Amazon" and/or the Amazon arrow logo by your employees and/or contractors, including Bernard Wilson, on March 21, 2021;

6. violations for idling truck issued to Amazon Logistics, Inc. and/or N-Quad Logistics, Inc. from December 1, 2019 through and including June 21, 2022;

7. directives issued to employees concerning New York City Citizens Air Complaint Program and the recording by third parties of vehicles or personnel delivering packages, from December 1, 2019, through and including June 21, 2022, the cross motion, pursuant to CPLR 3124, of plaintiff to compel non-party N-Quad Logistics, Inc. to produce records is granted; and it is further

ORDERED to the extent that it seeks to compel production by non-party N-Quad Logistics LLC of "all" records, as well as costs, the cross motion of plaintiff is denied; and

WHEREAS, in contravention of this court directive and the role of the court in supervising but not participating in discovery, counsel persist in unnecessarily and improperly cluttering the court docket with (i.e., posting on NYSCEF) discovery demands and responses thereto, such as Post EBT Demands (NYSCEF Document No 290), Amazon's insurance disclosure (NYSCEF Document No 294), Amazon's Response to Preliminary Conference Order (NYSCEF Document No 295); Revised N-Quad subpoena (NYSCEF Document No 296), IME Notice and Objections (NYSCEF Document No 297), it is HEREBY;

ORDERED that counsel shall adhere and comply with this court's directive that, except, as exhibits to motions or for demands for bills of particulars and responses thereto (as latter constitute an amplification of the pleadings), counsel shall refrain from posting on NYSCEF discovery demands or responses thereto, as same unnecessarily and improperly clutter the docket, and should be exchanged among counsel only; see In Re Westchester Rockland Newspapers, Inc., 66 AD2d 335, 338 (2nd Dept 1979), discovery is not for public viewing on the official court docket, which is public, and see also Scollo v Good Samaritan Hosp, 175 AD2d 278, 279 (2d Dept 1991) ("Pretrial discovery" "[is] not 'sittings of court'", "[is] conducted in private as a matter of modern practice", and "is not a public component of a trial"); and it is further

ORDERED that as per the Amended Discovery Status Conference Order dated October 3, 2025, counsel are directed to post on NYSCEF a joint proposed Discovery Status Conference Order or proposed competing Discovery Status Conference Order(s) at least two days before October 30, 2025, on which date counsel shall appear via Microsoft Teams, unless, by joint request sent to IAS Part 59 Clerk ([SFC-Part59-Clerk@nycourts.gov](mailto:SFC-Part59-Clerk@nycourts.gov)) such appearance be waived by the court.

#### DECISION

Neither moving defendant has set forth any rationale for this this court not adhering to the controlling authority in C&N Camera & Elecs v Public Serv Mut Ins Co, 210 AD2d 132 (1<sup>st</sup> Dept), wherein the First Department, Appellate Division, unanimously affirmed the order of Schoenfeld, J., reasoning:

We also note that it was proper for Justice Schoenfeld to hear the motion to reargue Justice Ciparick's prior order since the case had been reassigned to Justice Schoenfeld, the new Justice presiding in said Part, prior to the date the reargument motion was heard (Billings v Berkshire Mut. Ins. Co., 133 AD2d 919; lv dismissed 70 NY2d 1002; Dalrymple v King Community Unity Health Ctr., 127 AD2d 69).

In addition, actions involving whether a defendant is an employee or independent contractor of an alleged defendant tortfeasor present an analogous rationale for the materiality and discoverability of any contract or license between non-party

N-Quad Logistics LLC and defendant Amazon Logistics. See Szabados v Quinn, 156 AD2d 186 (1<sup>st</sup> Dept 1989).

This court must deny plaintiff's cross motion to the extent he seeks an order to compel non-party N-Quad Logistics LLC to comply with the blunderbuss directives set forth in his Amended Subpoena dated August 30, 2025. See Butler v District Council 37, American Federation of State, County and Municipal Employees AFL-CIO, 72 AD2d 720, 721 (1<sup>st</sup> Dept 1979) ("Attempts to designate documents by the use of the phrase 'All' are plainly improper.")

*Debra A. James*

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10/3/2025

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE