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Western District Case Notes

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

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MOTION TO DISMISS ON PLAUSIBILITY AND PERSONAL JURISDICTION GROUNDS

In *Knapp Farms Operating, Inc. v. SGG USA, LLC*, 24-cv-6184-CJS (July 15, 2026), in a diversity action arising from a construction contract in which plaintiffs alleged they paid for an unfinished apple storage facility and sued two individual defendants and various corporations related to those individuals, one such corporate defendant moved to dismiss the complaint on grounds that the complaint failed to state a claim against it because the complaint was devoid of any allegations of wrongdoing by it and because plaintiffs could not establish personal jurisdiction over the corporate defendant when that defendant was a Canadian corporation with no contacts in New York, never conducted business anywhere, and never had a bank account. The Court granted the motion to dismiss on both grounds, holding first that the complaint failed to state any plausible claim against the moving defendant. Merely asserting that the individual defendants were directors of the corporate defendant with control and authority over its finances and use of its funds was not sufficient to plausibly allege that the corporate defendant had facilitated any of the wrongdoing alleged in the complaint. The complaints' allegations concerning the corporate defendant also were made only upon information and belief and were unsupported by any facts that would make the allegations plausible rather than merely possible. The Court also rejected plaintiffs' argument that, until the parties engaged in discovery, plaintiffs cannot know if the corporate defendant was or was not involved. In addition, the Court held that plaintiffs had not made a prima facie showing to support any of the five elements needed to establish personal jurisdiction under New York's long arm statute (NYCPLR §302(a)(3)). Plaintiffs had not, for example, alleged any facts suggesting that the defendant committed a tortious act relating to the lawsuit, or that it derived any revenue from interstate or international commerce, but rather had only made conclusory and speculative assertions which were insufficient to withstand dismissal.


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COLLECTIVE BARGAINING AGREEMENTS AND THE DUTY TO ARBITRATE

In *Xerox Corp. v. Local 14A, Rochester Regional Joint Board*, 22-CV-6219-FPG (July 9, 2026), petitioner sought the Court to stay arbitration and moved for a declaratory judgment pursuant to Section 301 of the Labor Management Relations Act ("LMRA") in response to respondent's demand to arbitrate with regard to certain health benefits for retirees. Section 301 of LMRA grants federal courts jurisdiction over disputes between employers and labor unions that require interpretation of collective bargaining agreements. With respect to whether a CBA creates a duty for the parties to arbitrate a particular grievance, "unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." Here, petitioner put forth two arguments in seeking the stay of arbitration: First, petitioner denied it had any obligation to arbitrate because the parties had not agreed to arbitrate grievances brought on behalf of retirees; and second, petitioner argued that the notice of intention to arbitrate was defective because it identified two arbitrators when only one would conduct the arbitration. On both counts, the Court disagreed and dismissed the motion and compelled the arbitration. The Court found that constitutional standing and prudential standing were present. First, that the disputed benefit accrued to third parties (the retirees) did not change the fact that the union had negotiated for the benefit and incurred obligations in order to secure it. And second, Section 185 in LMRA contemplates that unions would be allowed to sue under LMRA, and the Second Circuit recognizes the right of a union to represent retirees.

Turning to whether such rights were subject to arbitration under the CBA, there was no dispute that the arbitration agreement was valid but instead the issue turned only whether the parties had agreed to arbitrate this particular dispute concerning health benefits for retirees. The Court concluded the arbitration provision was ambiguous because it susceptible to more than one interpretation, and an interpretation that the parties agreed to arbitrate grievances brought on behalf of retirees was a reasonable one considering the plain language of the provision, its compatibility with the rest of the CBA, and the past practice of the parties. Because the parties had entered into a valid and enforceable agreement to arbitrate, the Court applied the presumption of arbitrability and concluded the provision applied to the dispute at hand. The Court also held the notice to arbitrate was not defective when it listed two arbitrators when only one would oversee the case because, by its express language, the arbitration provision required the parties to include in the notice two eligible dates per year from both arbitrators before the parties would then select which arbitrator would conduct the proceeding.

MOTION TO DISMISS COPYRIGHT CLAIMS BASED ON IMPROPER VENUE

In *Forevermore Music, Inc. v. 43 North Broadway, LLC*, 25-cv-6078-EAW (July 28, 2026), plaintiff brought an action asserting claims for, among other things, copyright infringement and defendant moved to dismiss or transfer the case based on improper venue, arguing that its principal place of business is located in White Plains, New York, which is outside the Western District of New York. In evaluating defendant's motion, the Court observed that, under 28 U.S.C. § 1400(a), venue is proper in a copyright case if the action is "instituted in the district in which the defendant or his agent resides or may be found," and recognized the caselaw is not fully aligned on the proper application of the statute because, in addressing whether a defendant "may be found" in a particular district, many courts have required the defendant to have specific jurisdictional contacts in the district rather than contacts merely within the state. Thus, in a multi-district state like New York, the specific district should be treated as a separate state for purposes of § 1400(a)'s venue analysis, requiring in-district contacts. In other words, "the defendant must have sufficient contacts in the district—being subject to personal jurisdiction in the state is not enough." Here, because plaintiff did not allege that defendant had any specific contacts within the Western District of New York, the Court concluded that venue for plaintiff's copyright claims was not proper in this district. Rather than dismissing the case, however, the Court found that the interests of justice favored transferring the case—primarily because the statute of limitations on plaintiff's claims likely had expired—and transferred the case to the Southern District of New York under 28 U.S.C. § 1406(a).

MOTION TO TRANSFER VENUE

In *Hayes Pump, Inc. v. Kordun Construction Corp.*, 24-cv-6627-EAW (July 21, 2026)—an action for breach of contract concerning the sale of goods used in connection with a construction project in Brooklyn—defendant moved to transfer venue to the Eastern District of New York and plaintiff cross-moved for summary judgment. Noting that a party moving to transfer venue must make a strong case for transfer by clear and convincing evidence, the Court then identified the nine factors that courts consider in determining whether a transfer is in the interest of justice and examined each factor in turn. In doing so, the Court first recognized that, while a plaintiff's choice of venue is typically entitled to significant consideration, that factor is diminished if the operative facts upon which the litigation is brought bear little material connection to the chosen forum. And here, the Court could not discern any connection with the Western District of New York aside from the fact that plaintiff's attorneys are located here. But the location of counsel is not afforded substantial consideration, so plaintiff's preference for maintaining this action in the Western District of New York was entitled to little or no weight. Next, the Court recognized that the convenience of witnesses is perhaps the most important consideration in determining whether transfer is appropriate. To that end, the Court also observed that the convenience of non-party witnesses is accorded more weight than that of party witnesses. On that point, while the record was not sufficiently developed so as to reflect the exact location of some of the witnesses, many (including non-party witnesses) are located in the Eastern District and none appeared to be located in this district, so that factor favored transfer. The Court then found that the location of relevant documents and the accessibility of proof was a neutral factor in light of the advances of modern technology and also determined that the factor concerning convenience of the parties weighed in favor of transfer because defendant is located in the Eastern District of New York while plaintiff is located in Massachusetts. Similarly, because the locus of operative facts centered on the Eastern District of New York (while none of the facts have any connection to the Western District of New York), that factor too weighed in favor of transfer. Finally, because the Eastern District of New York is better situated to compel the attendance of non-party witnesses located in the New York City area (since they would be within a 100-mile radius of that court) and because the remaining factors (i.e., relative means of the parties, the forum's familiarity with the governing law, and calendar congestion of the transferee and transferor courts) were all neutral, the Court concluded that transferring the case to the Eastern District of New York was in the interests of justice, so

it granted defendant's motion and deferred ruling on plaintiff's cross-motion for summary judgment.

PRIVILEGE LOGS FOR ELECTRONICALLY STORED INFORMATION

In *Short v. City of Rochester*, 22-cv-6263-EAW-MJP (August 7, 2026), after the Court ordered defendant to produce approximately 72,000 emails resulting from searches for electronically stored information or a privilege log for any emails that were withheld, defendant eventually produced approximately 20,000 documents and a privilege log for the remaining 52,000 documents. Plaintiffs moved under Rule 37(a)(3)(B)(iv) to compel production of a more detailed privilege log, arguing the log lacked sufficient detail about the subject matter of the withheld documents and the relationship between the sender and recipient to establish that the documents were privileged. Defendant responded first by arguing that producing a more detailed privilege log would be overly burdensome because 90% of the withheld documents were irrelevant due to plaintiffs having proposed "obviously...too generic" ESI search terms. Instead, defendants offered to supplement the privilege log only as to those emails that plaintiffs identified as relevant. When plaintiffs failed to respond to that request, Defendants also argued that plaintiffs failed to confer with defendants in good faith before moving to compel. The Court granted the motion and afforded defendant 14 additional days to produce a compliant privilege log. The Court noted that Rule 37(a)(1) requires a moving party to include a certification of conferring in good faith, and Local Rule 7(d)(3) requires an affidavit demonstrating that sincere attempts to resolve the discovery dispute have been made. Here, though, the Court concluded that plaintiffs had satisfied their duty to meet and confer because defendants' demand that plaintiffs first identify those withheld documents that were relevant before any supplemental privilege log would be provided was unreasonable. Defendants' "scant log entries" regarding the subject matter of the withheld documents would not have allowed plaintiffs to discern the relevant documents from the irrelevant documents in any event. The Court also pointed out that a privilege log need list only those documents that are relevant and thus otherwise discoverable under Rule 26(b)(1). Documents that are irrelevant and therefore not otherwise discoverable are not required to be placed on the privilege log. Defendants agreed to run plaintiffs' search terms, and nothing relieved them of the obligation to review the resulting documents for relevance, nor were they permitted to evade that effort simply by placing all of the irrelevant documents on the privilege log.

MOTION TO APPROVE INFANT SETTLEMENT

In *Aycock v. Tao Motor, Inc.*, 25-cv-6074-EAW (July 8, 2026), plaintiff commenced a products liability action on behalf of herself and her minor child to recover damages for the burns sustained by the child when hot oil allegedly exploded from the engine of a dirtbike while the child was riding it. Following mediation, plaintiff and defendant/manufacturer agreed to settle the case for $200,000 and plaintiff filed a motion seeking the Court's approval of the settlement. Noting first that Local Rule 41 requires Court approval of settlements of actions on behalf of infant plaintiffs, the Court next observed that the analysis of an infant settlement agreement centers on whether the best interests of the infant are protected by the terms and conditions of the settlement, and whether the proposed settlement—including any legal fees and expenses to be paid—are fair and reasonable. And while there is no brightline test for determining whether a particular settlement is fair, courts give significant deference to a guardian's view that the settlement reached is fair and reasonable to an infant plaintiff. The Court then determined that the amount and structure of the settlement was fair and reasonable in light of the injuries sustained by the infant, her physical recovery, the additional costs and risks associated with further litigation, and the infant's mother's approval of the proposed settlement, which, again, is entitled to significant deference. As for the attorneys' fees and cost component of the settlement, however, the Court noted that it has an independent obligation to scrutinize the appropriateness of the amount requested by counsel, so as to protect the interests of the infant client, so the Court analyzed that aspect separately. In doing so, the Court observed that any contingency fee arrangement between counsel and the infant's guardian is "advisory only." The Court then noted that the absence of billing records demonstrating the amount of time counsel worked on the matter made it impossible for the Court to determine whether the requested contingent fee was reasonable. Moreover, the Court found that plaintiff's counsel's billing rate was "generally considered high" for the Western District of New York. Notwithstanding that, because plaintiff's counsel already voluntarily reduced his requested fee by approximately 27%—by seeking a contingency fee based on one-quarter of the settlement amount after deducting costs, rather than one-third of the settlement amount as provided in the contingency fee agreement entered into with the infant's mother at the outset of the representation—the Court concluded that the requested fee appeared reasonable and granted the motion.

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