

Apollo Asset Mgt., Inc. v Cernich

2025 NY Slip Op 33131(U)

August 18, 2025

Supreme Court, New York County

Docket Number: Index No. 653234/2020

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X	
APOLLO ASSET MANAGEMENT, INC., APOLLO MANAGEMENT, L.P., APOLLO ADVISORS VIII, L.P., APOLLO ADVISORS IX, L.P., APOLLO MANAGEMENT HOLDINGS, L.P., APOLLO INSURANCE SOLUTIONS GROUP LP	INDEX NO. 653234/2020
Plaintiff,	07/28/2025, 07/28/2025, 07/28/2025, 07/28/2025, 07/28/2025, 07/28/2025, 07/28/2025,
- v -	MOTION DATE 07/28/2025
STEPHEN CERNICH, HUAN TSENG,	
Defendant.	020 021 022 022 023 024 MOTION SEQ. NO. 025 026

DECISION + ORDER ON
MOTION

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 020) 977, 978, 979, 980, 981, 1080, 1083, 1111, 1112, 1113, 1114
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 021) 982, 983, 984, 985, 1081, 1084, 1115
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 022) 986, 987, 988, 989, 1082, 1085, 1116
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 022) 986, 987, 988, 989, 1082, 1085, 1116
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 023) 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1086, 1090, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 024) 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1087, 1091, 1130

were read on this motion to/for

PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 025) 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1088, 1092, 1131

were read on this motion to/for

PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 026) 1076, 1077, 1078, 1079, 1089, 1093, 1108, 1109, 1110

were read on this motion to/for

PRECLUDE

Upon the foregoing documents and for the reasons set forth on the record (*tr.s.* 8.14.25, 8.15.25), the motions (Mtn. Seq. Nos. 020-026) are decided as set forth below:

1. The Expert Testimony of Richard Marin (Mtn. Seq. No. 020)

Apollo Asset Management, Inc., Apollo Management, L.P., Apollo Advisors VIII, L.P., Apollo Advisors IX, L.P., Apollo Management Holdings, L.P., and Apollo Insurance Solutions Group LP, f/k/a Athene Asset Management, L.P. (collectively, **Apollo**) seeks to proffer Richard Marin to provide expert opinion (i) on the value and importance of confidentially sensitive proprietary and business information to an asset management firm like Apollo with a focus on a set of documents transmitted outside of Apollo for non-Apollo purposes and (ii) whether Apollo has reasonably measured its costs in developing the confidential information contained in those documents as such costs are the appropriate measure for damage. To wit, Mr. Marin opines (1) that the misappropriated documents are examples of documents containing sensitive and proprietary information to garner competitive protection and advantage and that such information was valuable to Apollo's business model, (2) the confidential information at issue

had high value in the marketplace for asset management, (3) Apollo's calculation of its development costs and (4) the amount Apollo is seeking reasonably reflects the amount necessary to prepare this type of confidential information.

Stephen Cernich and Huan Tseng (collectively, the **Defendants**) argue that Mr. Marin should be precluded from testifying because his testimony improperly (i) rests on his own personal credibility assessments of fact witnesses, (ii) speaks to ultimate fact conclusions to be reached by the jury, and (iii) serves only to bolster the testimony of Apollo's witnesses. The motion is denied.

Mr. Marin may testify based on his personal training, and experience can make clear that he is not testifying based on a particular well-established methodology because an expert opinion based on personal training is not subject to *Frye* (*Oddone*, 22 NY3d at 376 [2013]; *see also Ghazala v Shore Haven Apartment Del, LLC* 229 AD3d 447, 449 [2d Dept 2024]).

2. Extrinsic Evidence Relating to Apollo's Intent Regarding the Word "Affiliate" in the Release (Mtn. Seq. No. 021)

The Appellate Division held:

[T]he arbitrator's conclusion, in an earlier arbitration, against different parties, that the release did not apply to Ming Dang does not serve as a conclusive basis for finding that the release did not apply to the defendants. Accordingly, the scope of the release language with respect to Cernich and Tseng was ambiguous, and Supreme court should have simply denied the motion to dismiss without determining the meaning of the release language as a matter of law.

(*Apollo Mgmt., Inc. v Cernich*, 202 AD3d 527, 527 [1st Dept 2022]).

The Appellate Division subsequently held:

[T]he bulk of defendants' arguments raised on appeal are precluded by our earlier decision, where we concluded that 'plaintiffs will be permitted to seek, among other things, compensatory damages in the form of recovery of their development costs of confidential information with respect to the aiding and abetting claims' (*Apollo Mgt.*, 202 AD3d at 527). Defendants have also failed to meet their burden of establishing that they were non-party Imran Siddiqui's 'affiliates' under the terms of the release. In our prior decision, we determined that 'the scope of the release language with respect to [defendants] was ambiguous.' *The evidence submitted by defendants on summary judgment – mainly in the form of defendants' own testimony that they were Siddiqui's business partners – was not sufficient to resolve the issue of whether they were Siddiqui's 'affiliates.'* We also find that *the evidence advanced by plaintiffs with respect to the parties intent was not relevant to discerning whether defendants were Siddiqui's 'affiliates.'*

(*Apollo Asset Mgmt., Inc. v Cernich*, 226 AD3d 466, 466 [1st Dept 2024] [emphasis added]).

Stated differently, the Appellate Division held that the Defendants did not meet their *prima facie* burden of entitled to judgment as a matter of law (*cf. Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Additionally, the Appellate Division did not hold that **all** evidence of intent is irrelevant to resolving the ambiguity that they previously identified. The ruling was only that the **particular evidence** advanced by Apollo was not relevant to that determination. However, based on that ruling, the Defendants now argue that Apollo should be precluded from introducing *any* evidence of intent in resolving the ambiguity identified by the Appellate Division.

In the opposition papers, Apollo explains that the evidence that they actually proffered was the 30(b)(6) testimony of the Chief Compliance Officer of Apollo who was not employed by Apollo when the Settlement Agreement and Release (the **Release**; NYSCEF Doc. No. 984) with Mr. Siddiqui was signed. This fact testimony would either be based on hearsay and thus not proper

for consideration or otherwise irrelevant. As such, this testimony is precluded but the Defendants are not entitled to the broader relief that they seek – *i.e.*, exclusion of other extrinsic evidence of intent to resolve the ambiguity that the Appellate Division identified in Mr. Siddiqui's release.

As discussed, and based on the cases adduced by the Defendants, the Court intends to instruct the jury that affiliate means:

THE PARTNERSHIP AGREEMENT WITH MR. SIDDIQUI DEFINES AFFILIATES (SEE NYSCEF 651). IT SAYS WITH RESPECT TO ANY PERSON ANY OTHER PERSON DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH SUCH PERSON.

BLACK'S LAW DICTIONARY DEFINES AFFILIATES AS "A CORPORATION THAT IS RELATED TO ANOTHER CORPORATION BY SHAREHOLDINGS OR OTHER MEANS OF CONTROL" (BLACK'S LAW DICTIONARY 12TH ED 2024; *KLAPPER V GRAZIANO*, 41.3D 401 [2013]). COURTS HAVE HELD THAT AFFILIATES INCLUDE INDIVIDUALS AS TO THE CORPORATIONS THAT THEY CONTROL (*GEIER V MOZIDO*, LLC 2016 WL 5462437; *VKK CORP. V NATIONAL FOOTBALL LEAGUE*, 244 F3D 114 [2001]) AND THAT INDIVIDUALS CAN BE AFFILIATES OF COMPANIES THAT OWE OBLIGATIONS TO OTHERS WHERE THE PERSON IS THE "IMPETUS FOR THE FORMATION OF THE VENTURE AND THE PERSON UPON WHOSE SUCCESS OR FAILURE IT MAY DEPEND," AS IN, A PERSON WHO FORMS A NEW COMPANY AND PROMISES THAT EITHER THE COMPANY OR ITS AFFILIATES WILL PAY MONEY DUE (*WACHTER V KIM*, 82 AD3D 658 [2011]).

As such, the Defendants' motion to broadly preclude extrinsic evidence of intent is Denied.

3. Evidence Relating to the Final Arbitration Award (Mtn. Seq. No. 022)

Neither side may introduce the Final Arbitration Award, dated April 26, 2019 (NYSCEF Doc. No. 988). It is hearsay and it has no probative value as to the value of Apollo's compensable

damages or as to whether either Messrs. Siddiqui or Dang breached fiduciary duties or committed fraud.

4. Evidence Relating to Damages Suffered by Individual Apollo Entities (Mtn. Seq. No. 023)

This Court previously determined that the Defendants were not entitled to summary judgment based on their argument that one plaintiff Apollo entity as opposed to a different plaintiff Apollo entity in the group paid the development costs. In any event, the copies of the corporate documents certified by the Secretary of State (VEC Doc. Nos. 1-1125 and 1-1128) establish that the correct plaintiffs are bringing this lawsuit and that they were in existence during the relevant time period when the development costs were incurred.¹ As such, the Defendants' motion to preclude evidence relating to the respective development costs paid for by the individual Apollo entities is denied.

5. Evidence of Confidential Information Not Identified in Apollo's Interrogatory Responses (Mtn. Seq. No. 024)

¹ Athene Asset Management, LLC was created in 2009. In 2013, it converted to a limited partnership and became Athene Asset Management, L.P. It then converted to an LP under Cayman Islands law. In 2018, it redomiciled in Delaware and converted back from being an LP to an LLC, and its name became Athene Asset Management LLC. On October 1, 2019, it changed its name to Apollo Insurance Solutions Group LLC. On February 21, 2020, the LLC converted to an LP and its name was Apollo Insurance Solutions LP. It is a Delaware entity. During 2014-2017, the development costs are alleged to have been incurred and during that time Apollo Insurance Solutions Group LP was known as Athene Asset Management LP, an entity under Cayman Islands Law. Thus, it is the same entity and Apollo is not precluded from introducing evidence as to development costs incurred during that time period. Were the Defendants to suggest that to the jury that it is a different entity which incurred those development costs, curative instruction would be required which would be:

Companies sometimes change whether they are partnerships or limited liability companies or plain old corporations. This is not an issue in this case for you to decide. For your purposes, they are the same entity for the purpose of understanding what if any costs of development Apollo incurred and what damages if any they are entitled to.

To the extent that Apollo intends to rely on documents that were not identified in its Interrogatory No. 2 (NYSCEF Doc. Nos. 1019, 1025, 1031, 1037, 1041, and 1043) response, but which were nonetheless produced in discovery, Apollo shall supplement their Interrogatory No. 2 response and produce an appropriate witness for additional deposition(s) on or before September 3, 2025. The Defendants are not however entitled to preclude the introduction of relevant documents based on their argument that Apollo responded to an interrogatory response without identifying all of the documents that they intend to rely on. Nothing on this record presents surprise or prejudice as to these documents which were indisputably produced and any prejudice is cured by the additional deposition testimony discussed above. As such, the Defendants' motion to preclude evidence of confidential information is denied except to the extent set forth above.

6. Reference Sheets (Mtn. Seq. No. 025)

By stipulation, the parties have indicated that this motion is resolved to the extent that Apollo does not seek to introduce the Reference Sheets (VEC Doc. Nos. 1-1082 and 1-1085-1-1090) as substantive evidence, and, to the extent that the Defendants seek to preclude the introduction of the Reference Sheets at trial for that purpose, the motion is resolved.

7. Apollo's Motion *in Limine* (Mtn. Seq. No. 026)

a. Arguments that Apollo is Barred from Seeking Development Costs

Apollo is correct that the Defendants may not argue to the jury that Apollo is barred from seeking its development costs, but Apollo still must prove its damages at trial. As discussed above, neither Apollo nor the Defendants may produce the Arbitrator's awards on this issue or any other issue because it is hearsay and has no probative value. The quantum of these damages

is a factual issue to be resolved by the jury in this case on the record that is in front of them. As such, the branch of Apollo's motion seeking to preclude evidence that Apollo is barred from recovering development costs is granted.

b. Evidence that Apollo is Not Entitled to Certain Damages

The branch of Apollo's motion seeking to preclude evidence that Apollo is not entitled to damages based on the fact that certain costs were paid by certain of the various Apollo entities is granted for the reasons set forth above for Mtn. Seq. No. 023.

c. Arguments that Messrs. Siddiqui and Dang Did Not Owe a Fiduciary Duty

Apollo is correct that the Defendants can not argue that Messrs. Siddiqui and Dang did not owe any fiduciary duties to Apollo. They are not however correct that the Defendants may not introduce evidence that the scope of those fiduciary duties may have been modified by the parties, or that it is impermissible for the Defendants to argue as such. As such, the branch of Apollo's motion seeking to preclude the Defendants from arguing at trial that Messrs. Siddiqui and Dang did not owe any fiduciary duties to Apollo is granted except to the extent set forth above.

d. Evidence Relating to the Defendants' Contractual Obligations to Athene

The branch of Apollo's motion seeking to preclude the Defendants from offering any evidence at trial suggesting that the Defendants complied with their contractual obligations to their former employer, Athene Holding Ltd., is voluntarily withdrawn.

e. Evidence Relating to Apollo's Conflicts of Interests

Apollo is correct that the Defendants may not introduce newspaper articles for the truth of the matter asserted (VEC Doc. No. 1-1260; VEC Doc. No. 1-1689). They are hearsay and irrelevant. Additionally, the Defendants are precluded from introducing Athora's annual report (VEC Doc. No. 1-1685) and articles about Athora (VEC Doc. No. 1-1686). They are totally irrelevant. As such, the branch of Apollo's motion seeking to preclude this evidence is granted.

f. Evidence Relating to the Bermuda Lawsuit

The branch of Apollo's motion seeking to preclude evidence relating to a separate lawsuit that Athene filed against Mr. Cernich, Mr. Siddiqui, and Mr. Siddiqui's business, Caldera, in Bermuda (VEC Doc. Nos. 1-1626, 1-1629-1-1630, and 1-1650) is voluntarily withdrawn (*tr.* 8.15.2025).

g. Case Materials

Apollo argues that the Court should preclude the Defendants from offering into evidence at trial certain transcripts of oral arguments (VEC Doc. No. 1-1691), stipulations between the parties (VEC Doc. Nos. 1-1692 and 1-1699), Apollo's privilege log (VEC Doc. No. 1-1693), and notices of depositions (VEC Doc. Nos. 1-1697 and 1-1698) because they are irrelevant to the issues for trial.

It simply is not clear on this record for what purpose the Defendant seeks to use these materials. It can not be said however that they would never be admissible for any purpose whatsoever. As

such, the Court reserves judgment for trial as to whether these documents are admissible and if so for what purpose.

h. Evidence Relating to Compensation Paid by Athene

Apollo is correct that asset management fees are not development fees and that the Defendants can not introduce asset management fee payments to indicate that Apollo was paid for its development costs. As such, the branch of Apollo's motion seeking to preclude the Defendants from arguing at trial that Apollo was compensated by Athene or another collateral source is granted.

i. Emails Between the Defendants and Outside Counsel

Apollo is not entitled to preclude the use of documents which suggest that their lawyers knew about the conduct which Apollo now alleges that Messrs. Siddiqui and Dang did improperly (e.g., VEC Doc. No. 1-1455). As such, the branch of Apollo's motion seeking to preclude the Defendants from offering into evidence certain emails communications between the Defendants and the law firms of Sidley Austin LLP and Willkie Farr & Gallagher LLP about the corporate structure and formation of Caldera is denied.

j. Photographs of Dictionary Definitions of "Affiliate"

Apollo is correct that the Court will instruct the jury as to what the law is. This includes the definition of "Affiliate". As discussed above in Mtn. Seq. No. 021, the Court intends to provide the jury with the definition discussed in the jury *voir dire* statement. As such, the branch of

Apollo's motion seeking to preclude evidence of certain photographs of pages from different dictionaries that contain definitions of the term "affiliate" is granted.

k. Prior Statements and Letters by the Defendants' Counsel

The branch of Apollo's motion seeking to preclude evidence of certain statements and letters written by the Defendants' own trial counsel inside and outside of the various court proceedings is voluntarily withdrawn.

l. The Expert Report and Testimony of Mr. Cernich

Apollo is correct that expert reports do not come into evidence. They are hearsay. Mr. Cernich may testify as to his experience and his expertise in the insurance industry and as to what his experience has been with in complying with regulations and as to what information would typically be considered confidential (*see Oddone*, 22 NY3d at 376 [2013]; *see also Ghazala v Shore Haven Apartment Del, LLC* 229 AD3d 447, 449 [2d Dept 2024]). He may also testify as a fact witness. He may not however testify outside of his experience and expertise. As such, the branch of Apollo's motion seeking to preclude Mr. Cernich's expert report and expert testimony is granted solely to the extent set forth above.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that the Defendants' motion (Mtn. Seq. No. 020) to preclude the expert testimony of Mr. Marin is DENIED; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 021) to preclude extrinsic evidence relating to Apollo's intent in entering into the Release is DENIED; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 022) to preclude Apollo from offering any evidence of the Final Arbitration Award is GRANTED in accordance with the rulings set forth herein; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 023) to preclude evidence relating to the respective development costs paid for by the individual Apollo entities is DENIED; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 024) to preclude evidence of confidential information is DENIED except to the extent set forth herein; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 025) to preclude Apollo from offering into evidence at trial any reference sheets prepared by Apollo's counsel is resolved by agreement between the parties; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence that Apollo is barred from recovering development costs is GRANTED; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence that Apollo is not entitled to damages based on the fact that certain costs were paid by certain of the various Apollo entities is GRANTED; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude the Defendants from arguing at trial that Messrs. Siddiqui and Dang did not owe any fiduciary duties to Apollo is GRANTED except to the extent set forth herein; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude the Defendants from offering any evidence at trial suggesting that the Defendants complied with their contractual obligations to their former employer, Athene Holding Ltd., is voluntarily withdrawn; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence relating to Apollo's irrelevant conflicts of interest is GRANTED, and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence relating to the lawsuit that Athene filed against Mr. Cernich, Mr. Siddiqui, and Caldera in Bermuda is voluntarily withdrawn; and it is further

ORDERED that the Court reserves its ruling on the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude the Defendants from offering into evidence at trial certain case materials; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude the Defendants from arguing at trial that Apollo was compensated by Athene or another collateral source is GRANTED; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude the Defendants from offering into evidence certain emails communications between the Defendants and Sidley Austin LLP and Willkie Farr & Gallagher LLP is DENIED; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence of certain photographs of pages from different dictionaries that contain definitions of the term "affiliate" is GRANTED; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude evidence of certain statements and letters written by the Defendants' own trial counsel inside and outside of the various court proceedings is voluntarily withdrawn; and it is further

ORDERED that the branch of Apollo's motion (Mtn. Seq. No. 026) seeking to preclude Mr. Cernich's expert report and expert testimony is GRANTED solely to the extent set forth herein; and it is further

ORDERED that the parties are directed to order and upload a copy of the transcripts (*trs.* 8.14.2025, 8.15.2025) to NYSCEF, and the parties shall split the costs of the transcripts.

8/18/2025

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE