

Small v Metro-North Commuter R.R. Co.

2025 NY Slip Op 34272(U)

November 6, 2025

Supreme Court, New York County

Docket Number: Index No. 452198/2022

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

ANTHONY SMALL,

Plaintiff,

- v -

METRO-NORTH COMMUTER RAIL ROAD COMPANY,
METROPOLITAN TRANSPORTATION AUTHORITY

Defendants.

-----X

INDEX NO. 452198/2022
MOTION DATE 09/05/2024
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to/for JUDGMENT - SUMMARY.

Defendants Metro-North Commuter Railroad Company (Metro-North) and Metropolitan Transportation Authority (MTA) move, pursuant to CPLR 3212, for summary judgment dismissing plaintiff’s complaint, or, alternatively, for partial summary judgment dismissing the statutory claims asserted under the Boiler (Locomotive) Inspection Act, the Safety Appliance Act, and related federal regulations. Plaintiff opposes and cross-moves for summary judgment.

I. PERTINENT FACTS

This action is brought under the Federal Employers’ Liability Act (FELA) (45 U.S.C. § 51 et seq.) for injuries allegedly sustained by plaintiff on March 6, 2020, while employed by Metro-North. The action arises from a collision that occurred when a Metro-North vacuum truck operated by plaintiff struck the median barrier on an interstate highway near Pelham, New York. MTA is Metro-North’s parent entity (NYSCEF 1).

At the time of the incident, plaintiff was employed by Metro-North as a vacuum-truck operator and welder’s helper in its Track Department (NYSCEF 1; 22). His duties included

operating a “vac truck,” used to remove stone and debris from railroad tracks (*id.*). Plaintiff had worked for Metro-North since 2015, held a New York State Commercial Driver’s License, and regularly reported to the Mott Haven Yard in the Bronx, where he often accepted overtime assignments (NYSCEF 22).

The vehicle involved, designated Truck 10505M, was owned and maintained by Metro-North (NYSCEF 53). It was equipped with GPS, a data-recording system, and a forward-facing dashboard camera, and drivers were identified by a magnetic swipe-card system (*id.*).

On March 5, 2020, plaintiff completed his regular day shift at approximately 4:00 p.m. Shortly before the end of his shift, his supervisor, Eric Williams, offered him an overtime assignment that evening at Metro-North’s Hopewell Junction facility to perform track-cleaning work (NYSCEF 50). Plaintiff accepted the assignment and returned to Mott Haven Yard around 7:00 p.m., where he and his co-worker, Pedro Toro, conducted a pre-trip inspection before departing for Hopewell Junction (*id.*).

Plaintiff and Toro arrived at the Hopewell facility at approximately 9:00 p.m. and performed track-cleaning operations (NYSCEF 50). After completing the job, they were advised by the on-site supervisor that they could rest before returning to the Bronx (*id.*). Plaintiff and Toro left Hopewell at around 1:40 a.m. (NYSCEF 55). At approximately 2:00 a.m. on March 6, 2020, plaintiff and Toro began the return trip to New York City. Toro initially drove the vac truck while plaintiff sat in the passenger seat. About 30 minutes into the trip, the two switched positions, and plaintiff assumed control of the vehicle (NYSCEF 50; 51). Toro fell asleep shortly thereafter (*id.*). While traveling on the interstate, the vac truck struck the left-side guardrail and came to halt along the median (NYSCEF 49). State Police and emergency services responded, and plaintiff was transported to New Rochelle Hospital for treatment (*id.*).

The vac truck was later towed from the scene. The record also reflects that the same vehicle had been involved in a prior collision on April 29, 2019, while operating on rail, after which it underwent frame-straightening and tire replacement (NYSCEF 53).

Plaintiff commenced this action on March 15, 2022 (NYSCEF 1). The complaint asserts six causes of action: (1) negligence under FELA; (2) violation of the Boiler (Locomotive) Inspection Act (49 U.S.C. §§ 20701–20703); (3) violation of the Safety Appliance Act (49 U.S.C. §§ 20301 et seq.); (4) combined statutory violations under both Acts; (5) violation of 49 C.F.R. Part 214 (Railroad Workplace Safety); and (6) violation of 49 C.F.R. Part 229 (Locomotive Safety Standards). Plaintiff alleges that Metro-North failed to provide a safe place to work by allowing him to operate a defective vehicle, assigning excessive overtime, and failing to maintain the truck in safe mechanical condition, thereby causing the accident and his resulting injuries.

Metro-North Incident Reports and Data Records (NYSCEF 74)

Metro-North’s Office of System Safety prepared an Initial Report of Incident (IR-1) and an Incident Investigation Report (IR-2) following the March 6, 2020 collision. The reports describe that the vac truck, identified as Unit 10505M, was traveling southbound on Interstate 95 when it struck the guardrail near mile marker 3.5 in Pelham, New York. The IR-2 notes that the GPS system recorded Toro as the assigned driver, but that plaintiff assumed control of the vehicle after Toro displayed signs of fatigue. The report identifies “failure to operate moving vehicle/equipment safely” as the root cause, with “failure to follow procedure” listed as a contributing factor (*id.*).

Attached trip and engine-data logs show the truck departing Hopewell Junction at approximately 11:00 p.m. on March 5, traveling roughly 67 miles over four hours, with an

average recorded speed of 16 miles per hour and a final recorded location corresponding to the accident site at 3:10 a.m.

Plaintiff's accompanying written statement (NYSCEF 73) recounts that while driving back from Hopewell Junction, he observed the truck "pull to the left" and then collided with the median barrier.

Plaintiff Deposition (NYSCEF 50)

Plaintiff denied falling asleep or become distracted during the trip, and stated he was tired but did not believe fatigue caused the accident. Plaintiff denied falling asleep or becoming distracted during the trip and stated that, although he was tired, he did not believe fatigue caused the accident. He attributed the collision to the truck "pulling to the left" while he was traveling in the left lane, causing it to strike the guardrail. He stated that several months earlier he had reported to his supervisors that the vac truck tended to pull to the left, though he was not aware of any repairs made in response.

Toro Deposition (NYSCEF 51)

On the evening of March 5, 2020, Toro and plaintiff drove together to the Hopewell Junction work site to perform track-cleaning operations. Toro conducted a pre-trip inspection, or did a "walk-around" of the truck before departure. He was the assigned driver for the overtime shift and drove from Mott Haven Yard to Hopewell Junction without incident. After finishing the work, Toro drove for approximately 30 minutes on the return trip before plaintiff offered to take over driving. Toro stated that he fell asleep shortly thereafter and awoke when he heard the truck hit the guardrail. He had not noticed the vehicle pull to the left and was unaware of any prior steering or mechanical issues.

Andrea Hickman Deposition (NYSCEF 52)

Andrea Hickman, Metro-North's Manager of Track Maintenance, supervised both plaintiff and Toro at Mott Haven Yard. Both were qualified to operate vac trucks, and overtime assignments were voluntary. Hickman stated that Toro was the designated driver for the March 5–6 overtime shift and that Metro-North's swipe-card and GPS systems would have recorded the assigned driver had they been used. She indicated that plaintiff was not required or instructed to drive on the return trip and that she was unaware of any reports of mechanical problems with the vac truck before the incident.

Frank Gagliardotto Deposition (NYSCEF 53)

Frank Gagliardotto, Metro-North's General Superintendent of Track Operations, explained that Metro-North contracted with APOW Towing for quarterly maintenance and inspection of its vacuum trucks and that Truck 10505M had been serviced nine days before the incident. He stated that maintenance logs showed that the vehicle passed inspection with no reported defects, and that he was not aware of any employee complaints regarding steering or handling issues with the vac truck prior to March 6, 2020.

Nicholas Aldini Deposition (NYSCEF 54)

Nicholas Aldini, Metro-North's Assistant Track Supervisor, responded to the accident scene and observed the vac truck positioned along the left median with visible front-end damage. The vehicle did not exhibit any signs of mechanical or steering failure, and no prior maintenance reports referenced steering issues for Truck 10505M. Aldini confirmed that Metro-North's procedures required operators to perform pre-trip inspections and that no inspection reports noted steering problems before the incident.

Scott Kline, P.E. Affirmation (NYSCEF 55)

Scott Kline, a mechanical engineer with ARCCA, LLC, reviewed the vac truck's dash-camera video, engine control module (ECM) data, GPS records, post-accident photographs, and maintenance history. The ECM showed the vehicle traveling between 60 and 65 miles per hour with no brake, throttle, or steering input in the six seconds preceding impact. The dash-camera video depicted the truck continuing straight as the roadway curved to the right. Kline reported that the vehicle had been serviced nine days before the collision and that the tires and steering components were in proper condition. He found no evidence of mechanical malfunction and concluded that the collision resulted from a lack of steering or braking prior to impact.

Van O'Neal Affirmation (NYSCEF 75)

Van O'Neal, a consultant with ATA Associates, Inc., with 25 years of experience in commercial driver training and traffic safety, reviewed the pleadings, deposition transcripts, maintenance and payroll records, and applicable Federal Motor Carrier Safety Administration (FMCSA) regulations. Based on payroll data and time sheets, O'Neal reported that plaintiff worked approximately 98 hours during the seven days preceding the incident, including a 16-hour period spanning March 5–6, 2020. He opined that plaintiff was required to drive without the ten consecutive hours off duty mandated by the Federal Motor Carrier Safety Administration (FMCSA) hours-of-service regulations (49 C.F.R. § 395.3) and after exceeding the 70-hour limit in eight consecutive days under § 395.3(b)(2). O'Neal concluded that these hours-of-service violations were substantial contributing factors to the accident.

II. DISCUSSION

Summary Judgment Standard

“To prevail on a summary judgment motion, the moving party must provide evidentiary proof in admissible form sufficient to warrant the direction of summary judgment in his or her favor (*Kershaw v Hospital for Special Surgery*, 114 AD3d 75, 81 [1st Dept 2013]). “Once this burden is met, the burden shifts to the opposing party to submit proof in admissible form sufficient to create a question of fact requiring a trial” (*id.* at 82).

Only if movant's burden is met does the burden then shift to the opposing party to demonstrate the existence of a triable issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman*, 49 NY2d at 557). “On a motion for summary judgment, facts must be viewed ‘in the light most favorable to the non-moving party’ ” (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]).

A Defendants’ Motion for Summary Judgement

Party Contentions

Defendants contend that neither Metro-North nor the MTA was negligent under FELA and that plaintiff alleges no statutory violation or condition that caused the accident. They argue that the undisputed evidence—including vehicle data, maintenance records, testimony, and dash-camera footage—shows the vacuum truck was mechanically sound and that plaintiff’s own excessive speed, inattention, and failure to maintain his lane were the sole cause of the crash. They maintain that the LIA, SAA, and cited federal regulations apply only to locomotives or on-track equipment and are therefore inapplicable, and that the MTA must be dismissed because it was not plaintiff’s employer. Defendants further assert that plaintiff voluntarily accepted the

overtime assignment and offers no proof that fatigue or any “hours-of-service” violation contributed to the accident.

Plaintiff opposes, arguing that triable issues exist as to whether Metro-North negligently failed to address known steering problems. He claims he had previously complained that the truck “pulled” to the left and that Metro-North failed to document or repair the issue. Plaintiff further contends that Metro-North violated federal hours-of-service rules by permitting him to drive while fatigued, thereby breaching its FELA duty to provide a safe workplace.

In reply, defendants argue that neither the alleged mechanical-failure nor the hours-of-service theory is supported by the record. They note that plaintiff relies solely on his own uncorroborated testimony, contradicted by co-worker Toro, the maintenance records, the expert affidavit, and the dash-camera video. Defendants emphasize that plaintiff produced no expert or technical evidence, that the truck was inspected less than two weeks before the accident and no issues found, and that the video shows the vehicle traveling straight as the road curves. They argue that plaintiff’s conclusory claims of mechanical failure are insufficient to raise a triable issue and again seek dismissal of all claims, including those against the MTA.

Analysis

i. Statutory Claims

Plaintiff’s second through sixth causes of action, asserted under the LIA (49 U.S.C. §§ 20701–20703), the SAA (49 U.S.C. §§ 20301 et seq.), and 49 C.F.R. Parts 214 and 229, are dismissed. By their plain terms, these provisions apply only to locomotives, tenders, or cars operated on a railroad line. The vehicle involved here—a Metro-North vacuum truck operating on Interstate 95—does not fall within those categories. Courts have consistently limited the LIA and SAA to locomotives, tenders, and rolling stock operated on a railroad line, excluding off-

track or roadway equipment (*see LeDure v Union Pac. R.R. Co.*, 962 F3d 907 [7th Cir 2020], *affd.*, 596 US 242, [2022] [LIA applies only to locomotives “in use” on a railroad line]; *Mazzucola v. Pennsylvania R. Co.*, 281 F.2d 267, 269 [3d Cir 1960] [refusing to extend SAA to caterpillar tractor used to move cars on pier]; *DeGregorio v Metro-North R.R. Co.*, 2006 U.S. Dist LEXIS 97075 [D Conn 2006] [shuttlewagon confined to Metro-North’s maintenance facility not a locomotive or car subject to the LIA or SAA]; *Lupia v New Jersey Transit Rail Operations, Inc.*, 2022 WL 17904551, *2 [SDNY 2022] [LIA imposes strict liability only for locomotives and tenders operating on railroad line]).

Plaintiff’s remaining statutory claims, asserted under 49 C.F.R. Parts 214 and 229, likewise fail. Part 229 codifies the Locomotive Inspection Act and applies only to locomotives operated “on railroad lines” (49 C.F.R. § 229.3[a]; *LeDure*, 962 F3d 907). Part 214, which governs railroad workplace safety, applies to “on-track roadway maintenance machines” used for track construction or repair (49 C.F.R. § 214.501[b]), not to highway vehicles such as the vacuum truck involved here. Accordingly, those provisions impose no duties with respect to this incident and cannot serve as predicates for liability under FELA.

Accordingly, the second through sixth causes of action are dismissed

ii. FELA Negligence Claim

Under the FELA, 45 U.S.C. § 51 et seq., a railroad employer is liable in damages if its negligence played any part, however slight, in producing an employee’s injury (*Rogers v Missouri Pac. Ry.*, 352 US 500, 506 [1957]). The statute thus “relaxes the standard of causation,” but it does not impose strict liability: a plaintiff must still present competent evidence of duty, breach, foreseeability, and causation (*Tufariello v Long Is. R.R. Co.*, 458 F3d 80, 87 [2d Cir 2006]; *Galloose v Long Is. R.R.*, 878 F2d 80, 85 [2d Cir 1989]).

A FELA claim “must not be dismissed at the summary judgment phase unless there is absolutely no reasonable basis for a jury to find for the plaintiff” (*Gadsden v Port Auth. Trans-Hudson Corp.*, 140 F3d 207, 209 [2d Cir 1998] [internal quotations and citations omitted]). Only where “reasonable jurors could reach but one conclusion” may a court remove the issue from the jury (*Gallose*, 878 F2d at 85; *see Vaspasiano v Metro-N. R.R. Co.*, 638 F Supp 3d 141, 149 [D Conn 2022]).

Nevertheless, the railroad’s duty is one of reasonable care, not absolute safety. “A railroad does not have a duty to eliminate all workplace dangers by providing the ‘safest possible workplace,’ but only the duty of exercising reasonable care in providing a reasonably safe working environment” (*Vaspasiano*, 638 F Supp 3d at 151). “An employer is not liable if it has no reasonable way of knowing that a potential hazard exists, because ... the FELA was never intended to hold an employer absolutely liable for workplace injuries” (*Gallose*, 878 F2d at 85). Liability attaches only where an employer breaches this duty—whether by violating a statutory obligation or by failing to exercise due care in the face of a known or foreseeable hazard (*Tufariello*, 458 F3d at 90–91, quoting *Kernan v Am. Dredging Co.*, 355 US 426 [1958]; *see also Garland v Norfolk S. Ry. Co.*, 2025 WL 461438, *9 [WD NY Feb 11 2025]).

To support their motion, defendants rely on deposition testimony, maintenance and inspection records, vehicle data, dash-camera footage, and Kline’s expert affidavit, all of which show that the vacuum truck underwent preventive maintenance nine days before the incident, that no complaints of steering or alignment problems were recorded, and that the vehicle’s data recorder reflected steady travel at approximately 60 to 65 miles per hour with no brake or steering input in the seconds before impact. The dash-camera video depicts the truck continuing straight as the roadway curved to the right, and Kline concluded that the collision was caused by

driver inattention rather than mechanical failure. Toro, the only other Metro-North employee in the vehicle, stated that the truck did not “pull” while driven.

The record further reflects that Metro-North provided a rest period after the Hopewell Junction assignment and that plaintiff voluntarily accepted the overtime shift and elected to drive on the return trip. Viewed together, this evidence demonstrates that Metro-North exercised reasonable care by maintaining the vehicle in safe operating condition, scheduling routine inspections, and permitting rest before travel, and that no defect or unsafe condition of which Metro-North knew or should have known contributed to the accident. Accordingly, defendants satisfied their prima facie burden of showing that they did not breach their duty under FELA to provide a reasonably safe workplace.

In opposition, plaintiff relies primarily on his own account that, on the night of the incident, the truck “pulled to the left,” and on a prior complaint that the vehicle tended to pull left. He submits no corroborating witness, engineering analysis, or maintenance record supporting a mechanical defect, and the inspection records, Toro’s testimony, and the dash-camera footage indicate otherwise. However, plaintiff also submits the opinion of O’Neal, who, based on payroll and time data, asserts that Metro-North violated the FMCSA hours-of-service regulations (49 C.F.R. § 395.3) and that fatigue contributed to the collision.

The FMCSA hours-of-service regulations, set forth in 49 C.F.R. Part 395, limit the number of hours a commercial driver may operate a property-carrying vehicle, prohibiting driving without 10 consecutive hours off duty and capping total driving at 11 hours within a 14-hour period (49 C.F.R. § 395.3[a][1]–[2]). Those rules govern “motor carriers” engaged in interstate highway commerce, not railroad entities regulated by the Federal Railroad Administration (FRA). Although the vehicle here was licensed for highway use, Metro-North is

a commuter railroad subject to FRA jurisdiction, and its maintenance-of-way operations are regulated under the Federal Railroad Safety Act, not the FMCSA (*see DeGregorio v Metro-North R.R. Co.*, 2006 US Dist LEXIS 97075, at *19–21 [D Conn 2006] [holding that Metro-North’s maintenance vehicles are governed by FRA, not FMCSA, safety rules]). Accordingly, the FMCSA’s hours-of-service limits do not impose duties on Metro-North or create a separate cause of action under FELA.

No federal regulation prescribes specific hours-of-service limits for roadway maintenance employees operating highway vehicles owned by railroads. The FMCSA’s rules govern commercial motor carriers, and the FRA’s statutory Hours of Service Act (49 U.S.C. §§ 21101–21109) applies only to train, signal, and dispatching employees. Operators of roadway maintenance vehicles, such as plaintiff, fall outside both schemes. Accordingly, Metro-North’s duty with respect to fatigue is measured solely by the FELA’s reasonable-care standard, not by any specific federal hour limitation.

Plaintiff’s mechanical-defect theory is unsupported by competent proof and contradicted by objective evidence; conclusory assertions cannot raise a triable issue of fact (*see Cicardo Nat’l, Inc. v Loeb*, 220 AD3d 615 [1st Dept 2023]; *American Realty Co. v 64 B Venture*, 176 AD2d 226 [1st Dept 1991]). His fatigue theory likewise fails to raise a genuine issue, as the FMCSA standards do not apply, and, even if considered, O’Neal’s opinion does not show that Metro-North knew or should have known plaintiff was unfit to drive or that fatigue caused the accident. In fact, although plaintiff noted he was tired, he asserts he did not fall asleep and attributes the accident to mechanical error rather than fatigue. Moreover, the ECM and video evidence reflect a lack of steering or braking input rather than mechanical failure. Viewing the

record in the light most favorable to plaintiff, no rational factfinder could conclude that Metro-North's negligence played any part in causing the collision.

Accordingly, plaintiff fails to raise a triable issue of fact, and summary judgment is granted dismissing the FELA negligence claim.

B. Plaintiff's Cross-Motion for Summary Judgment

Plaintiff cross-moves for summary judgment on liability under FELA, arguing that Metro-North violated federal "hours-of-service" regulations promulgated by the Federal Motor Carrier Safety Administration (49 C.F.R. Part 395). He contends that these regulations establish a standard of care applicable to Metro-North's operation of the vac-truck and that Metro-North's alleged failure to comply constitutes negligence as a matter of law.

As an initial matter, plaintiff's reliance on FMCSA 49 C.F.R. Part 395 raises a new theory of liability not pleaded in the complaint. It is well settled that a party may not raise a new theory of liability for the first time on a motion for summary judgment (*Biondi v Behrman*, 149 AD3d 562, 563 [1st Dept 2017]; *Abalola v Flower Hosp.*, 44 AD3d 522 [1st Dept 2007]). Because Metro-North was not on notice of this regulatory theory, it cannot serve as a basis for summary judgment.

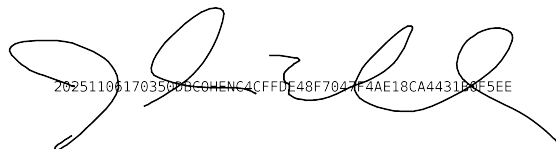
In any event, the FMCSA "hours-of-service" rules apply only to motor carriers engaged in interstate trucking, not to railroad roadway maintenance vehicles operated by Metro-North (*DeGregorio*, 2006 U.S. Dist LEXIS 97075). Accordingly, plaintiff's cross-motion for summary judgment is denied.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgment (Seq. 001) is granted, and the complaint is dismissed in its entirety as against defendants Metro-North Commuter Railroad Company and Metropolitan Transportation Authority; and it is further

ORDERED that plaintiff's cross-motion for summary judgment on liability is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly and mark the case disposed.



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11/6/2025

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE