

# The Legal Intelligencer

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## Chris Cuomo Not Holding Back in Arbitration Demand Against CNN

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By **Jeffrey Campolongo** | March 21, 2022



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In the fast-paced, high-stakes world of 24-hour news coverage, change can come pretty quickly. Recent shake-ups at CNN, the network revered for being “the most trusted name in news,” have had a seismic effect on the media industry. First, it was the firing of former anchor, Chris Cuomo, by CNN last December for inappropriately aiding his brother, then-New York Gov. Andrew Cuomo, in response to the governor’s sexual harassment scandal at a time when Cuomo had the top-rated show on the network. Next it was the firing of CNN president Jeff Zucker and his longtime lieutenant, Allison Gollust, in February. Zucker, largely considered one of the most influential and powerful players in the news and entertainment industry, was forced to resign from CNN on Feb. 2, citing his failure to properly disclose his romantic relationship with Gollust. Two weeks later, Gollust was fired for her role in not disclosing the relationship with Zucker.

## What a Tangled Web We Weave

Cuomo, a lawyer himself, has filed a scorched-earth demand for arbitration seeking \$125 million in compensation from his former employer. Cuomo alleged that he was wrongfully terminated based on his relationship with then-Gov. Cuomo, who was also his brother. According to the demand, which was uncharacteristically made public, Cuomo claims that during the early days of the global COVID-19 pandemic, Gov. Cuomo became a media darling because of his decisive leadership in response to the public health crisis and “despite Cuomo’s and Gov. Cuomo’s expressed reservations, CNN demanded through its leadership that Cuomo interview Gov. Cuomo frequently.” Between March 19, 2020, and June 24, 2020, Gov. Cuomo appeared on Cuomo’s program nine times resulting in a “ratings bonanza.”

Cuomo claims that his boss, Zucker, and Gollust not only allowed the Cuomo brothers to fraternize on air for ratings, but that CNN specifically benefited from it. Cuomo goes on to allege that CNN made a concerted effort to cement and strengthen the network’s ties to Gov. Cuomo and his administration and control his media, including a request that Gov. Cuomo hold his daily COVID-19 briefings at a time that was most suitable for the network based on its program schedule and when its ratings were weakest. In an even bigger bombshell, Cuomo alleged that Zucker and Gollust acted as advisers to Gov. Cuomo during this time by providing him with talking points and strategies for responding to statements made by then-President Donald Trump. The filing also alleged that Zucker and Gollust provided Gov. Cuomo strategies on how to handle the sexual harassment claims against him.

Fast forward to the end of 2020 when Gov. Cuomo was credibly accused of sexual harassment and assault by several women and staffers. Cuomo, for his own part, claims that he did what he could to support and assist his brother in responding to the allegations and defending his innocence while he faced this personal and professional crisis. In his filing, Cuomo claims that he was always transparent with CNN about his role as a confidant to his brother, and he never reported on the allegations against Gov. Cuomo.

As part of the investigation conducted by the New York Attorney General’s office into the governor, Cuomo was deposed about his role in providing support to his brother. Shortly thereafter, Gov. Cuomo resigned in disgrace. Several months later Cuomo’s deposition transcript was leaked to the media, prompting CNN to question Cuomo about his role in advising his brother. As a result, Cuomo was indefinitely suspended pending investigation. CNN then hired the law firm Cravath, Swaine & Moore to conduct an internal investigation into Cuomo’s conduct.

This is where, according to Cuomo, things got very strange. One day after the law firm was engaged, CNN received a letter from an employment lawyer containing allegations of sexual assault against Chris Cuomo. Per the arbitration demand, the firm Cravath, Swaine & Moore provided CNN with a report on its investigation with the entire “investigation” concluding just three days after being engaged. Cuomo claims he was never interviewed or asked to provide any information for the investigation. CNN then fired Cuomo for misconduct pursuant to his employment agreement.

## Cuomo’s Unique Employment Agreement With CNN

At the time Cuomo was hired by CNN in 2013, he negotiated a very lucrative, long-term contract. The agreement contained many of the typical employment provisions, including a six month post-employment noncompete, fairly standard in the media industry. The agreement also contained a termination “for cause” provision, which, again, was not the least bit unusual for this type of high-end business relationship. The agreement included the following provision:

6.2 Cause. The company [Turner] may terminate your [Cuomo’s] employment hereunder for “Cause.” “Cause” shall mean your (a) violation of any of the material provisions of this agreement; (b) misconduct that is reasonably likely to cause material damage (monetary or otherwise) to the company, any affiliated entity, or any personnel thereof; (c) conviction of or plea of guilty or nolo contendere to any felony, whether or not any right to appeal has been or may be exercised; (d) unethical business activity, including, but not limited to, fraud, misappropriation, embezzlement, dishonesty, harassment or discrimination in violation of company policies, willful or negligent destruction of company property or gross negligence; or (e) failure to adequately or reasonably perform any of your material duties or material obligations hereunder. In the cases of (a) or (e) hereunder, if such basis for cause is curable, you will be given notice and a five-day opportunity to cure.

Through his demand for arbitration, Cuomo’s wrongful termination claims are essentially threefold. First, he was not provided sufficient notice under the contract, nor an opportunity to cure within five days. This is particularly powerful given that the investigation by outside counsel was completed in just three days. Second, to the extent the firing was due to assistance he provided to his brother, CNN waived any such grounds for termination because it was aware as early as May 2021 that Cuomo was advising the governor. Third, had CNN conducted an appropriate investigation into the sexual assault allegations against Cuomo himself, it would have learned that the allegations were false and unfounded and that the anonymous allegations in the letter could not have provided cause to terminate because the allegations related to conduct that predated his employment with CNN.

Interestingly, Cuomo’s contract with CNN also included a nondisparagement clause. Those of us familiar with employment law are accustomed to seeing nondisparagement clauses when employees are going out the door, but not necessarily coming in. A rare, but powerful move that Cuomo is now looking to capitalize on in his arbitration demand. The agreement stated that “CNN agrees that it will make reasonable efforts to instruct its employees not to make any intentionally disparaging comments regarding [Cuomo] in the context of [Cuomo’s] business and professional activities.”

Through his arbitration demand, Cuomo alleges that Zucker, Gollust, as well as CNN colleagues, Jake Tapper, Don Lemon, Anderson Cooper and Brian Stelter were spreading disparaging remarks about Cuomo with no effort by CNN to instruct any of its lower-ranked employees not to disparage him. Cuomo insists that it was “an attempt [by CNN] to restore its scandal-worn image, ... to scapegoat Cuomo and to destroy his public image.” Cuomo claims that CNN’s top brass was always aware of the role he played in helping his brother, and he did so at the behest and to the benefit of the network.

The Cuomo, Zucker, Gollust trilogy will play out behind closed doors in a private arbitration forum but my hunch tells me we have not heard the last from this triad. Cuomo has raised some compelling arguments in his demand. The question will be whether he can provide the receipts to prove it. As for the preemptive

nondisparagement clause in his employment agreement, as a fellow employment and entertainment lawyer, one has to respect the foresight. It was almost as if Cuomo and his team knew that someday he would have to guard against his name being dragged through the mud.

**Jeffrey Campolongo** *is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.*

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