

Hason v Foster

2025 NY Slip Op 34145(U)

October 28, 2025

Supreme Court, New York County

Docket Number: Index No. 156905/2021

Judge: Hasa A. Kingo

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 05M

Justice

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KENNETH HASON,

Plaintiff,

- v -

STUART L. FOSTER,

Defendant.

INDEX NO. 156905/2021

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 59

were read on these motions In limine

Two unopposed motions in limine are before the court. First, Defendant moves on an omnibus basis to preclude various categories of proof and argument at the upcoming jury trial, which—by prior order—will proceed solely on damages. Second, Plaintiff moves to preclude any reference to collateral allegations and a post-acquisition administrative settlement associated with Plaintiff’s treating pain-management physician’s former employer. Both motions are granted for the reasons that follow. The court further notes, on the parties’ consent, that Defendant shall not reference Plaintiff’s residence in any fashion, and Plaintiff shall refrain from reference to Defendant’s residence as well. As always, the court reserves the right to revisit these rulings during trial if, for example, a party “opens the door,” a foundation materially changes, or the interests of fairness otherwise require.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from a November 8, 2020, rear-end collision in Southampton. Plaintiff, a passenger, previously obtained summary judgment on liability; trial will address damages only. In 2024, the parties stipulated that Defendant would not be produced for deposition and neither party would call him at trial. Defendant now seeks in limine rulings tailored to the damages-only posture (e.g., excluding liability evidence, DWI/arrest references, wealth/insurance, duplicative proof, undisclosed expert opinions, and the use of terms such as “victim,” as well as prohibiting mention of specific dollar amounts during voir dire and openings). Plaintiff’s separate motion asks the court to bar cross-examination or extrinsic proof regarding prior, unproven allegations directed at a different medical entity (and its former owner) and a later administrative settlement that expressly disclaims any admission of liability by Plaintiff’s physician.

ARGUMENTS

Defendant contends that, because liability is established and comparative fault is not at issue, any liability-side proof—including DWI/arrest materials—is irrelevant and unduly prejudicial; that wealth/insurance references are categorically improper; that specific dollar suggestions are barred outside summations; that undisclosed expert opinions and duplicative proofs constitute “trial by ambush;” and that pejorative labels (e.g., “victim”) risk unfair prejudice.

Plaintiff argues that collateral attacks on the treating pain specialist—via unrelated allegations against a prior employer and a no-admission administrative settlement—are classic propensity and credibility-only matters with overwhelming prejudice and no probative value concerning any damages issue in this case; New York authority squarely counsels exclusion.

DISCUSSION

Evidence must be relevant—i.e., have any tendency to make a consequential fact more or less probable—and even relevant proof may be excluded when its probative value is substantially outweighed by the danger of undue prejudice, confusion, or misleading the jury (*People v. Scarola*, 71 NY2d 769, 777 [1988]; *People v. Alvino*, 71 NY2d 233, 242 [1987]; *People v. Acevedo*, 40 NY2d 701, 704 [1976]; *Uss v. Town of Oyster Bay*, 37 NY2d 639, 641 [1975]). New York trial courts have broad discretion to make those calibrations *in limine* to promote an orderly trial on the actual issues the jury must decide (*see People v. Frumusa*, 29 NY3d 364, 372 [2017]).

The collateral-matter doctrine independently limits impeachment with extrinsic evidence offered solely to attack credibility (*Badr v. Hogan*, 75 NY2d 629, 635 [1990]; *People v. Pavao*, 59 NY2d 282, 288–89 [1983]; *People v. Schwartzman*, 24 NY2d 241, 245 [1969]; *People v. Zabrocky*, 26 NY2d 530, 535 [1970]). Admission of “bad acts” lacking probative value on a material issue—particularly where their relevance is, at most, marginal—is an abuse of discretion when the prejudice risk is high (*Mazella v. Beals*, 27 NY3d 694, 711 [2016]).

Finally, *voir dire* and openings are controlled by rule and statute. Counsel may not mention the amount of money “at issue” in *voir dire*, 22 NYCRR § 202.33, App. E(4), and may not suggest a specific dollar amount until summation (CPLR § 4016[b]).

I. Defendant’s Omnibus In Limine Application

a. Liability-Related Proof

Liability here has been established as a matter of law; the jury will decide only damages. Evidence whose sole purpose is to re-litigate fault—including accident-cause narratives or attempts to attribute comparative negligence—is irrelevant and risks confusing the issues (*Scarola*, 71 NY2d at 777). The motion to preclude liability evidence is granted.

b. DWI/Arrest References and Similar Criminal Disposition Materials

References to DWI, arrests, or criminal-part dispositions bear, at best, a tangential relationship to any element of damages and present an obvious danger of inflaming the jury. Given

the damages-only posture, their probative value is minimal while their prejudice is substantial (*Frumusa*, 29 NY3d at 372; *Scarola*, 71 NY2d at 777). Exclusion is warranted.

c. “Trial by Ambush,” Altered Testimony, and Duplicative Proof

After a note of issue, parties may not alter core testimony, enlarge claims, or spring undisclosed opinions. The CPLR’s liberal disclosure regime exists to avoid trial by ambush (*Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; *Hirsch v. Stewart*, 63 AD3d 74, 79 [1st Dept 2009]; *Vago v. Kaylyakov*, 36 AD3d 687, 689 [2d Dept 2007]). Duplicative evidence likewise may be excluded to conserve time and avoid confusing the jury (*see Matter of Beardslee v. New York State Off. of Children & Family Servs.*, 101 AD3d 1737 [4th Dept 2012]; *People v. Hernandez*, 28 AD3d 206 [1st Dept 2006]). Preclusion is granted. Expert testimony is confined to opinions and bases timely disclosed under CPLR § 3101(d).

d. Punitive-Damages Evidence

Punitive damages are penal, not compensatory, and are permitted only in “singularly rare” circumstances demonstrating conduct approaching criminality—“a high degree of moral culpability” and “conscious disregard” of others’ rights (*Home Ins. Co. v. Am. Home Prods. Corp.*, 75 NY2d 196, 203–04 [1990]; *Anonymous v. Streitferdt*, 172 AD2d 440, 441 [1st Dept 1991]; *Ross v. Louise Wise Servs., Inc.*, 8 NY3d 478, 489 [2007]; *Saarinen v. Kerr*, 84 NY2d 494, 501 [1994]). On this record, and given the damages-only trial, any punitive-damages theme (or shadow-boxing with such a theme) would improperly prejudice the jury and duplicate punishment concerns already addressed by compensatories (*see State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419, 426–27 [2003]; *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575–83 [1996]). The motion is granted to preclude punitive-damages evidence or argument.

e. Wealth/Financial Condition and Liability Insurance

Evidence of a party’s wealth or poverty is generally inadmissible and invites passion rather than reason (*Campbell*, 538 U.S. at 427; *BMW*, 517 U.S. at 575–83). References to insurance (or to adjusters/claims personnel) are likewise prohibited because of their potent prejudice (*Young v. Knickerbocker Arena*, 281 AD2d 761, 763 [3d Dept 2001]; *Kowalski v. Loblaws, Inc.*, 61 AD2d 340 [4th Dept 1978]). The motion is granted.

f. Specific Dollar Amounts in *Voir Dire*/Opening

Counsel may not tell prospective jurors “the amount of money at issue,” 22 NYCRR § 202.33, App. E(4), and may not ask the jury to “award” a specific sum before summation (CPLR § 4016[b]). Defendant’s request to enforce these limits is granted.

g. Prior Lawsuits and the “Victim” Label

Unrelated actions are classic propensity/character proof and are generally inadmissible (*Matter of Brandon*, 55 NY2d 206, 210–11 [1982]; *Ross v. Beer Garden, Inc.*, 12 AD3d 152, 154 [1st Dept 2004]; *Landsman v. Village of Hancock*, 296 AD2d 728, 732 [3d Dept 2002]). The term

“victim” adds nothing of probative value and risks unfair prejudice; courts may prophylactically bar prejudicial labels (*see, e.g., Mazella, 27 NY3d at 711*). The motion is granted.

h. Lost-Wage Themes

Plaintiff does not claim past or future lost earnings. Evidence and argument on income, benefits, or missed work are therefore irrelevant and, alternatively, substantially more prejudicial than probative (*Scarola, 71 NY2d at 777*). Preclusion is granted.

i. Hamptons Residence

On consent, Defendant shall not reference Plaintiff’s residence in the Hamptons for any purpose, and Plaintiff agrees to do the same for Defendant; the probative value (if any) is negligible and the prejudice risk palpable (*see Scarola, 71 NY2d at 777*).

II. Plaintiff’s Motion Concerning Collateral Allegations About Treating Physician

Plaintiff seeks to preclude cross-examination and extrinsic proof regarding allegations made against the treating physician’s former employer and a later administrative settlement explicitly denying liability. New York law is clear: where the subject goes only to general credibility and lacks probative value on a material issue, extrinsic proof is inadmissible and the inquiry itself may be foreclosed to prevent jury distraction and unfair prejudice (*Badr, 75 NY2d at 635; Mazella, 27 NY3d at 710–12* [reversing where unrelated disciplinary consent order—offered for “habit/credibility”—was “unquestionably collateral” and “improperly prejudicial”]; *Pavao, 59 NY2d at 288–89; Schwartzman, 24 NY2d at 245*).

So too where there is no adverse finding at all: mere existence of an investigation, lawsuit, or settlement with no admission of liability is “of little or no probative value” and invites impermissible propensity reasoning (*see Drayton v. Putnam Hosp. Ctr., 235 AD3d 722, 723* [2d Dept 2025][error to cross-examine about a pending, unrelated lawsuit against the witness]; *accord People v. Smith, 27 NY3d 652, 662* [2016]; *Dance v. Town of Southampton, 95 AD2d 442, 443* [2d Dept 1983]). Recent Appellate Division, First Department, authorities likewise reject efforts to bootstrap collateral, unproven fraud or RICO allegations to impugn witnesses or parties in unrelated personal-injury trials (*Broughton v. 553 Marcy Ave. Owners, LLC, 238 AD3d 536* [1st Dept 2025]; *Anguisaca-Morales v. St. Paul & St. Andrew United Methodist Church, 238 AD3d 439* [1st Dept 2025]).

Here, the proffered subjects (historic allegations about billing practices at a different entity, resolved years before Plaintiff became a patient, and a no-admission settlement) have no nexus to Plaintiff’s treatment, diagnoses, causation, or the reasonableness/necessity of care in this case. They are pure collateral matters, and the risk of unfair prejudice, jury confusion, and mini-trials on side issues far outweighs any marginal probative value (*Mazella, 27 NY3d at 711; Scarola, 71 NY2d at 777*). Plaintiff’s motion is therefore granted in full.

Accordingly, it is

ORDERED that Defendant’s unopposed omnibus motion *in limine* is granted as set forth above, including preclusion of (i) liability-related proof; (ii) any reference to DWI/arrest citations or criminal dispositions; (iii) undisclosed expert opinions and duplicative evidence; (iv) punitive-damages evidence or argument; (v) wealth/financial condition and liability-insurance references (including “adjuster/claims” terminology); (vi) statements of specific dollar amounts during *voir dire* and openings (CPLR § 4016[b]; 22 NYCRR § 202.33, App. E[4]); (vii) unrelated prior lawsuits involving Defendant; (viii) use of the term “victim”; (ix) lost-wage themes or proof; and it is further

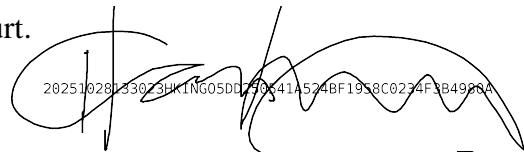
ORDERED that, on consent, Defendant shall not reference Plaintiff’s residence in the Hamptons for any purpose at trial, and Plaintiff shall not do the same with respect to Defendant; and it is further

ORDERED that Plaintiff’s unopposed motion *in limine* to preclude any reference to or use of collateral allegations and the no-admission administrative settlement involving the treating pain-management physician’s former employer is granted; and it is further

ORDERED that all counsel shall instruct their witnesses accordingly before they testify; and it is further

ORDERED that these rulings are without prejudice to reconsideration at trial should a party “open the door,” a proper non-propensity purpose be shown, a different foundation be laid, or the interests of justice otherwise require; any application to revisit a ruling must be made outside the presence of the jury.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

10/28/2025
DATE

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