FILED: BRONX COUNTY CLERK 08/22/2018 05:06 PM

NYSCEF DOC. NO. 54

INDEX NO. 25303/2015E

RECEIVED NYSCEF: 08/22/2018

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF BRONX	X
KENIA L. CABRERA,	Index No. 25303/2015E
Plaintiff,	
—against—	
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY and MAGHNOS A. ASHBY,	
Defendants.	
	X
MEMORANDUM OF LAW IN SUPPORT OF DEFENDAN THE VERDICT AND ORDER A NEW TRIAL, OR IN THE REMITTITUR OF THE JURY AW	ALTERNATIVE, A DRASTIC

Cheryl N. Alterman, Esq.
The Port Authority of New York
and New Jersey
4 World Trade Center
150 Greenwich Street, 24th Floor
New York, New York 10007
Telephone No.: (212) 435-3431



NYSCEF DOC. NO. 54

INDEX NO. 25303/2015E

RECEIVED NYSCEF: 08/22/2018

TABLE OF CONTENTS

			Page	3(S)
Prelimina	ary St	taten	nent	7
Legal Ar	gume	ent		9
I.			JURY AWARD IS EXCESSIVE AND REQUIRES A NEW TRIAL AT A MINIMUM, A DRASTIC REMITTITUR	9
II.	A	A NE	COURT SHOULD SET ASIDE THE VERDICT AND ORDER ON TRIAL BECAUSE THE CUMULATIVE EFFECT OF THE COURT'S ORS DEPRIVED DEFENDANTS OF A FAIR TRIAL	
	A.	NE	E COURT SHOULD SET ASIDE THE VERDICT AND ORDER A EW TRIAL BECAUSE THE COURT IMPROPERLY PRECLUDED FENDANTS' LIABILITY EXPERT, NICHOLAS BELLIZZI	. 19
			Mr. Bellizzi's testimony was necessary for the jury to have a fair and honest reckoning with the proof	. 19
		ii.	The Court Incorrectly Precluded Defendants' Expert from Testifying on the Grounds that the CPLR 3101(d)(1)(i) Notice Was Deficient	
		iii.	The Court Incorrectly Precluded Defendants' Expert from Testifying on the Grounds that Mr. Bellizzi Failed to Offer any Scientific Literature to Support His Analysis and the Conclusion He Reached	. 26
	В.	Imp Red Lav	e Verdict Should Be Set Aside and a New Trial Ordered Because the Court properly Denied Defendants' Motion to Charge the Jury with the eklessness Standard of Care Pursuant to New York Vehicle and Traffic w § 1103(b) and Incorrectly Charged a Statutory Violation that is	20
	C.		pplicable to the Facts of this Case	
	C.	i.	Plaintiff's Counsel Prevented Defendants from Utilizing their Exhibits dur Summation	ring
		ii.	The Verdict Should Be Set Aside and A New Trial Should Be Ordered Because the Jury Was Improperly Tainted When It Accused Mr. Ashby of Jury Tampering.	
		iii.	The Verdict Should Be Set Aside and A New Trial Should Be Ordered Because of Plaintiff's Counsel's Misconduct During Trial.	. 37
Conclusi	ion			. 40



NYSCEF DOC. NO. 54

INDEX NO. 25303/2015E

RECEIVED NYSCEF: 08/22/2018

TABLE OF AUTHORITIES

Page(s)
Cases
Allen v. Amzoski, Index No. 26419/1999, 2004 WL 354208 (Sup. Ct. Bronx Cty. Feb. 16, 2004)10
Alvarez v. CMS Transportation Inc., et al., 0027335/2011, 2014 WL 7463355 (Sup. Ct. Queens Cty. Nov. 21, 2014)14
Arellano v. New York City Health & Hosps. Corp., No. 102336/02, 2004 WL 2624395 (Sup. Ct. NY Cty. Feb. 23, 2004)26
Baja v. Rufle, et. al, No. 0000555/2015, 2017 WL 3381735 (Sup. Ct. Queens Cty. May 16, 2017)17
Conlon v. Foley, 73 A.D.3d 836 (2d Dep't 2010)14
D'Onofrio-Ruden v. Town of Hempstead, 29 A.D.3d 512 (2d Dep't 2006)22
Dance v. Town of Southampton, 95 A.D.2d 442 (2d Dep't 1983)22
De La Cruz v. Berroa, et. al, 0305827/2009, 2015 WL 10569707 (Sup. Ct. Bronx Cty. Oct. 2, 2015)14
Deleon v. New York City Sanitation Dep't, 35 N.E.3d 448 (2015)30
Dibble v. New York City Tr. Auth., 76 A.D.3d 272 (1st Dep't 2010)29
Donlon v. City of New York, 284 A.D.2d 13 (1st Dep't 2001)11
Doolittle v. T.E. Conklin Brass & Copper Co., 103 A.D.2d 722 (1st Dep't 1984)
Einheber v. Bodenheimer, No. 114682/01, 2006 WL 1835019 (Sup. Ct. NY Cty. May 5, 2006)26



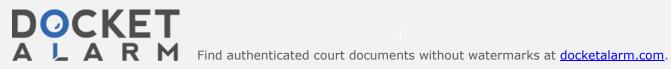
FILED: BRONX COUNTY CLERK 08/22/2018 05:06 PM

NYSCEF DOC. NO. 54

INDEX NO. 25303/2015E

RECEIVED NYSCEF: 08/22/2018

Freitag v. Vill. of Potsdam, 155 A.D.3d 1227 (3d Dep't 2017)	30
Fried v. Signe Nielsen Landscape Architect, PC, 943 N.Y.S.2d 791 (Sup. Ct. King Cty 2012)	21
Glover v. New York City Transit Auth., 60 A.D.3d 587 (1st Dep't 2009)	21
Godfrey v. G.E. Capital Auto Lease, Inc., 89 A.D.3d 471 (1st Dep't 2011)	22
Grunenthal v. Long Island R. Co., 393 U.S. 156 (1968)	9
Hage v. State, 966 N.Y.S.2d 346 (Ct. Cl. 2013)	21
Haulotte v. Chemical Bank, 102687, 1997 WL 851020 (Sup. Ct. NY Cty. Jan. 1994)	15
Higgins v. W. 50th St. Assocs., LLC, 930 N.Y.S.2d 174 (Sup. Ct. NY Cty 2011)	21
In Eberle v. Boeschl, et. al, No. 106528/11, 2017 WL 1787842 (Sup. Ct. NY Cty. Feb. 7, 2017)	16
Konstantin v. 630 Third Ave. Assocs., 2012 WL 4748316 (Sup. Ct., NY Cty., Sept. 20, 2012), aff'd sub nom. In re New York City Asbestos Litigation., 121 A.D.3d 230 (1st Dep't 2014), aff'd, 59 N.E.3d 1197 (2016)	12
Krygier v. Airweld, Inc., 176 A.D.2d 700 (2d Dep't 1991)	25
Lamaruggine v. Chelsea Motor Rental, et. al, No. 5865/92, 1994 WL 77129 (Sup. Ct. NY Cty, Feb. 1994)	16
Lamy v. Stewart, No. 002310/2010, 2013 WL 5405680 (Sup. Ct. Kings Cty. July 18, 2013)	17
Lara v. New York City Health & Hosps. Corp., 305 A.D.2d 106 (1st Dep't 2003)	28
Lifshits v. Variety Poly Bags, 5 A.D.3d 566 (2d Dep't 2004)	14



FILED: BRONX COUNTY CLERK 08/22/2018 05:06 PM

NYSCEF DOC. NO. 54

INDEX NO. 25303/2015E

RECEIVED NYSCEF: 08/22/2018

Lupo v. Pro Foods, LLC, et. al, No. 107565/06, 2010 WL 4079815 (Sup. Ct. NY Cty. Aug. 2, 2010)
Marsh v. Smyth, 12 A.D.3d 307 (1st Dep't 2004)
McCrae v. Popular Ford Sales, et al., No. 0007387/2007, 2013 WL 6384458 (Sup. Ct. Kings Cty. Sept. 30, 2013)17
Mickle v. New York State Thruway Auth., 182 Misc. 2d 967, 701 N.Y.S.2d 782 (Ct. Cl. 1999)21
Moller v. City of New York, No. 108756/04, 2009 WL 32747 (Sup. Ct. NY Cnty. Jan. 7, 2009)11
Morgan v. Bisorni, 100 A.D.2d 956 (2d Dep't 1984)32
Morsette v. "The Final Call,", 309 A.D.2d 249 (1st Dep't 2003)
In re New York Asbestos Litigation (Marshall), 28 AD3d 255 (1st Dep't 2006)
In re New York City Asbestos Litigation (Koczur), Index No. 122340/99 (Sup. Ct., N.Y. Cty., 2011)
In re New York City Asbestos Litigation (McCarthy), Index No. 100490/99 (Sup. Ct., NY Cty., 2011)
Nieves v. MTA Bus Company, et. al, No. 0008883/2012, 2014 WL 8098434 (Sup. Ct. Queens Cty. Dec. 19, 2014)
Penn v. Amchem Products, 85 AD3d 475 (1st Dep't 2011)
People v. Heidgen, 87 A.D.3d 1016 (2d Dep't 2011), aff'd, 3 N.E.3d 657 (2013)22
People v. Scalzo, 176 A.D.2d 363 (2d Dep't 1991)22
People v. Silverman, 252 A.D. 149 (2d Dep't 1937)
Ramirez v. Mezzacappa, 121 A.D.3d 770 (2d Dep't 2014)8



DOCKET A L A R M

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

