

IN BRIEF

Two Regional Supervising Judges Named to Oversee 118 Upstate Justice Courts

Court of Claims Judge Adam Silverman and Family Court Judge Sarah Rakov were appointed regional supervising judges for 118 town and village courts that span New York's Capital Region into the Hudson Valley, a state court system news statement said on Monday.

Appointed by Third Judicial District Administrative Judge E. Danielle Jose-Decker, Silverman and Rakov will work closely with town and village justices, engaging with district stakeholders and assisting in the continued implementation of Centralized Arraignment Parts, the statement read.

Both will also lead mentoring programs for new justices, and continuing legal education programming, within a new regional structure that aims to improve oversight, mentorship, and operational support for the local courts across the court jurisdiction's seven counties.

"Town and Village Courts are often the first—and sometimes the only—point of contact that members of our communities have with the justice system," Jose-Decker said in the prepared statement. "Judges Rakov and Silverman each bring a depth of experience, judgment, and genuine commitment to these courts that will make them outstanding resources and mentors for our justices and clerks. I am confident that this regional structure will strengthen the support, training, and oversight that our Town and Village justices receive and deserve."

Silverman has been on the Court of Claims, where civil claims against state government agencies are heard, in Albany County since 2020, and he is co-chair of the Legislative Committee for the Association of Court of Claims Judges.

He previously served as assistant counsel to former Gov. Andrew Cuomo and as deputy commissioner and counsel at the Department of Corrections and Community Supervision.

Rakov operated her own law office and practiced extensively in town and village courts prior to beginning a 10-year term on the Ulster County Family Court bench in 2022.

The news statement credited

Rakov for being closely engaged with issues affecting town and village courts, including recently meeting with the Ulster County Magistrates Association to address the interplay between Centralized Arraignment Part orders of protection and Family Court proceedings.

—Brian Lee

Complaint Lodged With Attorney Grievance Committee Against Acting AG Todd Blanche

Two veteran Washington-connected financial regulatory attorneys have joined O'Melveny & Myers as partners in the firm's D.C. office.

Democracy Defenders Fund, Lawyers Defending American Democracy and a group of 101 former federal and state judges filed an ethics complaint against Acting Attorney General Todd Blanche in New York on Monday.

The 69-page complaint asks the Attorney Grievance Committee for the Appellate Division, First Department—the Manhattan-based panel that handles disciplinary matters—to look into alleged violations of the Rules of Professional Conduct.

The complaint accuses Blanche, a former personal attorney to President Donald Trump, of myriad violations of the Rules, including alleged conflicts of interest, taking part in dishonest and deceitful conduct and abusing Justice Department authorities to target personal and political opponents of the president.

A spokesperson with the Department of Justice did not immediately return a message seeking comment.

"The damage over these many months to the once esteemed Department of Justice has been incalculable," said Scott Harshbarger, a former two-term Attorney General in Massachusetts and the chair and co-founder of Lawyers Defending American Democracy. "In light of the importance of the Department's

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Bill to Speed Up First Union Contracts Would Transform Labor Relations, Experts Say »2

NY High Court's Narrow Reading Sets Up Federal Appeals Battle Over Hateful Conduct Law

BY BRIAN LEE

A DIVIDED New York Court of Appeals set back a First Amendment challenge on Tuesday, by ruling that the state's Hateful Conduct Law plausibly passes constitutional scrutiny, paving the way for a federal appellate panel to potentially reinstate the social media reporting mandate.

The Court of Appeals' 4-3 majority held that the law's mandatory policy disclosures do not constitute compelled speech, and, while platforms must provide reporting

tools, they are not mandated to respond to individual user complaints.

The business law, which requires social media companies that generate more than \$100 million in gross annual revenue to report their poli-

Online

★ The Court of Appeals decisions are posted at [nylj.com](https://www.nylj.com).

BY JOHN CAMPISI

AS LARGE law firms push to incorporate more AI tools into their workflow, associate training is getting revamped to simulate real-time litigation and courtroom interactions.

Law firms including Orrick Herrington & Sutcliffe, Taft Stettinius & Hollister, Brownstein Hyatt Farber Schreck and Littler Mendelson have all incorporated an AI-powered deposition simulator for associate training. The tool, DepoSim from legal training provider AltaClaro, lets early-career associates interact with AI agents playing the roles of a real-time witness, opposing counsel and court reporter. It's

also intended to let more seasoned attorneys brush up on their skills.

Orrick litigation partner Matthew LaBrie, who leads the firm's litigation training council, said it's important to make sure "what we're teaching is actually reflective of what we're seeing in the

market."

"One of the things that surprised me most about how we've implemented [DepoSim] is that using AI has actually caused greater interaction and greater peer-to-peer engagement," LaBrie said. "I would have thought that would be the exact opposite. But the way we've implemented it has actually resulted in a more engaging training process."

Kelly Cullen, an Orrick lawyer who heads up associate development and training, said, a few years back, the firm decided to put a greater emphasis on onboarding junior lawyers, eliminating their revenue-generating requirements for the first six months of employment in order to enable

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A Different Kind of Pilot: Deposition Simulator Emerges as a Training Tool for Big Law Associates

BY JOHN CAMPISI

AS LARGE law firms push to incorporate more AI tools into their workflow, associate training is getting revamped to simulate real-time litigation and courtroom interactions.

Law firms including Orrick Herrington & Sutcliffe, Taft Stettinius & Hollister, Brownstein Hyatt Farber Schreck and Littler Mendelson have all incorporated an AI-powered deposition simulator for associate training. The tool, DepoSim from legal training provider AltaClaro, lets early-career associates interact with AI agents playing the roles of a real-time witness, opposing counsel and court reporter. It's



Matthew LaBrie and Kelly Cullen, Orrick



COURTESY PHOTOS

As NY Litigation Lending Law Takes Effect, Nonprofit Funder Pushes Alternative Model

BY BRIAN LEE

THE BUFFALO-based Milestone Foundation, the nation's sole nonprofit plaintiff litigation funder, is marking its 10-year anniversary concurrent with the implementation of the New York Consumer Litigation Funding Act.

As New York's litigation lending industry—also called presettlement funding—moves into a new era of regulation requiring strict transparency and a 25% settlement cap, the organization's executive director, Rachel McCarthy, calls for further action to curb high interest predatory lending in the for-profit sector.

In planning for its second decade, McCarthy told Law.com



Rachel McCarthy, executive director and president of The Milestone Foundation

the foundation aims to improve brand awareness and encourage discussions on what had been an opaque and largely unregulated space in the Empire State.

New York's landscape changed on June 17, when the New York Consumer Litigation Funding Act took effect, introducing strict new registration, transparency, and consumer protection requirements.

In addition to the 25% settlement cap, the new law includes plain-language contracts, and a 10-day rescission window.

However, because it does not cap interest rates or restrict allowable lender fees, McCarthy criticized it as insufficient to curb predatory lending in the for-profit sector. She noted that annual percentage rates among

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Plaintiffs' Lawyers Sanctioned in Two MDLs for Violating Protective Orders

BY AMANDA BRONSTAD

BRET Stanley was on the plaintiffs' steering committee of the Uber sexual assault multidistrict litigation handling much of the document discovery when, this year, a federal judge hit him with two sanctions that totaled \$80,000.

Stanley, at The Stanley Law Firm in Houston, insisted he did nothing wrong, but U.S. Magistrate Judge Lisa Cisneros, in the Northern District of California, found the attorney had violated a protective order by referencing documents in the multidistrict litigation in several of his state court cases against Uber. He didn't just have to pay monetary damages; he was removed from the plaintiffs' steering committee.

Stanley had to leave his prior firm, Johnson Law Group. But he chose not to fight the sanctions order.

"For me, professionally, this was a big deal," he told Law.com. "I understand the court and what they ordered, of course, but I never was cavalier about any of this. And there's a lot of nuances about everything that happened."

In fact, months after the order in the Uber cases, a federal judge



Judge Denise Cote, Southern District of New York

in the multidistrict litigation alleging prenatal use of acetaminophen causes autism and ADHD sanctioned another plaintiffs' lawyer, Ashley Keller, and his firm, Chicago's Keller Postman, for using confidential documents under a protective order in state court cases, including Texas Attorney General Ken Paxton's suit against Tylenol manufacturer Kenvue Brands and its former parent company, Johnson & Johnson. Keller appealed that order from U.S. District Senior Judge Denise Cote, in the Southern District of New York.

The striking similarities between the two sanctions order raises a question: Are judges clamping down on what appears to be an increasing number of breaches of protective orders? Or have corporate defendants taken more aggressive measures against the plaintiffs' bar by pursu-

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Baker McKenzie Promotes 47 To Partner in Lowest Cohort In a Decade

BY OSCAR GLYN

BAKER McKenzie has announced its partnership promotions for the year with the lowest number of promotions in over a decade.

The firm is promoting 47 lawyers to the partnership this year, compared with 59 in 2025 and 66 in 2024. The cohort is made up of 43% women.

The list includes 17 partners who were made up to partner on January 1 across the Americas.

The firm has elevated just two partners in London, compared with seven in the previous year and six in 2024. Conversely, Continental Europe made up a large proportion of the cohort, with 16 promotions.

M&A saw the highest number of promotions, with 10 partners, followed by dispute resolution and tax.

The firm made headlines in February when it was revealed that it was cutting hundreds of business services roles, a move which has been echoed by other firms in the industry, citing AI as one of the reasons.

The number of partners elevated is nearly half of what the firm was consistently promoting 10 years ago with over 80 partners being added to the partnership in 2015, 2016 and 2017.

Global chair of the firm, Sunny Mann, said: "Our 2026 partner promotions reflect our consistent focus on ensuring that we continue to be a high-performing, inclusive firm that can deliver for our multinational clients on their most critical work. We are investing in exceptional talent across our global

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DECISIONS OF INTEREST

First Department

MEDICAL MALPRACTICE: **Withdrawal motion denied, neurologically impaired plaintiff lacks representation.** *Cheng v. New York City Health and Hospitals Corporation, Supreme Court, New York.*

TRUSTS & ESTATES: **In camera review leads to disclosure of text not protected by work product doctrine.** *Matter of McGuire, Surrogate's Court, New York.*

CRIMINAL LAW: **Criminal obstruction of breathing charge survives dismissal motion after valid COC.** *People v. Jackson, Criminal Court, Bronx.*

PREMISES LIABILITY: **Plaintiff's failure to retain counsel leads to dismissal of slip-and-fall case.** *Barcelo v. Queens Blvd. Realty Co., Supreme Court, Kings.*

PERSONAL INJURY: **Child Victims Act claim deemed timely despite alleged abuse predating 2019 statute.** *Pressley v. Graham-Windham, Supreme Court, Westchester.*

TRUSTS & ESTATES: **Disqualification denied where former trial counsel withdrew before bench trial.** *Goldstein v. Rayner, Supreme Court, Rockland.*

U.S. Courts

CIVIL APPEALS: **Second Circuit says FDCPA venue transfers are mandatory upon debtor request.** *U.S. v. Liounis, 2d. Cir.*

CIVIL PROCEDURE: **Actual notice does not cure defective service; plaintiff given time to re-serve appeal.** *Villa v. Garan Serv. Corp., SDNY.*

LANDLORD TENANT LAW: **Lack of consumer-oriented conduct sinks section 349 claims in section 8 rent dispute.** *Garcia v. Kahan, SDNY.*

TRADE SECRETS: **Marsh wins bid to expand trade secrets suit as court keeps most of preliminary injunction.** *Marsh & McLennan Cos. Inc. v. Howden US Serv. LLC, SDNY.*

EMPLOYMENT LITIGATION: **Title VII claims fail after court finds law firm fell short of 15-employee threshold.** *Williams v. The Law Offices of Frederick K. Brewington, EDNY.*

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Bill to Speed Up First Union Contracts Would Transform Labor Relations, Experts Say

BY BRENDAN PIERSON

A BILL that recently passed the U.S. House of Representatives could radically transform the way employers and newly certified unions negotiate their first contracts, attorneys say, though its chance of passage remains uncertain.

The House passed the Faster Labor Contracts Act through a discharge petition on June 9, with several Republican lawmakers crossing the aisle despite a lack of support from their leadership. The bill has the backing of the Teamsters and of a group of Senators, including Republican Josh Hawley of Missouri and three Democrats.

If passed by the Senate and signed by the president, the law would set strict timelines for reaching an initial contract. Parties would be required to meet within 10 days of an initial request to bar-

gain once a union is certified or recognized and would then have 90 days to reach an agreement.

If they fail to do so, either side could ask for mediation from the Federal Mediation and Conciliation Service (FMCS). If there is still no contract after 30 days of mediation, the dispute would go to a panel of three arbitrators, one chosen by each side and one agreed-upon neutral arbitrator.

Currently, first contracts often take as long as two years to negotiate. The new bill aims to accelerate that process drastically, giving unions greater leverage in the process.

Attorneys say that the bill's chances of becoming law as it stands are slim, but not zero, and could increase under a future Democratic Congress or president.

"If you would have told me a couple years ago that Josh Hawley and [Teamsters President] Sean O'Brien would be bedfellows...I would have said, 'Come on, let's be

serious here,'" said Robert Entin, a partner at FordHarrison. Employers, he said, "need to go ahead and pay attention to this."

"I can't emphasize enough how dramatically this would change" the bargaining process, said Proskauer partner Michael Lebowich.

In practice, he said, most contract negotiations would likely end up going to arbitration—particularly because a large majority of the FMCS's mediators have been laid off under the Trump administration.

"The idea that the parties can actually go from a blank piece of paper to a completed bargaining agreement in 120 days is unrealistic," Lebowich said.

Further changing the dynamic, Lebowich said, is that the bill appears to prohibit an employer from unilaterally implementing its last, best offer in the case of an impasse, which in the past has been allowed under many circumstances.

Overall, he said, the bill would change the initial contract process from a negotiation—in which the union gets leverage from the threat of a strike and the employer from the threat of unilateral implementation or, less commonly, a lockout—into something more like a litigation before the arbitration panel.

Attorneys say it will be important for employers to develop their own contract proposals with arbitration in mind. That will mean collecting evidence about competitors' pay, benefits, and union contracts so they can support their position before the panel.

"I think this is going to lead to management being far more proactive in its development of bargaining positions, being prepared to come in with full versions of collective bargaining agreements rather than waiting to see what the union wants to do," Lebowich said.

The initial contract is critical, Entin said, since it forms the



If passed by the Senate and signed by the president, the bill would change the initial contract process from a negotiation into something more like a litigation before the arbitration panel.

basis for all future contracts. That means that, if the new bill passes, a single ruling from third-party arbitrators would have long-term consequences.

"I think everyone will tell you once something gets in the contract, it's really hard to get out," Entin said.

Michael Best & Friedrich partner Scott Beightol said that he believed the bill was unlikely to pass, and

that employers do not need to take major steps to prepare. Even if it does pass, he said, some of the employer playbook for dealing with unionization efforts will remain the same.

"Good employers should do what good employers do," Beightol said. "Make sure they're paying good competitive wages, have open-door policies, be respectful to their workforce."

Supreme Court to Review Whether Prisoner Can Sue Nurse for Neglecting Injury From Gang Attack

BY JIMMY HOOVER

THE U.S. Supreme Court has agreed to consider closing one of the few remaining pathways for suing federal officers for damages for constitutional violations, the latest development in its years-long campaign against so-called *Bivens* lawsuits.

The court took up an appeal Monday from a nurse at a federal prison in Honolulu who is being sued over his alleged indifference to a prisoner's serious medical need. The justices will hear the case after the start of their 2026-2027 term in October.

At issue is whether the prisoner, Kekai Watanabe, should be allowed to pursue his claim against staff nurse Francis Nielsen for allegedly violating his Eighth Amendment right against cruel and unusual punishment based on the court's 1971 decision in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*.

The case could further narrow the remedies available for alleged civil rights violations from federal

officials, including in circumstances—like denied medical care to prisoners—where the court had previously allowed *Bivens* suits to proceed.

In *Bivens*, the Supreme Court held there was an "implied" cause of action under the Fourth Amendment allowing plaintiffs to pursue money damages against FBI agents for the warrantless searches of their home.

The court extended *Bivens* only twice, including in its 1980 decision in *Carlson v. Green*, which allowed the mother of a deceased inmate to bring a federal wrongful death suit against prison officials who failed to treat her son's acute asthma attack.

Since then, however, the Supreme Court's conservative majority has expressed strong reservations about extending *Bivens* to new contexts, with several justices emphasizing that creating causes of action is a job for Congress, rather than the court.

"When asked to imply a *Bivens* action, 'our watchword is caution,'" the high court said in the 2022 decision *Egbert v. Boule*.

The case taken up by the court Monday, *Nielsen v. Watanabe*, asks whether plaintiff Watanabe should be allowed to bring a *Bivens* action against prison staff nurse Nielsen for his allegedly deficient medical care. Watanabe claims Nielsen told him to "stop being a cry baby" and refused to send him to a hospital after he complained of severe back pain following a gang attack.

Watanabe later sued after discovering his coccyx was fractured and there were bone fragments in his soft tissue around the injury.

The question for the justices is whether Watanabe's lawsuit represents a "new context" for a *Bivens* suit, as Nielsen claims, or whether, as the U.S. Court of Appeals for the Ninth Circuit held, it is "identical to *Carlson* in all meaningful respects."

"Watanabe alleges he suffered deliberate medical indifference while incarcerated, in violation of the Eighth Amendment's proscription against cruel and unusual punishment," a divided Ninth Circuit panel said. "*Carlson* dealt with the exact same issue. The district court thus erred in dismissing Watanabe's Eighth Amendment

claim, and we accordingly reverse and remand so that his claim can proceed."

Eleven judges on the Ninth Circuit dissented to the court's decision not to rehear the case.

Nielsen, represented by Jeffrey Lamken of MoloLamken, argued in his Supreme Court petition that Watanabe's lawsuit does in fact represent a new *Bivens* context because Congress has created an administrative review process for prison conditions that the justices in *Carlson* did not consider.

The Ninth Circuit should have considered whether that alternative remedy rendered the suit a new *Bivens* context at step one of its analysis. "Circuit after circuit has held that an alternative remedial scheme, not considered in prior cases, gives rise to a 'new *Bivens* context,'" Nielsen's petition argued.

He said the appeals court's ruling threatened to turn the judiciary into an "ad hoc medical review board."

Watanabe, represented by Joshua Wesneski of Weil Gotshal & Manges, said the alleged circuit



The question in the case is whether a federal inmate may invoke the court's 1971 disfavored ruling in 'Bivens v. Six Unknown Named Agents' to sue a staff nurse for violating his constitutional rights through the denial of medical care.

split among the lower courts that Nielsen pointed to was "nascent and shallow."

Further, Watanabe defended the Ninth Circuit's ruling as faithful to the Supreme Court's precedents. He wrote that the administrative review process highlighted by Nielsen was actually "in effect when the Court decided *Carlson*, yet it did not give the Court any pause."

He also pushed back against Nielsen's suggestion that the lesser degree of Watanabe's injuries as compared to the *Carlson* inmate's

death represent a "new context" under *Bivens*.

"In no case has the Court found a new context based on a difference in degree rather than a qualitative difference in the nature of the claim," stated Watanabe's brief in opposition. "There is no basis for a different rule now."

The Supreme Court is expected render its decision by July 2027.

The case is *Nielsen v. Watanabe*, No. 25-417.

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Noncompliance Is Part of Uber's Corporate Culture, Shareholder Lawsuit Claims

BY ELLEN BARDASH

A DERIVATIVE complaint filed Monday in the Northern District of California claims Uber's litigation exposure is the result of the company's "culture of non-compliance," alleging management ignored reports of sexual assault, discrimination and violations of consumer protection laws.

The shareholder plaintiff, the city of Detroit's police and fire retirement system, is represented by Scott+Scott. The firm previously represented Uber shareholders in a 2019 lawsuit related to Uber's IPO, which claimed the company had misrepresented its valuation by failing to disclose passenger safety issues. That case, also in the Northern District, settled for \$200 million in 2024.

"Uber is a serial compliance offender," the complaint states.



The complaint brings breach of fiduciary duty, corporate waste, unjust enrichment and Exchange Act violation claims against Uber's 10 directors and three additional officers.

"For years, the company, through its management and board, has knowingly cut compliance corners

in the name of growing the company. The victims of this lack of compliance culture include sexual

assault and harassment victims, customers with disabilities, and unwary consumers looking to subscribe to Uber One. Despite repeated warnings from inside and outside the company, these remain major issues and represent significant risk and actual harm to Uber and its shareholders."

The complaint cites other litigation against Uber as evidence that the company has failed to adequately address riders' safety concerns. That includes more than 3,000 cases involving sexual assault and harassment allegations that have been consolidated into federal multidistrict litigation before U.S. District Judge Charles Breyer, as well as more than 500 cases coordinated in superior court in San Francisco County.

Two bellwether cases from the federal MDL have gone to trial this year, resulting in one \$8.5 million verdict and one \$5,000 verdict. The

filing of the derivative case comes days after Breyer denied Uber's request for more time and scheduled a third trial for September.

The complaint also cites the U.S. Department of Justice's lawsuit alleging Uber discriminates against disabled passengers, which was filed last September. Uber's motion to dismiss that action was denied in March. Additionally, it claims Uber has violated consumer protection laws by deceptively enrolling customers in its subscription membership service, Uber One, and making membership difficult to cancel. The FTC filed a consumer protection lawsuit against Uber last year.

"This suit ignores important facts and is based on misleading, false narratives from other meritless lawsuits that we have already addressed publicly and in the courtroom," said an Uber spokesperson, adding that Uber has devel-

oped safety features and disputes the DOJ's and FTC's claims.

The complaint brings breach of fiduciary duty, corporate waste, unjust enrichment and Exchange Act violation claims against Uber's 10 directors and three additional officers.

The suit claims that, in addition to hundreds of millions of dollars at stake in the lawsuits pending against Uber, the company's reputation has been "irreparably damaged" by media coverage of its alleged wrongdoing. The director defendants were all alerted to reports about Uber's alleged consumer protection violations and safety concerns but failed to take adequate action, the complaint claims.

Scott+Scott attorneys declined to comment.

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Expert Analysis

ARBITRATION

Vacating Arbitral Awards for Fraud

BY J.P. DUFFY,
CAMILLE M. NG
AND BOBBY C. KALTENBACH

In recent years, the number of arbitral awards being vacated for fraud has seemingly been rising around the globe at a noticeable and alarming rate. Indeed, virtually every year since Covid, at least one substantial arbitral award has been vacated somewhere on fraud grounds. This article examines potential causes of that nascent trend, and considers whether incidences of fraud in the arbitral process are actually rising, or whether there are other possible explanations for the perceived increase, such as improved transparency, or expanded reporting of those incidences.

Fraud in the Arbitral Process,
Versus Fraud in the
Underlying Dispute

At the outset, it is important to clarify the type of fraud this article is considering—namely, fraud in the arbitration itself, and not fraud in the underlying transaction that gave rise to the arbitration. While the latter form of fraud has certainly become a popular merits contention in international arbitration—particularly in the investor-state context, where allegations of bribery and corruption in connection with an investment have become relatively commonplace—it is the former that can actually result in an arbitral award being vacated or denied recognition at the judicial enforcement stage, because fraud in the arbitration actually impacts the sanctity of the process and is actionable by an enforcement court.

Recent Examples of Awards
Being Vacated for Fraud

Recent examples of awards being vacated for fraud generally fall into two categories. The first category involves parties fraudu-

lently producing or concealing evidence for the purpose of misleading arbitrators, and includes misconduct like perjured testimony, forged documents, and the suppression of material evidence that impacts the award. The second category concerns sham arbitrations that were manufactured for the purpose of obtaining a fraudulent award, oftentimes by presenting fabricated claims to colluding arbitrators who knowingly issued invalid or compromised awards. The first category is noteworthy for how simple—yet brazen—the fraudulent conduct can be. For instance, in *Nigeria v. P&ID*, the English High Court set aside an \$11 Billion award issued against Nigeria after the court concluded that the claimant in the arbitra-

Hard statistics on the number of awards vacated around the world for fraud are difficult to come by, and even if such statistics readily existed, they would undoubtedly be subject to a number of possible criticisms.

tion had bribed Nigerian officials before, as well as during the arbitration, offered false evidence in the arbitration to conceal that bribery, and illegally obtained internal Nigerian strategy documents through improper means that it used to monitor Nigeria's legal strategy. Similarly, in *Eletson Holdings v. Levona Holdings*, a federal court in the Southern District of New York vacated a \$102 million arbitral award after finding "clear and convincing evidence" that the claimant in the underlying dispute "committed fraud in the arbitration and on the Arbitrator that was material to the result" by providing "perjured testimony," as well as concealing material documents that directly undermined the claimant's merits claims. In both *P&ID* and *Eletson*, the enforcement courts found that the offending conduct directly

influenced the outcome of the underlying arbitration, and therefore required the awards to be vacated. The second category involves equally blatant – but more complex – schemes to obtain fraudulent awards through sham arbitrations. For example, in what is colloquially known as the Sulu case, the Paris Court of Appeal annulled a merits award that ordered Malaysia to pay \$14.92 billion in royalties to Philippine nationals who claimed to be the heirs of the Sultan of Sulu, because of alleged breaches of an 1878 concession agreement between the British North Borneo Company and the Sultan of Sulu. While the French enforcement court ultimately vacated the merits award on jurisdictional grounds, the arbitrator was also convicted in Spain for continuing with the arbitration after a Spanish court revoked his mandate, and the claimants, their counsel, and their funder, were all also sued in Jersey for engaging in a conspiracy to defraud Malaysia through the arbitration. A further example of the second type of case involves a matter in which arbitrators ordered two oil majors to pay \$18 billion to 60 individuals who claimed to be the heirs of persons that leased exploitation rights to the respondents in 1949 as part of a concession agreement. While the underlying facts are complicated, and include claims that the institution administering the arbitration (the IAC in Cairo) was itself a sham, it was ultimately revealed that the vice president of the IAC was the one who convinced claimants' counsel to bring the arbitration, and then appointed arbitrators who not only awarded claimants \$18 billion on the merits improperly, but awarded a further \$23 million in administration costs to the IAC. Ultimately, the final arbitrators involved were criminally convicted of fraud in Egypt, as was the IAC's executive director, and claimants' efforts to enforce the award in both the Fifth and Ninth Circuits in the U.S. were rebuffed on grounds that the entire arbitration was a contrived charade. While these four cases provide extreme examples, alle-

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LABOR LAW

NY's Legislature Closes Its Session
Passing Sweeping L&E Law Bills

The final weeks of the 2026 New York state legislative session was remarkably active for labor and employment law. In rapid succession, the Legislature passed four significant bills that collectively would expand employee rights and impose substantial new compliance obligations on employers operating in the state. The bills cover such wide-ranging topics as AI workforce impact disclosure, mandatory employee access to personnel records, "ghost job" postings and restricting waivers of employment rights. All four measures now await action from Governor Kathy Hochul, who has yet to take a public position on any of them. For employers, the message is clear: the breadth of this legislative activity signals an era of heightened regulatory expectations in New York's labor and employment landscape. Below, we examine each bill and its practical implications.

The Anti-Waiver of
Employment Rights Act

The Anti-Waiver of Employment Rights Act (the Anti-Waiver Act) would amend both Article 7 of the Labor Law and Article 15 of the Executive Law to invalidate contractual provisions—whether express or implied—that waive or limit any employee's substantive or procedural rights under the New York Labor Law or the New York State Human Rights Law. The bill's legislative findings declare that contractual waivers of the rights conferred by these statutes "have been and are henceforth invalid" —language strongly suggesting retroactive intent. The scope of the prohibition is broad, reaching both pre-dispute and post-dispute agreements. For example, employers would no longer be able to shorten statutes of limitations or waive the ability to enforce rights collectively. The



By
**Howard
Lavin**
And
**Elizabeth
DiMichele**

bill carves out exceptions for settlements of disputes in which an employee has actually raised a good faith, bona fide claim, and for agreements entered into upon or following termination, such as separation agreements. Significantly, where the application of the Anti-Waiver Act would be preempted by federal law—most notably the Federal Arbitra-

tion Act (FAA)—those agreement terms remain unaffected. This exclusion should mean that contractual provisions permitted by federal law, including valid collective and class action waivers, should continue to be enforceable in arbitration agreements governed by the FAA. The Anti-Waiver Act also states that it does not diminish existing rights and remedies of any employee under any other law, regulation, collective bargaining agreement, or employment contract. If the Anti-Waiver Act becomes law, it would take effect immediately and could have far-reaching consequences for existing employment agreements, compulsory arbitration provisions, and waiver and release agreements. Employers should begin reviewing their standard agreements and onboarding

documents now to identify potentially noncompliant provisions.

Expansive Employee
Access to Personnel Records

Senate Bill 3460 would create a new right for current and former employees, including those employed by public employers, to obtain complete copies of their personnel records. The bill defines "personnel record" broadly to include job applications, resumes, performance evaluations, written warnings, pay rate information, waivers, and termination notices, among other records. Employers would be required to furnish a copy of personnel records at no cost to the employee within five business days of a written request. Notably, the bill also imposes an affirmative notification duty on employers to inform employees within ten days of adding any negative information to their file, and employees have the right to submit a written rebuttal that becomes a permanent part of the record. Employees are limited to two requests per calendar year—though this cap does not apply when requests are prompted by negative information placed in the file. A three-year post-termination record retention requirement further extends employers' obligations. Enforcement rests with the attorney general, and violations carry fines ranging from \$500 to \$2,500 per violation. Anti-retaliation protections are also included. If this bill becomes law, it would take effect 60 days after enactment and would require employers to promptly establish or revise recordkeeping policies and response procedures.

Targeting 'Ghost Jobs'

The so-called "ghost jobs" bill addresses an increasingly common source of frustration for job seekers: postings for positions an employer has no genuine intent to fill. Applicable to employers with at least 100 employees and to third-party job post-

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Off the Front

Training

« Continued from page 1
them to gain practical experience working on teams and focusing more heavily on training.

The firm said the change underscores Orrick's dedication to professional development, especially for the younger crop of lawyers who hope to become the next rainmakers at the firm. And the enhanced training focus goes right in line with AltaClaro's goals for DepoSim.

One thing LaBrie really likes about the program is that it serves as a more engaging type of training as opposed to theoretical instruction or lectures offered on video platforms like Zoom.

The deposition simulator has also been rolled out at Taft. Chasity Thompson Osborn, the firm's director of attorney learning and development, said in working with incoming associates, the firm wants to ensure it is providing consistency in its trainings.

"We want to make sure that we provide the opportunity for our attorneys to have relevant training and make sure that they have the development skills and foundational skills that they need in order to be successful," she said.

Osborn said Taft has a great relationship with AltaClaro, having worked with the company on numerous past initiatives, so it was already familiar with the legal tech provider before DepoSim came on the scene.

The simulator, she said, seemed like a great logical next step in the firm's training and development offerings for younger, tech-savvy attorneys.

"This gives them the opportunity to customize the experience that they have and at the various skill levels that they have," Osborn said.

Lyndsay Capeder, Taft's chief client and innovation officer, said the fact that the firm already had an established relationship with AltaClaro helped with the decision to roll out DepoSim.

Taft, she said, is not "in the business of just running around and collecting AI tools just for the sake of collecting AI tools," but rather the firm takes the time to evaluate which tools are expected to have the most meaningful impact on lawyers and their professional development.

Taft firmwide co-chair of commercial litigation Lynn Rowe Larsen called DepoSim one such tool in the toolkit that has aided younger litigators preparing for fruitful careers.

"They can adjust what they're doing throughout the course of a deposition," Larsen said. "And sometimes clients don't really want you to practice on their legal matter in a live deposition."

But Larsen also noted that while the simulator is geared toward early-year associates, the program can also serve as a refresher for veteran attorneys.

"You can maybe use it for an hour or so and kind of get back into the habit and the rhythm of the evidentiary objections of the process of taking a deposition if maybe you haven't had any in your practice in a while," she said. "It's a great training tool

and a reinforcement of skillsets that can go across the platform."

For labor and employment firm Littler Mendelson, DepoSim has thus far served as an invaluable tool to help train lawyers of all stripes—especially burgeoning ones—on the nature of dealing with different types of personalities during depositions, "because you absolutely never know what you're going to get," said Jeanine Conley Daves, office managing shareholder of Littler's New York office.

Deposed witnesses come in all shapes and sizes, Daves said, from someone who objects frequently to someone who hardly ever objects to someone "who's just very difficult and challenging and keeping you from sometimes asking questions that you need to ask."

Daves said the concept behind DepoSim is great because it prepares lawyers, especially junior level associates, on how to tailor their questioning style to match witness demeanor.

Littler already has a fairly robust training program, she said, but something like DepoSim allows the firm to turn the subject matter expertise into real, on-the-ground practice.

"It is really a supplement [to] training programs that we are already doing to give associates experience that they would not otherwise have," she said.

Depositions are a core part of litigation, Daves said, and oftentimes in real life young associates are not the ones taking the actual depositions. These junior lawyers may not even get to actually take depositions on their own until they're mid-year associates.

"They get this chance to, through the simulation, conduct their own depositions, get feedback on that deposition, and then work on ... well, how would I change this? How would I tweak that?" Daves said. "Because it's all about being confident, right?"

For government relations and lobbying law firm Brownstein Hyatt Farber Schreck, the tool has also been nothing but a positive when it comes to attorney training.

Margaux Trammell, Brownstein's chief talent officer, said DepoSim falls right in line with the firm's three-year strategic plan, which calls for increased adoption of AI programs. During the past couple of years, the firm has been working with a variety of companies, including AltaClaro, to learn about tech-driven products that can help with career development.

DepoSim, she said, succeeds because the simulator helps lawyers prepare for cases that they may actually come across in their daily work.

"I was a corporate partner for 16 years here at the firm, and so you know attorneys are always very skeptical about training because it's very theoretical and people get bored," said Trammell, who is in charge of attorney recruiting at Brownstein.

Trammell said attorneys using the simulator appreciate its interactive nature, since they're able to sit across from AI agents who take on the persona of different types of witnesses and opposing

counsel. She said the firm initially tested DepoSim with three junior associates, three mid-to-senior associates and three partners, some younger and others more senior.

"This one was unanimously received [with] a very high mark," she said.

Attorneys offering feedback said they appreciate the confidence-building potential for those using the simulator.

"I can speak out loud, and if I fail, it's totally OK because there are no consequences," Trammell said on typical attorney response. "But just the fact that I can practice out loud is amazing."

The lawyers, she added, also appreciate the fact that DepoSim can offer constructive feedback on performance, and compare that with prior sessions.

Fertile Ground for Simulations While DepoSim is one of a growing number of AI tools focused on helping lawyers prepare for depositions, its focus on training rising attorneys is singular.

To AltaClaro leaders, the positive feedback received about the product is heartening, and it validates the early work the company did with law firm clients as it designed the tool.

AltaClaro had sat down with Cullen and her colleagues at Orrick to get feedback on design plans for DepoSim, proving the process was truly collaborative.

"We did the heavy lifting, but they gave us such good feedback before we even built it," said AltaClaro CEO and founder Abdi Shayesteh.

"We service over 100 Am Law 200 firms, and not every firm is innovative like this," he said. "Some firms are like, 'yeah, let others go first, work out the glitches, and then I'll buy it.'"

But other firms, like Orrick, are dedicated to partnering with companies like AltaClaro and rolling up their sleeves and helping design a product collaboratively using combined expertise.

While DepoSim has been used primarily for deposition training, Shayesteh said AltaClaro has a "laundry list" of tasks the program will likely offer in the future, including AI-assisted trainings for cross-examination, delivering opening and closing statements and other "human to human parts of a lawyer's job."

While AI is taking over certain aspects of the legal industry, lawyers will still always need to involve their human skills "for the thinking on your feet, the judgment skills," he said.

AltaClaro leaders said DepoSim can actually help firms save costs on training, since traditionally law firms have incurred substantial expenses in hiring actors for one-time deposition role-playing or sending associates to often costly off-site training programs.

In the future, the company plans to expand the platform to include additional simulations across commercial litigation, employment law, intellectual property, expert witness depositions, trial practice, oral arguments, client interviews and negotiation scenarios.

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Hate

« Continued from page 1
media network of hateful conduct posted to its platform should they choose to do so, and enable the network to respond to such reports."

In a partial dissent, Judge Michael Garcia, joined by Judges Madeline Singas and Caitlin Halligan, accused the majority of constructing a "creative defense" for platforms by rewriting the statute.

The 2022 tragedy in Buffalo was driven by an 18-year-old perpetrator who published a racist manifesto online before he shot and killed 10 people and injured three others during the live-streamed massacre.

Following a successful preliminary injunction to litigation filed by law professor Eugene Volokh and the online free speech platform Rumble, which argued compelled speech, the case now faces review by the Second Circuit regarding the New York Court of Appeals' guidance.

Meanwhile, the shooter is serving a life sentence for his state crimes, while asking for a federal trial in New York City for his challenge to the U.S. Department of Justice seeking his eligibility for the death penalty.

Volokh is represented by the Foundation for Individual Rights and Expression, a nonprofit agency that files strategic First Amendment lawsuits against universities and government entities

and officials.

Sarah Coco of the state attorney general's office won the appeal after arguing on behalf of the state government on May 21.

Robert Corn-Revere, a former partner in Davis Wright Tremaine and ex-chief counsel to a Federal Communications Commission chairman, argued the case on behalf of the plaintiffs.

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Outside Counsel

When the Video Disappears: Missing Footage in Injury Cases

A few months ago, somebody said something to me after hearing about a serious accident case in New York: "Well, at least there must've been video." It was one of those comments people make automatically now. Almost instinctively. Like saying "there's an app for that." And honestly, I understood it.

Walk through New York City for ten minutes and it feels impossible not to be recorded. Cameras hang above bodegas. Apartment buildings have Ring systems. Traffic cameras watch intersections. Stores monitor every aisle. Elevators have cameras. Parking garages have cameras. Even delivery bikes seem to have cameras now.

People assume modern litigation must work like slow-motion replay in sports. Something happens, lawyers pull the footage, everybody watches it, and the truth reveals itself.

Except that is not how most cases actually work. In many serious injury matters, the most important video either never existed, was never preserved, or only captures a tiny fragment of what really happened.

Sometimes the camera points in the wrong direction. Sometimes the system records over itself within 48 hours. Sometimes the image quality is terrible. Sometimes there is footage, but nobody bothers preserving it until after it disappears.

And sometimes the missing footage becomes one of the biggest fights in the entire case. That issue comes up more often than people realize.

A store owner may know somebody fell on the property but fail to save the surveillance footage. A building manager may preserve footage from one angle but not another. A trucking company may keep onboard video showing impact but not the minutes leading up to it. In construction cases, foot-

BILLY COOPER is the managing director at Billy Cooper Law, a New York-based personal-injury law firm focusing on serious personal and catastrophic injury matters.

By
Billy
Cooper



age may vanish before attorneys even learn cameras existed.

By the time litigation begins, everybody suddenly starts asking the same question: What happened to the video? Legally, that question matters.

Under New York law, parties can have an obligation to preserve evidence once they reasonably anticipate litigation. That does not mean every lost recording automatically creates misconduct. Systems fail. Files corrupt. Businesses operate on automatic overwrite schedules. Cameras sometimes simply do not

By the time litigation begins, everybody suddenly starts asking the same question: What happened to the video? Legally, that question matters.

capture what people hoped they captured.

But courts also understand something else. Video evidence is often lost because nobody treated it as important until it became important. That distinction matters.

There is a major difference between a deli whose system automatically overwrote footage after three days before anybody reported an incident and a property owner who knew somebody suffered catastrophic injuries and still allowed relevant footage to disappear.

The law does not treat those situations the same way, nor should it. This is where the issue of spoliation enters the conversation, although most nonlawyers have never heard the term before. Spoliation simply refers to the destruction or loss of evidence that should have been preserved.

When courts conclude evidence was improperly lost, judges can impose remedies. Sometimes juries are told they may infer the missing evidence would have been unfavorable to the party that failed to preserve it. Lawyers call that an adverse inference.

Jurors usually understand the concept immediately because it is rooted in ordinary human behavior. If somebody throws away evidence after an incident, people naturally wonder why.

That does not mean adverse inferences should happen automatically every time footage disappears. Courts have to be careful there too. Technology is messy. Retention systems vary wildly between businesses. Small companies often have no idea how long footage is stored or how to retrieve it.

But there are situations where the disappearance of evidence raises legitimate concerns. And in a surveillance-heavy environment like New York, those disputes are becoming increasingly common.

Ironically, the explosion of cameras has not necessarily made litigation simpler. In some ways, it has made it more complicated. Jurors now expect video. Insurance companies expect video. Clients expect video. When footage does not exist, people sometimes assume something suspicious happened, even when it did not.

That shift creates pressure on everybody involved in a case. Lawyers have to move faster than they once did. Preservation letters must go out immediately. Businesses have to think carefully about internal protocols after incidents occur. Property owners who ignore preservation requests can create enormous legal problems for themselves later.

At the same time, lawyers also have to resist the temptation to treat video as perfect truth. Anybody who has tried enough cases knows cameras can mislead people.

Angles distort speed. Depth perception disappears. Video without sound misses critical context. Grainy footage creates

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IN BRIEF

« Continued from page 1
role in national law enforcement, we hope that the Attorney Grievance Committee recognizes it has an added responsibility to undertake an investigation of Mr. Blanche."

The complaint calls out Blanche's role in "abusing the investigative and prosecutorial powers" of the Justice Department to target the president's perceived political enemies, such as former FBI Director James Comey. It also cites Blanche's role supervising the DOJ's "flawed response to the Epstein Files Transparency Act, including the disclosure of thousands of records containing sensitive victim information."

The ACG has, in the past, referred some ethics complaints regarding federal officials to the DOJ Office of Professional Responsibility. Complaints against Emil Bove, now a Judge on the U.S. Court of Appeals for the Third Circuit, were redirected to the DOJ Office of Professional Responsibility and that the committee would "take no further action."

—Emily Saul

Weil Takes London Finance Partner From Sidley

Weil, Gotshal & Manges has hired finance partner in London from rival from Sidley Austin.

James Crooks, who specialises in leveraged finance and general debt financing transactions, will

join the firm's capital solutions practice. With challenges around finance becoming more complex, owing to the advent of private credit and continuation vehicles, plus the desire for a mix of finance structures, capital solutions is rising in importance to private capital clients, and firms are responding.

It is the latest departure for Sidley after a four-partner private equity team across New York and London departed to Akin Gump Strauss Hauer & Feld last month.

It comes as a welcome boost to Weil, which faced partner departures of its own; the London office lost a three-partner restructuring team to Akin in April, including Weil's restructuring co-head, Neil Devaney. The firm did, however, hire two anti-trust partners and a new head of its European private equity practice in Germany earlier this year.

Former Weil London leader Mike Francies came out of retirement to join Sullivan & Cromwell last year and has since been hiring from his old firm. Chris McLaughlin and Alastair McVeigh joined Francies from Weil, with specialisms in private equity and private credit respectively. Sullivan also hired Weil banking and finance partner Jenny Choi earlier this year.

In March, Weil announced the appointment of its third executive partner in its history, with Ramona Ree set to take over at the end of 2027 from Barry Wolf. Despite the departure, Sid-

ley has been in growth mode in London, building out its London office, targeting hires from, most notably, Latham & Watkins. The firm's management committee chair, Yvette Ostolaza, said the firm had "welcomed close to 50 lawyers from Latham."

Weil executive partner Barry Wolf said in a statement: "James is a respected and versatile finance lawyer whose arrival will further enhance our market-leading Finance practice in London, particularly in the capital solutions space, where his experience representing both creditors and borrowers across leveraged finance and special situations adds significant depth to our team."

The firm's London finance head, Tom Richards, said: "Weil is a market leader in capital solutions, an area that sits at the intersection of finance, restructuring and broader transactional expertise and remains a strategic priority for our practice. James brings deep experience in this sophisticated and highly specialized market, further strengthening our position as we continue to build on our leading capabilities. His broader expertise across sponsor and creditor-side leveraged finance makes him an excellent fit for our platform. We are very pleased to welcome him to the team."

Sidley Austin did not respond immediately to requests for comment.

—Oscar Glyn



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Real Estate Trends

REALTY LAW DIGEST

By
Scott E. Mollen



Commercial Landlord-Tenant—COVID-19 Shut-down Orders—Retail Tenant Was Excused From Paying Rent Based On The Language of the Lease’s Takings Clause—It Could Not ‘Operate Its Business’ Even Though the Premises Could Be Used for Storage of Inventory, Fulfillment of Online Orders and Advertising—Large Retail Tenants May Have Greater Leverage Than Small Retail Tenants When Negotiating Lease Terms

This decision involved an appeal to the U.S. Court of Appeals for the Second Circuit (court) involving a commercial landlord-tenant dispute arising “out of emergency orders issued at the height of the COVID-19 pandemic.”

The defendant tenant operated a Manhattan-based retail clothing store. When New York State ordered businesses to “shut down in March 2020, (tenant) stopped paying rent, pointing to the lease agreement’s exception for government takings.”

The plaintiff landlord then terminated the lease and sued for breach of contract. The tenant counterclaimed for a declaratory judgment, “breach of contract, money had and received, and unjust enrichment,” based on the landlord’s “allegedly wrongful termination of the lease and retention of two inadvertent payments that (tenant) made after (landlord) terminated the lease and (tenant) vacated the premises.”

The tenant argued that the District Court “erred in granting summary judgment in favor of (landlord) on (landlord’s) claim for breach of contract, in rejecting (tenant’s) counterclaims for breach of contract and unjust enrichment, and in assessing (landlord’s) damages.” The landlord cross-appealed, arguing that the District Court’s damages award was inadequate.

The court held that the District Court “erred in denying (tenant’s) motion for summary judgment on its counterclaim for breach of contract and in dismissing (tenant’s) counterclaim for unjust enrichment.”

Based on the reversal with respect to liability, the court did not address the challenge to the District Court’s damages award.

The tenant operates a women’s clothing and accessory retail store. It had a ten-year lease. The tenant alleged that the lease was intended to provide the tenant with “commercial retail

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SCOTT E. MOLLEN is a partner at Herrick, Feinstein.



COURTESY PHOTOS

The firm launches with two of counsels and one partner, but leaders hope to grow the local head count to 15 in the next 18 months. From left, **Joel Fishbein, Raymond Hunter, and Jeffrey Wolber**

Atlanta-Founded Defense Firm Hall Booth Smith Opens Philadelphia Office

BY JON CAMPISI

ATLANTA-founded healthcare and business defense firm Hall Booth Smith has commenced operations in Philadelphia, officially opening its new office last week with one partner and two of counsels, with the aim of growing that head count to 15 lawyers over the next 18 months.

The firm’s office in the City of Brotherly Love marks its entrance into Pennsylvania and helps build the firm’s continued growth up and down the Northeast.

Of counsel Joel Fishbein is leading the office, following a run as in-house counsel for aging communities. Fishbein focuses his practice on aging services, health care, medical malpractice, employment and business litigation.

His clients include long-term care providers, hospitals, physicians and businesses embroiled in complex, high-stakes matters across Pennsylvania and New Jersey.

Hall Booth Smith’s entry into Pennsylvania comes at a time where the state has seen an influx in medical-malpractice cases buoyed by a Pennsylvania Supreme Court rule change three years ago that permitted plaintiffs to file such lawsuits in any county where a corporate healthcare defendant regularly conducts business.

Experts say the venue rule change has led to a dramatic increase in medical-malpractice filings in recent years, which, in turn, has led to an increase in work for defense firms like Hall Booth Smith.

The region has also become one of the most active and complex legal markets in the country, which is home to “world-class health systems, a growing long-term care sector, and businesses that face increasingly high-stakes litigation,” the firm’s founding partner, John Hall, said in a statement.

In an interview, Fishbein said he learned about the opportunity to help start the firm’s Philadelphia office through firm lawyers he had previously connected with at conferences, includ-

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TAXATION

Pied-à-Terre Tax Enacted on NYC Residences



By
Ezra Dyckman



And
Charles S. Nelson

After much hype and negotiation between the governor, legislature, and mayor, the New York State legislature recently enacted a so-called “pied-à-terre” tax on certain non-primary residences located in New York City.

The tax is set to go into effect on July 1, 2026; however, the law leaves many unanswered questions and creates a few surprising results.

The tax applies to one, two, and three family homes that have a market value (as determined for real property tax purposes) of at least \$5 million, as well as to individual residential condominium units and cooperative apartments that have a market value of at least \$1 million, in each case if such property is not used as a primary residence.

The tax generally does not apply to the ownership of entire apartment buildings, but could apply to individual condominium units or cooperative apartments that are held for rental.

For applicable one, two, and three family homes, the tax is imposed at an annual rate of 0.8% of the market value of properties with values between \$5 million and \$15 million, 1.05% of the market value of properties with values greater than \$15 million but less than or equal to \$25 million, and 1.3% of the market value of properties with values greater than \$25 million.

For applicable individual condominium units and cooperative apartments, the tax is imposed at an annual rate of 4% of the market value of properties with values between \$1 million and \$3 million, 5.25% of the market value of properties with values greater than \$3 million but less

than or equal to \$5 million, and 6.5% of the market value of properties with values greater than \$5 million.

It is important to note that these valuation thresholds are based on market values for real property tax purposes, which are usually significantly lower than actual fair market values. The reason for the difference in value thresholds and tax rates for individual condominium units and cooperative apartments compared to one, two, or three family homes is that condos and co-op units are typically valued significantly lower than houses for real property tax purposes, because they are based on valuation methods for rental buildings rather than the comparable sales method.

Beginning July 1, 2028, this difference in treatment is scheduled to end, at which time condos and co-op units will be subject to the tax at the same rates and thresholds as one, two, or three family homes.

The Legislature apparently expected that the valuation discrepancies would be resolved during this two-year period, with condos and co-op units valued based on the comparable sales method.

It is not entirely clear how it will be determined whether a home is an individual’s primary residence. The statute provides that the New York City Department of Finance will issue regulations identifying factors to be taken into account in making this determination, including, but not limited to, whether an owner occupies property for a majority of the days during a calendar year.

The statute also provides that the Department of Finance may require documentation demonstrating that an owner used the address of such property as the owner’s permanent address on the owner’s New York State resident income tax return for the relevant year. The city recently

issued proposed regulations, which have not yet been finalized.

In enacting the pied-à-terre tax, the Legislature ostensibly intended to tax people who benefited from New York City’s economy by maintaining a residence there, but would not normally pay income taxes to the city. However, the test for primary residency for purposes of the pied-à-terre tax may be stricter than for New York City personal income tax purposes, and thus some individuals may be subject to both taxes.

For example, assume that an individual living primarily outside the city owns an apartment in the city that is not his primarily residence and also happens to spend more than 183 days in the city. This individual would be a statutory resident of New York City and would be subject to New York City personal income tax. Despite paying taxes to the city on his worldwide income,

landlord will be able to determine whether a tenant uses a home as a primary residence.

High net-worth individuals often own homes through trusts and LLCs rather than individually. The statute provides that a home held through a trust or an entity will be considered a primary residence if the sole beneficiaries of the trust or the owners of a majority of the interests in the entity use the home as a primary residence. It is not clear how the rules will apply to more complicated ownership structures.

Another potential complication relates to cooperatives. If a tenant-stockholder of a cooperative corporation does not use his apartment as a primary residence, the cooperative corporation would be liable for the pied-à-terre tax rather than the tenant-stockholder individually.

The statute provides that in such circumstances, the cooperative cor-

The tax is set to go into effect on July 1, 2026; however, the law leaves many unanswered questions and creates a few surprising results.

the individual may also be subject to the pied-à-terre tax on his New York City apartment because it is not his primary residence.

Complications can arise when someone other than the owner occupies a property. The tax will not apply if the actual owner (or his immediate family members) occupies the home as a primary residence.

The tax also does not apply if an individual lessee or sublessee occupies a home as a primary residence, but only if pursuant to a bona fide lease that was negotiated in an arm’s length transaction with a term of at least one year. It is not clear how a

poration shall collect the tax from the tenant-stockholder. However, if the cooperative corporation is unable to collect the tax from the applicable tenant-stockholder, the other tenant-stockholders may end up bearing the burden of the tax, even if they are using their own apartments as primary residences.

These are just some of the many issues that the new pied-à-terre tax raises, some of which may eventually be addressed by regulations. It is also expected that some taxpayers may challenge the validity of the tax on constitutional and other grounds.

Although the tax is set to automatically expire on June

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Paul Weiss Adds Bracewell Energy M&A Partner in Growing Houston Office

BY BRENDA SAPINO JEFFREYS

PAUL, WEISS, Rikkind, Wharton & Garrison has hired longtime Bracewell energy M&A partner Austin Lee as a partner in Houston, as Paul Weiss continues to build out its new Houston office.

Lee, who joined Paul Weiss as a partner in the M&A group within the corporate department on Monday, advises public and private companies on the acquisition and divestiture of oil and gas



COURTESY PHOTO

Before practicing at Bracewell for nearly 11 years, **Austin T. Lee** worked in-house at Newfield Exploration Co.

properties, along with transactional and operational matters related to projects in the energy sector.

“Austin is an experienced M&A lawyer with a multifaceted skill set, who has worked on a wide range of energy transactions and projects,” Angelo Bonvino, global head of the corporate department, wrote in a press release.

In addition to oil and gas M&A, Lee represents clients in midstream and downstream energy projects, produced water and salt water disposal projects, and gas storage and related energy storage facility projects. He has represented lenders and borrowers on financings in the energy sector and also advises energy clients on distressed situations. Earlier in his career, Lee was legal counsel in the upstream group at Newfield Exploration Co. in The Woodlands.

Lee’s recent representations, according to the press release, include Diamondback Energy, Apache Corp. and Grit Oil & Gas Management.

Sean Wheeler, global co-chair of M&A and head of the firm’s Houston office, further wrote in the release that Lee is a “talented and versatile energy lawyer.”

“Austin’s extensive knowledge and deal experience, particularly in the upstream space, will enhance our ability to serve our clients, many of whom are focused on investment in energy and infrastructure assets,” Wheeler wrote.

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Real Estate Trends / Expert Analysis

Realty Law

« *Continued from page 5*

space suitable for the operation of a brick-and-mortar retail store in a well-trafficked and highly desirable neighborhood in Manhattan.” The lease’s permitted uses included, *inter alia*, display of apparel and accessories, together with “ancillary office and storage use.”

The lease’s taking provision specified that if any part of the leased space is “taken or condemned for a public or quasi-public use by any lawful power or authority, or if tenant is denied access to or egress from the leased space by any action or decree of any lawful power or authority or as a result of natural or other disaster, or if tenant is denied or deprived of either the use, occupancy and/or enjoyment of the leased space and/or the ability to operate its business thereon or therefrom by any action or decree of any lawful power or authority or as a result of a natural or other disaster, or by any oral or written agreement between landlord or any such power or authority or by the acquiescence of landlord...and the taking is not deemed ‘temporary’ ..., this lease shall, as to the part that is subject to the taking, terminate as of the date tenant is denied or deprived of such possession, use, occupancy,...and/or operation of or on the leased space, and the Rent due hereunder shall be reduced proportionally to the square footage of the leased space that is so affected.”

The lease further provided that “[i]n the event of a ‘temporary taking’—when the ‘tenant has the expectation that, within three hundred and sixty-five (365) days after the taking, tenant’s access and egress to and from the leased space, and/or tenant’s possession, use, occupancy,...and operation of or on the leased space as the case may be, it shall be restored’—the lease entitled (tenant) to a reduction in rent in proportion to the amount of space affected by the taking.”

As a result of the number of executive orders (EO) and “related guidance restricting commercial activities in New York State and New York City,” “businesses except for take-out or delivery services were closed to the public as of March 16, 2020 and (tenant’s) employees were unable to enter the leased premises between March 22 and April 9, 2020.”

On April 9, 2020, the NYS Department of Economic Development issued guidance permitting retailers like the tenant “to have only a single employee at any given time into the business premises to fulfill online orders from inventory stored on-site.”

By early June, the government allowed clothing retailers to provide “curbside pickup for online and telephone orders.” On June 22, 2020, the government permitted retailers to resume in-store shopping. On that day, the tenant “welcomed customers back into the store in compliance with those guidelines.”

During this time, the tenant had “largely been withholding rent” based on the EO. The tenant contended that it “had not been able to operate its business.”

The landlord thereafter served a notice of termination based on the tenant’s failure to pay rent and directed the tenant to vacate the premises by June 10th. The tenant did not vacate the space. The landlord then sued for breach of contract.

The tenant counterclaimed for a declaration that it did not owe rent and for damages based on “breach of contract, money had and received, and unjust enrichment.” The tenant alleged that it was excused from paying rent by the lease’s takings provision and therefore there had been a wrongful termination of its lease.

It also argued that the landlord had “misapplied a partial rent payment from May 15, 2020 and had wrongfully retained two further payments that (tenant) mistakenly made in August and September 2020”—after (tenant) had already vacated the premises.”

Following discovery, each party

moved for summary judgment.

The District Court adopted a magistrate judge’s recommendation that recommended granting the landlord’s motion and denying the tenant’s motion.

The Magistrate Judge asserted that the EOs “did not effect a ‘takings’ under the lease, and that (tenant) therefore breached its obligation to pay rent.” The judge found that the tenant had continued to make “general retail use” of the subject space during the subject period, “including by displaying and storing merchandise in the leased space, fulfilling online orders through inventory stored in the leased space, and advertising through signage on the outside of the leased space.”

The judge further found that the tenant “failed to comply with the lease’s notice-and-cure provision, barring its counterclaim for breach of contract.” The judge rejected the tenant’s “counterclaims for money had and received and unjust enrichment as duplicative of its unsuccessful contract claim.”

The District Court entered a final judgment in favor of landlord awarding it \$6,707,916.84 in damages, plus interest. The tenant thereafter appealed and the landlord cross-appealed from the District Court’s damages calculation.

The court stated that pursuant to the lease definition of a taking, “a taking can occur when...the tenant is unable to ‘operate’ its business on the premises.” Although the District Court interpreted such language as requiring that the tenant demonstrate that it had been “deprived of all use or occupancy of the leased space,” the court explained that “the mere fact that (tenant) had some use or occupancy of its premises does not necessarily mean that it was able to operate its business there.”

The court reasoned that the District Court had “improperly rendered the alternate phrase ‘operate its business’ meaningless and without effect.” The court noted that “[a]ny interpretation that has the effect of rendering at least one clause...meaningless is not preferred and will be avoided if possible.”

The court also rejected the landlord’s argument that because the lease permitted “general retail use,” the tenant’s continued use of the store “for storing inventory, for filling online sales and advertising through signage meant that it never lost ‘the ability to operate its business.’”

The court observed that nothing in the permitted uses provision “purports to define (tenant’s) ‘business’ for purposes of determining whether a taking occurred.” Rather, the permitted use provision “merely specifies the ways in which a (tenant) could use the premises without itself breaching the lease.”

The court also noted that the takings clause did not “explicitly cross-reference the permitted uses provision, as other provisions of the lease do.” Rather, it found that the “plain language of the takings provision, in contrast, excuses (tenant’s) obligation to pay rent when it is unable to ‘operate its business.’...—that is, (tenant’s) actual/business.”

Thus, the court reversed the District Court’s entry of summary judgment in favor of the landlord. It noted that the tenant’s “business consisted of operating a traditional retail clothing store offering in-person sales, from which (tenant) also fulfilled a portion of its online orders.”

The court stated that based on the EO’s, the tenant store had been closed to the public until June 22, 2020 and no employees were permitted “to enter the premises from March 22 to April 9.” On April 9, one employee was permitted to enter the store to fulfill online orders.

From June 8 to June 22, the tenant could also provide curbside pickup outside the store for orders placed remotely.

However, “under the takings provision, an operation limited to fulfilling remote orders is not the ‘business’ that (tenant) had previously operated on the premises, which consisted principally of a brick-and-mortar clothing store

offering a traditional, in-person retail experience ‘in a well-trafficked and highly desirable neighborhood in Manhattan.’”

Since the EO barred the tenant from operating “its business” between March 22 and June 22, 2020, the court held that the lease “excused (tenant’s) obligation to pay rent during that period.” Thus, it granted the tenant’s summary judgment denying the landlord’s claim that the tenant had breached the lease by failing to pay rent.

The court also agreed with the tenant that the District Court had “incorrectly held that its unjust-enrichment claim duplicated its breach-of-contract claim.”

The District Court held that a lease provision “which provides that ‘the event of any termination of this Lease...by reason of an Event Of Default (by tenant),’ (tenant) would ‘pay the rent that would be payable under this Lease ‘as liquidated damages.’” The District Court held that such provision permitted the landlord to treat the tenant’s August and September 2020 payments as “post-termination rent and that (tenant) thus had no claim for unjust enrichment.”

However, the court explained that such reasoning “presumes that

The court explained that ‘the mere fact that (tenant) had some use or occupancy of its premises does not necessarily mean that it was able to operate its business there.’

(tenant) not (landlord), breached the lease.” Since it held otherwise, the court reversed the dismissal of the unjust enrichment claim.

The court noted that the tenant’s “unjust-enrichment claim is premised on a theory that it essentially overpaid on the lease by making two payments in August and September 2020 that it did not actually owe, since (landlord) had wrongfully terminated the lease months earlier.”

Neither the landlord nor the District Court had cited “any provision on the contract governing (landlord’s) obligations with respect to reimbursement of such overpayment.” The court stated that the “mistaken payment of an amount not owed under a contract between the parties typically ‘presents one of the core cases of restitution, where the liability is explained by reference to the transferee’s unjustified enrichment or to the transferor’s unintended dispossession.’”

Thus, the court was not “persuaded” that the tenant’s unjust-enrichment claim “is necessarily precluded by the lease.”

The District Court, since it found that the unjust enrichment claim was duplicative of the breach of contract claim, failed to consider the magistrate judge’s determination that “genuine issues of material fact in dispute would preclude summary judgment in (tenant’s) favor on that claim.” The court remanded the issue of unjust enrichment.

Accordingly, the court reversed the District Court’s grant of summary judgment to the landlord on its breach-of-contract claim and its denial of summary judgment for the tenant on the counterclaim for breach of contract.

The court also vacated the District Court’s judgment with respect to the tenant’s counterclaim for unjust enrichment and dismissed the landlord’s cross-appeal as moot. The matter was remanded for further proceedings.

Comment: This decision was based on the wording of the subject lease’s takings clause. The tenant operated approximately 136 stores across the United States and Canada. It is not unusual that a large national chain may have more leverage in lease negotiations than a single store operator.

Therefore, the wording of takings clauses in a lease with a “strong credit” and/or national retailer may provide the tenant with greater protection than might be available to a typical small retail tenant.

Thus, court decisions involving retail tenant obligations to pay rent notwithstanding COVID-19 Executive Orders, may vary. Generally, the court decisions will be based

upon the specific language of each lease’s takings provision.

Delshah 60 Ninth LLC v. Free People of PA LLC, U.S. Court of Appeals for the Second Circuit, Case No. 25-148 & 25-237. Decided May 5, 2026, Leval, Lynch, and Sullivan, JJ. Per Curiam.

Landlord-Tenant—Landlord Not Entitled to Collect Rent for Period That Pre-dated Its Ownership—Failure to Establish Proper Foundation for Admission of Business Records—Defendant Failed to Establish Warranty of Habitability Defense—Lacked Records and Defense Witness Had Credibility Issues—Tenant Failed to Prove Surrender—Landlord May Seek Attorney Fees in a Plenary Action for Rent

A plaintiff commenced a plenary action to recover approximately \$20,750 in alleged unpaid rent from January to November 2016. The plaintiff is the defendant’s former landlord.

On March 1, 2010, the “presumed owner of the subject building,” nonparty (“A”) and the defendant executed a lease for the subject

apartment. That lease expired on July 31, 2010. On June 1, 2011, a different presumed owner, a nonparty who was acting as a receiver, had entered into a lease with the defendant for the term of Sept. 1, 2011 through Aug.31, 2012 for the same apartment.

On July 25, 2012, a nonparty landlord, entered into a “renewal” lease with the defendant for the term Aug. 1, 2012 through July 30, 2013. Thereafter, “at some point,” the defendant became a month-to-month tenant until she vacated her apartment.

On or about April 26, 2016, a nonparty commenced a nonpayment summary proceeding against the defendant. A default judgment had been entered. On June 15, 2016, that nonparty owner sold the building to the plaintiff and assigned leases to the plaintiff. The plaintiff then moved to be substituted as the petitioner in the nonpayment proceeding in the Housing Court.

The complaint sought unpaid rent through November 2016 totaling \$20,500, which was increased to \$20,750 at trial and legal fees costs and disbursements of approximately \$10,000. The answer asserted affirmative defenses of breach of the warranty of habitability, constructive eviction, and that no legal fees are permitted pursuant to Real Property Actions and Proceedings Law (RPAPL) §702.

Following a trial, the defendant moved to dismiss on the grounds that the plaintiff failed to prove that a lease was in place for the period of the alleged default and that a lease was required since the subject apartment was rent stabilized. The defendant also claimed that the plaintiff failed to prove that the apartment had been registered with the NYC Dep’t of Housing Preservation and Development (HPD).

The plaintiff countered that the “case can be considered one of either rent arrears or use and occupancy, which does not require a lease.” It also argued that it could not obtain “certified records showing that it complied with MDL § 325 for 2016 because those records are unavailable.”

The defendant also asserted that *Harris v. Corbin* (79 Misc. 2d 971, App. Term, 2nd Dep’t. 1974) held that a landlord may not relabel an action for rent arrears as one for use and occupancy to evade MDL §325.

The salient issues were “1) whether plaintiff properly introduced evidence sufficient to prove the rent owed prior to their ownership (*i.e.*, was the foundation laid sufficient to accept records showing money owed to plaintiff’s predecessor?); 2) whether plaintiff proved rent owed to it after it took ownership; 3) whether the plaintiff

was obligated to prove registration with HPD as part of its *prima facie* case; 4) whether the defense of breach of warranty of habitability was proven; 5) whether the defense that defendant actually surrendered the property on June 30, 2016; and 6) whether the plaintiff is entitled to attorney’s fees.”

The court previously dismissed the defense of failure to provide a written lease covering the subject time period. The court had reopened the trial record to hold an evidentiary hearing as to whether the court should accept the plaintiff’s belated records proving compliance with the MDL. The parties thereafter settled that issue and stipulated to allowing the records into evidence and waived the evidentiary hearing.

The court held that the plaintiff was not entitled to recover rent from the time period before it took ownership. The plaintiff’s ledger had been admitted into evidence. The ledger showed that \$10,625 was due for May 2016 and the defendant owed that amount as a result of the assignment. The plaintiff had submitted “no rent bills, invoices, communications or testimony tending to show that rent was owed, demanded, unpaid, and outstanding for any time prior to it taking ownership of the premises.”

The court declined to take judicial notice of a prior Housing Court case wherein a petition had been granted on default and no money judgment had been issued. Moreover, the defendant denied the validity of the arrears owed to the plaintiff’s predecessor.

The court explained that a “proper foundation for admission of a business record must be provided by someone with personal knowledge of the maker’s business practices and procedures.... The proponent of the record must first demonstrate that it was within the scope of the entrant’s business duty to record the act, transaction or occurrence sought to be admitted.... In addition, each participant in the chain producing the record, from the initial declarant to the final entrant, must be acting within the course of regular business conduct or the declaration must meet the test of some other hearsay exception. The record must also be made ‘at the time of the act, transaction, occurrence, or event, but within a reasonable time thereafter.’”

The court found that the plaintiff failed to “lay a proper foundation to authenticate the charges transferred from plaintiff’s predecessor as represented in the first line of the ledger as \$10,625.” The plaintiff had submitted a “transaction register” into evidence which presumably had been prepared by plaintiff’s predecessor in interest.

That transaction register did not show “any outstanding rent balance, though it does reflect a deposit of \$1,875.” The court stated that there was “doubt as to the reliability of the” ledger’s first line.

Although the plaintiff’s ledger had been admitted into evidence, the court “precluded ‘the portion for which no foundation was laid—*i.e.*, the first line on the Ledger, about which Plaintiff’s witness had no personal knowledge.

Consequently, the alleged amount of arrears that predated Plaintiff’s ownership of the subject premises is precluded from the judgment.”

However, the court found that the plaintiff is entitled to rent for the period after it took ownership. The court explained that “[a] grantee who receives an assignment of leases is entitled to all the rights under the lease [and,] subject to the defendant’s other defenses.” The plaintiff “proved its entitlement to judgment for rent that accrued after June 15, 2016 until November 30, 2016, when it took possession of the unit.”

The court held that the warranty of habitability defense had not been proven. The defendant had to prove “that the premises had been unfit for human habitation, or that the condition of the premises had deviated from the uses reasonably intended by the parties, by offering proof as to the dates, severity and duration of the conditions complained of...and to show that the landlord had notice

of the conditions complained of....”

The defendant failed to submit any documentary evidence. There were no pictures or HPD records or other records “of the conditions violating the warranty of habitability.” The defendant sought a 50% rent abatement based on the testimony of a defense witness as to apartment conditions. However, the court found that such witness’s “recollection of the condition of the apartment and, therefore, his credibility was called into question during cross-examination.”

The witness admitted to “being confused about the trash collection method in the building, whether or not there was a trash chute in the building.” There was testimony about pests and mortar, but the witness “did not see the unit at all until about three and a half months after Defendant and (another witness) vacated the unit.”

Based on the weight and credibility of the evidence, the court found that the defendant did not prove “the existence of conditions along with notice and offer of access to prove the defense of breach of warranty of habitability.”

Additionally, the defense of surrender had not been proven. The defendant’s witness testified that he and the defendant had vacated and surrendered the property in June of 2016. However, the defendant “offered no evidence that the landlord accepted their surrender.” Moreover, the prior owner’s procedures “offered no opportunity for the landlord to accept or reject the surrender.”

The defendant’s testimony was “also not credible because she was aware that a nonpayment case had been filed against her.” The court opined that it was “not credible that Defendant believed that the landlord would agree to release her from the tenancy, discharging any obligation to pay rent arrears, much less that the landlord’s assent would be offered tacitly.” The court held that there was “no agreement regarding surrender” and therefore it dismissed the surrender defense.

However, the court found that the plaintiff was entitled to attorney’s fees. The defendant argued that attorney’s fees were not recoverable because they are barred by RPAPL § 702. That statute provides that “no fees, charges or penalties other than rent may be sought in a summary proceeding.”

The court stated that the plaintiff “is not barred from recovering attorney’s fees in a related plenary action....” It further stated that “[n]ot only is there no prohibition on attorney’s fees in a plenary action for rent, but also, a party may seek attorney’s fees for the prior Housing Court matter in a subsequent plenary action.”

The lease provided for attorney fees to the prevailing party. The court noted that the lease provided “for each party to have some claim to legal fees.” Here, the defendant had not asserted a counterclaim for legal fees and therefore, the court need not consider whether there had been a “successful defense.”

Since the plaintiff had proven “some of its causes of action,” the court declared it to be a “prevailing party entitled to a hearing on attorney’s fees.”

Accordingly, the court awarded a judgment in the plaintiff’s favor for \$10,000 in rent for the months July 2016 through November 2016, plus costs and disbursements. The plaintiff’s other claims were dismissed with prejudice. The court also held that the plaintiff is entitled to pre-judgment interest.

1378 Bedford v. Watson, Civil Court, Kings County, Case No. CV-011519-17/KI. Decided May 1, 2026. D’Souza, J.

Pied-à-Terre

« *Continued from page 5*

So, 2031, it appears likely that the Legislature will extend it in the future (assuming it survives legal challenges), as they have with many other tax increases. Therefore, taxpayers owning property in New York City will need to be aware of the tax and plan accordingly.

They touch many aspects of the employment space: how employees are recruited, what rights they can waive, what records they can access, and how emerging AI technologies affect their jobs. If these bills become law, they will create compliance obligations requiring coordinated attention from legal, human resources, and technology teams.

Given that several of the measures take effect immediately if they become law, proactive review of existing agreements, recordkeeping practices, job posting protocols, and AI governance frameworks is prudent.

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Legislature

« *Continued from page 3*

ing entities (job boards), the bill would require specific, conspicuous disclosure language—in capital letters and bold type—indicating whether a job post reflects a current vacancy expected to be filled within 90 days, a current vacancy to be filled on a longer timeline, or no current vacancy at all.

Covered employers must remove postings within two weeks of filling the position. Further, if the employer is aware or reasonably should be aware that a listing has been posted on a Job Board independently of the employer, the employer must notify the job board

that the position has been filled.

The ghost job bill would impose a similar obligation on Job Boards. If a job board knows or has reason to know that a listing for a particular position has been filled or has otherwise expired, then such job board must remove it within two weeks of the date that it knows or has reason to know that the job has been filled.

The New York Department of Labor (DOL) would have enforcement authority, including the power to conduct audits. Penalties are steep: \$2,500 per noncompliant posting, doubling every 30 days that the violation remains uncorrected. This bill would take effect immediately upon signing.

For large employers, the compli-

ance implications are significant. Recruiting teams and job boards should evaluate their practices in anticipation of potential compliance obligations.

AI Workforce Impact Disclosure

The AI Workforce Impact Disclosure Bill is perhaps the most forward looking of the four bills. It would require “covered businesses”—defined as entities doing business in New York with more than 50 employees, or any publicly traded entity regardless of size—to file annual reports with the DOL detailing their use of artificial intelligence (AI) and its impact on their workforce.

The mandated disclosures are

extensive. Covered businesses would need to report estimates of employees displaced, hired, or whose hours were changed, as well as the number of positions not filled, all “due in full or in part” to AI; the objectives, frequency, and duration of AI usage; human oversight protocols and risk-reduction measures; and sensitive data management and access protections.

Beginning March 1, 2027, reports covering the prior calendar year would be due annually. The DOL is authorized to develop additional reporting requirements and standard forms, and would be required to publish annual aggregate analyses providing lawmakers and the public with a sector, geographic location, and business size report

Awards

« Continued from page 3

gations of fraud in arbitration are not limited to such noteworthy matters. Indeed, fraudulent conduct can occur in much more modest and mundane arbitrations, such as disputes over escrow funds, disputes between companies and their distributors, counsel fee arbitrations in matrimonial actions, and arbitrations between agents over the poaching of clients. In short, unscrupulous parties could engage in fraud in an arbitration anytime they can financially benefit from doing so.

The Arbitration Community Acknowledges that Fraud Has Become an Issue that Requires a Response

While the cases above confirm that actual fraud in the arbitral process has occurred in recent years, there is also a general recognition in the arbitration community that it seems to be happening—or is at least being uncovered—more frequently, and the community has responded.

For instance, the ICC, which is one of the most prominent arbitral administrators in the world, noted in a 2024 report that “[i]n recent years, allegations of corruption have arisen with increasing frequency in arbitral proceedings, both commercial and investor-state,” and has created a Task Force on Corruption to help study and address the issue.

Similarly, in 2025, the Chartered Institute of Arbitrators (CIArb), which is a professional body based in London that helps link the global arbitration community, launched a Global Anti-Corruption Roundtable series that has held discussions in New York, Kigali, Madrid, Dubai, and Rio de Janeiro (with Singapore to follow in August), to explore how corruption in the arbitral process can be identified and addressed.

Similarly, the topic was recently addressed at an event held in conjunction with London International Disputes Week 2026, which also explored how tribunals should address fraud issues. Accordingly, the global arbitration community is paying attention and responding, whether fraud in the arbitral process is actually happening more frequently or not.

Is Fraud Actually an Increasing Problem in Arbitration, and If So, Why?

The incidences of fraud described above, and the arbitration community’s response to them, beg a few obvious questions—namely, is fraud in the arbitral process really occurring with increased frequency, or is fraud simply being uncovered

more and reported on more widely?

Is fraud in the arbitral process really becoming more prevalent, or have the number of arbitrations around the world simply increased so much that incidences of fraud now seem more common? What role does the rise of arbitration in jurisdictions that score poorly on scales like Transparency International’s Corruption Perception Index play?

Hard statistics on the number of awards vacated around the world for fraud are difficult to come by, and even if such statistics readily existed, they would undoubtedly be subject to a number of possible criticisms. A few points from available facts seem indisputable though.

First, material fraud in the arbitral process—at least in the commercial arbitration context—remains relatively rare. Indeed, the examples that this article points to are only noteworthy because they are so uncommon, and if fraud in the commercial arbitration context was truly becoming a perva-

First, material fraud in the arbitral process—at least in the commercial arbitration context—remains relatively rare.

sive problem, companies would stop voluntarily choosing the process, instead of continuing to prefer it.

Second, fraud in the arbitral process is certainly not a new concern, because Section 10(a) (1) of the Federal Arbitration Act of 1925—which is itself based on the 1920 New York Arbitration Act—has expressly listed fraud as a basis for vacating awards for its entire existence. In fact, it is axiomatic that as long as arbitration has existed—and it has in some form or another for at least as long as merchants have been trading—fraud has too, so it is not a new challenge.

Third, the ever-increasing availability of information, particularly as courts around the world digitize their records, certainly plays some role in incidences of fraud not only being uncovered, but being reported more widely (particularly by specialized services that focus exclusively on the global arbitration community). Stated differently, increased transparency, combined with improved reporting by specialized arbitration sources, has almost assuredly played some role in incidences of fraud in the arbitral process being disseminated more broadly than has previously occurred.

Fourth, as the number arbitrations increase around the globe annually—and the aggregated global institutional data shows a trend line that continues to march inexorably upwards—it is probable that the absolute instances of fraud

in the arbitral process will increase too, even if the proportionate numbers in relation to the total case numbers globally remains extremely low.

Fifth, the notion that increasing use of arbitration in jurisdictions that have higher perceived corruption levels is injecting more fraud into the arbitral process—while perhaps tempting—nevertheless appears to be misguided. Indeed, several of the examples used in this article come from the U.S., and while the U.S.’ ranking in the CPI Index is not particularly impressive (tied at 29th with the Bahamas, behind countries in Africa, East Asia, the Middle East, the Caribbean, and Latin America), if a country suffers from endemic corruption, its courts likely would too, which would likely impact the incidence of fraud in an arbitration being uncovered and condemned at the enforcement stage.

Consequently, fraud in the arbitral process is not a new concern, and is probably not occurring more frequently either. Instead, it

is much more likely that fraud is simply uncovered and reported now more than might have been in the past, and with substantially greater reach and effect than could previously occur.

Conclusion

Fraud and corruption are problems as old as humanity, and while they may be uncovered and reported on in the arbitral process more readily now than in the past, that does not mean that either is becoming more commonplace. Indeed, the present focus on the issue strongly suggests that fraud will not become an endemic problem in the arbitration community, and that instances of fraud will remain noteworthy because they will remain so rare.

Matter of Chilliest

« Continued from page 3

records, which are the same acts of misconduct at issue in this case.

Accordingly, AGC’s motion should be granted to confirm the Referee’s findings sustaining charges 1-7 and his sanction recommendation, to disaffirm the Referee’s finding declining to sustain charge 8 and to sustain this charge, and respondent is suspended from the practice of law in the State of New York for a period of four years, effective immediately, and until further order of the Court.

All concur.

issue remains surprisingly old-fashioned.

At the end of the day, proving liability still comes down to whether the facts make sense, whether the evidence holds together, and whether somebody failed to act reasonably under the circumstances.

Cameras can help answer those questions.

They just do not answer all of them.

Daily columns in the Law Journal report developments in laws affecting medical malpractice, immigration, equal employment opportunity, pensions, personal-injury claims, communications and many other areas.

MDL

« Continued from page 1

ing sanctions in an effort to stymie discovery efforts?

Stanley insists it’s the latter. “I believe that it is an effort to prevent lawyers from getting the discovery that they need,” he told Law.com. “I don’t want this to seem I’m against all protective orders. But when protective orders are used by means to shield production everywhere, when they are used to discredit me, or used to not allow for the discovery process to work, then that’s a problem.”

But there might be other reasons, Elizabeth Burch, of the University of Georgia School of Law, told Law.com. Judges are focused on having their orders followed, but there also has been an overreliance on protective orders, particularly as discovery and confidential settlements have increased.

“There is this phenomenon of judges covering very broadly things under protective orders that probably should not be put under protective orders to begin with,” she said. And lawyers are doing what’s in the best interest of their clients, not the public.

“You have these broad protective orders that don’t take into consideration public health at all, and, in many cases, this has just become the go-to thing that judges will enter and doesn’t seem like they’re giving adequate weight to the factors they’re supposed to consider under the rules,” she said.

Acetaminophen: ‘An Honest Mistake’

The prenatal acetaminophen multidistrict litigation, which involves 600 cases, is on hold after Cote struck the plaintiffs’ experts, prompting an appeal before the U.S. Court of Appeals for the Second Circuit, which heard oral arguments last November.

But there are other cases in state courts, particularly Paxton’s lawsuit, in which Keller serves as outside counsel.

On Feb. 6, Kenvue Brands attorney Jessica Brennan, of Barnes & Thornburg, in Morristown, New Jersey, filed a motion for sanctions against Keller and his firm, arguing he had attached a dozen confidential documents in an opposition to dismiss a personal injury case in Florida’s St. Johns County Circuit Court, then moved to file the same information in Paxton’s case in Panola County District Court.

“It is beyond dispute that Mr. Keller, an experienced attorney and plaintiffs’ lead counsel, knew that these materials were protected under this court’s order,” she wrote.

Keller, in a Feb. 17 response, insisted only four documents involving 11 pages of emails were at issue. The firm immediately moved to strike the filing, and he instructed his firm’s attorneys to

strictly adhere to court orders.

“He is confident that his colleagues are dedicated professionals who made an honest mistake,” he wrote. “And he accepts responsibility for any mistake he may have made as a supervisor, both in overseeing the filing and in setting firm policy.”

As to the Texas case, no confidential information was used, he wrote.

Cote, in a May 8 order, did not sanction Keller for the Florida case because his firm might have assumed the documents would be allowed, as they had in other state court cases in California and Illinois. Further, after Kenvue objected, Keller Postman pulled them from the docket. But she found that Keller “used” confidential documents in the Texas case, in violation of the protective order, by filing documents that relied upon or described them.

“There can be little argument that the violations of the protective order and coordination order in the Texas action were willful,” she wrote. “On the other hand, Kenvue has not shown that Keller Postman or Mr. Keller engaged in a willful violation of the protective order through their filings in the Florida action.”

Keller denied that he violated the protective order, and he disagreed on the definition of “used,” noting that the existence of the documents had already been made public in Illinois and California.

“My colleague filed an opposition to their motion that had completely blanked-out pages that said they know there are these documents that exist, that haven’t been produced in Texas, they’re relevant, and the trial court in Texas can order them in production, and we’ll be able to see them with that protective order in place,” he told Law.com. “My own view is that it is not using Kenvue’s confidential information. Pointing to the existence of confidential documents is not using confidential information.”

This month, he agreed to donate \$50,000 to the March of Dimes as his sanctions, but he also appealed Cote’s order to the U.S. Court of Appeals for the Second Circuit.

Uber: ‘The Court Has Serious Concerns’

Stanley, who’s been filing lawsuits against Uber since 2019, was in charge of discovery matters on the plaintiffs’ steering committee in the sexual assault multidistrict litigation.

But Uber sought about \$168,500 in attorney fees in sanctions against Stanley, who Cisnero previously found had violated the protective order by disclosing a confidential list of policy documents in state court cases in Texas and New Jersey. Then, on Dec. 8, Uber filed a new sanctions motion, insisting Stanley used a confidential database in the multidistrict litigation

to litigate a vehicle accident case against Uber in Bexar County District Court in Texas. This time, Uber demanded Stanley be removed from the plaintiffs’ steering committee.

Uber and its lawyers at Kirkland & Ellis—Allison Brown in Philadelphia and Laura Vartain in San Francisco—and Shook, Hardy & Bacon’s Michael Shortnacy, in Los Angeles, did not respond to requests for an interview.

On Feb. 17, Cisneros sanctioned Stanley \$30,000 on the first motion, noting that Uber waited five months to bring up sanctions, which was “something of an ambush,” and that its billing requests demonstrated an “overstaffed and overworked” team of attorneys.

“There was room in this dispute for both sides to compromise, but there is no indication that Uber has entertained the possibility of sharing lists of policy documents with other attorneys or allowing Stanley to use them in other litigation,” she wrote. “When Stanley requested such permission (albeit after this court found that he violated the protective order), Uber refused it.”

She added, “The court has serious concerns about Stanley’s lax approach to the protective order, but Uber has not shown bad faith.”

One day later, U.S. District Judge Charles Breyer, who was overseeing the first two bellwether trials in the sexual assault multidistrict litigation, ordered Stanley removed from the plaintiffs’ steering committee “effective immediately.”

Stanley told Law.com he never shared documents with anyone.

“This was not a ‘hey, check out these 50 PDFs,’” he said. “That never occurred.”

Instead, he said, he simply asked Uber to look for them.

“Because I gave information to Uber’s lawyers outside of the MDL using the name of the documents and the location of the documents, the court found I was using protected material and that was in breach of the protective order,” he said.

As to the second motion, involving the database, Cisneros concluded that Stanley violated the protective order again. The judge had the parties work out the amount, which ended up being \$50,000. Stanley agreed to personally pay the first half by May 1, and the second by July 1.

“And that’s significant for me. That’s not a non-significant number, right?” he said. Because of the sanctions, Stanley left Johnson Law Group and withdrew from representing anyone in the multidistrict litigation. And he chose not to appeal the order.

“I do have remorse, and I do also have strong feelings about all of this, but I do not and did not appeal the order on purpose,” he said. “It was time to accept and move on for me.”

@ Amanda Bronstad can be reached at amanda.bronstad@alm.com.

Footage

« Continued from page 4

false certainty because viewers think they are seeing more clearly than they actually are.

Sometimes a recording becomes the centerpiece of a case even though it only captures two seconds of a much larger event.

A crosswalk collision may show impact but not visibility conditions. A slip-and-fall video may show a person falling without revealing how long the dangerous condition existed beforehand. A construction video may capture the accident but not the safety shortcuts that led to it hours earlier.

The camera records a moment. It rarely records the full story. That is why strong personal injury litigation still depends on the same fundamentals it always has. Witness testimony matters. Timelines matter. Maintenance records matter. Human behavior matters. Expert analysis matters.

And increasingly, so does what happened before the video disappeared. Because in modern litigation, the absence of footage can become evidence itself. That reality has changed how cases are investigated, defended, and tried across New York.

But despite all the technology surrounding us, the core

At the end of the day, proving liability still comes down to whether the facts make sense, whether the evidence holds together, and whether somebody failed to act reasonably under the circumstances.

Cameras can help answer those questions.

They just do not answer all of them.

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Alicja Szczęśniak (Warsaw)
Pasu Na Songkhla (Bangkok)
Employment & Compensation
Lois Caoiro (Madrid)
Matthew Gorman (Washington D.C.)
Humberto Ruiz-Correa (Monterrey)
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Lending Law

« Continued from page 1

for-profit competitors can reach 200%.

By contrast, the Milestone Foundation utilizes simple, noncompounding interest rates ranging from 2% to 5% monthly, which can scale to a 60% annualized simple interest rate.

McCarthy stated these lower rates enable plaintiffs to afford basic living expenses, remain in their homes, and maintain transportation during multi-year litigation without being forced into unfair, premature settlements.

McCarthy noted that the foundation has advanced over \$7 million in affordable funding to more than 1,000 clients the past decade, while facing initial industry skepticism, but ultimately gaining backing from

law firms once its altruistic model was understood.

“What we’ve proven is that there is an appetite for an alternative model,” McCarthy said. “We want to encourage leaders to question why people accept these high rates without question, and we plan to increase our legislative advocacy to help protect consumers.”

A notable client, Mark Talley—whose mother was killed during the May 14, 2022 white supremacist attack at Tops Friendly Markets in Buffalo—revealed the foundation provided him with crucial presettlement funding.

This assistance arrived prior to a February partial settlement where gun accessory manufacturer Mean Arms agreed to pay \$1.75 million to victims’ families and survivors, a deal that did not conclude the broader, ongoing Tops shooting litigation.

Talley noted that the founda-

tion helped him stay “afloat,” and did not “exploit” or “prey” on his situation.

“We’re helping individuals—we’re not trying to make money off of them,” McCarthy said. “We want this to be a way for them to get access to the justice they deserve and to strengthen the civil justice system.”

Looking ahead, the foundation’s next decade will be guided by a recently assembled advisory council that is comprised of attorneys from across the litigation ecosystem—including bankruptcy, class action, mass tort and family law practitioners, and two former litigation lending industry attorneys.

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Send decisions of interest to decisions@alm.com. To access decisions and articles published in the Law Journal, visit nylj.com.

Part
Justice E. Biben
Phone 646-386-4093
111 Centre Street
Room 1333, 9:30 A.M.
WEDNESDAY, JUNE 24
Shawnton N. Edwards
Henry Thomas

Part 93
Justice Scherzer
Phone 646-386-4093
100 Centre Street
Room 1333, 9:30 A.M.
WEDNESDAY, JUNE 24
Shawnton N. Edwards
Henry Thomas

Part 95
Justice D.Conviser
Phone 646-386-4095
Fax 212-401-9137
111 Centre Street
Room 687, 9:30 A.M.
WEDNESDAY, JUNE 24
Rasheen Robinson

Part 99
Justice Burke
Phone 646-386-4099
Fax 212-401-9270
100 Centre Street
Room 1530, 9:30 A.M.
WEDNESDAY, JUNE 24
Yakson Antonio
Wanny Castillo Sanchez
Angel Costillo
Vlatimir Diaz
Ruben Fernandez
Carlos Garcia
Juan Garcia Villa
William Lugo
Carmelo A. Miranda
Wilson Monero Rodriguez
Emmanuel Del Pichardo Antonio
Jose Rosario
Davis Sanchez Canela
Angel Solero-Torres
Juan Tavarez

Part N-SCT
Justice Peterson
Phone 646-386-4014
Fax 212-401-9272
100 Centre Street
Room 218, 9:30 A.M.
WEDNESDAY, JUNE 24
Scott Burgess
Emmanuel Eder
Rudy Marte
Luis Morales
Dashawn Moss

Part IDV
Justice Dawson
Phone 646-386-3579
Fax 212-884-8938
100 Centre Street
Room 1604, 9:30 A.M.
Part 38
Justice Altman
Phone 646-386-4036
Fax 212-419-8409
111 Centre Street
Room 765, 9:30 A.M.

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Justice Presiding Judge
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Court Calendars

THURSDAY, JUNE 25
809392/26A.L. By And Through His Mother And Natural Guardian v. NYC Et Al
811985/24Benavides v. NYCTA Et Al
808098/26Caldwell v. NYC Et Al
812941/23Cordova v. NYC Et Al
813528/23Delacruz v. NYC Et Al
818213/23Difo v. McGlynn, Hays & Co., Inc.
801793/24Hernandez v. Valentine
23031/19Hicks v. NYC
802424/26In The Matter of The Petition of Lorenzo Suarez v. NYC Et Al
806229/26Jones v. NYC
28370/19Ledan v. NYC
809863/25Noel v. NYC
808751/23Norton v. Farhad
24837/18Palmer v. NYC
800250/23Ramirez v. Mateo
817195/21Rivera v. NYC Et Al
808825/25Rosa v. NYC Et Al
812103/24Santos v. NYC Et Al
808464/25Villanueva v. NYC

FRIDAY, JUNE 26
24411/19Alcantara v. NYC And

Part 4
Justice Andrew J. Cohen
Phone 718-618-1212
Room 413, 9:30 A.M.
WEDNESDAY, JUNE 24
806872/241714 Nereid Dev. LLC Et Al v. Dillon-Johnson
807267/22Acosta v. Solimancarpio
817332/25Adames v. Carmona-Contreras
814270/24Asencio Guzman v. Alica
818418/24Brody v. Jny Trucking Corp. Et Al
819564/24Burton v. American United Transportation, Inc. Et Al
814829/24Cruz v. Castillo
814163/23Davis v. Tenn
813616/24Dejesus v. Jmv Rlty. Hldgs., Inc. Et Al
807116/21F. v. Don L.W. LLC Et Al
303831/11Garcia v. West 170th Rlty.
817286/24Gutierrez v. Boodhoo
813531/25Harley Jr. v. 4439 Furman Ave Partners LLC Et Al
816006/251 G An Infant By Her Mother And Natural Guardian Maria Paulino Et Al v. Gonzalez
807098/25Lopez v. Czajka
807475/23Lopez v. 1387 Jessup LLC Et Al
811308/24Lopez v. Con Ed Co. of New York, Inc.
820061/24Madio v. Henry
823123/25Martinez v. Lic Motor Group LLC
810413/23McLoud v. Gnn Shine Bright Grocery
806608/22Mena-Diaz v. B'way. 189 Rlty. Corp. Et Al
821690/25Minott v. Ynoa Pena
810506/24Monfre v. Hudson Yards By Rhubarb LLC
820485/25Morris v. Potter
809361/25Owens-Howe v. Palisades Center Mall Et Al
82029

