

Wu v Torres

2025 NY Slip Op 34522(U)

November 25, 2025

Supreme Court, New York County

Docket Number: Index No. 153279/2018

Judge: Adam Silvera

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ADAM SILVERA PART 40

Justice

DAN L. WU, Plaintiff, - v - CARLOS M. TORRES, MTA BUS COMPANY, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, Defendant. INDEX NO. 153279/2018 MOTION DATE 10/15/2025, 11/10/2025 MOTION SEQ. NO. 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 152, 153, 154, 155, 156, 157, 158, 159, 160¹

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 007) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182

were read on this motion to/for DISCOVERY

Upon the foregoing documents, and after oral arguments, it is ordered that the motions of defendants Carlos M. Torres, MTA Bus Company, Metropolitan Transportation Authority, New York City Transit Authority (together, Defendants) seeking to reexamine plaintiff Dan L. Wu (Plaintiff), to compel his compliance with Defendants' discovery demands, and to stay the trial of this action, is granted in part, for the reasons set forth below.

Plaintiff Dan L. Wu (Plaintiff) commenced this negligence action to recover damages for serious personal injuries sustained on August 22, 2017 in a motor vehicle accident. Plaintiff claims to have sustained serious cervical spine, lumbar spine, and bilateral leg injuries, as well as headaches, dizziness, and difficulty in sleeping as a result of the accident. The note of issue was

¹ The Court declines to consider the reply papers (NYSCEF doc. nos. 161, 162) as the Court did not give permission. See 22 NYCRR 202.8-d. Even if the Court were to consider them, the determination herein would be unchanged.

filed on October 5, 2020. The Court granted Plaintiff's motion for summary judgment on the issue of liability, which was affirmed on appeal, and a damages-only trial ensues.

When, as here, discovery is sought more than 20 days after the note of issue has been filed, the party seeking discovery must show (1) that "unusual or unanticipated circumstances develop[ed] subsequent to the filing of [the] note of issue," and (2) that "additional pretrial proceedings" are required "to prevent substantial prejudice." Rules of the Chief Administrator of the Courts (22 NYCRR) § 202.21(d); *see also Schroeder v IESI NYCorp.*, 24 AD3d 180, 181 (1st Dept 2005).

By order to show cause (motion sequence 006). Defendants seek post-note of issue discovery on the ground that Plaintiff served an eve-of-trial notice of medical exchange, dated October 7, 2025 (October 7 Medical Exchange), which purportedly includes new injuries. Namely, Defendants argue that they learned Plaintiff had a prior infection resulting in the fusion of his L3 and L4 vertebrae and that a spinal fusion surgery was recommended. Defendants also brought a second order to show cause (motion sequence 007) based on another notice of medical exchange, dated October 17, 2025 (October 17 Medical Exchange). Defendants argue that the October 17 Medical Exchange contained Plaintiff's medical history not previously disclosed to them, including hepatitis, mental health issues, and a diagnosis of Parkinson's disease. In sum, Defendants argue that they require disclosure of new information relevant to Plaintiff's injuries, his current condition, and alleged disability.

In opposition, with respect to the October 7 Medical Exchange, Plaintiff argues that the fusion of the lumbar vertebrae is not new information. Plaintiff emphasizes that Defendants have long been in possession of records indicating there was a prior healed infection in Plaintiff's lumbar spine at L3-L4. Plaintiff also argues that this Court has already ruled on this issue and

denied the request to re-depose and re-examine Plaintiff. Plaintiff further contends that he has not had any lumbar fusion surgery and that the recommendation for surgery is merely continuing treatment for his originally plead injuries. With respect to the October 17 Medical Exchange, Plaintiff provided authorizations for records relating to treatment of Plaintiff's spine. However, Plaintiff objects to providing authorizations relating to his primary care, hepatitis, and Parkinson's disease.

Motion sequence 006 and 007 are joined for disposition. At the outset, the Court notes that it granted in part Defendants' prior order to show cause, which sought additional discovery regarding the fusion of the L3 and L4 vertebrae (*see* NYSCEF doc. no. 144). The Court directed Plaintiff to comply with Defendants' documentary discovery demands, which included authorizations relating to the L3-L4 vertebrae, but denied Defendants' application to re-depose and re-examine Plaintiff (noting that, "this case should not be dragged on any longer than necessary" [*id.* at 3]). As such, Defendants knew about Plaintiff's fusion and infection. Further, Plaintiff has not actually had lumbar fusion surgery. The mere recommendation of surgery does not open the door to further discovery. *See Taylor v Daniels*, 244 AD2d 176 (1st Dept 1997). Therefore, the information contained in Plaintiff's October 7 Medical Exchange regarding the L3-L4 vertebrae is not an unusual or unanticipated circumstance requiring additional pre-trial proceedings.

On the other hand, the October 17 Medical Exchange is the first time that Defendants were made aware of Plaintiff's Parkinson's disease. This new information, disclosed years after the filing of the note of issue, does constitute an "unusual or unanticipated circumstance" that "develop[ed] subsequent to the filing of [the] note of issue." 22 NYCRR § 202.21(d); *see also Jones v Seta*, 143 AD3d 482, (1st Dept 2016); *Gelin v New York City Tr. Auth.*, 189 AD3d789 (2d

Dept 2020). Parkinson's disease bears on at least some of Plaintiff's claimed injuries in this case, including dizziness, sleep problems, and restrictions in daily life. *See* Mayo Clinic, Parkinson's Disease, <https://www.mayoclinic.org/diseases-conditions/parkinsons-disease/symptoms-causes/syc-20376055> (noting that symptoms include feelings of dizziness, sleep disorders, and stiff muscles) (accessed Nov. 24, 2025). Defendants would be substantially prejudiced without further discovery on issues that may bear on the issue of causation.

Although the Plaintiff's Parkinson's treatment is discoverable, Defendants have not shown that medical records relating to Plaintiff's hepatitis, mental illness, or general physician appointments are relevant. Medical records pertaining to unrelated illnesses and treatments are not discoverable. *See Cottrell v Weinstein*, 270 AD2d 449 (2d Dept 2000); *Fitzpatrick v Consol. Resistance Co. of Am., Inc.*, 205 AD3d 773 (2d Dept 2022). Plaintiff has not placed his general health in issue, but, rather, has made claims for injuries to his back and neck and the resulting disabilities those injuries caused. Unlike Parkinson's disease, these issues do not call into question the causality of Plaintiff's injuries. Moreover, Plaintiff has not waived the doctor-patient privilege with respect to unrelated illnesses or treatments. *See Sadicario v Stylebuilt Accessories*, 250 AD2d 830 (2d Dept 1998).

Similarly, Defendants have not articulated a need for a supplemental medical examination or further deposition. Given the Court's substantial discretion, the portion of Defendants' motions seeking to re-depose and re-examine Plaintiff, is denied. Defendants' medical experts may "supplement [their findings] upon receipt of the records relating to" Plaintiff's Parkinson's disease. *See Jones v Seta*, 143 AD3d 482, 482-483 (1st Dept 2016). The note of issue in this matter has been filed since 2020, and numerous orders to show cause seeking additional discovery have since been made and addressed. Any relief not expressly addressed herein has been considered and

denied. As such, Defendants' instant orders to show cause seeking additional discovery are granted in part, consistent with the above.

Accordingly, it is

ORDERED motion of Carlos M. Torres, MTA Bus Company, Metropolitan Transportation Authority, New York City Transit Authority is granted in part; and it is further

ORDERED that, within 21 days, Plaintiff must comply with the discovery sought relating *only* to his Parkinson's disease treatment as demanded in Defendants' Supplemental Notice for Discovery and Inspection, dated October 17, 2025, including relevant authorizations; and it is further

ORDERED that the parties shall appear on January 15, 2025 at 9:30 a.m., in Room 252 of 60 Centre Street, New York, NY for a pre-trial conference; and it is further

ORDERED that the matter is scheduled for trial on March 19, 2026 at 9:30 a.m., in Room 252 of 60 Centre Street, New York, NY; and it is further

ORDERED that, within 14 days of entry, Defendants shall serve upon all Plaintiff a copy of this Decision and Order, together with notice of entry.

This constitutes the Decision and Order of the Court.

11/25/2025
DATE

ADAM SILVERA, J.S.C.

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