

**Life Ins. Fund Elite, LLC. v Hamburg Commercial
Bank AG**

2026 NY Slip Op 31840(U)

April 27, 2026

Supreme Court, New York County

Docket Number: Index No. 153100/2023

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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INDEX NO. 153100/2023
LIFE INSURANCE FUND ELITE, LLC.,
Plaintiff,
- v -
HAMBURG COMMERCIAL BANK AG, CERBERUS
EUROPEAN CAPITAL ADVISORS, LLP., PROMONTORIA
HOLDING 260 BV,
Defendant.
MOTION DATE 01/09/2026
MOTION SEQ. NO. 008 009 010
012 013 014
015 016 017

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 251, 252, 253, 254, 255, 256, 257, 258, 259, 349, 350, 351, 352, 353, 354
were read on this motion to/for PRECLUDE
The following e-filed documents, listed by NYSCEF document number (Motion 009) 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333
were read on this motion to/for PRECLUDE
The following e-filed documents, listed by NYSCEF document number (Motion 010) 271, 272, 335
were read on this motion to/for PRECLUDE
The following e-filed documents, listed by NYSCEF document number (Motion 012) 275, 276, 277, 278, 279, 280, 281, 282, 283, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346
were read on this motion to/for PRECLUDE
The following e-filed documents, listed by NYSCEF document number (Motion 013) 284, 285, 286, 287, 288, 336
were read on this motion to/for PRECLUDE
The following e-filed documents, listed by NYSCEF document number (Motion 014) 289, 290, 291, 292, 293, 320, 321, 322, 323
were read on this motion to/for PRECLUDE

The following e-filed documents, listed by NYSCEF document number (Motion 015) 295, 296, 297, 298, 299, 300, 334

were read on this motion to/for _____ PRECLUDE _____.

The following e-filed documents, listed by NYSCEF document number (Motion 016) 301, 302, 303, 304, 348

were read on this motion to/for _____ PRECLUDE _____.

The following e-filed documents, listed by NYSCEF document number (Motion 017) 305, 306, 307, 308, 309, 347

were read on this motion to/for _____ PRECLUDE _____.

The court held oral argument on March 11, 2026 for the parties' various motions in limine and decided them in accordance with the reasoning on the record. In sum:

Motion 8 was to preclude HCOB from offering evidence of the receipt of legal advice related to AVON. Per the reasoning on the record at page 5, the court granted the motion. HCOB's attempt is a typical sword/shield situation. HCOB cannot interpose its reliance on counsel and then refuse to say what that advice was. HCOB would unfairly keep from the fact finder whether: (1) the legal advice was sub par; or (2) whether HCOB even followed that advice. Without the substance of the advice, the mere existence of that advice has minimal to no relevance and is unduly prejudicial, without the advice itself.

In motion 9, plaintiff sought to exclude defendants' expert, Mr. Zass. The court denied the motion at page 8 of the transcript, because plaintiff's should have sought the workpapers behind Zass' expert report earlier in the case. The court should not first hear about the need for additional discovery, or the need for a Frye hearing for that matter, at the motion in limine phase. Plaintiff is free to poke holes in Zass' testimony, including a lack of basis for his report, on cross examination. Defendants will not be allowed to introduce at trial anything is has not already produced.

In motion 10, defendants sought to preclude evidence at trial related to Count 1, that the court dismissed on summary judgment. At the oral argument, at pages 12-13 of the transcript, the parties agreed that this evidence could go to state of mind. Accordingly, the court denied the motion only to the extent that the accounting is relevant to defendant's state of mind and is otherwise precluded.

Motion 11 is about which party has the burden of proof. The court reserved on this issue in the hopes that the evidence at trial will render this motion academic. If this motion needs to be decided, the court will take up the burden of proof issue at the decision of the bench trial. The parties should certainly reference motion 11 in their post-trial briefing.

Motion 12 involves defendants' desire to interpose eleven undisclosed fact witnesses. Plaintiff sought to preclude their testimony, because plaintiff had not had an opportunity to take discovery of these witnesses. At page 24 of the transcript, the court ordered defendants to give a proffer of testimony first, to be followed by depositions should depositions become necessary. Plaintiff also has leave to reach out to the court to preclude any witness that appears to be duplicative.

In motion 13, defendants sought to exclude Mr. Fotak's testimony. The court granted the motion per the reasoning at pages 27-29 of the transcript. Namely, Mr. Fotak is not an expert and has no personal knowledge about relevant issues so cannot serve as a fact witness.

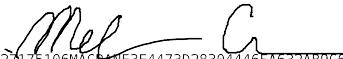
Motion 14 is plaintiff's motion to stop defendants from contradicting Cereberus' sworn statements in a certain Delaware filing. The court denied the motion per the reasoning at page 30 of the transcript, mostly because Cerebus is no longer a party.

The court denied motion 15, defendants’ motion to preclude the expert testimony of Justin McClean, per the reasoning at page 32 -33 of the transcript, because the caliber of the methodology goes to weight, not admissibility.

With respect to motion 16, per the reasoning at pages 35-44, the court restricted testimony to stale data only.

Per the reasoning at page 46 of the transcript, the court denied motion 17, defendants’ motion to exclude two opinions from David McLean, plaintiff’s expert on commercial reasonableness. Defendants’ objections go to weight, not admissibility.

On page 50 of the transcript, the court precluded certain late-produced documents from being used at trial. The parties were warned more than once that “documents not produced during discovery will not be admitted as evidence at trial.” (see, e.g., status conference order dated 4/4/2024 [EDOC 72]). All involved agreed to table the remainder of the evidence objections to the time of trial.


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<u>4/27/2026</u> DATE			<u>MELISSA A. CRANE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE