



Alerts

New York Lawyer Who Cited Non-Existent Cases Generated by ChatGPT Now Faces Sanctions Hearing

May 31, 2023

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Roberto Mata v. Avianca, Inc., 1:22-cv-01461 (S.D. New York 5/4/23) ((Castel, J.)

Brief Summary

Faced with what it called an "unprecedented circumstance," a federal district court in New York (Judge P. Kevin Castel) has issued an order to show cause against a plaintiff's attorney who had cited non-existent or "bogus" cases he generated from ChatGPT in a response brief to defendant's motion to dismiss. The district court ordered plaintiff's counsel to show cause in person in a June 8, 2023 hearing on why he should not be sanctioned pursuant to: (1) Rule 11(b) (2) & (c), Fed. R. Civ. P., (2) 28 U.S.C. § 1927, and (3) the inherent power of the court, for (a) citing non-existent cases to the court in his Affirmation in Opposition, and (b) submitting to the court annexed to his Affidavit filed April 25, 2023 copies of non-existent judicial opinions. Also, plaintiff's counsel was ordered to file a response by May 26, 2023.

Complete Summary

The plaintiff, Roberto Mata (Mata) claimed he was injured when a metal serving cart struck his knee during a flight on Avianca to Kennedy International Airport in New York. Mata then retained the law firm of Levidow, Levidow & Oberman, P. C. to pursue his claims against Avianca. In his affidavit filed on May 25, 2023 in response to the May 4, 2023 order to show cause, Steven A. Schwartz (Schwartz) of the firm stated that he originally filed the complaint on plaintiff's behalf, but because he was not admitted to practice in the Southern District of New York, Peter Loduca (Loduca), an associate at the firm, became the attorney of record on the case because Loduca was admitted in the Southern District. Schwartz continued to perform, however, all of the legal work that the case required. Schwartz further stated that because the use of generative artificial intelligence has evolved within law firms, he decided to consult the generative artificial intelligence website ChatGPT to help supplement the legal research he performed.

Schwartz explained in his affidavit that it was in consultation with ChatGPT that he located and cited the following cases in the affirmation he filed in opposition to Avianca's motion, which the court found to be nonexistent: *Varghese v. China*

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Southern Airlines Co Ltd., 925 F.3d 1339 (11th Cir. 2019); *Shaboon v. Egyptair*, 2013 IL App (1st) 111279-U (Ill. App. Ct. 2013); *Petersen v. Iran Air*, 905 F. Supp 2d 121 (D.D.C. 2012); *Martinez v. Delta Airlines, Inc.*, 2019 WL 4639462 (Tex. App. Sept. 25, 2019); *Estate of Durden v. KLM Royal Dutch Airlines*, 2017 WL 2418825 (Ga. Ct. App. June 5, 2017) and *Miller v. United Airlines, Inc.*, 174 F.3d 366 (2d Cir. 1999). Schwartz stated the citations and opinions in question were provided by ChatGPT, which also provided its legal source and assured the reliability of its content. Schwartz attached to his affidavit excerpts from the queries presented and responses provided. Indeed, the excerpts show that Schwartz made the following inquiries: "Is [V]arghese a real case [?]; "What is your source [?]; and "Are the other cases you provided fake [?]" Schwartz was reassured by ChatGPT that the cases provided were real and could "be found in reputable legal databases such as LexisNexis and Westlaw."

Schwartz further explained that he never used ChatGPT as a source for conducting legal research prior to this filing, and was thus unaware of the possibility that its content could be false. He threw himself on the mercy of the court and admitted it was his fault for not confirming the sources of the cases provided by ChatGPT. Schwartz stated that he has practiced law for over thirty years, and that he had no intent to deceive the court nor the defendant, Avianca. Schwartz also explained that Loduca had no role in performing the research in question, nor did he have any knowledge of how the research was conducted. Finally, Schwartz stated he greatly regrets using generative artificial intelligence to supplement his research and will never do so in the future without absolute verification of its authenticity. Loduca also filed an affidavit confirming what Schwartz said in his affidavit and that he had no role in the research.

As noted, an in-person hearing is scheduled on June 8, 2023, and it will be interesting to see how Judge Castel resolves this "unprecedented circumstance." The case has already had one ripple effect, with Judge Brantley Starr of the Northern District of Texas [issuing a standing order](#) yesterday requiring all lawyers to file certificates related to the use of generative AI in court filings.

Significance of Decision

This decision is significant because it highlights the significant risks of using artificial intelligence websites such as ChatGPT without verifying the accuracy of the output.