

IN BRIEF

Financier Retains Agnifilo Intrater Ahead of Federal Sex Crimes Trial

A onetime star Wall Street investor accused of violently beating women beyond their consent in a penthouse dungeon has retained Agnifilo Intrater ahead of his federal sex crimes trial.

Partners Marc Agnifilo, Zach Intrater, Teny Geragos and Jacob Kaplan all entered notices of appearance on behalf of financier Howard Rubin on Wednesday.

The financier was previously represented by a team at Dechert, who withdrew in February. He also retained Michael Gilbert of Sheppard Mullin Richter & Hampton and Isabelle Kirshner of Clayman Rosenberg Kirshner & Linder.

Rubin and his personal assistant, Jennifer Powers, were indicted by the U.S. Attorney's Office for the Eastern District of New York in September 2025 on charges including sex trafficking and transporting women for sex. Rubin was also charged with bank fraud. Powers' husband, Stephen Powers, was also charged.

Prosecutors claim Rubin used his wealth to recruit and mislead women into commercial sex acts involving bondage, discipline, dominance, submission and sadomasochism. The women allege Rubin ignored previously agreed upon safe words and tortured them. He's accused of buying their silence with nondisclosure agreements.

Rubin has pleaded not guilty. The case has been designated complex and the parties are due back in court on April 16.

Prior to his criminal case, Rubin faced civil actions from former models who said they were beaten and raped by him in 2016. He was found liable for sex trafficking six women in 2022 and ordered to pay nearly \$4 million by a federal court. The U.S. Second Circuit Court of Appeals upheld the verdict in November.

Agnifilo Intrater, which launched in 2024, has become the go-to firm for high profile individuals charged with sex crimes in New York City.

The firm was recently retained to represent disgraced Hollywood producer Harvey Weinstein in his Manhattan retrial, and defended a luxury real estate broker, Oren Alexander, at his federal sex trafficking

trial alongside his brothers this spring.

Agnifilo and Geragos led the trial team that secured an acquittal on racketeering and sex trafficking charges for music mogul Sean "Diddy" Combs.

The jury convicted Combs of lesser counts and Alexander was found guilty of all charges.

—Emily Saul

OpenAI Strikes AWS Deal to Sell AI to US Government

OpenAI has agreed to partner with Amazon Web Services to distribute its artificial intelligence products to federal agencies for both classified and unclassified work, a move that deepens the company's push into the government market while directly encroaching on territory long held by rival Anthropic.

The deal, first reported by The Information, follows OpenAI's agreement with the Pentagon, announced last month, allowing the U.S. military to deploy its AI models on classified networks. Through the AWS partnership, OpenAI's reach is expected to extend well beyond the Defense Department to a broader swath of federal agencies that rely on Amazon's cloud infrastructure.

The arrangement puts OpenAI squarely in competition with Anthropic on the AWS platform. Amazon has invested at least \$4 billion in Anthropic, which counts AWS as its primary cloud provider and has its Claude models integrated into Amazon Bedrock, the tech giant's AI platform for enterprise and government customers, and is integrated for public use as well.

The competitive dynamics between OpenAI and Anthropic, both based in San Francisco, have grown sharper in recent weeks. Anthropic drew the Pentagon's ire after declining to permit its technology to be used for mass surveillance of Americans or to power fully autonomous weapons systems. President Donald Trump subsequently designated Anthropic a supply chain risk

Responding to Cyrus Vance's Op-Ed on Etan Patz, Pedro Hernandez And the 'Erosion of Trial Verdicts' »2



The judge expressed discontent over years of litigation resulting in "nothing," as the board managing Puerto Rico's bankruptcy has yet to create a debt restructuring plan acceptable to creditors of the Puerto Rico Electric Power Authority, pictured above, holding \$8.5 billion in bonds.

Fed Up With 'Endless Litigation,' SDNY Judge Urges Progress in Puerto Rican Utility's Bankruptcy

BY ALYSSA AQUINO

A NEW YORK federal judge chastised attorneys for failing to come up with a plan allowing Puerto Rico's utility to exit bankruptcy, saying Wednesday that the bankruptcy wasn't intended to serve as an "engine for endless litigation."

Chief Judge Laura Taylor Swain of the Southern District of New York expressed discontent that years of litigation resulted in "nothing" after being informed that the board overseeing



Judge Swain

Puerto Rico's bankruptcy has yet to craft a debt restructuring plan agreeable to creditors holding \$8.5 billion worth of bonds in the commonwealth's utility, the Puerto Rico Electric Power Authority.

"[The Puerto Rico Oversight, Management, and Economic Stability Act] did not come into being on an assumption that it would be an engine for endless litigation," said Swain.

That law, regularly referred to as PROMESA, created the Financial Oversight and Management Board, which has been attempting to clear the debts of the commonwealth and its utility. The board is represented by Proskauer Rose LLP. The court has approved a restructuring plan for Puerto Rico, but a plan for PREPA remains elusive.

NY Court Watcher Sees Weaknesses in Ethics Complaint Against Chief Judge

BY BRIAN LEE

DID NEW YORK Chief Judge Rowan D. Wilson cut against judicial rules when he made pointed public comments about New York's sentencing laws—unleashing the kicker that he found them "stupid," and that he believes judges who use repugnant language in their comments from the bench should be voted out of office?

The rules governing judicial conduct suggest Wilson acted lawfully.

And the attorney for the state's judicial misconduct watchdog may have already addressed the matter three years ago, when speaking to lawmakers about an obviously unrelated matter.

Also, Albany Law School professor Vincent Bonventre defended Wilson's comments that were the subject of a March 11 complaint to the Commission on Judicial Con-

duct by eight Republican state lawmakers.

The GOP legislators, upset by Wilson's assertiveness, claim Wilson and all judges are prohibited from making political commentary, nor may they opine on reforming



The CJC has never publicly disciplined a Court of Appeals judge, making Chief Judge **Rowan D. Wilson** the first to face such action.

lative legislation, only non-policy, administrative matters impacting the judiciary.

The complaint was in response to Wilson's Feb. 27 appearance at a symposium at the City University of New York Law

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Lawyer Accused of Using Police To Intimidate Process Server

BY CHARLES TOUTANT

A DISPUTE among lawyers has put the chairman of the Port Authority of New York and New Jersey in the spotlight over allegations he used the agency's police department to interfere with a process server.

A police report shows port chairman Kevin O'Toole—who is also managing partner of the O'Toole Scrivo law firm—called port police after a court process server knocked on his door bearing documents showing he and his law firm were named as defendants in *Brown v. McCarter*.

That litigation stemmed from attorney William Brown Jr.'s wrongful-termination suit against his former law firm, McCarter & English—who's hired the O'Toole



Kevin O'Toole was a New Jersey Senator from 2008 to 2017 and became chairman of the Port Authority in July 2017.

Scrivo law firm to defend it.

But now Brown has used a public records request

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DECISIONS OF INTEREST

First Department

CONTRACTS LAW: Court finds AG had authority to initiate action against defendants for usurious loans. *People v. Yellowstone Capital LLC*, Supreme Court, New York.

CRIMINAL LAW: Dismissal of unlicensed driving charges denied; scooter considered motor vehicle. *People v. Scott*, Criminal Court, New York.

Second Department

MOTOR VEHICLE TORTS: Firm representing plaintiffs in car accident case disqualified due to conflict of interest. *Khidimazarov v. United Parcel Servs. Co. MTLR Corp.*, Supreme Court, Kings.

FAMILY LAW: Court refuses to impute income against husband in child support action for alleged trust. *W.L.F. v. G.T.F.*, Supreme Court, Kings.

FAMILY LAW: Defendant's motion for contempt denied; untimely filed domestic relations order. *Matassov v. Matassov*, Supreme Court, Kings.

FAMILY LAW: Self-represented litigants lack authority to effectuate

CLPR § 5223 service, court finds. *J.L. v. Y.A.E.C.*, Supreme Court, Westchester.

U.S. Courts

CRIMINAL APPEALS: Second Circuit grants qualified immunity to NYPD detective in bus assault arrest case. *Sacaza v. City of New York*, 2d. Cir.

SECURITIES LITIGATION: Investor suit tossed; PSLRA bars RICO claims based on fraudulent securities transactions. *Chelderv. Gen. Conference Corp.*, SDNY.

PRIVACY: VPPA suit dismissed; Facebook pixel data is not 'personally identifiable information.' *Berryman v. Reading Int'l Inc.*, SDNY.

PERSONAL INJURY: Court lifts stay on state injury suit over schooner restaurant accident. *Crew Ventures LLC v. Phillips*, SDNY.

EMPLOYMENT LITIGATION: Court rejects defendant's bid to discredit plaintiff's testimony in retaliation suit. *Burns v. Primary PartnerCare Mgmt. Group Inc.*, NDNY.

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Lawmakers: Recovery of Attorney Fees Is Key to Reforming NY's 'Broken' Open-Records System

BY BRIAN LEE

NEW YORK attorneys would be more inclined to represent clients wanting to access public records, if not for the state's restrictive statute for recovering attorney fees, a lawmaker suggested Wednesday while advocating in Albany for strengthening the Freedom of Information Law.

State Assemblymember Phillip Steck, D-Colonie, and Sen. John Liu, D-Queens, sponsor A950-A/S1418-A, legislation meant to strengthen the recovery of attorney fees for

people who are successful in their pursuit of FOIL records.

The duo lobbied for the legislation during a news conference with state and national transparency advocates, to highlight Sunshine Week from March 15-21.

Steck and Liu's legislation would allow for "reasonable attorneys' fees" in FOIL proceedings.

It notes that compared to certain other states, New York maintains a higher standard for recovering lawyer fees.

The Empire State requires a party to "substantially

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The President’s Wrath? A Federal Judge Must Strike a Delicate Balance

BY CHARLES TOUTANT

A FEDERAL judge appears to be in an unenviable position: contradict his own ruling, or potentially draw the ire of the U.S. president.

The situation unfolding in the courtroom of Chief Judge Matthew Brann, of the Central District of Pennsylvania, involves a presidential appointment in New Jersey, and could have a ripple effect in multiple states where President Donald Trump’s picks face similar opposition.

It also ventures into uncharted territory, with little precedent to hint at what sort of standards will apply.

Plus, if Brann rules against the president, some attorneys are bracing for Trump to call the judge a radical and criticize the ruling as politically motivated.

The underlying issue stems from Trump’s selection of Alina Habba for U.S. attorney in New Jersey.

Brann is the judge who ruled that Habba’s selection for the top job was unlawful. He also found against the subsequent appointment of a three-person team to run the office.

Now, that same judge is responsible for determining whether to dismiss the case against criminal defendants, who argue the court should drop the charges against them—because Habba is the one who signed off on them.

A ruling in a defendant’s favor could mean that after battling local officials for nearly a year over who should be the U.S. attorney in New Jersey, the Trump administration could soon see some payback in the form of dismissed criminal indictments.

Now, a briefing schedule has been set in defendant Daniel Torres’ motion to dismiss charges against him based on a finding that the Justice Department’s appointment of a three-person team to manage the U.S. Attorney’s Office for New Jersey was unlawful.

The March 9 ruling by Brann, sitting by designation, sets up *United States of America v. Torres* as a test



Jason LeBoeuf of Ziegler Law Group, and Chief Judge Matthew Brann, of the U.S. District Court for the Middle District of Pennsylvania

case for numerous criminal defendants in New Jersey and elsewhere who have made similar requests to dismiss charges brought under the auspices of Habba or others alleged to have been installed unlawfully.

If the motion is granted, the court would be allowing a suspected drug dealer to walk free.

Torres allegedly brought 8 kilograms of cocaine to a meeting in a parking lot in Paterson in January 2024, which he intended to sell for \$128,000, according to his indictment. The individuals he met with were agents from the Drug Enforcement Administration, and Torres was placed under arrest.

Defense attorney Jason LeBoeuf, of Ziegler Law Group in Livingston, New Jersey, represents Torres. LeBoeuf says there are plenty of unknown factors about the case.

“My brief is due Thursday. The government’s is due, I think, a week after that. I guess then we’re going to find out where the judge is with it,” LeBoeuf said.

Brann’s latest ruling comes after a decision from August 2025 in which he found Habba’s appointment as acting U.S. attorney violated the Federal Vacancies Reform Act.

That ruling came in a consolidated case brought by three criminal defendants—Cesar Umberto Pina, Julien Giraud Jr. and Julien Giraud III.

But in that case, Brann declined

to dismiss the motions to dismiss the charges by the three defendants.

In Brann’s latest ruling, LeBoeuf says, he thinks the judge decided he might have been wrong to close the door on dismissing charges in the Pina and Giraud cases. That might have prompted the call for extra briefing in the Torres case, Le Boeuf said.

LeBoeuf fully expects the Trump administration to engage in judge-bashing if Torres walks free.

“We operate under the rule of law. When the rule of law is broken, the way it has been here, there has to be remedy. It’s a proper remedy for a constitutional violation. They have violated the Constitution, and what is being sought is a proper remedy for a constitutional violation,” he said.

LeBoeuf likened the circumstances to *Mapp v. Ohio*, a 1961 U.S. Supreme Court ruling which held that illegally obtained evidence cannot be the basis of a prosecution.

“What happens when the evidence gets suppressed? The case must be dismissed. And the language of Justice [Thomas Campbell] Clark in *Mapp* is the criminal goes free. If the criminal has to go free, he does, but the rule of law remains,” LeBoeuf said.

Jacob Elberg, a professor at Seton Hall University » Page 6

Enforcement of ‘Made in America’ Claims Likely to Intensify, Lawyers Say

BY DAN NOVAK

MANUFACTURERS that label their products as “Made in America” should expect increased scrutiny after President Donald Trump signed an executive order last week targeting such claims, regulatory attorneys said.

The order, signed March 13, directs the Federal Trade Commission to “consider” writing regulations requiring online retailers to verify products that claim to be made in the United States. Under FTC rules finalized in 2021, a product labeled as “Made in America” must be “all or virtually all” made in the United States.

It would be quite difficult for an online third-party retailer to verify that a product sold on their websites is truly made in the United States, said Cozen O’Connor member Richard Fama. Manufacturers themselves already struggle with whether to label their products “Made in America,” he added.

In addition, the FTC rule requiring that “virtually all” of a product must be made in the U.S. is vague, and it can get tricky when a product is manufactured in the United States but its parts are sourced internationally, Fama said. Often, companies are totally unaware of the FTC’s regulations, he added.

There are likely many cases of Chinese manufacturers making false Made in USA claims for products sold by online retailers, said Frankfurt Kurnit Klein & Selz partner Holly Melton. It’s difficult for the FTC to target the Chinese companies directly, so a rule could force retailers to help sniff them out, she added.



Federal Trade Commission building in Washington, D.C.

But a rule requiring sellers to verify the origin of products sold on their sites is “unwieldy and how that would ever work in practice is completely unclear,” Melton said. “I don’t think it’s something that an Amazon or a Walmart can do.”

Fama said the executive order strongly suggests a ramp-up of enforcement surrounding country-of-origin claims.

“I think it’s important to get the word out that this is a priority in the administration and compliance is going to be expected,” he said. “And if there’s not compliance, there’s probably going to be ramifications for that.”

The order also directs federal agencies to review and verify products marketed as made in America sold to the U.S. government under the Buy American Act—a 1933 law that requires the federal government to prioritize procuring American-made products. If a company is found to have made a false country-

of-origin claim, the agencies should remove the products from government procurement availability and refer the company to the Department of Justice, “which may pursue actions under the False Claims Act,” the order states.

Melton said the executive order grouped together differing legal standards for advertising and government procurement without distinguishing between the two. Some manufacturers sell products that may satisfy the Buy American Act but not the FTC’s requirements, which are far stricter, she added.

“The fact that they’re addressing them all in one place just kind of conflates the standards in some ways and can really confuse companies, particularly if they sell to consumers and want to sell to the government,” Melton said.

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Perspective

Responding to Cyrus Vance’s Op-Ed On Etan Patz, Pedro Hernandez and The ‘Erosion of Trial Verdicts’

BY HARVEY FISHBEIN, ALICE FONTIER AND ALEXANDRA KATZ

On March 10, former Manhattan District Attorney Cyrus Vance Jr. published an opinion piece in these pages titled, “When Judges Override Juries: The Etan Patz Case and the Erosion of Trial Verdicts.” Vance’s piece, which principally attacks the Second Circuit’s decision in *Hernandez v. McIntosh*, 146 F.4th 142 (2d Cir. 2025), is simply wrong as to the facts.

A decision issued nearly eight months ago found that Hernandez’s conviction, secured under Vance’s supervision as DA, was obtained in violation of clearly established federal law. In particular, the Second Circuit overturned the murder and kidnapping convictions of Pedro Hernandez, a man with an IQ of 70 and documented history of mental illness that makes him prone to delusions and hallucinations.

The conviction turned entirely on the asserted confession of Hernandez, which was obtained in 2012, more than 30 years after Patz’s disappearance. The confession was obtained after nearly seven hours of unrecorded, unmirandized stationhouse interrogation during which Hernandez repeatedly asked to go home and voiced concern that the detectives were trying to pin a crime on him which he did not commit. An exhausted and worn-down Hernandez, whose psychiatric condition and severe intellectual limitations make him highly suggestible, finally agreed with the detectives and said that he kidnapped Etan Patz, the six-year-old boy who famously disappeared on his way to school in 1979.

Only then did the police turn on the video camera for the first time, administer Miranda warnings and demand that he repeat that statement, guiding him through the narrative and supplying details along the way. That asserted confession was the sum total of the people’s evidence against Hernandez. Despite a groundswell of public doubt that Hernandez’s confession was true, and without a shred of evidence to corroborate it, Vance nonetheless decided to prosecute him.

Hernandez’s first trial, at which the jury, consistent with New York law, was entitled to evaluate the voluntariness of the asserted confessions, ended in a mistrial after a juror gave weight to the defense that his confession was “coerced.”

The jury at a second trial convicted Hernandez but struggled mightily with the strength of the prosecution’s evidence. During deliberations, it sent a note to the judge asking whether, if it found Hernandez’s initial, unmirandized confession was involuntary, it should disregard the post-warning statements, including the recorded confession that immediately followed the warnings.

Over the defendant’s strenuous objection, the trial judge answered with one word: “No.” That answer was clearly wrong. The Second Circuit’s opinion in Hernandez, authored by Judge Guido Calabresi, was careful, thorough, and unanimous. Under clear U.S. Supreme Court precedent, the answer was not “no”; it was “maybe.” And critically, it was “yes” with respect to the video-recorded “confession” obtained immediately after Hernandez was belatedly provided with his Miranda warnings.

It was an enormous error that impacted the central issue in the case and was issued to a jury that already had doubts about the voluntariness of Hernandez’s statements, the only evidence of his guilt. That error, the Second



A 1979 poster, issued by the New York Police Department, depicts the missing Etan Patz.

Circuit correctly concluded, was “manifestly prejudicial” to Hernandez. He was and is entitled to a new, fair trial.

Vance characterizes the Second Circuit’s decision as one based on “sympathy” and “appellate override” based on a “selective accounting” of the evidence. No one who reads the Second Circuit’s unanimous decision will find those characterizations to be remotely accurate.

Notably, five different federal judges found that the state court’s answer to the jury’s note was manifestly incorrect. Magistrate Judge Robert Lehrburger found that even under AEDPA’s (Antiterrorism and Effective Death Penalty Act) deferential standard for habeas cases, the trial court’s response to the jury’s note was “neither meaningful nor responsive to the jury’s request,” was “so deficient as to deprive Hernandez of due process,” and “violated Hernandez’s Fifth Amendment rights.”

District Judge Colleen McMahon similarly found that the state trial court’s handling of the note “failed to give the jury any meaningful guidance on how to evaluate the central issue in the case.” And as the Second Circuit further held, the people could not meet their burden of proving, beyond a reasonable doubt, that the error was harmless given that the voluntariness of Mr. Hernandez’s confession was “the central issue in the case.”

Shortly after the Hernandez decision was issued, Vance told *The New York Times* that he “respected” the Second Circuit’s decision. Why now, many months later, does Vance reverse course and accuse it of “sympathy” based judicial activism? While only Vance can answer that question, it should be lost on no one that the current Manhattan District Attorney, Alvin Bragg, is preparing to retry Hernandez later this spring.

This might explain why so much of Vance’s piece has little to do with the law—Bragg’s Office has separately asked the Supreme Court to review the case—and focuses instead on details about the private suffering of the Patz family. He comments, for example, on how terrible the Hernandez decision was for Etan’s father, Stan. He shares how Etan’s mother, Julie, “worn to the bone by decades of grief,” has since passed away. And although

the Patz family has “declined to comment publicly after the verdict,” Vance attempts to speak for them, explaining how they felt “they could finally move forward with their lives” after the verdict but now, after Hernandez, suffer “yet another proceeding.”

Equally troubling are Vance’s mischaracterizations of the facts of the case, mischaracterizations that may be lent undue weight because of his former position. For example, he suggests that Hernandez knew facts that “could only have come from the killer himself.” That claim simply derives no basis in fact. Neither Etan nor his body has ever been found. The only evidence presented that Etan Patz was dead or the way he presumably died is the asserted confession of Hernandez, who wrote that he “shoked” Patz, but only after asking the NYPD detectives how to spell the word “choked.”

In a March 12, post on social media promoting his article, Vance described Hernandez as Etan’s “killer.” This is despite the fact that a jury will be correctly instructed, just weeks from now, that Hernandez has been convicted of nothing and is presumed to be innocent. As a lawyer and citizen, Vance is entitled to his views. As the former district attorney, he is not entitled to attempt to mislead and influence a potential jury pool, particularly through half-truths and misleading characterizations of the record.

Pedro Hernandez has now spent 14 years in prison for a crime to which he has entered a plea of not guilty and steadfastly maintains his innocence. The only conviction, obtained in violation of federal law, has been thrown out. Should the district attorney’s office go forward with a third trial this spring, Mr. Hernandez is entitled to the one thing Vance and his office denied him more than a decade ago: a fair trial.

HARVEY FISHBEIN is an NYC criminal defense attorney, ALICE FONTIER is a project managing attorney with the Criminal Defense Practice at The Legal Aid Society, and ALEXANDRA KATZ is a staff attorney with The Bronx Defenders.

Questions? Tips? Contact our news desk: editorialnylj@alm.com

Expert Analysis

TAX LITIGATION

Credit Bidding: A Critical Tool for The Executing Judgment Creditor

A property execution is the device by which a judgment creditor forces the sale of the judgment debtor's interest in specified non-exempt real or personal property. The sales are conducted by a sheriff (real or personal property) or in New York City, by a city marshal (personal property only). Some New York sheriffs, including, recently, the New York City Sheriff, have adopted a policy prohibiting judgment creditors from "credit bidding" at an execution sale without a court order. A credit bid permits a judgment creditor to bid in at the sale up the amount of the Judgment without having to pay the Sheriff in cash, because the cash would only be paid back to the judgment creditor after the sale closed, less the Sheriff's fees (poundage).

Rules preventing credit bidding present a risk to a judgment creditor. Without the ability to credit bid, valuable property may be sold for a pittance. If that happens, the debtor's property is gone and there is nothing the judgment creditor can do except fume.

It is unclear where the no credit bidding policy came from, but regardless, it makes no sense and is not supported by law. It is time for our sheriffs to review their policies on credit bidding and allow it as a matter of course.

Execution sales are governed by CPLR 5233 (personal property) and CPLR 5236 (real property). Neither prohibits credit bidding. Execution sales of course require cash bids, *Rowe v. Granger*, 118 A.D. 459 (3d Dep't 1907), but that only forecloses bidding based upon a loan or mortgage commitment, not a judgment creditor's bid based upon the debt he is seeking to collect, which is a cash equivalent, as good as a certified or bank check, which are accepted at execution sales.

Though the CPLR is silent about the bidding process at execution sales, credit bidding by judgment creditors has been recognized in

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By
Bernard
D'Orazio



New York for more than 200 years. The leading case is *Nicholas v. Ketcham*, 19 Johns. 84, 1821 N.Y. Lexis 37 (Sup. Ct. Judicature 1821).

There, New York's then-highest court (the predecessor to today's court of Appeals) held that "[i]t would be unreasonable, and injurious to debtors as well as creditors, to insist that the creditor on the execution should advance money on his bid, when the sole object of the sale is to put money in his pocket, by paying a debt due to him."

It is unclear where the no credit bidding policy came from, but regardless, it makes no sense and is not supported by law. It is time for our sheriffs to review their policies on credit bidding and allow it as a matter of course.

This *Nicholas v. Ketcham* precedent from New York's highest court, while ancient, remains good law and should resolve any question about credit bidding, as recognized in the leading treatises. See B. Bergman, *New York Mortgage Foreclosures* §2.13 (2014) ("the judgment creditor can apply his bid as a credit on the judgment, thus having to avoid the charade of paying cash and immediately getting it back") (citing, inter alia, *Richter v. Targee St. Internal Med. Group, P.C.*, N.Y.L.J., Jan 30, 2004, at 21 (Sup. Ct. Richmond County 2004), and *Nicholas v. Ketcham*, supra); Weinstein-Korn-Miller, *New York Civil Practice* ¶5233.03 (Sheriff's sale is generally for cash, except where bid is from the judgment creditor) (citing *Richter* and *Nicholas v. Ketcham*).

Recently, in *255 Butler Assoc. LLC v. 255 Butler, LLC*, 2023 NY Slip Op 33053[U] (Sup. Ct. Kings County 2023), Justice Leon Ruchelsman thoroughly reviewed the history and precedents on credit bidding and found no reason it should not be allowed at an execution sale. The Court reviewed and rejected critiques of credit bidding as "unpersuasive and "surely the minority view," explaining:

First, it is inaccurate to assert a credit bid does not exactly match the same results of a cash bid. As some commentators have observed "the value of the secured creditor's credit has a discrete and easily identified cash value. Forbidding credit bidding on the ground that credit is not cash is tantamount to prohibiting cash bidders from bidding with two fifty-dollar bills in lieu of a single, hundred-dollar note (see, Credit Bidding and the Design of Bankruptcy Auctions, by Vincent Bucola and Ashley Keller, *George Mason Law Review* [Fall 2010]).

Further, concerning the argument credit bidding chills competition "there is nothing about the argument specific to credit bidding. Instead, the argument rests on the notion that bidders with deep pockets may deter bidders with limited resources. For instance, if a would-be bidder knows that Warren Buffett plans to attend an auction, she is also surely aware that Buffett can top her reservation price for any or all of the assets on the block. Yet nobody proposes to ban wealthy cash bidders from participating in a bankruptcy auction" Therefore, a survey of credit bidding demonstrates that there is no real basis to forbid its practice. *255 Butler Assocs. LLC v. 255 Butler, LLC*, 2023 N.Y. Misc. LEXIS 5343, *6-7; see also *FT Glob. Cap., Inc. v. Future Fintech Grp., Inc.*, 2025 U.S. Dist. LEXIS 19111 (S.D.N.Y. 2025) ("judgment-creditors may bid on credit") (citing *255 Butler*).

There are numerous unreported cases allowing credit bidding as well. See, e.g., *Tecknowledgely Inc. v. Gala Power Tech., Inc.*, Index No. 601242/09 (Sup. Ct. N.Y. County 2012) (Scarpulla, J.); » Page 7

Expert Analysis

ARBITRATION

RWI Claims Are Won Before They Are Filed

BY ISAAC GREANEY,
DAN HOFFMAN
AND MICHELLE CHO

Representations and warranties insurance (RWI) has become a standard feature of private equity transactions. For buyers, RWI policies promise faster deal execution, cleaner exits from seller disputes, and protection against overpayment caused by unknown breaches. In theory, when a breach emerges, the buyer submits a claim, the insurer evaluates and covers the loss, and the policy performs as intended.

But in practice, many straightforward RWI claims get bogged down in protracted, expensive, and distracting disputes—often lasting years and ending in arbitration hearings that do not resemble the "efficient insurance recovery" buyers thought they purchased. This disconnect surprises many private equity sponsors. After all, the claim value is often modest relative to the deal size, the breach seems clear, and the policy was negotiated for this exact scenario.

The central premise we outline below is simple: imagining how a full arbitration would play out before submitting a claim materially improves outcomes, whether the dispute ultimately settles or proceeds to a hearing. Early discipline allows sponsors to assess realistic recovery, preserve credibility, limit insurer delay tactics, and meaningfully improve both settlement and arbitration results.

Market data underscores why the topic matters. Aon reports that through Q4 2024, its North American clients recovered more than \$1.4 billion in RWI-related claims, with over \$300 million paid in 2024 alone and a record median claim payment of \$5.5 million. These figures confirm that recoveries are real—but they also hint at why the path to payment deserves the

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same strategic attention sponsors bring to the deal itself. Aon Transaction Solutions, Transaction Solutions Global Claims Study (North America) (2024).

Why Pre-Notice Strategy Matters

Many sponsors begin thinking seriously about strategy only after a claim has been submitted and the insurer begins pushing back. By that point, key choices have already been made—often by deal teams or claims consultants acting without a disputes-oriented mindset.

A more effective approach is to step back before notice and ask: if this ends up in arbitration eighteen months from now, what will matter

Finally, it positions the policyholder to avoid delay. Insurers are repeat players in RWI disputes; private equity sponsors are not. Without a deliberate plan to 'push' the insurer, claims can drift and months turn into years.

most—and what will we wish we had done differently at the start?

That exercise yields several immediate benefits.

First, it forces realism. Not every breach will lead to a full policy recovery once proof burdens, exclusions, experts, and costs are considered. Understanding the risks of arbitration and cost of recovery early allows sponsors to decide whether the claim makes economic sense and on what terms.

Second, it encourages precision. Early claim submissions frequently include overconfident factual assertions, broad descriptions of breach, or damages estimates that later prove difficult to support. These misstatements or embellishments—which may seem trivial in a notice of claim—are magnified when pre-

sented to arbitrators months later.

Third, it reduces discovery distraction. Insurers frequently seek internal claim assessments, deal-team communications, and analyses created during the claims process itself. Internal work that is not properly protected with counsel can quickly become a discovery sideshow, diverting attention from the merit of the claim.

Finally, it positions the policyholder to avoid delay. Insurers are repeat players in RWI disputes; private equity sponsors are not. Without a deliberate plan to "push" the insurer, claims can drift and months turn into years.

None of this requires turning the claims process into litigation on day one—but it does require approaching the process as Phase One of a potential arbitration as that is where many claims disputes ultimately land.

An Arbitration Mindset From Day One—Without Replacing Deal Counsel

One of the most common early missteps in RWI claims is allowing the process to be driven exclusively by deal teams or transactional counsel. Deal counsel know the transaction, the parties, and the policy better than anyone—and their involvement is indispensable. But deal teams are not naturally oriented toward contentious claims, building an evidentiary record, or anticipating expert battles.

The solution is not to replace deal counsel, but to adopt an arbitration mindset early, by involving disputes counsel who are prepared to arbitrate the case if necessary and who can work collaboratively with deal counsel to best position the claim.

When done correctly, this need not materially increase cost. Early involvement allows disputes counsel to shape the record, guide information exchange, push back on insurer delays, and stress-test damages without duplicating transactional work—often narrowing issues and improving the odds of earlier resolution. » Page 7

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Global Report

Akin Hires Leader From Rival as It Joins Rush to Build in Saudi Arabia

BY KRISHNAN NAIR

AKIN Gump Strauss Hauer & Feld is hiring Addleshaw Goddard’s Saudi Arabia co-head, and the Riyadh office’s co-founder, in a move that reflects a wider appetite among U.S. firms to expand in the Kingdom.

Ibrahim Siddiki, an M&A and private equity partner, helped found Addleshaw’s Riyadh office in 2023, joining several other large international firms flocking to the Kingdom after authorities relaxed restrictions on foreign law firms operating there. He will become the Riyadh office’s co-partner-in-charge alongside partner Alexander Malahias.

He counts several large local businesses in his client base, including Investcorp Gulf Opportunity Fund, Sadara Chemical Company, and Alamar Food Company. Before joining Addleshaw Goddard in 2021, he was a partner in Bracewell’s Dubai office.

Still a relatively small player in the Kingdom, the addition of Siddiki brings Akin’s Riyadh office up to three partners.

“Saudi Arabia is one of the most dynamic and fast-growing markets globally, and a core pillar of Akin’s long-term strategy in the Middle East,” said Akin co-chair, Abid Qureshi in a statement. “Ibrahim’s market reputation and technical strengths align exceptionally well with our clients’ needs in the Kingdom. His appointment underscores our continued commitment to building a market-leading presence in the region.”

Saudi has been a high growth location for many Global 200 law firms. Throughout 2025, deal flow in Saudi slowed thanks to rising oil prices and project costs, but



King Abdullah Financial District in Riyadh, Saudi Arabia

it is expected to bounce back significantly later in 2026. This is expected to be driven in part by the Kingdom’s Vision 2030 growth project, which has been behind several significant deals, including the largest-ever leveraged buyout in 2025, in which Saudi’s Public Investment Fund led a private equity consortium to acquire Nasdaq-listed games maker Electronic Arts for \$55 billion.

A sweep of U.S. firms are advising on the deal, including a global Kirkland & Ellis team that involved several Riyadh partners, as well as Wachtell, Lipton, Rosen & Katz, Sidley Austin and Simpson Thacher & Bartlett.

Several people say the deal has been viewed as a potential boon for U.S. firms in the Kingdom, with large Saudi backers like PIF seeking foreign investment targets. Earlier this month, Gibson Dunn & Crutcher brought in Linklaters’ Saudi managing partner, Waleed Rasrommani, growing its Kingdom

presence to nine partners, which matches Latham & Watkins’ total and compares favourably to the eight at Kirkland & Ellis—another global firm considered competitive in the region. Linklaters, meanwhile, shrunk in the city to just two partners.

Meanwhile, Addleshaw also has just a few partners dedicated to Riyadh, but draws from lawyers across the Middle East, including from the UAE.

An Addleshaw Goddard spokesperson wished Siddiki all the best and added that the firm continues to “build out our Middle East business”. Its recent appointments include Jad Slim as a corporate partner in the Kingdom, UAE partner Naji Hawayek, and partners Andrew Carter, Matthew Williams and Richard Davies into the firm’s new Abu Dhabi office. The firm expects to add more partners in the region in the first half of the year.

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K&L Gates Advises Vietnam Airlines On \$8 Billion Boeing Aircraft Deal

BY JESSICA SEAH

K&L Gates has advised Vietnam Airlines on its agreement with aircraft manufacturer Boeing to purchase 50 Boeing 737-8 aircraft in a transaction valued at more than \$8 billion, marking one of the airline’s largest aircraft orders to date.

The deal forms part of Vietnam Airlines’ long-term fleet modernisation strategy, aimed at expanding capacity, improving operational efficiency and enhancing service quality, the airliner said in a statement. The aircraft are expected to be deployed on domestic and regional routes across Asia.

K&L Gates’ team on the deal was led by Singapore-based partner Duc Nguyen and included finance practice area leader Robert Melson in Tokyo.

K&L Gates has a substantial aviation and asset finance practice in Asia, typically led out of its Tokyo outfit, where at least five of its part-



Vietnam Airlines’ Boeing 787-9 Dreamliner

ners focus on aviation and asset finance deals. The firm has notable experience in advising lenders and Japanese leasing companies on their aircraft leasing deals.

Two years ago, K&L Gates hired Nguyen and Samuel Kolehmajnen in Singapore from legacy Herbert Smith Freehills. The duo helped the firm launch its

aviation-focused offering in the city state. Months later, Nguyen acted for Crédit Agricole CIB in providing Southeast Asia’s first-ever sustainability-linked loan to Cebu Pacific, a Philippines-based low-cost carrier.

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Top 50 Firm Dechert Loses Another Partner To Simmons & Simmons in Paris

BY RICK MITCHELL

SIMMONS & Simmons has hired Dechert Paris funds formation partner Cyril Fiat to rebuild and lead the Paris funds formation practice that lost an eight-lawyer team to Proskauer in November 2024.

Fiat leaves Philadelphia-founded Dechert, No. 43 on the Global 200, with \$1.51 billion in global revenue, for London-headquartered Simmons, which ranks 84th with revenue totaling \$786 million.

Dechert also lost a funds partner this week to Paul, Weiss, Rifkind, Wharton & Garrison in London.

Fiat is arriving solo to rebuild Simmons’ Paris funds team, which now has two associates, a Simmons spokesperson said in an email. The firm did not immediately respond to additional questions about its plans for the team.

In moving to Simmons, Fiat joins his former Dechert colleague and longtime cross-border transactions partner Ermine Bolot-Massé, who left Dechert for Simmons in January. Simmons has made a flurry of hires across its international offices in the past few months.

Fiat spent six years as a partner at Dechert, after serving in-house at the World Bank in Washington, D.C., advising on investments for its approximately \$27 billion pension fund, according to his LinkedIn profile. He earlier spent time at Clifford Chance’s Paris and London offices and at Ashurst and Mayer Brown in Paris. He’s a current legal committee member at France Invest, a trade association representing private equity, venture capital, private debt, and infrastructure players.



Cyril Fiat, partner at Simmons

Fiat’s clients include asset managers, investment firms, credit institutions and institutional investors. He advises on structuring and fundraising for private investment funds, including creation of French and international fund vehicles, and on regulatory matters.

Simmons said its Paris office now has 34 partners. Dechert has been contacted for comment.

Clyde & Co Loses Two-Lawyer Disputes Team in Paris

London-based Clyde & Co. has lost its Paris managing partner and arbitration chief, Nadia Darwazeh, to Vanguard International Dispute Resolution, a Paris-headquartered boutique.

The U.K.-educated Darwazeh, who brought an associate with her, has over 25 years of experience acting as counsel in commercial

and investor-state arbitrations and regularly sits as arbitrator, according to her LinkedIn profile.

Darwazeh had been a partner at Clyde & Co since 2018 and was a partner at Curtis, Mallet-Prevost before that. She spent three years at the Paris-based International Chamber of Commerce as counsel in charge of the Europe, Middle East and Africa team, after working for three years as counsel at O’Melveny & Myers’ Shanghai office. She also was an associate in Shearman & Sterling’s Frankfurt office.

Vanguard International, not connected with the U.S. international investments group, was founded in 2025 by Sophia Von Dewall and Melanie Van Leeuwen, former partners at arbitration specialist Deraïns & Gharavi International.

Van Leeuwen is chair of the ICC Commission on Arbitration and Alternative Dispute Resolution.

“I am very excited about the new home!” Darwazeh said in a text message. She said that Vanguard International, although founded in France, “is not really a French boutique. All the partners are international,” with a 12-member team from around the world. The firm’s website lists seven lawyers, including three partners.

Despite Darwazeh’s departure from Clyde & Co, international arbitration remains a core focus for the firm, according to a firm spokesperson, who noted that it has nearly 200 partners and approximately 400 lawyers worldwide specializing in the field.

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Simpson Thacher Error Prompts UK Competition Watchdog To Extend Decision Deadline

BY OSCAR GLYN

SIMPSON Thacher & Bartlett’s failure to meet a deadline has prompted the U.K. Competition and Markets Authority to extend the deadline by which it had to make a final order on the acquisition of Entier by Aramark.

Pushing back its own deadline by six weeks, a group made up of CMA panel members, known as the ‘inquiry group’, said in a statement that it “will not be possible to discharge its statutory duty under section 41(2) of the [of the Enterprise Act 2002] within the original period”.

The CMA required Aramark to unwind its purchase of Entier due to antitrust concerns in January. Shoosmiths worked on the original transaction; but when the CMA expressed concern over the transaction, Simpson Thacher was instructed, according to those with knowledge of the case. Aramark had intended to appeal the decision, but due to an “unfor-



Aramark headquarters in Philadelphia

unate linguistic confusion” Simpson Thacher failed to meet the deadline for filing an appeal in February. An application for extension of the time period to appeal was rejected in a Competition Appeal Tribunal last week, as Simpson Thacher failed to demonstrate “exceptional circumstances”.

James Wolffe KC presiding over the tribunal, said: “I am not convinced that a professional negligence action against Aramark’s solicitors would be an inadequate

remedy for the loss of the opportunity to challenge the decision.”

In a statement issued after the tribunal loss, Aramark said: “We are very disappointed with the decision of the Competition Appeal Tribunal and are reviewing our options including an appeal.”

Simpson Thacher had not responded to a request for comment at the time of publication.

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The Advisory Committee on Judicial Ethics responds to written inquiries from New York state’s approximately 3,600 judges and justices, as well as hundreds of judicial hearing officers, support magistrates, court attorney-referees, and judicial candidates (both judges and non-judges seeking election to judicial office). The committee interprets the Rules Governing Judicial Conduct (22 NYCRR Part 100) and, to the extent applicable, the Code of Judicial Conduct. The committee consists of 28 current and retired judges, and is co-chaired by the Honorable Debra L. Givens, an acting justice of the supreme court in Erie County, and the Honorable Lillian Wan, an associate justice of the appellate division, second department.

Opinion: 25-149

Digest: On these facts, a judge may mentor an individual who appeared before the judge nine years ago on a guilty plea to traffic infractions and a violation, where the individual has fully satisfied all terms and conditions of the sentence and has no matters pending.

Rules: 22 NYCRR 100.2; 100.2(A), (B); 100.4(A)(1)-(3); Opinions 23-92;

23-33; 22-55; 20-55; 16-124; 16-34; 14-181; 05-140.

Opinion: A judge asks if he/she may accept an unexpected request from a former criminal defendant “to serve as [his/her] mentor” with a focus on educational and career advice. The defendant appeared before the judge on a single occasion nine years ago. The case had been before another judge for trial, but the parties negotiated a plea “reducing the charges to [a violation] and various traffic infractions” and the matter was transferred to the inquirer for allocation. The sentence imposed by the inquiring judge “included a conditional discharge, fines, surcharges, and community service, all of which have been fully satisfied.” The judge understands that the defendant has had no encounters with the criminal justice system in the past nine years, and no aspects of the prior conviction remain open. The request for mentorship was made independently on the defendant’s own initiative, and not through any agency.

A judge must always avoid even the appearance of impropriety (see 22 NYCRR 100.2) and must always act in a manner that promotes public confidence in the judiciary’s integrity and impartiality (see 22 NYCRR 100.2[A]). A judge must not

allow family, political, or other relationships to influence the judge’s judicial conduct or judgment (see 22 NYCRR 100.2[B]). A judge may nonetheless participate in extra-judicial activities that are compatible with judicial office and do not (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) detract from the dignity of judicial office; or (3) interfere with proper performance of judicial duties (see 22 NYCRR 100.4[A])(1)-(3)).

We have “recognized that the community benefits from having judges take an active part in community affairs whenever possible” (Opinion 23-92 [citations omitted]). A judge may therefore serve as a mentor in circumstances where the mentorship is “not likely to create an appearance of impropriety or involve the judge in impermissible activities” (Opinion 23-33). For example, a judge may mentor applicants seeking to obtain a nomination to one of the nation’s military service acad-

Judicial Ethics

Opinions From the Advisory Committee On Judicial Ethics

emies (see id.); may mentor foster youth through a city agency (see Opinion 22-55); may mentor high school students through a program organized by a not-for-profit chamber of commerce” (Opinion 20-55); “may mentor a high school student through a not-for-profit mentorship program” (Opinion 16-124); and may participate as a panelist and mentor in a philanthropic, non-commercial luncheon for young members of a minority group (see Opinion 16-34). Of particular note, we have said a judge may participate as a “mentor/life coach” in a ministry for formerly incarcerated individuals returning to society, where the participants “have been released and are no longer subject to supervision by any probation or parole authority” (Opinion 05-140). We emphasized that the judge may not interact with “law enforcement agencies or other courts on the participant’s behalf” nor “provid[e] employment recommendations” (id.). We also “cautioned” the judge “not to

participate with anyone who has previously appeared before him/her and not to advise anyone who may appear before his/her court” (id.).

Conversely, we have advised that a judge may not serve as a mentor to “a teenager who recently appeared before the judge as a respondent in a Persons in Need of Supervision truancy proceeding” (Opinion 14-181). Notwithstanding the judge’s willingness to “immediately forward the case for reassignment” and a clearly well-intentioned desire to provide “personal guidance and social support” to a vulnerable teenager, we found that the proposed mentoring relationship would create an appearance of impropriety (id.). After reviewing other opinions where we found impropriety in a judge’s “proposed personal interaction with a litigant concerning the subject matter of the case that was (or had been) before the judge,” we then explained (id. [citations and footnote omitted]):

It would directly interfere with the proper performance of the judge’s judicial duties, in that it would require the judge to disqualify him/herself from a specific pending matter which is properly before the judge. It could also potentially cast doubt on the judge’s impar-

tiality in the present truancy proceeding, or raise questions about the judge’s ability to be impartial in PINS cases generally, as other alleged truant might reasonably fear the judge was, in effect, biased against them because he/she did not offer to mentor them.

We find Opinion 14-181 readily distinguishable. Here, the defendant appeared before the judge on a single occasion nine years ago, and has long since satisfied all terms and conditions of the non-carceral sentence then imposed. The defendant has had no further connection whatsoever with the judge, the judicial system, or the judge’s court. Also unlike Opinion 14-181, this defendant’s prior case did not involve truancy or delinquency proceedings, or any other subject matter that could directly suggest a need for mentorship. That is, the proposed mentoring relationship will focus on educational and career advice completely unrelated to the subject matter of the prior criminal case.

Accordingly, on the facts presented, we conclude the judge may mentor the former defendant on education and career matters, subject to generally applicable limitations on judicial speech and conduct.

Off the Front / Expert Analysis



Legal Aid

« Continued from page 1

“Legal Aid has evolved alongside this city. And like New York, we are alive and well,” he said. He emphasized that under Carter’s leadership, Legal Aid is poised to “reimagine justice for the next century.”

While the organization looks to the future, it remains rooted in tradition. “Access to equal justice for all New Yorkers must be expected, not the exception,” Levine said.

Kicking off the panel discussion, Carter grounded the audience with a similar sentiment. “Access to justice should never be determined by your income,” she said.

Throughout history, Legal Aid has been a lifeline for underprivileged New Yorkers facing an overburdened system. Friedman noted that in the early 1900s, the city called upon workers like Legal Aid to help with overwhelming caseloads and overcrowded jails.

“The biggest issue Legal Aid was seeing in terms of criminal cases early on was just how long people were sitting in jail,” Friedman noted. “They felt a lot of these really poor clients were

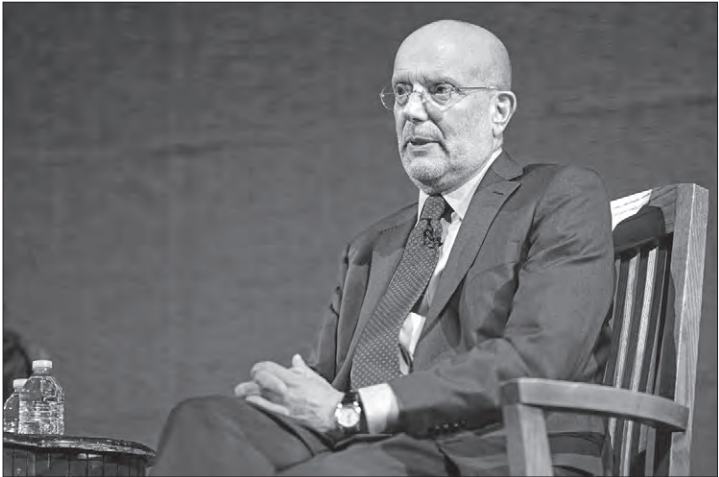
only in jail because they didn’t understand the system or because they couldn’t pay enough to get out,” Friedman added; the modern day parallel wasn’t lost on Hoag-Fordjour. Legal Aid officially established its criminal division in 1920, which has become one of its key pillars.

One of the evening’s most compelling conversations centered on housing rights, particularly the landmark 1983 McCain v. Koch lawsuit. Banks recalled meeting Yvonne McCain, a domestic violence survivor who, along with her children, were placed in a small, rodent-infested hotel room without a refrigerator in Herald Square.

“Nobody should live like this,” Banks remembered McCain telling him when she came to Legal Aid for help. McCain’s decades-long legal battle to help her family and others like it was instrumental in the establishment of New York’s right to shelter. “We cannot do our jobs without people willing to step forward so others can receive justice,” Carter said.

Panelists also analyzed modern issues, including the pressing institutional crisis at Rikers Island. Continuing with the theme of Legal

During a March 18 panel at the New York Historical Society on the evolution of Legal Aid in New York City, a group of speakers included, above from left, **Alexis Hoag-Fordjour**, co-director of the Center for Criminal Justice at Brooklyn Law School; historian **Bekah Friedman**; **Twyla Carter**, attorney-in-chief and chief executive officer of The Legal Aid Society; and **Steven Banks**, 83rd New York City Corporation Counsel and former attorney-in-chief of The Legal Aid Society.



Aid’s past informing its present, Carter drew a line between the organization’s work on the Willobrook case, in which it helped expose abuse at the state institution for the developmentally disabled, and its current role in challenging unconstitutional conditions at Rikers. It is very much in our DNA to take on state institutions and protect people who need it most,” Carter said.

Looking to the future, Carter emphasized the importance of innovation as Legal Aid faces an ever-growing need for its services. Notably, Legal Aid has been working with Columbia Law School to create an AI-assisted helpline. “We get about 40,000 calls a year from people we don’t represent,” she said. “Using AI lets us take in more calls, identify the issues faster and come up with resources and

solutions,” she said, while ensuring that lawyers and supervisors will be checking all AI-produced work.

In addition to tech, Carter cited pro bono work from law firms as one of the key factors that will contribute to Legal Aid’s success in the coming years. She highlighted that while Legal Aid’s public defense work and criminal defense work are constitutionally mandated, its

civil work is not. “The assistance we receive from law firms to do that work is extremely important.”

As Legal Aid continues to face some of the city’s most pressing issues, it’s prepared for the challenge. “We are not going anywhere. We are built for this,” Carter concluded.

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Claims

« Continued from page 3

It also creates an underappreciated opportunity: flexible fee arrangements. From the policyholder’s perspective, RWI recovery often feels like a triple frustration: a breach that caused overpayment, a policy purchased specifically to address that risk, and then years of legal fees to recover on the policy. Flexible fee structures—hybrid or contingent—can reduce that pain by aligning incentives and limiting ongoing legal spend. Early engagement makes these arrangements more feasible because counsel has earlier visibility into the claim and greater ability to control the record heading into arbitration.

Four Early Moves That Drive Outcomes

Across RWI disputes—particularly those involving financial statement and accounting breaches—the following four early actions separate efficient resolutions from drawn-out battles.

1. Engage Arbitration-Ready Counsel Before Notice

Even if counsel initially operates behind the scenes, early involvement pays dividends. Arbitration counsel instinctively assesses what can be privileged or work-product protected, which positions should be carefully caveated to preserve credibility, what information should (or should not) be disclosed, and how to present the noticed claim to survive later scrutiny by insurer’s counsel.

2. Stress-Test Damages and Recovery Economics Early

Claims teams often view damages through a business lens: what went wrong and how much value was lost. Arbitration requires more. Damages theories must be prov-

able, supported by underlying deal documents, investment memoranda, and witness testimony, and resilient to expert attack.

Early stress-testing should include downside scenarios, sensitivity to assumptions, candid assessment of expert dependence, and recovery economics—legal fees, expert costs, and time value of money. One reason “slam dunk” claims drag is that early damages positions are asserted with more confidence than the evidence can ultimately support.

Policyholders should also avoid advancing flawed or incomplete damages analyses. Even where courts reject the argument that an insured is automatically bound by early valuation positions, inconsistent damage theories can still undermine credibility and slow resolution, as a recent Delaware Superior Court decision illustrates. See *Hartree Natural Gas Storage, LLC v. AIG Specialty Ins. Co.*, C.A. No. N22C-05-081 PRW CCLD (Del. Super. Ct. Dec. 9, 2025).

3. Control the Information Exchange and “Lock In” Insurer Views

Insurers rarely want to abandon arguments—on breach, knowledge, loss, or exclusions; nearly every insurer response includes a reservation of rights. Without measured sequencing, the claims process can devolve into a haphazard document dump that invites insurers to raise new issues and forces insureds to play whack-a-mole in response.

That risk is magnified in arbitration. With the benefit of hindsight—and a fully developed record—insurers can reframe the narrative by seizing on stray documents or after-the-fact analyses, distracting the tribunal from the central question: what the deal team actually knew and understood at signing. If the evidence is not presented in a staged, careful way, the case can

drift from that contemporaneous inquiry into an ex post reconstruction colored by information no one had when the representations were made.

Policyholders should take a deliberate approach to what they produce, when, and why—paired with a clear record memorializing the insured’s compliance and confirming that information requests have been satisfied. While insurers are often reluctant to “lock in” their views, arbitration counsel can press for written acknowledgments and position statements that can later be used to prevent the insurer from shifting theories.

For breaches of accounting or financial reps, insurers commonly retain accounting experts to evaluate and investigate. Policyholders should push these experts to memorialize their views in writing. Confirming the expert’s analysis enables policyholders to effectively respond and refute a stable record, rather than chasing a moving target.

4. Create a Delay-Resistant Record

Time is not neutral in RWI disputes. Claims are often small relative to deal value, and sponsors understandably move on to new deals and portfolio performance. Insurers, by contrast, can absorb time, knowing delay creates leverage on the sponsor to settle for less.

Creating a delay-resistant record means tracking requests, responses, follow-ups, and unanswered questions with rigor—and being consistently responsive on the policyholder side. RWI policies often contain strict time limits for insurers to respond, but such limits are only effective if policyholders aggressively enforce them with consistency. Over time, that discipline makes insurer delay increasingly difficult to justify.

Arbitration Changes The Economics—And Not Always for the Better

Many sponsors assume arbitration will be fast and inexpensive. While arbitration may be quicker and cheaper than full litigation, that comparison obscures several realities that matter in RWI disputes.

Arbitrations offer fewer natural off-ramps. Dispositive motions are rare, and arbitrators are less inclined to narrow issues aggressively. Discovery can also “boil the ocean” unless strictly limited by contract. Confidentiality protects intransigent insurers from the reputational risk that might otherwise moderate their conduct on public dockets.

RWI arbitrations also present one-sided discovery. Insurers generally have little to produce beyond a handful of documents regarding their underwriting and claim evaluation. Policyholders, on the other hand, must often produce wide swaths of deal data, financials, transactional documents and investor memos. This leads to a perverse incentive: insurers are encouraged to multiply issues, drag out production disputes, and push for numerous depositions.

These features make early missteps harder to fix and reinforce the importance of pre-notice discipline.

Settlement as Capital Allocation, Not Vindication

For private equity sponsors, RWI settlement decisions should be evaluated as capital allocation decisions, not moral judgments.

Net recovery matters more than nominal policy limits. Legal fees, expert costs, and time value materially affect outcomes. The impact of contractual or statutory interest

and costs should be assessed early, but they rarely provide the upside to offset the expense of protracted arbitration.

Sponsors must also assess probability-weighted outcomes. A strong breach case can still face inherent litigation risks: Will witnesses testify credibly? Will damage experts’ theories hold up on cross? Will arbitrator’s discretion lead to an unexpected award?

Certainty also has value: recovering 75% of a claim now may outperform chasing 95–100% eighteen months later, particularly when recovered funds can be redeployed into the business or improve fund performance.

Structured Accountability Without Posturing

Approaching the claims process with litigation in mind does not mean making threats or invoking bad faith early. In fact, doing so often undermines credibility. A better approach is protective discipline: structured accountability, rigid responsiveness on the policyholder side, and escalation only when the record supports it. Clear follow-ups, direct questions, and documented timelines allow the record to speak for itself.

Practical Takeaways for Private Equity Sponsors

• Pre-notice decisions shape outcomes. The strategy choices made before submitting a claim often determine whether a dispute resolves efficiently or drags on for years.

• Pair deal counsel with disputes counsel early. Transactional expertise is essential, but adding an arbitration-ready perspective improves credibility, record-building, and settlement positioning.

• Arbitration is not “fast and cheap.” Confidentiality, one-sided discovery, and limited off-ramps can work against policyholders who enter unprepared.

• Discipline—not aggression—creates leverage. Structured accountability—tracking, follow-up, documented timelines—builds a stronger record than threats or bad-faith accusations.

Pre-Notice and Early-Notice Checklist

- Before Submitting a Claim
- Engage arbitration-ready counsel (even informally)
- Stress-test damages and net recovery economics
- Assess interest and cost recovery realistically
- Identify likely knowledge, scrape, and interim-breach issues
- Consider early whether seller fraud is in play and how it aligns with the SPA and policy
- After Notice
- Control and sequence the information exchange
- Track requests and responses to create a delay-resistant record
- Push for insurer positions without posturing
- Maintain consistent factual and damages narratives
- Reassess settlement benchmarks periodically

Conclusion

RWI claims deserve the same rigor as the deals they insure. For private equity sponsors, early strategic discipline—grounded in an arbitration mindset—can mean the difference between a swift, rational recovery and years of frustration. The irony is that the best way to avoid arbitration is often to prepare for it before the claim is ever filed.

Credit

« Continued from page 3

Property Clerk v. Baynes, Index No. 400422/10 (Sup. Ct. N.Y. County 2010) (Shulman, J.); *Wood v. Mediterranean Equities LLC*, Index No. 604253/02 (Sup. Ct. N.Y. County 2003) (Moskowitz, J.).

As noted in *Nicholas v. Ketcham*, credit bidding protects both debt-

ors as well as creditors, thereby making it less likely that a valuable property is sold for a small sum. The credit-bidding judgment creditor is there to ensure a fair value is bid. The creditor can place the highest bid, without having to marshal a large amount of cash that would only be paid back to him in the end by the Sheriff.

The winning credit bidder then takes title to the property, stepping

into the shoes of the judgment debtor, the same as any other winning bidder. He will, like any winning bidder, have to pay the poundage due to the sheriff and will take title subject to prior liens on the property, such as a mortgage, and is responsible for taxes, repairs, and maintenance.

He may need to commence eviction proceedings to oust an uncooperative judgment debtor

or other occupant without a lease or right to be there, just like any winning bidder. He will be liable to pay (with cash) the amount of the homestead exemption to the debtor, if that is applicable. See CPLR 5206. The winning bidder can and usually will seek to liquidate the property through a normal course sale; for realty, most likely listing it for sale through a realtor, thereby obtaining a more

substantial recovery in the end.

As things now stand, unless and until the sheriffs revise their no credit bidding policies, the wise judgment creditor should seek a court order allowing credit bidding well before the execution sale date. Such an application can be made by motion in the action under CPLR 5238, which grants the court broad authority to supervise a sheriff in connection with judgment enforce-

ment, by order to show cause to allow for service on the sheriff.

The application should be routinely granted. Experience indicates that credit bidding motions are not opposed by the sheriffs, which is another signal that there is no good reason for making judgment creditors file motions seeking a credit bidding order. Credit bidding should routinely be allowed at all execution sales.

Outside Counsel / Calendar of Events / Off the Front

Evidence

« Continued from page 4
which taken together raised doubts as to authenticity.

Critically, the majority notes that the “fact that much of the video apparently accurately depicted the home is not sufficient...to authenticate the video...the increasing prevalence of ‘deepfake’ videos has only rendered the method of matching circumstantial details in a video to personal observations a more suspect form of authentication.” The majority opinion is adamant that “We do not mean to suggest that the videos here could not have been authenticated...But the evidence of authentication proffered here was legally insufficient. What that means for the next case is that in Family Court, as in all our courts, evidence must be properly authenticated.”

The Court of Appeals’ decision in *Matter of M.S.* marks a significant development in the law governing the authentication of video evidence in Family Court proceedings. It has prompted substantial discussion within the matrimonial and family law bar, with thoughtful practitioners reaching differing conclusions about both the majority’s reasoning and the implications of the dissents.

The authors approach the decision from opposing perspectives. What follows is a professional exchange reflecting a broader evidentiary debate currently underway within the New York legal community. While the authors do not reach the same conclusions, they share respect for the seriousness of the issues presented and took the opportunity to examine them in depth.

At the outset, regardless of how you view the evidentiary standards applied in *Matter of M.S.*, if the conduct alleged in *Matter of M.S.* is true, it should be punished to the fullest extent permitted by law.

The arguments made in the forceful dissents of Justices Troutman and Singas are incorporated into the following Q&A between these two authors:

1. Alan’s Question: Justice Troutman argues that the majority’s discussion of deepfakes was not grounded in the evidentiary record developed in the Family Court proceedings: “Yet no one uttered the word ‘deepfake’ during the Family Court proceedings, nor was there any evidence presented that the portions of the videos depicting sexual abuse were fabricated... the majority creates new and insurmountable hurdles for future authentication of video evidence. As a result, children will be harmed and abusers will escape accountability.” Brett, explain to me how the Court of Appeals can raise an objection never made below to block the video evidence from being authenticated – under what rule, statute, or caselaw is that appropriate?

Brett’s Answer: I approach the issue from a different starting point. Once a challenge is made to the authenticity of a piece of evidence, the implication is that it is fake. That is what unauthentic means. What the Court of Appeals, which I believe was issuing an opinion regarding New York law in general as much as for this one family, was acknowledging is

that modern technology precludes us from being able to fully trust what we see or hear. While the term “deepfake” may not have been in vogue years ago when the case was being litigated below, the premise of being able to manipulate video and audio recordings is not a new concept. This is why the holding in *Patterson* was very instructive. Furthermore, as the majority noted in its decision, there were ways the video could have been authenticated in this case, including by proper presentation of expert testimony. The presentment agency did not properly present such evidence here. I do not see this decision as groundbreaking. It stands for the very simple principle that there is a right way to authenticate audio and video recordings and litigants must follow those protocols should they seek admission of such evidence.

2. Brett’s Question: Agent Baranski’s testimony about what B.W. told him is hearsay. How do you contend that it was something other than hearsay that should have been considered?

Alan’s Answer: First, this is not hearsay. What B.W. told Agent Baranski is a verbal act. Rule 8.47 of the New Rules of Evidence. What B.W. said gives legal significance to the conduct in question – namely, a sex crime. Second, to quote Justice Cardozo in the *Finlay* decision (Court of Appeals), the Court’s role of *parens patriae* requires the Court to do what is best for the interest of the child and must put itself in the position of a “wise, affectionate and careful parent.” The majority opinion is irreconcilable with the mandate of *parens patriae*.

3. Alan’s Question: This is not a case where a plain vanilla image of a living room “matched” another plain vanilla image of a living room. The details surrounding what is shown in the video align with what is shown in the mother’s home and the Appellate Division affirmed Family Court’s factual findings in that regard. Given the Appellate Division’s findings regarding corroborating details, why was circumstantial authentication insufficient?

Brett’s Answer: I respectfully disagree with the suggestion that the majority’s decision undermined existing law. I think it held firm on the long established proposition that in order to authenticate a video, testimony as to the accuracy of the video must be elicited from: (a) somebody who was present for the events or (b) the person who took the video. The majority states that circumstantial evidence is relevant to authenticity, but rejected the premise that circumstantial evidence alone as to identifying features of video can authenticate the video in and of itself. And this makes sense. The whole premise of deepfake videos is that there are many accurate identifying features in the videos that give the impression that what

the viewer is seeing is real. But the ability to change one small aspect of the video calls into question the accuracy of the entire video. That is why the requirement of having somebody who was present for the videoed event or the person who recorded it testify to the accuracy of the video is so essential to ensure authenticity.

4. Brett’s Question: At no time during the underlying trial did the person who made the video testify. At no point during the underlying trial did anybody who was present in the videos testify. The only thing the Family Court judge

‘Matter of M.S.’ has prompted substantial discussion within the matrimonial and family law bar, with thoughtful practitioners reaching differing conclusions about both the majority’s reasoning and the implications of the dissents.

ever heard from anybody who was present during the events of the video was the CAC interview of the child who denied being touched (albeit not convincingly). The person who made the video was a child pornographer who was literally spying on this family. Do you really feel a judge can make a finding of abuse based almost entirely on such a video? Do you not see the potential for abuse in prosecutions if this is the case?

Alan’s Answer / Question: Agent Baranski testified that “he did not observe anything in the videos that led him to believe they had been tampered with or altered.” Baranski “worked exclusively on crimes against children, primarily investigated child pornography and human trafficking, and performed digital forensic work and online undercover work.” Expert testimony can be used to establish that a video truly and accurately represents what was before the camera. How is Agent Baranski’s testimony insufficient?

5. Brett’s Answer: From the majority’s perspective, the foundational questions necessary to establish authentication were not sufficiently developed. As the majority noted: “First, Family Court credited the expertise and testimony of Agent Baranski in determining the videos were not altered. Agent Baranski was concededly familiar with child pornography through his experience, but Erie County never sought to qualify him as an expert (or establish his experience) in video authentication, which is the point. Broad familiarity with a subject does not make someone learned in detecting evidence of tampering or fabrication. Yet Agent Baranski did not testify as to any training or experience in identifying signs of tampering or video alteration that could establish his ability to authenticate as a lay witness. He was not asked whether he examined the videos to look for tampering; whether he used any forensic tool to detect tampering; or even whether he was able to offer a learned affirmative

opinion that the video was not tampered with, as *Patterson* mandates. Instead, the question he was asked about tampering was: ‘[D]id you make any observations that led you to believe that the video footage had been tampered with or altered in any way?’ to which he answered, ‘No’ without elaboration. Agent Baranski himself may have possessed the experience or training necessary to authenticate the videos, but we will never know because he was not asked the important foundational questions.”

It appears with a few more in-depth questions, it was pos-

sible to authenticate the video. All the Court of Appeals did here was to reinforce a standard that has been in place for 27 years and reminded us all that emotionally-charged facts cannot be an excuse to disregard rules of evidence.

6. Brett’s Question: Why do you think the majority wrote: “The rules of evidence apply in Family Court just as much as they apply in any other court.”?

Alan’s Answer: To buttress the majority opinion’s determination that the Family Court overlooked the rules of evidence in this case. However, what the decision reflects – or at least, what the dissents bring to the forefront that the majority does not – is that the Family Court’s factual findings were substantiated. You have referred to these as ‘emotionally-charged facts,’ which raises an important question about how courts are supposed to strike the right balance between context and evidentiary standards. Indeed, they are facts (not speculation), and yet, a speculative, never before raised issue about “deepfakes” trumped the facts found by the Family Court. Justice Singas’ dissent forcefully rejects the majority’s concern about deepfakes as implausible on this record, describing a hypothetical scenario that would require extraordinary technical sophistication undetected by law enforcement, Family Court, and two Appellate Division panels.

7. Alan’s Question: Justice Troutman’s dissent states, “It seems that in the future, a party opposing the introduction of video evidence need only posit, with no evidentiary support whatsoever, that the video might be a deepfake.” Does this concern you?

Brett’s Answer: With artificial intelligence (“AI”) and current technology, all videos and audio recordings warrant careful and methodical scrutiny. To me, this is the gravamen of the decision. We live in a time where videos and audios can easily be manipulated. In order for the court system to rely on this type of evidence, authentic-

ity has to be established by somebody with knowledge. Not a law enforcement officer (an investigator) who spoke to a known criminal (a child pornographer) who broke into the camera system of the Respondent that seemed to show a bad act against the child, who denied it ever happening.

8. Brett’s Question: The presentment agency could have qualified Baranski as an expert and obtained further evidence of authenticity through him. They could have called B.W. in an attempt to authenticate the video. They could have hired their own expert, aside from Baranski, to prove the video was real and not tampered with in any fashion. Given these possible paths to authentication, do you feel the dissent may be overestimating the potentially disastrous impact this decision could have on similar cases?

Alan’s Answer: Not at all. The decision has the potential to open the door to bad actors who will claim, in knee-jerk fashion, that evidence is “fake” – a reflexive objection that risks undermining otherwise reliable evidence. If it is truly the case that the Court of Appeals had *no* avenues available to cure or otherwise rectify what it felt was a question missed here or there below (which I dispute), then a legislative mandate may be in order.

9. Alan’s Question: Shifting to Justice Singas’ dissent, the mother declined to testify and was warned by Family Court that it would draw the “strongest permissible adverse inference against her if she chose to remain silent.” Further, the majority does not acknowledge that the mother denied the boyfriend’s sexual abuse “despite refusing to even watch these videos, or that the mother never argued the videos are fake.” From your perspective, why do those facts not materially affect the authentication analysis or the outcome?

Brett’s Answer: I view those facts somewhat differently. By joining in the authentication objection, the mother effectively challenged the reliability of the videos, even if she did not expressly characterize them as fabricated. I also do not read the majority as treating the adverse inference as irrelevant. Had there been additional admissible evidence of abuse or neglect, the negative inference could well have resulted in the finding against the mother. The problem here was that the only other evidence against her was this unauthenticated video. Thus, the inference alone was not enough.

10. Brett’s Final Question: They say bad cases make bad law. I think the Court of Appeals did an exceptional job preventing this. But anytime a parent who may have allowed a child molester around her children is not held responsible for their actions, the community is going to react negatively. To what extent do you think the

outcome of the case informs your analysis of the majority’s legal reasoning?

Alan’s Answer: Someone may well have said that bad cases make bad law, but clichés are irrelevant here. I could just as easily say that New York courts are charged with protecting the best interests of children. That is quite a broad and powerful mandate. It is hard enough for lawyers and Judges alike to implement the Rules of Evidence with crystal clarity and ongoing consistency. This decision, I believe, will make that task much harder.

11. Alan’s Final Question: Justice Singas’ dissent provides that the majority “essentially, saying the word ‘deepfake,’ throwing up its hands without critical thought, and returning an abused child to an abuser’s care—cannot be the way forward...we cannot—must not—force the choice of either revictimizing child victims by requiring them to testify, or returning these victims to their abusers’ care. Tragically, the majority fails to see that its holding will impose profound harm.” I could not agree more, yet you disagree. Why?

Brett’s Answer: If we allow the rules of evidence to be disregarded or bent when there are tragic circumstances in play, then we undercut our entire justice system. The rules have to apply equally to the hardest circumstances and to the most benign. We absolutely want to protect children from those who abuse them. In fact, there are statutes in child protective matters, such as 1046 of the Family Court Act, that relax rules of evidence in certain circumstances in these Article 10 cases. But we must also equally guard against false allegations of child abuse too. These situations also tear apart families and can cause tremendous damage to children and parents alike. The law finds the balance between these two competing principles through a trial that has long-established rules of evidence. These rules aim to ensure that only authentic materials are admitted into evidence. One such piece of evidence is the out-of-court forensic interview with the child, which can be the basis of a finding if the child’s statements are corroborated. Thus, children do not need to testify in these proceedings. But what is necessary is some authenticated evidence of abuse and neglect, particularly when the child denies the abuse. As I have said previously, I do not think this is unreasonable and do not think it is tragic in any manner.

Regardless of where one lands on the *M.S.* decision, it remains as important as ever that we keep our discourse civil, even when we disagree. While many of us may find the decision incorrect on the law and/or overall objectionable, and while others find it to be a reiteration of well-established evidentiary rules, the decision stands as the law of the land in New York and it is incumbent upon all lawyers to accept the decision, and adapt to it accordingly based upon the facts of our own cases. The practice of law demands no less.

Calendar

FRIDAY, MARCH 20

NY State Bar (CLE)
Basics of Mortgage Foreclosures
nysba.org/events/basics-of-mortgage-foreclosures-2/
1.5 CLE credits; Virtual

NY City Bar (CLE)
Artificial Intelligence, M&A and Antitrust: Emerging Trends Lawyers Need to Know
10 a.m. - 3:30 p.m. (Includes Networking Luncheon)
4 CLE credits
Registration Link: *https://services.nycbar.org/EventDetail?EventKey=ART032026&mcode=NYLJ*
Media Contact: Eli Cohen: *ecohen@nycbar.org*
Location: 42 West 44th Street

NY City Bar (Non CLE)
Friday Evening Chamber Music at the City Bar
6:30 p.m. - 8:30 p.m.
Registration Link: *https://services.nycbar.org/EventDetail?EventKey=FCM031326&mcode=NYLJ*
Location: 42 West 44th Street
Contact: 212-382-6663 or *customerrelations@nycbar.org*

FRIDAY, MARCH 20, 27

NY State Bar (Non CLE)
Mindful Moments
nysba.org/events/3-6-26-mindful-moments-weekly-group/Virtual

nysba.org/events/3-6-26-mindful-moments-weekly-group/Virtual

MONDAY, MARCH 23

Practising Law Institute
Tax Controversy 2026: Navigating the New Enforcement Landscape
9 a.m. – 4:45 p.m.
http://pli.edu/programs/understanding-tax-controversy/

NY City Bar (CLE)
Intellectual Property Conference
9 a.m. - 5:30 p.m. (Includes Networking Luncheon)
6 CLE credits
Registration Link: *https://services.nycbar.org/Intellectual-Property/*
Location: 42 West 44th Street
Contact: 212-382-6663 or *customerrelations@nycbar.org*

TUESDAY, MARCH 24

NY State Bar (CLE)
Managing Difficult Clients and Colleagues: Protecting Your Mental Health and Well-Being
nysba.org/events/managing-difficult-clients-and-colleagues-protecting-your-mental-health-and-well-being/
1 CLE credit; Virtual

NY City Bar (CLE)
Not-for-Profit Law Conference 2026: Navigating Change & Building Resiliency
9 a.m. - 5 p.m. (Includes Networking Luncheon)
6 CLE credits
Registration Link: *https://services.nycbar.org/NFP/*
Location: 42 West 44th Street
Contact: 212-382-6663 or *customerrelations@nycbar.org*

TUESDAY, MARCH 24 WEDNESDAY, MARCH 25

Practising Law Institute
Commercial Real Estate Financing 2026: Distress and Defaults
9 a.m. – 5 p.m. (Day 1)
9 a.m. – 12:15 p.m. (Day 2)
https://www.pli.edu/programs/commercial-real-estate-financing/

WEDNESDAY, MARCH 25

NY State Bar (CLE)
Interference with Expectancy of an Inheritance: Florida and New York Perspectives
nysba.org/events/interference-with-expectancy-of-an-inheritance-the-florida-and-new-york-perspectives/
1 CLE credit
Virtual

Intimidation

« Continued from page 1

to obtain the police report. And he’s using it to strengthen his bid to disqualify O’Toole Scervo from defending McCarter & English.

Brown claims the police account of attorney O’Toole’s alleged conduct gives more credence to his motion to remove the firm from the case.

And he’s gone one step further—adding O’Toole and the O’Toole Scervo firm as defendants in his suit against McCarter.

In response to the amended filing, the Port Authority said its own legal department would now represent it in the case.

And O’Toole Scervo said in court papers filed Tuesday that “out of an absolute abundance of caution,” it had implemented an “ethical screen” to preventing attorney O’Toole from discussing this matter with any colleagues at O’Toole Scervo, who are involved in representing McCarter or accessing files related to case.

O’Toole Scervo also said in its response to the disqualification motion that Brown fails to

explain how O’Toole’s potential liability creates a conflict. It also said the conflict between O’Toole’s personal interests and McCarter’s defense is “speculative.”

But on Wednesday, Brown replied with a brief stating the conflict is “no longer speculative.”

Brown’s pleading alleges the Port Authority asked the police chief in Cedar Grove, where O’Toole lives, to advise the process server to serve the paperwork through the Port Authority’s legal department.

According to an incident report Brown obtained through the Open Public Records Act, a Cedar Grove police officer met the process server in a street, a short distance from O’Toole’s home.

“There’s no written procedure that can screen the chairman of the Port Authority from his own agency, right? They stated that the screen was implemented, right? But guess what? Just a few days later, it showed that it failed. And open records prove it. He had the Port Authority stop a process server,” Brown said. “One of the most important things in the law is basically service—the process. That’s how you make sure the other side

knows they have a complaint. You can’t have the police intimidating process, servers.”

Brown, who is self-represented, filed his employment suit in 2024, claiming McCarter & English fired him for being conservative and for advocating that military veterans should get recognition in firm diversity initiatives.

McCarter & English spokeswoman Jill Himelfarb said in a statement, “We appreciate the court’s consideration of our brief and will continue to defend the firm against Mr. Brown’s unfounded claims.”

A Port Authority spokesman, Benjamin Feldman, responded to a request for comment from O’Toole. “The Port Authority is representing Kevin O’Toole in this matter in accordance with our by-laws. We have accepted service for him, and we will defend him vigorously in this troubling litigation,” he said.

O’Toole served in the New Jersey Senate from 2008 to 2017 and became chairman of the Port Authority in July 2017.

The Port Authority has approximately 8,000 employees.

@ Charles Toutant can be reached at *charles.toutant@alm.com*.

DECISIONS WANTED!

The editors of the New York Law Journal are eager to publish court rulings of interest to the bench and bar. Submissions must include a sentence or two on why the decision would be of significance to our readers. Also include contact information for each party’s attorneys. E-mail decisions to *decisions@alm.com*.

