

Summer Seminars 2024

TOPIC OUTLINE

Evidence Update & Discussion 2024

Statutes

- CPLR 4549 – speaking authority
- CPLR 2106 Affirmation [Khurdayan v. Kassir, 223 AD3d 1590 (1st Dept. 2024)]

Court Rules

- 22 NYCRR 202.8-G material statement of facts
 - What do YOUR rules say re motions?
- 22 NYCRR Section 202.20-c(C) Requests for Documents. “Jackson Affidavit” – to prevent trial by ambush.
- Section 202.20-d (F &G) Depositions of Entities; Identification of Matters. “FRCP 30(b)(6)”

Hearsay

- What is hearsay & what are the exceptions?
- Hochhauser v. Electric Ins. Co., 46 AD3d 174, 176 (2nd Dept. 2007)
- Matter of Leon RR, 48 NY2d 117, 122-123 (1979)

Medical Hx (History)

- Must be germane to medical diagnosis, prognosis or treatment or otherwise helpful. Williams v. Alexander, 309 N.Y. 283, 286, 129 N.E.2d 417 (1955)
- Dead Man’s Statute – CPLR 4519 - Grechko v Maimonides, 188 AD3d 832 (2nd Dept. 2020)
- Marquez v. 171 Tenants Corp., 220 AD3d 575, 576 (1st Dept. 2023) – History redacted – not germane to diagnosis and not directly attributable to plaintiff
- People v. Ortega, 15 NY3d 610 (2010)

CVA

- Vasaturo v Vasaturo, 224 AD3d 1193 (3rd Dept. 2024) bifurcated trial, court NOT allow counselors testimony to establish his own symptoms and emotional presentation were consistent with individual suffering childhood sex abuse in liability portion.
 - **Issues:** wrong? Or limiting instructions? Or unified trial.

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Bifurcate v. Unified Trial

- Castro v. Malia Realty, LLC, 177 A.D.3d 58, 65 (2nd Dept. 2019). it is long and well established that when there is a dispute as to the force and manner of the impact, the type and severity of the injuries is inextricably intertwined with the liability and is therefore admissible. See, Raudzens v New York City Tr. Auth., 85 A.D.2d 722 (2nd Dept. 1981); Pechersky v. Queens Surface Corp., 18 A.D.3d 842 (2nd Dept. 2005); Gee v. NYCTA, 135 A.D.2d 778 (2nd Dept. 1987); Lind v. City of New York, 270 A.D.2d 315 (2nd Dept. 2000). See also, Scott v Pershing Constr. Co., 112 A.D.2d 279 (2nd Dept. 1985); Jacobs v Broidy, 88 A.D.2d 904 (2nd Dept. 1982); Costa v Hicks, 98 A.D.2d 137, 143 (2nd Dept. 1983); Kaplan v. New Floridian Diner, 245 A.D.2d 548 (2nd Dept. 1987); Roman v McNulty, 99 A.D.2d 544 (2nd Dept. 1984); Naumann v. Richardson, 76 A.D.2d 917, 917-918 (2nd Dept. 1980), *app. dis.*, 54 N.Y.2d 680 (1981); Fu v. County of Washington, 163 A.D.3d 1388, 1389 (3rd Dept. 2018).
- **Brain Injury** - Schechter v. Klanfer, 28 N.Y.2d 228; Nahvi v. Urban, 259 A.D.2d 740 (2nd Dept. 1999); Costa v. Hicks, 98 A.D.2d 137, 146 (2nd Dept. 1983)[Bill of Particulars]. PJI 1:62. Limiting instructions may also be appropriate in this regard. See, PJI 1:65.

Combo plan

- Alternatively, even though bifurcated and trial on liability only, certain medical records and testimony should be permitted in this issue. See, Martell v. Chrysler Corp., 186 A.D.2d 1059, 1060 (4th Dept. 1992); Cybulski v. Bethlehem Steel Corp., 266 A.D.2d 836 (4th Dept. 1999).