

Caban v Metro N. Commuter R.R.

2025 NY Slip Op 34805(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 154846/2016

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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KAREN CABAN

Plaintiff,

- v -

METRO NORTH COMMUTER RAILROAD,

Defendant.

-----X

INDEX NO. 154846/2016

MOTION DATE 05/01/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 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

were read on this motion to/for

SUMMARY JUDGMENT

Plaintiff, Karen Caban, a former employee of Defendant Metro-North, a railroad company, commenced this action pursuant to the Federal Employers' Liability Act (45 USC § 51 et seq. ["FELA"]) to recover for injuries alleged to have been caused by an unsafe work environment. Defendant moves for an order granting summary judgment dismissing Plaintiff's complaint pursuant to CPLR § 3212. Defendant also seeks an order under Frye v United States, 293 F 1013 (DC Cir 1923) precluding expert testimony regarding Plaintiff's allegation that her accident was due to the purported presence of soot and ice covering a ladder rung and/or her claim that the ladder rung was bent.

In the alternative, Defendant moves for an order granting partial summary judgment dismissing Plaintiff's claim under the Safety Appliance Act and Boiler Inspection Act. For the reasons that follow, the Court grants Defendant's motion in part and denies it in part.

Background

Plaintiff claims that she sustained injuries while working at Defendant's North White Plains train yard as a coach cleaner. On December 12, 2013, Plaintiff reported for work around midnight for her overnight shift (NYSCEF Doc. No. 54, p 57 lines 9-12). There was precipitation December 8-10 and freezing temperatures throughout the day of the incident (NYSCEF Doc. No. 68). Before she started her shift, she attended a daily briefing where she was told to be aware of freezing areas that may cause hazardous conditions (NYSCEF Doc. No. 55). Following the briefing, Plaintiff began cleaning her assigned cars (NYSCEF Doc. No. 54, p 58 lines 17-19). Plaintiff wore personal protective equipment at work including boots, gloves, a vest, and hard hat (*id.* at p 60 lines 2-9). She also carried a mop, and a gallon bottle filled with soap and water (*id.* at p 59 lines 16-20). After she finished her assignment, Plaintiff stayed in the last car that she cleaned until it started to move (*id.* at p 65 lines 23-25). She gathered her things and jumped off the train and then walked to another track to get on a different train (*id.* at p 66 lines 2-6). Plaintiff started to climb a ladder to enter the other train car when she fell and hurt her left knee (*id.* at p 92 lines 11-20).

About an hour after Plaintiff's fall, she went to the office building and reported the accident to foreman Mark Spadaccini (*id.* at p 96 lines 4-5). Spadaccini then completed an incident report about the accident (NYSCEF Doc. No. 57). On December 19, 2013, Plaintiff and general foreman Ray Askew completed a written statement about the incident (NYSCEF Doc. No. 66). Plaintiff alleges this written report is not completely accurate because the supervisor told her to omit some information about the ice on the ladder rungs (NYSCEF Doc. No. 54, p 77 lines 14-15). On December 13, 2013, Plaintiff sought treatment at Morris Heights Health Center, where she saw her primary care doctor (*id.* at p 141 lines 5-14). Plaintiff was eventually

diagnosed with left knee internal derangement and underwent surgery (NYSCEF Doc. No. 51).

This Federal Employers' Liability Act (FELA) action ensued in June 2016.

Discussion

As a preliminary matter, FELA actions litigated in state courts are governed by state procedural rules and federal substantive law (*St. Louis Southwestern Ry. Co. v Dickerson*, 470 US 409, 411 [1985]). The motion before the court seeks summary judgment and the preclusion of expert testimony. Although courts apply the federal substantive law to determine whether a movant is entitled to summary judgment, the structure of the burden-shifting framework is a procedural issue (*see Celotex Corp. v Catrett*, 477 US 317, 327 (1986); *Merritt Hill Vineyards, Inc. v Windy Heights Vineyard, Inc.*, 61 NY2d 106, 110 (1984); *News Am. Mktg., Inc. v Lepage Bakeries, Inc.*, 16 AD3d 146, 149 [1st Dept 2005]). Likewise, motions to preclude are procedural in nature (*see Wills v Amerada Hess Corp.*, 379 F3d 32, 47-50 [2d Cir 2004]).

Under FELA, interstate railroad operators are liable to their employees for workplace injuries resulting from the railroad's negligence (*Stephney v MTA Metro-N. R.R.*, 173 AD3d 572, 572 [1st Dept 2019]). In a FELA action, "the plaintiff must prove the traditional common-law elements of negligence: duty, breach, damages, causation and foreseeability" (*id.*). These elements, however, are "substantially relaxed" and "negligence is liberally construed to effectuate the statute's broadly remedial intended function" (*id.*, quoting *Hyatt v Metro-North Commuter R.R.*, 16 AD3d 218, 218-219 [1st Dept 2005]). To determine whether there is an issue of fact for the jury, the court must consider whether "employer negligence played any part, even the slightest, in producing the injury ... for which damages are sought" (*Hyatt*, 16 AD3d at 219).

Railroad employers have a duty to provide a safe workplace to employees under FELA (*Vasquez v Metro-North Commuter R.R.*, 2014 US Dist LEXIS 47240, at *12 [SDNY Apr. 4, 2014]). This duty is breached when the railroad knew or should have known about the potential hazard and failed to use reasonable care to protect and inform its employees. (*Ulfik v Metro-North Commuter R.R.*, 77 F3d 54, 58 [2d Cir 1996]). To establish foreseeability, a plaintiff must show that the defendant had either constructive or actual notice of the alleged condition that caused the plaintiff's injury (*Stephney*, 173 AD3d at 572). However, generally, notice creates an issue of fact to be decided by the jury (*Hyatt*, 16 AD3d at 219).

Admissibility of Expert Evidence

Expert testimony is used when it clarifies an issue requiring technical or professional knowledge beyond the knowledge of a typical juror (*People v Kinsey*, 168 AD2d 231, 232 [1st Dept 1990]). "For a witness to be qualified as an expert, the witness must possess the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable" (*Schechter v 3320 Holding LLC*, 64 AD3d 446, 449 [1st Dept 2009]).

In this case, Defendant requests an order pursuant to *Frye v United States*, (293 F 1013 [DC Cir 1923]) that precludes the expert testimony of James Snyder, expert in maintenance of equipment railroad foreman procedures, and Dr. William Marletta, certified safety professional and consultant. Under *Frye*, expert testimony is to be admitted only if the principle or procedure it is based on has "'gained general acceptance' in its specified field" (*People v Brooks*, 31 NY3d 939, 941 [2018]). *Frye* should not be used if an expert did not use an experimental or novel scientific theory (*Parker v Crown Equip. Corp.*, 39 AD3d 347, 348 [1st Dept 2007]).

Defendant has failed to present an argument that these opinions are inadmissible under *Frye*. Instead, Defendant makes arguments about qualifications, preemption, relevance, and other issues that do not address whether the experts relied on methods that are generally accepted in the scientific community (*see Marsh v Smyth*, 12 AD3d 307, 310 [1st Dept 2004]). Here, Dr. Marletta and Snyder's opinions are not based on experimental or novel theories. In fact, their opinions are based on their experience and training and implementation of accepted methods to facts supported by the record (*People v Oddone*, 22 NY3d 369, 375-376 [2013]; *Parker v Crown Equip. Corp.*, 39 AD3d 347, 348 [1st Dept 2007]). Therefore, the Court denies Defendant's motion for a *Frye* order precluding the expert testimony of Dr. Marletta and Snyder. The Court will consider the merits of Defendant's arguments independent of *Frye*.

Dr. Marletta

First, Defendant argues that Dr. William Marletta is not qualified to give an opinion as to whether Defendant provided Plaintiff with safe working conditions. Dr. Marletta holds a Ph.D. in occupational safety and health from New York University and has been the principal of a diversified safety consulting firm since 1985 (NYSCEF Doc. No. 69). His report on Plaintiff's accident relies on a copy of the verified bill of particulars, a copy of the supplemental bill of particulars, a copy of the summons and complaint, a copy of the incident investigation report from MTA Metro-North railroad, and information provided by Plaintiff onsite. Dr. Marletta conducted weather research for the report via www.wunderground.com. He also inspected the fixed ladder attached to train car 4276 during a site visit on May 10, 2022.

Defendant further argues that Dr. Marletta failed to establish that he has the proper training, education, knowledge, or experience about the safety standards for commuter railroads regulated by the Federal Railway Administration ("FRA") because FRA safety standards are the

only applicable standards in this case. However, FRA safety standards are not the only relevant safety standards in a FELA action. The OSHA regulations and other standards that informed Dr. Marletta's opinions are relevant to Metro-North's operations even if they are not bound by them (*see Robertson v Burlington N.R.R. Co.*, 32 F3d 408, 410-411 [9th Cir 1994]). Finally, Dr. Marletta's extensive education and background in occupational safety show that he is qualified to give his expert opinion.

Second, Defendant argues that Dr. Marletta's expert opinion should be precluded because Federal Railroad Administration ("FRA") regulations preempt OSHA regulations. Defendant also maintains that the only safety standards used in Dr. Marletta's report are inapplicable and preempted by FRA regulations, so the expert opinion must be precluded. In his report, Dr. Marletta relied on the Occupational Safety and Health Administration (OSHA) standards, American National Standard Institute (ANSI) standards, and American Society for Testing and Materials (ASTM) standards.

Turning to the OSHA standards, Defendant relies on the FRA policy statement from 1978 and the OSH Act to support this argument. The relevant part of the FRA policy statement states:

"Generally [OSHA] regulations are applicable in railroad offices, shops, and other fixed work places. [However] [t]here are . . . exceptions to the rule. [OSHA regulations] would not apply with respect to the design of locomotives and other rolling equipment used on a railroad, since working conditions related to such surfaces are regulated by FRA as major aspects of railroad operations"

49 Fed Reg 10585 (1978)

The OSH Act provides, "[n]othing in this [Act] shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health" (29 U.S.C. § 653[b][1]). The accident in the present case took place while Plaintiff was climbing the fixed

ladder attached to a train car parked at Metro North's White Plains train yard. There is no debate that the accident took place on a train car which would be classified as a "locomotive or other rolling equipment" and is subject to the first exception to the OSHA regulation (*see* 49 C.F.R. § 238.5). Therefore, OSHA regulations give way to the FRA's authority by the OSH Act. To that end, the OSHA regulations cannot be introduced to show that "(1) Defendants were bound by OSHA under the circumstances of this case, or (2) Defendants violated those OSHA regulations or standards" (*Campbell v Consol. Rail Corp.*, 2009 US Dist LEXIS 803, at *13 [NDNY Jan. 6, 2009, No. 1:05-CV-1501 (GTS/GJD)]).

However, even if Defendant is not bound by OSHA regulations, they are admissible as evidence of negligence in a FELA action and should be coupled with a proper jury instruction (*see Robertson*, 32 F.3d at 410-411). Accordingly, Dr. Marletta's testimony referencing the OSHA standards is admissible as evidence of negligence in Plaintiff's FELA action, as long as it is accompanied by a jury instruction stating that the OSHA regulations are only to be used as evidence of negligence and not that the Defendant was bound by the OSHA standards or are proof of negligence per se (*id.*).

Next, Defendant argues that Dr. Marletta improperly relies on the ANSI and ASTM standards. Defendant cites cases that do not reflect the standards applicable to a FELA action. Courts have allowed professional guidelines to be used in a FELA action as evidence of negligence (*see, e.g., Miller v Chicago & N. W. Transp. Co.*, 925 F Supp 583, 591 [ND Ill 1996]). Accordingly, these standards are admissible as evidence of negligence as long as they are accompanied by a proper jury instruction.

Third, Defendant argues that Dr. Marletta's report should be precluded because it is inconsistent with Plaintiff's complaint and deposition testimony. Defendant relies on an alleged

error in Dr. Marletta's report to support this contention. Dr. Marletta's report states that "Ms. Caban was descending the ladder at the time of her accident" (NYSCEF Doc. No. 60, *5), which contradicts Plaintiff's testimony that she was climbing the ladder when the accident occurred (NYSCEF Doc. No. 54, p 92 lines 11-17). However, Dr. Marletta contends that this is an error and "descending" should be "ascending." Defendant maintains that Dr. Marletta's report offers a contradictory version of the accident because he does also mention vision obstruction issues from the top view perspective of a pedestrian. The Court will not disregard Dr. Marletta's opinion because of this error. Additionally, in a FELA action, the Court must allow the case to be determined by the jury if the employer's negligence, no matter how small, played a part in Plaintiff's injury (*Hyatt*, 16 AD3d at 219). Dr. Marletta's reference to vision obstruction issues is relevant to whether Defendant's alleged negligence could have contributed to Plaintiff's injury. Therefore, Dr. Marletta's report is not inconsistent with Plaintiff's complaint and deposition testimony.

Fourth, Defendant claims that Dr. Marletta's report is based on speculation and conjecture. Defendant maintains that because Dr. Marletta conducted his site visit eight years after the accident, his opinions about the weather, the condition of the ladder, and lighting issues are speculative. Viewed in its entirety, the expert's opinion must demonstrate a reasonable degree of certainty to be admissible because expert opinions that are unsupported by an evidentiary foundation or too speculative or conclusory are inadmissible (*Espinal v Jamaica Hosp. Med. Ctr.*, 71 AD3d 723, 724 [2d Dept 2010]).

Defendant relies on cases where there is no dispute that the conditions during the site visit were different from the conditions during the incidents. In this case, however, during Dr. Marletta's site visit, the train was located at the approximate location as the time of the accident,

and Metro-North's EMIS Supervisor in charge of obtaining information concerning maintenance of Metro-North fleets, Dwayne Bradshaw's affidavit confirmed that Car No. 4276's door loop assembly has never been replaced (NYSCEF Doc. No. 49). Therefore, the Court rejects this argument.

Fifth, Defendant argues that Marletta's report should be precluded because the probative value is outweighed by the risk that it will confuse the factfinder and prejudice Defendant. As previously stated, Dr. Marletta's testimony is admissible as proof of negligence when coupled with a proper jury instruction. Any factfinder confusion or unfair prejudice can be tempered by fitting jury instructions (*see Robertson*, 32 F.3d at 411).

Snyder

Defendant claims that James Snyder, expert in maintenance of equipment railroad foreman procedures, is not qualified to give an opinion as to whether Defendant provided Plaintiff with working conditions. Snyder worked at the Long Island Railroad as a car appearance maintainer, car repairman, qualified phase two repair man, and maintenance of equipment foreman. Defendant claims that Snyder is not qualified to opine as to the FRA safety standards because his opinions are based on his work experience at the LIRR, and he does not have any experience or familiarity with Metro-North rules. However, the LIRR is covered by FELA and the same FRA standards as Defendant because both the Metro-North and LIRR routes cross state lines (*Linetskiy v NY City Tr. Auth.*, 2 AD3d 503, 504 [2003]). Further, in his role as a qualified phase two care repairman, Snyder was qualified as an MTA/LIRR car inspector with FRA code compliance (NYSCEF Doc. No. 67). Finally, during Snyder's time as a car appearance maintainer, his job responsibilities included cleaning railroad coach cars and mirrored Plaintiff's duties at Metro-North when the accident took place (*id.*). Consequently,

Snyder's experience is sufficient to demonstrate that he is qualified to opine as to not just the relevant safety standards in this case, but also to the FRA standards and job duties that are applicable in this case.

Additionally, Defendant argues that Snyder's opinions are inapplicable and irrelevant. Defendant maintains that conclusion number six from Snyder's opinion that "Carrying a water bucket from the heated supply shed 16-20 car lengths is a two person job" is irrelevant and not supported by the record (*id.*). This opinion is not irrelevant because it could support a showing of negligence by Defendant. Additionally, because the opinion details the facts it relies on, there is no reason to believe it is not based in the record. Defendant's arguments are relevant to the weight the opinion should be given rather than admissibility (*Espinal*, 71 AD3d at 724).

Summary Judgment Standard

On a motion for summary judgment under CPLR 3212, the moving party must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the moving party makes that prima facie showing, the burden then shifts to the nonmoving party to establish the existence of material issues of fact requiring a trial (*id.*). The court evaluates this evidence in the light most favorable to the nonmoving party (*Bazdaric v Almah Partners LLC*, 41 NY3d 310, 316 [2024]).

Federal Employers' Liability Act, Safety Appliance Act, and Locomotive Safety Act

A violation of the Safety Appliance Act ("SAA") (49 USC § 20302) or Locomotive Inspection Act (49 USC § 20701) (previously the Boiler Inspection Act) ("LIA") can be evidence of negligence per se in a FELA action (*Turner v CSX Transp., Inc.*, 72 AD3d 1597,

1598 [4th Dept 2010]: *Feldman v CSX Transp., Inc.*, 31 AD3d 698, 703 [2d Dept 2006]). The Safety Appliance Act requires railroad carriers to equip their cars with:

“secure sill steps . . . secure ladders and running boards when required by the Secretary of Transportation, and if ladders are required, secure handholds or grab irons on it roof at the top of each ladder . . . [and] secure grab irons or handholds on its ends and sides . . .” (49 U.S.C. §§ 20302 [a] [1] [B] [C] and [a] [2])

In this context, “secure” refers to the structural and mechanical nature of the equipment (*Nash v Norfolk & W. Ry.*, 93 F Supp 2d 703, 705 [WD Va 2000]). Bent, worn, or slick appliances are covered by the SAA, but surfaces made slippery by foreign substances like ice, snow, or grease are not covered (*id.* at 706).

Under the Locomotive Inspection Act, a railroad has “an absolute and continuing duty to maintain the locomotive, and all parts and appurtenances thereof, in proper condition, and safe to operate in active service without unnecessary peril to life or limb” (*S. R. Co. v Lunsford*, 297 US 398, 401 [1936]). Both statutes require the train to be “in use” during the accident for liability to attach (*Hairston v Metro-North Commuter R.R.*, 2 AD3d 127, 128 [1st Dept 2003]; *Crockett v Long Is. R.R.*, 65 F3d 274, 277 [2d Cir 1995]). To assess if a train is “in use,” the court primarily considers the activity of the injured party and the location of the train during the time of the accident (*Deans v CSX Transp., Inc.*, 152 F3d 326, 329 [4th Cir 1998]).

In this case, the accident occurred while Plaintiff was working on a train car parked at Defendant’s North White Plains Yard facility as a car cleaner. At the time of the accident, Plaintiff injured her knee while climbing into a train car to rest after she finished cleaning her assigned revenue trains in preparation for morning service during an overnight shift (NYSCEF Doc. No. 54 p 129 lines 2-5; NYSCEF Doc. No. 59 p 13 lines 13-15). A train car that is parked

in a railroad yard and being cleaned before approval for departure is not “in use” (*Hairston*, 2 AD3d at 128). Because the car was not in use during the time of the accident, the SAA and LIA cannot apply. Accordingly, the prongs of Defendant’s motion for summary judgment dismissing the Plaintiff’s claims under the Safety Appliance Act and Locomotive Inspection Act are granted.

Turning to the FELA claim, it is undisputed that Defendant had a duty to provide Plaintiff with a safe workplace (*Vasquez v Metro-North Commuter R.R.*, 2014 US Dist LEXIS 47240, at *12 [SDNY Apr. 4, 2014]). However, Defendant argues that they did not breach this duty because Plaintiff’s negligence was the sole cause of her injury, and that Defendant had no notice of the alleged dangerous condition. On the day of the accident, Plaintiff attended a safety meeting and was told to “be aware of freezing areas that may cause hazardous conditions” (NYSCEF Doc. No. 55). Additionally, Scala’s expert affidavit corroborates the weather conditions that existed at the time of the accident (NYSCEF Doc. No. 68). When considering Plaintiff’s FELA claim through the relaxed standard, it is possible for a juror to conclude that Defendant had at least, constructive notice of the icy hazardous conditions that caused the injury. Therefore, Defendant’s motion for summary judgment dismissing Plaintiff’s FELA claim is denied.


Accordingly, it is hereby

ORDERED that the portion of Defendant’s motion for summary judgment is granted only to the extent that causes of action based upon the Federal Safety Appliance Act (SAA) and the Boiler Inspection Act (f/k/a LIA) are dismissed; and it is further,

ORDERED that all other causes of action remain; and it is further

ORDERED that the portion of Defendant's motion to preclude the expert reports of Dr. William Marletta and James Snyder is denied.

12/10/2025
DATE


LESLIE A. STROTH, J.S.C.

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