

EASTERN DISTRICT ROUNDUP

Judicial Discretion in Awarding Counsel Fees in Divorce Cases

By Samuel Butt and John Moore

October 9, 2025

1. Alternative Plausible Conclusions Do Not Render Complaint's Allegations Implausible On Motion To Dismiss

In *Schenker of Canada Ltd. v. Am Trans Expedite LLC*, 24 CV 6440 (EDNY, Sept. 4, 2025), Judge Cogan held that plaintiff's claims are not implausible, so as to support a motion to dismiss, merely because it is possible to draw other plausible conclusions from the complaint's allegations that would not support liability.

Plaintiff contracted for defendant to handle the domestic transit of 5,160 Apple MacBook Air laptop computers that plaintiff had ordered from Shanghai, China.

Upon discovering that the delivery was missing units and that defendant had sub-contracted portions of the domestic transit in violation of the contract (among other alleged



Samuel Butt



John Moore

breaches), plaintiff brought suit, alleging various state law claims as well as a claim under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. §14706.

Defendant moved to dismiss, arguing that the Carmack Amendment preempted the state law claims and that plaintiff's claim under the Carmack Amendment failed to state a claim. Cogan denied the motion.

Defendant was right about preemption. Rather than dispute that the Carmack Amendment had preemptive effect when applicable, plaintiff argued that defendant had waived its application and that the amendment

SAMUEL BUTT, a partner at Schlam Stone & Dolan LLP, clerked for the late Charles P. Sifton, Chief Judge of the Eastern District. JOHN MOORE, a partner at the firm, clerked for Judges Edward R. Korman of the Eastern District and Stanley Marcus of the 11th Circuit.

would not apply to the extent defendant was acting as a transportation broker, rather than as a carrier.

But the contract expressly incorporated the Carmack Amendment, and plaintiff's reliance on a contractual provision selecting New York law "to the extent not inconsistent with applicable federal law" was not an "'express waiver' of the Carmack Amendment that the statute requires".

Moreover, plaintiff had expressly pleaded that defendant was a carrier and failed to allege that defendant was a broker, even in the alternative, although the issue had been raised before plaintiff's time to amend had run. Plaintiff "had every opportunity to plead an alternative status to preserve its common law claims. Having failed to do so, it is hoisted by its own petard."

But Cogan rejected defendant's argument that plaintiff failed to state a claim under the Carmack Amendment. Defendant argued that the complaint's acknowledgement of a delay of nearly one month between defendant's delivery of the computers and plaintiff's discovery of the shortfall in units rendered implausible plaintiff's necessary allegation that the units went missing during transit rather than after delivery.

The complaint met the plausibility standard because it alleged that specifically-identified stoppages in transit, and defendant's failure to use GPS tracking as called for by the contract, provided an opportunity for the missing computers to be taken during domestic transit.

Though it might also be plausible that the computers had gone missing at a different

time, "[t]he choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion." Slip op. 10, quoting *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020) (quotation and citation omitted).

2. Federal Preemption Requires Dismissal of State Law Claims

In *Gregory v. Boston Scientific Corporation*, 22 CV 2267 (EDNY, Aug. 25, 2025), Judge Kuntz concluded that a federal statute preempted plaintiff's state law claims in connection with the manufacturing and marketing of the AMS 800 Urinary Control System (AMS 800).

After plaintiff's treatment for prostate cancer, he began suffering from urinary incontinence. On Aug. 25, 2017, plaintiff had the AMS 800 device implanted to manage his incontinence. However, in April 2019, plaintiff began to experience leakage. About six months later, plaintiff underwent an ultrasound, which revealed a leak in the cuff of the device.

Accordingly, on Nov. 7, 2019, plaintiff had the first device removed, and a new AMS 800 device implanted. The second device failed within 13 days, and a later ultrasound revealed a leak in the second device as well.

Accordingly, plaintiff commenced his action against defendant, alleging strict product liability, negligence, breach of express warranty, breach of implied warranty of merchantability, negligent or intentional infliction of emotional distress, and violations of New York General Business Law §§349 and 350.

Congress enacted the Medical Device Amendments (MDA), 21 U.S.C. §§360c et

seq., to the Federal Food, Drug, and Cosmetics Act (FDCA), 21 U.S.C. §§301 *et. seq.*, in 1976.

The MDA contains an express preemption provision, which prevents any state from establishing or continuing in effect any requirement, with respect to a device intended for human use, that “(1) is different from, or in addition to, any requirement applicable under this chapter to the device, and (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter.” Slip op. 7 (citing 21 U.S.C. §360k).

The MDA therefore preempts state law claims relating to the safety and effectiveness of Class III medical devices, such as the AMS 800 device, with pre-market approval by the Food and Drug Administration (FDA), if such laws impose standards “different from, or in addition to” federal requirements.

However, “if a cause of action under state common law only provides a damages remedy for claims premised on a violation of FDA regulations, then the state duties ‘parallel’, rather than add to, federal requirements, and the cause of action is not preempted under §360k.”

Plaintiff’s claims were not parallel claims exempted from the MDA’s preemption provision. His strict liability and negligence claims were preempted because he did not articulate how defendant failed to adhere to the pre-market approval requirements or otherwise violated federal regulations.

Similarly, his breach of implied warranty claim was preempted by the MDA, since to demand that the AMS 800 device be designed in a safer manner would impose different and additional

requirements to federal law given the initial pre-market approval and supplemental pre-market approvals.

Plaintiff’s breach of express warranty claim was preempted because it was premised on FDA approved representations made by defendant. Plaintiff’s claims for infliction of emotional distress were preempted because plaintiff failed to allege a violation of parallel federal requirements.

Lastly, plaintiff’s New York General Business Law (GBL) claim for deceptive business practices (plaintiff withdrew his GBL claim for false advertising) was preempted because the MDA proscribed claims asserting that FDA-approved promotional material should have been different.

3. Religious Discrimination Complaint Dismissed

In *Bandalos v. Stony Brook University Medical Center*, 22 CV 135 (EDNY, Aug. 18, 2025), Judge Donnelly dismissed plaintiff’s complaint alleging religious discrimination under Title VII based on her employer’s refusal to grant a religious exemption from the New York State Department of Health’s vaccine mandate requiring certain healthcare workers to be vaccinated against COVID-19.

In the midst of the COVID-19 pandemic, the State Department of Health adopted an emergency regulation requiring that hospital personnel be “fully vaccinated against COVID-19.”

The regulation defined “personnel” as employees “who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.” 10 N.Y.C.R.R. §2.61. The regulation contained a

medical exemption, but did not include a religious exemption.

Plaintiff was a nurse at Stony Brook University Medical Center. She asserted that as a practicing Catholic, she had a religious objection to the vaccination. She requested accommodations that she said would allow her to keep working without needing to be vaccinated. She also formally requested a religious exemption from the vaccine mandate.

Defendant denied the request for a religious exemption and notified plaintiff that she would be placed on leave without pay to provide her time to comply with the vaccine mandate. When plaintiff did not obtain the vaccine, defendant sent a Notice of Discipline, which included the proposed penalty of termination. Plaintiff resigned from her position.

To state a claim under Title VII, plaintiff was required to allege that she suffered an adverse employment action because of her race, color, religion, sex, or national origin. Employers are required to accommodate the religious practice of their employees unless doing so would impose an undue hardship.

Stating a claim for failure to accommodate a religious practice requires pleading (1) a bona fide religious belief in conflict with an employment requirement, (2) that the employer was informed of the belief, and (3) that the plaintiff was disciplined for not complying with the employment requirement.

Defendant argued that granting plaintiff a religious exemption from the vaccine mandate would have violated that mandate, which did

not provide for religious exemptions. “Courts in this Circuit have uniformly held that the mandate did not permit employers to grant covered employees a blanket religious exemption; therefore, accommodating the plaintiff’s request for a religious accommodation would have violated the Mandate and imposed an undue hardship on the defendant.”

Title VII does not require employers to break the law to accommodate their employees. Plaintiff’s complaint was indistinguishable from those cases.

Defendant was not obligated to grant plaintiff’s proposed accommodations—for instance, moving her to a call center away from patients. Even with this change, she would still have fallen within the regulatory definition of “personnel” (because she could have infected others if she contracted COVID-19) and so would remain subject to the mandate.

Nor did plaintiff allege an inference of discrimination based on a later change in policy that deemed employees to be fully vaccinated even if they did not obtain booster shots. This change did not treat religious employees any worse than others because it followed a change in state policy that no longer enforced the booster requirement.

In any event, plaintiff was no longer qualified for her position at the time of her suspension because she was unvaccinated. Absent compliance with the vaccine mandate, “she did not meet the requirements for her position and was not qualified for her position at the time of her suspension.”