

NEW YORK COURT OF APPEALS

Caldwell v. Cablevision Systems Corp.

20 N.Y.3d 365 (N.Y. 2013) · Decided February 7, 2013

SUMMARY

The New York Court of Appeals held that testimony from a subpoenaed fact witness who receives compensation exceeding the statutory witness fee is generally admissible. However, when the payment appears disproportionate and the subpoenaing party offers no explanation, the trial court must, upon a timely request, instruct the jury to consider whether the compensation may have influenced the witness's testimony. The court affirmed because the failure to give a specific bias instruction was harmless under the circumstances.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Pigott, J.; Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith
JURISDICTION	New York
DECIDED	February 7, 2013
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order affirming a judgment entered after a bifurcated negligence trial in which the jury found CSI negligent but found that its negligence was not a substantial factor in causing the accident.
STANDARD OF REVIEW	The Court reviewed the trial court's evidentiary ruling and jury-charge determination for abuse of discretion and assessed whether the failure to give the requested specific bias instruction was prejudicial; the court concluded that the omission was harmless under the circumstances.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bessie Caldwell, Caldwell plaintiffs v. Communications Specialists, Inc., Cablevision Systems Corporation

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a subpoenaed fact witness's testimony is inadmissible as a matter of law because the witness received compensation substantially exceeding the statutory attendance fee.
2. Whether the trial court was required, upon a timely request, to give a jury instruction specifically addressing the potential bias created by a disproportionately large payment to a fact witness.
3. Whether the trial court's failure to give the specific bias instruction required reversal under the circumstances of this case.

HOLDINGS

1. A subpoenaed fact witness's testimony is generally admissible even when the witness receives compensation exceeding the statutory attendance fee, provided the payment is not contingent on the content of the testimony or the outcome of the litigation.
2. When a fact witness receives compensation that appears disproportionately greater than reasonable compensation for lost time and incidental expenses, and the subpoenaing party offers no explanation for the payment, the trial court must, upon a timely request, give a specific jury instruction addressing the potential bias created by the payment.
3. The trial court's failure to give the requested specific bias instruction was harmless and did not require reversal.

KEY QUOTATIONS

"We conclude that such testimony is generally admissible, but that the trial court should, in a proper case, charge the jury as to the witness's potential bias, in light of the perceived excessiveness of the fee." (20 N.Y.3d at 369)

"Although this is only the minimum that must be paid to a subpoenaed fact witness, that does not mean that an attorney may pay a witness whatever fee is demanded, however exorbitant it might be." (20 N.Y.3d at 370)

"What is not permitted and, in fact, is against public policy, is any agreement to pay a fact witness in exchange for favorable testimony, where such payment is contingent upon the success of a party to the litigation" (20 N.Y.3d at 371)

"Supreme Court should have instructed the jury that fact witnesses may be compensated for their lost time but that the jury should assess whether the compensation was disproportionately more than what was reasonable for the loss of the witness's time from work or business." (20 N.Y.3d at 372)

FACTUAL BACKGROUND

CSI performed fiber-optic cable installation beneath Benefield Boulevard, cutting and backfilling a trench and test pits without repaving the street before the accident. Bessie Caldwell tripped while crossing the street and

claimed that she stepped into a dip in the trench. CSI subpoenaed the physician who treated Caldwell after the accident to testify as a fact witness about an emergency-room note stating that she had tripped over her dog; CSI paid the physician \$10,000 for approximately one hour of testimony.

PROCEDURAL HISTORY

After discovery, the matter proceeded to a bifurcated trial on liability. The jury found CSI negligent but not a substantial factor in causing the accident, and Supreme Court denied plaintiffs' motion to set aside the verdict. The Appellate Division affirmed, holding that the trial court should have given a more specific instruction concerning the potential bias of a fact witness who received a substantial payment, but found the error harmless. The New York Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Robinson, 151 App. Div. 589 (1st Dep't 1912), aff'd, 209 N.Y. 354 (1913)
- Bergoff Detective Serv., Inc. v. Walters, 239 App. Div. 439 (1st Dep't 1933)

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