

NY CLS CPLR R 4532-a

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Civil Practice Law And Rules (Arts. 1 — 100) >

Article 45 Evidence (§§ 4501 — 4551)

R 4532-a. Admissibility of graphic, numerical, symbolic or pictorial representations of medical or diagnostic tests

A graphic, numerical, symbolic or pictorial representation of the results of a medical or diagnostic procedure or test is admissible in evidence provided:

- (1) the name of the injured party, the date when the information constituting the graphic, numerical, symbolic or pictorial representation was taken, and such additional identifying information as is customarily inscribed by the medical practitioner or medical facility is inserted on such graphic, numerical, symbolic or pictorial representation; and
- (2)
 - (a) the representation has been previously received or examined by the party or parties against whom it is being offered; or
 - (b)
 - (i) at least ten days before the date of trial of the action, the party intending to offer such graphic, numerical, symbolic or pictorial representation as a proposed exhibit serves upon the party or parties against whom said proposed exhibit is to be offered, a notice of intention to offer such proposed exhibit in evidence during the trial and that the same is available for inspection; and
 - (ii) the notice aforesaid is accompanied by an affidavit or affirmation of such physician identifying such graphic, numerical, symbolic or pictorial

representation and attesting to the identifying information inscribed thereon, attesting that the identifying information inscribed thereon is the same as is customarily inscribed by the medical practitioner or facility, and further attesting that, if called as a witness in the action, he or she would so testify.

Nothing contained in this rule, however, shall prohibit the admissibility of a graphic, numerical, symbolic or pictorial representation in evidence where otherwise admissible.

History

Add, L 1970, ch 772, § 1; amd, L 1979, ch 124, § 1; L 1993, ch 482, § 1, eff July 26, 1993; L 2001, ch 392, § 1, eff Jan 1, 2002; L 2004, ch 375, § 1, eff Jan 1, 2005.

Annotations

Notes

2001 Recommendations of the Advisory Committee on Civil Practice:

The Committee recommends the amendment of CPLR 4532-a governing the admissibility of a range of medical diagnostic tests, such as magnetic resonance images (“MRI’s”) and positron emission tomographs (“PET scans”), to broaden the terms used for such tests to avoid having to amend this provision each time a new test is developed.

Personal injury practitioners alerted the Committee to the ongoing problem of needing to amend CPLR 4532-a each time a new diagnostic test is developed. The Committee therefore undertook to make the statute more generic by eliminating the current use of technical terms and substituting the phrase “graphic or pictorial representations of medical or diagnostic tests” where appropriate. The Committee also made several other additional changes to make the language more readable.

Notes to Decisions

In a negligence action to recover for personal injuries arising out of an automobile accident, the trial court erred in permitting testimony at the damage phase of trial regarding X-rays which did not contain plaintiff's name, since, under CPLR 4532-a(1) it is required that there be photographically inscribed on the X-ray the patient's name, the date taken, and the name and address of the physician under whose supervision they were taken. *Galuska v Arbaiza*, 106 A.D.2d 543, 482 N.Y.S.2d 846, 1984 N.Y. App. Div. LEXIS 21575 (N.Y. App. Div. 2d Dep't 1984).

In action for personal injuries, testimony of plaintiff's medical expert as to unhealed fracture of bone was improperly received in evidence in absence of X-rays on which expert relied and upon inability of plaintiff to produce them, and thus defendant's motion to strike this testimony should have been granted, such that matter is remanded for new trial limited solely to issue of damages. *Ebanks v New York City Transit Authority*, 118 A.D.2d 363, 504 N.Y.S.2d 640, 1986 N.Y. App. Div. LEXIS 55162 (N.Y. App. Div. 1st Dep't 1986), rev'd, 70 N.Y.2d 621, 518 N.Y.S.2d 776, 512 N.E.2d 297, 1987 N.Y. LEXIS 17294 (N.Y. 1987).

In personal injury action, defendants were not entitled to new trial on issue of damages merely because plaintiffs failed to produce X-rays relied on by their expert since (1) expert's medical findings were based on his clinical observations and physical examination of plaintiff, in addition to X-rays of her injuries, (2) expert referred to X-rays on only 2 occasions during direct examination, and (3) expert's reference to X-rays primarily served to confirm his conclusions based on his independent examination of plaintiff. *Karayianakis v L & E. Grommery, Inc.*, 141 A.D.2d 610, 529 N.Y.S.2d 358, 1988 N.Y. App. Div. LEXIS 6643 (N.Y. App. Div. 2d Dep't 1988).

In medical malpractice action, court erred in excluding X-rays taken by plaintiff's medical witness since X-rays were relevant and admissible as demonstrative evidence of condition resulting from alleged malpractice where they would have been explained by expert witness. *Vander Wel v Palazzo*, 155 A.D.2d 387, 548 N.Y.S.2d 14, 1989 N.Y. App. Div. LEXIS 15081 (N.Y. App. Div. 1st Dep't 1989).

In personal injury action by passenger in minibus that collided with overpass, it was not error to exclude copies of X-rays, MRI films and CT scans of plaintiff's spine based on defendants' noncompliance with CLS CPLR § 4532-a. *Adams v Romero*, 227 A.D.2d 292, 642 N.Y.S.2d 673, 1996 N.Y. App. Div. LEXIS 5768 (N.Y. App. Div. 1st Dep't 1996).

Photographs of injured plaintiff's hand, taken immediately after accident, were properly admitted as part of plaintiffs' direct case. *Heath v Makita Corp.*, 255 A.D.2d 419, 681 N.Y.S.2d 289, 1998 N.Y. App. Div. LEXIS 11993 (N.Y. App. Div. 2d Dep't 1998).

Admission of MRI report and X-rays in personal injury action was harmless, despite lack of foundation, where plaintiffs' expert relied on them primarily to confirm conclusions he had reached from his examination of plaintiff and review of properly-admitted hospital records; moreover, materials were of kind accepted in profession as reliable in forming professional opinion. *Ferrantello v St. Charles Hosp. & Rehabilitation Ctr.*, 275 A.D.2d 387, 712 N.Y.S.2d 615, 2000 N.Y. App. Div. LEXIS 8853 (N.Y. App. Div. 2d Dep't 2000).

In action against employer for exposure of employees to dangerous substances, employer was entitled to new trial on issue of liability where (1) X-ray of one plaintiff's lungs was placed in evidence without proper foundation required by CLS CPLR § 4532-a, (2) during testimony of plaintiffs' expert physician, X-ray was displayed to jury, (3) physician used X-ray to show jury alleged abnormalities of asbestosis, (4) only one plaintiff alleged that he was suffering from asbestosis, (5) employer's expert radiologist testified that although X-ray was of poor quality, plaintiff's lungs appeared normal, and (6) thus, admission of X-ray into evidence was not harmless error. *Aguirre v Long Island R.R. Co.*, 286 A.D.2d 658, 730 N.Y.S.2d 122, 2001 N.Y. App. Div. LEXIS 8549 (N.Y. App. Div. 2d Dep't 2001).

In personal injury action, court would deny defendant's motion in limine to preclude plaintiff from introducing X rays into evidence which did not comply with authentication and notice requirements of CLS CPLR § 4532-a since literal compliance with statute was not required where plaintiff asserted (1) that X rays were part of his hospital records which were otherwise

admissible as business records under CLS CPLR §§ 2306 and 4518, and (2) X rays were in court pursuant to defendant's own subpoena. Requirements of CLS CPLR § 4532-a merely afford alternative method for admitting X ray into evidence without calling radiologist who made it to authenticate it as being that of party whose injury it is offered to prove, on notice to party against whom it will be offered; X Rays may be admitted either under specific requirements of statute or by virtue of "otherwise admissible" exemption of statute. *Hoffman v New York*, 141 Misc. 2d 893, 535 N.Y.S.2d 342, 1988 N.Y. Misc. LEXIS 713 (N.Y. Sup. Ct. 1988).

In a plaintiff's lawsuit against a ski resort, seeking damages for injuries the plaintiff allegedly sustained when she fell off a ski lift, the trial court held that although the plaintiff's medical expert could testify about his own examination of the plaintiff, and could rely on certified out-of-court x-rays, bone scan reports, and magnetic resonance imaging reports, the expert could not base his opinions on hospital records or records created by doctors who provided primary treatment that were not admitted into evidence under an independent exception to the rule on hearsay evidence. *Hornbrook v Peak Resorts, Inc.*, 194 Misc. 2d 273, 754 N.Y.S.2d 132, 2002 N.Y. Misc. LEXIS 1064 (N.Y. Sup. Ct. 2002).

Trial court properly dismissed an injured party's personal injury action; the jury's finding that the injured party did not sustain a serious injury within the meaning of N.Y. Ins. Law § 5102(d) was supported by the weight of the evidence, and MRI films were not admissible pursuant to N.Y. C.P.L.R. 4532-a, providing for self-authentication of diagnostic tests, since the injured party admittedly failed to meet the section's requirements, or show that the MRI films were admissible pursuant to the business records exception to the hearsay rule. *Kovacev v Ferreira Bros. Contr., Inc.*, 9 A.D.3d 253, 779 N.Y.S.2d 204, 2004 N.Y. App. Div. LEXIS 9256 (N.Y. App. Div. 1st Dep't 2004).

Research References & Practice Aids

Jurisprudences:

R 4532-a. Admissibility of graphic, numerical, symbolic or pictorial representations of medical or diagnostic tests

58 NY Jur 2d Evidence and Witnesses § 421. .

29A Am Jur 2d, Evidence §§ 959., 960., 977., 978.

125 Am Jur Proof of Facts 3d 391, Proof of Admissibility of Tests Indicating Presence of Blood on Object.

6 Am Jur Trials 1., Presenting Plaintiff's Medical Proof—Common Injuries and Conditions.

5 Am Jur Trials 921., Showing Pain and Suffering.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4532-a, Admissibility of Graphic, Numerical, Symbolic or Pictorial Representations of Medical or Diagnostic Tests in Personal Injury Actions.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Negligence § 7.40. Conducting Trial.

Matthew Bender's New York Evidence:

1 Bender's New York Evidence § 112.06. Visual and Audio Evidence.

3 Bender's New York Evidence § 149.02. Scope of the Business Records Rule.

Annotations:

Admissibility of X-ray report made by physician taking or interpreting X-ray pictures. 6 ALR2d 406.

Matthew Bender's New York Checklists:

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide
New York Civil Litigation § 10.05.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 4532-a:1 et seq.

LexisNexis Forms FORM 75-CPLR 4532-a:1.—Notice of Intention to Introduce X-Ray in Personal Injury Action.

LexisNexis Forms FORM 75-CPLR 4532-a:2.—Affidavit to Accompany Notice of Intention to Offer X-Ray in Evidence at Trial of Personal Injury Action.

Texts:

Jonakait, Baer, Jones, & Imwinkelried, New York Evidentiary Foundations (Michie), Ch 4 .Authentication.

Hierarchy Notes:

NY CLS CPLR, Art. 45

Forms

Forms

Notice of Intent to Introduce X-rays at Trial

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