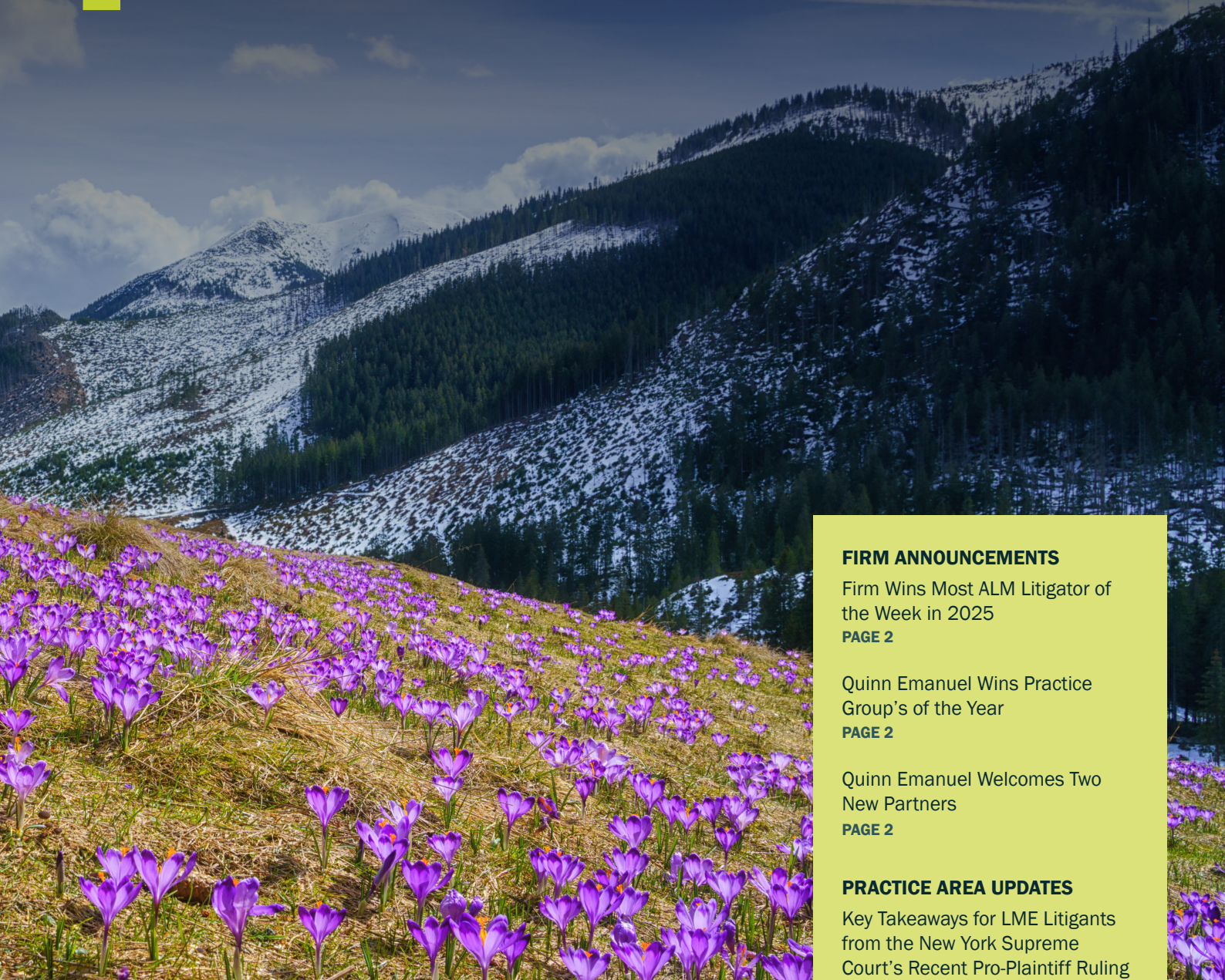


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FEBRUARY 2026

Business Litigation Report

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CONFIDENTIALITY OF SETTLEMENT AGREEMENTS IS AN UPHILL BATTLE IN NEW YORK: HERE IS WHAT EMPLOYERS CAN DO

Businesses face omnipresent legal risk – and employment-related claims – alleging discrimination, harassment, or retaliation – continue to represent significant litigation exposure.

Employment-related claims span a wide array of subjects, including unfair hiring and promotions, payment disputes, and discrimination based on age, disability, race, ethnicity, religion, gender, or sexuality. Large employers can spend upwards of seven figures on a single litigation, especially when faced with a class action suit or a suit by a high-earning employee. Litigation is costly—it takes time, costs money, and can generate negative publicity for a business. The ability to enter into a confidential settlement agreement with an employee is a vital tool to combat employment-related claims.

New York state law places additional restrictions on settlement agreements for employment discrimination claims (i.e., claims involving harassment, discrimination or retaliation). A settlement agreement between an employer and employee to resolve employment discrimination claims may only include a confidentiality provision if that is the settling employee's preference—an employer cannot insist on such provision. New York courts have found entire settlement agreements unenforceable where employers did not strictly comply with the law. Further, courts have chastised employers that try to circumvent the law and violate public policy by punishing employees who exercise their rights under the law. These restrictions have left employers scrambling. Fortunately, there are steps employers can take to ensure settlement agreements are enforceable and confidential.

New York's Restrictive Laws

New York law errs on the side of being more friendly to employees than employers. Settlement agreements containing a confidentiality provision for employment discrimination, harassment, and retaliation claims are subject to New York General Obligations Law Section 5-336 and New York Civil Practice Law and Rule 5003-B. Such settlement agreements cannot contain a confidentiality provision unless confidentiality is the "complainant's preference," which must be memorialized in a writing signed by all parties. N.Y. General Obligations Law ("N.Y. GOL") § 5-336(1)(a-b); N.Y. C.P.L.R. § 5003-B. Employees have 21 days to consider a settlement agreement and 7 days to revoke the agreement after signing. N.Y. GOL § 5-336(1)(b); N.Y. CPLR § 5003-B. The 21-day consideration period is waivable for pre-litigation settlements, N.Y. GOL § 5-336(1)(b), and is non-waivable for settlements that occur after a case is filed, N.Y. CPLR § 5003-B.

N.Y. GOL § 5-336 has become stricter over time. First enacted in 2018 in response to the #MeToo movement, it covered only sexual harassment claims. By 2019, the law was applicable to all types of employment discrimination claims. N.Y. GOL § 5-336 was amended in 2023, and its protections were expanded to independent contractors filing claims of employment discrimination, harassment,

FIRM HIGHLIGHTS

Firm Wins Most ALM Litigator of the Week in 2025

For the second time in three years, Quinn Emanuel has earned top honors in ALM's *Litigators of the Week* column—securing more wins than nearly 60 peer firms, with five victories recognized in 2025. This recognition reflects our team's excellence in high-stakes litigation, including a landmark appellate win for Vimeo, a Delaware merger victory for Desktop Metal, dismissal of the CFTC's case against My Forex Funds, a US\$63m verdict for the founders of CARiD.com, and the release of a wrongfully convicted client after 40 years of imprisonment.

Quinn Emanuel Wins Practice Groups of the Year

Quinn Emanuel has been recognized by Law360 for Practice Group of the Year across four categories—Bankruptcy, International Arbitration, Trials, and White Collar—highlighting the firm's breadth, depth, and leadership in complex litigation. This honor reflects the outstanding results our teams continue to deliver for clients across industries and around the world.

Quinn Emanuel Welcomes Two New Partners

Quinn Emanuel is pleased to welcome two new partners: William Charles in London and Ghalib Mahmoud in the Dubai office. Will brings a proven track record across a range of sectors, including banking and financial services, private equity and credit, asset management, technology, and energy. Ghalib specializes in restructuring and bankruptcy, corporate fraud investigations, and asset tracing for multi-national corporations and high net worth individuals.



and retaliation. N.Y. GOL § 5-336(1)(a). The latest amendment also articulates specific provisions that make a settlement agreement unenforceable, such as a provision that contains or requires any “affirmative statement” that the employee was not subject to unlawful discrimination. N.Y. GOL § 5-336(3)(c).

Courts Respond: The Shift to Strict Compliance

Courts have quickly taken notice of the 2023 amendment and its impact is reflected in court rulings. In January 2025, a court held that an entire settlement agreement will be rendered unenforceable if employers do not follow the restrictions laid out in N.Y. GOL § 5-336. *Separ v. Cnty. of Nassau*, No. 21-CV-00010, 2025 WL 51206, at *4 (E.D.N.Y. Jan. 8, 2025). There, an employee sued her former employer and the county for unlawful discrimination and retaliation. *Id.* at *1. The parties verbally reached a settlement agreement, memorialized the settlement in writing, and signed the agreement. *Id.* Importantly, the settlement stated that it “shall not take effect until . . . [employee’s] execution of the Confidentiality and Non-Disparagement [sic] Acknowledgment” which was attached as a separate exhibit. *Id.* at *3. After the employee refused to sign the exhibit, the defendants moved to enforce the settlement. *Id.* at *1. The court found that the settlement agreement was never effective because the acknowledgment was a “material component” of the broader settlement agreement and a “condition precedent” to effectuate it. *Id.* at *4. By not signing the acknowledgment, the employee exercised her right to consider the confidentiality provision for up to 21 days under GOL § 5-336, and she decided not to move forward with the settlement. *Id.*

Separ is instructive. It shows that the improper insertion of a confidentiality provision will destroy enforceability of the entire settlement agreement. This was not always the case. As recently as two years before *Separ*, the common practice was to invalidate only the confidentiality provision of a settlement agreement—not the entire agreement. *Sanchez vs. S&P Global, Inc.*, No. 23-cv-00576, 2023 WL 9857442 (S.D.N.Y. Oct. 27, 2023) (emphasis added) (noting that Judge Failla reads GOL 5-336 to invalidate a problematic non-disclosure provision rather than the entire agreement). *Separ* does not appear to be an anomaly; three months ago another

New York federal court reiterated Separ's holding. The Southern District of New York stated that "an employer may make assent to an NDA a condition of settlement" but "the failure to sign the NDA or a revocation of the NDA voids entire settlement." *Hadzijic v. Art Food LLC*, No. 24 CIV. 7205, 2025 WL 2886104, at *7 (S.D.N.Y. Oct. 10, 2025). Further, a settlement agreement with a provision stating that the employee "agrees" to sign a separate confidentiality agreement cannot compel the employee to actually sign the separate agreement. *Id.* at *6. An agreement to sign is not sufficient to show that the inclusion of the confidentiality provision was the "complainant[']s preference" under GOL § 5-336. *Id.*

Public Policy Regarding Confidentiality

In New York, freedom of contract is an important public policy. See, e.g., *Com'rs of State Ins. Fund v. Strekte Corp.*, No. 451792/2021, 2025 WL 3634691, at *3 (N.Y. Sup. Ct. Dec. 12, 2025). An agreement can only be found unenforceable where "statute or public policy dictates that the interest in freedom to contract is outweighed by an overriding interest of society." *Id.*

Here, Courts have found that, as a matter of public policy, a party's freedom of contract is outweighed by the Court's need to protect employees accusing employers of employment discrimination. Accordingly, courts will not enforce a settlement agreement when the agreement punishes an employee who exercises her statutory rights to consider a settlement agreement for 21 days and to later reject it, up to seven days after execution of the agreement. In another case, *Simons*, the employer refused to pay employee the \$75,000 settlement amount after the parties signed a pre-litigation settlement agreement. *Simons v. Lee Litigation Group, PLLC*, No. 151692/2020, 2021 WL 3624940, at *1-2 (N.Y. Sup. Ct. Aug. 12, 2021). The employee sued the employer for breach of contract and the employer filed a counterclaim for violation of the confidentiality provision. *Id.* at *2. There, the confidentiality provision stated that if the employee "is required to provide any confidential disclosure, as compelled by law," or if the employee revokes her agreement to confidentiality, the settlement agreement shall be reduced to \$100. *Id.* at *1. The court noted that these conditions are rights afforded to complainants, not employers, under GOL § 5-336. *Id.* at *4. Accordingly, it held that the confidentiality provision "improperly attempts to circumvent the intent of recent amendments to General Obligations Law § 5-336" to "honor the plaintiff's preference." *Id.* at *4 (noting that this goal is not met when only the employee is subject to punishment because that illustrates that the confidentiality provision was intended solely to protect the employer). Further, the court stated that the employee did not violate the confidentiality provision contained in the settlement agreement by bringing the suit because New York has a "deep-rooted, long-standing public policy in favor of a person's right to make statements during the course of court proceedings without penalty." *Id.* at *4 (quoting *Denson v Donald J. Trump for President*, 180 A.D.3d 446, 453-54 (1st Dept. 2020)).

Relatedly, New York public policy supports a presumption of public access to judicial documents, which are documents "relevant to the performance of the judicial function." *Lugosch v. Pyramid Co.*, 435 F.3d 110, 119 (2d Cir. 2006). In practice, this means that if a case settles after the case is filed, the settlement can be filed on the public docket. To avoid public disclosure, a party must move to seal the filing. However, court records



will not be sealed “absent the most compelling reasons,” *id.*, and a written finding of “good cause,” N.Y. COMP. CODES R. & REGS. tit. 22, § 216.1 (2026). This holds true in employment discrimination cases even where the employer and employee agree to keep the settlement agreement confidential. *Welch v. Bio-Reference Laboratories, Inc.*, No. 19-CV-0846, 2021 WL 1850930, at *4 (N.D.N.Y. May 10, 2021) (denying the employer’s motion to seal the settlement agreement because “bargained-for confidentiality” is not a compelling reason sufficient to overcome the presumption of access to judicial documents).

Next Steps: Guidance for Employers

Even with courts’ steadfast adherence to New York law, there are still ways employers can maintain confidentiality while keeping their settlement agreements enforceable.

Confidentiality Without Complainant’s Preference: Employers can require confidentiality of certain settlement information regardless of whether it is the employee’s preference. For example, employers can include a non-disclosure provision regarding the actual terms of a settlement, including the amount, and the facts and circumstances leading up to it.

Hadzjic, 2025 WL 2886104, at *6 (S.D.N.Y. Oct. 10, 2025). Such a provision is distinct from preventing disclosure of the “underlying facts and circumstances to the claim” and therefore does not implicate the protections under GOL § 5-336.

Separate Confidentiality and Settlement Agreements: The law does not expressly require that the confidentiality agreement be kept as a separate document from the overall settlement agreement. *Frequently Asked Questions: Nondisclosure Agreements*, NEW YORK STATE, <https://www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions> (last visited Jan. 13, 2026). While a standalone confidentiality agreement will not sidestep the restrictions of GOL § 5-336—the law applies with equal force to any “agreement” that contains a provision prohibiting disclosure of the underlying facts and circumstances of a discrimination claim, GOL § 5-336(1) (a)—separate agreements can benefit an employer when the goal is to have an enforceable settlement agreement. To start, a settlement agreement without a confidentiality provision regarding the discrimination claim itself is not subject to GOL

§ 5-336. Therefore, the 21-day consideration period and 7-day revocation period do not apply to such an agreement; the employee can sign the settlement agreement immediately and has no right to revoke it once executed. This is consistent with GOL § 5-336's purpose of allowing employees "adequate time to consider NDAs, not to consider settlements that do not require the signing of an NDA." Hadzjic, 2025 WL 2886104, at *7. The key to retaining this benefit is to refrain from requiring confidentiality of the underlying claim as a condition of the settlement. See *Separ*, 2025 WL 51206, at *4. Although this creates a risk that the employee reaps the benefits of a settlement without guaranteeing the employer's confidentiality—as the employee may choose not to sign the confidentiality agreement—it does protect an employer from having the entirety of a settlement agreement invalidated.

Pre-Litigation Settlements: In some cases, it may be in the employer's interest to settle an employment dispute before a case is filed. First, if an employer settles pre-suit, the employee may waive the 21-day consideration period. See CPLR § 5003-B; GOL § 5-336(1)(b). Second, court records are presumptively public. *Lugosch*, 435 F.3d at 119. Even if the parties' settle, and the complainant prefers to include a confidentiality provision, the alleged facts of the underlying claim are already on the public docket. Practically, this moots any sense of confidentiality. Although an employer can move to seal these records, the "good cause" standard to seal such records is a high bar to meet. See *Welch*, 2021 WL 1850930, at *4. Third, public filings can attract media attention. Instead of an employee sharing the facts of the underlying alleged discrimination, the media can freely access those facts through the court system. This is not ideal for employers looking to maintain confidentiality. Settling a case before suit is commenced keeps the settlement within the private sphere.

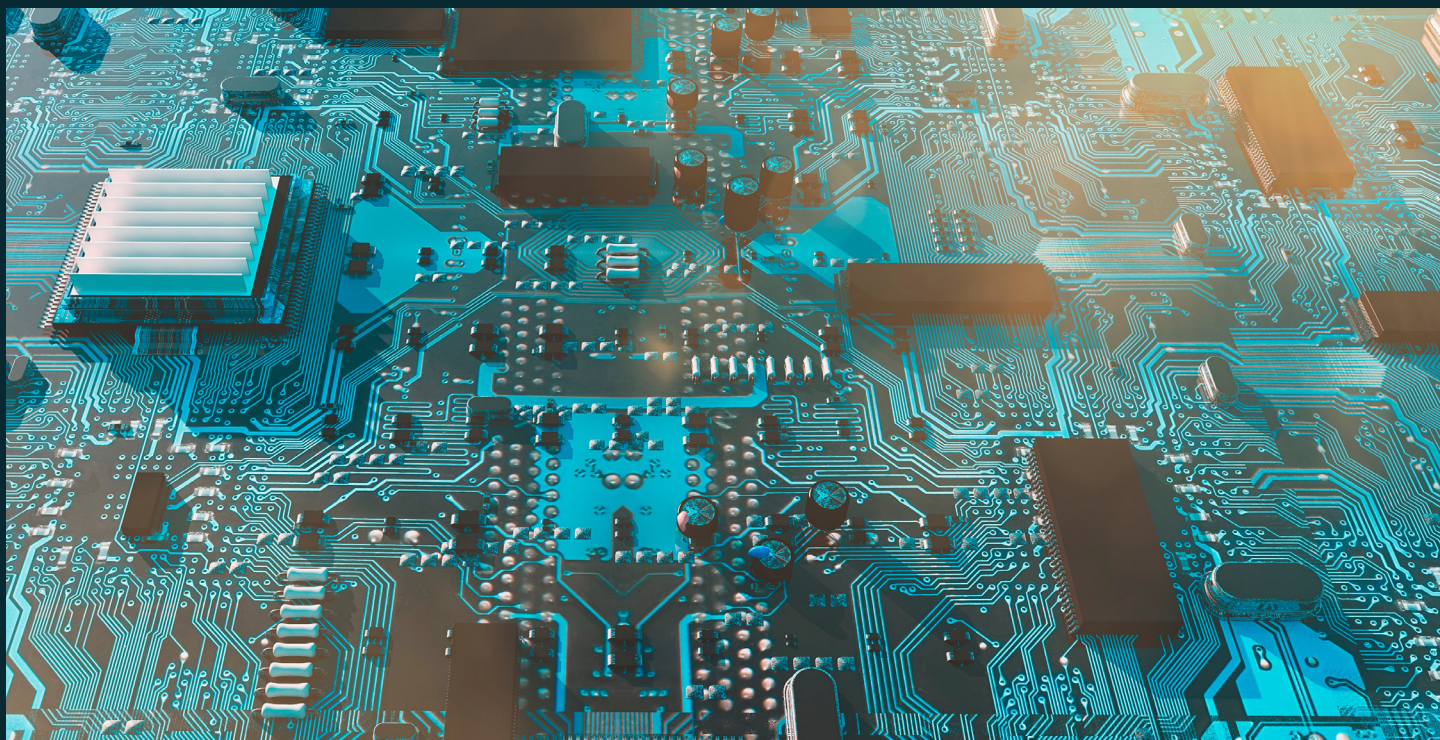
Compliance with Requirements: Employers should strictly follow New York's laws and recent case rulings. Courts will not hesitate to call out an employer that attempts to "circumvent" them. *Simons*, 2021 WL 3624940, at *4. Courts are quick to invalidate an entire settlement agreement when even only one aspect of the agreement is improper. An employee that signs a settlement agreement with a provision stating that she "agrees to sign" a separate confidentiality provision is not sufficient to meet the requirement that confidentiality is the employee's preference. *Hadzjic*, 2025 WL 2886104, at *6. Therefore, employers should include explicit language that confidentiality is "in the complainant's preference" rather than language that the employee simply agrees that the settlement and the underlying facts and claims are confidential. GOL § 5-336(1)(a).

Conclusion

There is no doubt that when it comes to maintaining the confidentiality of settlements relating to employment discrimination claims, the most critical element is to explicitly memorialize the employee's preference for confidentiality. However, there is doubt stemming from the unknown: there is an unsurprising lack of case law on pre-litigation settlement agreements because those agreements never made it to the courtroom. And for good reason—pre-litigation settlement agreements offer employers, and employees, the best opportunity to maintain confidentiality of the underlying alleged discriminatory activity. To have the best chance at ensuring that settlements involving employment discrimination claims remain confidential, employers should avoid cutting corners and focus on strictly abiding by New York's law and recent case decisions.

NOTED WITH INTEREST

Defamation in the AI Era



ChatGPT, Claude, and other large language models produce statements that sound authoritative—even when fabricated. LLMs can generate false statements about real people, including invented lawsuits, criminal records, or accusations. They often do so in a tone that seems authoritative. Predictably, such outputs have led to defamation lawsuits.

Early results favor AI developers. In May 2025, a Georgia state court granted summary judgment to OpenAI on a claim based on ChatGPT output that was indisputably false. The court reasoned that the user knew ChatGPT might fabricate, so a reasonable reader in the user's position would not have understood the output as a statement of fact.

The decision reassures developers—but on narrow grounds. Harder cases involving different facts are also pending: users unaware of hallucination risk, false statements republished to millions, or companies that

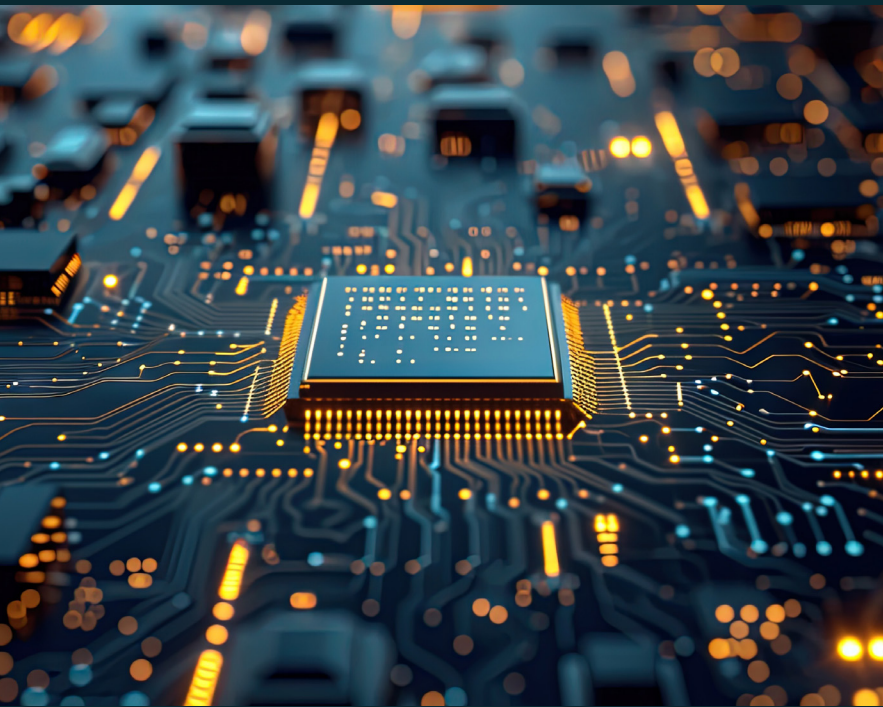
ignore repeated warnings. Here are some aspects of AI-based defamation liability worth knowing.

How AI Creates Defamatory Content

LLMs are designed to generate text—not retrieve it—by predicting the next word in a sequence based on patterns learned during training. When reliable information is missing, the model fills the gap. Sometimes it does that by fabricating facts, sources, or entire narratives. Courts are now encountering several common patterns.

Mixing True Facts to Create False Statements:

AI can state facts that are individually accurate but combine them into something false and harmful. *Battle v. Microsoft Corp.*, No. 1:23-cv-01822 (D. Md. filed July 7, 2023), illustrates the problem. Bing's AI summary conflated two people: Jeffery



Battle, an aerospace educator, and Jeffrey Battle, a convicted terrorist. The output read:

Jeffrey Battle, also known as The Aerospace Professor, **However, Battle** was sentenced to eighteen years in prison after pleading guilty to seditious conspiracy and levying war against the United States. He had two years added to his sentence for refusing to testify before a grand jury.

The word “however” fused two biographies into one defamatory portrait. This case may not yield published guidance: On October 23, 2024, the court compelled arbitration.

Implying False Facts:

A statement need not be literally false to defame. It can imply harmful facts through context or false attribution. In November 2024, Indian news agency ANI sued OpenAI in the Delhi High Court, alleging that ChatGPT generated fabricated content that was falsely attributed to ANI. This included a purported interview/podcast appearance by a political figure that never occurred. The case also raises copyright-related claims. In 2025, industry stakeholders, including T-Series, Saregama, Sony Music, and

publisher associations, applied to intervene or join the case. Given the novel issues raised, the court appointed two amici curiae, including to assist on threshold questions such as jurisdiction, which OpenAI has contested. The matter remains pending.

In the U.S., related claims are emerging under trademark law. *The New York Times*, *The Wall Street Journal*, and others have asserted trademark dilution claims against AI platforms, alleging that false attribution of AI-generated content to their publications harms their brands. As image and video generation tools mature, similar claims may arise from visual or audiovisual fabrications.

In March 2025, Minnesota solar company Wolf River Electric sued Google after its AI Overview falsely stated that the Minnesota Attorney General had sued the company for deceptive practices. The complaint alleges that the Google tool fabricated the statement and that it was not supported by the cited sources. In the wake of its publication, customers cancelled contracts. The company seeks over US\$100m in damages. See *LTL LED, LLC v. Google LLC*, Case No. 25-cv-02394 (D. Minn.), Dkt. No. 1-1 (Compl.). In January 2026, the court remanded the case to Minnesota state court.

Image-generation tools are creating similar issues. In January 2026, a plaintiff filed a class action against xAI, alleging that its Grok chatbot generated sexualized deepfake images based on photos she had posted to X. The complaint asserts defamation claims on the theory that the images “gave the false impression that Plaintiff and Class Members were actually photographed in a revealing or sexualized manner.” *Doe v. xAI Corp.*, No. 5:26-cv-00772 (N.D. Cal. filed Jan. 23, 2026). The case is in its earliest stages, but it signals that defamation-by-implication claims may extend beyond text to AI-generated images and video.

Pure Fabrication:

Sometimes LLMs invent facts from nothing. In *Walters v. OpenAI*, Case No. 23-A-04860-2 (Ga. Super. Ct. Gwinnett County, filed July 17, 2023), a journalist asked ChatGPT to summarize a complaint

involving the Second Amendment Foundation. ChatGPT responded that radio host Mark Walters was a defendant accused of embezzling from the organization. The lawsuit did not exist. The accusation was invented. When prompted further, ChatGPT elaborated on the fabricated claims. In May 2025, the court granted summary judgment to OpenAI, holding that—under the reasonable-reader standard, which allows “time for reflection”—no reasonable reader in the journalist’s position could have understood ChatGPT as communicating “actual facts.” *Walters v. OpenAI*, No. 23-A-04860-2, Order at 7 (Ga. Super. Ct. Gwinnett Cty. May 19, 2025). The court emphasized the surrounding context: ChatGPT warned it could not access the linked complaint and noted that the relevant lawsuit post-dated its “knowledge cutoff date,” and OpenAI repeatedly warned (including in its Terms of Use) that ChatGPT “may produce inaccurate information.” *Id.* at 6. The journalist was also familiar with ChatGPT’s “flat-out fictional responses,” had the actual complaint available to verify the output, and testified that within about ninety minutes he determined the output “was not true.” *Id.* at 6–7.

Defamation Basics Still Apply to AI-based Claims

Showing that an LLM fabricated harmful, false statements is not enough to sustain a defamation claim. The plaintiff must establish: (1) publication to a third party, (2) of a false statement of fact about the plaintiff, (3) made with the requisite fault, (4) that harmed the plaintiff’s reputation.

Publication and Defamatory Meaning:

Publication does not require a mass audience. If the AI platform (or its owner) is deemed the speaker—rather than the user who entered the prompts—the element may be satisfied when the AI platform delivers its response to even a single user.

The harder question is whether AI outputs can convey facts, not fiction. In *Walters v. OpenAI*, the Georgia court held they did not, under the circumstances present. The court emphasized four facts: (a) ChatGPT warned the journalist that it could not access the document described in his prompt; (b) OpenAI’s terms of use stated that outputs may contain inaccuracies; (c) the journalist had a copy of

the actual complaint to verify; and (d) the journalist quickly recognized the output as fabricated.

But *Walters* leaves open the question of what happens when users *do not* know the statements are hallucinations. Two pending cases test that scenario.

In *LTL LED, LLC v. Google LLC* (Minn.), a solar company alleges that Google’s AI Overview falsely told the public that it faced a Minnesota Attorney General lawsuit for deceptive practices. Unlike *Walters*, the AI-generated statements reached the general public—not a savvy journalist with independent knowledge—and appeared alongside cited sources that lent an air of reliability. In response, customers canceled contracts. The case is still in its pre-trial phase.

Similarly, in *Starbuck v. Google LLC*, No. N25C-10-211 MAA (Del. Super. Ct., filed Oct. 2025), a conservative activist alleges that Google’s Bard and Gemini chatbots generated fabricated statements – including sexual assault accusations, criminal records, and invented court documents – and attributed them to fictitious sources. The complaint details how third parties, including a “mom’s group” evaluating whether to support Starbuck’s business initiatives, relied on the AI-generated content. Google has moved to dismiss. It argues, among other things, that no identifiable audience relied on the outputs and that the AI tools explicitly warned users of possible inaccuracies. The case remains pending.

Courts will ultimately decide whether growing public awareness of hallucinations – or companies’ express disclaimers – limits whether AI outputs can reasonably be understood as asserting defamatory facts. That conclusion could significantly limit defamation liability for AI-generated statements. Courts may not go that far, given that AI tools are increasingly marketed as powerful, accurate research assistants.

Falsity:

Truth is among the most powerful defamation defenses. But in most AI defamation cases, falsity is undisputed.

Fault:

Establishing fault presents the largest obstacle for AI defamation plaintiffs.

Public Figures and Actual Malice:

A public figure must prove actual malice: The defendant subjectively knew that the statement was false or entertained serious doubts about its truth. These standards were built for human speakers. It seems implausible to say that a probabilistic language model “knew” whether its next predicted word was true, let alone “entertained serious doubts.” And how can the AI platform, which controls neither the user’s prompt nor the spontaneous output, possess the requisite knowledge about statements it did not know the model would generate?

Walters addressed this head-on. It rejected the argument that merely releasing software capable of hallucinations establishes fault under either the actual malice or negligence standards. OpenAI introduced expert testimony describing its mitigation efforts to reduce hallucinations. The court found no evidence that OpenAI knew the specific output was false or acted with reckless disregard.

Private Figures and Negligence:

Private-figure plaintiffs generally face a lower fault standard – negligence – but they still must show the defendant failed to exercise reasonable care under the circumstances. In defamation cases, courts often evaluate what reasonable care would require in the defendant’s position. This can include the availability and use of safeguards to prevent false statements. In the generative AI context, this suggests developers may seek to defeat negligence claims by demonstrating robust, industry-consistent mitigation measures. In *Walters*, the court credited evidence of OpenAI’s hallucination-reduction efforts in concluding the plaintiff had not raised a triable negligence claim.

The Role of Notice.

The fault question may turn on what happens *after* plaintiffs notify AI companies of false outputs. Some argue that a company’s refusal to correct flagged falsehoods could establish knowledge.

Under traditional defamation principles, however, fault is typically measured at the time of publication, not afterward.

Starbuck v. Meta tested this theory. The plaintiff alleged that he repeatedly notified Meta of fabricated January 6th accusations and Holocaust denial claims, yet Meta failed to correct them. The case settled in August 2025. Reports indicated that, as part of the settlement, Meta agreed to hire the plaintiff as a consultant to address political bias in its AI. Although the settlement terms are undisclosed, the case illustrates how pre-suit notice and a defendant’s failure to respond may strengthen a plaintiff’s position – or at least provide leverage.

Starbuck v. Google presents similar facts: The plaintiff alleges that he notified Google of the defamatory outputs several times over two years. Yet according to the complaint, Google “sat back and did nothing.” Whether courts credit this theory of post-notice liability remains to be seen. Google’s motion to dismiss is pending.

Harm.

Damages for reputational harm can be difficult to quantify. Plaintiffs may recover presumed damages in certain circumstances, but this remedy may require a showing of actual malice where the speech involves a matter of public concern—even for private figures. Given the difficulty of proving actual malice in the AI context, most plaintiffs will be limited to actual damages proximately caused by the defamatory statement.

This limitation may discourage some claims – but not all. In *LTL LED*, the plaintiff alleges documented contract cancellations totaling hundreds of thousands of dollars, with claimed damages ranging from U\$110m to US\$210m. Where AI-generated falsehoods cause concrete, provable business losses, the damages calculus changes significantly.

By contrast, *Walters* testified that he had not suffered actual damages, and the court concluded that he could not recover presumed or punitive damages on the record presented – resulting in summary judgment for OpenAI.

Takeaways

Beyond the doctrinal questions discussed above, courts will also need to address immunity. Section 230 of the Communications Decency Act shields website operators from liability for content “provided by another information content provider.” How Section 230 applies to AI-generated outputs – particularly where the output is arguably the company’s own generated speech rather than third-party content—remains an unsettled question.

For Potential Plaintiffs:

AI defamation claims present unique challenges, but also distinct advantages.

First, falsity may be easier to establish. Hallucinated outputs are often demonstrably fabricated, narrowing the dispute and reducing the likelihood the case turns on proving truth.

Second, fault may be easier to establish against users who republish AI-generated falsehoods. Unlike traditional defamation cases, there will be a contemporaneous record: the prompts entered, the outputs received, and what the user did next. That record can reveal whether the user knowingly published statements whose truth they had reason to doubt.

Third, plaintiffs should notify AI companies promptly and request correction. Pre-suit notice creates a record. If the company ignores it, that may support a fault argument—or at least provide settlement leverage, as in *Starbuck v. Meta*.

For AI Platforms:

Implement a protocol for responding to complaints about false outputs. Ignoring notice is a bad fact. Design systems to warn users when outputs may be unreliable, particularly when the model lacks access to the information requested. The *Walters* judge credited OpenAI’s warnings and other contextual facts in concluding that a reasonable reader in that setting would not have understood the output as stating fact.

Continue educating courts on how LLMs work. These models generally generate text by predicting sequences rather than retrieving documents like a search engine (though outputs may sometimes resemble or reproduce training material). That distinction matters for how courts apply traditional defamation principles to a new context.

For Companies and Individuals Using AI Tools:

Liability is not limited to AI developers. Anyone who republishes AI-generated falsehoods may face defamation claims.

Before publishing any AI-generated factual assertion, verify it independently and document that process. Use enterprise versions of AI tools where available—they typically include stronger safeguards. These steps may help defeat a negligence claim if a falsehood slips through.

PRACTICE AREA UPDATES

Bankruptcy & Restructuring Update:

Key Takeaways for LME Litigants from the New York Supreme Court's Recent Pro-Plaintiff Ruling in STG Logistics.

2025 was a big year for both liability management exercises (“LME”) and LME-related litigation. Throughout the year, press and analysis concerning new deals and novel structures dominated the distressed debt news cycles, and key decisions such as the Fifth Circuit’s ruling in Serta and the Mitel decision out of New York’s First Department contributed significantly to the discourse surrounding the legality and utility of these popular but controversial transactions.

We are only a few weeks into 2026, but the LME trend shows no signs of slowing down, with the New York Supreme Court issuing an important decision in *Axos Financial Inc., v. Reception Purchaser, LLC*, Case No. 650108/2025 (N.Y. Sup. Ct. N.Y. Cnty) (“STG Logistics”), only three days into the new

year. The STG Logistics case concerns a challenge to an LME executed in 2024 between the borrower STG and certain of its first lien lenders. On January 3, 2026, Judge Anar Patel issued a strikingly pro-plaintiff decision in which he largely shot down the defendants’ primary arguments in favor of dismissal—including key arguments concerning the application of the *no action* clause and respecting the chronology of the structured steps of the LME transaction—and allowed the plaintiffs’ most important claims to go forward.

Less than ten days after Judge Patel’s ruling, STG filed for bankruptcy in the District of New Jersey, which has stayed prosecution of the STG Logistics case in New York state court for the time being. Still, Judge Patel’s reasoning and rulings carry tremendous significance, both for the litigants in the STG Logistics case and for other industry participants, particularly those either considering engaging in or challenging LME transactions going forward.

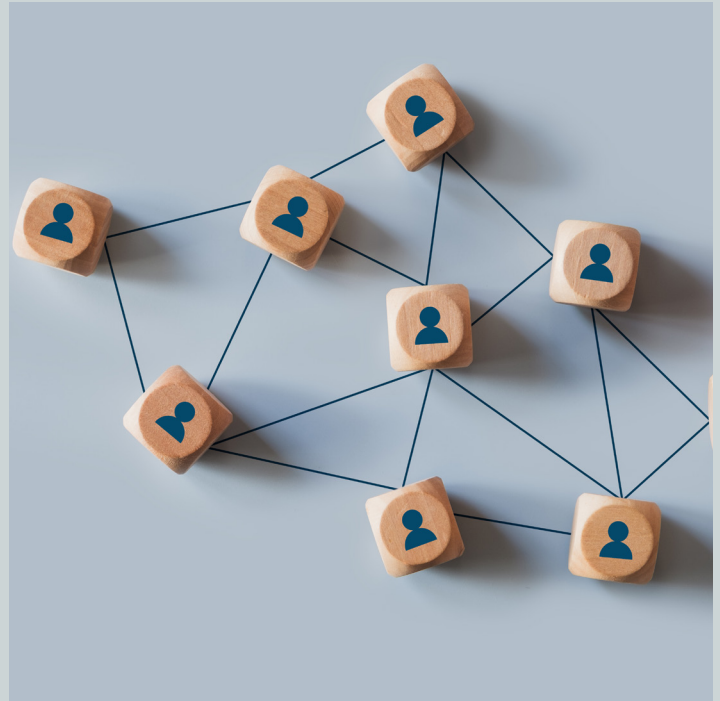


Background

The case arises out of an LME performed by STG and a majority of the holders of STG’s senior term loans in October of 2024 (the “October Transaction”). The October Transaction included elements of what have come to be known as “drop down” transactions and “double dip” transactions. Generally speaking, dropdown transactions involve a borrower transferring encumbered collateral from a restricted entity (i.e., an obligor or guarantor under the existing loan agreement) into an unrestricted subsidiary, rendering the collateral unencumbered. The unrestricted subsidiary then pledges this “dropped down” collateral in support of new debt. A “double dip” occurs when a lender provides a secured loan to a borrower, which then transfers the proceeds to an affiliate as an intercompany loan, and in exchange the loan is both (i) directly guaranteed by entities in the borrower’s corporate family and (ii) separately supported by the pledge of the intercompany loan as collateral, and any guarantees on the intercompany loan. As a result, the lender has two claims on the same loan against the same entities: one direct claim under its loan and guarantees thereof (the first dip), and one indirect claim under the intercompany loan and related guarantees (second dip).

The transaction at issue in STG Logistics did both. According to the complaint, at the time of the transaction—which occurred in October of 2024—STG and certain of its affiliates were borrowers under a March 24, 2002 credit agreement (the “Credit Agreement”), pursuant to which STG issued US\$725m in term loans and two tranches of revolver loans totaling US\$150m. All loans issued under the Credit Agreement were “first-lien” and enjoyed *pari passu* status. Antares Capital LP served as the administrative and collateral agent under the Credit Agreement, and certain Antares affiliates were lenders under the Credit Agreement that participated in the October Transaction.

To execute the October Transaction, STG, Antares, and a group of lenders that held a bare majority of the loans issued under the Credit Agreement (the “Majority Lenders”), executed three primary documents: the Sixth Amendment to the Credit Agreement (the “Sixth Amendment”), the Dropdown Credit Agreement, and the Intercompany Credit Agreement. The Sixth Amendment stripped the Credit Agreement of many lender protections, including numerous provisions—some of which were added only months earlier in 2024 in the Fifth Amendment to the Credit Agreement (the “Fifth Amendment”)—designed specifically to prevent a dropdown transaction. After the Sixth Amendment was executed, STG established certain unrestricted subsidiaries and transferred substantially all of its



assets to them. Then, the Majority Lenders exchanged their existing loans for new debt issued by one of the newly formed unrestricted subsidiaries (“UnSub”) and backed by the dropped down collateral and guarantees from both STG and UnSub. The Majority Lenders purchased additional UnSub debt with new money that was lent upstream from UnSub to STG pursuant to the Intercompany Agreement. As a result of the transaction, the Majority Lenders held a first-lien security interest in all unrestricted subsidiary assets, and two first-lien claims on the parent’s assets consisting of the intercompany loan and the guaranty by the parent company, while the non-participating lenders were left with liens on severely diminished collateral, and claims based on those liens that were further diluted by the Majority Lenders’ double dip on STG’s remaining assets.

After the transaction, the company made a follow-on offer to the non-participating lenders that would allow those lenders to exchange their existing loans, but at a deeper discount, for new loans that had less collateral coverage, inferior payment priorities, and a lower interest rate than the new loans given to the Majority Lenders. Most of the non-participating lenders agreed and tendered their existing loans to STG. The two non-participating lenders that refused the follow-on offer, Axos Financial, Inc., and Siemens Financial Services, Inc., filed suit against STG, Antares, and the Majority Lenders.

The lawsuit includes claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and fraudulent transfer, and also seeks a declaration that the Sixth Amendment

is invalid because it violated the Credit Agreement, as amended by the prior Fifth Amendment. The complaint requests the court unwind the transaction or award damages to the plaintiffs.

The defendants moved to dismiss the complaint on various grounds. Of principal relevance to this article are (i) the defendants' argument that the suit is barred by the Credit Agreement's No-Action Clause; and (ii) the defendants' argument that the complaint fails to state a claim because the transaction complied with the Credit Agreement as amended by the Sixth Amendment. The motions to dismiss included other arguments, including (i) an argument that the declaratory judgment and implied covenant claims should be dismissed as duplicative of the breach of contract claims; (ii) an argument by Antares that, as administrative and collateral agent, it is exculpated from any liability; (iii) an argument by STG that the fraudulent transfer claim should be dismissed because it was improperly brought under New York law when Illinois law applied; and (iv) an argument that equitable relief (i.e., declaratory judgment or unwinding the transaction) should not be available.

The Ruling

Judge Patel denied the motions to dismiss on every basis except one. With respect to the New York fraudulent transfer claim, the court found that the New York Uniform Voidable Transactions Act clearly states that Illinois law, not New York law, should apply to the transfer notwithstanding the Credit Agreement's choice-of-law provision. The court otherwise generally accepted the plaintiffs' arguments and in doing so made several key rulings.

I. No-Action Clause

The court first took up the defendants' argument that the plaintiffs lacked standing to bring any claims because they did not comply with the No-Action Clause in the Credit Agreement. The No-Action Clause states in relevant part:

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Agent in accordance with the Loan Documents for the benefit of all the Secured Parties

The defendants argued that this provision unambiguously vested Antares with sole authority to bring claims related to the

loans issued under the Credit Agreement. The plaintiffs did not dispute that they never made a demand on Antares to "enforce rights and remedies," nor did they ever request Antares' consent to bring the complaint. Instead, the plaintiffs argued that non-compliance with the No Action Clause should be excused because Antares was a participant in the transaction.

The court sided with the plaintiffs, and—relying on holdings in the cases *BlackRock Balanced Capital Portfolio (FI) v. U.S. National Association*, 165 A.D.3d 526, 528 (1st Dept. 2018) and *Commerzbank AG v. U.S. Bank, N.A.*, 100 F.4th 362, 375-76 (2d Cir. 2024)—ruled that "compliance with the no-action clause is excused when demand futility requires that a party 'commence an action against itself.'" The court explained that this applied not only to the plaintiffs' claims against Antares itself, but also to the claims brought against STG and the Majority Lenders given Antares' clear conflicts of interest in bringing such claims after Antares itself participated in the same transaction that formed the basis of the claims.

The defendants argued that Antares' participation in the transaction did not absolve the plaintiffs of their obligation at least to obtain the agent's consent before filing their complaint, citing *Eaton Vance Mgmt. v. Wilmington Sav. Fund Soc., FSB*, No. 654397/2017, 2018 WL 1947405, at *6 (N.Y. Sup. Ct. N.Y. Cnty, Apr. 25, 2018) ("J. Crew"), *aff'd*, 171 A.D.3d 626 (1st Dept. 2019) and *Antara Cap. Master Fund LP v. Bombardier, Inc.*, No. 650477/2022, 2023 WL 2566166 (N.Y. Sup. Ct. N.Y. Cnty Mar. 17, 2023), both cases in which the claims were dismissed for failure to comply with a no-action clause. The court found those cases distinguishable because here the plaintiffs alleged that Antares' engaged in non-exculpatory behavior (i.e., bad faith, gross negligence, or willful misconduct), which the court found sufficient to establish that a material conflict of interest such that demand on Antares would have been futile. Specifically, the plaintiffs alleged that Antares intentionally had participated in the October Transaction which benefitted its affiliated Antares lenders and conflicted with Antares' obligation to act as agent for all lenders under the Credit Agreement, not just a subset. Because the court found that the complaint sufficiently alleged non-exculpatory behavior by Antares, it also denied Antares' motion to dismiss on the basis that it was exculpated from all liability.

II. Compliance with Credit Amendment

The court then turned to the defendants' argument that the complaint failed to state a claim because the October Transaction complied with the Sixth Amendment. The plaintiffs effectively conceded that the October Transaction complied with the Sixth Amendment, but argued that the Sixth Amendment itself violated

the Credit Agreement because it violated the non-participating lenders' sacred rights without obtaining their consent.

The Credit Agreement contained a number of "sacred rights" provisions, which set out certain creditor rights that could not be amended without the consent of all lenders "directly and adversely affected" thereby. Although the Sixth Amendment itself did not alter the text of any of the sacred rights in the Credit Agreement, the plaintiffs argued that the Sixth Amendment, and other transaction documents executed in connection with the Sixth Amendment, improperly impacted their sacred rights. For instance, the plaintiffs argued that the Sixth Amendment violated the sacred right found in section 10.1(a)(ii) of the Credit Agreement to receive pre-maturity interest payments because it amended a separate section of the Credit Agreement (section 8.1) to give the borrower "unilateral discretion to avoid any scheduled interest payments until maturity without triggering a default."

The plaintiffs also argued that other aspects of the October Transaction, such as the non-pro-rata repurchase of the Majority Lenders existing loans by the company, the transfer of collateral to unrestricted subsidiaries, and the subordination of the plaintiffs' loans, all violated their sacred rights. None of these actions were specifically affected by the Sixth Amendment, but plaintiffs argued that the Sixth Amendment was part of a larger integrated transaction, and that all transaction documents, namely the Sixth Amendment, the Dropdown Agreement, and Intercompany Agreement, should therefore be read as one single agreement.

The court agreed. Citing *BWA Corp. v. Alltrans Express U.S.A., Inc.*, 112 A.D.2d 850, 852 (1st Dept. 1985), the court noted that under New York law, "[c]ontracts that are 'executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction will be read and interpreted together, it being said that they are, in the eye of the law, one instrument.'" The court found that the plaintiff had adequately alleged that these transaction documents, "had the same purpose, were executed at the same time, and are mutually dependent" and determined that for the purposes of adjudicating the motions to dismiss, it would "read[] and interpret[] the three contracts as one instrument."

After applying the integrated transaction doctrine, the court found that the "actions of Defendants pursuant to the Dropdown Agreement and the Intercompany Agreement"—specifically the drop down of collateral from STG to the unrestricted subsidiaries—did violate plaintiffs' sacred rights. And the court further found that plaintiffs had advanced an

interpretation of the Credit Agreement's provisions regarding non-pro-rata exchanges and subordination that created ambiguities and prevented dismissal.

III. Defendants' Other Arguments

The defendants argued that the plaintiffs' declaratory judgment claim should be dismissed because monetary damages provided a sufficient remedy and the claim was duplicative of plaintiffs' breach of contract claims. The court disagreed, noting that "the breach of contract claims will not settle the open issue as to whether the [Fifth Amendment] or the [Sixth Amendment] is the operative loan document." The court noted that the "declaratory judgment cause of action is forward-looking and cements clarity as to current and future rights and responsibilities of the loan parties" whereas "the breach of contract claims hinge on past actions." Likewise, the court declined to dismiss the plaintiffs' request to unwind the transaction, noting that doing so would be premature.

Finally, the defendants also argued that the breach of the implied covenant of good faith and fair dealing claim should be dismissed, but the court disagreed, finding that the implied covenant claim hinged on different facts than the breach of contract claims, and that the plaintiffs had adequately pleaded that the defendants had engaged in bad faith by secretly conspiring to participate in the transaction only months after the parties agreed to Fifth Amendment, which had added explicit provisions designed to prevent this type of LME.

Takeaways

The STG Logistics decision deals a significant blow to LME proponents by providing plaintiffs a roadmap for circumventing two critical arguments often raised by entities seeking to defend their transactions at the motion to dismiss stage. First, by holding that the agent's participation in the transaction was a sufficient conflict of interest to render demand futile under the No-Action Clause, the court arguably rendered no-action clauses irrelevant to LME litigation. This is because all LMEs by definition favor one group of lenders over others in the same class, and LMEs usually require the agent's participation. Although it is true that Antares' affiliates also had participated in this transaction as lenders, it is not clear that this fact alone drove the court's conclusion. In fact, the court made specific note of the plaintiffs' allegations that Antares, as agent, owed obligations to all lenders under the Credit Agreement, "including providing regular financial updates on STG, advising on STG's covenant compliance, sharing any material developments, and ensuring that loan parties abide by their respective obligations,"

but by approving and effectuating the transaction, Antares, as agent, “abandoned the duty it owed to all lenders as Agent to instead collude with a select group of lenders and devise a Scheme at the expense of others.”

Second, and arguably more importantly, the court showed an inclination to disregard the precise order of the carefully structured transaction steps that LME participants routinely use to ensure compliance with the operative deal documents (such as TriMark’s use of exit consents or Wesco Aircraft’s two-step structure) and to collapse the steps into one. In so doing, the New York Supreme Court seems to have taken a more pro-plaintiff stance than even Judge Isgur did in his now-overturned decision in the Wesco Aircraft case. In *re Wesco Aircraft Holdings, Inc.*, No. 23-3091, 2025 WL 354816, at *16 (Bankr. S.D. Tex. Jan. 17, 2025), report and recommendation adopted in part, rejected in part sub nom. *Wesco Aircraft Holdings, Inc v. SSD Invs. Ltd*, No. 4:25-CV-202, 2025 WL 3514358 (S.D. Tex. Dec. 8, 2025). In that decision, Judge Isgur refused to apply the integrated transaction document to collapse the steps of the Wesco Aircraft uptier transaction, and instead based his reasoning on specific language preventing any amendment that would have the “effect of” releasing collateral. By applying the integrated transaction doctrine here, Judge Patel has suggested that LME challengers may prevail even where such protective language is not present.

Finally, the court at least entertained the notion that an amendment may violate sacred rights even if the amendment does not change any of the text of sacred rights provisions, simply because such amendment “impacts” sacred rights. This signals a potential divergence from the First Department’s ruling in *Mitel*, in which the appellate court held that “amendments otherwise permitted under the express terms of the Credit Agreement . . . cannot support a ‘sacred rights’ claim even if these amendments are alleged to ‘effectively’ impact Plaintiffs.” *Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614, 615 (1st Dept. 2024).

To be sure, the court was operating under the decidedly pro-plaintiff motion to dismiss standard under New York’s CPLR § 3211(a)(7), and the ruling was by no means dispositive in the plaintiffs’ favor. Still, the ruling signals a willingness from the New York Supreme Court to endorse the plaintiffs’ theories, which itself will likely embolden other left-behind lenders to pursue litigation challenging LMEs in New York state court going forward.



International Disputes Update:



Amendments to the English Arbitration Act and China Arbitration Law in 2025

Last year saw notable amendments to arbitration legislations in the U.K. and China. The English Arbitration Act was amended for the first time since its inception in 1996. China also implemented sweeping revisions to its Arbitration Law enacted in 1994.

On August 1, 2025, the new English Arbitration Act 2025 (“AA 2025”) came into force, amending the existing Arbitration Act of 1996 (“AA 1996”). The 2025 amendments to the AA 1996 do not replace the existing legislation but provide legal clarity and guidance on the applicable law of arbitration agreements, arbitrator powers, jurisdictional challenges, and the arbitrator’s duty of disclosure. Some key revisions are highlighted below.

AA 2025 introduces Section 6A, which provides how the law governing the arbitration agreement should be determined. Section 6A(1) provides that the law applicable to an arbitration

agreement is “(a) the law that the parties expressly agree applies to the arbitration agreement, or (b) where no such agreement is made, the law of the seat of the arbitration in question.” In other words, the governing law of the arbitration agreement will be the law of the seat of the arbitration, unless the parties expressly agree otherwise. The amendment explicitly provides that “agreement between the parties that a particular law applies to an agreement of which the arbitration agreement forms a part does not constitute express agreement that that law also applies to the arbitration agreement.” This replaces the widely debated common law principles and offers a straightforward default position. When drafting an arbitration clause, parties should consider an arbitration-friendly jurisdiction for the seat of the arbitration, if they do not expressly choose the law applicable to arbitration agreement.

AA 2025 further strengthens arbitrators’ powers in allowing summary disposal and recognizing emergency arbitrators. AA 2025 adds Section 39A, which expressly confers the arbitral tribunal the power to make an award on a summary basis.

Section 39A provides that “[u]nless the parties otherwise agree, the arbitral tribunal may, on an application made by a party to the proceedings (upon notice to the other parties), make an award on a summary basis in relation to a claim, or a particular issue arising in a claim, if the tribunal considers that (a) a party has no real prospect of succeeding on the claim or issue, or (b) a party has no real prospect of succeeding in the defence of the claim or issue.” The arbitral tribunal must allow the parties “a reasonable opportunity to make representations to the tribunal.” This is an extraordinary power that arbitrators in other jurisdictions do not have. Allowing the arbitral tribunal to dismiss a case summarily will save time and costs. In addition, AA 2025 inserts Section 41A, which explicitly provides that emergency arbitrators may issue preemptory orders.

AA 2025 codifies the arbitrator’s duty of disclosure in Section 23A. Previously, under English common law, arbitrators had a continuing to disclose “any relevant circumstances.” AA 2025 now requires that “[a]n individual who has been approached by a person in connection with the individual’s possible appointment as an arbitrator must, as soon as reasonably practical, disclose to the person any relevant circumstances of which the individual is, or becomes, aware” and “[a]n arbitrator must, as soon as reasonably practical, disclose to the parties to the arbitral proceedings any relevant circumstances of which the arbitrator is, or becomes, aware.” Pursuant to the amendment, arbitrators must disclose any circumstances that might reasonably give rise to justifiable doubts as to their impartiality based on facts of which the arbitrator ought reasonably to be aware, and such disclosure must be made “as soon as reasonably practical” when the arbitrator is approached for possible appointment. This new statutory provision is mandatory. This amendment will encourage arbitrators to err on the side of caution and to make comprehensive, early disclosures and avoid arbitrator challenges.

AA 2025 amends Section 67 of AA 1996 to provide a revised, narrower framework for jurisdictional challenges to the arbitration award. AA 2025 restricts parties from raising jurisdictional objections or evidence before the court that were not raised in the arbitration. In addition, AA 2025 prohibits the court from re-hearing evidence that was heard by the arbitral tribunal. However, a court may determine that such jurisdictional objections or evidence should be heard by the court in the “interests of justice.” The rules are designed to prevent jurisdictional challenges from being full re-hearings.

China too passed amendments to the Chinese Arbitration Law in September 2025, which is to take effect on March 1,

2026. The newly revised Chinese Arbitration Law significantly updates China’s 1994 Arbitration Law, the first national legislation governing arbitration. The amendments seek to realign the Chinese arbitration regime more closely to common international arbitration standards to position China as a preferred and accessible seat of arbitration.

Amendments to the Chinese Arbitration Law endeavor to adopt international standards, especially in relation to foreign-related arbitrations. One significant change can be found in Article 81, which explicitly recognizes the concept of the “seat of arbitration.” Previously, Chinese law did not distinguish the seat of arbitration and the location of the arbitration institution, which created confusion in foreign-related disputes. With the amendment, parties in foreign-related disputes can now specify the seat of the arbitration. In addition, Chinese Arbitration Law now formally recognizes *ad hoc* arbitration in specific foreign-related disputes. Previously, Chinese law recognized only institutional arbitration. Article 82 provides that foreign-related maritime disputes and foreign-related disputes between entities registered within Free Trade Pilot Zones, Hainan Free Trade Port and other designated areas are eligible for *ad hoc* arbitration. Further, Article 86 allows foreign arbitral institutions to set up offices and administer foreign-related arbitrations in Free Trade Pilot Zones, Hainan Free Trade Port, and other areas as designated by the Chinese government, thus opening the door for foreign arbitral institutions to operate in China.

Another notable alignment to international arbitration standards is arbitrators’ disclosure obligations. For the first time, the Chinese Arbitration Law sets out the arbitrators’ disclosure obligations in line with other international arbitration regimes. Pursuant to Article 45, arbitrators are required to disclose promptly in writing to the arbitral institution any circumstance that may give rise to reasonable doubts as to their independence or impartiality.

Although these amendments reflect greater openness and flexibility to foreign-related disputes and international arbitration regimes, parties will be looking to see how the updated procedural statutory guidelines will be implemented in practice.

VICTORIES



Historic Rule 11 Dismissal and Fee Victory Against the Commodity Futures Trading Commission in Hotly Contested Fraud Case

In August 2023, the Commodity Futures Trading Commission filed a complaint against Traders Global Group, Inc. (doing business as “My Forex Funds”) and its founder, Murtuza Kazmi, alleging that the defendants had carried out a massive fraud in connection with their simulated foreign exchange and commodities trading business. CFTC v. Traders Global Group., Case No. 1:23-cv-11808 (D.N.J.). Concurrently, the CFTC filed under seal an ex parte motion for a restraining order against My Forex Funds and Mr. Kazmi, urging the court to freeze immediately all of defendants’ corporate and personal assets and to institute a temporary receiver to take over defendants’ business. In support of the CFTC’s ex parte restraining order request, the CFTC’s lead investigator declared under penalty of perjury that defendants had transferred CAD \$31.55m from a corporate account to an unidentified account controlled by Mr. Kazmi. Taking the CFTC at its word, the Court granted the CFTC’s restraining order request without a hearing and without any prior notice to defendants. After defendants were finally served with the complaint and the executed restraining order, they came to Quinn Emanuel to defend them in this existential crisis.

Immediately, Quinn Emanuel developed an aggressive strategy to dissolve the restraining order, to oppose the CFTC’s parallel motion for a preliminary injunction, and to fight the CFTC’s overreach on the merits. In an early emergency motion to modify the restraining order, Quinn Emanuel brought to the Court’s attention that the CAD \$31.55m transfer was not a deposit to an “unidentified Kazmi account,” as the CFTC’s investigator had affirmed under oath, but a legitimate payment to Canadian tax authorities. Even when confronted with this significant discrepancy, the CFTC did not admit fault, and it remained intransigent in its campaign to destroy Mr. Kazmi and his business.

During a contested evidentiary hearing on the CFTC’s motion for a preliminary injunction in November 2023, the CFTC investigator who signed the declaration in support of the ex parte motion testified that he had learned the CAD \$31.55m transfer was a tax payment only after the CFTC had filed its ex parte motion and complaint. Finding that the CFTC had offered little to no evidence showing that defendants would dissipate assets pending the litigation, the Court significantly pared back the scope of the initial restraining order and dismissed the temporary receiver from the case—a rare outcome in and of itself.

After the preliminary injunction hearing, Quinn Emanuel discovered that the CFTC’s lead investigator had lied under oath again. Contrary to the investigator’s testimony during the hearing, the CFTC later conceded that the Ontario Securities Commission had informed the CFTC that the CAD US\$31.55m transfer was a tax payment before the CFTC had filed its complaint and ex parte motion. Shortly thereafter, Quinn Emanuel moved for sanctions under Rule 11 of the Federal Rules of Civil Procedure.

After months of discovery and a contentious multi-day evidentiary hearing, the Court dismissed the entire case with prejudice and ordered the CFTC to pay our clients over US\$3m in attorneys’ fees and costs—the largest monetary sanction to date against a U.S. government agency. The Court explained:

The CFTC’s conduct, which was undertaken over the course of a year and involved numerous instances of sanctionable behavior, was willful and undertaken in bad faith. It likely affected the Court’s decision to order the [restraining order] or, at the very least, maintain it, and it likely affected the Court’s decision on the [preliminary injunction] Motion, because the Court did not have the full, complete and truthful information before it. The

CFTC's conduct was undertaken for the purpose of gaining a tactical advantage, that is, restraining all or substantially all of Defendants' assets, and has caused significant expense and diversion of Court and party resources. Without the imposition of sanctions, this conduct appears likely to repeat itself. Dkt. 258 at 40.

This total victory brought to light issues of national importance regarding due process rights, government accountability, and attorney ethics.

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