ARTHUR ALAN WOLK 1710-12 Locust Street Philadelphia, PA 19103 Plaintiff, v. OVERLAWYERED.COM 318 State Street Santa Barbara, CA 93101-2361 and THE OVERLAWYERED GROUP 875 King Street Chappaqua, NY 10514-3430 and WALTER K. OLSON, ESQUIRE 875 King Street Chappaqua, NY 10514-3430 and THEODORE H. FRANK, ESQUIRE 901 North Monroe Street, Apt. 1007 Arlington, VA 22201 and REASON.COM 3415 S. Sepulveda Boulevard Suite 400 Los Angeles, CA 90034 and THE REASON MAGAZINE 3415 S. Sepulveda Boulevard Suite 400 Los Angeles, CA 90034	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY OCTOBER TERM, 2010 NO. _____ EQUITY ACTION

and

THE REASON FOUNDATION
3415 S. Sepulveda Boulevard
Suite 400
Los Angeles, CA 90034

and

DAVID NOTT, President
The Reason Foundation
3415 S. Sepulveda Boulevard
Suite 400
Los Angeles, CA 90034

and

THOMAS E. BEACH
Beach Investment Council
300 Barr Harbor Drive
West Conshohocken, PA 19428

and

JACOB SULLUM
3415 S. Sepulveda Boulevard
Suite 400
Los Angeles, CA 90034

and

NICK GILLESPIE
3415 S. Sepulveda Boulevard
Suite 400
Los Angeles, CA 90034

and

MATTHEW WELCH
3415 S. Sepulveda Boulevard
Suite 400
Los Angeles, CA 90034

Defendants.

AVISO

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th floor
Philadelphia, PA 19107
Telephone: (215) 238 - 6333

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparesencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requier que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociacion De Licenciados De Filadelfia
SERVICIO De Referencia E Informacion Legal
1101 Market Street, 11th floor
Filadelfia, Pennsylvania 19107
TELEFONO: (215) 238 - 6333

COMPLAINT IN EQUITY FOR INJUNCTIVE RELIEF (21500)

Plaintiff, Arthur Alan Wolk ("Plaintiff" or "Wolk"), by and through his undersigned counsel, Bochetto & Lentz, P.C., brings the following equity action seeking both preliminary and permanent injunction relief mandating the removal of the tortious and defamatory internet blog postings from the various websites on which they appear, which impugn Wolk's character, reputation and integrity; disparage his professional abilities; and cast him in a false light and falsely accuse him of heinous crimes.

The Parties

1. Plaintiff, Arthur Alan Wolk, is an individual, citizen and resident of the Commonwealth of Pennsylvania, who has been an attorney since 1968, and whose practice is limited to representing victims of air crash litigation with offices at 1710-12 Locust Street Philadelphia, Pennsylvania.

2. Defendant, Overlawyered.com ("Overlawyered"), is a California business entity with its home office and principal place of business located at 318 State Street, Santa Barbara, California 93101-2361. Overlawyered operates, owns and/or controls a blogging website www.Overlawyered.com.

3. Defendant, The Overlawyered Group ("Overlawyered Group"), is a New York business entity with its home office and principal place of business located at 875 King Street, Chappaqua, New York 10514-3430.

4. Defendant, Walter K. Olson, Esquire ("Olson"), is an individual, citizen and resident of the State of New York, with an address located at 875 King Street, Chappaqua, New York 10514-3430. Olson is the founder and editor of Defendant Overlawyered.com and is, or was during relevant periods, also a senior fellow at The Manhattan Institute for Policy Research

("MI"), a right wing conservative lobbyist for Tort Reform, an alleged charitable organization, and The American Enterprise Institute ("AEI"), a similar organization.

5. Defendant, Theodore H. Frank, Esquire ("Frank"), is an individual, citizen and resident of the State of Virginia, with an address located at 901 North Monroe Street, Apartment 1007, Arlington, Virginia 22201-2353. Frank is a contributor to Defendant Overlawyered.com, and is the individual who wrote and posted at least two of the false and defamatory blog postings at issue, who is currently an editor at MI and/or AEI. Sometimes Overlawyered, the Overlawyered Group, Olson and Frank are collectively referred to as the "Overlawyered Defendants."

6. Defendant Reason.com ("Reason") is another blogging internet website organized under the laws of the State of California, with its principal place of business located at 3415 S. Sepulveda Boulevard, Los Angeles, California. Reason operates, owns and/or controls a blogging website known as www.Reason.com, which has a co-partnership and/or co-promotion relationship with Overlawyered. The Reason and Overlawyered websites appear to monitor and promote each other, forming a type of co- partnering relationship, whereby blogs and comments published on one website trigger the others to re-publish the same comments and make other comments, thereby creating a swell of defamatory blogging statements compounding the impact of the initial defamation.

7. Defendant, The Reason Magazine a/k/a Reason.com ("Reason Magazine"), is upon information and belief the magazine publication arm of Reason, but also exercises authority, control and has responsibility over the content appearing on the website www.Reason.com.

8. Defendant, the Reason Foundation ("Reason Foundation"), is upon information and belief organized and existing under the Laws of the State of California as a charitable foundation, with its principal place of business in Los Angeles, California. The Reason Foundation and its "trustees," upon information and belief, directly fund and control Reason.com and Reason Magazine, including the content published by such entities such as the false, malicious and defamatory website postings described herein.

9. Defendant, David Nott ("Nott"), is an individual, citizen and resident of the State of California, and is the President and a Trustee of The Reason Foundation. As an Officer and Trustee of the Reason Foundation, Defendant Nott has authority, control and is charged with the legal responsibility to supervise and control the content appearing on Reason's website at www.Reason.com and Reason Magazine.

10. Defendant, Thomas E. Beach ("Beach"), is an individual, citizen and resident of the Commonwealth of Pennsylvania, and is a Trustee of The Reason Foundation. As a Trustee of the Reason Foundation, Defendant Beach has authority, control and is charged with the legal responsibility to supervise and control the content appearing on Reason's website at www.Reason.com and Reason Magazine.

11. Defendant, Jacob Sullum ("Sullum"), is an individual, citizen and resident of Texas, who is a putative journalist Reason, Reason Magazine and Reason Foundation responsible for posting defamatory blog postings on www.Reason.com concerning Wolk as more fully described herein.

12. Defendant, Nick Gillespie ("Gillespie"), is an individual, and, upon information and belief, a citizen and resident of the State of California, and a putative journalist, an officer and editor of Reason.com and its Magazine who, along with Sullum, Overlawyered and the

other contributors to Reason.com, joined a conspiracy to destroy the good name and reputation of Wolk by inciting a feeding frenzy of internet defamation for the sole purpose of destroying Wolk's reputation and advancing the political and social agendas of Reason.

13. Defendant, Matthew Welch ("Welch"), is an individual, a citizen and resident of the State of California, and putative journalists for Reason.com and Reason Magazine, who published false and defamatory blog postings concerning Plaintiff on www.Reason.com.

14. Defendants Reason, Reason Magazine, Reason Foundation, Nott, Beach, Sullum, Gillespie and Welch are collectively responsible for and control the content of material appearing on www.Reason.com, including the false and defamatory blog postings about Wolk more fully described herein. Such Defendants are sometimes collectively referred to herein as the "Reason Defendants."

15. In furtherance of their collective interest in tort reform legislation, and anti-plaintiff, anti-trial lawyers agendas, Defendants have collectively conspired to discredit Wolk a relentless barrage of internet blogs described herein which attack Wolk's character, integrity and commitment to his clients and cast him in a false light.

Jurisdiction And Venue

16. Subject matter jurisdiction over the Defendants with respect to these claims and causes of action is conferred upon this Court pursuant to 42 Pa.C.S. § 931 and 42 Pa.C.S. § 8341 *et seq.*

17. This Court has personal jurisdiction over Defendant Beach because he is a resident of and/or is domiciled in this Commonwealth. This Court also has personal jurisdiction over the Overlawyered Defendants and Reason Defendants under 42 Pa.C.S. § 5322 (a) – (b), because these Defendants, jointly and severally, do business in this Commonwealth, committed

intentional torts against Plaintiff, a Philadelphia resident, harming him in the Philadelphia community, *inter alia*, where they know Plaintiff conducts his legal practice and in which community his reputation is most valued.

18. Venue is proper in this Court pursuant to Pennsylvania Rule of Civil Procedure 1006(a), because Plaintiff's offices are headquartered in Philadelphia County, and the conduct at issue resulted in damages here in Philadelphia County.

The Background of This Lawsuit

19. Wolk is 67 years old, and he has been a prominent member of the Bar of this Court for forty-one years, the majority of which time Wolk has dedicated his professional career to representing victims of aviation crashes.

20. As Wolk's age might suggest, while he can send and receive emails and use Computer for limited purposes, he is far from a sophisticated computer user and until recently was not knowledgeable about the internet and the use of search engines like Google, Yahoo, or any others.

21. None of Wolk's computers had "Google" as its default search engine.

22. In April 2009, however, Wolk attended a CLE given by judges of the Court of Common Pleas of Philadelphia.

23. In that CLE, the judges suggested to lawyers in attendance that they should "Google" themselves since it was likely that jurors and judges do.

24. That night, Wolk went home, "Googled" himself and found -- for the first time -- a blog dated April 8, 2007 on a website called www.overlawyered.com related to *Taylor v. Teldyne,* No. Civ. Action 1:00-CV-1741-J (N.D. Ga.), a federal case where Wolk's law firm represented victims of an airplane crash.

25. The blog falsely accused Wolk of selling out his clients in the *Taylor* case by compromising the value of a settlement in exchange for having the court vacate a prior discovery order that was critical of Wolk. The blog stated as follows:

> Judge writes scathing opinion about attorney; opponent attorney mails opinion to client; losing attorney sues other attorney for defamation. No dice, but even this ludicrous suit does not result in sanctions. [Beck/Herrmann]
>
> Beck and Herrmann miss, however, an especially interesting subplot. Wolk settled the underlying case, Taylor v. Teledyne, No. CIV.A.1:00-CV-1741-J (N.D. Ga.), on the condition that the order criticizing him be vacated. ***Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in other litigation?*** (The discovery violation complained about was apparently a repeat occurrence.) The district court permitted a settlement that vacated the order, but its only reported inquiry into whether Wolk ***did not suffer from a conflict of interest and was adequately protecting his client's rights*** was Wolk's representation to the court that the client was alright with the size of the settlement. ***That begs the question whether the client was fully aware of the conflict of interest; if, as seems to be the case***, the N.D. Ga. failed to do so, one really wishes courts would do more to protect fiduciaries of plaintiffs' attorneys before signing off on settlements. 338 F.Supp.2d 1323, 1327 (N.D. Ga. 2004), aff'd in unpublished summary per curiam opinion (11th Cir., Jun. 17, 2005). (emphasis supplied).

A true and correct copy of the April 8, 2007 blog is attached hereto as Exhibit "A."

26. Once he saw the blog, Wolk immediately notified the Overlawyered Defendants that it was completely false, and demanded that it be removed from the internet. Despite Wolk's demands, Overlawyered refused to remove the blog or issue a retraction. A true and correct copy of Wolk's April 9, 2009 e-mail to Defendant Frank is attached hereto as Exhibit "B."

27. As Wolk informed the Overlawyered Defendants, the blog was rife with absolute falsehoods.

28. First, Wolk did not even personally handle the discovery in the *Taylor* case, and thus the order critical of Wolk's conduct during discovery in the *Taylor* case was issued in error.

29. Moreover, the *Taylor* case was settled with no involvement from Wolk, and the plaintiffs in the *Taylor* case had additional counsel other than Wolk, who independently reviewed all aspects of the settlement making sure the plaintiffs in *Taylor* were well served, received full value in the settlement and were completely satisfied with the result. Indeed, the plaintiffs in *Taylor* received a settlement that far exceeded the value previously placed on the case by an independent mediator.

30. Most importantly, the *Taylor* case was settled ***before*** Wolk even requested the Court vacate the mistaken discovery order, which the Court in *Taylor* eventually did.

31. Aside from Wolk himself informing Overlawyered as to the falsity of its blog, two independent lawyers directly involved in the *Taylor* case, Jason T. Schneider, Esquire and John Kevin Griffin, Esquire, wrote separate letters to Overlawyered's counsel, also confirming the blog was false. True and correct copies of the Griffin and Schneider Letters are attached hereto as Exhibits "C" and "D," respectively.

32. In this regard, Attorney Griffin, who was counsel for one of the two plaintiffs in *Taylor*, informed Overlawyered that the blog's statements that the settlement was somehow "compromised" in exchange for vacating the critical discovery order was "entirely false" as there was "never consideration given or a quid pro quo offered for vacating the order." Indeed, as Griffin explained, the settlement was already reached ***before*** the Court vacated the discovery order. *See* Exhibit "C," Griffin Letter.

33. Likewise, Attorney Schneider, who was also counsel in the *Taylor* case, informed Overlawyered that the settlement had been reached before the Court vacated the

discovery order, and that the settlement amount actually exceeded independent valuations of the case. As Mr. Schneider explained,

> There is no question in my mind that the settlements reached were completely separate from any request to vacate the discovery order. The settlements reached were also well in excess of any sums offered at the mediation. Therefore, to say "it appears" that the clients' interests were somehow compromised to get the discovery order vacated is wrong.

See Exhibit "D," Schneider Letter.

34. Thus, Wolk provided the Overlawyered Defendants with all of the foregoing facts and information, which conclusively proved that: (a) he did not sell out his clients; (b) he never had a "conflict of interest"; (c) he fully disclosed all aspects of the case and settlement to his clients and other plaintiffs' counsel, all of whom independently reviewed and approved of the settlement, which was well in excess of an independent mediator's recommended settlement value; and (d) he absolutely did not compromise the client's interest in the settlement in exchange for vacating the court's discovery order since the case was settled before the Court even vacated the discovery order.

35. Although the Overlawyered Defendants never bothered to check the facts before posting the blog, once Wolk provided Overlawyered with the actual, true facts, the Overlawyered Defendants ***knew*** what was contained in their April 8, 2007 blog was false.

36. The Overlawyered Defendants nevertheless refused to remove the false blog, thereby continuing to publish the blog with actual knowledge of its falsehoods.

37. Since the Overlawyered Defendants refused to remove the lies they posted, Wolk was forced to file an action at law in this Court in August 2009, which the Overlawyered Defendants removed to the Federal District Court on diversity grounds.

38. On August 2, 2010, the District Court granted the Overlawyered Defendants' Rule 12(b)(6) Motion to Dismiss, ruling that, despite Wolk having no reason to discover the defamatory blog until April 2009, Pennsylvania's "discovery rule" did not apply to toll the one-year statute of limitations. A true and correct copy of the District Courts August 2, 2010 Memorandum is attached hereto as Exhibit "E."

39. Although the District Court's decision is currently on appeal in the Third Circuit, in the meantime, Wolk has been forced out of court, without an adequate remedy at law, and the Overlawyered Defendants continue to allow the false April 8, 2007 blog to remain on their website even though they know the allegations are categorically false.

Wolk Becomes the Subject of Unrelenting Character Assassinations

40. After the District Court dismissed Wolk's damages claim on statute of limitations grounds, the Overlawyered Defendants immediately initiated a feeding frenzy of internet blogging chatter further defaming Wolk, which included enlisting the participation of various co-partnering blogging sites, like www.reason.com, www.popehat.com, and www.law.com.[1]

41. Each of these websites appear to monitor and promote the other, forming a type of co- partnering relationship, whereby blogs and comments published on one website trigger the others to re-publish the same comments and make other comments, thereby creating a swell of defamatory statements compounding the impact of the initial defamation.

42. In this regard, on August 6, 2010, a few days after the District Court's decision, Frank, the author of the initial April 8, 2007 Overlawyered blog, posted another defamatory blog on www.PointofLaw.com, a partnership website affiliated with Overlawyered. A true and correct copy of Frank's August 6, 2010 blog on PointofLaw is attached hereto as Exhibit "F."

[1] To their credit, Popehat.com and Law.com removed their republications and comments when the same information Wolk supplied to Overlawyered was supplied to them.

43. Frank's PointofLaw blog addressed the decision in *Wolk v. Olson* as a victory for "bloggers everywhere." Frank, however, also summarized Wolk's arguments in the District Court, stating Wolk "argued that the statute shouldn't start to run until the plaintiff reads (***or, de facto, claims to have read***) the blog post." *See Id.*

44. By characterizing Wolk's allegations in the District Court as "de facto claims," Frank was once again defaming Wolk by directly implying that Wolk lied in his court filings as to the timing of when he read the first defamatory Overlawyered blog.

45. In an effort to further incite even more defamatory internet blogging, Frank, on his PointofLaw blog, referred to other co-partnership blog websites such as www.reason.com and www.popehat.com, which contained additional false and defamatory statements about Wolk. *See* Exhibit "F," PointofLaw blog (referring to "Extensive must-read analysis by Jacob Sullum at Reason.")

46. For example, the blog on www.reason.com to which Frank referred was posted by Defendant Sullum on August 6, 2010, and it was entitled "Lawyer trying to protect his reputation as an Effective Advocate Misses Deadline for His Libel Suit." A true and correct copy of Sullum's August 6, 2010 blog on Reason.com is attached hereto as Exhibit "G."

47. The title of the August 6, 2010 Reason blog was clearly defamatory in that it intended to and did falsely imply that Wolk was an incompetent lawyer because he missed the deadline for his own lawsuit.

48. Further, in his August 6, 2010 Reason blog, Sullum also implied that Wolk was lying in the District Court about not Googling himself until April 2009, and further implied that Wolk was guilty of filing a previous frivolous lawsuit by "bully[ing] an aviation news website into a thoroughly abject capitulation and apology." *See Id.*

49. Most significantly, Sullum's August 6, 2010 Reason blog republished almost the entirety of the utterly false and defamatory April 8, 2007 Overlawyered blog, and thus again accused Wolk of breaching his ethical and fiduciary duties by selling out his client's interest in the *Taylor* case. *See Id.*

50. Not to be outdone, on August 9, 2010, three days after the defamatory PointofLaw and Reason blogs, Overlawyered, through Defendant Olson, published its own blog concerning the District Court's decision in *Wolk v. Olson,* which again touted the decision as a victory for free speech. Significantly, Olson's blog referred readers back to Frank's defamatory August 6, 2010 blog posted on PointofLaw.com. A true and correct copy of Olson's August 9, 2010 blog posted on Overlawyered.com is attached as Exhibit "H."

51. When Wolk was alerted of the defamatory August 6, 2010 Reason blog, he immediately sent notice to the Reason Defendants, demanding that they remove the defamatory blog since it re-published the initial April 8, 2007 Overlawyered blog as well as completely new false and defamatory statements.

52. The Reason Defendants, predictably, refused to remove their blog. Instead, to further impugn Wolk, on September 16, 2010, Reason, through Sullum, published a second blog entitled "Who You Calling Touchy?," in which Reason published a portion of Wolk's demand letter for the sole purpose of inciting additional defamatory comments from Reason's bloggers. A true and correct copy Sullum's September 16, 2010 blog post on Reason.com is attached hereto as Exhibit "I."

53. As a result, a thread of comments from Reason's anonymous bloggers ensued, creating a feeding frenzy of outrageously defamatory statements, which included accusations that

Wolk has committed the most heinous of crimes. Exhibit "J," 9/16/10 Reason Blog with reader comments filed under seal.

54. The Reason Defendants knew exactly what they were inciting in publishing their blog "Who You Calling Touchy?," and intended to incite the defamatory feeding frenzy that ensued, knowing that it would be picked up by Google and other internet search engines.

55. As a result, Wolk, a respected lawyer, father of two and grandfather has been shamelessly and falsely accused of the most heinous crimes imaginable.

56. Wolk immediately demanded that the Reason Defendants remove the defamatory blog and its comments, and produce the identifying information of the anonymous bloggers who hideously libeled Wolk on their site.

57. While the Reason Defendants eventually removed the bloggers' hideous comments, they still refused to remove the blog articles themselves, and further ignored Wolk's requests for the information identifying the anonymous bloggers.

58. Further, although the Reason Defendants "removed" the bloggers' comments from its sites, because search engines like Google "cache" or store historical information from blogs and websites, to this day one can still find the "cached" comments through Google and other search engines. *See* Google search of Wolk attached hereto as Exhibit "K" (filed under seal), and Bing search for Wolk attached hereto as Exhibit "L" (filed under seal).[2]

[2] Like the blogging comments from the September 16, 2010 article, due to the particularly egregious nature of the accusations appearing on the search engine rankings, Wolk is filing these exhibits under seal.

Wolk's Irreparable Harm

59. The damages suffered by Wolk have been horrific.

60. Wolk has been accused of selling out his clients, virtually the worst sin a lawyer can commit.

61. Worse, such false allegations have been spread over the internet, and now even a "Googling" of Wolk's name by a client, juror or judge reveals these accusations, which will exist in perpetuity due to the nature of the internet medium. The harm from such accusations may never be fully ascertained.

62. Further still, Defendants Overlawyered and Reason have purposefully repeated the initial April 8, 2007 defamatory statements and published entirely new defamatory statements, all of which was intended to and did incite a feeding frenzy of blogging activity resulting in anonymous bloggers accusing Wolk of heinous crimes. To this day, accusations linking Wolk to these crimes can still be found on search engines.

63. Understandably, the emotional and physical toll on Wolk has been overwhelming.

64. As a result of all of the Defendants' false and malicious defamation, Wolk does not sleep, has suffered a reoccurrence of persistent back pain from his own airplane crash many years ago, which on some days is disabling, takes pain medication, and has suffered reoccurring bouts of his post traumatic stress disorder, which includes having nightmares and day mares of his previous airplane crash.

65. Wolk has been shamed in the eyes of his community and his colleagues, and thus he does not show his face at bar functions or social engagements where members of the Bar may be present in numbers.

66. Even Wolk's children have become aware of the unrelenting internet smear campaign of Defendants, forcing Wolk to explain that he is entirely innocent of these false and malicious statements.

67. Further, Wolk's legal practice has suffered as a direct result of Defendants' smear campaign. Wolk no longer has the same steady flow of clients he previously enjoyed prior to the April 8, 2007 Overlawyered blog.

68. As a result, Wolk's planned retirement has been jeopardized because the chances of selling his practice to his associates has been greatly reduced and perhaps eliminated altogether.

69. Now, as a result of Defendants' conduct, Wolk has to work harder, longer hours to both maintain existing client relationships and build new ones, all resulting in additional expense, time and effort for Wolk when he would otherwise be planning his retirement.

70. In sum, the harm to Wolk's personal and professional reputations is irreparable, and can only be fully remedied by granting the injunctive relief requested herein.

Claims for Equitable Relief

COUNT I

Plaintiff v. Overlawyered Defendants

Request for Injunctive Relief

71. Wolk incorporates all other paragraphs of this Complaint as if fully set forth herein.

72. The "April 8, 2007 Overlawyered Blog," a copy of which is attached as Exhibit "A", titled "Arthur Alan Wolk v. Teledyne Industries, Inc.," is totally false and defamatory as to Wolk in that it falsely states and/or implies, *inter alia*, that Wolk sold out his clients to get a

court to remove a discovery order critical of Plaintiff in that case, breached his ethical obligations and knowingly acted in contravention of the best interests of his client.

73. Likewise, the August 6, 2010 Blog posted by Defendant Frank on www.PointofLaw.com, attached hereto as Exhibit "F," which was referred to and incorporated by Olson's August 9, 2010 blog on www.Overlawered.com, attached hereto as Exhibit "H," is totally false and defamatory as to Wolk in that it falsely states and/or implies that Wolk lied and/or misrepresented the facts to the District Court in the *Wolk v. Olson, et al.* case, which further implies that Wolk violated his ethical obligations as a lawyer and submitted false statements to a tribunal.

74. The Overlawyered Defendants, published or caused to be published the aforementioned blogs on the Overlawyered.com, and despite Wolk providing proof that the blogs are completely false, the Overlawyered Defendants refuse to remove them.

75. By refusing to remove the false blogs despite their actual knowledge that they are false, the Overlawyered Defendants have knowingly published falsehoods, and thus have acted with "actual malice."

76. Through their online publication, the Overlawyered Blogs has been disseminated to thousands of individuals and continue to be disseminated to thousands more as they remain on Overlawyered.com and, as a result, the blogs appear prominently when Wolk's name is used as a search term on the enormously popular search engine www.Google.com and other similar search engines.

77. Further, not only do the Overlawyered Blogs defame and harm Wolk's personal reputation, more poignantly, they are directed at defaming and harming Wolk's business reputation.

78. The Overlawyered Blogs impute business misconduct by implying that Wolk did not protect his client's best interest, as he is ethically bound to do, but rather primed his own interests above the clients and reduced his client's settlement to benefit himself, implying he will do this whenever it serves his interests.

79. This is utterly false, has been done with malice toward Wolk, and has harmed Wolk's reputation and injured his business because clients have become distrustful of Wolk as a result of the Overlawyered Blogs and have not retained him.

80. As a direct result of the Overlaweyred Blogs, Wolk has suffered, and continues to suffer, irreparable harm, which cannot be fully compensated through money damages.

81. Further, Wolk does not have an adequate remedy at law since the harm to his reputation, his career, and his law practice is difficult to measure. Moreover, with respect to the initial April 8, 2007 Overlawyered Blog, unless overturned on appeal, Wolk's ability to pursue monetary damages has been foreclosed by the District Court's August 2, 2010 decision.

WHEREFORE, Plaintiff respectfully requests this Court to exercise its equitable powers to remedy the continuing damage caused by the Overlawyered Blogs by issuing an injunction ordering the Overlawyered Defendants: (a) to remove the false and defamatory Overlawyered Blogs from their website; and (b) to ensure the defamatory Overlawyered Blogs are also removed from search engines that "cache" or save the historical Overlawyered Blogs.

The Court is also requested to award Plaintiff his counsel fees and expenses to obtain this injunctive relief, as he has spent a fortune to correct what Defendants could have easily corrected before Plaintiff incurred any legal expense, but have steadfastly refused despite overwhelming evidence that the blogs were false and their actual knowledge of such falsity.

COUNT II

Plaintiff v. The Reason Defendants

Request for Injunctive relief

82. Plaintiff incorporates all other paragraphs of this Complaint as if fully set forth herein.

83. The blog postings by the Reason Defendants on their website www.reason.com were all false and defamatory as to Wolk in that, *inter alia*, the blogs directly stated and implied that:

(a) Wolk was an incompetent lawyer because he missed the deadline for his own suit;

(b) Wolk lied to the District Court as to when he first learned of the April 8, 2007 Overlawyered Blog;

(c) Wolk was guilty of filing a frivolous lawsuit by "bully[ing] an aviation news website into a thoroughly abject capitulation and apology;" and

(d) Most significantly, republished almost the entirety of the utterly false and defamatory April 8, 2007 Overlawyered Blog, once again accusing Wolk of breaching his ethical and fiduciary duties by selling out his client's interest in the *Taylor* case.

84. Moreover, the Reason Defendants, through their false and defamatory blog postings, intentionally created a forum in which Reason's anonymous bloggers were encouraged and incited to further defame Wolk, leading to dozens of separate false accusations that Wolk committed the most heinous crimes imaginable.

85. By encouraging and inciting its readers to further defame Wolk, the Reason Defendants have contributed, in whole or in part, to the content of their anonymous bloggers' statements.

86. Wolk has repeatedly demanded that the Reason Defendants remove their defamatory blog postings, and in doing so, he supplied the Reason Defendants will direct proof that their defamatory statements were absolutely false.

87. Nevertheless, the Reason Defendants have refused to remove their defamatory blogs, despite being given actual knowledge that the blogs were false.

88. By refusing to remove the false blogs despite their actual knowledge that they are false, the Reason Defendants have knowingly published falsehoods, and thus have acted with "actual malice."

89. Through their online publications, the Reason Blogs have been disseminated to thousands of individuals and continue to be disseminated to thousands more as they remain on Reason.com and, as a result, the blogs appear prominently when Wolk's name is used as a search term on the enormously popular search engine www.Google.com and other similar search engines.

90. Indeed, although the Reason Defendants claim they removed from their website the postings of their anonymous bloggers who repeatedly accused Wolk of heinous crimes, those same anonymous postings are still visible through the "cache" of search engines, including on Google and Bing.

91. As a direct result of the Reason Defendants' false and defamatory blogs, Wolk has suffered, and continues to suffer, irreparable harm which cannot be fully compensated through money damages.

92. Further, Wolk does not have an adequate remedy at law since the harm to his reputation, his career, and his law practice is difficult to measure.

WHEREFORE, Plaintiff respectfully requests this Court to exercise its equitable powers to remedy the continuing damage caused by the blogs of the Reason Defendants by issuing an injunction ordering the Reason Defendants: (a) to remove the false and defamatory blogs about Wolk appearing on their website www.reason.com; and (b) to ensure the defamatory Reason Blogs are also removed from search engines that "cache" or save the historical blogs.

The Court is also requested to award Plaintiff his counsel fees and expenses to obtain this injunctive relief, as he has spent a fortune to correct what Defendants could have easily corrected before Plaintiff incurred any legal expense, but have steadfastly refused despite overwhelming evidence that the blogs were false and their actual knowledge of such falsity.

Respectfully submitted,

BOCHETTO & LENTZ, P.C.

/s/ David P. Heim

By: _____

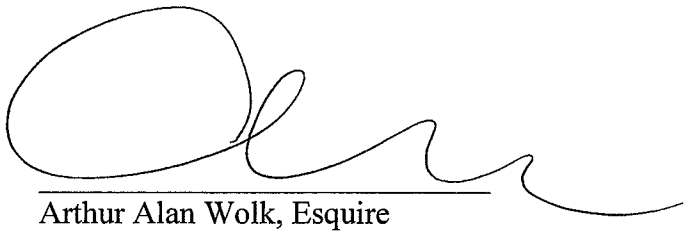
George Bochetto, Esquire (27783)
David P. Heim, Esquire (84323)
Tricia Desmarais-Clark, Esquire (206004)
1524 Locust Street
Philadelphia, PA 19102
(215) 735-3900

Attorneys for Plaintiff

Dated: October 22, 2010

VERIFICATION

I, Arthur Alan Wolk, Esquire, verify that the statements made in Plaintiff's Complaint are, to the best of my knowledge, true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



10/22/10
Date

Arthur Alan Wolk, Esquire

EXHIBIT A

Arthur Alan Wolk v. Teledyne Industries, Inc.

by Ted Frank on April 8, 2007

Judge writes scathing opinion about attorney; opponent attorney mails opinion to client; losing attorney sues other attorney for defamation. No dice, but even this ludicrous suit does not result in sanctions. [Beck/Herrmann]

Beck and Herrmann miss, however, an especially interesting subplot. Wolk settled the underlying case, *Taylor v. Teledyne*, No. CIV.A.1:00-CV-1741-J (N.D. Ga.), on the condition that the order criticizing him be vacated. Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in other litigation? (The discovery violation complained about was apparently a repeat occurrence.) The district court permitted a settlement that vacated the order, but its only reported inquiry into whether Wolk did not suffer from a conflict of interest and was adequately protecting his client's rights was Wolk's representation to the court that the client was alright with the size of the settlement. That begs the question whether the client was fully aware of the conflict of interest; if, as seems to be the case, the N.D. Ga. failed to do so, one really wishes courts would do more to protect fiduciaries of plaintiffs' attorneys before signing off on settlements. 338 F.Supp.2d 1323, 1327 (N.D. Ga. 2004), *aff'd* in unpublished summary per curiam opinion (11th Cir., Jun. 17, 2005).

We've earlier reported on Mr. Wolk for his lawsuits against commenters at an aviation website that criticized him: Sep. 16-17, 2002. As the *Taylor* opinion notes, Wolk also threatened to sue the federal judge in that case. He also filed what the Eleventh Circuit called a frivolous mandamus petition.

Related posts

- Youtube lawsuit of the week: A&P vs. rappers (3)
- You mean it was trillions? (1)
- Wrongs without remedies dept. (1)
- Worst places to get sued, cont'd (0)
- Worst new idea of the day (8)

Tagged as: libel slander and defamation

EXHIBIT B

From: Arthur Alan Wolk
Sent: Thursday, April 09, 2009 9:29 PM
To: tedfrank@gmail.com
Cc: Paul Rosen; Walter DeForest; Cheryl DeLisle; Bradley J. Stoll
Subject: Your false and disparaging statements on the website Overlawyered.com

Mr. Frank:

I have just seen the false and disparaging statements made about on your web site or better said the web said managed, supervised and promoted by those who would deny consumers all rights to sue companies that manufacture defective products, the American Enterprise Institute, a web site run by and for defense lawyers and manufacturers and which by your lead at least made absolutely no effort to investigate the facts.

You don't mention the fact that for example you worked for at least two defense firms against which I have been extremely successful thus your pique over me appears to be related more to my beating your clients backsides than any umbrage over some undefined legal transgression. Absent from your bio is any description of any success anywhere on any subject and with any law firm of substance so it therefore must be easy for you to tear down someone who has a had a forty year success record against the likes of you. Absent from your tirade is my forty years of success and my hundreds and hundreds of cases with not a critical word by a lawyer or a judge.

But more important to me is your false commentary on the Taylor case and your outright libelous statements that make me look like I sold out my clients in that case for a retraction of a false discovery order. Had you investigated the facts you would have seen that it was my firm that made complete discovery and the defense none. In fact it was because the court looked so foolish with nothing to back up her vitriol that she vacated that order and for no other reason.

I have never sold out my clients ever and never will but I will fight to protect my name against people like you who hide behind some phony title like "scholar" bestowed upon yourself. What did the Taylor case settle for? Who were the heirs and what were their damages? What was the liability defense and what were the facts against Teledyne. How many plaintiffs' death verdicts had ever been allowed out of that judge's courtroom? What were the damages recoverable under Georgia law? What considerations as to liability and damages did I make before recommending settlement. What potential for proofs of contributory conduct or even sole causation by immune persons such as the pilots' employer were there as in bad maintenance? What steps did I take to ensure that the settlement was fair and reasonable and like other settlements or even better for similar circumstances in Georgia? Did I contact other Georgia lawyers for their views?

The 11th circuit affirmed the trial court's decision not to hold be in contempt, not to award counsel fees, and not to reinstate the false discovery order. That affirmance had nothing to do with the underlying Taylor case at all so you even got that wrong.

Kindly provide full and complete answers to these questions in writing within twenty-four hours and yes I will sue you for defamation. I know you never contacted me to get answers to these questions so let's learn whom you spoke to.

I will check to see if your late firms represented Teledyne in anything. I know Kirtland and Ellis represented Pratt and Whitney unsuccessfully against me at least once and maybe more. I am attempting to see if you were involved in that debacle.

You see Mr. Frank, if you are going to libel someone you need to understand the facts first and the law and also understand the person you are libeling. This was a big mistake.

By copy of this e-mail I am requesting my counsel, Paul Rosen to immediately institute a lawsuit against you and your organization. When we learn who your contributors are we will sue each and every one of them against whom I have had cases or who motivated you to continue the defense generated effort to damage my reputation.
Also by copy of this e-mail I am requesting counsel for Teledyne to set you straight because if I find they had anything to do with these lies I'll sue them too.
I demand that you immediately remove this and every other article about me from your website. What you wrote is false, shows a complete disregard for the facts and malice, an intent to harm me when you couldn't beat me in court and an effort to destroy the perception of potential clients who would read this and fail to hire me. You have accused me of unethical conduct, fraud and the commission of a crime none of which is true. This is clearly the reason I have found it extremely difficult to gain new business. You will soon find the same.

Arthur Alan Wolk

EXHIBIT C

John Kevin Griffin, P.A.
647 N 2nd Street, Fort Pierce, FL 34950

P.O. Box 4450
Fort Pierce, FL 34948-4450
Office: (772) 468-2525
(888) 693-5203 FAX
Email:griffinlaw@gmail.com

Civil litigation State & Federal Court

John Kevin Griffin * Florida Bar 1990
Veteran United States Marine Corps

August 18, 2010

Michael N. Onufrak, Esq.
WHITE AND WILLIAMS
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 00000000000000

Re: Defamation

Dear Mr. Onufrak:

I was just sent the article that your clients published about my client's settlement implying that her interest was compromised in order for Arthur Wolk to get a discovery order vacated. *(Wolk settled the underlying case, Taylor v. Teledyne, No. CIV.A.1 :00-CV-1741-J (N.D. Ga.), on the condition that the order criticizing him be vacated).*

I was asked by Mr. Wolk to send you a letter so you could inform your clients of the continuing falsity of this statement in their article, which I understand still appears on the internet. That statement is entirely false. My name and contact information can be found on the case docket but your clients didn't attempt to contact me although they could have easily reached me for a comment or verification before publishing this false statement.

There was no selling out or compromising the interests of my client or the Taylors, and any contrary suggestion is not true. To suggest that Mr. Wolk did so is to suggest that I let it happen. I would urge your clients to be very careful about publishing such a false accusation by implication against me and directly against Mr Wolk.

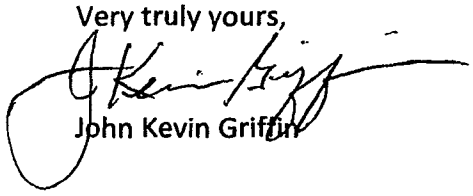
I represented Ann Mauvais in the case of *Taylor, et al vs. Teledyne, et al.* My law firm in Pensacola, Florida was the original firm representing her. The firm of Wolk and Genter assumed the representation of Ms. Mauvais during the *Taylor* proceedings, which I monitored. The discovery in the case was handled by Philip Ford and Catherine Slavin, not Mr. Wolk. I was aware of the discovery order critical of Mr. Wolk individually by name.

Settlement negotiations in the case were handled for us by Richard Genter, not Arthur Wolk, and since the defendants' recommended a settlement figure that was too low Richard Genter rejected it for us and pushed for and obtained a settlement figure hundreds of thousands of dollars more than the settlement number originally recommended. My client was totally satisfied with the settlement figure obtained by Richard Genter and the overall pursuit of her claim against Teledyne et al.

There was a delay in receiving the settlement funds because Teledyne delayed in furnishing us a proposed release for signature. In the mean time Mr. Wolk contacted us and requested a few days to address vacating the discovery order identifying him individually. I conferred with my client and she agreed to the brief extension of time. So the point I'm conveying to you is the very satisfactory settlement figure obtained by Richard Genter for my client had already been agreed upon and the delay in receiving the actual funds was the result of a delay in receiving the proposed release from the Teledyne defendants.

In the interim, between the negotiated settlement where the settlement figure had already been reached and the time for receiving the proposed release from Teledyne for review and signature, the Court agreed to vacate its discovery order. There was never consideration given or a quid pro quo, as implied in your clients' article, offered for vacating the order. Had your clients contacted me before publishing I would have told them what I am telling you, I would not have allowed such a thing to occur as they have stated and implied in the article. I would have warned them not to publish it because it was false.

Very truly yours,



John Kevin Griffin

cc: Arthur Wolk

EXHIBIT D

JASON T. SCHNEIDER, P.C.
ATTORNEY AT LAW

6111 PEACHTREE DUNWOODY ROAD
BUILDING D
ATLANTA, GEORGIA 30328

(770)394-0047
FAX (678)623-5271
jason@jasonschneiderpc.com

www.jasonschneiderpc.com

August 10, 2010

Michael N. Onufrak, Esq.
WHITE AND WILLIAMS
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103

Dear Mr. Onufrak:

My name is Jason Schneider. I am an attorney in Atlanta, Georgia. I acted as local counsel for the law firm of Wolk and Genter in the case of Taylor vs. Teledyne.

Arthur Wolk sent me your clients' article claiming that the Taylor clients' claims were compromised so Mr. Wolk could get a critical discovery order vacated. That article and its implications are entirely false.

I attended the mediation along with Richard Genter. Mr. Wolk was not present or consulted by phone during the mediation. Nor was he involved in discovery in that case to my knowledge except for a conference call with the court regarding a discovery dispute between the parties.

A settlement was reached and concluded with a release and the clients never indicated to me they were dissatisfied with the outcome. It was only after the settlement had been agreed to, that Mr. Wolk asked for a one week delay to ask the court to vacate the order. There is no question in my mind that the settlements reached were completely separate from any request to vacate the discovery order. The settlements reached were also well in excess of any sums offered at the mediation. Therefore, to say "it appears" that the clients' interests were somehow compromised to get the discovery order vacated is wrong.

Arthur asked me to write this letter to put you and your clients on notice that what they said is false and it continues to be false on the Overlawyered website. What your clients' article means is I allowed this to happen, and I can assure you and your clients that they are wrong.

My name was on that docket and all they had to do was call me and I could have dispelled their notion before it ever made it to print. They, to this day, have never contacted me to get the facts straight.

Very truly yours,

Jason T. Schneider

cc: Arthur Alan Wolk

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR ALAN WOLK, ESQUIRE	:	CIVIL ACTION
	:	
v.	:	
	:	
WALTER K. OLSON, et al	:	NO. 09-4001

MEMORANDUM

McLaughlin, J. August 2, 2010

The issue before the Court is whether the Pennsylvania Supreme Court would apply the discovery rule to toll the statute of limitations in a mass-media defamation case. The Court holds that it would not.

Arthur Alan Wolk, a well-known aviation attorney, has sued Overlawyered.com for defamation, false light, and intentional interference with prospective contractual relations arising out of an article published on that website. The plaintiff also names as defendants Walter K. Olson, Theodore H. Frank, David M. Nierporent, and The Overlawyered Group.

The defendants move to dismiss the complaint on the ground that the case was not brought within the statute of limitations and the complaint fails to state a claim. The Court will grant the defendant's motion to dismiss on statute of limitations grounds.

I. The Complaint

The plaintiff is perhaps the most prominent aviation attorney in the country. Compl. ¶ 13. Overlawyered.com is a public website that attracts more than 9,000 unique daily visitors, including tens of thousands of lawyers and other professionals. Compl. ¶¶ 22-24, 39.

In 2002, the court in Taylor v. Teledyne Tech., Inc., issued a discovery order critical of the plaintiff's conduct, but the plaintiff was not personally involved in any of the asserted conduct. Compl. ¶ 30. The trial judge subsequently vacated the order and sealed it from publication. Compl. ¶ 31. Thereafter, the parties settled the case. Compl. ¶ 32.

On April 8, 2007, Mr. Frank wrote an article (the "Frank Article") for Overlawyered.com, and Mr. Olson and Mr. Nierporent edited it. Compl. ¶ 37. The article commented on the chain of events leading to settlement in the Taylor case:

> Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in other litigation? [I]f, as seems to be the case, the N.D. Ga. failed to [disclose a potential conflict of interest], one really wishes courts would do more to protect fiduciaries of plaintiffs' attorneys before signing off on settlements.

Compl. ¶ 38.

In April 2009, the plaintiff discovered the Frank Article. Compl. ¶ 47. He immediately contacted Mr. Frank and demanded that all articles relating to the plaintiff be removed

from Overlawyered.com. Compl. ¶ 48. The defendants refused to retract the Frank Article, which remained accessible on the website at the time the plaintiff filed his complaint. Compl. ¶ 49.

II. Analysis

The plaintiff commenced this suit on May 12, 2009, by filing a praecipe for a writ of summons in the Court of Common Pleas. After removing the case to federal court, the defendant moved for dismissal under Rule 12(b)(6). Under this rule, a court may dismiss an action if the complaint shows facial noncompliance with the statute of limitations. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 n.1 (3d Cir. 1994); see also Jones v. Bock, 549 U.S. 199, 215 (2007).

Pennsylvania's one-year statute of limitations for defamation applies to all three claims.[1] See 42 Pa. Cons. Stat. Ann. § 5523(a) (2010); Menichini v. Grant, 995 F.2d 1224, 1228 n.2 (3d Cir. 1993). The statute began to run from the time of publication. See Dominiak v. Nat'l Enquirer, 266 A.2d 626, 629-30 (Pa. 1970). Mr. Frank published the article on April 8, 2007,

[1] Because the plaintiff's claim for intentional interference with a potential contractual relationship arises from his defamation claim, the one-year statute of limitations applies to the contract claim, even though it would otherwise be subject to a two-year limitations period. Evans v. Philadelphia Newspaper, Inc., 601 A.2d 330, 333-34 (Pa. Super. Ct. 1991) ("[T]he one year statute of limitation for defamation cannot be circumvented by cloaking such a cause of action in other legal raiment.").

with the result that the limitations window closed on April 8, 2008. The plaintiff's action, therefore, was time-barred when he commenced it on May 12, 2009, unless some tolling principle had tolled the statute.

The discovery rule represents a potential tolling principle. It accounts for a plaintiff's "inability . . . despite the exercise of reasonable diligence, to know that he is injured and by what cause." Fine v. Checcio, 870 A.2d 850, 858 (Pa. 2005). The plaintiff claims that the discovery rule should apply to toll the statute of limitations here,[2] but the defendants argue that the rule does not apply to mass-media defamation.

The plaintiff relies on two Pennsylvania Supreme Court cases to support his position. The plaintiff reads these cases too broadly, however. He first cites Fine v. Checcio, in which the Pennsylvania Supreme Court stated that "the discovery rule applies to toll the statute of limitations in any case where a party neither knows nor reasonably should have known of his injury and its cause at the time his right to institute suit arises." 870 A.2d at 859. Although the plaintiff takes from

[2] The plaintiff also asserts that fraudulent concealment tolled the statute. If a defendant causes a plaintiff to relax his vigilance or deviate from a typical standard of inquiry, the doctrine of fraudulent concealment tolls the statute of limitations. Fine, 870 A.2d at 860. The doctrine does not apply here. The plaintiff alleged no facts that would demonstrate that the defendant actively or passively misled the plaintiff or hid from him the existence of the Frank Article.

this that the discovery rule should apply to "any case," the court went on to clarify that the purpose of the rule is to address "an injury that is not immediately ascertainable." Id. at 860.

The plaintiff also cites Wilson v. El-Daief, in which the Pennsylvania Supreme Court held that the discovery rule is a tool of statutory interpretation that determines when a cause of action accrues. 964 A.2d 354, 363 (Pa. 2009). Because the statute of limitations begins to run "from the time the cause of action accrued," the plaintiff infers from Wilson that the discovery rule must be applied in all cases to determine when accrual occurs and the statute begins to run. 42 Pa. Cons. Stat. Ann. § 5502(a) (2010). The decision, however, described a more limited application: "to toll the running of the statute of limitations for latent injuries, or injuries of unknown etiology . . . ." Wilson, 964 A.2d at 356.

Elsewhere, the Pennsylvania Supreme Court has stated that the discovery rule should be employed only for "worthy cases"; it "cannot be applied so loosely as to nullify the purpose for which a statute of limitations exists."[3] Dalrymple

[3] Indeed, the discovery rule is a narrow exception to an otherwise strict limitations standard. For example, Pennsylvania does not toll the statute of limitations for a plaintiff who fails to discover a cause of action due to incarceration or insanity. 42 Pa. Cons. Stat. Ann. § 5533(a) (2010). Likewise, ignorance, mistake or misunderstanding will not toll the statute, even though a plaintiff may not discover an injury until it is too late. See Pocono Int'l Raceway, Inc., v. Pocono Produce, Inc., 468 A.2d 468, 471 (Pa. 1983).

v. Brown, 701 A.2d 164, 167 (Pa. 1997). Taken in their totality, Fine and Wilson agree that not all cases are worthy of the discovery rule. Worthy cases are those pertaining to hard-to-discern injuries.

Consequently, the discovery rule would appear to be inapplicable in this case. If the rule is intended for hard-to-discern injuries, it would be at odds with a cause of action based upon a defamatory statement disseminated through a mass medium, like a website, and received by tens of thousands of readers.

Moreover, applying the discovery rule here would undermine the purpose of the statute of limitations. If a plaintiff may bring a person into court after a limitations period has expired simply by invoking the discovery rule, and if a court is bound from dismissing the claim no matter how public or ancient the injury may be, then the discovery rule will have nullified the stability and security that the statute of limitations aims to protect. See Schumucker v. Naugle, 231 A.2d 121, 123 (Pa. 1967).

Three other judges from this Court have concluded that the discovery rule does not apply to mass-media defamation. Bradford v. Am. Media Operations, Inc., 882 F. Supp. 1508, 1519 (E.D. Pa. 1995) (holding that the discovery rule could not apply to defamation in the widely distributed Star newspaper); Barrett

v. Catacombs Press, 64 F. Supp. 2d 440, 446 (E.D. Pa. 1999) ("[T]he discovery rule should not be applied where . . . a defendant's alleged defamation was not done in a manner meant to conceal the subject matter of the defamation."); Drozdowski v. Callahan, No. 07-cv-01233-JF, 2008 WL 375110, at *1 (E.D. Pa. Feb. 12, 2008) (declining to apply the discovery rule to defamation published in a book); see also Smith v. IMG Worldwide, Inc., 437 F. Supp. 2d 297, 306 (E.D. Pa. 2006) (distinguishing defamation in a private conversation).

Many other courts have also declined to apply the discovery rule to mass-media defamation. See, e.g., Schweihs v. Burdick, 96 F.3d 917, 920-21 (7th Cir. 1996) (adopting a "mass-media exception" to the discovery rule, explaining that the rule only applies to defamation "in situations where the defamatory material is published in a manner likely to be concealed from the plaintiff, such as credit reports or confidential memoranda"); Rinsley v. Brandt, 446 F. Supp. 850, 852-53 (D. Kan. 1977) ("We would not apply the discovery rule where the defamation is made a matter of public knowledge through such agencies as newspapers or television broadcasts."); Shively v. Bozanich, 80 P.3d 676, 688-89 (Ca. 2003) ("[A]pplication of the discovery rule to statements contained in books and newspapers would undermine the single-publication rule and reinstate the indefinite tolling of the statute of limitations . . . ."); Mullin v. Washington Free Weekly, Inc., 785 A.2d 296, 299 (D.C. 2001) ("[E]very other court

squarely faced with this issue [rejected] application of the discovery rule in mass media defamation claims. We follow these precedents and do likewise here." (citations omitted)); Flynn v. Assoc'd Press, 519 N.E.2d 1304, 1307 (Ma. 1988) ("The discovery rule does not apply to a public libel printed in a newspaper widely available to the public, including the plaintiff."); Clark v. AiResearch Mfg. Co. of Ariz. Inc., 673 P.2d 984, 986-87 (Az. 1983) ("We believe the rule of discovery should be applied in those situations in which the defamation is published in a manner in which it is peculiarly likely to be concealed from the plaintiff . . . ."); Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc., 334 N.E.2d 160, 164 (Il. 1975) (distinguishing defamation in a credit report from defamation in magazines, books, newspapers, and radio and television programs).

The Court is not aware of any case in which the discovery rule has been applied to postpone the accrual of a cause of action based upon the publication of a defamatory statement contained in a book or newspaper or other mass medium. I reach the same conclusion as my colleagues in the Eastern District of Pennsylvania and other jurisdictions: as a matter of law, the discovery rule does not apply to toll the statute of limitations for mass-media defamation.

An appropriate Order will be issued separately.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR ALAN WOLK, ESQUIRE	:	CIVIL ACTION
	:	
v.	:	
	:	
WALTER K. OLSON, et al.	:	NO. 09-4001

ORDER

AND NOW, this 2nd day of August, 2010, upon consideration of the Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) (Docket No. 5), the plaintiff's opposition, the defendants' reply thereto, the Supplemental Brief in Support of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), the Plaintiff's Sur-Reply in Opposition to the Motion to Dismiss Pursuant to Rule 12(b)(6) of Defendants, and after oral arguments held on June 24, 2010, IT IS HEREBY ORDERED that, for the reasons stated in a Memorandum of today's date, the defendants' Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED that the defendants' Motion for a Protective Order to Stay Discovery Pursuant to Rule 26(c) (Docket No. 7) is DENIED as moot.

This case is closed.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.

EXHIBIT F

FORUM

« ANTI-PROP 8. ANTI-PERRY. | SOCIAL SCIENCE AND THE CONSTITUTION »

August 6, 2010

Arthur Alan Wolk v. Olson (E. D. Pa. Aug. 2, 2010)

Watch what you say about lawyers dept.: A Philadelphia attorney didn't like what a blogger wrote about the attorney's litigation record in a post about the attorney's unsuccessful libel lawsuit, so he sued the blogger. And the blogger's innocent co-bloggers. Except the post was made in 2007, the lawsuit was filed in 2009, and the Pennsylvania statute of limitations is one year. It should be fairly obvious that the statute of limitations starts to run when a blog post is first published to the Internet, but the plaintiff argued that the statute shouldn't start to run until the plaintiff reads (or, *de facto*, claims to have read) the blog post, which, of course, would destroy the statute of limitations for bloggers. No dice. One wishes the Eastern District of Pennsylvania decision in *Arthur Alan Wolk v. Olson* had also addressed the obvious First Amendment issues, but a good result is a good result, and bloggers everywhere should rejoice that courts continue to refuse to create double-standards. Congratulations to White & Williams, the defendants, and bloggers everywhere. (Shannon Duffy, "Discovery Rule for Libel Doesn't Apply to Blogs, Says Federal Judge", Legal Intelligencer, Aug. 6; White & Williams press release, Aug. 5; Simple Justice blog).

Update, 5:05 PM August 6: Extensive must-read analysis by Jacob Sullum at Reason; further commentary and coverage at Popehat; DBKP; Instapundit; and Phil. Bus. J..

POSTED BY TED FRANK AT 8:53 AM | TRACKBACK (0)
Tags:blogs , First Amendment , libel , Pennsylvania , statute of limitations , watch what you say about lawyers

Published by the Manhattan Institute

CLP
CENTER FOR LEGAL POLICY
AT THE MANHATTAN INSTITUTE

EXHIBIT G

http://reason.com/blog/2010/08/06/lawyer-trying-to-protect-his-r

Lawyer Trying to Protect His Reputation As an Effective Advocate Misses Deadline for His Libel Suit

Jacob Sullum | August 6, 2010

On April 8, 2007, *Overlawyered* writer Ted Frank blogged about an aviation attorney named Arthur Alan Wolk, prompted by an item on another legal blog about the dismissal of a ridiculous lawsuit Wolk had filed. Frank's summary of Wolk's case: "Judge writes scathing opinion about attorney; opponent attorney mails opinion to client; losing attorney sues other attorney for defamation." Frank noted that when Wolk settled the original case (the one that gave rise to the judicial rebuke), one condition was suppression of that embarrassing opinion. Frank suggested this demand created a conflict of interest:

> Did Wolk's client suffer from a reduced settlement so that his attorney could avoid having the order used against him in other litigation? (The discovery violation complained about was apparently a repeat occurrence.) The district court permitted a settlement that vacated the order, but its only reported inquiry into whether Wolk did not suffer from a conflict of interest and was adequately protecting his client's rights was Wolk's representation to the court that the client was alright with the size of the settlement. That begs the question whether the client was fully aware of the conflict of interest; if, as seems to be the case, the [court] failed to [make sure the client knew about the conflict], one really wishes courts would do more to protect fiduciaries of plaintiffs' attorneys before signing off on settlements.

This was not Wolk's first appearance at *Overlawyered*. A 2002 post noted how he had used a defamation suit to bully an aviation news website into a "a thoroughly abject capitulation and apology" for criticizing a $480 million verdict he had won from Cessna. The appeasement included an astonishing promise not to "characterize matters in such a way as to bring apparent discredit upon anyone," lest such characterizations instigate *other people* to commit libel. As *Overlawyered* put it, "The consequences of such a formula for the future of hard-hitting journalism can be imagined." The post concluded: "Among the lessons many observers will draw, we think, will be the old one: watch what you say about lawyers."

You probably can guess what happened next. The touchy lawyer with a history of suing his online critics into submission sued Frank, along with *Overlawyered* editors Walter Olson (a *Reason* contributing editor) and David Nieporent*, citing the 2007 comment about Wolk's conflict of

interest. But he did not get around to doing so until two years after the post appeared. Unfortunately for Wolk, Pennsylvania, where he filed his case, generally requires that defamation lawsuits be filed within one year of the injury. According to *Law.com*, Wolk argued that the court should let the statute of limitations slide, since he had not discovered Frank's allegedly defamatory post until April 2009, when he supposedly performed a Google search on his name after being advised to do so at a "seminar on client relations in early 2009."

U.S. District Judge Mary McLaughlin did not question the plausibility of this story, which suggests that a notoriously sensitive lawyer who had sued over online criticism back in 2001 did not think of Googling his own name until he learned about this esoteric technique in 2009. But in a decision (PDF) issued this week, she dismissed Wolk's suit, ruling that under Pennsylvania law plaintiffs can escape the one-year limit only if the alleged defamation was difficult to discover—e.g., because it occurred in a credit report or a confidential memorandum. McLaughlin said that exception does not apply if the offending statement was published in a "mass medium" such as a website that is well-known among attorneys and that "attracts more than 9,000 unique daily visitors, including tens of thousands of lawyers and other professionals."

In a sense, then, Frank, Olson, and Nieporent were saved by the conspicuousness of the forum in which they dissed Wolk. Even if Wolk had not missed the deadline, it seems likely he would have lost the case, since the comments to which he objected are a constitutionally protected combination of fact and opinion. But before losing, he would have succeeded in punishing his critics by inflicting the anxiety, inconvenience, and cost of litigation on them. One really wishes courts would do more to protect the First Amendment rights of writers who offend rich people with thin skins.

Law.com reports that "Wolk has already filed a notice of appeal to challenge McLaughlin's ruling."

[*Spelling corrected. His name was misspelled in McLaughlin's ruling.]

EXHIBIT H

Wolk v. Olson: Overlawyered in the news

by Walter Olson on August 9, 2010

While I was away in recent days, a news story about this site drew wide coverage in the press. U.S. District Judge Mary McLaughlin last week dismissed a defamation lawsuit filed by Philadelphia aviation lawyer Arthur Alan Wolk against me, Overlawyered, and co-bloggers Ted Frank and David Nieporent over a blog post that Ted published on this site in 2007. Judge McLaughlin ruled (PDF) that the claim was time-barred, notwithstanding Wolk's argument that the operation of the statute of limitations should have been stayed based on his claim that he was unaware of the post until 2009, when he says he first performed a Google search on his own name.

The judge's dismissal of the suit was covered in Law.com/The Legal Intelligencer, the ABA Journal, Legal Ethics Forum, and many other blogs and publications well known to our readers. All of us are grateful to attorneys Michael N. Onufrak and Siobhan K. Cole of White and Williams in Philadelphia, who represented us. Had the judge not ruled in our favor on the threshold statute of limitations issue, we are confident that we would have prevailed based on the post's protected status under the First Amendment. Wolk has filed a notice of appeal in the action.

For readers' protection as well as our own, we are obliged to discourage discussion in our comments section about these developments. We regret the curtailment of free controversy. **More**: Ted at Point of Law.

Related posts

- Worst places to get sued, cont'd (0)
- "The Worst Places To Get Sued in America" (1)
- WHYY Philadelphia, "Radio Times" (1)
- Wherein we deny all robot-related activity (10)
- When a judge sues for defamation, cont'd (0)

Tagged as: about the site, libel slander and defamation, Philadelphia

{ 0 comments... add one now }

Leave a Comment

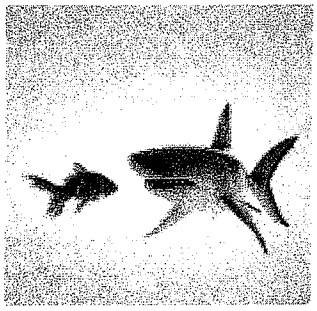
Name *

E-mail *

Website

You can use these HTML tags and attributes: <a href="" title=""> <abbr title=""> <acronym title=""> <b> <blockquote cite=""> <cite> <code> <del datetime=""> <i> <q cite=""> <strike>

Submit



- **Recent Comments**
  - KDP on "Government finds no electronic defects in runaway Toyotas 'so far'"
  - Dennis on Travel writer's legal nightmare continues
  - PointOfLaw Forum on "Government finds no electronic defects in runaway Toyotas 'so far'"
  - wfjag on Offering to trade legal services for sexual favors
  - wfjag on Travel writer's legal nightmare continues
  - Bill Poser on Travel writer's legal nightmare continues
  - "Government finds no electronic defects in runaway Toyotas 'so far'" on On the new Toyota findings
  - Bumper on Why JetBlue can't crack a smile
  - Frank on On trial for vehicular homicide, sues family she killed
  - Beagles on "Family of man hit by train suing railroad, canoe company"
- **Recent Posts**
  - August 12 roundup
  - Travel writer's legal nightmare continues
  - "Government finds no electronic defects in runaway Toyotas 'so far'"
  - Why JetBlue can't crack a smile

- Newsweek on the ADA's effects
- August 11 roundup
- Offering to trade legal services for sexual favors
- NYC bus drivers' union in court
- August 10 roundup
- A reminder: anti-arbitration is anti-consumer

- **Point of Law**

  - Penn & Teller Thursday on vaccines
    Penn & Teller's unmentionably named show on the Showtime network does a great job debunking all sorts of matters; tomorrow, they'll turn their attention to the trial-lawyer-driven vaccine controversy that has needlessly put thousands of children at risk.... [...]
    Ted Frank
  - Death of Proximate Causation? Viewer of Child Pornography Found Liable to Victim
    It's hard to have any sympathy at all for viewers of child pornography -- the author of this note finds such people despicable and deserving of criminal punishment. What about tort liability, though? Does a viewer of a film of... [...]
    Michael Krauss
  - Judge Walter lambastes Lerach
    In 2008, I wrote:In today's NY Times, Joe Nocera lambastes Bill Lerach's lack of remorse and notes that his crimes weren't victimless. To which I would add: given that Lerach's Portfolio defense of his crimes demonstrates that he lied in... [...]
    Ted Frank
  - Good Budds with President Obama
    President Obama attended a Democratic Senatorial Campaign Committee fundraiser Monday at the Highland Park, Texas, home of Russell Budd, president of Baron & Budd P.C., one of the nation's premier plaintiff's firms. Baron & Budd is also one of the premier law firms trying... [...]
    Carter Wood
  - AT&T Mobility v. Concepcion
    The Ninth Circuit's holding in Concepcion v. AT&T Mobility, barring an arbitration clause that prohibits class actions as "unconscionable," rests upon a belief in the exceptionalism of class actions, namely, that they are a uniquely superior form of dispute resolution... [...]
    Ted Frank

- **Search**

To search, type and hit e

- **Media Bloggers Association**

- **Favorites**

  - *Best of
  - AAJ/ATLA
  - ADA and disability rights
  - ADA filing mills

- Chasing clients
- Class actions
- Competition through litigation
- CPSIA
- CPSIA and books
- CPSIA and resale
- Deep Pocket Files
- Defensive medicine
- Dickie Scruggs
- Feeing frenzy
- Finger in the chili
- Ford Pinto
- Free speech
- Grand Theft Auto: Class Action
- John Edwards
- Junk science
- Kentucky fen-phen fraud
- Lawyers' nastygrams
- Legal extortion
- Libel, slander, and defamation
- Loser pays
- McDonald's hot coffee & Stella Liebeck
- Other hot coffee cases
- Personal responsibility
- Politics
- Prop 65
- RIAA and file sharing
- Robert F. Kennedy, Jr.
- Roy Pearson's $54 million pants
- Scandals
- Schools
- Schools for Misrule
- Skylights and falling burglars
- Sudden acceleration
- Sued if you do, sued if you don't
- Things not to do
- Third-party liability for crime
- Tobacco settlement
- UK
- Wacky warnings
- Watch what you say about lawyers
- William Lerach
- Wrongful birth and wrongful life

- **Learn More/Reform**

  - AEI Legal Center
  - Cato
  - Cato at Liberty
  - Center for Class Action Fairness
  - Common Good
  - Liability reform sites

- Manhattan Institute
- Point of Law
- Schools for Misrule

- **Misc.**
  - Early years of site
  - General links
  - Google News
- **Navigation**
  - About
  - Accolades
  - Cato at Liberty
  - Contact
  - Social
  - Tags
- **Other blogs**
  - Alkon
  - Althouse
  - Amend the CPSIA
  - Arts & Letters Daily
  - Business Insider
  - Cato at Liberty
  - Coyote
  - Evil HR Lady
  - Fountain
  - Free-Range Kids
  - IGF
  - Kausfiles
  - KevinMD
  - Malkin
  - MargRev
  - Mark Perry
  - McArdle
  - Memeorandum
  - NAM
  - NRO Corner
  - Obscure Store
  - Open Market
  - OpinionJournal Federation
  - Popehat
  - Postrel
  - Reason "Hit and Run"
  - Respectful Insolence
  - Reynolds
  - Romenesko
  - Room for Debate (NYT)
  - Secular Right
  - Seeking Alpha

- Shafer
- Sullivan
- Taranto
- Teachout
- Volokh
- White Coat

- **Other law blogs**

  - Above the Law
  - Bainbridge
  - Cal Biz Lit
  - Center for Class Action Fairness
  - Citizen Media Law Project
  - Concurring Opinions
  - D & O Diary
  - Drug & Device Law
  - Employer's Lawyer
  - Greenfield
  - Hochfelder
  - Kennerly
  - Legal Blog Watch
  - Legal Pulse (WLF)
  - Likelihood of Confusion
  - Lowering the Bar
  - OnPoint News
  - Parloff
  - Pero
  - Point of Law
  - Prawfsblawg
  - Russell Jackson
  - Schwartz
  - TortsProf
  - Truth on the Market
  - Turkewitz
  - Volokh
  - WSJ law blog

- **Archives**

  Select Month

- **Meta**

  - Log in
  - Entries RSS
  - Comments RSS
  - WordPress.org

Get smart with the Thesis WordPress Theme from DIY Themes.

WordPress Admin

EXHIBIT I

Subscribe
About
Staff
Contributors
Topics
Print Archives
Cover Gallery
Hit & Run - Blog
Daily Brickbats
Podcasts
RSS Feeds
Advertise
Subscriber Services
Donate
Reason Stuff
Events
Submissions
Contact Us

Submit

Who You Calling Touchy?

| September 16, 2010

Last month I wrote a [illegible] criticizing a lawyer, Arthur Alan Wolk, who has been known to sue people for criticizing him online. Guess what happened? Wolk recently emailed me, threatening to sue me and *Reason* unless I delete the post:

> Remove it because it is false and you get a free pass. If you don't I will sue you because you like your buds at Overlawyered did nothing to fact check anything before you wrote your blog. In fact had you read my lawsuit you would have known that what you were about to publish and republish was false but instead you recklessly failed to do anything to verify if what you were writing about had any merit or truth whatsoever. Guess what, you need to check the statute of limitations because it won't apply to you. I am giving you the opportunity you didn't give me, and set the record straight and to do the right thing. Please remove your lies from the internet.
>
> This false and defamatory publication jeopardizes Reason.com's foundation status and I have already retained tax counsel to challenge the tax exempt status of all these public interest organizations who are nothing more than lobbyists for tort reform, a violation of the tax exempt status they claim. If you think for even a moment that my forty-one years of practice will be defined by lies on the internet you need to do a little more research. Please do not make me cause you and your officers to join your friends in Philadelphia. I just want lies about me off the web.

Although Wolk's reaction to my post reinforces the point I was trying to make, he reasonably complains that I did not include his response to the *Overlawyered* [illegible] that was the subject of one of his defamation suits. He says he avoided any conflict of interest in *Taylor v. Teledyne* by not participating in the settlement negotiations and by not asking the judge to vacate a discovery order that criticized him until after an agreement had been reached. He cites letters from two other plaintiffs' attorneys who were involved in the case, who confirm this account. Wolk also says the judge's criticism was unfair, in part because other lawyers at his firm handled discovery in that case.

[illegible] | 9.16.10 @ 3:30PM | [illegible]

I don't understand - are you posting the above to avoid a lawsuit or is Reason going to tell Wolk to "Fuck off!", as he rightly deserves?

EXHIBIT

J

(Filed Under Seal)

EXHIBIT
K
(Filed Under Seal)

EXHIBIT
L
(Filed Under Seal)