

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

Misty Blanchette Porter, M.D. v. Dartmouth-Hitchcock Medical Center et al.

Porter · No. 2:17-cv-194-kjd · Decided November 26, 2025

SUMMARY

The United States District Court for the District of Vermont denied Dartmouth Health’s Rule 59 motion for a new trial limited to damages. The court rejected challenges concerning the timeliness of the plaintiff’s damages expert disclosures, jury instructions on mitigation and lost earnings, exclusion of a handwritten damages calculation, and use of a severance offer in closing argument. The court concluded that no error resulted in a seriously erroneous verdict or miscarriage of justice.

CASE DETAILS

COURT	United States District Court for the District of Vermont
WRITING FOR THE COURT	Kevin J. Doyle
JURISDICTION	United States District Court for the District of Vermont
DECIDED	November 26, 2025
DOCKET	2:17-cv-194-kjd
DISPOSITION	denied
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 59 for a new trial limited to damages after a jury trial in which Plaintiff received an economic-damages award. The court denied the motion.
STANDARD OF REVIEW	A Rule 59 motion for a new trial should ordinarily be granted only when the jury reached a seriously erroneous result or the verdict is a miscarriage of justice. The evidence is viewed in the light most favorable to the nonmoving party. Jury-instruction challenges are reviewed by examining the charge as a whole and determining whether any error was prejudicial. Evidentiary rulings are reviewed for error warranting a new trial, including whether exclusion was justified under Federal Rule of Evidence 403.
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

motion for new trial

expert testimony

damages

evidence

ada / disability

PRACTICE AREAS

civil procedure

evidence

employment law

disability discrimination

damages

QUESTIONS PRESENTED

1. Whether alleged untimely supplementation of Plaintiff's damages expert's reports warranted exclusion of the expert's testimony or a new trial under Rules 26, 37, and 59.
2. Whether the jury instructions adequately explained the treatment of Plaintiff's University of Vermont Medical Center earnings in calculating lost-earnings damages.
3. Whether the court erred by excluding a handwritten note containing alternative damages calculations as substantive evidence or as a demonstrative exhibit.
4. Whether the court improperly restricted Defendants' closing argument concerning a severance offer as a means of mitigating damages.

HOLDINGS

1. The alleged untimely supplemental disclosures did not warrant a new trial. Defendants waived their timeliness objection to the August 2024 report by failing to object on Rules 26 and 37 grounds when the evidence was offered, and, in any event, the supplemental disclosures were substantially justified or harmless under Rule 37.
2. The jury instructions adequately explained the calculation of lost-earnings damages, and any deficiency would not have prejudiced Defendants. The phrase lost income or lost earnings necessarily excludes earnings Plaintiff actually received from UVMMC.
3. The court properly excluded the handwritten note containing alternative damages calculations from evidence and as a demonstrative exhibit because it did not fairly or accurately represent the expert's testimony and posed a danger of confusing or misleading the jury.
4. Defendants were not entitled to a new trial based on an alleged restriction concerning the severance offer because the court issued no express ruling barring the proposed argument, and Defendants affirmatively represented that they would not use the offer to argue for a reduction in damages.

KEY QUOTATIONS

"A district court ordinarily should not grant a new trial unless it is convinced that the jury has reached a seriously erroneous result or that the verdict is a miscarriage of justice." (Analysis § I)

"Rule 26(e) "does not grant a license to supplement a previously filed expert report because a party wants to, but instead imposes an obligation to supplement the report when a party discovers the information it has disclosed is incomplete or incorrect."" (Analysis § I)

"Courts have long required that summary charts fairly represent and summarize the evidence upon which they are based." (Analysis § III)

“For the reasons explained above, Dartmouth Health’s Motion for a New Trial Related to Damages Issues (Doc. 308) is DENIED.” (Conclusion)

FACTUAL BACKGROUND

Plaintiff Dr. Misty Blanchette Porter claimed economic damages arising from the termination of her employment with Dartmouth Health. Her damages expert, Dr. Bancroft, prepared supplemental calculations incorporating later information about Plaintiff’s continued employment and earnings at the University of Vermont Medical Center, salary freezes, a tuition credit, and her work schedule. At trial, the jury awarded \$1,000,000 in economic damages, and Defendants challenged the damages proceedings through a Rule 59 motion.

PROCEDURAL HISTORY

The district court initially granted summary judgment to Dartmouth Health on all claims on November 4, 2020. The Second Circuit later vacated the judgment as to disability discrimination, whistleblower discrimination, and wrongful-discharge claims and remanded for trial. After trial, Defendants moved for a damages-limited new trial, arguing errors involving expert disclosure, jury instructions, exclusion of an expert’s handwritten calculations, and closing-argument restrictions. The district court denied the motion.

DISPOSITION

denied

CASES CITED

- In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig., 725 F.3d 65, 112 n.34 (2d Cir. 2013)
- Hugo Boss Fashions, Inc. v. Fed. Ins. Co., 252 F.3d 608, 624 (2d Cir. 2001)
- Lewis v. FMC Corp., 786 F. Supp. 2d 690, 705 (W.D.N.Y. 2011)
- Levinson v. Westport Nat. Bank, No. 3:09-CV-1955(VLB), 2013 WL 3280013, at *4-5 (D. Conn. June 27, 2013)
- Minebea Co., Ltd. v. Papst, 231 F.R.D. 3, 6 (D.D.C. 2005)
- Rivenburgh v. CSX Transp., 280 F. App’x 61, 63-64 (2d Cir. 2008)
- Miller v. Pfizer, Inc., 356 F.3d 1326, 1332 (10th Cir. 2004)
- Negron v. Cigna Health & Life Ins. Co., No. 3:16-cv-01702 (JAM), 2021 WL 2010788, at *4 (D. Conn. May 20, 2021)
- Funk v. Belneftekhim, 861 F.3d 354, 366 (2d Cir. 2017)
- Patterson v. Balsamico, 440 F.3d 104, 117-18 (2d Cir. 2006)
- Shcherbakovskiy v. Da Capo Al Fine, Ltd., 490 F.3d 130, 140 (2d Cir. 2007)
- Hudson v. New York City, 271 F.3d 62, 67 (2d Cir. 2001)
- United States v. Vargas-Cordon, 733 F.3d 366, 379 (2d Cir. 2013)
- Jones v. Consol. Rail Corp., 800 F.2d 590, 594 (6th Cir. 1986)
- Moysis v. DTG Datanet, 278 F.3d 819, 829 (8th Cir. 2002)

- United States v. Citron, 783 F.2d 307, 316 (2d Cir. 1986)
- Castaldi v. Land Rover N. Am., Inc., 363 F. App'x 761, 762 (2d Cir. 2009)
- United States v. Pinto, 850 F.2d 927, 935 (2d Cir. 1988)
- Winfrey v. Rogers, 901 F.3d 483, 497 (5th Cir. 2018)
- United States v. Basham, 561 F.3d 302, 335 (4th Cir. 2009)

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