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Western District Case Notes

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MOTION TO DISMISS TORTIOUS INTERFERENCE CLAIM

In *Hurlbut Health Consulting v. Otis Elevator Co.*, 24-cv-06562-MAV (Jan. 5, 2026), plaintiff filed a complaint in state court asserting causes of action for breach of contract, unjust enrichment, and "tortious interference with business." Defendant removed the matter and then moved to dismiss the tortious interference claim, contending that plaintiff failed to plead facts sufficient to establish the elements of that claim. After reviewing those elements—i.e., that (1) the plaintiff had business relations with a third party; (2) the defendant interfered with those business relations; (3) the defendant acted for a wrongful purpose or used dishonest, unfair, or improper means; and (4) the defendant's acts injured the relationship—the Court next observed that "the conduct constituting tortious interference with business relations is, by definition, conduct directed not at the plaintiff itself, but at the party with which the plaintiff has or seeks to have a relationship." The Court then found that each of plaintiff's allegations related to defendant's conduct toward plaintiff, and not toward any third party with which plaintiff sought business relations. As a result, the Court held that plaintiff failed to state a claim upon which relief could be granted and dismissed plaintiff's claim for tortious interference with business relations.

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UNIFORM COMMERCIAL CODE ARTICLE 4A AND PREEMPTION

In *Pitrone v. M&T Bank, N.A.*, 24-cv-01006-GWC (Jan. 5, 2026), plaintiff filed a complaint asserting a single cause of action for breach of contract and contending that defendant violated the terms of her deposit account agreement by failing to exercise reasonable care with respect to two wire transfers that she authorized. More specifically, plaintiff alleged that she was the victim of a scam and, at the instruction of the scammers, went in person to one of defendant's branches where she authorized two wire transfers to a bank in Hong Kong, sending approximately $478,000 to the scammers' account there. According to plaintiff, given her age, her general banking practices, and a recent data breach, defendant's employees should have recognized that plaintiff was being scammed and either refused to execute the wire transfers or frozen her account. Defendant moved to dismiss, arguing among other points that plaintiff's claim was preempted by Article 4A of New York's Uniform Commercial Code, which governs electronic funds transfers. In evaluating defendant's motion, the Court first observed that, when determining if a common law claim is preempted by Article 4A, "the critical inquiry is whether its provisions protect against the type of underlying injury or misconduct alleged in the claim." The Court then recognized that two of Article 4A's principal purposes are to protect against erroneous and unauthorized electronic funds transfers and to cabin banks' liability for unreported errors. Thus, where a payment order is not authorized by a customer, a bank must make a refund to the customer, but if the wire

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transfer is authorized, the bank does not have any obligation to refund the customer. Ultimately, the Court held that plaintiff's claim was preempted because Article 4A is a comprehensive scheme that allocates risk in the execution of wire transfers, and its security measures relate only to preventing *unauthorized* transfers. Here, however, plaintiff admitted that she authorized the transfers, so if the Court were to impose liability on defendant for failing to implement the additional security measures plaintiff was lobbying for—i.e., preventing customers from making ill-advised wire transfers—such liability would be inconsistent with Article 4A's allocation of risk. As a result, plaintiff's claim was preempted, and her complaint was dismissed.

MOTION TO COMPEL RULE 26(F) CONFERENCE

In *Mandala v. NTT Data, Inc.*, 18-cv-6591-MAV-CDH (Jan. 15, 2026), plaintiff asserted various employment discrimination claims arising under federal and state law against defendant. Plaintiff amended his complaint, defendant moved to dismiss, and the Court granted the motion in part and denied part. After defendant filed a motion for reconsideration, and while that motion was pending, plaintiff sent defendant a letter requesting to schedule "an initial conference to begin the Rule 26(f) conferral process." Defendant advised such a meeting was premature because its motion to reconsider was still pending and it had not yet filed an answer. Soon after, the Court issued a text order holding that "defendant is not required to file an answer in this matter until after the court issues its decision on the pending motions." Plaintiff then filed a motion to compel defendant to participate in a discovery planning conference pursuant to Rule 26(f) and Local Rule 26(b), arguing that i) defendant's motion for reconsideration did not automatically stay the parties' obligations under Rule 26(f), ii) now was a "practicable time" to hold a Rule 26(f) conference, and iii) a stay of discovery was inappropriate because the motion for reconsideration was unlikely to succeed, the burden of holding such a conference on defendant was minimal, it was in the public interest to avoid further delay, and any stay would disproportionally burden plaintiff who had the burden of proof. The Court began its analysis by noting that Rule 26(f) provides that "the parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)," and Rule 16(b) typically requires the issuance of a scheduling order "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." The Court also noted, though, that it need not issue a scheduling order within that time frame "if it finds good cause for delay." According to the Court, a pending dispositive motion is considered good cause in this Circuit to delay issuance of a scheduling order, and a motion seeking reconsideration of the decision on a dispositive motion is, itself, dispositive. Since a Rule 16 conference had not yet been scheduled, the Court found it was premature to hold a Rule 26(f) conference, and noted also that plaintiff's argument that discovery should not be stayed was misplaced because discovery, in fact, had not yet even begun and could not be stayed until it had begun. For all of those reasons, the motion to compel a Rule 26(f) conference was denied.

MOTION FOR RECONSIDERATION

In *Crisis Pregnancy Services, Inc. v. Page*, 23-cv-01057-LJV-HKS (Jan. 31, 2026)—an action brought under the Freedom of Access to Clinical Entrances Act in which plaintiff alleges that defendants violated the Act by threatening and intimidating individuals that sought access to plaintiff's facility—one of the defendants moved to dismiss the claims against her and plaintiff moved to dismiss the counterclaims interposed against it. After the Court granted both motions in part and denied both in part, plaintiff moved for reconsideration, arguing that the Court did not address or decide certain issues raised in its motion. Recognizing that a motion for reconsideration "is an extraordinary request that is granted only in rare circumstances, such as where the court failed to consider evidence or binding authority," the Court then observed that "reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." The Court found that plaintiff failed to meet that high bar because it was merely rehashing arguments it previously made and expressing disagreement with the Court's decision, which are not grounds for reconsideration. Moreover, because plaintiff's other arguments in support of reconsideration were not raised in its original motion, they could not be considered since parties cannot use a motion for reconsideration to advance new argu-

WESTERN NEW YORK
THE DAILY RECORD

ments. Accordingly, the Court held that, while plaintiff can assert those arguments at the summary judgment stage, "the ship has sailed on its motion to dismiss" and denied the motion for reconsideration.

INSURANCE COVERAGE AND LATE NOTICE WITHOUT EXCUSE

In *Kendall Central School District v. Century Indemnity Co. et al.*, 24-cv-6200-EAW (March 3, 2026), plaintiff commenced an action against defendants seeking insurance coverage with respect to a Child Victim's Act ("CVA") lawsuit that arose out of conduct alleged to have occurred in the early 1970s. Those underlying claims, which would otherwise have been time-barred, were revived by the New York State Child Victims Act. After being served with the complaint in the underlying action, plaintiff notified its current insurance carriers, who denied coverage because the alleged negligence occurred prior to the current policy term. Plaintiff searched for records relating to insurance coverage for the time period at issue but could not locate any records, in part because of its document retention policies at the time. In the course of written discovery concerning plaintiff's employment practices during the 1970s, entries in certain meeting minutes referenced insurance policies procured through a local insurance agent during the relevant time period. More than two years after the underlying action had been commenced, plaintiff put those carriers on notice of the lawsuit, but the carriers disclaimed coverage on grounds that plaintiff failed to provide timely notice of the lawsuit, leading to the instant insurance coverage lawsuit and the filing of competing motions for summary judgment by the parties. The Court recognized that, under current New York law, failure to provide timely notice does not invalidate a claim absent prejudice to the insurer, but under the law in effect at the time of the policies at issue here (1968-1973), no showing of prejudice was required for late notice to nullify the insurance coverage if there was no valid excuse for that delay. Here, the question before the Court was whether plaintiff's delay in providing defendants with notice was excused, and the Court concluded it was not. The Court observed that, where there is no excuse or mitigating factor for the late notice, the issue poses a legal question for the court, rather than a question of reasonableness for the jury. In this instance, a justifiable lack of knowledge of insurance coverage may excuse a delay in reporting an occurrence, but "a justifiable lack of knowledge of coverage is to be distinguished from a lack of knowledge of the existence of the policy. Notice of the content of the coverage is within the control of the insurer and it will thus generally bear some of the responsibility for an insured's lack of knowledge of coverage." But a lack of knowledge of the existence of a policy is within the insured's control. Here, the Court concluded that plaintiff's defense amounted to a lack of knowledge about the existence of a policy and not as to the coverage provided by the policy, which was not grounds for finding a valid excuse as a matter of law. For that reason, defendant's motion was granted and plaintiff's motion was denied.

JURY NOTES

In *Wepnner v. County of Erie*, 22-cv-519-MAV (Feb. 3, 2026), following a three week trial and while the jury was deliberating, the jury sent a note to the Court requesting a new copy of the verdict sheet, stating that the jurors "wrote down something they would like to change." After receiving a clean copy of the verdict sheet, the jury reached a verdict and found in favor of plaintiff. In order to create "a complete trial record," defendant moved to have the original copy of the verdict sheet filed in the docket or, in the alternative, produced to counsel, notwithstanding that it also acknowledged that what the jury had recorded on the original copy of the verdict sheet was part of its deliberations, and that jury deliberations are not meant to be part of the trial record. "The sanctity of the jury room is among the basic tenets of our system of justice. Inquiries into the thought process underlying the verdict have long been viewed as dangerous intrusions into the deliberative process." Noting that is it well-established that "jury deliberations are, by design, a black box," and that, "except in the rarest circumstances, a reviewing court has neither the authority nor the ability to peer inside the jury's deliberations," the Court denied the motion.

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