

Western District Case Notes

■ **Kevin Hogan And Sean McPhee** SPECIAL TO THE DAILY RECORD

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MOTION FOR RETROACTIVE EXTENSION OF TIME TO SERVE COMPLAINT

In *Button v. N.Y. State Dep't of Transportation*, 24-cv-06739-EAW (Nov. 12, 2025), plaintiff filed a complaint against her employer—a state agency—seeking damages for disability discrimination. Thereafter, the summons and complaint were served on the New York State Attorney General and copies were mailed to defendant's Commissioner and General Counsel.

Defendant's attorney later notified plaintiff's attorney that service was insufficient because the envelope containing the copies of the summons and complaint that were mailed to defendant's Commissioner was not marked "urgent legal mail" (in capital letters) and because certified return receipt was not requested, both of which are required by CPLR 307. Several weeks later, plaintiff's attorney mailed copies of the summons and complaint to defendant's Commissioner, but this second mailing was also not marked "urgent legal mail" and was not sent by

certified mail return receipt requested. As a result, defendant moved to dismiss plaintiff's complaint based on insufficient service of process. That same day, plaintiff's attorney sent the summons and complaint to defendant's Commissioner a third time, and this time the envelope was marked "urgent legal mail" in capital letters and was sent certified return receipt requested. In light of that third mailing, plaintiff made a motion requesting that the Court deem service of process timely. In evaluating the motions, the Court first observed that Fed. R. Civ. P. 4(m) requires dismissal of an action without prejudice if a defendant is not served within 90 days after the complaint is filed unless the plaintiff shows good cause for the failure. The Court also noted that, even in the absence of good cause, it has discretion to grant an extension in certain circumstances. Here, because there was no dispute that plaintiff failed to complete service on her first two attempts; because plaintiff conceded that she did not meet her 90-day deadline to serve defendant; and because plaintiff did not argue that she had good cause for her failure—besides criticizing defendant for requiring "strict adherence to the CPLR mailing formality"—the Court then analyzed the factors for determining whether a discretionary extension is appropriate. In doing so, the Court remarked that it was "not impressed with plaintiff's attorney's inability to comply with basic proce-



Sean McPhee

dural requirements needed to effectuate service," but found that failing to grant the requested extension "could have dire consequences for plaintiff (even though her counsel does not seem to recognize this)." That was because, although the three-year statutes of limitations on plaintiff's claims had not expired, her ADA claim would be untimely in a recommenced action since the 90-day deadline to commence an action following receipt of a "right to sue" letter from the EEOC is not tolled in instances where a complaint is timely filed but later dismissed, meaning that claim would be time-barred if this case was dismissed. The Court then concluded that this factor "favors granting plaintiff's requested extension of time, notwithstanding her counsel's inexcusable failure to effectuate service even after being advised by defense counsel as to the missing steps," and retroactively deemed plaintiff's third mailing timely.

MOTION TO QUASH NON-PARTY SUBPOENAS

In *Murphy v. County of Chemung*, 18-cv-6628-FPG (Nov. 19, 2025), plaintiffs objected to the Magistrate Judge's Order granting defendants' motion to quash nine non-party subpoenas that were served on the final



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day of fact discovery. The Court first noted that it could reconsider the Order, which pertained to non-dispositive matters, only when if the Order was clearly erroneous or contrary to law. According to the Court, clear error is a highly differential standard of review, and is present when, upon review of the entire record, the Court is left with a definite and firm conviction that a mistake has been committed. Here, the Court found no such mistake and overruled the objections. Plaintiffs argued that the motion to quash should not have been granted because defendants did not have standing to object to the non-party subpoenas and because the Court should not have considered whether good cause existed to extend the discovery deadline when plaintiffs never made such a request. Regardless of whether defendants had standing or plaintiffs had requested an extension, the Magistrate Judge retained her own authority to *sua sponte* quash the untimely subpoenas or extend (or decline to extend) the discovery deadlines. Thus, the rulings in the Order were reasonable factually and legally.

MOTION TO SEAL

In *Marcelletti v. GEICO General Insurance Co.*, 23-cv-6211-EAW (Nov. 3, 2025), a punitive class action asserting breach of contract claims, defendant filed four motions to seal various information filed in connection with plaintiff's emergency motion to enforce a scheduling order and in opposition to one of the motions to seal. The Court undertook a three-part analysis in considering the motion to seal: was the information a judicial document; if so, what is the weight of the presumption that attaches; and, finally, do competing considerations outweigh that presumption. To overcome the presumption of public access to judicial documents, the Court

noted that it must find, on the record, that sealing is necessary to preserve higher values and then narrowly tailor any sealing order to achieve that aim. The information sought to be sealed included letter motions, briefs, declarations, and exhibits, all relating to the discovery motion and all of which pertained to the Court's determination of that motion. For that reason, the Court concluded that the information constituted judicial documents. Although those documents did not meet the higher threshold imposed by the First Amendment with respect to judicial documents, they nevertheless were entitled to a weaker but "still substantial" presumption of public access. And even though some of the information may have been subject to protection under a confidentiality protective order entered in this matter, that alone did not justify granting the motion to seal. The Court held that defendant had not established any compelling reason to maintain the information under seal, and that, even in the face of the modest presumption of public access, defendant had not met its burden of demonstrating that it would suffer competitive harm if the alleged confidential business information was disclosed.

MOTION TO STAY DISCOVERY

In *Armory5, Inc. v. Logan*, 24-cv-06568-MAV-CDH (Nov. 26, 2025), plaintiffs sued three sets of defendants, one of which was their former attorneys, asserting claims under the Defend Trade Secrets Act of 2016, the Computer Fraud and Abuse Act, and New York and Delaware law. Plaintiffs later amended their complaint and their former attorneys moved to dismiss it. While that motion was pending, plaintiffs moved for leave to amend their complaint yet again and that motion was granted. Plaintiffs then filed their second amended com-

plaint and, while certain defendants served answers, plaintiffs' former attorneys moved to dismiss it and also asked the Magistrate Judge to stay discovery pending the outcome of their motion, which plaintiffs opposed. In evaluating the motion, the Court first observed that it has discretion to stay discovery upon a showing of good cause, and while a defendant's filing of a motion to dismiss does not automatically constitute good cause to stay discovery, it may qualify as good cause when weighing the applicable three-factor test, which considers: (1) the strength of the dispositive motion; (2) the breadth of the discovery sought; and (3) the prejudice a stay would have on the non-moving party. Regarding the first factor, the Court did not examine the merits of the motion to dismiss in great detail because it is pending before the District Judge and, where different courts are deciding the stay motion and the dispositive motion, it is a waste of judicial resources for the court deciding the stay motion to consider the strength of the motion to dismiss. Nonetheless, "based on a cursory review," the Court found that the motion to dismiss presented substantial arguments that may shape the number and nature of the claims going forward in a manner that could significantly impact the breadth of discovery, a factor that weighed in favor of staying discovery. Next, the Court observed that the second factor weighed "even more strongly in favor of staying discovery" because this is a "complex, document-rich case," and allowing plaintiffs to proceed with discovery could lead to unnecessary expenditures of time and resources. Finally, while noting that some prejudice to the non-moving party is inherent in any delay, such delay alone is insufficient to prevent a stay, otherwise stays of discovery would never be granted. The Court then found that the third

factor favored a stay of discovery both because plaintiffs failed to identify any specific prejudice, and because judicial efficiency and case management would be better served by staying discovery. As a result, discovery from plaintiffs' former attorneys was stayed during the pendency of their motion to dismiss, but because the remaining defendants answered the second amended complaint rather than moving to dismiss it, discovery would proceed with respect to those defendants.

MOTION IN LIMINE REGARDING DAMAGES RECOVERABLE AT TRIAL

In *United Pool Distribution, Inc. v. Custom Courier Solutions, Inc.*, 22-cv-06314-FGP-CDH (Nov. 18, 2025)—a dispute concerning a non-solicitation agreement—defendant filed a motion *in limine* to preclude plaintiff from seeking damages it claims accrued after June 1, 2022—the date the Court found in prior motion practice that the non-solicitation agreement expired. Plaintiff opposed the motion, arguing that it incurred damages from defendant's breach beyond the expiration of the non-solicitation agreement so it should not be precluded from offering evidence of those damages. Recognizing that the purpose of a motion *in limine* is to allow the Court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence, the Court also observed that it is permitted to reserve decision on the motion until trial so that the motion is placed in an appropriate factual context. The Court then found that it could not fully assess plaintiff's damages theory—or the facts on which it is based—so it would not attempt to resolve the issue in advance of trial. Accordingly, the Court determined that plaintiff would not be precluded from proffering evi-

dence of damages accruing after June 1, 2022 but, likewise, defendant would not be precluded from seeking the preclusion of such damages upon a properly submitted Fed. R. Civ. P. 50 motion (for judgment as a matter of law) at the close of plaintiff's case.

MOTION TO EXTEND TIME TO APPEAL

In *Pynn v. Pynn*, 24-cv-508-LJV (Oct. 28, 2025), the Court first denied the pro se plaintiffs' motion for a preliminary injunction and temporary restraining order, and then more than seven months later denied her motion to reconsider the first order. Thirty-three days after the Court denied the motion to reconsider, plaintiff moved for an extension of time to appeal and simultaneously filed two notices of appeal, one from each of the prior orders. The Second Circuit determined that plaintiff's appeals were not timely but directed the Court to consider whether her motion for extension of time entitled her to relief under Federal Rule of Appellate Procedure 4(a)(5). Under the rule, a notice of appeal must be filed within 30 days after entry of the judgement or order appealed from. A court may extend the time to file a notice of appeal only if the party moves no later than 30 days after the time prescribed by Rule 4(a) expires and shows excusable neglect or good cause. If, however, the motion is made after the 30-day grace period, the court lacks jurisdiction to grant such a motion. Here, the motion for an extension of time to appeal was filed more than eight months after the first order's entry, depriving the Court of jurisdiction to grant that motion even if it found that plaintiff had demonstrated good cause or excusable neglect. The second notice of appeal, however, was filed only 33 days after entry of the order to which

it pertained, thus within the 30-day grace period. In light of its obligation to construe the filings of a pro se litigant liberally, the Court construed the motion to extend the time to appeal to apply to both of the Court's orders, and concluded that plaintiff established the requisite excusable neglect when, in her motion, she pointed to her misunderstanding of the law and her father's death. Of the four factors courts consider when evaluating whether a movant has shown excusable neglect, the third factor — the reason for the delay, including whether it was within the reasonable control of the movant — is considered dispositive. The Court found that this factor weighed heavily in plaintiff's favor. "The federal rules are complex, and the court may find excusable neglect in a pro se litigant's confusion about how they work." The Court also found that the other three factors weighed in plaintiff's favor as well: there presumably would be no prejudice to the defendants who had not yet appeared; the delay in appealing the second motion was minimal; and, there was no reason to believe that plaintiff was not acting in good faith. The Court thus denied the motion to extend the time to appeal the first order but granted the motion to extend the time to appeal the second order.

Kevin M. Hogan is a partner at Phillips Lytle LLP. He concentrates his practice in litigation, intellectual property and environmental law. He can be reached at khogan@phillipslytle.com or (716) 847-8331.

Sean C. McPhee is a partner at Phillips Lytle LLP where he focuses his practice on civil litigation, primarily in the area of commercial litigation. He can be reached at smcphoe@phillipslytle.com or (716) 504-5749.