LEGALITY AND ENFORCEMENT OF ELECTRONIC TRANSACTIONS

Presented by:

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STATUTORY FRAMEWORK

- **Uniform Electronic Transaction Act ("UETA") (1999)**
  - Adopted by 49 states (**except New York***), the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands
- **Electronic Signatures In Global And National Commerce ("E-SIGN") (2000)**
  - 15 U.S. Code § 7001 *et seq.*
  - Preempts any inconsistent state law, except those who have adopted the UETA without amendment
- **New York Electronic Signatures and Records Act (1999)**
  - N.Y. State Technology Law Article 3 (§§301-309) titled "Electronic Signatures and Records Act" **("ESRA")**
  - The N.Y.S. Office of Information and Technology Services oversees the ESRA; is the Electronic Facilitator that administers the ESRA and promulgates rules and regulations consistent with the ESRA (9 NY Comp Codes Rules and Regs Part 540)

PURPOSE

- **UETA**
  - To establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.
- **E-SIGN**
  - To provide that electronic records and signatures have the same validity and effect as wet signatures with regard to transactions in or affecting interstate or foreign commerce
- **ESRA**
  - To establish standards and procedures governing the use and authentication of electronic signatures and the utilization of electronic records in accordance with article 3 of the New York Technology Law

APPLICABILITY

- **UETA**
  - Applies to commercial transactions in those states that have adopted UETA
    - Establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures
  - Applies only to those transactions where the parties have agreed to or intended to conduct the transaction electronically
  - The Act does not apply to *all* writings and signatures, but only to electronic records and signatures related to business, commercial and governmental affairs
    - This includes commercial transactions involving consumers, *i.e.*, sale of goods
  - Preempts E-SIGN in interstate or foreign commerce
    - **IF** adopted in full, without changes, or is consistent with E-SIGN

APPLICABILITY

- **E-SIGN ACT**
  - Applies to transactions in or affecting interstate or foreign commerce (15 U.S.C. § 7001(a))
    - This does **not** eliminate intrastate commerce as that is usually construed as "affecting interstate commerce"
    - Electronic records and signatures have the same validity and effect as wet signatures with regard to transactions in or affecting interstate or foreign commerce
  - Tracked the UETA, but extended the law to consumer transactions (*e.g.*, intent required)
  - Specifically provides that UETA trumps the provisions of ESIGN (Sec. 7002)
  - States that have not adopted the UETA or adopted it with amendments do not trump E-SIGN and may avoid federal preemption only if consistent with E-SIGN

APPLICABILITY

- **ESRA**
  - ESRA provides the legal foundation for conducting transactions electronically by recognizing electronic signatures and electronic records as having the same legal validity and effect as their paper-based counterparts.
  - It enables parties who voluntarily elect to use electronic signatures or electronic records to electronically create, sign, store, and exchange records with confidence that those records are enforceable under law. Tracked the UETA, but extended the law to consumer transactions (*e.g.*, intent required)
  - ESRA is applicable in business and consumer transactions
  - Generally ESRA is not displaced by E-Sign. E-Sign preempts only to the extent of any actual conflict or where federal requirements apply

INTERACTION WITH UCC ARTICLES

- Applies to Article 2 Sale of Goods and Article 2A Leases
- Revised Article 9 provides for a security agreement to be authenticated instead of being signed.
  - Authentication means to sign or otherwise with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process (UCC § 9102(a)(7))
- Article 12 establishes commercial-law rules for digital assets and other "controllable electronic records"
- Other articles governing negotiable instruments, letters of credit, documents of title, security interests in personal property and investment securities have been amended to permit the use of certain electronic records and signatures for many purposes, according to their own terms

DIFFERENCES BETWEEN THE ACTS

- **Record Keeping**
  - E-SIGN requires the records to remain accessible to all parties for a specified time, but provides that a state may not impose paper requirements
  - UETA requires accessibility for later reference and allows the use of third parties to keep the records
  - ESRA has no specific requirement within the statute but New York will look to other statutes that require records to be maintained
- **Use of Third Parties**
  - Both E-SIGN and UETA allow the use of electronic agents, but UETA incorporates state law governing mistakes if a security procedure is not used and a mistake is made as a result of using electronic agents
  - ESRA provides that governmental entities are authorized to store electronic records but does not address the use of third parties for such storage

DIFFERENCES BETWEEN THE ACTS

- UETA defers to state laws for substantive determinations of authority, agency, forgery, contract formation, etc.
- E-SIGN does not affect any legal requirement other than it being written, signed, or in non-electronic form
- UETA is permissive
- E-SIGN is mandatory in interstate electronic commerce
- Under ESRA the use or acceptance of electronic records by "government entities" is voluntary so businesses and consumers need to check which government entities will or will not accept electronic signatures
  - Businesses and consumers may choose to use electronic signatures and engage in electronic transactions freely

ELECTRONIC RECORD CLEARLY DEFINED

- **UETA**
  - A record created, generated, sent, communicated, received, or stored by electronic means.
    - (UETA § 2(7))
- **E-SIGN**
  - A contract or other record created, generated, sent, communicated, received, or stored by electronic means.
    - (15 USC §7006(4))
- **ESRA**
  - An electronic record shall mean information, evidencing any act, transaction, occurrence, event, or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.
    - (NYS Technology Act Article 3 §302.2)

ELECTRONIC AGENT DEFINED

- **UETA**
  - A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
    - (UETA § 2(6))
- **E-SIGN**
  - A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.
    - (15 USC § 7006(3))
- **ESRA**
  - No definition

DIFFERENCES BETWEEN THE ACTS

- **Record Keeping**
  - E-SIGN requires the records to remain accessible to all parties for a specified time, but provides that a state may not impose paper requirements
  - UETA requires accessibility for later reference and allows the use of third parties to keep the records
  - ESRA has no specific requirement for maintenance of records. However, record retention obligations may derive from the underlying substantive law, regulatory requirements or records-management statutes.
- **Use of Third Parties**
  - Both E-SIGN and UETA allow the use of electronic agents, but UETA incorporates state law governing mistakes if a security procedure is not used and a mistake is made as a result of using electronic agents
  - ESRA is silent regarding the use of electronic agents. Therefore, it neither permits or prohibits such use of third parties.

DIFFERENCES BETWEEN THE ACTS

- UETA defers to state laws for substantive determinations of authority, agency, forgery, contract formation, etc.
- E-SIGN does not affect any legal requirement other than it being written, signed, or in non-electronic form
- ESRA does not limit any legal rights or privileges, contractual or otherwise, that parties may have in the use of electronic signatures and records.
- UETA is permissive
- E-SIGN is mandatory in interstate electronic commerce
- ESRA is voluntary

WHAT IS AN ELECTRONIC SIGNATURE?

- **UETA**
  - "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
    - (UETA § 2(8))
- **E-SIGN**
  - An electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.
    - (15 USC § 7006 (5))
- **ESRA**
  - Electronic signature" shall mean an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record.
    - (NYS Technology Act Article 3 §302.3)

WHAT IS AN ELECTRONIC RECORD?

- **UETA**
  - A record created, generated, sent, communicated, received, or stored by electronic means.
    - (UETA § 2(7))
- **E-SIGN**
  - A contract or other record created, generated, sent, communicated, received, or stored by electronic means.
    - (15 USC §7006(4))
- **ESRA**
  - "Electronic record" shall mean information, evidencing any act, transaction, occurrence, event, or other activity, produced or stored by electronic means and capable of being accurately reproduced in forms perceptible by human sensory capabilities.
    - (NYS Technology Act Article 3 §302.2)

WHAT IS AN ELECTRONIC AGENT?

- **UETA**
  - A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.
    - (UETA § 2(6))
- **E-SIGN**
  - A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.
    - (15 USC § 7006(3))
- **ESRA**
  - There is no definition of an electronic agent in the ESRA.
    - However 9NY Comp Codes Rules and Regs §540.1(c) provides "New technologies are frequently being introduced. The intent of this Part is to be flexible enough to embrace future technologies that comply with ESRA and all other applicable statutes and regulations".
    - Alternatively, one should look to common law principles

ELECTRONIC RECORDS ARE ENFORCEABLE

- **UETA**
  - A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
  - A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
  - Any law that requires a writing will be satisfied by an electronic record.
  - Any signature requirement in the law will be met if there is an electronic signature.
    - (UETA § 7)

ELECTRONIC RECORDS ARE ENFORCEABLE

- **E-SIGN**
  - "…Notwithstanding any statute, regulation, or other rule of law… with respect to any transaction in or affecting interstate or foreign commerce— (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."
    - (15 USC § 7001(a))

ELECTRONIC RECORDS ARE ENFORCEABLE

- **ESRA**
  - "…an electronic signature may be used by a person in lieu of a signature affixed by hand. The use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand."
    - (NYS Technology Act Article 3 §304.2)

ADMISSIBILITY OF AN ELECTRONIC SIGNATURE

- **UETA**
  - Section 13. Admissibility In Evidence.
    - In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form
- **E-SIGN** – no specific provision
  - Section 7001
    - (a) (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
    - (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.
- **ESRA**
  - In any legal proceeding where the provisions of the civil practice law and rules are applicable, an electronic record or electronic signature may be admitted into evidence pursuant to the provisions of article forty-five of the civil practice law and rules including, but not limited to section four thousand five hundred thirty-nine of such law and rules.
    - (NYS Technology Act Article 3 §306)

ADMISSIBILITY OF AN ELECTRONIC SIGNATURE

- **UETA**
  - Proof of whether a record is signed is a question of fact to be determined under state law
  - Broad concept and does not require any specific technology – may include voice message, a name on an email, or a firm name on a facsimile, if intent is present
  - Critical element is the intention to execute or adopt the sound, symbol, or process for purposes of signing and requires the signer to execute or adopt that process with intent to sign
  - Section 13 specifically states that electronic records are not inadmissible into evidence solely because they are in electronic format

ADMISSIBILITY OF AN ELECTRONIC SIGNATURE

- **E-SIGN**
  - Does not change the substance of any law and affects only the medium for execution and delivery of writings

ADMISSIBILITY OF AN ELECTRONIC SIGNATURE

- **ESRA**
  - CPLR Article 45 governs Evidence. CPLR 4539 governs "Reproductions of original"
  - CPLR 4539(b) says "(b) A reproduction created by any process which stores an image of any writing, entry, print or representation and which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes, when authenticated by competent testimony or affidavit which shall include the manner or method by which tampering or degradation of the reproduction is prevented, shall be as admissible in evidence as the original.

WHAT ARE THE FACTORS FOR RECOGNITION BY THE COURTS?

- Attribution
- Authentication
- Consent
- Intent
- Security
- Record Retention

ATTRIBUTION

- **UETA** - defines the term
- Section 9. Attribution And Effect Of Electronic Record And Electronic Signature.
  - (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
  - (b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.
- **E-SIGN** does not have a separate definition
- **ESRA** does not have a separate definition

ATTRIBUTION

- The act of signing can be proven by any relevant evidence, including the use of technology or a password
- Determined by the context and surrounding circumstances at the time of execution or adoption of the agreement

AUTHENTICATION

- Confirming a transaction participant's actual identity or status as an authorized business representative at the beginning of the transactions ("initial authentication"); and,
- Confirming that the same person initially identified as a transaction participant continues to be the person participating in the transaction ("ongoing authentication").

AUTHENTICATION

- ***Rose v Koch*** (2025) 2025WL2831017 [USDC E.D.OK]
  - Addressed the authentication requirement
- Found:
  - Certificates of Completion generated by DocuSign which provide detailed timestamps and authentication data for … electronic signatures
  - Testimony of a forensic expert, affirmed her reliance on this metadata
- THEREFORE, conclusion was that the account documents were executed electronically

CONSENT

- Consent to conduct business electronically
  - Can be established by circumstance in commercial transactions
  - Can be express or implied, except in consumer transactions under E-SIGN
- Best to use express, written consent agreement

INTENT

- Intent to sign must be clear and show there is no possibility of forgery
- The electronic signature (including clickthrough, digitized signatures, check boxes/buttons, etc.) should:
  - Establish the signer's intent to create the signature
  - Attach the signature to the record being signed
  - Confirm the identity of the person accessing, reviewing, and signing

SECURITY

- The document(s) cannot be modified before or after signature
- UETA Section 2(14)
  - "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.
- **E-SIGN** – no provision
- **ESRA –** no provision but relies on CPLRCPLR 4539(b) which provides for admissibility into evidence as long as the records "…does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes, when authenticated by competent testimony or affidavit which shall include the manner or method by which tampering or degradation of the reproduction is prevented, shall be as admissible in evidence as the original."

UETA ADDRESSES CHANGE OR ERROR

- If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:
  - A person may avoid a transaction caused by an inadvertent error if, upon learning that another party believes a transaction occurred, he gives prompt notice of the error, does not use or receive a benefit from the transaction, and complies with any instructions for returning or destroying any received consideration.
  - If the parties agreed to use a security procedure to detect changes or errors and only one party conforms, the conforming party may avoid the effect of any error or change if the nonconforming party would have detected it if he had conformed.
  - In all other instances the change or error has the effect provided by law, including the law of mistake and the parties' contract.
    - (UETA § 10)

RECORD RETENTION

- **UETA provides:**
  - Both parties must have access to the maintained records
  - The signature must be associated with the record
    - Keep an associated record of how the signature was captured, or
    - Make a textual or graphic statement that can be added to the signed record
  - The records must be protected to maintain integrity and reliability
  - The records accurately reflect the information in the document
  - A party may use a third-party provider for this service
- **E-Sign** and **ESRA** rely on other statutes that have record keeping provisions

HOW U.S. COURTS ARE HANDLING ELECTRONIC SIGNATURE CASES

Attribution of Signature

- ***Zuliewski v. American General Life Insurance*** (Michigan Court of Appeals 2012)
  - Former beneficiaries of a life insurance policy contested change
  - An online account was established providing all the required information and was thereafter used to change the beneficiaries
  - Michigan's statute reads
    - (1) …electronic signature is attributable to a person if it is the act of the person…
    - (2) …electronic record or electronic signature attributed … is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including any agreements of the parties…
  - Former beneficiaries argued the insurance company was required to show the efficacy of its security procedures
  - Court disagreed relying on facts that numerous items required to establish online account were provided

Attribution

- ***Designs for Health, Inc. v. Millero***
  (Conn. App. Ct. 2019) 201 A.3d 1125
  - Upheld a contract containing a forum selection clause finding that DocuSign's certificate of completion was *prima facie* evidence that the defendant signed the document on the date and time stated

Attribution

- ***Loretta-Azuka v. Exeter Health Resources, Inc.*** (2019 DNH 87)
  - The court found that DocuSign's management of the defendant's account was sufficient to overcome plaintiff's claim that her signature had been forged

Authentication

- ***Orr v. Bank of America***
  285 F.3d 764, 774 (9th Cir. 2002)
  - The Ninth Circuit has held that "[a] document can be authenticated under [FRE Rule 901] by a witness who wrote it, signed it, used it, or saw others do so." As such so long as the e-signature can be properly authenticated by the signer or a witness to the e-signature, e-signatures will be given full legal effect in federal courts as well.

Authentication

- ***Lorraine v. Markel AM. Inc. Co.***
  - 241 F.R.D 534 (D. Md. 2007)
  - Addressed the admissibility of an electronic record including the need to authenticate the document, show that the copy of the contract is an accurate duplicate of the original, and that it is kept in the ordinary course of business

Authentication

- ***Knight v. New York and Presbyterian Hospital***
  - 42 N.Y. 3d 699 (2024)
  - HELD: The patient's electronic signature on center's admission agreement that contained forum selection clause was authenticated
  - The authenticity of the "writing" could be done by any methods of authentication, including but not limited to "the testimony of a witness who was present at the time of the signing, an admission of authenticity, proof of handwriting, and … circumstantial evidence.

Authentication/Attribution

- ***Espejo v. Southern California Permanente Medical Group***

  (2016) 246 Cal.App.4th 1047

  - Signature was authenticated
    - Testimony from the IT/systems consultant detailing the transmission, review, and signature process, the employer's security precautions regarding transmission and the use of a unique username and password, and the steps needed to place a name on the signature line. Defendant showed that only someone using the plaintiff's user name and password could have signed the document.

Authentication/Attribution
NOT FOUND

- ***Ruiz v. Moss Bros. Auto Group, Inc.*** (2014) 232 Cal.App.4th 836
  - Court found no authentication of electronic signature
    - No evidence explaining how the signature, or the date and time printed next to the signature, came to be placed on the agreement or how it ascertained that the electronic signature was the act of the person who allegedly signed the document
  - Should have shown that the electronic signature could only be placed by a person using a unique username/login ID and password, that the date and time indicated the actual date and time the signature was made, that the person was required to use a unique username/login ID and password to access the document to sign it

Authentication/Attribution
WAS FOUND

- ***Aerotek, Inc. v. Boyd***
  (2021) 21WL2172538 Tx.S. Ct.
  - Court found that employer had a robust authentication process, a comprehensive audit trail, and a secure record management system
    - Evidence established the efficacy of the security procedures applied and the court was able to determine the person (candidate) to which the electronic record or electronic signature was attributable.
  - Aerotek provided evidence that a candidate was required to create a unique identifier, a user ID, a password, and security questions. Every action was recorded and timestamped. Application could not be submitted until all steps were completed and all required signatures provided. Aerotek could not modify the contents.

Email Agreements

- ***Forcelli v. Gelco***

  (2013) 109 A.D.3d 244

  - A farewell statement at the end of an email was a signed and "subscribed" signature
  - "[A]n email message contains all material terms of a settlement and a manifestation of mutual accord, and the party to be charged, or his or her agent, types his or her name under circumstances manifesting an intent that the name be treated as a signature, such an email message may be deemed a subscribed writing within the meaning of New York CPLR 2104 so as to constitute an enforceable agreement.

Email Agreements

- ***Forcelli v. Gelco*** held that an email in which the party's or its attorney's name is retyped at the end of an email is sufficiently subscribed for purposes of CPLR 2104.
- Other cases held that a prepopulated attorney's name was NOT sufficiently subscribed for purposes of admissibility under CPLR 2104

Email Agreements

- ***Matter of Philadelphia Ins. Indem. Co. v Kendall***
  - **197 A.D. 3d 75 (2021)**
  - **Distingushed Forcelli "this distinction between prepopulated and retyped signatures in emails reflects a needless formality that does not reflect how law is commonly practiced today. It is not the sign-off that indicates whether the parties intended to reach a settlement via email, but rather the fact that the email was sent. …if an attorney hits "send" with the intent of relaying a settlement offer or acceptance, and their email account is identified in some way as their own, that it is unnecessary for them to type their own signature."**

Email Agreements

- ***Parish Transport LLC v. Jordan Carriers Inc.*** (2021) 327 So.3d45
  - Considered whether an e-mail chain contained an "electronic signature" as necessary to form a contract.
  - Accepted that individual emails in an e-mail chain can be combined to satisfy the statute of frauds signature requirement, in this case, there was insufficient evidence to determine that Doug Jordan **intended** to adopt the email chain as a valid contract.

Email Agreement - NOT UPHELD

- ***HALABU HOLDINGS, LLC v. OLD NATIONALBANCORP***, 2020wl317110[USDC,EDMI]
- Upheld "an electronic sound, symbol, or process attached to or logically associated with a record" is only an electronic signature if it is "executed or adopted by a person with the intent to sign the record."
- Halabu would have to prove that the email from Old National Bancorp. Demonstrated sufficient **intent** to transact business electronically and that it **intended** to enter into a contract for the sale of real estate
  - A purchase agreement for the sale of real estate was required to be in **writing.**

Overlay of UETA and E-SIGN ACT

- ***Barwick v. Geico*** (2011 Ark128[Supreme Court of Arkansas 2011)
  - An automobile insurance policy was obtained and signed electronically
  - Plaintiff waived the minimum medical coverage
  - Medical injuries were sustained which Geico would not cover
  - Plaintiff claimed the waiver was not binding because it was not "in writing" and Arkansas' statute required a "writing"
  - Case went to the Arkansas Supreme Court and the Court found the Arkansas statute provided for an electronic signature and said "*In our view, the meaning of section 25-32-107(c) could not be more straightforward when it states that 'if a law requires a record to be in writing, an electronic record satisfies the law.'*"

Overlay of ESRA and Other NY Statutes

- **NY General Construction Law §46**
  - The term signature includes any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.
- **NY State Technology Law (ESRA)**
  - An electronic signature may be used by a person in lieu of a signature affixed by hand with the same validity and effect as the use of a signature affixed by hand.
- **NY Criminal Procedure Law § 100.20**
  - A supporting deposition is a written instrument…filed in connection with an information…subscribed and verified by a person…

Overlay of ESRA and Other NY Statutes

- **People v. Sanchez**
  - **47 Misc. 3d 612**
  - A Supporting deposition was given and signed electronically and included the words "I understand an electronic signature has the same legal effect as my signature affixed by hand."
  - Citing the NY General Construction Law, the NY Criminal Procedure Law and the State Technology Law (ESRA), the Court held that the deposition was signed and that the e-mail response constituted both a signature an a verification of the facts in the complaint.

Other Options for Admissibility

- ***IO Moonwalkers, Inc. v. Banc of America Merchant Services***
  814 S.E.2d 583 (N.C. App. 2018)
- The court upheld an electronically signed contract on a theory of ratification.
- Moonwalkers did not dispute the records but claimed that the signer was not authorized to do so. The court found that DocuSign records confirmed that Moonwalkers had reviewed and was aware of the contract's terms. That, along with Moonwalkers other actions in abiding by the terms of the contract and responding to defendant's requests for information or materials required under the contract, led the court to hold that Moonwalker had ratified the contract.
- Electronic records were critical evidence, but not in and of themselves dispositive of the validity or binding nature of the contract.

A Discussion of the E-Signatures

- ***AJ Equity v. The Office Connection … and Karen Esther Minc*** (Slip Decision, Sup Ct. New York 10/26/2023)
- Court acknowledged that e-signatures are considered valid in New York
- Cited E-Sign Act that "the term 'electronic signature' means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record."
- **Nevertheless,** Plaintiff failed to explain the "signature certificate" and **Thus** prevented the court from determining
  - whether the procedures used complied with either the New York Electronic Signatures and Records Act or
  - Whether Karen Minc intended to be bound by the agreement under the ESign Act
- **Therefore,** Plaintiff's motion for summary judgment on that issue was **denied**

RECOMMEND LANGUAGE CONFIRMING ELECTRONIC AGREEMENT

- This Contract/Agreemen may be signed electronically and delivered to the creditor by electronic mail (including pdf or any electronic signature which complies with the U.S. E-Sign Act of 2000, the Uniform Electronic Transactions Act, Electronic Signatures Act, or other applicable law) or other transmission method, and any document so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

WANDA BORGES

WANDA BORGES, the principal member of Borges & Associates, LLC., **has been specializing in commercial insolvency practice and commercial litigation representing corporate clients throughout the United States for more than forty-five years.**

She is admitted to practice before the courts of the State of New York **and the United States District Court for the Southern, Eastern, Northern and Western Districts of New York, the United States District Court for the District of Connecticut, the United States District Court for the Eastern District of Michigan, the Second Circuit Court of Appeals and the Supreme Court of the United States.**

She is a member of several professional organizations, including the American Bar Association, the New York State Academy of Trial Lawyers, American Bankruptcy Institute. As a member of the Commercial Law League of America, she is a Past President of the League, is a Past Chair of its Bankruptcy and Creditors' Rights Sections' Executive Councils and currently serves on the CLLA Eastern Region Executive Council She is currently the Co-Chair of the Board of Associate Editors for the Commercial Law World and other CLLA publications. She is a Past President of the CLLA Fund for Public Education

WANDA BORGES

She is a regular lecturer for the National Association of Credit Management (NACM) and its various affiliates. She has prepared and continues to update courses on "Advanced Issues in Bankruptcy", "Basics in Bankruptcy", "Current Cases in Bankruptcy", "Creditor's Committees", "Credit and Collection Issues", Sarbanes-Oxley Act of 2002, "Litigation Issues" and "Antitrust Issues" which have been presented at past NACM Annual Credit Congresses and at trade credit association meetings. Even prior to the passage of the "Red Flags Rule", Ms. Borges worked with the NACM and the FTC to determine the applicability of the Rule to business creditors. Ms. Borges has prepared and presents seminars on the Red Flags compliance issues for the NACM, its various affiliates, corporations, collection agencies and various other organizations. Ms. Borges had been a faculty member for the NACM's Graduate School of Credit and Financial Management at Dartmouth College from 1994 through 2020. Ms. Borges *has been a faculty member for the National Institute on Credit* Management, a program jointly sponsored by the Commercial Law League of America and the National Association of Credit Management

WANDA BORGES

She has been a regular lecturer for the American Management Association on the Uniform Commercial Code and Fundamentals of Business Law for the Non-Lawyer, and for both the American Management Association, the Media Financial Management Association (formerly the Broadcast Cable Financial Management Association) and the Broadcast Cable Credit Association on Creditor's Rights in Commercial Litigation and Bankruptcy Matters. Additionally, she has presented seminars and webinars for the National Conference of Bankruptcy Judges, the American Bankruptcy Institute, The Commercial Law League of America, The International Association of Commercial Collectors, various local and national Bar Associations, Thomson West Publishing Company, the New York State Food Service Distributors Association and Riemer/Plus.

Ms. Borges frequently presents live seminars, tele-seminars and webinars for various trade credit groups, many of whom are managed by NACM Affiliate Associations. Additionally, she has prepared and presented these educational programs for the American Automotive Leasing Association, the National Chemical Credit Association, the National Cement Trade Credit Group, the Health Industry Manufacturers Association, the Beauty and Barber Manufacturers Credit Association, the New Hampshire Association of Broadcasters and the Credit Association for Satellite History.

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She has served as the Managing Editor and still is one of the contributing authors of the Manual of Credit and Collection Laws published by the National Association of Credit Management and is a contributing author to its Principles of Business Credit. She is a member of NACM's Editorial Advisory Committee. She is an Associate Editor and contributing author for the Commercial Law League of America's magazine "The Commercial Law World" and has contributed to the CLLA's Law Journal and the Bankruptcy Section Newsletter. Her treatise Hidden Liens:Who is Entitled to What? was published in the Fall, 1998 Edition of the Commercial Law Journal. She has authored Antitrust, Restraint of Trade and Unfair Competition: Myth Versus Reality, published by the NACM. Ms. Borges is the lead author and Editor-in- Chief of Enforcing Judgments and Collecting Debts in New York published by Thomson West Publishing Company and updated annually. She routinely publishes articles for the National Association of Credit Management "Business Credit" magazine and has published articles for its "Fraud Prevention News". Upon the passage of the BAPCPA in 2005, Ms. Borges prepared and presents educational programs on this new legislation and co-authored The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 – An Overhaul of U.S. Bankruptcy Law, published by the NACM.

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She has published articles for the Broadcast Cable Credit Association "Creditopic$" and continues to publish articles for the "The Financial Manager" on Commercial Creditors' Rights in Bankruptcy, Bankruptcy issues generally, the FTC's Red Flags Rule, the ECOA and Regulation B, Electronic Invoicing, "Dot Com" Businesses, and on Advertiser/Agency Liability; and has prepared the "white paper" on the discontinuance of notarization of broadcast invoices. She is a co-author of the National Association of Broadcasters' book Out of the Red and into the Black, as well as the Broadcast Cable Credit Association's Credit & Collection Handbook. Ms. Borges has appeared as a guest on the Fox News Channel program, "Fox on Consumers", speaking on consumer bankruptcy exemptions. In February, 2010, Ms. Borges prepared and presented a program entitled "Avoiding Bankruptcy Pitfalls: Creditors' Rights and Professional Obligations in Bankruptcy Proceedings" for the Georgia Bar Association and the Institute of Continuing Legal Education in Georgia" which was televised live and telecasted to satellite locations throughout the State of Georgia. She will be presenting a program for the Texas Bar Association on Electronic Transactions in April 2026.

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She has conducted "in-house" seminars on credit, collection, secured transactions and insolvency for corporate clients such as Agrium, Inc., Bristol-Myers Squibb, Burlington Industries, Inc., Cosmair, Inc., Doric Enterprises, Ferguson Enterprises, Inc., Ingram, Mars Incorporated, McKesson Corporation, Mobil Chemical Company, Multi-Arc Corp., Pfizer Inc., R.J. Reynolds Tobacco Company, Sandvik, Inc., Sharp Electronics Corporation, Simon & Schuster Corp., SONY Corporation, Southeastern Freight Lines, Inc., Stanley Works, Sumitomo Corporation and SunTrust Bank.

She is a past Chair of the Board of Trustees of Mercy College and served as a member of that board for nine years. She has served on the board of Regents College, and has taught Business Law at Seton College in Westchester County, New York. She is a past Chair of the Broadcast Cable Financial Management Association.

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Ms. Borges actively participates in community events. She is a Leader of Song and has directed the Youth Music Ministry at her parish, Our Lady Star of the Sea where she currently sits on the Parish Advisory Council. She remains a member of the Fairfield County Chorale for which she served as its president for the years 1995 through 1997, Executive Vice-President of the Fairfield County Chorale during the years 2012 through 2013 and served several years as a director on its Board.

She received the "Human Valor" Award by Noticias del Mundo, a New York based spanish-language newspaper in 1985, the Mercy College Alumni Association's "Professional Achievement" Award in 1991, honorary membership in Delta Mu Delta - The National Honor Society in Business Administration - in May, 1995 and in October, 1996, was awarded the Mercy College Trustee's Medal for outstanding dedication to her profession and alma mater. She is listed in Who's Who of American Women. In September, 2000 she was named one of the "50 Outstanding Alumni" of Mercy College. In February, 2001 she received the "Career Achievement Award" from the Broadcast Cable Credit Association. In May, 2004, she received the "Strength in Numbers Recognition Certificate" from the NACM. In December 2006, she was named one of "2006 Top25 Most Influential Collection Professionals" by Collection Advisor Magazine. Ms. Borges was recently inducted into Mercy College's Alumni Hall of Fame celebrating its 60th year in existence. In November, 2010, Ms. Borges received the "Robert E. Caine Award for Leadership" from the Commercial Law League of America. Ms. Borges has been included on the New York Super Lawyers – Metro Edition list (Bankruptcy & Creditor/Debtor Rights) each year since 2009. Ms. Borges received a "Woman of Distinction" Award from St. Catharine Academy in April, 2015. Ms. Borges is listed in Who's Who in America. In November, 2023, Ms. Borges received the "Warren Pinchuck Service Award" from the Commercial Law League of America. In January 2025, Ms. Borges received the "Leadership and Distinguished Service Award" from the International Association of Commercial Collectors.