SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** 33M
Justice

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HARRINGTON WATT, and GRACE WATT,

Plaintiffs,

- v -

BP PRODUCTS NORTH AMERICA INC., *et al.*,

Defendants.

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INDEX NO. 151554/2024

MOTION DATE 07/07/2025

MOTION SEQ. NO. 013

DECISION + ORDER ON MOTION

EXXON MOBIL CORPORATION

Plaintiff,

-against-

ISLAND TRANSPORT CORPORATION

Defendant.

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Third-Party
Index No. 595247/2025

The following e-filed documents, listed by NYSCEF document number (Motion 013) 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 192

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of September 9, 2025, Defendant/Third-Party Plaintiff Exxon Mobil Corporation's ("Exxon") motion to dismiss Third-Party-Defendant Island Transport Corporation's ("Island") counterclaims in Island's Answer to the Amended Third-Party Complaint is granted.

I. Background

Plaintiffs Harrington and Grace Watt sue Defendants, including Exxon, for Mr. Watt's cancer, which was allegedly caused by his decades long exposure to benzene in products designed, manufactured, distributed, and sold by the various Defendants. Exxon initiated a Third-Party Complaint against Island alleging that pursuant to a 1991 Motor Carrier Contract, 1995 Motor

Carrier Contract, and a 2010 Standard Trucking Agreement, it is entitled to defense and indemnification from Island. Exxon also alleges breach of contract, unjust enrichment, common law indemnification, and contribution. In its Answer to Exxon's Amended Third-Party Complaint, Island alleged several counterclaims, including fraudulent inducement, negligent misrepresentation, unilateral mistake, contractual indemnification, and gross and ordinary negligence. Exxon now moves to dismiss those counterclaims, and Island opposes.

II. Discussion

A. Collateral Estoppel

Exxon's motion to dismiss Island's counterclaims for contractual indemnification, gross and ordinary negligence are granted pursuant to the doctrine of collateral estoppel. Collateral estoppel applies when "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits" (*Conason v Megan Holding, LLC*, 25 NY3d [2015] [internal quotation marks and citation omitted], *rearg denied* 25 NY3d 1193 [2015]; *Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1985]). "The fundamental inquiry is whether re-litigation should be permitted in a particular case in light of fairness to the parties, conservation of the resources of the courts and the litigants, and the societal interests in consistent and accurate results." (*Buechel v Bain*, 97 NY2d 295, 304 [2001]). The litigant seeking the benefit of collateral estoppel must show that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party, while the party to be precluded bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination (*id.*).

Here, the issues in both proceedings are identical: namely whether Island may assert counterclaims against Exxon for contractual indemnification, gross and ordinary negligence in response to third-party claims asserted by Exxon for any liability Exxon may face due to a plaintiff's personal injuries due to benzene exposure. The pleadings in both cases are identical and the parties are also identical. There is no dispute that the parties litigated whether the claims were viable and were granted an opportunity to argue orally their positions, after which Hon. Bruce J. Kaplan, J.S.C. dismissed with prejudice the contractual indemnification, gross and ordinary negligence counterclaims. Thus, the requirements of collateral estoppel have been met, and Island is barred from relitigating whether it is entitled to allege contractual indemnification, gross and ordinary negligence as counterclaims against Exxon (*see Harvester Chemical Corp., Inc. v Aetna Cas. And Sur. Co.*, 212 AD2d 392, 394 [1st Dept 1995] citing *Schultz v Boy Scouts of America, Inc.*, 65 NY2d 189, 204-05 [1985]). Therefore, those claims are dismissed (*see also Suresh v Krishnamani*, 212 AD3d 514, 514 [1st Dept 2023]; *Cartesian Broadcasting Network, Inc. v Robeco USA*, 43 AD3d 311, 312 [1st Dept 2007]).

B. Economic Loss Doctrine

Exxon's motion to dismiss the fraudulent inducement and negligent misrepresentation counterclaims pursuant to the economic loss doctrine is granted. As a preliminary matter, Island's argument that collateral estoppel precludes dismissal of the remainder of Island's counterclaims, because in the *Singh* matter those counterclaims were not dismissed is incorrect. Collateral estoppel applies when there is a final judgment – the denial of a motion to dismiss is not a final judgment and does not give rise to any preclusive effect.

The New York's economic loss doctrine bars Island's fraudulent inducement and negligent misrepresentation counterclaims. As alleged in the counterclaims, the damages which Island seeks

to recover based on Exxon's alleged fraudulent inducement and negligent misrepresentation arise from Island's duty to indemnify Exxon under the parties' various contracts. Thus, the damages are economic damages flowing from the contract to transport Exxon's products, and the fraudulent inducement and negligent misrepresentation counterclaims, which sound in tort, are barred by the economic loss doctrine unless Island has alleged some independent duty owed to it outside of the contracts (*see, e.g. Bocre Leasing Corp. v General Motors Corp. (Allison Gas Turbine Div.)*, 84 NY2d 685, 688-89 [1995]; *see also Cedar & Washington Assocs., LLC v Bovis Lend Lease LMB, Inc.*, 95 AD3d 448, 449 [1st Dept 2012]). However, here, the contracting parties are both sophisticated commercial entities who entered multiple iterations of contracts negotiated at arm's length, which does not establish a special relationship or independent duty existing between them aside from those asserted in the contracts at issue (*see, e.g. Basis Pac-Rim Opportunity Fund v TCW Asset Management Co.*, 124 AD3d 538, 539 [1st Dept 2015]).

Indeed, the indemnification clauses at issue, which if ultimately found triggered would cause the economic damages which are the subject of Island's counterclaims, all contain carve outs for damages Exxon incurs through its own negligence. Thus, there is nothing preventing Island from avoiding or limiting its damages under the indemnification clauses by arguing that it was a victim of fraud or negligent misrepresentation and therefore was not negligent in the transportation of the benzene containing products. And although Island chose to assert tort counterclaims given the binding contracts which cover the damages and allegations giving rise to the counterclaim is fatal (*see, e.g. Clark-Fitzpatrick, Inc. v Long Island R. Co.*, 70 NY2d 382, 389-90 [1987]). Based on the economic loss doctrine, and because Island may avoid the economic damages which are the subject of the counterclaims by litigating this case within the terms agreed

to by the contract, the counterclaims for fraudulent inducement and negligent misrepresentation are dismissed.

C. Unilateral Mistake

Exxon's motion to dismiss Island's unilateral mistake claim is granted, but unlike the other claims, this claim is dismissed without prejudice. To state a claim of unilateral mistake, "it must be alleged that one of the parties fraudulently misled the other" and a "conclusory claim of unilateral mistake, which is unsupported by legally sufficient allegations of fraud, fails to state a cause of action for reformation" (*see Greater New York Mut. Ins. Co. v United States Underwriters Ins. Co.*, 36 AD3d 441, 443 [1st Dept 2007]). The fraud forming the basis of a unilateral mistake claim must be pled with particularity pursuant to CPLR 3016(b).

The claim for unilateral mistake is defeated by Island's own allegations that as early as the 1990s, there were allegations and evidence in the public record, via ongoing litigation in New Jersey captioned *Mehlman v. Mobil Oil Corp.* 291 N.J. Super. 98 (App. Div. 1996), that Exxon's alleged predecessor, Mobil Oil Corp., knew benzene could cause cancer yet sold gasoline containing a dangerous levels of benzene. Despite making these allegations about the public disclosure of Mobil Oil Corp's products benzene levels, Island fails to provide any particularized allegations regarding why this publicly available information could not have been discovered by it with a reasonable amount of due diligence (*see, e.g. Wachovia Securities, LLC v Joseph*, 866 NYS2d 651, 653 [1st Dept 2008] [failure to allege mistake occurred despite exercise of due diligence fatal to claim of unilateral mistake]). Instead, there is simply a conclusory allegation that Island reasonably relied on Exxon's representation that the products being transported were safe. This is insufficient to allege fraudulent conduct sufficient to give rise to a unilateral mistake claim (*see also Angel v Bank of Tokyo-Mitsubishi, Ltd.*, 39 AD3d 368, 369 [1st Dept 2007]).

Because this claim is dismissed based on pleading defects, the Court grants leave to replead with more particularized allegations of fraud and reasonable reliance within thirty days of this Decision and Order, if possible. Dismissal of the unilateral mistake claim is without prejudice.

Accordingly, it is hereby,

ORDERED that Exxon's motion to dismiss Island's counterclaims is granted, and all counterclaims are dismissed, with prejudice, except for Island's counterclaim alleging unilateral mistake, which is dismissed without prejudice, with leave to replead within thirty days, if possible; and it is further

ORDERED that within ten days of entry, counsel for Exxon shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

11/10/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED			x	NON-FINAL DISPOSITION	
	x	GRANTED		DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE