

The Dutchess County Bar Association



President's Message	WHAT'S IN THIS ISSUE
Dear Colleagues: Happy Fall! It was a great summer for the DCBA, with multiple luncheons and CLE programs, all of which have been wonderful. I have enjoyed seeing everyone who has come out to these events, and I hope to continue to see our members showing up to enjoy and benefit from them. On September 11, 2026 we held a luncheon at which the Amee Van Tassell Young Lawyer Award was presented to Alexandra Downey Thomas by the Honorable James D. Pagones. With Amee's parents and daughter in attendance, and Judge Pagones's Court staff present, it was a poignant ceremony and the DCBA would like to again congratulate Alexandra on her receipt of this award. Also in September, on the 15th, we held a Landlord/Tenant CLE with presentations by the Honorable Craig M. Wallace, Vincent Catalano, Esq., Sean O'Fallon, Esq., Stella Capparelli, Esq., and Alexandra Schweitzer, Esq. The program was extremely informative and all of the presenters were incredibly knowledgeable. We are thankful for their contributions and appreciate all who attended this important CLE. On the horizon we have some great events, including an antisemitism in the workplace CLE on October 2nd, a meet the candidates event on October 5th, and a trivia night in late October or early November! We hope to see you all at each of these events. Finally, as always, if you haven't yet renewed your DCBA membership make sure you do so as soon as possible, so you can take advantage of all of our benefits and upcoming events! Thank you to those who have already renewed, and we look forward to seeing you soon. Thank you.  Danielle Fenichel, Esq. President, Dutchess County Bar Association	President's Message
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Autumn Events

The Dutchess County Bar Association had a busy September, with two events bringing members together for professional development, fellowship and a celebration of our legal community.

September Luncheon & Amee Van Tassell Award



On September 11, the DCBA gathered at Millhouse Brewing Company for our annual September Luncheon and presentation of the Amee Van Tassell Award.

This year's award was presented to Alexandra Downey Thomas by Judge James Pagones, recognizing her commitment to professionalism, civility, and service to the legal and local communities.



The DCBA was honored to have Amee Van Tassell's parents and daughter join us for the luncheon and award presentation. Their presence made the occasion especially meaningful as members of the DCBA came together to celebrate Amee's legacy and recognize this year's recipient.



Landlord/Tenant Law CLE



On September 15, the DCBA hosted a Landlord/Tenant Updates CLE at the DoubleTree by Hilton Poughkeepsie. The program brought together members of the bench and bar for a practical discussion of current landlord/tenant issues and the challenges facing practitioners and the courts.

Thank you to our presenters, Judge Craig Wallace, Sean O’Fallon, Vincent Catalano, Stella Capparelli and Alexandra Schweitzer and to everyone who attended and helped make the program a success.



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THE PRACTICE PAGE

NEW DEFENSE-FRIENDLY CHANGES TO AUTOMOBILE THRESHOLD INJURY LAW

By: The Hon. Mark C. Dillon *

Significant changes have been enacted to New York's automobile threshold injury laws, effective May 26, 2026 (2026 Sess. Laws of NY Ch. 58 [S9008-C, A10008]). The amendments are defendant friendly, as there is little good news here for the plaintiffs' bar.

Among the statutory amendments is the elimination of the portion of Insurance Law 5102(d) which listed as a defined threshold injury the 90/180 category --- "a medically determined impairment or injury of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute the person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment." That provision is no longer a qualifying basis for liability under the Insurance Law. The amendment directs that it "take effect immediately" and be applied to actions and proceedings commenced on or after its effective date. Meaning, that any 90/180 claims asserted in actions commenced prior to May 26, 2026 remain viable. With time and dispositions, the 90/180 threshold prong will disappear from our automobile litigations altogether.

The elimination of 90/180 claims should not cause much reduction in case filings. In most threshold injury cases, plaintiffs' complaints typically allege multiple prongs of the serious injury statute, so that the elimination of the 90/180 basis will not prevent the filing of any case which raises another serious injury prong. It will nevertheless restrict the plaintiffs' ability to recover damages in any action which would ultimately rely at summary judgment or trial on the 90/180 category of Insurance

Law 5102(d). Future plaintiffs will need to focus upon evidence fitting within one or more of the other serious injury categories, which remain unaffected in the statute.

Relatedly, CPLR 1411 is also amended to provide that automobile injury plaintiffs are barred from recovery if their percentage of comparative fault is more than 50% of the total liability assessed against all parties. This change in the law will have two practical impacts. The first, of course, is that plaintiffs who previously would have won monetary awards subject to a proportional reduction for contributory fault will recover nothing when their contributory fault exceeds 50%. The second impact is that during pre-trial settlement negotiations, defendants will have greater leverage than before in cases where there is a reasonable possibility that the plaintiff's contributory negligence is more than 50% of the total. Plaintiffs may feel pressured in such circumstances to accept perhaps-reduced settlements rather than risking a 50%-plus finding of contributory negligence at trial and thereby receive no monetary award at all. In other cases where the plaintiff is arguably more than 50% liable, defendants may be emboldened to try those cases rather than settling them, in the expectation of defense verdicts.

The amendments impose a further defendant-friendly restriction on automobile-related personal injury actions, found in Insurance Law 5104(d). *Non-economic* damages for serious injuries are capped at \$100,000 under specified circumstances, including 1) plaintiffs operating vehicles that have been uninsured for 30 or more days prior to the occurrence, 2) plaintiffs convicted of operating their vehicle at the time of the occurrence while impaired, and 3) plaintiffs operating a vehicle during the commission of a felony or the immediate flight therefrom, and convicted of such felony. Thus, injured plaintiffs operating their motor vehicles while insured, sober, and without felonious taint are unaffected by the monetary cap, which should be a relief to the significant bulk of claimants. The cap expressly does not apply to any action involving death, nor economic loss.

The first basis for the new damages cap, regarding uninsured vehicles, is an apparent attempt by the state to minimize the value of staged automobile accidents in the commission of insurance fraud, and to encourage all automobile owners to maintain their general automobile policies of insurance. The second and third bases for the damages cap further a public policy, to prevent claimants from greatly profiting from the operation of motor vehicles while under the influence of alcohol or drugs or during the conduct of felonies.

Might the damages cap affect summary judgment motions? Assume that the equitable value of the plaintiff's alleged injuries, and the settlement demand, exceeds the \$100,000 cap. Conceivably, a defendant could make a motion for partial summary judgment on the issue of damages only --- demonstrating that the cap applies as a matter of law --- which, if successful, might leverage a settlement of those cases for \$100,000 or less, or at least cap the defendant's trial exposure at that amount. That's good news for excess insurers and insurers with policies containing underinsured motorist protection provisions. Additionally, a successful motion on damages may negate the need for any damages evidence at trial, if the defendant is liable for a sufficient percentage of common law liability and is willing to concede that the post-comparative damages are worth at least that \$100,000 capped sum.

The \$100,000 cap is applicable against plaintiffs "convicted" of being "impaired" while operating a vehicle at the time of an occurrence. These are precise legal terms. "Convicted" requires that a sentence has been imposed. Impairment includes Driving While Impaired by Alcohol (VTL 1192[1]) and, necessarily, the greater offense of Driving While Intoxicated (VTL 1192[2], [2-a], [3]). A 0.8 blood alcohol content ("BAC") is the cut-off between DWAI and DWI. The difference between DWI and DWAI does not seem to matter to the \$100,000 cap, so long as the plaintiff is convicted of either. Impairment should also apply to the crime of Driving While Impaired by Drugs (VTL 1192[4], [4-a]), whether the drug is of the prescribed, legal, or illegal variety.

The new statutory amendments therefore place a new premium on collateral proceedings in the criminal courts, where the plaintiff's alcohol or drug impairment or felonious conduct at the time of an occurrence is related to the civil personal injury action. Defendants will want those criminal proceedings concluded, assuming an impairment or felonious conduct is found, to trigger the \$100,000 cap on damages. Injured plaintiffs have an additional incentive to fight those criminal proceedings with vigor where their damages may be worth more than \$100,000, to avoid the Sword-of-Damocles cap.

Finally, there is an oddity in the amended law that may need to be worked out in the courts. The amendment to Insurance Law 5104 states that “[i]n any action to recover noneconomic loss pursuant to this article, the trier of fact shall not determine the question of whether an injury is a serious injury until the trier of fact has determined the party or parties at fault.” Such language might suggest that determinations be made in a particular order consisting of 1) common law fault, then 2) serious injury threshold, and then 3) damages. Until now, if a defendant were to establish the lack of a threshold injury by summary judgment motion, the action would be dismissed and issues of common law liability and damages would be rendered academic. Is that still the case if common law liability, including whether the plaintiff is more than 50% at fault, now obtains priority? The assessment of the parties’ comparative negligence is quintessentially a question of fact for trial, and if prioritized, would necessarily delay dispositive lack-of-serious-injury determinations that may be warranted under Insurance Law 5102(d) (without regard to the 90-180 prong). That construction, of course, makes no practical sense, as trial judges are statutorily authorized by CPLR 3401 to control their calendars, which is a vital consideration to the efficient administration of the courts (*Headley v Noto*, 22 NY2d 1, 4 [1968]. See *Hoven v Hoven*, 100 AD2d 684 [3d Dep’t. 1984] [the court has a duty to control its calendar]). Courts should have summary judgment authority to front-load a threshold injury determination ahead of the common law assessment of negligence, or the applicability of the \$100,000 cap, if doing so disposes or streamlines an action without the time, cost and judicial resources of unnecessarily adjudicating other issues first. The new language of Insurance Law 5102(d) in this regard is best interpreted to mean that *at trial*, courts must determine common law liability, then serious injury, and then monetary damages, which is the normal course of events in bifurcated venues, without impeding the authority of trial courts to determine any component question by means of pre-trial dismissal under CPLR 3211 or summary judgment under CPLR 3212. In non-bifurcated venues, a verdict sheet arranged in that issue-sequence should satisfy the dictates of the statute.

But reasonable minds can disagree about the sequencing of litigation issues, and there have already been legal observers suggesting that the language of Insurance Law 5104 prevents the trial courts from considering threshold injury on summary judgment unless, in the same motion, common law liability is first granted in favor of the plaintiff on both the main claim and against the affirmative defense of contributory negligence. By that reasoning, if primary or contributory negligence is an issue requiring an assessment at trial, common law liability cannot be resolved by summary judgment, and the issue of threshold injury must therefore be put off to the trial. Trial and appellate courts will need to resolve these statutory interpretations in the months and years ahead.

Threshold injury law has been rather quiet for several years. Not anymore.

*Mark C. Dillon is a Justice of the Appellate Division, 2nd Dep’t., an Adjunct Professor at Fordham Law School, and a contributing author to the CPLR Practice Commentaries in McKinney’s.

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NATURALIZATION CEREMONY

AUGUST 7, 2026

Roy C. Ketcham High School

By: Hon. Jeffrey C. Martin

There are days in the life of a Court that are devoted to disagreement, loss, and difficult judgment. This day is different. Today, this courtroom becomes a place of promise. Today, we witness not the end of a case, but the beginning of citizenship.

To each new citizen before us: you arrived here by a path that is entirely your own. You came from different nations, cultures, faith, languages, professions, and circumstances. Some of you crossed oceans. Some crossed borders. Some endured uncertainty, separation, danger, or years of waiting. Every one of you carried hope. And today, that hope is joined to a solemn oath.

The words of your oath were brief, but their meaning is profound. By taking the oath of allegiance, you did more than receive a certificate. You entered a constitutional community. You became one of the people in the opening words of our constitution: “We the People.”

That phrase is not a description of a government standing above its citizens. It is a declaration that the authority of our government begins with people and remains accountable to them. From this day forward, those words include you.

From the earliest years of the Republic, America’s leaders understood that the nation would be renewed by those who chose it. In 1783, George Washington welcomed newly arrived immigrants with these words: “the bosom of America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions.”

That open door has never meant that America is perfect. Our history contains both magnificent achievement and painful contradiction. The promise of equal justice has often been incomplete, and each generation has been called to bring the nation closer to its own ideals.

Abraham Lincoln described that continuing work as a “new birth of freedom,” so that “government of the people, by the people, for the people” would not perish from the earth. Citizenship gives you both a place in that inheritance and a role in carrying it forward.

You now possess rights that generations have struggled to secure: the right to vote, to speak, to worship, to petition, to serve on a jury, and to seek protection of courts governed by law. These are not favors granted by a ruler. They are liberty protected by a constitutional order.

The oath you took today also reminds us that citizenship is not a spectator role. Democracy asks something of us. It asks us to become informed, to listen before judging, to disagree without dehumanizing, to defend the rights of people whose views are different from our own, and to place the common good above the comfort of indifference.

It asks us to vote, to serve, to care for our neighbors, and to speak up when equal justice is denied. America rests not only in its institutions, but in the habits and character of its citizens.

President Ronald Reagan once shared an observation that has become especially meaningful at ceremonies like this one: “you can go to live in France, but you cannot become a Frenchman. You can go to live in Germany or Turkey or Japan, but you cannot become a German, a Turk, or a Japanese. But anyone, from any corner of the earth, can come to live in America and become an American.”

The power of that thought is not that America erases where you came from. It is that America makes room for where you came from. Your heritage, language, memories, customs, and family stories do not stand outside the American story. They now become part of it.

Our national identity is not weakened when new citizens bring new experiences to it. It is renewed. Generation after generation, immigrants have enlarged the meaning of “we the people” through their work, service, creativity, and care for their communities. Beginning today, you continue that work in your own way.

To the families and friends gathered here: this achievement also bears your fingerprints. Your patience, encouragement, sacrifice, and love helped carry these new citizens through years of effort and uncertainty. Today belongs to you, too.

And to those of us who became citizens by birth rather than by choice, the ceremony is a needed reminder. These new citizens deliberately chose responsibilities that many of us inherited without effort. Their example invites every citizen to value more deeply what citizenship means.

To our newest Americans: your country does not ask you to forget the road that brought you here. It asks you to build the road ahead. Bring your courage. Bring your talents. Bring the wisdom of your experience. Bring your questions, your work, your compassion, and your dreams. Share your rich heritage with all of us, bring to us your culture, your history, your heroes, and the diversity of your lives. Because, in your stories lies enormous strength, courage, conviction, and perseverance. We need more of that. We need to be reminded that the individuality of each one of you, and the individuality of all the people who came before you, have created the tapestry, which is the extraordinary melting pot at the end of the rainbow.

There will be moments when our nation falls short of its highest ideals. In those moments, remember that citizenship gives you a voice, a vote, and a place in the work of repair. America is not merely a finished inheritance handed down to us. It is a shared undertaking entrusted to us. It has been, and always will be, a work in progress. You are now part of that workforce.

Years from now, the certificate which you receive confirming your citizenship may rest in a safe place, but this day will live in ordinary choices: an election in which you vote, a jury summons you answer, a neighbor you help, or an injustice you refuse to ignore.

Those acts may seem small. They are not. Together, they are the daily architecture of democracy.

So leave here proud of what you have achieved, but also conscious of what you now carry: a share of the nation’s liberty, a share of its responsibility, and a share of its future.

On behalf of this Court, I offer you our respect, our gratitude, and our heartfelt congratulations.

May this country be strengthened by your citizenship.

May your citizenship be enriched by your service.

May the freedom you claim today be preserved by the freedom you protect for others.

Welcome to the work of “We the People.”

Welcome home, fellow Americans.

Hon. Jeffrey C. Martin, AJSC, is a Judge of the Dutchess County Family Court

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Significant Changes to New York Defamation Law and the expansion of Anti-SLAPP protections

By: Michael Treybich, Esq.

Defamation law cases come up often enough in private practice that many general practitioners have dabbled in it, sometimes to their clients' detriment. Since a major overhaul of the New York "Anti-SLAPP"ⁱ law which took effect on November 10, 2020, New York's well-established defamation law saw significant procedural and substantive changes via Chapter 250 of the laws of 2020 (the "Act") which expanded the anti-SLAPP statutes (the "Statutes").

Defamation in New York continues to be generally defined as a false statement of fact that tends to expose a person to public contempt, hatred, ridicule, aversion, or disgrace, published to at least one third party, that causes reputational harm. The essential elements of defamation remain: 1. A false statement of fact or mixed opinionⁱⁱ, that is 2. Published to a third party without privilege or authorization, 3. Fault amounting to at least negligenceⁱⁱⁱ, and 4. special harm or defamation per se^{iv}.

The context of the statement is examined by the Court to assess whether the specific language in issue: 1. has a precise meaning which is readily understood, 2. are capable of being proven true or false, and 3. whether either the full context of the

communication in which the statement appears or the broader social context and surrounding circumstances are such as to signal to readers or listeners that what is being read or heard is likely to be opinion, not fact.

Libel and Slander are both sub-categories of defamation. Libel is written or fixed defamation and slander is spoken defamation. The sole practical difference between them is how damages are measured, which is beyond the scope of this article.

New York courts also continue to recognize certain defenses to Defamation, the most common including “truth”^v, immunity, and qualified privilege.

Immunity most commonly arises in the context of lawsuits. For example, any communication made “in connection” with a lawsuit, such as a witness testifying in court, at a deposition, or communicating to obtain legal counsel, etc., will be absolutely immune from a lawsuit for defamation, irrespective of the truth or falsity of the statements (but certainly not immune from the consequences of perjury should they lie under oath).

A qualified privilege arises in the context of people who have a shared interest in speaking to each other on the subject matter. In other words, if the members of a board of directors of a corporation, partners, members of a limited liability company, an association, etc., discuss something related to their business or organization, and the discussion contains statements which are potentially defamatory, there is a presumption that the statement is protected from a defamation claim. This privilege is *qualified* because the presumption may be rebutted by a plaintiff who makes a showing of actual or common law malice^{vi}.

Compared to the 2020 Act, New York’s prior anti-SLAPP provisions, originally adopted in 1992 (Civil Rights Law §§ 70-a and 76-a) were narrower, definitionally being limited to an “action ... for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission.” This tended to apply only to instances of real estate developers suing tenants or neighbors challenging a developer’s project before a planning or zoning board.

Civil Rights Law §76-a(2) requires in an “action involving public petition and participation” (as expanded by the Act, discussed below), that “damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue”.

In other words, a plaintiff has a heightened burden to prove actual or constitutional malice on the part of a defendant by clear and convincing evidence.

Moreover, the CPLR contains summary disposition provisions for an action “involving public petition and participation” at CPLR 3211(g) and CPLR 3212(h).

For a pre-answer motion to dismiss, CPLR 3211(g) provided that if the moving party demonstrates that the “action, claim, cross claim or counterclaim” subject to the motion is an action involving “public petition and participation” as defined the Civil Rights Law (described above pre-amendment, and below post-amendment), then the motion “shall be granted” unless the party responding to the motion “demonstrates that the cause of action has a substantial basis in law^{vii} or is supported by a substantial argument for an extension, modification or reversal of existing law.” This portion of the Statutes remains relatively unchanged, except for a significant addition, discussed below.

For a summary judgment motion, CPLR 3212(h) similarly provides that a “motion for summary judgment, in which the moving party has demonstrated that the action, claim, cross claim or counterclaim subject to the motion is an action involving public petition and participation” as defined in the Civil Rights Law, “shall be granted unless the party responding to the motion demonstrates that the action, claim, cross claim or counterclaim has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law.” This portion was not amended by the Act.

The Act made several significant changes to both the civil rights law and the Civil Practice Law and Rules, including to Civil Rights Law §§70-a, 76-a, and to CPLR 3211(g).

These changes included:

An amendment to Civil Rights Law §70-a, in the context of attorney’s fees and costs being made available to a defendant, striking the word “may” and substituting “shall”, and making it clear that attorney fees are recoverable not only to the “prevailing party”, i.e., after trial, but also upon a summary disposition pursuant to CPLR 3211(g) or CPLR 3212(h) (i.e., a motion to dismiss or for summary judgment);

Multiple amendments to Civil Rights Law §76-a to broaden the procedural devices by which a claim may be made by a defendant, and expanding the definition of what an “action involving public petition and participation” from the previously limited “real estate development” scenario, to include:

“1) any communication in a place open to the public or a public forum^{viii} in connection with an issue of public interest; or

2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest, or in furtherance of the exercise of the constitutional right of petition.”; and

3) Requiring the courts to construe such expanded definition of “public interest” “broadly and shall mean any subject other than a purely private matter”.

CPLR 3211(g) was amended to require that all other proceedings, including hearings, discovery and motions in the action are stayed pending the resolution of the motion. This subdivision was also amended by including a clause allowing the Court “upon a showing by the nonmoving party, by affidavit or declaration under penalty of perjury that, for specified reasons, it cannot present facts essential to justify its opposition, may order that specified discovery be conducted notwithstanding this subdivision. Such discovery, if granted, shall be limited to the issues raised in the motion to dismiss.”

Thus, these changes strengthen the attorney’s fees provision in favor of defendants, very broadly expand the definition of which actions fall under the ambit of the anti-SLAPP Law, and require the Court to stop everything while it decides a motion to dismiss, except for permitting the Court to order limited discovery if a plaintiff makes the necessary showing of requiring evidence to oppose the motion.

Putting this all together, the Statutes, as amended by the Act, now apply to protect an expansive range of speech, and make a broad range of causes of action perilous for a plaintiff – especially any that rely on speech on a matter of public interest made in a public forum. Such actions can include (but not limited to) defamation, slander, slander per se, libel, libel per se, intentional infliction of emotional distress, injurious falsehood, etc.

Thus, a plaintiff in a lawsuit involving speech in a public forum, whose cause(s) of action require(s) that their defendant’s speech be false, has to “demonstrate that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law,” in order to defeat the inevitable pre-trial motion to dismiss that is liable to leave the plaintiff liable for such defendant’s attorney’s fees.

If the action survives a motion to dismiss, following discovery, such plaintiff will again have the burden of showing, in opposition to their defendant’s motion for summary judgment, that such defendant acted with actual or constitutional malice in making the actionable speech, to avoid summary judgment in the defendant’s favor.

If summary judgment is granted to the defendant, the plaintiff is also likely to be liable for the defendant’s attorney’s fees.

If the action survives summary judgment, at trial the plaintiff must establish (in addition to all other elements), by *clear and convincing evidence*, that the defendant had “knowledge of its falsity or [made the communication] with reckless disregard of whether it was false”.

This is a high burden. A recent, high profile example of this type of evidence is discussed in the decision and order on summary judgment in the matter of US Dominion, Inc. v. Fox News Network, LLC, (293 A.3d 1002 [DE Superior Ct., 2023]) which settled after such order, but before trial for \$787.5 Million, the largest reported defamation settlement ever as of the time of this writing (the second largest settlement was \$177 Million paid by the Walt Disney Co. in 2017 to settle a “pink slime” defamation case against its ABC network by Beef Products, Inc., while the largest defamation *verdict* was nearly \$1.5 *Billion*^{ix} against Alex Jones - awarded to several of the families of the Sandy Hook shooting victims).

The evidence tendered in support of the plaintiff’s motion for summary judgment in the Dominion case included many dozens of text messages and emails between Fox News employees, including its on-air personalities, wherein they stated their knowledge that the reporting was false and had been debunked, yet they continued to bring on special guests who they knew were going to make these false statements about Dominion. (US Dominion, Inc., 293 A.3d at 1026-1029)

Despite such evidence available on its summary judgment motion, and the Delaware Court granting summary judgment to Dominion on multiple elements of defamation, the Court denied summary judgment on the issue of actual (constitutional) malice given that there were “multiple genuine issues as to material facts” to submit to a jury, (see, US Dominion, Inc., 293 A.3d at 1052-1053)

This shows, *inter alia*, how even with such overwhelming evidence, there are nuances in defamation law that could operate to defeat summary judgment. Also be aware that the Dominion case was a Delaware State Court case, and at the time of that decision, Delaware did not yet have an anti-SLAPP law on the books (Delaware adopted the Uniform Public Expression Protection Act – a uniform anti-SLAPP law – effective September 15, 2025).

In this landscape, the allegedly defamed, and their attorneys, should tread carefully, not only because of the heightened burdens imposed upon a plaintiff by New York’s anti-SLAPP Law, or the increased possibility of an attorney’s fee judgment in favor of a defendant, but also because of the risk of a lawsuit bringing increased public attention to the alleged defamatory statements, which a defendant presumably would wish to avoid.

The fair reporting privilege, codified at New York Civil Rights Law §74, grants the press absolute immunity from defamation for publishing a “fair and true” report of any judicial proceeding, this is even so if the alleged statements that are the basis for that lawsuit end up being proven false. Thus, if the lawsuit is reported upon by the press, the allegations in the complaint, including the alleged defamatory statement that the defendant is accused of making^x, may be set forth in such news report verbatim, and the way modern news websites work, that report may be available to the public and associated with the name of the plaintiff on the internet in perpetuity, or close enough to make any victory Pyrrhic.

Moreover, if a plaintiff is a professional, or otherwise subject to a licensing board, or holds a position of public trust, such plaintiff should also be wary of the potential professional impact of a defamation lawsuit that is dismissed as without basis under the anti-SLAPP law, as one may be brought up on ethics charges for filing a meritless lawsuit potentially resulting in professional sanctions for the alleged victim.

Another consideration is insurance coverage. When representing a defamation defendant, make sure to check for possible insurance coverage and notify the insurer right away so as to avoid waiving coverage. For business defendants, the standard typical commercial general liability or business owner’s policy has a “personal and advertising injury” section which may be applicable. For individuals, a personal umbrella policy or sometimes a personal injury endorsement to a homeowner’s policy may contain coverage for accidental^{ki} defamation or social media remarks. Media liability, professional indemnity or an errors and omissions (E&O) policy may provide insurance to content creators, publishers, and professionals accused of reputational harm or defamatory statements in their work.

The tension between a person's right to privacy and the constitutional right to free speech embodied by the First Amendment of the United States Constitution, and the arguably broader rights granted by Article I, Section 8 of the New York State Constitution, is beyond the scope of this writing. However, as citizens of this free nation, it behooves us to remember that we have a duty to use our voices responsibly, regardless of any immunity we may have from a defamation lawsuit. Your reputation may depend on it. A proverb comes to mind, that "it takes 20 years to build a reputation and 5 minutes to ruin one." Another relevant proverb (moreso for defendants), is that "freedom of speech" does not mean "freedom of speech without consequences".

If you have gotten this far, you deserve a prize, such as the obligatory disclaimers, including but not limited to: this is not legal advice, prior results do not guarantee a similar outcome, the citations to decisions contained herein identify the forum and probably the law applied, and while the interpretation of defamation is surprisingly consistent across the United States because of the jurisprudence of the United States Supreme Court and the applicability of the First Amendment to the United States Constitution, your jurisdiction or your situation almost definitely has a nuance which may change the result, and you should consult with an attorney knowledgeable in defamation law in your jurisdiction.

Michael Treybich is a solo practitioner and the principal of the appropriately named Treybich Law, P.C. with offices in Poughkeepsie and Manhattan, whose practice is focused on general commercial, construction, real estate and insurance coverage litigation and appeals. Michael enjoys writing, slaying institutional dragons, tabletop roleplaying games, long walks on the beach, and can be reached by telephone at (212) 390-1755 or (845) 554-5295, or by email at michael@treymbichlaw.com.

ⁱ "SLAPP" = Strategic Lawsuit Against Public Participation

ⁱⁱ Not a pure opinion, since an opinion cannot be true or false. A "mixed opinion" is actionable because it is a stated opinion based upon undisclosed or implied facts. I.e., "I know this person committed this murder because I have all of this evidence that they did so".

ⁱⁱⁱ There are different burdens and additional elements based on whether the speech is on a matter of legitimate public concern, and whether the plaintiff is a public figure or a limited public figure.

^{iv} Defamation per se is a subset of defamatory speech that presumes damages, such as statements accusing someone of committing a serious crime, having a loathsome, communicable disease, being unchaste (this one should tell you how old our common law on defamation is), and matters injuring trade, business, or profession.

^v Though "truth" is technically not an affirmative defense, but rather a negation of one of a plaintiff's essential elements, that the alleged defamatory statement be "false".

^{vi} Common law malice is the regular English definition of "malice", i.e., spite or ill will. "Actual" malice, sometimes referred to as 'constitutional' malice, is a heightened pleading requirement in cases involving public official or figures who must show that the defendant made the statement with knowledge that it was false or with reckless disregard of whether it was false, which was crafted by the United States Supreme Court in its decision in New York Times v. Sullivan, 376 US 254 (1964). That the United States Supreme Court chose to use a variation of the term "malice" for a different standard within the same area of law is to this day one of the biggest land mines and sources of agita for attorneys who venture into defamation laws.

^{vii} A "substantial basis" is a heightened pleading standard compared to CPLR 3211[a][7] and means "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*see Black v. Ganieva*, 236 AD3d 427 [1st Dept 2025]). The Court considers affidavits and other evidence to assess whether the pleading has a substantial basis (*see Sharp v. Bar Fluid LLC*, 237 AD3d 628, 629 [1st Dept 2025])

^{viii} This generally includes, *inter alia*, the internet. (Packingham v. North Carolina, 137 S.Ct. 1730; 582 US 98 [2017])

^{ix} This has resulted in several bankruptcy filings which may ultimately reduce the sums due.

^x Which pursuant to CPLR 3016(a), the "particular words complained of shall be set forth in the complaint".

^{xi} Most insurance policies omit coverage for intentional torts. Note, however, that the duty to defend is broader than the duty to indemnify, and one does not want to waive defense being paid by the insurer.

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Upcoming DCBA Events

Modern Workplace Anti-Semitism CLE

Friday, October 2, 2026 | 12:30 PM | Virtual via Zoom

Join the Dutchess County Bar Association for a CLE addressing Modern Workplace Anti-Semitism, featuring Hon. Rory Lancman and the Brandeis Center. The program will examine issues surrounding antisemitism in the workplace and provide an opportunity for members to learn more about this important and timely topic.

[Register Here!](#)

Virtual Meet the Candidates: 9th Judicial District Supreme Court Candidate Forum

Monday, October 5, 2026 | 12:00–1:30 PM | Virtual via Zoom

The Dutchess County Bar Association will host a Virtual Meet the Candidates: 9th Judicial District Supreme Court Candidate Forum. The forum will provide an opportunity for attendees to hear directly from the candidates through a series of questions presented to all participating candidates.

[Register Here!](#)

DCBA Trivia Night

October 2026 | 5:30–8:00 PM

Join your fellow DCBA members for a fun evening of **trivia, food, drinks and camaraderie!** Gather your team, test your knowledge and enjoy a relaxed evening with colleagues outside the courtroom.

Details to come. Keep an eye on your inbox for registration information and event details!

Executive Order 62: Temporary Moratorium on Permitting for Large Data Centers (50 MW Or More)

By: Dylan Harris, Esq. and Cassandra Bacile, Esq.

On June 4, 2026, the New York State Legislature passed the Responsible Data Center Development Act (“RDCDA”). The RDCDA called for a one-year moratorium on permitting new large scale data centers. The RDCDA defined “large data center” as any facility with a (potential) capacity of 20 Mega Watts (“MW”) or more. (RDCDA §2).

Instead of signing the RDCDA into law, on July 14, 2026, Governor Kathy Hochul signed Executive Order No. 62 (the “executive Order” or “EO 62”). The Executive Order establishes a moratorium on data centers in New York, and defines “data centers” as:

“a facility or group of facilities located on the same site or contiguous sites used to house computer servers, associated components, or computing or telecommunications equipment for the storage, processing, distribution, and / or management of data.”

(EO 62 §6)

Overview of EO 62

The Executive Order constitutes the first statewide permitting moratorium on data centers in the country. The moratorium in EO 62 applies to permits issued by the Department of Environmental Conservation (“DEC”) for data centers that:

- have uninterruptible power supply systems, specialized cooling systems designed for high-density computing loads, and/or cybersecurity systems;
- provide data storage, cloud computing, and/or delivery on a continuous 24-hour cycle; and
- (may) consume 50 MW or more.

The EO 62 moratorium does not apply to:

- DEC permit applications (and other similar approvals), for the construction or expansion of data centers, deemed complete before or by July 14, 2026 (i.e., the enactment of EO 62);
- local government permits (and other similar approvals) for data centers; and
- data center facilities primarily used for manufacturing, research, education, or the provision of medical care.

Further, the length of EO 62’s moratorium is connected to an additional requirement of EO 62 that the Department of Public Service (“DPS”) conduct a Generic Environmental Impact Statement (“GEIS”) in accordance with the State Environmental Quality Review Act (“SEQRA”). In this GEIS, DPS must assess impacts on energy demand, water use and quality, air quality, disproportionate impacts on disadvantaged communities, and noise. The Executive Order does not provide a deadline for DPS to produce the Final GEIS, which in turn means there is no explicit deadline for EO 62’s moratorium. However, EO 62 states that the GEIS is tied to the “Energize NY Proceeding,” (Case 26-E-0045), which requires that DPS produce a whitepaper no later than one-year from February 12, 2026 (i.e., on or before February 11, 2027).

Distinguishing EO 62 from the RDCDA

As noted above, unlike the RDCDA, EO 62 does not place a one (1) year deadline for the moratorium on data center permitting. Rather, EO 62 requires that the DEC hold all applicable permits in abeyance until DPS produces a Final GEIS as required by EO 62.^{xii} In addition, below are six (6) additional key differences between the RDCDA and EO 62.

First, the RDCDA’s definition of “data center” is more detailed than EO 62’s definition of that term. Specifically, the RDCDA definition of “data center” includes, among other things, that such facilities must:

[r]eceive electrical, gas, or water service from electric corporation, gas corporation, water-works corporation or municipality, have applied or requested to receive such service, or have otherwise caused [such applicable] corporation ... or municipality to incur an expense in relation to the provision of service pursuant to the public service law. (RDCDA §2).

Second, the RDCDA required that, no later than one year after the effective date of the RDCDA, the New York State Climate Action Council determine reasonable energy consumption goals for the design and operation of data centers. (RDCDA 62 §6).

Third, the RDCDA's moratorium on DEC permits applied to all "large data centers" as that term is defined in the RDCDA (i.e., a potential consumption of at least 20 MW). Unlike the Executive Order's moratorium, which applies to data centers that have a (potential) consumption of 50 MW. (RDCDA §2).

Fourth, like EO 62 the RDCDA also required a GEIS. However, the RDCDA's GEIS included an assessment of impacts on land use (i.e., estimated acreage used by facilities, impact on farmland, and redevelopment use) and electronic waste generated by data centers. (RDCDA §2).

Fifth, the RDCDA required that the Public Service Commission (the "Commission"), among other things, ensure that any increase in electric or water commodity prices attributable to large data centers are borne by such facilities. (RDCDA §§3 and 4).

Finally, the RDCDA provided specific labor standards for the construction of large data centers. (RDCDA §10).

EO 62's Additional Mandates

The Executive Order provides four (4) other mandates in addition to the temporary moratorium and GEIS.

First, the Executive Order requires that Empire State Development Corporation create and publish a Community Investment Framework (the "Framework") within 60 days of the EO 62's enactment (i.e., on or before Monday, September 14, 2026).^{xiii} The Framework must include "guidance" on: (1) creating and maintaining a community investment fund; (2) investing in local infrastructure; (3) providing organized labor a "seat at the table;" and (4) maintaining public transparency through reporting. (EO 62 §2).

Second, EO 62 requires DPS to consider the development of a New York Grid Acceleration Fund (the "Fund"). The Fund is intended to protect consumers across New York State from increased costs and stranded assets caused by large data centers. The Executive Order notes that the Fund may require that data centers make upfront capital contributions to finance grid improvements. Additionally, EO 62 states that DPS may consider requiring data centers to "fund new clean electric generation and/or battery storage dedicated to their operations." (EO 62 §3).

Third, EO 62 requires DPS to form a Data Center Interconnection Working Group (the "Working Group"). The Working Group shall review the practices and methodologies of transmission owners across the State for any impacts data centers have on network upgrades and supply. DPS must report the Working Group's findings to the Commission within 90 days of EO 62's enactment (i.e., Monday, October 12, 2026). (EO 62 §4).

Finally, EO 62 requires DEC to assess water withdrawal regulations and deliver a report within 12 months of EO 62's enactment (i.e., by Wednesday, July 14, 2027). (EO 62 §5).

Sources:

- Executive Order [K. Hochul] No. 62 [9 NYCRR 9.62].
- 2026 NY Senate-Assembly Bill S10642, A11560.
- Joshua L. Sturtevant, *New York Enacts First-in-the-Nation Statewide Data Center Moratorium*, <https://www.sheppard.com/insights/blogs/new-york-enacts-first-in-the-nation-statewide-data-center-moratorium>

- New York State Governor's Office, *First Statewide Moratorium on New Hyperscale Data Centers Launched by Governor Kathy Hochul*, <https://www.governor.ny.gov/news/first-statewide-moratorium-new-hyperscale-data-centers-launched-governor-kathy-hochul>
- Davis Polk Client Update, *New York State Enacts Data Center Moratorium*, <https://www.davispolk.com/insights/client-update/new-york-state-enacts-data-center-moratorium>

Dylan Harris is a partner in the Poughkeepsie office of Whiteman Osterman & Hanna LLP and a member of the firm's Real Estate and Litigation Practice Groups. Dylan's practice areas include litigation and appeals, municipal and real estate law.

Cassandra Bacile is an associate attorney in the Albany office of Whiteman Osterman & Hanna LLP and a member of the firm's Environmental Practice Group. Cassandra's practice areas include environmental law, land use and development.

^{xii} As noted above, Case 26-E-0045 requires that DPS produce a whitepaper no later than one-year from February 12, 2026 (i.e., February 11, 2027). Therefore, this may likely be the "deadline" for the Final GEIS and moratorium in EO 62.

^{xiii} 60 days after EO 62's enactment actually falls on Saturday, September 12, 2026. Therefore, the deadline is extended to the following Monday.

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Article submissions for the **Winter 2026** issue are due by **November 16, 2026**.

Looking Out for One Another: Suicide Prevention and the Legal Community

By: Alexandra Downey Thomas, Esq.

We spend our careers advocating for others. Clients come to us during some of the most difficult moments of their lives, and we are expected to remain composed, find solutions and keep moving forward. We become very good at recognizing when our clients need help. We may be less practiced at seeing when one of our own, or even we ourselves, needs the same.

September is Suicide Prevention Month, and an opportunity to have a conversation our profession needs to keep having.

For the Dutchess County legal community, that conversation is not an abstract one. Five years ago this September, our community lost fellow attorney Kyle Van De Water to suicide. Kyle was an attorney, Army veteran, husband, father, colleague and friend to many. His death brought the reality of suicide into our own community, where many of us knew him personally as a colleague and friend.

Research concerning attorney well-being gives us reason to pay attention. A 2023 study examining suicide risk among nearly 2,000 practicing attorneys noted that lawyers experience suicidal ideation at a rate considerably higher than the general population and identified high levels of perceived stress, loneliness and work overcommitment as significant predictors of suicidal thoughts among attorneys.^{xiv}

The research is sobering, but it is also a reason to talk about what we can do. We do not need to be mental health professionals or crisis counselors to make a difference. We can learn what to look for, we can notice when something seems different, and we can ask a difficult question instead of avoiding it. Most importantly, we can make it easier for the people around us to say when they are not okay.

Some warning signs may be recognizable: talking about wanting to die, expressing hopelessness or feeling trapped, believing oneself to be a burden, withdrawing from others, increased use of alcohol or drugs, significant changes in mood or sleep, giving away possessions, or saying goodbye in an unusual way. Sometimes the change is harder to define: someone simply does not seem like themselves. Equally important, warning signs are not always obvious. Someone who is struggling may not outwardly appear to be in crisis, and those closest to a person will not necessarily know that the person is at risk. Suicide is complex.

What we can do is make room for honest conversations when something causes concern. Reaching out can be as simple as asking someone how they are doing and being willing to hear the real answer. If you are concerned that someone may be thinking about suicide, it is okay to ask directly: “Are you thinking about suicide?” Asking about suicide does not put the idea in someone's head. It can instead open the door to an honest conversation and an opportunity to connect that person with help. There is no perfect thing to say, and you do not have to solve someone's problems. Listen without judgment. Take the person seriously. Help connect them with support and follow up. A text the next morning matters. So does the phone call a week later.

The idea of connection has particular meaning within a local bar association. We may be adversaries in one case and colleagues in another. We argue against one another, negotiate with one another and stand on opposite sides of courtrooms. But we also spend years seeing the same people in courthouses, at depositions, conferences and bar events. We become mentors, colleagues and, sometimes, friends. Those relationships give us an opportunity to know one another beyond a case caption.

Our workplaces matter, too. Making mental health resources visible and creating an environment in which asking for help is not treated as professional weakness benefits everyone. Perhaps we can all become a little more willing to check in when someone seems different, and a little less willing to assume that someone must be fine because they appear successful, accomplished or put together. We do not always know what another person is carrying.

My own involvement with the American Foundation for Suicide Prevention (“AFSP”) began after Kyle's death. Kyle was one of my mentors when I was a new attorney and, over time, became a very good friend. Losing him ultimately led me to AFSP, where I became involved in suicide prevention education and advocacy. Through that work, I have learned much of what I have shared here: how important it is to understand the warning signs, to be willing to ask directly about suicide, and to recognize the role that connection can play in prevention. AFSP's educational programs, including *Talk Saves Lives: An Introduction to Suicide Prevention*, are designed to give people the knowledge and confidence to have those conversations. AFSP's Out of the Darkness Walks offer another kind of connection, bringing together people who have lost loved ones, people with lived experience, families, friends and others who want to support suicide prevention. Walks are held in communities throughout the Hudson Valley and across the country, offering an opportunity to remember those lost, support those affected by suicide and come together around the shared goal of prevention.

You do not need to have experienced a suicide loss to be part of this work. You do not need to know exactly what to say when someone is struggling, and you do not need to be an expert. As attorneys, we already spend our careers listening, advocating and stepping in when someone needs help. Those instincts have value beyond the representation of our clients. We can use them for one another.

Ask the question. Make the call. Send the text. Listen to the answer. Check in again. You never know how much it may matter.

RESOURCES

If you or someone you know needs emotional support, call or text the 988 Suicide & Crisis Lifeline at 988. The Lifeline provides free and confidential support 24 hours a day, 365 days a year.

For information about suicide prevention, educational programs, support resources, advocacy, the Hudson Valley/Westchester Chapter, or upcoming Out of the Darkness Walks, visit [AFSP.org](https://afsp.org).

Alexandra Downey Thomas, Esq. is of counsel to Feldman, Kleidman, Collins & Sappe, LLP where her practice focuses on medical malpractice defense and professional liability matters.

^{xiv} Patrick R. Krill, Hannah M. Thomas, Meaghyn R. Kramer, Nikki Degeneffe & Justin J. Anker, *Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk*, 11 *Healthcare* 536 (2023).

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