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Volume.....:	<b>004</b>

A 6141-08T3

DONALD J. TRUMP,

Plaintiff/Appellant,

v.

TIMOTHY L. O'BRIEN; TIME  
WARNER BOOK GROUP, INC.; and  
WARNER BOOKS, INC.,

Defendants/Respondents.

) SUPERIOR COURT OF NEW JERSEY  
) APPELLATE DIVISION  
) DOCKET NO.: A-6141-08T3  
)  
) ON APPEAL FROM THE  
) SUPERIOR COURT OF NEW JERSEY  
) LAW DIVISION - CAMDEN COUNTY  
)  
) SAT BELOW  
) HONORABLE MICHELE M. FOX, J.S.C.  
)  
)

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APPELLATE DIVISION

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APPENDIX TO BRIEF OF PLAINTIFF/APPELLANT DONALD J. TRUMP  
Volume X  
Pa3243-Pa3596

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HEADLINE: Is Trump Headed for a Fall?

BYLINE: By TIMOTHY L. O'BRIEN and ERIC DASH

BODY:

IT was another stupendous week for that pop culture sensation, Donald J. Trump. On Thursday, his hit reality television show, "The Apprentice," continued to rack up huge ratings as it neared its nail-biting conclusion. Two days earlier, immediately after its release, his slight new book, "How to Get Rich," popped up to 10th place on the best-seller list of Amazon.com, offering students of wealth invaluable nuggets like Business Rule No. 1: "If you don't tell people about your success, they probably won't know about it."

Mr. Trump, of course, has never been shy about discussing his own success. In an interview, he boasted that "in prime-time television, I'm the highest-paid person."

More than Oprah? "Oprah's not prime time," he shot back.

More than Larry King? "Yeah, and Larry King is cable."

More than the "Friends" cast? Well, collectively, no, he acknowledged. But individually, yes.

Mr. Trump's young television apprentices spent last Thursday evening in what he described then as "the No.1 hotel" in Atlantic City, the Trump Taj Mahal, vying to lure gamblers into the casino.

In reality, the Taj Mahal needs all the help it can get — as does the rest of Mr. Trump's increasingly troubled gambling empire. His casino holdings are mired in nearly \$2 billion of bond debt that they are struggling to repay. They are aging and overshadowed by flashier competitors, and their revenue and profits have been slumping over the last year.

While the winner of "The Apprentice" will get the "dream job of a lifetime" — a year at Mr. Trump's feet, absorbing even more of his business expertise — the master himself now faces an unwieldy group of investors who are muttering a word that has repeatedly hounded him during his career as a real estate developer and casino mogul: bankruptcy.

Trump Hotels recently began talks with major creditors to address its suffocating debt burden. Asked about the possibility that bondholders may force Trump Hotels and Casino Resorts into a prepackaged bankruptcy proceeding, which some of them privately say they are considering if other efforts fail to corral the debt, Mr. Trump is quick to distance himself from any personal financial liability.

"This has nothing to do with me," he said, even though he is chairman and chief executive of the company that bears his name and uses his initials, DJT, as its ticker symbol. "This has to do with a company in which I'm a major shareholder."

Trump Hotels has a market capitalization of about \$102 million, so Mr. Trump's 49 percent equity stake is worth about \$50 million. But should that leaning tower of bond debt tip the entire enterprise into bankruptcy court, Mr. Trump's stock could be worth much less. Nothing, perhaps.

TO be sure, Mr. Trump's representatives could reach a deal with bondholders and avert a bankruptcy filing. Last month, Trump Hotels announced that Credit Suisse First Boston was willing to inject \$400 million in fresh funds into the company in exchange for a controlling stake. Although bondholders would have to swallow a significant discount on their investment, some say they take comfort in the fact that a bank, and not Mr. Trump, would be overseeing the company's coffers.

Should bondholders accept that deal, it would eliminate a hefty portion of the debt, leave Mr. Trump with only a 20 percent stake in the new company -- which would be called Trump International even though it currently has no overseas operations -- and flick Mr. Trump from the chief executive's perch. He would retain the title of chairman and would continue promoting his namesake operation.

"There is more of a gun to his head" now than when Mr. Trump dealt with creditors in past years, said one bondholder.

Although Mr. Trump has long had contentious relations with his creditors, sometimes threatening to withhold interest payments, both sides say tempers have cooled in recent weeks. Mr. Trump and New Jersey gambling regulators said they were confident that the company would be able to make two interest payments of about \$73.1 million each that come due in May and November, though Trump Hotels has indicated in public filings that it will need to take advantage of a 30-day grace period to make the May payment on time.

Even so, it will continue to be a tight squeeze. The company, which has published only unaudited financial statements for last year, carries \$1.8 billion worth of debt on its balance sheet. Its bond payments are so burdensome that its annual interest expense of \$228.5 million last year wiped out its operating income of \$139.4 million, contributing to a \$87.3 million loss for the year.

Losses are not new to Mr. Trump's company. It has not posted an annual profit since it went public in 1995. It also ran afoul of the Securities and Exchange Commission in 2002, when the regulatory agency slapped Trump Hotels with a cease-and-desist order for producing "misleading" financial statements in an earlier quarter. And Trump Hotels' cash flow is so anemic that Mr. Trump, who has routinely extracted millions of dollars in management fees and other perks like a corporate jet from the struggling enterprise, did not take home a bonus last year.

Bond rating agencies downgraded Trump Hotels' debt last month. If a debt restructuring does not happen soon, analysts say, the company's financial picture may become bleaker. "You have to understand The Donald's psyche. He is really giving up total control here for a serious infusion of cash," said Marvin Roffman, a casino analyst who has had a long history of heated disputes with Mr. Trump. "The company has real problems. For him to let go is a sign that he is throwing in the towel."

Of course, Mr. Trump is known to wage war when he negotiates, and he said last week that he was prepared to counterattack if bondholders became combative about a restructuring. "We're talking about a fight that takes years," Mr. Trump warned, noting that such a financial battle "would ruin the business."

"I don't think anybody would want that to happen," he added.

PEOPLE close to the debt negotiations said Mr. Trump had not been leading the talks. That task, they said, has fallen to Scott C. Butera, Trump Hotels' executive vice president. In an interview last week, Mr. Butera said the company had no plans to file for bankruptcy protection, but he acknowledged the hazards of navigating a clear course in negotiations that involve about 20 important groups of bondholders, among them Oak Tree Capital, Putnam Investments, Trust Company of the West and Loews.

"Talking to bondholders is like herding cats, but I think that they're finally speaking with one voice," Mr. Butera said. "I think we'll always be able to make our debt payments but I'm concerned about more than that. You don't want to be sitting around clipping coupons and watching the property deteriorate."

Some bondholders, none of whom would speak for attribution, describe the Trump Hotels situation as more dire. They say the company is desperate for cash and needs to get its house in order as quickly as possible.

"It's not really a question of 'Why now?'" one bondholder said. "It's 'How much longer can you afford to wait?' Every day that passes, Trump falls further behind the competition."

Mr. Trump said his casino holdings amounted to only about 3 percent of his net worth, which, using his estimate, would thus be about \$1.6 billion. But Mr. Trump's overall holdings are hard to assess and possibly are worth much less

than that. Since the mid-1980's, the twin pillars of his wealth have been real estate, largely concentrated in New York, and casinos, largely concentrated in Atlantic City.

His real estate holdings, which are not threatened by any casino bankruptcy, are privately held. Most press accounts of their value have relied on Mr. Trump's own estimates. Asked to list properties in New York in which he has a 100 percent stake, Mr. Trump mentioned 40 Wall Street and "many things," but declined to be more specific. He has developed new high-rise buildings elsewhere in the city, most notably in the West Side yards. But many of those deals involved other people -- particularly a well-heeled group of Chinese investors -- who back Mr. Trump in exchange for his management of the property, complex profit-sharing arrangements and his name on the door.

Still, last week, Mr. Trump called himself the "biggest real estate developer in New York," a description some competitors have disputed.

"He's a dear friend of mine, but it wouldn't be accurate for him to say that," said Richard S. LeFrak, scion of one of New York's most active real estate families. Mr. LeFrak said his family owns the most residential units in New York. He said that if Manhattan was viewed in isolation from New York's other four boroughs and the yardstick was the value of property sold, then Mr. Trump might be "up there" in the top ranks of developers, though he was still hesitant to label him the biggest.

Mr. Trump's real estate and casino holdings came under their first wrenching restructuring several years ago, when they were buried under \$3.2 billion of debt, about \$1 billion of which the developer had personally guaranteed. In the end, Mr. Trump narrowly averted personal bankruptcy proceedings by playing hardball with bank lenders too deeply enmeshed with him to cut him loose. But he was forced to sell several prized properties, like the Plaza Hotel and half of the land beneath the West Side yards.

"It's not bad to sell things. I owned them, and I sold them," Mr. Trump said. "That's why the banks like me. They love my reputation."

MR. TRUMP's three Atlantic City casinos -- the Taj Mahal, Trump Plaza and Trump Marina -- were ensnared in that earlier debt mess. He avoided losing them by taking them public and cutting his ownership stake to 25 percent from 100 percent. (He has since nearly doubled his stake.) Now he faces another diminution of his involvement in a casino business he built from scratch starting in the mid-1980's.

Atlantic City's gambling fortunes rebounded when Mr. Trump began his building binge there, and that city's modern face bore his stamp until the opening last summer of the Borgata Hotel Casino and Spa, a high-end enterprise.

The Borgata, a \$1.1 billion joint venture of Boyd Gaming and MGM Mirage, has already lured customers away from the Trump casinos and other rivals by offering more popular nightclubs and headline entertainment. The Borgata's "win" -- a measure of the money gamblers lose in a casino -- was \$266.8 million in just six months of operation last year, more than the \$259.6 million win at the Trump Marina for the entire year. The Taj Mahal's 2003 win was \$517 million, down about 4 percent from 2002, and Trump Plaza's was \$318.2 million, a 7 percent drop from 2002.

The bitter weather of last winter also took a toll on the top line of Trump Hotels, but analysts say its ballooning interest payments are still the real problem. They also say that nearby properties have siphoned business from Trump Hotels by remodeling and expanding their facilities -- something that Mr. Trump's casinos are unable to do. While Trump Hotels has recently bolstered its management team, its options are limited. The company has been forced to cut costs and plow excess cash into hefty interest payments rather than the casinos.

Barbara Cappaert, an analyst at KDP Investment Advisors, said Trump Hotels had barely enough cash to support day-to-day maintenance and refurbishment and could not afford expansions like the new hotel tower the Taj Mahal needs to accommodate more guests.

Mr. Trump, meanwhile, stands to lose even more market share if neighboring states approve proposals on gambling. Pennsylvania officials are considering allowing slot machines at local racetracks, and New York legislators are reviewing several proposals.

MR. TRUMP'S negotiations with his bondholders are expected to intensify this week if investors receive a formal restructuring proposal. Bondholders seem to be "more comfortable with the idea of Mr. Trump there for his brand name" and Credit Suisse "for a corporate governance check," said a Banc of America Securities analyst, Andrew M. Sussner. Some bondholders and analysts go as far as suggesting that reducing Mr. Trump's role could lower the cost of borrowing for the company.

## Is Trump Headed for a Fall? The New York Times March 28, 2004 Sunday

Even so, bondholders say that reaching an agreement could be difficult, because the deal is contingent on two sets of creditors accepting a discount on their bonds. The largest and most important group comprises major institutional investors who hold notes that have a face value of \$1.3 billion and are backed by the Trump Plaza and Trump Taj Mahal properties. Those notes carry an 11.25 percent interest rate and mature in just two years. The other bonds have a face value of \$490 million, come due in 2010 and carry interest rates of 12.625 percent to 18.625 percent.

Many bondholders and Wall Street analysts say that a bankruptcy filing is inevitable if the deal is to succeed. "I think it is very likely that he will end up with a prepackaged or other bankruptcy," Mr. Susser said. "It's hard to make the numbers work even if the bondholders take less than what they're owed."

After peaking at \$34 in 1996, Trump Hotels stock plunged to a low of \$1.51 late last year. This year, largely on the back of the popularity of "The Apprentice," the stock has climbed — even though a bankruptcy filing could make the company's equity worthless. Since Mr. Trump started promoting the show, the stock price has risen 62 percent, to \$3.40. "If anything, the brand has gotten more valuable because of the show," Mr. Trump said. "I think the name has helped the casinos in terms of the drawing of the crowds."

While he said that "Atlantic City has been a great place for me," he showed few signs of remorse over his diminishing role there. And he said he was optimistic that "How to Get Rich" might offer some valuable lessons for his bondholders.

"A bondholder could read 'How to Get Rich' and say: 'You know what? This is a good time to make a deal,'" he said.

Bondholders seem to be more pragmatic about what they can learn from Mr. Trump, including what value he brings to the casino enterprise to which they remain tethered. "There is some value to having him there as the showman," one bondholder said. "I am not sure if there's any benefit of having him C.E.O."

URL: <http://www.nytimes.com>

**GRAPHIC:** Photo: Donald Trump presided over the opening of the Taj Mahal in Atlantic City in April 1990. His once-lucrative casinos now are battling debt. (Photo by Associated Press)(pg. 8) Drawing (Drawing by Daniel Adel)(pg. 1) Chart: "Trump's Struggling Casinos" Trump Hotels and Casino Resorts has many problems. It is \$1.8 billion in debt. Interest on its bonds exceeds its operating income, contributing to net losses at the company. And its casino's share of the "win" -- how much gamblers lose at casinos -- has been declining in Atlantic City. These problems have depressed the company's stock price. Graph tracks weekly stock price of Trump Hotels and Casino Resorts since 1998. Graph tracks operating income from 1998 to 2003. Graph tracks net interest expense from 1998 to 2003. Graph tracks net loss from 1998 to 2003. 2003 figures are unaudited. SHARE OF ATLANTIC CITY'S "WIN" Graph tracks share of Atlantic City's "win" for following casinos from 1999 to 2003: Sands Resorts Casino Borgata\* Tropicana Harrah's -- Harrah's, Showboat Caesar's -- Bally's, Caesar's, Hilton Trump -- Taj Mahal, Plaza, Marina\* Opened in July 2003, partial-year data (Sources by Bloomberg Financial Markets company reports New Jersey Casino Control Commission)(pg. 8)

LOAD-DATE: March 28, 2004

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March 29, 2004 Monday

**SECTION:** FINANCE; Pg. 11

**LENGTH:** 1021 words

**HEADLINE:** Trump, the TV star, tries to woo his creditors

**BYLINE:** Timothy L. O'Brien And Eric Dash

**SOURCE:** The New York Times

**BODY:**

It was another stupendous week for that pop culture sensation, Donald Trump. On Thursday, his hit reality television show, "The Apprentice," continued to rack up huge ratings as it neared its nail-biting conclusion. Two days earlier, immediately after its release, his slender new book, "How to Get Rich," popped up to 10th place on the best-seller list of Amazon.com, offering students of wealth invaluable nuggets like Business Rule No. 1: "If you don't tell people about your success, they probably won't know about it."

Trump, of course, has never been shy about discussing his own success. In an interview, he boasted that "in prime-time television, I'm the highest-paid person."

More than Oprah? "Oprah's not prime time," he shot back.

More than the "Friends" cast? Well, collectively, no, he acknowledged. But individually, yes.

Trump's young television apprentices spent last Thursday evening in what he described then as "the No. 1 hotel" in Atlantic City, the Trump Taj Mahal, vying to lure gamblers into the casino.

In reality, the Taj Mahal needs all the help it can get — as does the rest of Trump's increasingly troubled gambling empire. His casino holdings are mired in nearly \$2 billion of bond debt that they are struggling to repay. They are aging and overshadowed by flashier competitors, and their revenue and profits have been slumping over the past year.

While the winner of "The Apprentice" will get the "dream job of a lifetime" — a year at Trump's feet, absorbing even more of his business expertise — the master himself now faces an unwieldy group of investors who are muttering a word that has repeatedly hounded him during his career as a real estate developer and casino mogul: bankruptcy.

Last week, Trump Hotels began talks with major creditors to address its suffocating debt burden. Asked about the possibility that bondholders might force Trump Hotels & Casino Resorts into a prepackaged bankruptcy, which some of them privately say they are considering if other efforts fail to corral the debt, Trump is quick to distance himself from personal financial liability.

"This has nothing to do with me," he said, even though he is chairman and chief executive of the company that bears his name and uses his initials, DJT, as its ticker symbol. "This has to do with a company in which I'm a major shareholder."

Trump Hotels has a market capitalization of about \$102 million, so Trump's 49 percent equity stake is worth about \$50 million. But should that leaning tower of bond debt tip the entire enterprise into bankruptcy, Trump's stock could be worth much less. Nothing, perhaps. Trump's representatives could reach a deal with bondholders and avert a bankruptcy filing. Last month, Trump Hotels announced that Credit Suisse First Boston was willing to inject \$400 million in fresh funds into the company in exchange for a controlling stake. Although bondholders would have to swallow a hefty

## Trump, the TV star, tries to woo his creditors The International Herald

discount on their investment, some say they take comfort in the fact that a large bank, and not Trump, would be overseeing the company's finances.

Should bondholders accept that deal, it would eliminate a hefty portion of the debt, leave Trump with only a 20 percent stake in the new company -- which would be called Trump International even though it currently has no overseas operations -- and flick Trump from the chief executive's perch. He would retain the title of chairman and would continue promoting his namesake operation.

Although Trump has long had contentious relations with his creditors, both sides say tempers have cooled in recent weeks. Trump and New Jersey gambling regulators said they were confident that the company would be able to make two interest payments of about \$73.1 million each that come due in May and November, though Trump Hotels has indicated in public filings that it will need to take advantage of a 30-day grace period to make the May payment.

Even so, it will continue to be a tight squeeze. The company, which has published only unaudited financial statements for last year, carries \$1.8 billion worth of debt on its balance sheet. Its bond payments are so burdensome that its annual interest expense of \$228.5 million last year wiped out its operating income of \$139.4 million, contributing to an \$87.3 million loss for the year.

Trump's real estate and casino holdings came under their first wrenching restructuring several years ago, when they were buried under \$3.2 billion of debt, about \$1 billion of which the developer had personally guaranteed. In the end, Trump narrowly averted personal bankruptcy by playing hardball with bank lenders too deeply enmeshed with him to cut him loose. But he was forced to sell several prized properties, like the Plaza Hotel in New York.

"It's not bad to sell things. I owned them and I sold them," Trump said. "That's why the banks like me. They love my reputation."

Trump's three Atlantic City casinos -- the Taj Mahal, Trump Plaza and Trump Marina -- were ensnared in that earlier debt mess. He avoided losing them by taking them public and cutting his ownership stake to 25 percent from 100 percent. He has since nearly doubled his stake. Now he faces another diminution of his involvement in a casino business he built from scratch starting in the mid-1980s.

Trump's negotiations with his bondholders are expected to intensify this week if investors receive a formal restructuring proposal. Some bondholders and analysts go as far as suggesting that reducing Trump's role could lower the cost of the company's capital. Even so, bondholders say that reaching an agreement could be difficult, because the deal is contingent on two sets of creditors accepting a discount on their bonds.

After peaking at \$34 in 1996, Trump Hotels stock plummeted to a low of \$1.51 late last year. This year, largely on the back of the popularity of "The Apprentice," the stock has climbed, even though a bankruptcy could make the company's equity worthless. Since Trump started promoting the show, the stock price has risen 62 percent, to \$3.40.

LOAD-DATE: March 29, 2004

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March 30, 2004 Tuesday

**SECTION:** FINANCE; Pg. 17

**LENGTH:** 1106 words

**HEADLINE:** Trump, the TV star, woos wary creditors

**BYLINE:** Timothy L. O'Brien And Eric Dash

**SOURCE:** The New York Times

**BODY:**

It was another stupendous week for that U.S. pop culture sensation Donald Trump.

On Thursday, his hit reality television show, "The Apprentice," continued to rack up huge ratings as it neared its nail-biting conclusion. Two days earlier, immediately after its release, his slender new book, "How to Get Rich," popped up to 10th place on the best-seller list of Amazon.com, offering students of wealth invaluable nuggets like Business Rule No. 1: "If you don't tell people about your success, they probably won't know about it."

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In reality, the Taj Mahal needs all the help it can get -- as does the rest of Trump's increasingly troubled gambling empire. His casino holdings are mired in nearly \$2 billion of bond debt that they are struggling to repay. They are aging and overshadowed by flashier competitors, and their revenue and profit have been slumping over the past year.

While the winner of "The Apprentice" will get the "dream job of a lifetime" -- a year at Trump's feet, absorbing even more of his business expertise -- the master himself now faces an unwieldy group of investors who are muttering a word that has repeatedly hounded him during his career as a real estate developer and casino mogul: bankruptcy.

Last week, Trump Hotels began talks with major creditors to address its suffocating debt burden. Asked about the possibility that bondholders might force Trump Hotels & Casino Resorts into a prepackaged bankruptcy, which some of them privately say they are considering if other efforts fail to corral the debt, Trump is quick to distance himself from personal financial liability.

"This has nothing to do with me," he said, even though he is chairman and chief executive of the company that bears his name and uses his initials, DJT, as its ticker symbol. "This has to do with a company in which I'm a major shareholder."

Trump Hotels has a market capitalization of about \$102 million, so Trump's 49 percent equity stake is worth about \$50 million. But should that leaning tower of bond debt tip the entire enterprise into bankruptcy, Trump's stock could be worth much less -- nothing, perhaps.

Trump's representatives could reach a deal with bondholders and avert a bankruptcy filing. Last month, Trump Hotels announced that Credit Suisse First Boston was willing to inject \$400 million in funds into the company in

## Trump, the TV star, woos wary creditors The International Herald Tribune

exchange for a controlling stake. Although bondholders would have to swallow a discount on their investment, some say they take comfort in the fact that a large bank, not Trump, would be overseeing the company's finances.

Should bondholders accept that deal, it would eliminate a hefty portion of the debt, leave Trump with only a 20 percent stake in the new company -- which would be called Trump International even though it currently has no overseas operations -- and flick Trump from the chief executive's perch. He would retain the title of chairman and would continue promoting his namesake operation.

"There is more of a gun to his head" now than when Trump dealt with creditors in past years, one bondholder said. Although Trump has long had contentious relations with his creditors, both sides say tempers have cooled in recent weeks. Trump and New Jersey gambling regulators said they were confident that the company would be able to make two interest payments of about \$73.1 million each that come due in May and November, though Trump Hotels has indicated in public filings that it will need to take advantage of a 30-day grace period to make the May payment.

Even so, it will continue to be a squeeze. The company, which has published only unaudited financial statements for the past year, carries \$1.8 billion of debt on its balance sheet. Its bond payments are so burdensome that its annual interest expense of \$228.5 million last year wiped out its operating income of \$139.4 million, contributing to an \$87.3 million loss for the year.

Trump's real estate and casino holdings came under their first wrenching restructuring several years ago, when they were buried under \$3.2 billion of debt, about \$1 billion of which the developer had personally guaranteed. In the end, Trump narrowly averted personal bankruptcy by playing hardball with bank lenders too deeply enmeshed with him to cut him loose. But he was forced to sell several prized properties, like the Plaza Hotel in New York.

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Trump's three Atlantic City casinos -- the Taj Mahal, Trump Plaza and Trump Marina -- were ensnared in that earlier debt mess. He avoided losing them by taking them public and cutting his ownership stake to 25 percent from 100 percent. He has since nearly doubled his stake. Now he faces another diminution of his involvement in a casino business he built from scratch starting in the mid-1980s.

Trump's negotiations with his bondholders are expected to intensify this week if investors receive a formal restructuring proposal.

Bondholders seem to be "more comfortable with the idea of Trump there for his brand name" and Credit Suisse "for a corporate governance check," said a Banc of America Securities analyst, Andrew Susser.

Some bondholders and analysts go as far as suggesting that reducing Trump's role could lower the cost of the company's capital. Even so, bondholders say that reaching an agreement could be difficult, because the deal is contingent on two sets of creditors accepting a discount on their bonds.

Many bondholders and Wall Street analysts say that a bankruptcy filing is inevitable if the deal is to succeed. "I think it is very likely that he will end up with a prepackaged or other bankruptcy," Susser said.

After peaking at \$34 in 1996, Trump Hotels stock plummeted to a low of \$1.51 late last year. This year, largely on the back of the popularity of "The Apprentice," the stock has climbed, even though a bankruptcy could make the company's equity worthless. Helped by Trump's promotion of the show, the stock price has rebounded to \$3.40.

LOAD-DATE: March 30, 2004



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Copyright 2004 The New York Times Company  
The New York TimesMay 1, 2004 Saturday  
Late Edition - Final**SECTION:** Section C; Column 1; Business/Financial Desk; Pg. 2**LENGTH:** 817 words**HEADLINE:** Trump Hotels Reports Loss of \$49 Million for First Quarter**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH**BODY:**

Trump Hotels and Casino Resorts, the centerpiece of Donald J. Trump's struggling casino empire, reported a quarterly loss of nearly \$49 million yesterday, further undermining the company's tenuous financial position and complicating its ability to meet hefty debt payments due at the end of this month and in the fall.

Trump Hotels has about \$1.8 billion in debt that has drained the company of the cash it needs to maintain its properties and compete effectively in the Atlantic City gambling market. Over the last few months, the company and its bondholders have been considering options to deal with the debt burden, including a prepackaged bankruptcy or a recapitalization that would cede control of the company to a major investment bank.

Either option would result in a sharply decreased role at Trump Hotels for Mr. Trump, the chief executive, who has been accused by analysts and bondholders of ineffective management and slipshod financial practices.

Trump Hotels said it lost \$48.8 million, or \$1.63 a share, in the quarter, compared with a loss of \$24 million, or \$1.09 a share, in the period a year earlier. Trump Hotels has never been profitable since it became a public company in 1995. The company said yesterday's losses included a provision of \$19.1 million related to the payment of state taxes in Indiana. The company's quarterly revenue was \$276.2 million, down from \$278.8 million.

Trump Hotels released its earnings after the stock market closed yesterday, but investors seem to have anticipated the company's financial hemorrhaging. In heavy trading on the New York Stock Exchange, shares of Trump Hotels plunged 34 cents, or about 16 percent, to \$1.80.

The possibility of a bankruptcy filing and a sell-off of Trump Hotels' shares has caused the company's overall stock market value to be sliced nearly in half over the last month, dropping to about \$54 million at the close of trading yesterday from about \$102 million. Mr. Trump's 49 percent stake in the company has also been devalued, dropping to \$26.5 million from about \$50 million a month ago.

If shares of Trump Hotels continue their steep drop, the Big Board could delist them, though they have not yet declined far enough to meet the exchange's complex delisting criteria.

Nonetheless, Mr. Trump, in a statement he released along with yesterday's earnings, tried to put a bright spin on the results, citing the climate, the competition and television as factors affecting his business.

"The Atlantic City market has become increasingly more competitive," he noted. "However, the more favorable weather conditions this year helped offset the effects of this increased competition. The Trump brand is as strong as it's ever been. The success of 'The Apprentice' has generated significant exposure for our company's largest asset, the Trump Taj Mahal."

Mr. Trump and New Jersey gambling regulators have said that they are confident that Trump Hotels will be able to make two interest payments of about \$73.1 million each that come due today and Nov. 1, though the company already

## Trump Hotels Reports Loss of \$49 Million for First Quarter The New York

indicated in public filings this year that it would need to take advantage of a 30-day grace period to make the May payment on time. Mr. Trump's representatives have been negotiating with bondholders to avert a bankruptcy filing.

Last month, Trump Hotels announced that Credit Suisse First Boston was willing to inject \$400 million in cash into the company in exchange for a controlling stake. Although bondholders would have to accept a steep discount on their investment, some say they might accept the deal because it would mean a bank, and not Mr. Trump, would oversee the company's operations.

If a deal is reached, it would reduce a large part of the \$1.8 billion debt load and leave Mr. Trump with only a 20 percent stake in a new company called Trump International. Mr. Trump would be ousted as chief executive but would remain chairman of a five-member board.

Still, analysts say that reaching an agreement before the end of the month may be difficult. And with Trump Hotels bleeding cash, the clock is ticking even more loudly.

"I'd be pretty impressed if they could get it done that fast," said Andrew M. Susser, an analyst at Banc of America Securities. "There are a lot of moving pieces that have to come together to get bondholders to agree on these things."

Bondholder representatives have met with Trump Hotels' executives several times since negotiations began in earnest in early April, when the company submitted its initial restructuring proposal. Late last week, the bondholders' advisers recommended that some debtholders seriously consider accepting the offer, people involved in the discussions said. Bondholders are also considering a restructuring proposal of their own.

In an interview yesterday, Scott C. Butera, executive vice president of Trump Hotels, described the negotiations as "constructive."

URL: <http://www.nytimes.com>

LOAD-DATE: May 1, 2004

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May 6, 2004 Thursday  
Late Edition - Final

**SECTION:** Section C; Column 4; Business/Financial Desk; Pg. 1; Market Place

**LENGTH:** 799 words

**HEADLINE:** Trump Hotels Digs Deep for Cash To Try to Prop a Teetering House

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

Veteran gamblers know better than to bet against the house. But what if the house is owned by Donald J. Trump, whose cash-starved casino holdings are struggling to stay afloat?

Mr. Trump is essentially placing a high-stakes bet that his casinos will generate enough cash over the next few weeks to make a \$73.1 million debt payment that is due at the end of the month. It will be a tight squeeze, even for someone with the feline financial dexterity of Mr. Trump. Bankruptcy looms.

Buried at the bottom of the unaudited first-quarter earnings report that Trump Hotels and Casino Resorts released last Friday was a sobering figure: \$91.4 million, the amount of cash that two of Mr. Trump's Atlantic City casinos can tap to help meet the debt payment.

Though that cash trove exceeds the debt payment, it is not unencumbered. New Jersey gambling regulators require casinos to keep a reserve known as "cage cash" to cover unexpected payouts to winning bettors and to provide a cushion for tax payments and payroll. The cage cash reserve at the Trump Taj Mahal and Trump Plaza, the casinos responsible for this month's debt payment, is about \$50 million — meaning that only \$41.4 million of the casinos' cash can be applied to the \$73.1 million tab.

The rest of the debt will have to be paid out of the two casinos' fresh cash flow, which averaged about \$12 million a month in the first quarter. Before the Borgata casino opened in Atlantic City last year and began eating into the market share of Trump Hotels and Casinos, the two casinos had free cash flow of about \$18 million a month from April through June.

That suggests that if the Trump casinos somehow manage to ante up all their available cash, fork over the entirety of April and May's cash flow, and dodge other unforeseen expenses for the rest of the month — they will have \$65 million to \$77 million on hand in a few weeks to pay a \$73.1 million obligation. It is enough to make even reckless gamblers queasy.

Trump Hotels reported its earnings on Friday evening, an hour after the stock market closed and when most of Wall Street was already on its way home for the weekend. While the company's filing crept in like the fog on little cat feet, its finances are hardly elusive. Mr. Trump's company reported a first-quarter loss of nearly \$49 million, about twice its loss a year earlier. Trump Hotels has sputtered along so weakly that it has been unable to spend money on upgrading to fend off the Borgata's advance (though, as the company's proxy filing on Friday showed, Mr. Trump still managed to receive a \$1.5 million salary last year).

Of course, one way out of this mess is to find a friendly outsider with deep pockets. Mr. Trump is contemplating just that. He says he is willing to cede control of the company and his job as chief executive to secure a \$400 million cash infusion from an investment bank, an arrangement that would be subject to the approval of the company's wary and battered bondholders.

## Trump Hotels Digs Deep for Cash To Try to Prop a Teetering House The New

A spokeswoman for the New Jersey Division of Gaming Enforcement, which regulates the state's casinos, monitors their finances and sets cage-cash guidelines, said that the agency believed that Trump Hotels was "financially stable."

Andrew M. Susser, an analyst at Banc of America Securities, said he expected the company to make the debt payment, but that it would need to draw upon April and May revenue to do so. "Liquidity is certainly tight around coupon time," he said.

Mr. Trump has another Atlantic City casino, the Trump Marina, as well as small casino operations elsewhere that he might consider as possible lenders, but those casinos are already saddled with debt. Moreover, bond covenants and gambling regulations hinder the casinos' ability to share their funds.

Trump Hotels was supposed to make its debt payment on May 1, but it invoked a 30-day grace period. Barbara Cappaert, an analyst at KDP Investment Advisors, cautioned that the delay might reflect Mr. Trump's high-stakes negotiating tactics as much as the company's current financial hardships.

"By withholding it, it shows immediately that they need to restructure and it is a carrot for bondholders," she said. "The implicit threat is that if they don't come to an agreement, the company would dissolve."

Even if Trump Hotels has the cash to make its payment this month, it faces other coupon payments this fall and thereafter. Marvin Roffman, an analyst and longtime critic of Mr. Trump who predicted the Trump Taj Mahal's 1991 bankruptcy, is once again gloomy about Mr. Trump's prospects.

"He continues to see erosion in market share, his working capital is gone and the interest rate meter is starting to tick up," Mr. Roffman said. "He is caught between a rock and a hard place. Now, he knows how his 'Apprentices' feel."

URL: <http://www.nytimes.com>

**GRAPHIC:** Photo: Trump Hotels will tap the cash reserve at the Trump Taj Mahal, above, to help meet a large debt payment due this month on it and another Atlantic City casino. (Photo by Bloomberg News)

LOAD-DATE: May 6, 2004

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May 6, 2004 Thursday

SECTION: FINANCE; Pg. 13

LENGTH: 707 words

HEADLINE: Quarterly report shows squeeze at Trump casinos ;  
Cash appears tight with debt payment due

BYLINE: Timothy L. O'Brien And Eric Dash

SOURCE: The New York Times

**BODY:**

Veteran gamblers know better than to bet against the house. But what if the house is owned by Donald Trump, whose cash-starved casino holdings are struggling to stay afloat?

Trump is essentially placing a high-stakes bet that his casinos will generate enough cash over the next few weeks to make a \$73.1 million debt payment due at the end of the month. It will be a tight squeeze, even for someone with Trump's feline financial dexterity. Buried at the bottom of unaudited first-quarter earnings that Trump Hotels & Casino Resorts released last Friday was a sobering figure: \$91.4 million, the amount of cash that two Trump casinos in Atlantic City, New Jersey, can tap to help meet that debt payment. That cash trove is not unencumbered, as would be typical at most publicly traded companies. New Jersey gambling regulators require casinos to keep a reserve known as "cage cash" to cover unexpected payouts to winning bettors and to provide cushion for tax payments and payroll. The cage cash reserve at the Trump Taj Mahal and Trump Plaza, the two casinos responsible for this month's debt payment, is about \$50 million -- meaning that only \$41.4 million of the casinos' cash can be applied to the \$73.1 million tab. The rest of the debt will have to be paid out of the two casinos' fresh cash flow, which averaged about \$12 million a month between January and March. Before the Borgata casino opened in Atlantic City last year and began eating into Trump Hotels' market share, the two casinos had free cash flow between April and June of about \$18 million a month. So Trump Hotels -- if it somehow manages to ante up all of its available cash, hands over the entirety of April and May's cash flow, and dodges other unforeseen expenses for the rest of the month -- will only have somewhere between \$65 million and \$77 million on hand in a few weeks when it has to pay off its \$73.1 million obligation. Even the most reckless gamblers get queasy around these kinds of odds. Trump Hotels filed its earnings on Friday evening, an hour after the stock market closed and when most of Wall Street was already on its way home for the weekend.

While the company's filing crept in like the fog on little cat feet, its finances are hardly elusive. Trump's company reported a first-quarter loss of nearly \$49 million, about twice as much as it lost in the quarter a year earlier.

Trump Hotels has sputtered along so weakly that has been unable to spend money upgrading its facilities to fend off the Borgata's advance (though, as the company's proxy filing on Friday showed, Trump still managed to pull down a \$1.5 million salary last year). Of course, one way out of this mess is to find a friendly outsider with deep pockets. Trump is contemplating just that. He said he was willing to cede control of the company and his job as chief executive to secure a \$400 million cash infusion from an investment bank, a deal that will get done only if the company's wary and battered bondholders agree to it. A spokeswoman for New Jersey's Division of Gaming Enforcement, which regulates the state's casinos, monitors their finances, and sets cage cash guidelines, said the agency believes that Trump Hotels is "financially stable." Andrew Susser, an analyst at Banc of America Securities, said that he expects the company to make the debt payment but that it will need to draw upon April and May revenue to do so.

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Quarterly report shows squeeze at Trump casinos ;Cash appears tight with

Even if Trump Hotels has the cash to make its debt payment later this month, it still faces a bleak future because other coupon payments are due this fall and thereafter. Marvin Roffman, an analyst and longtime Trump critic, who correctly predicted the Trump Taj Majal's 1991 bankruptcy, is once again gloomy about Trump's prospects.

"He continues to see erosion in market share, his working capital is gone, and the interest-rate meter is starting to tick up," Roffman said. "He is caught between a rock and a hard place. Now, he knows how his 'apprentices' feel."

LOAD-DATE: May 6, 2004

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Copyright 2004 International Herald Tribune  
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May 7, 2004 Friday

**SECTION:** FINANCE; Pg. 14**LENGTH:** 697 words**HEADLINE:** Casino debt is pinching Trump**BYLINE:** Timothy L. O'Brien And Eric Dash**SOURCE:** The New York Times**BODY:**

Veteran gamblers know better than to bet against the house. But what if the house is owned by Donald Trump, whose cash-starved casino holdings are struggling to stay afloat?

Trump is essentially placing a high-stakes bet that his casinos will generate enough cash over the next few weeks to make a \$73.1 million debt payment due at the end of the month. It will be a tight squeeze, even for someone with Trump's financial dexterity. Buried at the bottom of unaudited first-quarter earnings that Trump Hotels & Casino Resorts released last Friday was a sobering figure: \$91.4 million, the amount of cash that two Trump casinos in Atlantic City, New Jersey, can tap to help meet that debt payment. That cash trove is not unencumbered, as would be typical at most publicly traded companies. New Jersey gambling regulators require casinos to keep a reserve known as "cage cash" to cover unexpected payouts to winning bettors and to provide cushion for tax payments and payroll. The cage cash reserve at the Trump Taj Mahal and the Trump Plaza, the two casinos responsible for this month's debt payment, is about \$50 million — meaning that only \$41.4 million of the casinos' cash can be applied to the \$73.1 million tab. The rest of the debt will have to be paid out of the two casinos' fresh cash flow, which averaged about \$12 million a month from January to March. Before the Borgata casino opened in Atlantic City last year and began eating into Trump Hotels' market share, the two casinos had free cash flow between April and June of about \$18 million a month. So Trump Hotels — if it somehow manages to ante up all of its available cash, hands over the entirety of April and May's cash flow, and dodges other unforeseen expenses for the rest of the month — will only have \$65 million to \$77 million on hand in a few weeks when it has to pay off its \$73.1 million obligation. Even the most reckless gamblers get queasy around these kinds of odds.

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Trump Hotels has sputtered along so weakly that has been unable to spend money upgrading its facilities to fend off the Borgata's advance (though, as the company's proxy filing on Friday showed, Trump still drew a \$1.5 million salary last year). One solution is to find a friendly outsider with deep pockets. Trump is contemplating just that. He said he was willing to cede control of the company and his job as chief executive to secure a \$400-million cash infusion from an investment bank, a deal that will get done only if the company's wary and battered bondholders agree to it. A spokeswoman for New Jersey's Division of Gaming Enforcement, which regulates the state's casinos, monitors their finances, and sets cage cash guidelines, said the agency believes that Trump Hotels is "financially stable." Andrew Susser, an analyst at Banc of America Securities, said that he expected the company to make the debt payment but that it would need to draw upon April and May revenue to do so.

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"By withholding it, it shows immediately that they need to restructure and it is a carrot for bondholders," said Barbara Cappaert, an analyst at KDP Investment Advisers. "The implicit threat is that if they don't come to an agreement, the company would dissolve."

Even if Trump Hotels has the cash to make its debt payment this month, it still faces a bleak future because other coupon payments are due this fall and thereafter. Marvin Roffman, an analyst who correctly predicted the Trump Taj Mahal's 1991 bankruptcy, is once again gloomy about Trump's prospects.

"He continues to see erosion in market share, his working capital is gone, and the interest-rate meter is starting to tick up," Roffman said. "He is caught between a rock and a hard place. Now, he knows how his 'apprentices' feel."

LOAD-DATE: May 7, 2004



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May 7, 2004 Friday

**SECTION:** FINANCE; Pg. 14

**LENGTH:** 292 words

**HEADLINE:** Trump woos Indian tribes (folo);  
Casino debt is pinching Trump

**BYLINE:** Raymond Hernandez

**SOURCE:** The New York Times

**BODY:**

Raymond Hernandez of The New York Times reported from Washington: \*\*

Trump and other major casino investors have quietly spent tens of millions of dollars to help Indian groups in Connecticut finance campaigns aimed at winning federal recognition as Indian tribes, according to testimony before a House committee.

The disclosure, made on Wednesday before the House Committee on Government Reform, gets to the heart of a major concern of critics who say private investors like Trump are bankrolling the efforts of would-be tribes in the hopes of grabbing a share of the lucrative Indian gambling industry. Federal recognition grants Indian tribes the right to build casinos.

The most detailed testimony about the partnerships between private investors and would-be tribes came from Jeff Benedict, the founder of the Connecticut Alliance Against Casino Expansion, a nonprofit group.

Benedict said he and his group had examined court records, corporate financial reports and public statements to identify the extent of private investors promoting tribal recognition efforts.

He testified that four major financiers, including Trump, had spent nearly \$35 million in Connecticut helping several groups win tribal recognition from the federal Bureau of Indian Affairs.

Arguing that the situation in Connecticut is part of a larger pattern of abuse, Benedict cited statistics showing that 291 groups nationwide were seeking federal recognition as tribes and that an estimated two-thirds of them had private deals with investors who wanted a cut of the \$15 billion that is wagered annually in Indian-run casinos.

Robert Reardon Jr., a lawyer for Trump, said, "Everything that Mr. Trump's organization has done has been proper."

**LOAD-DATE:** May 7, 2004

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May 28, 2004 Friday  
Late Edition - Final

**SECTION:** Section C; Column 5; Business/Financial Desk; Pg. 1

**LENGTH:** 706 words

**HEADLINE:** Trump Hotels Makes Payment On Its Debt.

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

Trump Hotels and Casino Resorts Inc. said yesterday that it made a crucial \$73.1 million debt payment that was coming due this weekend, giving the company a temporary respite from financial struggles that still threaten to force it into bankruptcy.

Trump Hotels, the centerpiece of Donald J. Trump's casino holdings, delayed payment of the debt when it originally came due on May 1, invoking a 30-day grace period.

Burdened with a \$1.8 billion debt load and an inability to maintain or expand its Atlantic City operations adequately, Trump Hotels has been scrambling to rework its debt and raise outside capital.

One deal under consideration involves a \$400 million cash infusion from Credit Suisse that would require Mr. Trump to reduce his equity stake in the company substantially and step aside as chief executive. Bondholders would also have to accept a reduction in the value of their debt holdings for the deal to go through.

Trump Hotels was required to use cash generated this month to meet the May debt payment, which means it will have a shorter period for building up cash before the next \$73.1 million payment is due in November.

One person briefed on the financial position of Mr. Trump's two largest Atlantic City casinos, the Trump Taj Mahal and the Trump Plaza, said those casinos were entering the Memorial Day weekend with operating funds of about \$20 million and \$10 million, respectively. Those are perilously thin amounts given New Jersey regulations that insist on adequate cash cushions at casinos and the possibility that lucky gamblers could snare windfalls.

Scott C. Butera, executive vice president of Trump Hotels, declined to discuss the cash positions of the casinos, but said he was comfortable with their finances and was confident that the company would be able to meet its fall debt payment.

"Obviously, the summer months are our best months, and we're optimistic about the November payment," said Mr. Butera, who added that negotiations with bondholders had been "active and constructive."

Trump Hotels said this month that it lost \$48.8 million, or \$1.63 a share, in the first quarter, compared with a loss of \$24 million, or \$1.09 a share, a year earlier. In trading yesterday on the New York Stock Exchange, shares of Trump Hotels fell 4 cents, or 2 percent, to \$1.93, well below the 52-week high of \$3.65.

The possibility of a bankruptcy filing and a sell-off of shares has caused the company's total stock market value to be sliced by more than half in the last year. Trump Hotels has never been profitable since it became a public company in 1995.

While Trump Hotels is focused on meeting debt payments, its executives would prefer to rework the debt as soon as possible to escape a cash squeeze.

## Trump Hotels Makes Payment On Its Debt The New York Times May 28, 2004 F.

By making the debt payment yesterday, Mr. Trump may have bought himself some additional time to work out the complex restructuring agreement with bondholders and Credit Suisse.

Since the negotiations began in early April, bondholder representatives have been meeting with Trump Hotels executives, including Mr. Butera, as well as Steven Rattner, the financier leading the Credit Suisse team.

Although there was some hope a deal could be reached by the end of May, analysts say that expectation was ambitious and that Mr. Trump might have used the interest payment as a good will gesture to appease bondholders as he pursues more protracted negotiations.

"He may have withheld the coupon payment to try to get guys in line," said Jane Pedreira, a bond analyst at Lehman Brothers who covers Trump Hotels. "So it signals to me that the dialogue is positive and progressing."

Nonetheless, getting all of the parties to agree will remain a complex process, especially given the deep distrust many bondholders retain toward Mr. Trump because of the contentious relationship he has had with them in recent years.

One bondholder, who spoke on the condition of anonymity, voiced frustration yesterday with the restructuring talks and said he hoped an outside takeover offer might be made for Trump Hotels.

"It would be the happiest day of my life if I could repossess his hotels and sell them to Carl Icahn," the bondholder added. "I would love to say, 'Mr. Trump, you've had your chance.'"

URL: <http://www.nytimes.com>

**GRAPHIC:** Photo: Trump casinos in Atlantic City need a busy summer season to help meet the next debt payment, which is due in November. (Photo by Getty Images)(pg. C2)

**LOAD-DATE:** May 28, 2004

1 of 1 DOCUMENT

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May 28, 2004 Friday

**SECTION:** FINANCE; Pg. 19

**LENGTH:** 685 words

**HEADLINE:** Payment made late, Trump seeks deal

**BYLINE:** Timothy L. O'Brien And Eric Dash

**SOURCE:** The New York Times

**BODY:**

Trump Hotels & Casino Resorts said Thursday that it had made a crucial, \$73.1 million debt payment coming due over the weekend, giving the struggling gambling concern a temporary respite from financial struggles that still threaten to force it into bankruptcy.

Trump Hotels, the cash-strapped centerpiece of Donald Trump's casino holdings, had to delay payment of the debt when it originally came due May 1, requiring it to invoke a 30-day grace period to make good on the payment.

Burdened with a \$1.8 billion debt load and an inability to adequately maintain or expand its Atlantic City, New Jersey, facilities, Trump Hotels has been scrambling to restructure its debt and raise outside capital that would permit it to resurrect its sagging fortunes.

A deal currently on the table involves a \$400 million cash infusion from a major investment bank, Credit Suisse, which would require Trump to sharply reduce his equity stake in the casino company and step aside as chief executive. Bondholders would also be required to accept a reduction in the value of their debt holdings.

Trump Hotels was required to use cash generated this month to meet the May debt payment, which means it will have a shorter time span to build up cash when the next payment, for \$73.1 million, comes due in November.

Also, an individual briefed on the financial position of Trump's two largest Atlantic City casinos, the Trump Taj Mahal and the Trump Plaza, said those casinos were entering the busy Memorial Day weekend with operating funds of about \$20 million and \$10 million respectively -- perilously thin amounts given the vagaries of the casino business, New Jersey requirements mandating sufficient cash cushions at casinos, and the possibility that lucky gamblers could snare an unforeseen windfall in coming days.

Scott Butera, executive vice president of Trump Hotels, declined to discuss the casinos' cash positions but said he was comfortable with their finances and confident that Trump Hotels would be able to meet its autumn debt payment.

"Obviously, the summer months are our best months, and we're optimistic about the November payment," Butera said, adding that negotiations with Trump Hotels' bondholders had been "active and constructive."

Trump Hotels this month posted a loss of \$48.8 million for the first quarter, compared with a loss of \$24 million a year earlier. Trump Hotel shares fell 4 cents, or 2 percent, to finish Thursday at \$1.93, well below their 52-week high of \$3.65. The possibility of a bankruptcy filing and a sell-off of Trump Hotels' shares has caused the company's stock market value to fall by more than half over the past year.

Trump Hotels has never posted a profit since it became a public company in 1995.

While Trump Hotels is focused on debt payments going forward, the company's executives would prefer to restructure its debt as soon as possible in order to escape the cash crunch enveloping the enterprise.

Payment made late, Trump seeks deal The International Herald Tribune May

By making the debt payment, Donald Trump may have bought himself some extra time to work out the complex restructuring agreement with his bondholders and Credit Suisse.

Since the negotiations began in early April, bondholder representatives have been meeting with Trump Hotels executives, including Butera, as well as Steven Rattner, the financier who is leading the Credit Suisse team.

Although there was some hope a deal could be reached by the end of May, analysts say that initial timetable was ambitious and that Trump may have used the interest payment as a goodwill gesture to appease bondholders through more protracted negotiations.

"He may have withheld the coupon payment to try to get guys in line," said Jane Pedreira, a bond analyst at Lehman Brothers who covers Trump Hotels. "So it signals to me that the dialogue is positive and progressing."

Nonetheless, getting all of the parties to agree will remain a complex process, especially given the deep distrust many bondholders retain toward Trump because of the contentious relationship he has had with them in recent years.

**LOAD-DATE:** May 28, 2004

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May 29, 2004 Saturday

SECTION: FINANCE; Pg. 18

LENGTH: 675 words

HEADLINE: Trump Hotels gains breathing space

BYLINE: Timothy L. O'Brien And Eric Dash

SOURCE: The New York Times

DATELINE: NEW YORK:

BODY:

Trump Hotels & Casino Resorts has gained a temporary respite from financial struggles that still threaten to force it into bankruptcy.

Trump Hotels, the centerpiece of Donald Trump's casino holdings, said on Thursday that it had made a crucial \$73.1 million debt payment that was coming due over the weekend. It delayed payment of the debt when it originally came due on May 1, invoking a 30-day grace period.

Burdened with a \$1.8 billion debt load and an inability to adequately maintain or expand its operations in Atlantic City, New Jersey, Trump Hotels has been scrambling to restructure its debt and raise capital.

One deal under consideration involves a \$400 million cash infusion from a major investment bank, Credit Suisse, which would require Trump to sharply reduce his equity stake in the company and step aside as chief executive. Bondholders would also have to accept a reduction in the value of their debt holdings for the deal to go through.

Trump Hotels was required to use cash generated this month to meet the May debt payment, which means it will have less time to build up cash for the next \$73.1 million payment, due in November.

Also, one person briefed on the financial position of Trump's two largest casinos in Atlantic City, the Trump Taj Mahal and the Trump Plaza, said those casinos were entering the busy U.S. Memorial Day weekend, which runs through Monday, with operating funds of about \$20 million and \$10 million, respectively -- perilously small amounts, given state regulations that insist on sufficient cash cushions at casinos and the possibility that some gamblers could win a big jackpot in the coming days.

Scott Butera, executive vice president of Trump Hotels, declined to discuss the cash positions of the casinos but said he was comfortable with their finances and was confident that the company would be able to meet its November payment.

"Obviously, the summer months are our best months, and we're optimistic about the November payment," said Butera, who added that negotiations with Trump Hotels bondholders had been "active and constructive."

This month, Trump Hotels said it had a loss of \$48.8 million in the first quarter, compared with a loss of \$24 million a year earlier. In trading Thursday on the New York Stock Exchange, shares of Trump Hotels fell 4 cents, or 2 percent, to \$1.93, well below their 52-week high of \$3.65.

The possibility of a bankruptcy filing and a sell-off of shares of Trump Hotels have caused the company's total stock market value to be sliced by more than half over the past year. Trump Hotels has never been profitable since it became a public company in 1995.

## Trump Hotels gains breathing space The International Herald Tribune May

While Trump Hotels is focused on debt payments going forward, the company's executives would prefer to restructure its debt as soon as possible to escape a cash squeeze. By making the debt payment on Thursday, Trump may have bought himself some additional time to work out the complex restructuring agreement with his bondholders and Credit Suisse.

Since the negotiations began in early April, bondholder representatives have been meeting with Trump Hotels executives, including Butera, as well as Steven Rattner, the financier leading the Credit Suisse team.

Although there was some hope a deal could be reached by the end of May, analysts said that initial timetable was ambitious and that Trump might have used the interest payment as a good-will gesture to bondholders.

Nonetheless, getting all of the parties to agree will remain a complex process, especially given the deep distrust many bondholders retain toward Trump because of the contentious relationship he has had with them in recent years.

One bondholder voiced frustration on Thursday with the restructuring talks and said he hoped for an outside takeover offer for Trump Hotels.

"It would be the happiest day of my life if I could repossess his hotels and sell them to Carl Icahn," the bondholder said. "I would love to say, 'Mr. Trump, you've had your chance.'"

**LOAD-DATE:** May 30, 2004

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July 30, 2004 Friday  
Late Edition - Final

**SECTION:** Section C; Column 2; Business/Financial Desk; Pg. 1

**LENGTH:** 901 words

**HEADLINE:** Losses Increase as Cash Decreases, Straining Trump's Casinos

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

Trump Hotels and Casino Resorts Inc., the flagship of Donald J. Trump's debt-laden casino holdings, reported increased losses for the second quarter and a dwindling supply of cash yesterday, leaving the struggling company in an increasingly perilous financial position.

Beginning with Memorial Day weekend, the summer season typically is the most lucrative for casino companies because more people are on vacation and looking to gamble. But Trump Hotels lost \$17.6 million, or 59 cents a share, in the quarter, compared with a loss of \$10 million, or 46 cents a share, in the same quarter last year.

More ominously, Trump Hotels' cash reserves -- which it needs to help reduce its \$1.8 billion in debts -- are shrinking. The company says it has \$81.1 million on hand, down from \$124.3 million in the first quarter of the year.

Trump Hotels had \$106 million in cash on hand at the end of the second quarter last year.

Although Mr. Trump enjoyed a star turn as a business guru on the hit television show "The Apprentice," his casino company has never been profitable since going public in 1995. Trump Hotels, with casinos concentrated in Atlantic City, has been flirting with bankruptcy protection this year, scrambling to make a last-minute, \$73.1 million debt payment in May. A similar payment is due in November.

Trump Hotels is talking with its bondholders about restructuring its debts, two people briefed on the negotiations say. One plan under consideration involves a \$400 million cash infusion from the Credit Suisse Group that would greatly reduce Mr. Trump's equity stake in the company and force him to step aside as chief executive.

Bondholders would also have to accept a loss for the deal to go through.

"It's been a multidimensional chess game," said one of the people who had been briefed on the talks. "If you think about the complexities, with all the different groups, pulling them all together hasn't been quick."

Addressing his company's slumping profits, Mr. Trump said in an interview that rising gas prices had cut into gamblers' budgets in the second quarter. "Maybe the high rollers won't use their jets," he said. "For people who drive their automobiles, it certainly has an impact on the amount of money they have when they reach their destinations."

More important, he said that his company's earnings were hurt by gamblers who were winning more money than usual. Trump Hotels said in a news release that the "hold percentage" at its table games, a measure of how much money a casino rakes in from losing gamblers, fell substantially in the quarter.

"We consider ourselves to be very open to having people win," Mr. Trump said. "It's bad for me but it brings other people. It can even out over the course of a year."

Scott C. Butera, executive vice president of Trump Hotels, said that unusually lucky gamblers, combined with broader economic factors, "all played a role" in undermining the company's performance, particularly in May and June.



## Losses Increase as Cash Decreases, Straining Trump's Casinos The Ne

He said he was surprised by the downturn in those months but declined to comment on the company's performance so far in July. While noting that other Atlantic City casinos were also experiencing a weaker summer, Mr. Butera acknowledged that Trump Hotels' challenges remain greater than most because of its anemic finances.

"Other companies have more capital and a better ability to market," he said. "It's a question of how many resources you have to work with."

Mr. Trump said that he expected his casinos to perform better in July and August because late summer is typically Atlantic City's busiest season. But the long-term prospects of Trump Hotels remain doubtful. Pennsylvania recently legalized slot machine gambling in 14 locations in the state, and that could drain gamblers from Atlantic City. Trump Hotels may face better-financed casino rivals if recently announced mergers of Harrah's Entertainment Inc. with Caesars Entertainment Inc., and MGM Mirage with the Mandalay Resort Group, are completed. Mr. Trump's company said it had already lost business to the Borgata Hotel Casino and Spa, a high-end enterprise that opened in Atlantic City last summer and is co-owned by MGM Mirage and the Boyd Gaming Corporation.

Trump Hotels said that it lost \$66.4 million, or \$2.22 a share, for the six-month period ended June 30, compared with a loss of \$34.0 million, or \$1.55 a share, for the same period last year. Trump Hotels' shares are very thinly traded and investors had a muted response to the company's earnings announcement. The shares closed at \$2.06, down a penny, on lower than usual trading volume yesterday.

Mr. Trump, whose personal net worth is notoriously difficult to evaluate, voiced some confusion yesterday about his stake in Trump Hotels, part of which he holds directly and part of which he controls through a limited partnership. He initially said yesterday that he had a 41 percent stake in Trump Hotels. In March, he said in an interview that he had a 49 percent stake. Asked whether he had sold stock in the interim, he said he had not. After revisiting the topic with his advisers, he said he actually holds about 56 percent of Trump Hotels' shares — a stake worth about \$34.5 million.

Mr. Trump said that the Republican convention, which might draw fresh crowds into the New York region next month, should have a "big impact" on his company's bottom line in the next quarter.

URL: <http://www.nytimes.com>

GRAPHIC: Photo: Donald J. Trump, the chief executive of Trump Hotels. (Photo by Susan Stava for The New York Times)(pg. C2)

LOAD-DATE: July 30, 2004

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August 10, 2004 Tuesday  
Late Edition - Final

**SECTION:** Section C; Column 5; Business/Financial Desk; Pg. 1

**LENGTH:** 699 words

**HEADLINE:** Trump Hotels Plans to Seek Bankruptcy

**BYLINE:** By TIMOTHY L. O'BRIEN

**BODY:**

Trump Hotels and Casino Resorts, the centerpiece of Donald J. Trump's faltering casino holdings, said last night that it planned to file for bankruptcy protection by the end of September. The company hopes the move will allow it to reorganize under new management and with new financing that will ease its \$1.8 billion debt burden.

Under the terms of the agreement reached with Trump Hotels' bondholders, Mr. Trump will step aside as chief executive and his 56 percent equity stake will be reduced to about 25 percent. For Mr. Trump to hold onto that stake, he will be required to make a series of investments in the company, including a \$55 million cash investment and an exchange of Trump Hotels debt that he owns.

Mr. Trump will remain as chairman and, in a nod to the marketing muscle retained by the host of the television show "The Apprentice," cede to the recapitalized company "a perpetual and exclusive worldwide trademark license, royalty free, to use his name and likeness and all related marks and intellectual property rights."

The prospective bankruptcy filing is a stunning comedown for a man who helped reignite the gambling boom in Atlantic City about two decades ago and whose name has become synonymous with business savvy, even though his casinos have never been profitable since first going public in 1995 and have been widely criticized by analysts as poorly run.

Credit Suisse First Boston, the investment bank that has been working on a restructuring of Trump Hotels for several months, plans to invest \$345 million in the reorganized company. Trump Hotels said that if all elements of the reorganization fell into place, Trump Hotels' publicly traded debt would drop to about \$1.25 billion from \$1.8 billion and its interest rates on that debt would be reduced to an annual rate of 7.875 percent from 12 percent.

The company said debt restructuring would reduce its annual interest payments by about \$110.2 million — much needed financial breathing room for a company increasingly short on cash and surrounded by better-financed and better-managed competitors. Trump Hotels also said it planned to arrange for up to \$100 million in debtor-in-possession financing once the company files for bankruptcy.

Trump Hotels said it planned to file for bankruptcy protection under Chapter 11, which, unlike a Chapter 7 bankruptcy, does not mean the company is going out of business. Rather, a Chapter 11 filing gives a company that still holds potential promise an opportunity to right itself.

Trump Hotels said it expected its recapitalization plan to be completed by the first quarter of 2005.

"I have had a wonderful longstanding working relationship with CSFB, and I am proud to be able to partner with them," Mr. Trump said in a statement last night. "I look forward to our recapitalized company being a major player in the evolving gaming industry."

## Trump Hotels Plans to Seek Bankruptcy The New York Times August 10, 2004

Under the agreement, one group of Mr. Trump's bondholders would exchange \$1.3 billion in debt for about \$228.2 million in cash, about \$852 million in new debt and about \$107 million in the reorganized company's stock. Another group of bondholders would exchange about \$406 million in debt for about \$56 million in cash and \$350 million in new notes. Yet a third group would swap \$68.8 million in debt for about \$500,000 in cash, \$48 million in new notes, and \$15.7 million in the reorganized company's stock.

Trump Hotels recently reported a second-quarter loss of \$17.6 million, or 59 cents a share, compared with a loss of \$10 million, or 46 cents a share, in the period a year earlier — one yardstick of just how badly the company has been performing. Moreover, Trump Hotels' cash reserves are shrinking. The company said in its quarterly filing that it has \$81.1 million on hand, down from \$124.3 million in the first quarter of the year. The company had \$106 million in cash on hand at the end of the second quarter last year.

In an interview last night, Scott C. Butera, executive vice president of Trump Hotels, declined to say exactly when a reorganization agreement was reached with bondholders but said that disclosure of the agreement was made in a timely fashion consistent with regulatory requirements.

URL: <http://www.nytimes.com>

LOAD-DATE: August 10, 2004

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August 11, 2004 Wednesday

**SECTION:** FINANCE; Pg. 13**LENGTH:** 509 words**HEADLINE:** Humbled, Trump Hotels seek debt relief**BYLINE:** Timothy L. O'Brien**SOURCE:** The New York Times**BODY:**

Trump Hotels & Casino Resorts, the centerpiece of Donald Trump's faltering casino holdings, has said that it plans to file for bankruptcy protection by the end of September.

Donald Trump will step aside as chief executive but will remain as chairman, the company said Monday night. The company said it hoped the move would allow it to reorganize under new management and with new financing that would ease its \$1.8 billion debt burden.

Under the agreement reached with Trump Hotels' bondholders, Donald Trump's 56 percent equity stake would be reduced to about 25 percent. For Trump to hold on to that stake, he will be required to make a series of investments in the company, including a \$55 million cash investment and an exchange of Trump Hotels debt that he owns.

Acknowledging Trump's marketing value as host of the American television show "The Apprentice," Trump will cede to the recapitalized company "a perpetual and exclusive worldwide trademark license, royalty-free, to use his name and likeness and all related marks and intellectual property rights."

The prospective Chapter 11 bankruptcy filing is a stunning comedown for a man who helped re-ignite the gambling boom in Atlantic City, New Jersey, about two decades ago and whose name has been synonymous with business savvy. But his casinos have never been profitable since going public in 1995 and have been criticized by analysts as poorly run.

Trump Hotels recently reported a second-quarter loss of \$17.6 million, widening its loss of \$10 million a year earlier. Its cash reserves are shrinking. The company's latest quarterly filing said that it had \$81.1 million on hand, down from \$124.3 million in the first quarter and \$106 million in the second quarter last year.

Credit Suisse First Boston, the investment bank that has been working on a restructuring of Trump Hotels for several months, planned to invest \$345 million in the reorganized company. If all elements of the refinancing fall into place, Trump Hotels' publicly traded debt would drop to some \$1.25 billion from \$1.8 billion, and the annual interest rate on the debt would narrow to 7.875 percent from 12 percent.

Debt restructuring would reduce Trump Hotel's annual interest payments by about \$110.2 million -- badly needed breathing room for a company surrounded by better-financed and better-managed competitors. The company also plans to seek \$100 million in debtor-in-possession financing once it files for bankruptcy protection.

Under the accord, one group of Trump's bondholders would swap \$1.3 billion in debt for about \$228.2 million in cash, some \$852 million in new debt and about \$107 million of the reorganized company's stock. Another would swap some \$406 million in debt for some \$56 million in cash and \$350 million of new notes. A third group would swap \$68.8 million in debt for some \$500,000 in cash, \$48 million in new notes and \$15.7 million of the reorganized company's stock.

**LOAD-DATE:** August 11, 2004

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August 11, 2004 Wednesday  
Late Edition - Final

**SECTION:** Section C; Column 3; Business/Financial Desk; MARKET PLACE; Pg. 1

**LENGTH:** 947 words

**HEADLINE:** Trump Must Ante Up \$55 Million To Hold On to 25% of His Casino

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

As Donald J. Trump's publicly traded casino company, Trump Hotels and Casino Resorts, goes into a bankruptcy reorganization, Mr. Trump has to invest \$55 million of his money in the enterprise to maintain a large ownership stake.

But does he have it?

In an interview yesterday, as in many interviews before, Mr. Trump pegged his net worth at \$4 billion to \$5 billion, a figure that suggests he could easily chip \$55 million into the reorganization of the casino that bears his name.

"It's cash I have on hand," Mr. Trump said. "I'm very, very liquid."

In fact, it is nearly impossible to independently determine how wealthy Mr. Trump is, since most of his assets are privately held real estate investments that lack the kind of unforbearing financial disclosure required of his publicly traded casino holdings. But a cursory examination of Mr. Trump's finances suggests that his claims of being a billionaire may be greatly exaggerated.

His casino holdings, as of about a week ago, were worth \$34.5 million. That, however, was when Trump Hotels' stock was trading around \$2 a share on the New York Stock Exchange. As of yesterday, the stock traded over the counter for 36 cents a share. Yesterday, Mr. Trump repeatedly said that his Trump Hotels stock represented only about 2 percent of his wealth; based on the prebankruptcy trading price of the shares, that would give him a net worth of about \$1.7 billion — well below the \$4 billion to \$5 billion figure he suggested earlier in the day.

But even \$1.7 billion may be too generous an assessment of Mr. Trump's wealth. Although Mr. Trump now distances himself from his casino business, for most of his life in the public eye, casinos were a significant pillar of his wealth, with a substantial inheritance from his wealthy father and his real estate holdings making up the rest. But past flirtations with personal and corporate bankruptcy forced Mr. Trump to either sell some prized real estate holdings or cede control of what remained to outside investors, particularly a group of wealthy Chinese financiers. While Mr. Trump still owns some handsome properties, his overall real estate holdings have been greatly diminished.

Two people with direct knowledge of the matter said that in the midst of his earlier financial crisis Mr. Trump borrowed \$20 million to \$30 million from his father's \$150 million estate to fend off creditors.

Mr. Trump disputed that yesterday, though he declined to provide a valuation of his father's estate. "I had zero borrowings from the estate," he said. "I give you my word."

In one well-publicized incident at the time, Mr. Trump's father even walked into one of his Atlantic City casinos to buy chips in order to give his son's casinos some much needed cash.

"That was in 1990, OK?" Mr. Trump said yesterday. "That was a long time ago."

## Trump Must Ante Up \$55 Million To Hold On to 25% of His Casino The New Y

Moreover, while most multibillionaires do not serve as hucksters in commercials for Visa and Verizon, Mr. Trump said his ubiquity on television was not only shrewd self-promotion — it was lucrative.

"I get a lot of money from doing that, it's not little money," he said. "Other rich people don't do commercials because no one asks them. It's just like 'The Apprentice.' I can't tell you how many of my rich friends are dying, dying to have me put them on that show."

The Credit Suisse Group, a Wall Street investment bank leading the bankruptcy reorganization of Trump Hotels, will control the business if the revamping is completed. Credit Suisse offered to lend Mr. Trump the \$55 million he needs to maintain a 25 percent ownership interest, according to an investment banker involved in the transaction. But Mr. Trump said he planned to provide the money himself. If he does not come up with the money, his equity stake in the company will largely evaporate.

"I'm not interested in a loan for this," Mr. Trump said. "I'm doing it out of cash. You can check on this after the deal is done."

The source of Mr. Trump's proposed \$55 million investment has been an object of speculation among Trump Hotels bondholders and analysts. Jane Padreira, a fixed-income analyst who covers Trump Hotels for Lehman Brothers, was among several observers who think Mr. Trump will have to borrow the funds. "I don't believe that he has that kind of money," she said.

To be sure, the reorganization of Trump Hotels makes financial sense. The company owns prime casino locations in a growth industry, and if the bankruptcy plan succeeds in reducing the company's debt burden, Trump Hotels will be able to finance an overhaul of its properties.

Whether Mr. Trump is along for the ride as an owner, rather than simply as a marketer, will be determined by that \$55 million.

Even though the terms of the reorganization call for Mr. Trump to cede his chief executive post, Trump Hotels will pay him a \$2 million salary to stay aboard as chairman and help promote the casinos.

"It's pretty amazing to still be paid with no executive capacity, after driving the company into bankruptcy," said Jeffrey A. Sonnenfeld, an associate dean at the Yale School of Management, a frequent critic of Mr. Trump. "It is surprising that the bondholders didn't say, 'You're fired.' Instead, they said, 'You are fired but we are still paying you.'"

Not all Trump Hotels bondholders have agreed to the bankruptcy reorganization plan, and that may still derail the deal. In the meantime, Mr. Trump said he intended to dip into his personal assets and remain in the casino business.

"One reason I have a lot of cash is because I'm in the condo business," Mr. Trump said. "I'm not bound to tell you how much cash I have, but I have a lot of cash and a lot of real estate."

URL: <http://www.nytimes.com>

**GRAPHIC:** Photos: Trump Plaza Hotel and Casinos would be controlled after reorganization by Credit Suisse. Donald J. Trump, top, is trying to hold on to a 25 percent share. (Photo by NBC)  
(Photo by Craig Allen/Getty Images)(pg. C1)

Donald J. Trump, shown in a frame from a TV ad for Visa credit cards, says he gets a lot of money for appearing in television commercials. (Photo by BBDO Worldwide)(pg. C5)

LOAD-DATE: August 11, 2004

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The International Herald Tribune

August 12, 2004 Thursday

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HEADLINE: Can Trump afford casino stake?

BYLINE: Timothy L. O'Brien And Eric Dash

SOURCE: The New York Times

**BODY:**

As Donald Trump's casino company, Trump Hotels & Casino Resorts, sails headlong into a bankruptcy reorganization, Trump has to invest \$55 million of his own money in the enterprise to keep a large ownership stake.

But does he have it?

In an interview on Tuesday, as in many interviews before, Trump put his net worth at \$4 billion to \$5 billion, a figure that suggests he could easily chip \$55 million into a paltry casino reorganization. "It's cash I have on hand," Trump said. "I'm very, very liquid."

In fact, it is nearly impossible to independently determine just how wealthy Trump is, as most of his assets are privately held real estate investments that lack the kind of unforgiving financial disclosure required of his publicly traded casino holdings. But a cursory examination of Trump's finances suggests that his claims of being a multibillionaire may be greatly exaggerated.

Trump's casino holdings, as of about a week ago, were worth \$34.5 million. That, however, was when Trump Hotels stock was trading at around \$2 a share on the New York Stock Exchange. As of early Wednesday, the stock was trading over the counter at 42.5 cents a share.

On Tuesday, Trump repeatedly remarked that his Trump Hotels stock represented only about 2 percent of his wealth. Based on the prebankruptcy trading price of the shares, that would give him a net worth of about \$1.7 billion — well below the \$4 billion to \$5 billion figure that he has often cited. But even \$1.7 billion may be an overly generous assessment of Trump's wealth. Although Trump now distances himself from his casino business, for most of his life in the public eye casinos represented a primary pillar of his wealth, with a substantial inheritance from his father and his real estate holdings making up the rest. But past flirtations with personal bankruptcy forced Trump to either sell some prized real estate holdings or cede control of what remained to outside investors, particularly a group of Chinese financiers.

While Trump still owns some handsome properties, his overall real estate holdings have been greatly diminished.

Two people with direct knowledge of the matter said that in the midst of his earlier financial crisis, Trump borrowed \$20 million to \$30 million from his father's \$150 million estate to fend off creditors.

Trump disputed that on Tuesday, though he declined to provide a valuation of his father's estate. "I had zero borrowings from the estate," he said. "I give you my word." In one incident that was well publicized at the time, Trump's father walked into one of Trump's casinos in Atlantic City, New Jersey, to buy chips to give his son's casinos some needed cash.

"That was in 1990, O.K.?" Trump said on Tuesday. "That was a long time ago."



Moreover, while most multibillionaires do not give sales pitches in commercials for companies like Visa and Verizon, Trump said his ubiquity on television was not only shrewd self-promotion but also lucrative.

"I get a lot of money from doing that; it's not little money," he said. "Other rich people don't do commercials because no one asks them."

Credit Suisse Group, a Wall Street investment bank leading the bankruptcy reorganization of Trump Hotels, offered to lend Trump the \$55 million that he needs to partake of the ownership deal, according to an investment banker involved in the transaction. But Trump said he planned to provide the funds himself. If he does not come up with the money, his equity stake in the company will largely evaporate.

"I'm not interested in a loan for this," Trump said. "I'm doing it out of cash. You can check on this after the deal is done."

The source of Trump's proposed \$55 million investment has been an object of speculation among Trump Hotels bondholders and analysts. Jane Padreira, a fixed-income analyst who covers Trump Hotels for Lehman Brothers, was among several who have said that Trump must borrow the funds.

"I don't believe that he has that kind of money," she said.

A reorganization of Trump Hotels makes financial sense. The company owns prime casino locations in a growth industry, and if the bankruptcy plan succeeds in reducing its debt burden, Trump Hotels will be able to finance an overhaul of its properties. Whether Trump is along for the ride as an owner, rather than simply as a marketer, will be determined by that \$55 million.

But he will still be paid by the company. Even though the reorganization calls for Trump to cede his chief executive post, Trump Hotels will pay him a \$2 million salary to stay as chairman and help promote the casinos.

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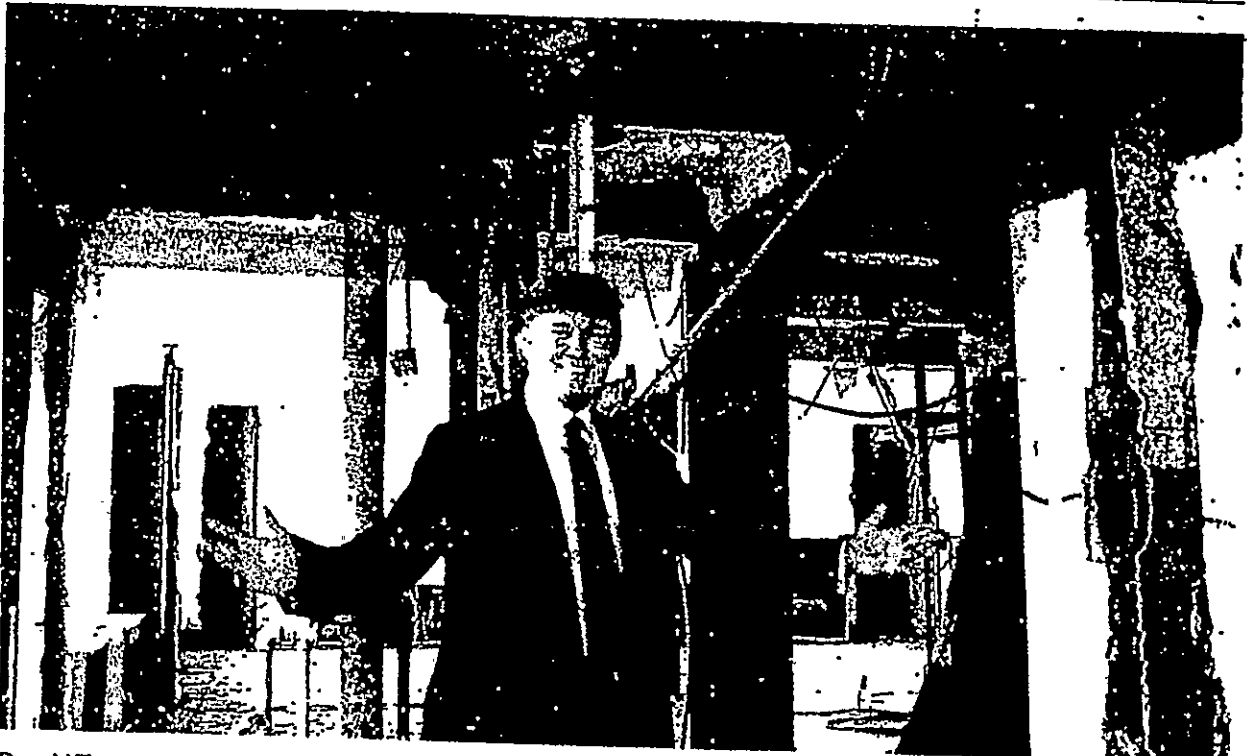
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Four of the cases illustrate a little-noticed sales technique used by many insurance agents — selling military people an

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Continued on Page 4



Frances Roberts

Donald Trump in 2002 on the future site of the Trump Park Avenue condominiums. He says his marketing savvy is instinctive.

# The Midas Touch, With Spin on It

## Trump's Billionaire Persona Belies Troubles With His Empire

By TIMOTHY L. O'BRIEN and ERIC DASH

When Donald J. Trump kicks off the second season of his hit reality television show "The Apprentice" this Thursday evening, reality may be in short supply.

In a business career long protected by the safety cushion of a multimillion-dollar inheritance from his father, Mr. Trump has completed some well-publicized successful projects, like Trump Tower at 5th Avenue and 56th Street in Manhattan. But he has also had repeated failures that pushed him to the edge of personal and corporate bankruptcy.

Within the next month or so, the Trump casinos are expected to file for bankruptcy protection. And Mr. Trump, a self-proclaimed billionaire "many times over," must pay \$55 million to maintain a minority stake in a gambling franchise he once owned outright.

But none of this concerns Bill Rancic, last season's victorious apprentice and now an employee in Mr. Trump's real estate operation.

"I'm sure it will all work out with Mr. Trump," Mr. Rancic said in a telephone interview. "It always does."

Indeed. For more than two decades, Mr. Trump has weathered personal and professional

vicissitudes by combining an acute marketing sensibility with unvarnished chutzpah. As the P. T. Barnum of the business world, Mr. Trump is a showman who has emerged as television's most popular guru for aspiring entrepreneurs and has managed to burnish a gilded reputation.

"He's got a very fertile and creative imagination about how to spin issues, and he's brilliant at turning lemons into lemonade," said Alan Marcus, a business and political consultant who oversaw Mr. Trump's public relations from 1994 to 2000.

"If I ever had a weak company that I want-

Continued on Page 2

# Medical Editors I To Call for Registration Of Drug Tests at Outset

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# Union of US Airways I

By MICHELINE MAYNARD

The leader of a rebel pilot group at US Airways accused the company of demanding too many sacrifices from employees, saying that the airline's request for \$295 million in annual wage and benefit cuts from the pilots had "gone from need to greed."

But the airline's chief executive, Bruce R. Lakefield, urged the pilots' union to accept the airline's proposal, arguing that "the price is even higher" if no agreement is reached and US Airways is forced to seek bankruptcy protection.

The deadlock with the pilots is increasing the likelihood that the airline will file for bankruptcy this month a move

The debate over the disclosure of clinical drug trials could reach a turning point this week, with editors of influential medical journals expected to call for fundamental changes in the way such tests are reported.

The journal editors, gatekeepers for the medical profession, are expected to begin requiring that drug trials be

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# Midas Touch, With Spin: Trump's Billionaire Persona

*Continued From First Business Page*

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However mixed his record as an entrepreneur, Mr. Trump has retained center stage, Trump-watchers say, by deftly massaging the news media, distracting attention from his business setbacks and doing just about anything to keep himself in the spotlight.

"He's like a kid, and he's got that brash, narcissistic thing that works for him," said Liz Smith, doyenne of Manhattan's gossip columnists and a longtime chronicler of Mr. Trump's ups and downs. "He has enormous appeal to the masses because of that."

For his part, Mr. Trump explains his marketing prowess as something that comes naturally.

"If you asked Babe Ruth how he hit home runs, he was unable to tell you," Mr. Trump said in an interview. "I do things by instinct."

Consider how Mr. Trump has handled his most recent financial problems.

In February, with his casinos hemorrhaging cash and teetering on the edge of bankruptcy, Mr. Trump issued a news release announcing that brighter days lay ahead. He trumpeted possible investment bank bailout of Trump Hotels and Casino Resorts as a "recapitalization plan" and pointed out that bankers, despite planning to force him aside as chief executive, retained global aspirations for the company. In July, as Trump Hotels reported ever-worsening financial results, Mr. Trump issued another news release saying

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Mr. Trump's financial woes are not new. A decade ago, he was forced to sell off or lose control of prized assets in New York like the Plaza Hotel and the West Side rail yards because he had saddled his real estate holdings with more debt than they could bear. Although he stated he had nev-

er personally guaranteed any of that debt, it later turned out that he had — thereby exposing himself to the prospect of personal bankruptcy.

Mr. Trump narrowly avoided that fate in the mid-1990's by tapping into his father's fortune and by receiving a financial lifeline from banks that needed his participation to bail out his sagging real estate empire. But he emerged with a greatly diminished set of properties.

Even so, he penned a popular 1997 memoir, "Trump: The Art of the Comeback," that portrayed his meltdown as a resurrection.

When pressed to offer some insight into the alchemy of remaining at center stage, Mr. Trump attributes his longevity to two things: "No. 1, you have to love what you're doing, and I love what I'm doing. And No. 2, you can never, ever give up."

Mr. Trump's showcasing of his wealth is at the heart of his appeal. He has said that he is worth anywhere from \$2 billion to \$5 billion, and he is routinely described on television and in news accounts as a billionaire. Yet there is very little evidence to support that notion.

Mr. Trump's stake in his casino holdings was worth \$34.5 million before his company said it intended to file for bankruptcy protection. Now the value of that stake is difficult to determine.

Another leg of Mr. Trump's apparent wealth, real estate, is impossible to assess accurately because it is privately held and Mr. Trump has never offered a complete public accounting of its value.

The largest portion of Mr. Trump's fortune, according to three people who have had direct knowledge of his



Donald Trump at the casting call last year for "The Apprentice," the reality show that

holdings, apparently comes from his lucrative inheritance. These people estimated that Mr. Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million. That is an enviably large sum of money by most people's standards but far short of the billionaire's club.

Mr. Trump said that because his assets were privately held he did not have to offer proof of their value.

"What my father left me is relatively small compared to what I've done," he said. "It's tiny compared to what I've done. I'm a billionaire many times over."

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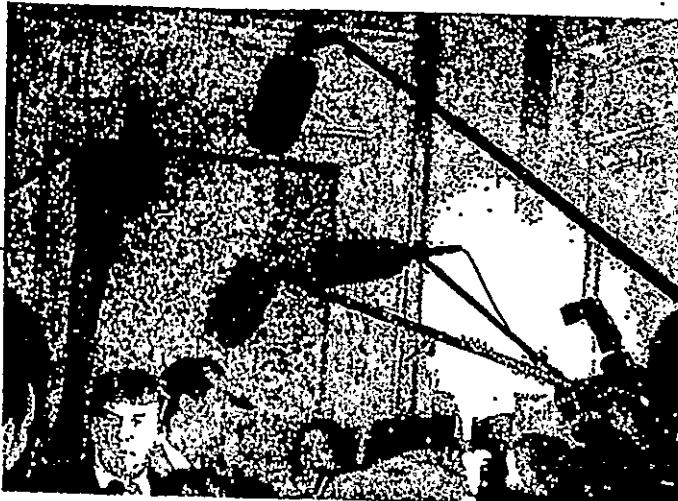
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Roby Washington/The New York Times

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But for every critic, Mr. Trump has many more acolytes. Even in his darkest days, he has rarely attracted much negative publicity, which some observers say is due to his marketing discipline and an unwavering ability to stay "on message."

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Mr. Trump, through all of his business travails, has also displayed an estimable resilience. Jeffrey A. Sonnenfeld, an associate dean of the Yale School of Management, is a frequent critic of Mr. Trump's business practices, but lauds his durability.

"He doesn't retreat," Mr. Sonnenfeld said. "He doesn't acknowledge defeat in what would normally be considered a defeat."

"There is always a new quest," Mr. Sonnenfeld added, "that gets people excited about the future."

That sense of excitement has certainly greeted the second season of "The Apprentice." On the NBC Web site promoting the coming show, last season's contestants are asked to pick three words to describe Mr. Trump. Mr. Rancic said his mentor was "Smart, Driven, Likable."

Another aspiring mogul, Jessie Connors, offered a different assessment of Mr. Trump's talents. Her three-word description: "Smoke and mirrors."

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Correction Appended

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"He doesn't retreat," Mr. Sonnenfeld said. "He doesn't acknowledge defeat in what would normally be considered a defeat."

"There is always a new quest," Mr. Sonnenfeld added, "that gets people excited about the future."

That sense of excitement has certainly greeted the second season of "The Apprentice." On the NBC Web site promoting the coming show, last season's contestants are asked to pick three words to describe Mr. Trump. Mr. Rancic said his mentor was "Smart. Driven. Likable."

Another aspiring mogul, Jessie Connors, offered a different assessment of Mr. Trump's talents. Her three-word description: "Smoke and mirrors."

Images: Photos: Donald Trump in 2002 on the future site of the Trump Park Avenue condominiums. He says his marketing savvy is instinctive. (Photo by Frances Roberts)(pg. C1); Donald Trump at the casting call last month for the second season of "The Apprentice," the reality show that has broadened his fame. (Photo by Ruby Washington/The New York Times)(pg. C2)

1 of 1 DOCUMENT

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The International Herald Tribune

September 9, 2004 Thursday

**SECTION:** FINANCE; Pg. 13

**LENGTH:** 828 words

**HEADLINE:** Trump: the image and the reality

**BYLINE:** Timothy L. O'Brien And Eric Dash

**SOURCE:** The New York Times

**BODY:**

On Thursday evening, When Donald Trump kicks off the second season of his hit reality television show, "The Apprentice," reality may be in short supply.

In a business career long protected by the safety cushion of a multimillion-dollar inheritance from his father, Trump has achieved some well-publicized successful projects like Trump Tower at 5th Avenue and 57th Street in Manhattan. But he has also repeated failures that pushed him to the edge of personal and corporate bankruptcy.

Within the next month or so, the Trump casinos are expected to file for bankruptcy protection. And Trump, a self-proclaimed billionaire "many times over," must pay \$55 million to maintain a minority stake in a gambling franchise he once owned outright.

But none of this concerns Bill Rancic, last season's victorious Apprentice and now an employee in Trump's real estate operation.

"I'm sure it will all work out with Mr. Trump," Rancic said in a telephone interview. "It always does."

Indeed. For more than two decades, Trump has weathered personal and professional vicissitudes by combining an acute marketing sensibility with unvarnished chutzpah.

"He's got a very fertile and creative imagination about how to spin issues, and he's brilliant at turning lemons into lemonade," said Alan Marcus, a consultant who oversaw Trump's public relations from 1994 to 2000. "If I ever had a weak company that I wanted to make look strong, I'd hire Donald."

However mixed his record as an entrepreneur, Trump has held center stage, Trump-watchers say, by deftly massaging the news media, distracting attention from his business setbacks, and doing just about anything to keep himself in the spotlight.

For his part, Trump explains his marketing prowess as something that comes naturally.

"If you asked Babe Ruth how he hit home runs, he was unable to tell you," Trump said in an interview. "I do things by instinct."

Consider how Trump has handled his most recent financial problems.

In February, with his casinos hemorrhaging cash and teetering on bankruptcy, Trump issued a news release announcing that brighter days lay ahead.

In July, as Trump Hotels reported ever worsening financial results, Trump issued another news release saying that he planned to build a \$300 million, 64-story hotel and condominium, the Trump International Hotel, in Las Vegas.

## Trump: the image and the reality The International Herald Tribune Septem

Trump said he was not consciously aware of issuing the news about his vague Las Vegas project in tandem with a poor corporate earnings announcement.

"I think I'm lots less aware of things like that," he said. "But people found that Las Vegas story great, that's true."

When Trump Hotels disclosed in early August plans to file for Chapter 11 bankruptcy, effectively proclaiming that the company's shareholders were about to see their equity stakes evaporate, Trump announced another innovative product: a signature line of retro, 1980s-style power suits selling for \$575 to \$650.

Trump, when pressed to offer some insight into the alchemy of remaining at center stage, attributes his longevity to two things: "Number one, you have to love what you're doing, and I love what I'm doing. And number two, you can never, ever give up."

Trump's showcasing of his wealth is at the heart of his appeal. He has said that he is worth anywhere from \$2 billion to \$5 billion and he is routinely described on television and in news accounts as a billionaire.

Yet there is very little evidence to support that notion.

Trump's stake in his casino holdings was worth \$34.5 million before his company said it intended to file for bankruptcy protection, but its value is now difficult to determine. Trump's real estate is impossible to assess accurately because it is privately held and Trump has never offered a complete public accounting of its value.

The largest portion of Trump's fortune, according to three people who have had direct knowledge of his holdings, apparently comes from his lucrative inheritance. These people estimated that Trump's wealth, presuming that it is not encumbered by heavy debt, may amount to about \$200 million to \$300 million.

Trump has also called all of his real estate holdings the biggest and the best, though his financial travails have left him in control of very few of them.

But for every critic, Trump has many more acolytes.

Even in his darkest days, he rarely has attracted much negative publicity. Some observers say this is due to his marketing discipline as well as an unwavering ability to stay "on-message."

"In his world, he's not the most successful, he's not the richest, he doesn't have the most clout in the real estate world, but ever since he came out of Queens he successfully controlled the communications process," said John Allen, who serves as senior partner at Lippincott Mercer, a brand management consultancy in New York. "He's very rarely defined by other people because he defines himself."

LOAD-DATE: September 9, 2004

1 of 1 DOCUMENT

Copyright 2004 The New York Times Company  
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September 23, 2004 Thursday  
Late Edition - Final

**SECTION:** Section C; Column 5; Business/Financial Desk; Pg. 8

**LENGTH:** 601 words

**HEADLINE:** Credit Suisse and Trump Hotels Break Off Investment Talks

**BYLINE:** By TIMOTHY L. O'BRIEN

**BODY:**

Trump Hotels and Casino Resorts Inc., the flagship of Donald J. Trump's faltering casino holdings, said late last night that a recently announced deal with Credit Suisse First Boston to inject fresh money into the debt-laden concern had fallen apart, raising doubts about how much longer the company could remain in operation without filing for bankruptcy protection or being taken over by another gambling company.

Trump Hotels has a \$73.1 million debt payment coming due in November, and the company's financial coffers have been so severely strained that casino analysts and bondholders have questioned whether the company will have the resources to make that payment.

The company had to delay a similar payment in May for 30 days while it scrambled to put together the money that it needed.

Mr. Trump and other Trump Hotels executives could not be reached for comment last night, but the company said in a statement that it planned to try to negotiate a new restructuring with bondholders.

The company also said that Mr. Trump, who is Trump Hotels' chief executive and owns a 56.4 percent stake in the casino concern, might try to privatize the company, a move that would be difficult given the tangled and tattered nature of the finances of Trump Hotels.

In August, Trump Hotels said that it planned to file for bankruptcy protection by the end of September, which it hoped would allow it to reorganize under new management and with fresh financing to ease a \$1.8 billion debt burden that has prevented it from paying for much-needed casino and hotel renovations.

Under the terms of that agreement, Mr. Trump would have given up his title as chief executive and would have had his equity stake reduced to about 25 percent. But to retain even that stake, Mr. Trump was required to make a series of investments in the company, including a \$55 million cash investment and an exchange of the Trump Hotels debt that he owns.

Credit Suisse, the investment bank that has been intimately involved in trying to restructure Trump Hotels over the last several months, had planned to invest \$345 million in the reorganized company.

That investment would have accompanied and required major financial concessions by other bondholders of Trump Hotels, an uncertain component of the repackaging given Mr. Trump's shaky relationship with his debtholders.

Trump Hotels had planned in August to file for bankruptcy protection under Chapter 11, which typically gives a company legal and financial breathing room to steady itself and ideally re-emerge as a healthier entity.

But last night's announcement that the Credit Suisse deal is off raises questions about the future of Trump Hotels.



Although Mr. Trump has routinely offered optimistic assessments of his casino company's fortunes, the company's numbers tell a different story.

Trump Hotels reported a second-quarter loss of \$17.6 million, or 59 cents a share, compared with a loss of \$10 million, or 46 cents a share, in the period a year earlier, a measure of how poorly the company has been performing. The second quarter is typically strong for casinos.

More ominously, Trump Hotels' cash reserves are shrinking. The company said in its quarterly filing that it had \$81.1 million on hand, down from \$124.3 million in the first quarter of this year.

The company had \$106 million in cash on hand at the end of the second quarter last year.

Although Mr. Trump has enjoyed a star turn as a business guru on the hit television show "The Apprentice," his casino company has never been profitable since going public in 1995.

URL: <http://www.nytimes.com>

LOAD-DATE: September 23, 2004

1 of 1 DOCUMENT

Copyright 2004 The New York Times Company  
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September 24, 2004 Friday  
Late Edition - Final

**SECTION:** Section C; Column 3; Business/Financial Desk; Pg. 1

**LENGTH:** 858 words

**HEADLINE:** Now, Reality for Trump Looks More Like 'Survivor'

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

The collapse of talks to secure financing for the struggling casinos of Donald J. Trump left him — the largest shareholder — scrambling to find alternate solutions, casino analysts said yesterday, and facing the possibility of the company's filing for bankruptcy protection.

When Mr. Trump and his partner in that potential reorganization, Credit Suisse First Boston, announced late Wednesday night that their talks had collapsed, the future of Trump Hotels and Casino Resorts Inc. was again thrown into doubt.

"I think this could get ugly because we're about to see a very high-level game of chicken," said Dennis J. Drebsky, a New York bankruptcy lawyer who has been involved in the restructuring of other Atlantic City casinos. "Your guess is as good as mine as to what happens next."

To help Trump Hotels dig out from beneath \$1.8 billion in debt that has hurt the company's operations, Credit Suisse was planning to inject \$345 million into the company, with Mr. Trump on board to invest \$55 million.

All of that hinged on getting bondholders in Trump Hotels to accept a discount on their debt holdings, something no one involved in the talks was able to do, according to two people briefed on the negotiations.

Without unified support from the bondholders, the deal fell apart. Analysts said that Trump Hotels now has to look for new investors, or restructure its debt and its relationship with bondholders without the help of a third party, or sell itself to a rival.

Indeed, during the last week, a possible sale of Mr. Trump's flagship casino, the Trump Taj Mahal Hotel Casino and Resort in Atlantic City, was considered but never pursued.

Mr. Trump, who is the chief executive and owns about 56 percent of the company, confirmed yesterday in an interview that talks about a possible sale of the Taj Mahal had taken place.

"Some people were looking at it but it was of no interest to us," he said.

Mr. Trump said that he expected a quick resolution of the financing problem for Trump Hotels.

"I'm very energized about the future of the company," he said. "I believe that our lenders are very excited about it, and I look forward to doing something in the not too distant future. I may be talking to you about it next week."

A Credit Suisse spokeswoman said yesterday that the firm was "disappointed we will not be partnering with Trump Hotels and Casino Resorts as we had planned."

Although Mr. Trump said that he would consider taking his company private, a move that would invite close scrutiny from securities regulators, some analysts said that was not a realistic option.

## Now, Reality for Trump Looks More Like 'Survivor' The New York

Jane Padreira, an analyst at Lehman Brothers, said the possibility of taking the company private was "Donaldspeak."

She said one option for Mr. Trump was to put part of his casino company, the part that included the Taj Mahal and had a \$73.1 million debt payment due in November, into a bankruptcy proceeding.

Ms. Padreira said: "He can save face now, saying, 'It wasn't my fault; I had someone to buy the company, the bondholders were unreasonable and wouldn't allow it to happen.'"

Restructuring talks began in earnest earlier this year and gained momentum after Trump Hotels announced in August that it would file for bankruptcy protection as part of a reorganization with Credit Suisse and seek concessions from its bondholders. Those involved in the talks said that the bondholders were largely, but not entirely, unified, a situation that ultimately helped make restructuring negotiations untenable.

Mr. Trump did not lead the talks with Credit Suisse for Trump Hotels. That task fell to Scott Butera, executive vice president of Trump Hotels, who, along with Credit Suisse bankers, spent most of the time negotiating with the casino company's bondholders.

"It's always a tough thing to pull together, all these constituencies," said a Trump Hotels' bondholder with direct knowledge of the negotiations. "We still have our properties. It could be back to Square 1 or it could be that they will approach us again."

The overall stock valuation of Trump Hotels is \$14 million, with slightly more than half of the company owned by Mr. Trump. Given the company's financial prospects and its unwieldy structure, some analysts say outsiders may be hesitant to become involved.

"Trump Hotels is a very risky proposition because they're midlevel casinos in a market with far more upscale casinos that have more money and better management," Mr. Drebsky, the bankruptcy lawyer, said.

"Trump's casinos haven't made any money since 1995 during a time when the casino business was very good. There's got to be a reason for that and it's not going to go away. The management hasn't been particularly sparkling."

Whatever the outcome of Mr. Trump's current travails, some people who follow the industry say the next few weeks offer the prospect of first-rate theatrics.

"We should have 'The Bondholder Restructuring Show' — forget 'The Apprentice,'" said Barbara Cappaert, a financial analyst with KDP Investment Advisors.

"We should have the restructuring negotiations live on television."

URL: <http://www.nytimes.com>

**GRAPHIC:** Photos: A possible sale of the Trump Taj Mahal Hotel Casino and Resort in Atlantic City, the flagship casino of the company, was considered, but Donald J. Trump said "it was of no interest to us." (Photo by Mary Godleski for The New York Times)(pg. C1)

Donald J. Trump is the largest shareholder of Trump Hotels. (Photo by Jennifer Graylock/Associated Press)(pg. C4)

LOAD-DATE: September 24, 2004

1 of 1 DOCUMENT

Copyright 2004 The New York Times Company  
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October 21, 2004 Thursday  
Late Edition - Final

**SECTION:** Section C; Column 5; Business/Financial Desk; Pg. 1

**LENGTH:** 618 words

**HEADLINE:** Trump Hotels Said to Reach Deal to Avoid Bankruptcy

**BYLINE:** By TIMOTHY L. O'BRIEN and ERIC DASH

**BODY:**

Trump Hotels and Casino Resorts Inc., the struggling holding company that controls Donald J. Trump's casinos, has reached a preliminary agreement with its investors to restructure \$1.8 billion in debt, fending off a possible bankruptcy filing and leaving Mr. Trump as the company's chairman and chief executive.

The restructuring — coming less than two weeks before the due date of a hefty bond payment that many analysts suspected the company might have had difficulty making — is the latest step in the dizzying round of financial deal making that the company has engaged in this year.

According to two people directly involved in the restructuring, which is expected to be announced publicly as early as today, Mr. Trump's stake in the company will be reduced from 56 percent of the shares to about 27 percent. Bondholders will be swapping about \$575 million in debt in return for an equity stake that will leave them in control of about 63 percent to 65 percent of the company's shares.

The restructuring is expected to be completed no later than February. One person involved in the deal said that Mr. Trump would invest \$55 million of his own cash and exchange \$16.4 million in Trump Hotels debt that he controls to maintain an equity stake in the company. This person also said it was possible that Mr. Trump might resign as chief executive in coming months, but that for now the company's investors valued his marketing prowess and wished to keep him aboard.

By shrinking the size of the company's debt, the transaction is expected to save Trump Hotels about \$100 million in annual interest payments, giving the company much-needed financial breathing room. Nonetheless, it will still have to pay off hundreds of millions of dollars in overall debt coming due in 2006.

Trump Hotels, which largely operates in Atlantic City, has had difficulty maintaining its competitive position there because it lacks the money to refurbish its properties and expand the number of rooms in its hotels. A recent unsuccessful restructuring bid backed by Credit Suisse First Boston, the investment bank, would have injected as much as \$400 million in fresh financing to help overhaul the properties.

Investors and others involved in the deal said that the Credit Suisse transaction fell apart because bondholders balked at what they believed were onerous financing terms imposed by the investment bank.

While in the new deal bondholders will not benefit from the outside expertise the bank would have brought to a company that has suffered from financial mismanagement, three people involved in the current negotiations said the bondholders believed that their increased equity stake offered the promise of a return in the future.

Two people involved in the talks said in interviews last night that Trump Hotels was negotiating with several banks for a \$500 million line of credit that would be used to finance an overhaul of the casinos and add new hotel rooms.

## Trump Hotels Said to Reach Deal to Avoid Bankruptcy The New York Times O

The bank loans would be secured by a first lien on all of the company's assets, meaning that if Trump Hotels collapses in the future, the banks, and not the bondholders, would be first in line to recover their losses.

But bondholders, who have had a seesaw relationship with Mr. Trump over the years, are apparently willing to roll the dice in the current round of negotiations with him, betting that their equity stake will remain sound.

One person involved in the recent talks between Mr. Trump and his investors described them as a "lovefest."

Trump Hotels has not been profitable for the last nine years, and its shares, which once traded as high as \$34 on the New York Stock Exchange, now sell over the counter for 52 cents.

URL: <http://www.nytimes.com>

LOAD-DATE: October 21, 2004

1 of 1 DOCUMENT

Copyright 2004 International Herald Tribune  
The International Herald Tribune

October 22, 2004 Friday

**SECTION:** FINANCE; Pg. 16

**LENGTH:** 587 words

**HEADLINE:** Deal keeps Trump at hotel-casino helm

**BYLINE:** Timothy L. O'Brien And Eric Dash

**SOURCE:** The New York Times

**BODY:**

Trump Hotels and Casino Resorts, the struggling holding company that controls Donald Trump's casinos, has reached a preliminary agreement with its investors to restructure \$1.8 billion in debt, fending off a possible bankruptcy filing and leaving Trump as the company's chairman and chief executive.

The restructuring — coming less than two weeks before the due date of a hefty bond payment that many analysts suspected the company might have had difficulty making — is the latest step in the dizzying round of financial deal-making for the company this year.

According to two people directly involved in the restructuring, Trump's stake in the company will be reduced to about 27 percent of the shares from 56 percent. Bondholders will be swapping about \$575 million in debt in return for an equity stake that will leave them in control of about 63 percent to 65 percent of the company's shares.

The restructuring is expected to be completed no later than February. One person involved in the deal said that Trump would invest \$55 million of his own cash and exchange \$16.4 million in Trump Hotels' debt that he controls to maintain an equity stake in the company. This person also said it was possible that Trump might resign as chief executive in coming months, but for now the company's investors valued his marketing prowess and wished to keep him.

By shrinking the size of the company's debt, the transaction is expected to save Trump Hotels about \$100 million in annual interest payments, giving it much-needed financial breathing room.

Nonetheless, it will still have to pay hundreds of millions of dollars in overall debt coming due in 2006.

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In the new deal bondholders would not benefit from the outside expertise the bank would have brought to a company that has suffered from financial mismanagement.

But three people involved in the current negotiations said the bondholders believed that their increased equity stake offered the promise of a return in the future.

Deal keeps Trump at hotel-casino helm The International Herald Tribune O

Two people involved in the talks said in interviews on Wednesday that Trump Hotels was negotiating with several banks for a \$500 million line of credit that would be used to finance an overhaul of the casinos and add new hotel rooms.

Under the deal, if Trump Hotels collapses in the future, the banks, and not the bondholders, would be first in line to recover their losses.

But bondholders, who have had strained relations with Trump, are apparently willing to roll the dice in the current round of negotiations, betting that their equity stake will stay sound.

One person involved in the recent talks between Trump and his investors described them as a "lovefest."

Trump Hotels has not been profitable for the last nine years, and its shares, which once traded as high as \$34 on the New York Stock Exchange, now sell over the counter for around 52 cents.

LOAD-DATE: October 22, 2004

From: Arthur Sulzberger JR./CORPHQ/NYTIMES <aosjr@nytimes.com>  
Sent: Tuesday, September 6, 2005 4:26 PM  
To: Tim O'Brien <tob@nytimes.com>  
Subject: RE: The Donald

Tim,

Now THAT's a great story.

Arthur

"Tim O'Brien"  
<tob@nytimes.com>

09/06/2005 04:25  
PM

To  
"Arthur Sulzberger  
JR./CORPHQ/NYTIMES"  
<aosjr@nytimes.com>  
cc

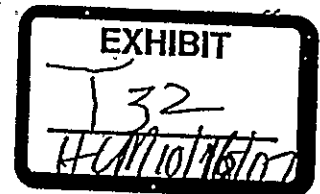
Subject  
RE: The Donald

Arthur -

No feedback at all from Donald yet. I think parts of it will make him go ballistic (particularly the stuff about the casinos and his net worth) while other parts he'll sort of relish (like raising hell in Palm Beach, the Apprentice stuff, and his-marketing mojo). Overall, I think he'll be ticked.

He did see the cover art about 6 months ago and called me to tell me: "I loooovve this. I look like some kind of superhero. Like a Marvel superhero. I loooovvee it." He keeps a copy of the cover art on his desk and said the only thing he didn't like about it was that my name was above his....

Tim



3297a

TOB-EF-00000387



-----Original Message-----

From: Arthur Sulzberger JR./CORPHQ/NYTIMES [mailto:aosjr@nytimes.com]

Sent: Tuesday, September 06, 2005 3:44 PM

To: Tim O'Brien

Subject: RE: The Donald

Tim,

Great story.

And yes, great trek. Machu Picchu is all one could hope for.

Arthur

---

PS: Donald must have seen your book by now. Any feedback?

"Tim O'Brien"

<tob@nytimes.com>

To

09/06/2005 10:36

AM

"Arthur Sulzberger

JR./CORPHQ/NYTIMES"

<aosjr@nytimes.com>

cc

Subject

RE: The Donald

Arthur --

What a surprise -- and what a kind note. I didn't even know Warner Books sent you a galley. They dropped them on a random assortment here (so Keller got one, but not Geddes; Jill got one, but not Gretchen).

Anyway, thanks for taking the time to write. Donald is easy to lampoon, but harder to portray accurately (and deep down inside he's really sort of likeable -- in the way that endearing but out-of-control 8-year-olds are likeable).

Bennett's favorite Sinatra story: When Tony's mother was dying in Astoria, Queens in the 1970s it took her a few days to go. During the last couple of days, Sinatra showed up by Mrs. Bennett's bedside and kept her company around the clock -- holding and stroking her hand and singing to her softly.

Sinatra just showed up. Tony never asked him to come, he just showed up.

Hope you loved the Inca Trail. I was a volunteer worker in Peru a couple of decades ago after college and I lived in a small Quechuan village in the Andean foothills. I trekked the Amazon outside of Iquitos and did part of the Inca Trail between Cuzco and Machu Picchu. I've lived all over the world and I still think Machu Picchu is one of the most magical and spiritual places I've visited.

---

Thanks again for the generous note.

All best,

Tim

—Original Message—

From: Arthur Sulzberger JR./CORPHQ/NYTIMES [mailto:aosjr@nytimes.com]

Sent: Monday, September 05, 2005 4:46 PM

To: tob@nytimes.com

Subject: The Donald

Tim,

I hope I have your correct e-mail address.

Just finished reading your book (while trekking the Inca Trail, no less) and wanted you to know how much I enjoyed it.

Congrats. And what, exactly, was Bennett's favorite Sinatra story?

Arthur

**From:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com> [rick.wolff@twbg.com] on behalf of rick.wolff@twbg.com  
**Sent:** Monday, October 31, 2005 11:27 AM  
**To:** tob@nytimes.com  
**Subject:** RE: CNBC, etc.

At some point we're going to reach a tipping point on this book...and Trump is going to either do something or say something that will add jet fuel to this book. Just keep up all of the good work you've done so far...and keep battling! Also -- please let Rob Nissen know about the Post story so he can follow up elsewhere.

-----Original Message-----

**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Monday, October 31, 2005 11:19 AM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
**Subject:** RE: CNBC, etc.

thanks for going the extra mile Rick. the Post story is going to run very large and be right up front in the paper....it may even be the front page, but pls keep that detail under your hat for now.

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com> [mailto:rick.wolff@twbg.com]  
**Sent:** Monday, October 31, 2005 11:12 AM  
**To:** tob@nytimes.com; rob.nissen@twbg.com  
**Subject:** RE: CNBC, etc.

Rob - this is just the kind of Trump feedback we've been waiting for! Please try very hard today to get Tim onto the more upscale major TV and radio shows (especially FOX, CNN, ABC, CBS, NPR) --even the local NYC affiliates if we can...I spoke with Imus' booker this AM - please send a book overnight to Julie Kanfer at WFAN (34-12 36<sup>th</sup> Street, Astoria NY 11106) with a note that the book is coming from me (a WFAN colleague). Finally, I just spoke with Jamie Raab and she's also eager to make sure we strike while the iron is hot. Many thanks! Rick

-----Original Message-----

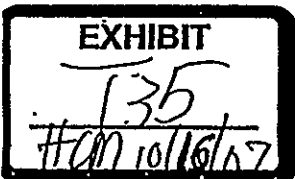
**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Monday, October 31, 2005 10:55 AM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>  
**Subject:** RE: CNBC, etc.

Rob -

He knew I'd be on because CNBC was advertising the appearance late last week and over the weekend. And CNBC is owned by NBC, and NBC airs The Apprentice. He lobbied the show not to have me on all weekend and this morning.

All of this will be elements of the stories that will run tomorrow...

We should get this in front of as many radio and TV people as possible (the CNBC stuff, organized crime ties, etc.). I don't think we want this stuck in the



Inside Edition/Extra trough, though – these new developments take the story in a different direction.

Thanks,

Tim

-----Original Message-----

**From:** Nissen, Rob - TWBG -Advertising and Promotion  
<rob.nissen@twbg.com> [mailto:rob.nissen@twbg.com]  
**Sent:** Monday, October 31, 2005 10:43 AM  
**To:** tob@nytimes.com  
**Subject:** RE: CNBC, etc.

Tim:

Sounds great. I am trying to confirm you for On the Money tonight at 7:30pm. As soon as I hear, I'll let you know. How did Trump try to kill the appearance? How did he know you'd be on? That could be a story in itself.

Rob

-----Original Message-----

**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Monday, October 31, 2005 10:22 AM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>;  
Nissen, Rob - TWBG -Advertising and Promotion  
<rob.nissen@twbg.com>  
**Cc:** Andrew Blauner  
**Subject:** CNBC, etc.

Gents –

Am getting lots of calls from people off of the CNBC gig this morning. Trump tried to get the appearance killed. On the show, I spoke about how he openly acknowledges in the book that he suspected that his early casino partners in AC had organized crime ties. I also said that the book is the story of how a "cartoon character became the most famous businessman in the U.S." and said he was more like "Baby Huey" than "Jack Welch."

He's now phoning reporters all over town saying something to the effect of "I am not a mobster. I am not Baby Huey." The NY Post is planning a big story for tomorrow...I'll let you know as I hear from others. The London Sunday Telegraph ran a big piece yesterday.

Let me know what you want to do proactively off of the CNBC appearance.

Thanks,

Tim

---

Tim O'Brien  
The New York Times  
229 W.43rd Street  
New York, NY 10036

212-556-7131

From: dave dillon <davedillon\_nsm@hotmail.com>  
Sent: Tuesday, October 25, 2005 4:42 PM  
To: tob@nytimes.com; johnbetterman@yahoo.com;  
Michael\_White@countrywide.com  
Cc: michael@obandob.com  
Subject: OB WAS ON NETWORK TV THIS AFTERNOON!!

---

No kidding, you were on INSIDE EDITION at 3:15 central time. I was talking over son. But the contractor issues with a partner were "blowing about doing a spec house with and Karl spotted you and told me to turn on channel 7. They mentioned that your quote about Donald being bored with Marla was the hit of the women's show "The View" today and showed a clip. IT WAS AWESOME-THE LADIES ATE THAT UP AND MARLA GAVE SOME COMMENTS TOO ON A PHONE INTERVIEW. YOU WERE SHARP, MAN!! (ok, enough capital letters) You said all the interviews were on tape and so it was all legit—and that your bud Dilly told you how to write each chapter. ok, maybe i added that part.

>From: "Tim O'Brien" <tob@nytimes.com>  
>To: "dave dillon" <davedillon\_nsm@hotmail.com>, <johnbetterman@yahoo.com>,  
> <Michael\_White@countrywide.com>  
>Subject: RE: FW: TRUMP / NY Post  
>Date: Tue, 25 Oct 2005 14:39:29 -0400

>  
>cnbc moved me to next monday. no more alerts from me about TV cuz it's too  
>unpredictable and i'm wasting your time!

>-----Original Message-----

>From: dave dillon [mailto:davedillon\_nsm@hotmail.com]  
>Sent: Tuesday, October 25, 2005 2:16 PM  
>To: michael@obandob.com; tob@nytimes.com; johnbetterman@yahoo.com;  
>Michael\_White@countrywide.com  
>Cc: pjoblaw@aol.com  
>Subject: Re: FW: TRUMP / NY Post

>  
>Mike—so true!!!

>  
>I just caught the last half of Trump's press conference on CNN a moment  
>ago....He said, "I know for a fact that Tim O'Brien F——ed Mike Tyson's  
>wife. Are there any other questions because if not, I'm off to buy the  
>Dallas Cowboys and update my Forbes net worth. Look at these shoes.....250  
>grand a pair, but I got them for half that because I negotiate for a  
>living."

>  
>  
>  
>  
>>From: "Michael O'Brien" <michael@obandob.com>  
>>To: "Tim O'Brien" <tob@nytimes.com>, "John Betterman"  
>><johnbetterman@yahoo.com>, "Michael White"

EXHIBIT -58  
FOR I.D. 10/13/05 1159

>><Michael\_White@countrywide.com>, "dave dillon"  
>><davedillon\_nsm@hotmail.com>  
>>CC: "Pat O'Brien" <pjoblaw@aol.com>  
>>Subject: Re: FW: TRUMP / NY Post  
>>Date: Tue, 25 Oct 2005 13:01:11 -0500  
>>  
>>This is just too much fun;The Donald pulling sophomoric staredowns on the  
>>street;probably bluffed his way through so many other confrontations,he  
>>docsn't know how to handle an authentic "whacko",who's also a terrible  
>>writer  
>>----- Original Message ----- From: "Tim O'Brien" <tob@nytimes.com>  
>>To: "John Betterman" <johnbetterman@yahoo.com>; "Michael White"  
>><Michael\_White@countrywide.com>; "dave dillon"  
>><davedillon\_nsm@hotmail.com>  
>>Cc: "Pat O'Brien" <pjoblaw@aol.com>; "Mike O'Brien" <michael@obandob.com>  
>>Sent: Tuesday, October 25, 2005 12:26 PM  
>>Subject: RE: FW: TRUMP / NY Post  
>>  
>>  
>>>LOL.  
>>>  
>>>he and I just passed on W. 57th Street. i was coming out of a TV taping  
>at  
>>>CBS about my book and he was waiting to go in, sitting in the back of  
>his  
>>>limo glowering at me through the window. it was pouring rain. i stopped  
>>>and  
>>>gave him a full salute. he closed the drapes. i jumped in a cab.  
>>>  
>>>i guess he and i won't be jumping in his chopper to catch a boxing match  
>>>together in Atlantic City after all.....  
>>>  
>>>-----Original Message-----  
>>>From: dave dillon [mailto:davedillon\_nsm@hotmail.com]  
>>>Sent: Tuesday, October 25, 2005 11:54 AM  
>>>To: tob@nytimes.com; Michael\_White@countrywide.com;  
>>>johnbetterman@yahoo.com  
>>>Subject: RE: FW: TRUMP / NY Post  
>>>  
>>>  
>>>This and the Denver Post article are just too delicious. The ripples are  
>>>starting and the word is spreading. This book is just the beginning for  
>>>Tim.  
>>>Soon, he will write "Tuesdays with Dilly" and "The Art of the Dilly."  
>>>Trump  
>>>called me this morning. He already started his new book,  
>>>"F— Tim" (due out in the spring)  
>>>  
>>>  
>>>>>From: "Tim O'Brien" <tob@nytimes.com>  
>>>>>To: "Michael White" <Michael\_White@countrywide.com>, "John  
>>>>>Betterman" <johnbetterman@yahoo.com>, "Dave Dillon"  
>>>>><davedillon\_nsm@hotmail.com>  
>>>>>Subject: FW: TRUMP / NY Post  
>>>>>Date: Tue, 25 Oct 2005 10:57:01 -0400  
>>>>>  
>>>>>  
>>>>>  
>>>>>THE NEW YORK POST

>>>>October 25, 2005

>>>>

>>>>THE DONALD 'BORES' IN ON MARLA

>>>>

>>>> By CYNTHIA R. FAGEN

>>>>

>>>> In case you haven't already overdosed on The Donald's very public

>>>>private

>>>>life, here's another delicious Trump tidbit: The real-estate mogul

>>>>confesses

>>>>he was already "bored" by Marla Maples on the very day he married her.

>>>>

>>>> "I was bored when she was walking down the aisle. I kept thinking,

>>>>What

>>>>the hell am I doing here?" he admits in a just released financial

>>>>tell-all, "TrumpNation," by Tim O'Brien.

>>>>

>>>> And in case you want to know what the "Apprentice" TV star does when

>he

>>>>is

>>>>asleep, Trump bares this sinful little revelation: He says he

>constantly

>>>>dreams about sex and, at 59, doesn't need Viagra.

>>>>

>>>> "I've always said to friends of mine, 'If you need Viagra, it's very

>>>>possible you are with the wrong woman.'"

>>>>

>>>> In one hilarious excerpt, O'Brien tells of Trump doing a little fancy

>>>>footwork with Mike Tyson, who once accused The Donald of sleeping with

>>>>the

>>>>boxer's then-wife, Robin Givens.

>>>>

>>>> "He said, 'Could I ask you, Are your f--ing my wife?' " Trump

>>>>recalled,

>>>>"Now, if I froze, I'm dead... You would have zero chance. Here's the

>>>>heavyweight champion of the world, and he's a solid piece of f--ing

>>>>armor."

>>>>

>>>> Trump doesn't disclose his answer.

>>>>

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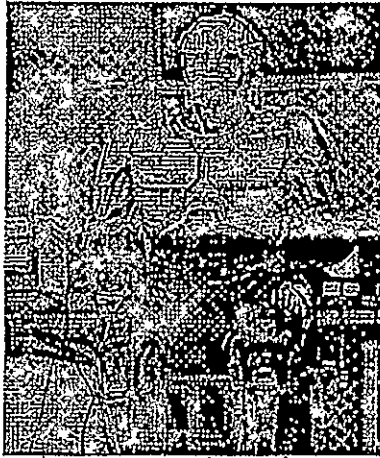
From: dave dillon <davedillon\_nsm@hotmail.com>  
Sent: Wednesday, November 9, 2005 6:27 PM  
To: tob@nytimes.com; Michael\_White@countrywide.com; pjoblaw@aol.com;  
michael@obandob.com; tob3000@comcast.net  
Subject: THIS JUST IN FROM CNBC !!!!  
Attach: CNBC FILE.doc

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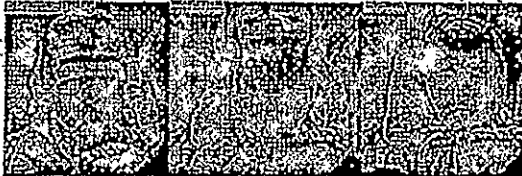
Check out these pictures of Tim getting in character for that interview last week !

EXHIBIT T56  
FOR I.D. 8/13/08 KEI

Some just released pictures of Tim backstage getting ready for the CNBC's Squawk Box interview.



And then, I'll say, "Mark, are you suggesting that because I have a web site, that I'm just in this to make money?"  
Yep... I'm ready...



Yeah, I said "Baby Huey."  
Now... who's gonna try to stop me?



DEFENDANTS' PRODUCTION/REDACTION LOG  
 May 25, 2007

DONALD J. TRUMP  
 V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS, INC.

DOCKET NO. CAM-L-545-06

Doc No.	Date	Description	Production Range	Notes
1	12/23/97	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing December 23, 1997 interview with D. Trump regarding various properties	TOB-PD-00004340 - TOB-PD-00004343	
6	03/22/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 22, 2004 interview (with E. Dash, <i>New York Times</i> journalist) of D. Trump regarding net worth, casino holdings and other assets	TOB-PD-00004311 - TOB-PD-00004319	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
10	03/25/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) March 25, 2004 interview with R. LeFrak regarding New York real estate market; and (2) March 25, 2004 interview with D. Trump regarding golf and real estate assets	TOB-PD-00004344 - TOB-PD-00004345	<ul style="list-style-type: none"> <li>R. LeFrak interview redacted</li> </ul>

Doc. No.	Date	Description	Production Range	Notes
11	03/26/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 26, 2004 interview with D. Trump regarding ownership in various properties and net worth	TOB-PD-00004323 - TOB-PD-00004324	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
27	09/02/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) September 2, 2004 interview with D. Trump regarding net worth, various real estate and entertainment assets, and persona; and (2) September 2, 2004 interview with H. Rubenstein regarding D. Trump and publicity	TOB-PD-00004325 - TOB-PD-00004331	<ul style="list-style-type: none"> <li>H. Rubenstein interview redacted</li> </ul>
29	10/19/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing October 19, 2004 interview with D. Trump regarding casino financing and D. Trump's assets	TOB-PD-00004357 - TOB-PD-00004359	
45	12/01/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing December 1, 2004 interview with D. Trump regarding T. O'Brien's book and D. Trump's business books	TOB-PD-00004360	
143	01/12/05	Notes written by T. O'Brien for the purpose of newsgathering, regarding January 12, 2005 flight with D. Trump on D. Trump's jet	TOB-EF-00007871	

Doc No.	Date	Description	Production Range	Notes
144	01/12/05	Notes written by T. O'Brien for the purpose of newsgathering, memorializing anecdotes from his January 12, 2005 flight with D. Trump	TOB-EF-00007894	
157	01/18/05	Email from E. Dash, <i>New York Times</i> journalist, to T. O'Brien for the purpose of newsgathering, appending E. Dash transcriptions of T. O'Brien notes of: (1) undated interview with E. Koch regarding New York City development, his administration, and his interaction with D. Trump; and (2) January 12, 2005 interview with D. Trump regarding various topics including Wollman Rink, E. Koch, marriage, childhood, entertainment, and real estate properties	TOB-EF-00007765 - TOB-EF-00007797	<ul style="list-style-type: none"> <li>Email from E. Dash redacted</li> <li>E. Koch interview redacted</li> </ul>
189	02/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 1, 2005 interview with D. Trump regarding assets, press coverage, and marriage	TOB-PD-00004361 - TOB-PD-00004363	
198	02/03/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 1, 2005 interview with D. Trump regarding M. Stewart	TOB-PD-00004364	

Doc. No.	Date	Description	Production Range	Notes
218	02/16/05	Interview notes written by T. O'Brien memorializing February 16, 2005 interviews with: (1) D. Trump focused on a range of topics including various New York developments, golf courses, entertainment properties, and marriage; and (2) G. Cuneo regarding business dealings and construction	TOB-EF-00007798 - TOB-EF-00007825	
220	02/16/05	Interview notes written by J. Plambeck, Research Assistant, for the purpose of newsgathering, memorializing February 16, 2005 interview with D. Trump and G. Cuneo regarding business dealings and construction	TOB-EF-00007872 - TOB-EF-00007873	
221	02/16/05	Portion of notes of T. O'Brien interview with D. Trump for the purpose of newsgathering, conducted on February 16, 2005 regarding D. Trump's decision to cooperate with T. O'Brien on the Work and D. Trump's ability to fight back, and including observations from T. O'Brien	TOB-EF-00007877 - TOB-EF-00007879	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> </ul>
224	02/16/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 16, 2005 interview with D. Trump regarding various entertainment and various real estate properties	TOB-PD-00004365 - TOB-PD-00004368	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> </ul>
246	03/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 1, 2005 interview with D. Trump	TOB-PD-00004369	

Doc No.	Date	Description	Production Range	Notes
250	03/02/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 2, 2005 interview with D. Trump regarding branding and wedding	TOB-PD-00004370 - TOB-PD-00004372	
252	03/04/05 03/05/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 4-5, 2005 interviews with: (1) D. Trump and A. Weisselberg regarding D. Trump's finances in the early 1990s, development in Atlantic City and New York, and airlines; (2) H. Grace regarding Palm Beach and D. Trump; (3) D. Trump regarding Mar-A-Lago, golf courses, and style; (4) A. Senecal regarding Mar-A-Lago; and (5) N. Gerber regarding D. Trump	TOB-EF-00007826 - TOB-EF-00007867	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> <li>• H. Grace interview redacted</li> <li>• A. Senecal interview redacted</li> </ul>
350	03/16/05 03/28/05	Portion of notes of several March 16 and 28, 2005 interviews with T. O'Brien and D. Trump for the purpose of newsgathering, covering topics including suits, family, press coverage, prior financial difficulties, and various assets, and also including portions of a press conference with others including P. Hunsinger	TOB-EF-00007880 - TOB-EF-00007893	
359	04/16/05	Notes written by T. O'Brien on April 16, 2005 for the purpose of newsgathering, memorializing anecdotes from his trip to Mar-a-Lago with D. Trump	TOB-EF-00007874 - TOB-EF-00007876	



Doc No	Date	Description	Production Range	Notes
365	04/18/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 18, 2005 interview with D. Trump regarding golf course	TOB-PD-00004373	<ul style="list-style-type: none"> <li>T. O'Brien personal note redacted</li> </ul>
366	04/19/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 19, 2005 interview with D. Trump regarding net worth and schedule for future interviews	TOB-PD-00004374	
376	04/21/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 21, 2005 interview with A. Weisselberg and M. Scarbrough regarding D. Trump's assets and net worth	TOB-PD-00004297 - TOB-PD-00004310	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
383	04/25/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 25, 2005 interview with D. Trump regarding net worth	TOB-PD-00004375	
400	05/05/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing May 5, 2005 interview with D. Trump regarding net worth	TOB-PD-00004376 - TOB-PD-00004377	

Doc No	Date	Description	Production Range	Notes
423	05/18/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing May 18, 2005 interview with D. Trump regarding World Trade Center, Apprentice, and casinos	TOB-PD-00004378 - TOB-PD-00004379	
443	06/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing June 1, 2005 interview conducted off the record with D. Trump regarding valuations of D. Trump properties	TOB-PD-00004332	
445	06/02/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing June 2, 2005 interview with M. Scarbrough regarding D. Trump's assets and valuations	TOB-PD-00004333 - TOB-PD-00004334	
569	10/21/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing October 21, 2005 interviews with: (1) M. Scarbrough regarding D. Trump's casino holdings; (2) J. Lerner regarding the Westside Yards lawsuit; (3) R. Graff regarding D. Trump's casino holdings; and (4) M. Bowe regarding D. Trump's real estate holdings	TOB-PD-00004335 - TOB-PD-00004339	<ul style="list-style-type: none"> <li>• J. Lerner interview redacted</li> <li>• R. Graff interview redacted</li> <li>• M. Bowe interview redacted</li> </ul>
725	Undated	Interview notes written by T. O'Brien memorializing undated Q&A with D. Trump, regarding topics including <i>The Apprentice</i> and marriage	TOB-EF-00007868 - TOB-EF-00007870	

Doc No.	Date	Description	Production Range	Notes
851	03/24/04 and Withheld	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) March 24, 2004 interview with D. Trump regarding potential newsgathering sources; and (2) interview with confidential newsgathering sources regarding D. Trump's business dealings and net worth	TOB-PD-00004320 - TOB-PD-00004322	<ul style="list-style-type: none"> <li>• Interview with confidential sources redacted</li> </ul>
856	08/09/04 and 08/10/04 and Withheld	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) August 9, 2004 interview with S. Butera regarding casinos; (2) August 10, 2004 interview with T. Dean regarding casinos and financing; (3) August 10, 2004 interview with D. Trump regarding casino financing and net worth; and (4) interviews with several confidential sources regarding D. Trump's casinos and financing	TOB-PD-00004346 - TOB-PD-00004356	<ul style="list-style-type: none"> <li>• S. Butera interview redacted</li> <li>• Editorial comment redacted</li> <li>• T. Dean interview redacted</li> <li>• Interviews with confidential sources redacted</li> </ul>
880	12/20/04	Audio recording for the purpose of newsgathering of December 20, 2004 interview by T. O'Brien with D. Trump regarding various topics including D. Trump's persona and his real estate and entertainment properties	TOB-M-0003	

Doc No.	Date	Description	Production Range	Notes
898	01/12/05	Audio recording for the purpose of newsgathering of January 12, 2005 interview by T. O'Brien with D. Trump regarding various topics including Wollman Rink, E. Koch, marriage, childhood, entertainment, and real estate properties	TOB-M-0004 - TOB-M-0016	
917	02/16/05	Audio recording for the purpose of newsgathering of February 16, 2005 interviews by T. O'Brien with: (1) D. Trump focused on a range of topics including various New York developments, golf courses, entertainment properties, and marriage; (2) G. Corneo regarding business dealings and construction	TOB-M-0017 - TOB-M-0032	
918	03/04/05 03/05/05	Audio recording for the purpose of newsgathering of March 4-5, 2005 interviews by T. O'Brien with: (1) D. Trump and A. Weisselberg regarding D. Trump's finances in the early 1990s, development in Atlantic City and New York, and airlines; (2) H. Grace regarding Palm Beach and D. Trump; (3) D. Trump regarding Mar-A-Lago, golf courses, and style; (4) A. Senecal regarding Mar-A-Lago; and (5) N. Gerber regarding D. Trump	TOB-M-0033 - TOB-M-0040	<ul style="list-style-type: none"> <li>• H. Grace interview withheld</li> <li>• A. Senecal interview withheld</li> </ul>
919	03/06/05	Audio recording for the purpose of newsgathering of March 6, 2005 interview by T. O'Brien with T. Bennett regarding F. Sinatra, including comments by D. Trump	TOB-M-0041	

Doc No	Date	Description	Producer/Range	Notes
924	03/16/05	Audio recording for the purpose of newsgathering of March 16, 2005 press conference at Macy's regarding Trump's suits	TOB-M-0042	
930	03/28/05	Audio recording for the purpose of newsgathering of March 28, 2005 interview by T. O'Brien with D. Trump regarding various topics including press coverage, prior financial difficulties, and various assets	TOB-M-0043	
936	04/23/05	Audio recording for the purpose of newsgathering of April 23, 2005 interview by T. O'Brien with D. Trump regarding various topics including marriage, family, and <i>The Apprentice</i>	TOB-M-0044	

DEFENDANTS' PRODUCTION/REDACTION LOG

SEPTEMBER 19, 2007

DONALD J. TRUMP  
V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS, INC.

DOCKET NO. CAM-L-545-06

Doc No.	Date	Description	Production Range	Notes
239	02/25/05	Invoice from J. Plambeck, Research Assistant, to T. O'Brien for research services in connection with editorial process and newsgathering for February 2005	TOB-EF-00007900 - TOB-EF-00007901	• Social security number redacted
353	04/08/05	Email from J. Plambeck, Research Assistant, to T. O'Brien, discussing invoice for March and April research assistance for the purpose of newsgathering	TOB-EF-00007898	
354	04/08/05	Invoice from J. Plambeck, Research Assistant, to T. O'Brien for research services in connection with editorial process and newsgathering for March/April 2005	TOB-EF-00007899	• Social security number redacted

DEFENDANTS' PRODUCTION/REDACTION LOG  
 May 25, 2007

DONALD J. TRUMP  
 V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS, INC.

DOCKET NO. CAM-L-545-06

Doc No	Date	Description	Production Range	Notes
1	12/23/97	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing December 23, 1997 interview with D. Trump regarding various properties	TOB-PD-00004340 - TOB-PD-00004343	
6	03/22/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 22, 2204 interview (with E. Dash, <i>New York Times</i> journalist) of D. Trump regarding net worth, casino holdings and other assets	TOB-PD-00004311 - TOB-PD-00004319	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
10	03/25/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) March 25, 2004 interview with R. LeFrak regarding New York real estate market; and (2) March 25, 2004 interview with D. Trump regarding golf and real estate assets	TOB-PD-00004344 - TOB-PD-00004345	<ul style="list-style-type: none"> <li>R. LeFrak interview redacted</li> </ul>

Doc No.	Date	Description	Production Range	Notes
11	03/26/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 26, 2004 interview with D. Trump regarding ownership in various properties and net worth	TOB-PD-00004323 - TOB-PD-00004324	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
27	09/02/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) September 2, 2004 interview with D. Trump regarding net worth, various real estate and entertainment assets, and persons; and (2) September 2, 2004 interview with H. Rubenstein regarding D. Trump and publicity	TOB-PD-00004325 - TOB-PD-00004331	<ul style="list-style-type: none"> <li>H. Rubenstein interview redacted</li> </ul>
29	10/19/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing October 19, 2004 interview with D. Trump regarding casino financing and D. Trump's assets	TOB-PD-00004357 - TOB-PD-00004359	
45	12/01/04	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing December 1, 2004 interview with D. Trump regarding T. O'Brien's book and D. Trump's business books	TOB-PD-00004360	
143	01/12/05	Notes written by T. O'Brien for the purpose of newsgathering, regarding January 12, 2005 flight with D. Trump on D. Trump's jet	TOB-EF-00007871	



Doc No.	Date	Description	Production Range	Notes
144	01/12/05	Notes written by T. O'Brien for the purpose of newsgathering, memorializing anecdotes from his January 12, 2005 flight with D. Trump	TOB-EF-00007894	
157	01/18/05	Email from E. Dash, <i>New York Times</i> journalist, to T. O'Brien for the purpose of newsgathering, appending E. Dash transcriptions of T. O'Brien notes of: (1) undated interview with E. Koch regarding New York City development, his administration, and his interaction with D. Trump; and (2) January 12, 2005 interview with D. Trump regarding various topics including Wollman Rink, E. Koch, marriage, childhood, entertainment, and real estate properties	TOB-EF-00007765 - TOB-EF-00007797	<ul style="list-style-type: none"> <li>Email from E. Dash redacted</li> <li>E. Koch interview redacted</li> </ul>
189	02/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 1, 2005 interview with D. Trump regarding assets, press coverage, and marriage	TOB-PD-00004361 - TOB-PD-00004363	
198	02/03/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 1, 2005 interview with D. Trump regarding M. Stewart	TOB-PD-00004364	

Doc No	Date	Description	Production Range	Notes
218	02/16/05	Interview notes written by T. O'Brien memorializing February 16, 2005 interviews with: (1) D. Trump focused on a range of topics including various New York developments, golf courses, entertainment properties, and marriage; and (2) G. Cuneo regarding business dealings and construction	TOB-EF-00007798 - TOB-EF-00007825	
220	02/16/05	Interview notes written by J. Plambeck, Research Assistant, for the purpose of newsgathering, memorializing February 16, 2005 interview with D. Trump and G. Cuneo regarding business dealings and construction	TOB-EF-00007872 - TOB-EF-00007873	
221	02/16/05	Portion of notes of T. O'Brien interview with D. Trump for the purpose of newsgathering, conducted on February 16, 2005 regarding D. Trump's decision to cooperate with T. O'Brien on the Work and D. Trump's ability to fight back, and including observations from T. O'Brien	TOB-EF-00007877 - TOB-EF-00007879	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> </ul>
224	02/16/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing February 16, 2005 interview with D. Trump regarding various entertainment and various real estate properties	TOB-PD-00004365 - TOB-PD-00004368	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> </ul>
246	03/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 1, 2005 interview with D. Trump	TOB-PD-00004369	

Doc No.	Date	Description	Production Range	Notes
250	03/02/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 2, 2005 interview with D. Trump regarding branding and wedding	TOB-PD-00004370 - TOB-PD-00004372	
252	03/04/05 03/05/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing March 4-5, 2005 interviews with: (1) D. Trump and A. Weisberg regarding D. Trump's finances in the early 1990s, development in Atlantic City and New York, and airlines; (2) H. Grace regarding Palm Beach and D. Trump; (3) D. Trump regarding Mar-A-Lago, golf courses, and style; (4) A. Senecal regarding Mar-A-Lago; and (5) N. Gerber regarding D. Trump	TOB-EF-00007826 - TOB-EF-00007867	<ul style="list-style-type: none"> <li>• Editorial comment redacted</li> <li>• H. Grace interview redacted</li> <li>• A. Senecal interview redacted</li> </ul>
350	03/16/05 03/28/05	Portion of notes of several March 16 and 28, 2005 interviews with T. O'Brien and D. Trump for the purpose of newsgathering, covering topics including suits, family, press coverage, prior financial difficulties, and various assets, and also including portions of a press conference with others including P. Hunsinger	TOB-EF-00007880 - TOB-EF-00007893	
359	04/16/05	Notes written by T. O'Brien on April 16, 2005 for the purpose of newsgathering, memorializing anecdotes from his trip to Mar-a-Lago with D. Trump	TOB-EF-00007874 - TOB-EF-00007876	

Doc No.	Date	Description	Prohibition Range	Notes
365	04/18/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 18, 2005 interview with D. Trump regarding golf course	TOB-PD-00004373	<ul style="list-style-type: none"> <li>T. O'Brien personal note redacted</li> </ul>
366	04/19/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 19, 2005 interview with D. Trump regarding net worth and schedule for future interviews	TOB-PD-00004374	
376	04/21/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 21, 2005 interview with A. Weisselberg and M. Scarbrough regarding D. Trump's assets and net worth	TOB-PD-00004297 - TOB-PD-00004310	<ul style="list-style-type: none"> <li>Editorial comment redacted</li> </ul>
383	04/25/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing April 25, 2005 interview with D. Trump regarding net worth	TOB-PD-00004375	
400	05/05/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing May 5, 2005 interview with D. Trump regarding net worth	TOB-PD-00004376 - TOB-PD-00004377	

Doc No.	Date	Description	Production Range	Notes
423	05/18/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing May 18, 2005 interview with D. Trump regarding World Trade Center, Apprentice, and casinos	TOB-PD-00004378 - TOB-PD-00004379	
443	06/01/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing June 1, 2005 interview conducted off the record with D. Trump regarding valuations of D. Trump properties	TOB-PD-00004332.	
445	06/02/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing June 2, 2005 interview with M. Scarbrough regarding D. Trump's assets and valuations	TOB-PD-00004333 - TOB-PD-00004334	
569	10/21/05	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing October 21, 2005 interviews with: (1) M. Scarbrough regarding D. Trump's casino holdings; (2) J. Lerner regarding the Westside Yards lawsuit; (3) R. Graff regarding D. Trump's casino holdings; and (4) M. Bowe regarding D. Trump's real estate holdings	TOB-PD-00004335 - TOB-PD-00004339	<ul style="list-style-type: none"> <li>• J. Lerner interview redacted</li> <li>• R. Graff interview redacted</li> <li>• M. Bowe interview redacted</li> </ul>
725	Undated	Interview notes written by T. O'Brien memorializing undated Q&A with D. Trump, regarding topics including <i>The Apprentice</i> and marriage	TOB-EF-00007868 - TOB-EF-00007870	

Doc No.	Date	Description	Production Range	Notes
851	03/24/04 and Withheld	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) March 24, 2004 interview with D. Trump regarding potential newsgathering sources; and (2) interview with confidential newsgathering sources regarding D. Trump's business dealings and net worth	TOB-PD-00004320 - TOB-PD-00004322	<ul style="list-style-type: none"> <li>• Interview with confidential sources redacted</li> </ul>
856	08/09/04 and 08/10/04 and Withheld	Interview notes written by T. O'Brien for the purpose of newsgathering, memorializing: (1) August 9, 2004 interview with S. Butera regarding casinos; (2) August 10, 2004 interview with T. Dean regarding casinos and financing; (3) August 10, 2004 interview with D. Trump regarding casino financing and net worth; and (4) interviews with several confidential sources regarding D. Trump's casinos and financing	TOB-PD-00004346 - TOB-PD-00004356	<ul style="list-style-type: none"> <li>• S. Butera interview redacted</li> <li>• Editorial comment redacted</li> <li>• T. Dean interview redacted</li> <li>• Interviews with confidential sources redacted</li> </ul>
880	12/20/04	Audio recording for the purpose of newsgathering of December 20, 2004 interview by T. O'Brien with D. Trump regarding various topics including D. Trump's persona and his real estate and entertainment properties	TOB-M-0003	

Doc No	Date	Description	Production Range	Notes
898	01/12/05	Audio recording for the purpose of newsgathering of January 12, 2005 interview by T. O'Brien with D. Trump regarding various topics including Wollman Rink, E. Koch, marriage, childhood, entertainment, and real estate properties	TOB-M-0004 - TOB-M-0016	
917	02/16/05	Audio recording for the purpose of newsgathering of February 16, 2005 interviews by T. O'Brien with: (1) D. Trump focused on a range of topics including various New York developments, golf courses, entertainment properties, and marriage; (2) G. Corneo regarding business dealings and construction	TOB-M-0017 - TOB-M-0032	
918	03/04/05 03/05/05	Audio recording for the purpose of newsgathering of March 4-5, 2005 interviews by T. O'Brien with: (1) D. Trump and A. Weisselberg regarding D. Trump's finances in the early 1990s, development in Atlantic City and New York, and airlines; (2) H. Grace regarding Palm Beach and D. Trump; (3) D. Trump regarding Mar-A-Lago, golf courses, and style; (4) A. Senecal regarding Mar-A-Lago; and (5) N. Gerber regarding D. Trump	TOB-M-0033 - TOB-M-0040	<ul style="list-style-type: none"> <li>• H. Grace interview withheld</li> <li>• A. Senecal interview withheld</li> </ul>
919	03/06/05	Audio recording for the purpose of newsgathering of March 6, 2005 interview by T. O'Brien with T. Bennett regarding F. Sinatra, including comments by D. Trump	TOB-M-0041	

Doc No.	Date	Description	Production Range	Notes
924	03/16/05	Audio recording for the purpose of newsgathering of March 16, 2005 press conference at Macy's regarding Trump's suits	TOB-M-0042	
930	03/28/05	Audio recording for the purpose of newsgathering of March 28, 2005 interview by T. O'Brien with D. Trump regarding various topics including press coverage, prior financial difficulties, and various assets	TOB-M-0043	
936	04/23/05	Audio recording for the purpose of newsgathering of April 23, 2005 interview by T. O'Brien with D. Trump regarding various topics including marriage, family, and <i>The Apprentice</i>	TOB-M-0044	



DEFENDANTS' REDACTION LOG  
 SEPTEMBER 27, 2006

DONALD J. TRUMP  
 V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS, INC.

DOCKET NO. CAM-L-545-06

Doc. No.	Redaction No.	Date	Description	To	From	Page Count
1	TOB-EF-00000061 - TOB-EF-00000062	10/21/05	Email from counsel re: research concerning D. Trump interest in property	D. McCraw	T. O'Brien	AC WP
2	TOB-EF-00000066 - TOB-EF-00000067	10/21/05	Email from counsel re: research concerning D. Trump interest in property	D. McCraw	T. O'Brien	AC WP
3	TOB-EF-00000121 - TOB-EF-00000122	10/21/05	Email from counsel re: research concerning D. Trump interest in property	D. McCraw	T. O'Brien	AC WP
4	TOB-EF-00000211 - TOB-EF-00000214	09/07/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP

Doc No.	Production No.	Date	Description	To	From	CC Party Claim
5	TOB-EF-00000215 - TOB-EF-00000219	09/06/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
6	TOB-EF-00000220 - TOB-EF-00000223	09/06/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
7	TOB-EF-00000224 - TOB-EF-00000226	08/18/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
8	TOB-EF-00000270 - TOB-EF-00000272	09/12/05	Email re: editorial content of Work excerpt	R. Wolff T. O'Brien R. Nissen A. Blauner J. Pinter E. Battaglia	L. Bonner	NP
9	TOB-EF-00000536 - TOB-EF-00000542	10/24/05	Email reflecting request for legal advice from H. Kilpatrick and C. Ross	L. Dubelman K. Leonard paca@vidlit.com	R. Wolf T. O'Brien R. Nissen	AC WP

Doc. No.	Perchusion No.	Date	Description	To	From	Pub. or Class.
10	TOB-EF-00000885 - TOB-EF-00000887	11/19/04	Agreement between Blauer Books Literary Agency and T. O'Brien			SSN
11	TOB-EF-00000888 - TOB-EF-00000890	11/19/04	Agreement between Blauer Books Literary Agency and T. O'Brien			SSN
12	TWBG-EF-00000373 - TWBG-EF-00000375	01/26/06	Email conveying advice of counsel regarding re: Dow Jones report on Trump lawsuit	R. Nissen	J. Romanello	AC WP
13	TWBG-EF-00000400 - TWBG-EF-00000402	01/26/06	Email conveying advice of counsel concerning Trump lawsuit	R. Nissen	T. O'Brien	AC WP
14	TWBG-EF-00000403 - TWBG-EF-00000404	01/26/06	Email conveying advice of counsel concerning Trump lawsuit	T. O'Brien	R. Nissen	AC WP
15	TWBG-EF-00000432 - TWBG-EF-00000433	01/25/06	Email conveying advice of counsel concerning Trump lawsuit	R. Nissen	R. Wolff	AC WP
16	TWBG-EF-00000515 - TWBG-EF-00000516	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	R. Nissen	J. Romanello	AC WP

Date	Production No.	Date	Description	To	From	cc	Priority
17	TWBG-EF-00000517 - TWBG-EF-00000518	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	J. Romanello	R. Nissen		AC WP
18	TWBG-EF-00000519 - TWBG-EF-00000520	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	R. Nissen	J. Romanello		AC WP
19	TWBG-EF-00000522	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	R. Nissen	J. Romanello		AC WP
20	TWBG-EF-00000523	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	R. Nissen	J. Romanello		AC WP
21	TWBG-EF-00000524	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	J. Romanello	R. Nissen		AC WP
22	TWBG-EF-00000966 - TWBG-EF-00000967	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	T. O'Brien	R. Nissen		AC WP
23	TWBG-PD-00000427	02/24/06	Summary chart re: Internet coverage of Work with handwritten notes requesting advice of counsel				AC WP

Doc No.	Production No.	Date	Description	Name	Category
24	TWBG-PD-00000467 - TWBG-PD-00000468	01/24/06	Email seeking advice of counsel concerning Trump lawsuit	M. Schachter	AC WP
25	TWBG-PD-00000478 - TWBG-PD-00000488	02/21/06	Email seeking advice of counsel concerning Trump lawsuit	M. Schachter	AC WP
26	TWBG-PD-00000517	06/14/05	Time Warner Audiobooks Contract Request		SSN
27	TWBG-PD-00000519 - TWBG-PD-00000523	06/14/05	Abridger Agreement relating to audio Work		SSN
28	TWBG-PD-00000525	08/15/05	Invoice relating to audio Work	D. Kao	SSN
29	TWBG-PD-00000526	08/09/05	Invoice relating to audio Work	D. Kao	SSN
30	TWBG-PD-00000527	08/09/05	Invoice relating to audio Work	D. Kao	SSN
31	TWBG-PD-00000528	07/29/05	Invoice relating to audio Work	D. Kao	SSN

Doc No	Production No.	Date	Description	To	From	Off icer	Priv ( )
32	TWBG-PD-00000530	06/14/05	Invoice relating to audio Work	D. Kao	L. Gallagher	K. Sayle	SSN
33	TWBG-PD-00000559	04/12/05	Email relating to audio Work	D. Kao	A. Blauner	J. Dorries	SSN
34	TWBG-PD-00000788 - TWBG-PD-00000789	10/04/05	Email conveying advice of counsel concerning Work	R. Wolff	R. Nissen		AC WP
35	TWBG-PD-00000810 - TWBG-PD-00000811	09/12/05	Email conveying advice of counsel concerning Work	R. Wolff T. O'Brien R. Nissen A. Blauner J. Pinter E. Battaglia	L. Bonner		AC WP
36	TWBG-PD-00000814 - TWBG-PD-00000815	09/12/05	Email conveying advice of counsel concerning Work	T. O'Brien	L. Bonner	R. Wolff	AC WP
37	TWBG-PD-00000834 - TWBG-PD-00000838	10/24/05	Email conveying advice of counsel re: Work	R. Wolff	T. O'Brien	R. Nissen	AC WP

Doc. No.	Production No.	Date	Description	To	From	AC/ WP (Claim)
38	TWBG-PD-00000839 - TWBG-PD-00000843	10/24/05	Email conveying advice of counsel re: VidLit	K. Leonard-O'Keefe paca@vidlit.com R. Wolff	L. Dubelman	AC WP
39	TWBG-PD-00000987	02/23/06	Email seeking advice of counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
40	TWBG-PD-00001349 - TWBG-PD-00001350	04/17/06	Email to counsel re: Trump lawsuit	M. Schachter	T. Lutkus	AC WP
41	TWBG-PD-00001584	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
42	TWBG-PD-00001585	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
43	TWBG-PD-00001586	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
44	TWBG-PD-00001587	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP

Doc. No.	Producing No.	Date	Description	To	From	Party or Claim
45	TWBG-PD-00001588	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
46	TWBG-PD-00001589	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
47	TWBG-PD-00001590	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
48	TWBG-PD-00001591	03/10/06	Email to counsel re: Trump lawsuit	M. Schachter	N. Wiese	AC WP
49	TWBG-PD-00000001 - TWBG-PD-00000007	10/27/05	Facsimile cover sheet reflecting request for advice of counsel re: VidLit	K. Leonard	L. Dubelman	AC WP
50	TWBG-PD-00000011 - TWBG-PD-00000017	06/26/06	Email relating to advice of counsel re: Trump lawsuit	M. Schachter	S. Mubarek	AC WP
51	TWBG-PD-00000156	02/20/05	Invoice for photo research for Work	F. Tonuzi	L. Wyss	SSN



Doc ID	Production No.	Date	Description	To	From	Party (Initial)
52	TWBG-PD-00000179	08/09/05	Invoice for freelance services for Work	Warner Books	J. Ordansky	SSN
53	TWBG-PD-00000231	06/14/05	TW Audiobooks Request for Payment form to A. Loschert	L. Gallagher	D. Kao	SSN K. Sayle
54	TWBG-PD-00000237	07/26/05	TW Audiobooks Request for Payment form to A. Blauner			SSN
55	TWBG-PD-00000244	07/29/05	Invoice relating to audio Work	D. Kao	M. Pelfry	SSN
56	TWBG-PD-00000247	08/09/05	Invoice relating to audio Work	D. Kao	A. Hong	SSN
57	TWBG-PD-00000250	08/08/05	Invoice relating to audio Work	D. Kao	N. Marshall	SSN
58	TWBG-PD-00000300 - TWBG-PD-00000308	09/06 - 01/06	Chart of payments relating to TWBG audiobooks reflecting advice of counsel			AC WP

Doc. No.	Production No.	Date	Description	To	From	Doc. No.	Priv. Claim
59	TWBG-PD-00000419	12/15/04	TW Audiobooks Request for Payment Form to T. O'Brien				SSN
60	TWBG-PD-00000420	04/02/05	Fact Sheet reflecting request for advice of counsel				AC WP
61	TWBG-PD-00000961	12/15/04	Warner Books, Inc. Request for Payment Form to Blauner Books Literary Agency				SSN
62	TWBG-EF-00000004	08/09/05	Invoice relating to audio Work	D. Kao	A. Hong		SSN
63	TWBG-PD-00000969 - TWBG-PD-00000986	12/10/04	Warner Books, Inc. Request for Payment Form to T. O'Brien with attached Agreement between T. O'Brien and Warner Books, Inc.				SSN
64	TWBG-PD-00001559 - TWBG-PD-00001573	12/10/04	Email Agreement between T. O'Brien and Warner Books, Inc.	D. Kao	A. Blauner	J. Dorries	SSN

Doc No	Production No	Date	Description	To	From	Set	SSN/Status
65	TWBG-PD-00000531	04/13/05	TW Audio Books Request for Payment Form to Blauner Books Literary Agency	C. Alexis-Bowes	M. Thomas	K. Sayle	SSN
66	TWBG-PD-00000107 - TWBG-PD-00000121	12/10/04	Agreement between T. O'Brien and Warner Books, Inc.				SSN
67	TWBG-EF-00000006	08/15/05	Invoice relating to audio Work	D. Kao	N. Marshall		SSN
68	TWBG-EF-00000004	08/09/05	Invoice relating to audio Work	D. Kao	A. Hong		SSN
69	TWBG-EF-00000521	01/24/06	Email reflecting activities of counsel concerning Trump lawsuit	J. Romanello	R. Nissen		AC WP
70	TWBG-EM-00022073 - TWBG-EM-00022074	03/08/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
71	TWBG-EM-00000561 - TWBG-EM-00000563	02/08/06	Email conveying advice of counsel concerning Trump lawsuit	R. Wolff	J. Pinter		AC WP

Item No.	Production No.	Date	Description	To	From	Type of Party
72	TWBG-EM-00000564 - TWBG-EM-00000566	02/08/06	Email conveying advice of counsel concerning Trump lawsuit	R. Wolff	J. Pinter	AC WP
73	TWBG-EM-000006096	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
74	TWBG-EM-000006097	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
75	TWBG-EM-000006098	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
76	TWBG-EM-000006099	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
77	TWBG-EM-000006100 - TWBG-EM-000006101	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
78	TWBG-EM-000006102 - TWBG-EM-000006103	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP

Doc No.	Production No.	Date	Description	To	From	File Category
79	TWBG-EM-00006222 - TWBG-EM-00006225	01/31/06	Email conveying advice of counsel concerning Trump lawsuit	J. Romanello	R. Nissen	AC WP
80	TWBG-EM-00007629 - TWBG-EM-00007630	01/24/06	Email conveying advice of counsel concerning Trump lawsuit	R. Wolff	J. Raab	AC WP
81	TWBG-EM-00009972 - TWBG-EM-00009973	08/18/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
82	TWBG-EM-00009977 - TWBG-EM-00009979	09/06/05	Email re: editorial content of Work excerpt	R. Nissen	T. O'Brien	NP
83	TWBG-EM-00009980 - TWBG-EM-00009982	09/06/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
84	TWBG-EM-00009980 - TWBG-EM-00009982	09/06/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
85	TWBG-EM-00009983 - TWBG-EM-00009986	09/06/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP

Doc No.	Production No.	Date	Description	To	From	Legal Claim
86	TWBG-EM-00009987 - TWBG-EM-00009989	09/07/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
87	TWBG-EM-00009990 - TWBG-EM-00009992	09/07/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
88	TWBG-EM-00009993 - TWBG-EM-00009995	09/07/05	Email re: editorial content of Work excerpt	L. Bonner	T. O'Brien	NP
89	TWBG-EM-00010011 - TWBG-EM-00010013	10/20/05	Email re: editorial content of Work excerpt	L. Bonner	J. Impoco	NP
90	TWBG-EM-00010152 - TWBG-EM-00010153	03/02/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works			
91	TWBG-EM-00021967 - TWBG-EM-00021968	02/02/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works			

Doc No	Production No	Date	Description	To	From	Doc No	Doc Title
92	TWBG-EM-00022058 - TWBG-EM-00022062	02/02/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
93	TWBG-EM-00022082	03/17/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
94	TWBG-EM-00022083	03/07/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
95	TWBG-EM-00022084 - TWBG-EM-00022085	03/09/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
96	TWBG-EM-00022086 - TWBG-EM-00022087	03/08/05	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				

Topic	Production No.	Date	Description	From	To	Page	Claim
97	TWBG-EM-00022517 - TWBG-EM-00022518	03/02/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
98	TWBG-EM-00022519 - TWBG-EM-00022520	03/03/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
99	TWBG-EM-00022521 - TWBG-EM-00022522	03/01/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
100	TWBG-EM-00022523 - TWBG-EM-00022524	03/01/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
101	TWBG-EM-00022525 - TWBG-EM-00022526	03/02/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				



Doc No.	Production No.	Date	Description	To	From	at	BY
102	TWBG-EM-00022527 - TWBG-EM-00022528	03/01/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
103	TWBG-EM-00022529	03/02/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
104	TWBG-EM-00022530 - TWBG-EM-00022531	2006- 2007	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
105	TWBG-EM-00022533 - TWBG-EM-00022536	03/03/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				
106	TWBG-EM-00022537	03/03/06	Non-responsive 2005-2006 Presales Meeting Notes relating to other works				

Disc. No.	Production No.	Date	Description	To	From	Pub. Claim
107	TWBG-EM-00007633 - TWBG-EM-00007635	01/25/06	Non-responsive email relating to other work and editorial process	N. DeMille	J. Raab	
108	TWBG-EM-00007636 - TWBG-EM-00007637	01/25/06	Non-responsive email relating to other work and editorial process	N. DeMille	J. Raab	

**KEY**

AC = Attorney-client privilege, including common interest and joint defense privileges

WP = Work product doctrine

NP = New Jersey's newsperson's privilege (N.J.S.A. 2A:48A-21 to 21.8) and any applicable shield law protection afforded by other states, as well as constitutional (federal and state) and common law journalistic privileges

SSN = Social security number

DEFENDANTS' PRIVILEGE LOG  
 SEPTEMBER 27, 2006

DONALD J. TRUMP  
 V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS, INC.

DOCKET NO. CAM-L-545-06

Doc No	Date	Description	To	From	Party Claim
1	12/23/97	Notes of interview with newsgathering source			NP
2	01/05/04	Notes of interview with newsgathering source			NP
3	01/06/04	Notes of interview with newsgathering source			NP
4	01/11/04	Research regarding newsgathering process			NP

Doc No.	Date	Description	To	From	Claim
5	03/03/04	Notes of interview with newsgathering source			NP
6	03/22/04	Notes of interview with newsgathering source			NP
7	03/23/04	Notes of interview with newsgathering source			NP
8	03/24/04	Notes of interview with newsgathering source			NP
9	03/25/04	Notes of interview with newsgathering source			NP
10	03/25/04	Notes of interview with newsgathering sources			NP
11	03/26/04	Notes of interview with newsgathering source			NP

Doc No	Date	Description	To Name	From	cc	Priority (column)
12	03/31/04	Notes of interview with newsgathering source				NP
13	05/06/04	T. O'Brien email to or from newsgathering source				NP
14	05/06/04	T. O'Brien email to or from newsgathering source				NP
15	08/10/04	T. O'Brien email to or from newsgathering source				NP
16	08/10/04	T. O'Brien email to or from newsgathering source				NP
17	08/11/04	T. O'Brien email to or from newsgathering source				NP
18	08/11/04	T. O'Brien email to or from newsgathering source				NP

Doc No.	Date	Description	To	From	Type of Claim
19	08/11/04	T. O'Brien email to or from newsgathering source			NP
20	08/23/04	Notes of interview with newsgathering sources			NP
21	08/23/04	Notes of interview with newsgathering source			NP
22	08/26/04	Notes of interview with newsgathering source			NP
23	08/26/04	Notes of interview with newsgathering source			NP
24	08/26/04	Notes of interview with newsgathering source			NP
25	08/31/04	Notes of interview with newsgathering source			NP

Doc. No.	Date	Description	To	From	Process	Priv. (Claim)
26	09/02/04	Email regarding newsgathering process	T. O'Brien	E. Dash		NP.
27	09/2/04	Notes of interview with newsgathering source				NP
28	10/07/04	T. O'Brien email to or from newsgathering source				NP
29	10/19/04	Notes of interview with newsgathering sources				NP
30	10/27/04	Email regarding editorial process	T. O'Brien	A. Blauner		NP
31	10/27/04	T. O'Brien notes regarding editorial process				NP
32	10/28/04	T. O'Brien email to or from newsgathering source				NP
33	10/31/04	T. O'Brien notes regarding editorial process				NP

Doc No.	Date	Description	To	From	Claim
34	11/01/04	T. O'Brien email to or from newsgathering source			NP
35	11/02/04	Email regarding editorial process	T. O'Brien	A. Blauner	NP
36	11/04/04	Email regarding editorial process	T. O'Brien	A. Blauner	NP
37	11/09/04	Email regarding editorial process	T. O'Brien	A. Blauner	NP
38	11/29/04	Email regarding editorial process	T. O'Brien	A. Blauner	NP
39	11/29/04	Email regarding newsgathering process	T. O'Brien	A. Blauner	NP
40	11/29/04	Draft contract regarding Trump book project, with comments of counsel	R. Wolff L. Platner CFR	C. DuBois	AC WP
41	12/01/04	T. O'Brien email to or from newsgathering source			NP



Doc No	Date	Description	To	From	Page Count
42	12/01/04	T. O'Brien email to or from newsgathering source			NP
43	12/01/04	Email regarding newsgathering process	R. Wolff	T. O'Brien	NP
44	12/01/04	Materials from newsgathering source			NP
45	12/01/04	Notes of interview with newsgathering source			NP
46	12/01/04	Notes of interview with newsgathering source			NP
47	12/06/04	T. O'Brien email to or from newsgathering source			NP
48	12/06/04	T. O'Brien email to or from newsgathering source			NP

Doc No.	Date	Description	To	From	cc	PRIN (claim)
49	12/06/04	Email regarding editorial process				NP
50	12/06/04	Email regarding editorial process				NP
51	12/06/04	Email discussing advice of counsel regarding Trump book project	C. DuBois	R. Wolff		AC WP
52	12/09/04	T. O'Brien email to or from newsgathering source				NP
53	12/09/04	Email regarding editorial process	R. Wolff A. Blauner	E. Battaglia	R. Nissen	NP
54	12/09/04	Email regarding editorial process	A. Blauner	R. Wolff		NP
55	12/09/04	T. O'Brien email to or from newsgathering source				NP

Doc No.	Date	Description	To	From	Apply Chain
56	12/09/04	Email regarding editorial and newsgathering processes	T. O'Brien	J. Segal	NP
57	12/09/04	Email regarding editorial and newsgathering processes	J. Segal	T. O'Brien	NP
58	12/09/04	Email regarding editorial and newsgathering processes	T. O'Brien	J. Segal	NP
59	12/09/04	Email regarding editorial and newsgathering processes	J. Segal	T. O'Brien	NP
60	12/09/04	Notes of interview with newsgathering source			NP
61	12/10/04	T. O'Brien email to or from newsgathering source			NP
62	12/10/04	T. O'Brien email to or from newsgathering source			NP

Doc No.	Date	Description	To	From	cc	Priv Claim
63	12/10/04	Email regarding newsgathering process	T. O'Brien	C. Robertson		NP
64	12/10/04	T. O'Brien email to or from newsgathering source				NP
65	12/12/04	Email regarding editorial and newsgathering processes	T. O'Brien	A. Blauner		NP
66	12/16/04	Email regarding editorial process	T. O'Brien	A. Blauner		NP
67	12/19/04	T. O'Brien email to or from newsgathering source				NP
68	12/19/04	T. O'Brien email to or from newsgathering source				NP
69	12/19/04	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	CC	Priv. Class
70	12/20/04	Email regarding editorial process	T. O'Brien	A. Blauer		NP
71	12/20/04	Email regarding editorial process	T. O'Brien	R. Wolff		NP
72	12/20/04	Email regarding editorial and newsgathering processes	A. Blauer R. Wolff	T. O'Brien		NP
73	12/20/04	Email regarding editorial process	A. Schwartz	R. Wolff	S. Crews	NP
74	12/21/04	T. O'Brien email to or from newsgathering source				NP
75	12/21/04	T. O'Brien email to or from newsgathering source				NP
76	12/21/04	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	Priv	Claim
77	12/21/04	T. O'Brien email to or from newsgathering source				NP
78	12/21/04	Notes of interview with newsgathering source				NP
79	12/21/04	Notes of interview with newsgathering source				NP
80	12/22/04	T. O'Brien email to or from newsgathering source				NP
81	12/22/04	T. O'Brien email to or from newsgathering source				NP
82	12/22/04	T. O'Brien email to or from newsgathering source				NP
83	12/22/04	T. O'Brien email to or from newsgathering source				NP

Doc No.	Date	Description	To	From	Pat. Claim
84	12/22/04	T. O'Brien email to or from newsgathering source			NP
85	12/22/04	T. O'Brien email to or from newsgathering source			NP
86	12/22/04	Notes of interview with newsgathering source			NP
87	12/22/04	Notes of interview with newsgathering source			NP
88	12/22/04	Notes of interview with newsgathering source			NP
89	12/22/04	Notes of interview with newsgathering source			NP
90	12/22/04	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	From	Priv
91	12/23/04	T. O'Brien email to or from newsgathering source			NP
92	12/23/04	T. O'Brien email to or from newsgathering source			NP
93	12/23/04	Notes of interview with newsgathering source			NP
94	12/25/04	Notes of interview with newsgathering source			NP
95	12/26/04	T. O'Brien notes regarding newsgathering process			NP
96	12/26/04	Email regarding editorial process	T. O'Brien	R. Wolff	NP
97	12/27/04	T. O'Brien notes regarding newsgathering process			NP



Doc No.	Date	Description	To	From	cc	Party Claim
98	12/27/04	T. O'Brien notes regarding newsgathering process				NP
99	12/28/04	T. O'Brien email to or from newsgathering source				NP
100	12/28/04	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
101	12/28/04	Notes of interview with newsgathering source				NP
102	12/29/04	Email regarding editorial and newsgathering processes	T. O'Brien	A. Blauner		NP
103	12/29/04	Notes of interview with newsgathering source				NP
104	12/30/04	Email regarding newsgathering process	J. Plambeck	T. O'Brien		NP

Doc No	Date	Description	To	From	Priv & Claim
105	12/30/04	T. O'Brien notes regarding newsgathering sources			NP
106	12/31/04	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
107	01/01/05	T. O'Brien email to or from newsgathering source			NP
108	01/02/05	T. O'Brien email to or from newsgathering source			NP
109	01/03/05	T. O'Brien email to or from newsgathering source			NP
110	01/03/05	T. O'Brien email to or from newsgathering source			NP
111	01/03/05	Email regarding editorial process	T. O'Brien	A. Blauer	NP
112	01/03/05	Materials from newsgathering source			NP

Doc No	Date	Description	To	From	Category/Claim
113	01/04/05	Email regarding newsgathering process	T. O'Brien	E. Dash	NP
114	01/04/05	Notes of interview with newsgathering source			NP
115	01/04/05	Notes of interview with newsgathering source			NP
116	01/05/05	T. O'Brien email to or from newsgathering source			NP
117	01/05/05	T. O'Brien email to or from newsgathering source			NP
118	01/05/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
119	01/05/05	Email regarding newsgathering process and sources	T. O'Brien	J. Plambeck	NP

Doc No.	Date	Description	To	From	Priority Claim
120	01/05/05	Notes of interview with newsgathering source			NP
121	01/06/05	T. O'Brien email to or from newsgathering source			NP
122	01/06/05	Research regarding newsgathering process			NP
123	01/06/05	Notes of interview with newsgathering source			NP
124	01/06/05	Notes of interview with newsgathering source			NP
125	01/06/05	Email regarding editorial process	T. O'Brien A. Blauner	R. Wolff	NP E. Battaglia L. Pockell
126	01/07/05	Email regarding newsgathering process	J. Plambeck	T. O'Brien	NP
127	01/07/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP

Doc No.	Date	Description	To	From	CC	Primary System
128	01/07/05	Email regarding editorial process	T. O'Brien	R. Wolff		NP
129	01/07/05	Email regarding newsgathering process and sources	T. O'Brien	J. Plambeck		NP
130	01/07/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
131	01/07/05	Notes of interview with newsgathering source				NP
132	01/10/05	Email regarding editorial and newsgathering processes	T. O'Brien	J. Plambeck		NP
133	01/10/05	Email regarding editorial process	T. O'Brien	R. Wolff		NP
134	01/10/05	Email regarding newsgathering process	T. O'Brien	A. Blauner		NP
135	01/10/05	Email regarding editorial process	T. O'Brien	A. Blauner		NP

Doc No.	Date	Description	To	From	Party Claim
136	01/10/05	Email regarding editorial process	T. O'Brien	A. Blauner	NP
137	01/10/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
138	01/11/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP
139	01/11/05	Email regarding editorial and newsgathering processes	T. O'Brien	J. Plambeck	NP
140	01/12/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
141	01/12/05	T. O'Brien email to or from newsgathering source			NP
142	01/12/05	Notes of interview with newsgathering source			NP

Doc No	Date	Description	To	From	IPNY Claim
143	01/12/05	T. O'Brien notes regarding newsgathering process			NP
144	01/12/05	Notes of interview with newsgathering source			NP
145	01/12/05	Notes of interview with newsgathering source			NP
146	01/13/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
147	01/13/05	T. O'Brien email to or from newsgathering source			NP
148	01/13/05	T. O'Brien email to or from newsgathering source			NP
149	01/13/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP

Doc No.	Date	Description	To	From	Priv Claim
150	01/14/05	T. O'Brien email to or from newsgathering source			NP
151	01/14/05	Notes of interview with newsgathering source			NP
152	01/15/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
153	01/16/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
154	01/17/05	Materials from newsgathering source			NP
155	01/18/05	Notes of interview with newsgathering source			NP
156	01/18/05	Email regarding editorial process	A. Blauner T. O'Brien	R. Wolff	NP
157	01/18/05	Email including notes of interview with newsgathering source	T. O'Brien	E. Dash	NP



Doc No	Date	Description	To	From	CC	NP (C) (U)
158	01/18/05	Notes of interview with newsgathering source				NP
159	01/18/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck		NP
160	01/18/05	Notes of interview with newsgathering source				NP
161	01/19/05	Email regarding editorial process	R. Nissen	E. Battaglia		NP
162	01/19/05	Email regarding editorial process	R. Nissen	E. Battaglia		NP
163	01/19/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
164	01/19/05	Notes regarding editorial process				NP
165	01/20/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP

Doc No	Date	Description	To	From	Category	Priv	Claim
166	01/21/05	Notes of interview with newsgathering source					NP
167	01/21/05	Email regarding newsgathering source	T. O'Brien	J. Plambeck			NP
168	01/22/05	T. O'Brien email to or from newsgathering source					NP
169	01/24/05	Notes of interview with newsgathering source					NP
170	01/24/05	Notes of interview with newsgathering source					NP
171	01/24/05	Notes of interview with newsgathering source					NP
172	01/25/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck			NP

Doc. No.	Date	Description	To	From	cc	Priv. Claim
173	01/25/05	Notes of interview with newsgathering source				NP
174	01/25/05	Email regarding editorial process	T. O'Brien	A. Blauner		NP
175	01/27/05	T. O'Brien email to or from newsgathering source				NP
176	01/28/05	T. O'Brien email to or from newsgathering source				NP
177	01/28/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
178	01/29/05	T. O'Brien email to or from newsgathering source				NP
179	01/31/05	T. O'Brien notes regarding newsgathering process				NP

Doc No.	Date	Description	To	From	cc	Priv Claim
180	02/01/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter		NP
181	02/01/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter		NP
182	02/01/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck		NP
183	02/01/05	T. O'Brien email to or from newsgathering source				NP
184	02/01/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
185	02/01/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
186	02/01/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP

Doc No.	Date	Description	To	From	Priv. or Claim
187	02/01/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
188	02/01/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
189	02/01/05	Notes of interview with newsgathering source			NP
190	02/02/05	T. O'Brien email to or from newsgathering source			NP
191	02/02/05	Email regarding editorial process	I. Held R. Wolff L. Pockell	J. Raab	NP
192	02/03/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
193	02/03/05	Email regarding editorial process	T. O'Brien	A. Blauner	NP

Doc No.	Date	Description	To	From	Peak Claim
194	02/03/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP
195	02/03/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
196	02/03/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
197	02/03/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	J. Pinter	NP
198	02/03/05	Notes of interview with newsgathering source			NP
199	02/04/05	Email regarding editorial and newsgathering processes	J. Plambeck	T. O'Brien	NP
200	02/04/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP

Doc No.	Date	Description	To	From	Party Claim
201	02/07/05	Materials from newsgathering source			NP
202	02/07/05	Materials from newsgathering source			NP
203	02/09/05	T. O'Brien email to or from newsgathering source			NP
204	02/09/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP E. Battaglia I. Held
205	02/09/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP
206	02/10/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
207	02/10/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
208	02/10/05	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	From	Priv	Claim
209	02/10/05	Notes of interview with newsgathering source				NP
210	02/11/05	T. O'Brien email to or from newsgathering source				NP
211	02/11/05	Email regarding newsgathering process	J. Plambeck	T. O'Brien		NP
212	02/11/05	T. O'Brien email to or from newsgathering source				NP
213	02/14/05	T. O'Brien notes regarding newsgathering process				NP
214	02/14/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
215	02/15/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP



Doc No	Date	Description	To	From	Party
216	02/15/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP
217	02/16/05	Email regarding newsgathering and editorial processes	A. Blauner	T. O'Brien	NP
218	02/16/05	Notes of interview with newsgathering source			NP
219	02/16/05	Notes of interview with newsgathering source			NP
220	02/16/05	Notes of interview with newsgathering source			NP
221	02/16/05	Notes of interview with newsgathering source			NP
222	02/16/05	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	System	Priority	Claim
223	02/16/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
224	02/16/05	Notes of interview with newsgathering source				NP
225	02/17/05	Email regarding editorial process	T. O'Brien	R. Wolff		NP
226	02/17/05	Email regarding newsgathering process	T. O'Brien	A. Blauer		NP
227	02/17/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
228	02/17/05	Email regarding editorial process	T. O'Brien	R. Wolff		NP
229	02/17/05	Email regarding editorial process and discussing legal advice	R. Wolff	T. O'Brien		AC NP WP

Doc No	Date	Description	To	From	Party (Claim)
230	02/18/05	Materials from newsgathering source			NP
231	02/18/05	T. O'Brien's notes regarding newsgathering process			NP
232	02/18/05	Notes of interview with newsgathering source			NP
233	02/22/05	Email regarding editorial process	R. Oliver	T. O'Brien	NP
234	02/23/05	Notes of interview with newsgathering source			NP
235	02/24/05	Materials from newsgathering source			NP
236	02/24/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
237	02/24/05	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	From	Party in Claim
238	02/24/05	Notes of interview with newsgathering source			NP
239	02/25/05	Notes regarding editorial process			NP
240	02/25/05	Notes of interview with newsgathering source			NP
241	02/25/05	Notes of interview with newsgathering source			NP
242	02/25/05	Notes of interview with newsgathering source			NP
243	02/28/05	Materials from newsgathering source			NP
244	02/28/05	T. O'Brien email to or from newsgathering source			NP

Doc No	Date	Description	To	From	By
245	02/28/05	Notes of interview with newsgathering source			NP
246	03/01/05	Notes of interview with newsgathering source			NP
247	03/02/05	Notes of interview with newsgathering source			NP
248	03/02/05	Notes of interview with newsgathering source			NP
249	03/02/05	Notes of interview with newsgathering source			NP
250	03/02/05	Notes of interview with newsgathering source			NP
251	03/03/05	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	From	Copy
252	03/05/05	Notes of interview with newsgathering sources			NP
253	03/05/05	Notes of interview with newsgathering sources			NP
254	03/07/05	Materials from newsgathering source			NP
255	03/07/05	T. O'Brien email to or from newsgathering source			NP
256	03/08/05	T. O'Brien email to or from newsgathering source			NP
257	03/08/05	T. O'Brien email to or from newsgathering source			NP
258	03/08/05	T. O'Brien email to or from newsgathering source			NP

Doc No	Date	Description	To	From	Reference	By Claim
259	03/08/05	T. O'Brien email to or from newsgathering source				NP
260	03/08/05	T. O'Brien email to or from newsgathering source				NP
261	03/09/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien		NP
262	03/10/05	Email regarding newsgathering process	J. Plambeck	T. O'Brien		NP
263	03/11/05	Materials from newsgathering source				NP
264	03/11/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
265	03/11/05	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	CC	Prin	Claim
266	03/12/05	T. O'Brien email to or from newsgathering source					NP
267	03/14/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck			NP
268	03/14/05	T. O'Brien email to or from newsgathering source					NP
269	03/14/05	T. O'Brien email to or from newsgathering source					NP
270	03/14/05	T. O'Brien email to or from newsgathering source					NP
271	03/14/05	T. O'Brien email to or from newsgathering source					NP
272	03/14/05	Email regarding editorial and newsgathering processes	T. O'Brien	E. Dash			NP



Doc No.	Date	Description	To	From	cc	Priv Claim
273	03/14/05	Notes of interview with newsgathering source				NP
274	03/15/05	Email regarding editorial process	T. O'Brien R. Wolff	A. Blauner		NP
275	03/15/05	Email regarding editorial and newsgathering processes	E. Battaglia R. Wolff R. Nissen	T. O'Brien	A. Blauner	NP
276	03/16/05	Email regarding editorial process	R. Nissen R. Wolff A. Blauner	T. O'Brien	E. Battaglia	NP
277	03/16/05	T. O'Brien email to or from newsgathering source				NP
278	03/16/05	Email regarding editorial process				NP

Date	Description	From	To	CC	Claim
279	03/16/05	T. O'Brien email to or from newsgathering source			NP
280	03/16/05	T. O'Brien email to or from newsgathering source			NP
281	03/16/05	Email regarding editorial and newsgathering processes	R. Wolff R. Nissen A. Blauner	T. O'Brien	E. Battaglia NP
282	03/16/05	Email regarding editorial and newsgathering processes	R. Wolff R. Nissen A. Blauner	T. O'Brien	E. Battaglia NP
283	03/16/05	Email regarding editorial and newsgathering processes	A. Blauner	R. Wolff	NP
284	03/17/05	Email regarding editorial process	R. Wolff R. Nissen A. Blauner	T. O'Brien	E. Battaglia F. Tonuzi A. Twomey NP

Doc No	Date	Description	To	From	NP (Claim)
285	03/17/05	Email regarding editorial process	R. Nissen R. Wolff A. Blauner	T. O'Brien	NP
286	03/17/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
287	03/17/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck	NP
288	03/17/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck	NP
289	03/17/05	Email regarding editorial process	T. O'Brien R. Nissen F. Tonuzi A. Twomey.	R. Wolff	NP
290	03/17/05	Notes of interview with newsgathering source			NP

Doc L. No.	Date	Description	To	From	Process or Claim
291	03/17/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
292	03/17/05	Email regarding editorial and newsgathering processes	R. Wolff R. Nissen A. Blauner	T. O'Brien	NP
293	03/17/05	Email regarding editorial and newsgathering processes	R. Wolff R. Nissen A. Blauner	T. O'Brien	NP
294	03/18/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP
295	03/18/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck	NP
296	03/18/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP
297	03/18/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP

Doc# No.	Date	Description	Info	From	Project Chain
298	03/18/05	Notes of interview with newsgathering source			NP
299	03/19/05	Notes of interview with newsgathering source			NP
300	03/21/05	Email regarding newsgathering process	J. Plambeck	T. O'Brien	NP
301	03/21/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck	NP
302	03/21/05	Email forwarding advice and work product of counsel	T. O'Brien	R. Wolff	AC WP
303	03/21/05	T. O'Brien email to or from newsgathering source			NP
304	03/21/05	Email regarding editorial process	H. Kilpatrick R. Wolff	T. O'Brien	AC WP

Doc No	Date	Description	To	From	Party Claim
305	03/21/05	Email among author, editor, and counsel, requesting and conveying legal advice	R. Wolff T. O'Brien	H. Kilpatrick	AC WP
306	03/21/05	Email among author, editor, and counsel, requesting and conveying legal advice	T. O'Brien H. Kilpatrick	R. Wolff	AC WP
307	03/21/05	Email among author, editor, and counsel, requesting and conveying legal advice	R. Wolff	T. O'Brien	AC WP
308	03/21/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
309	03/21/05	Notes of interview with newsgathering source			NP
310	03/22/05	Email regarding editorial process	T. O'Brien	A. Blauner	NP
311	03/22/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP

Doc No	Date	Description	To	From	cc	IP/Claim
312	03/22/05	T. O'Brien email to or from newsgathering source				NP
313	03/22/05	T. O'Brien email to or from newsgathering source				NP
314	03/22/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff		NP
315	03/22/05	Email regarding editorial process	T. O'Brien	A. Blauner		NP
316	03/22/05	Email regarding editorial process	T. O'Brien	A. Blauner		NP
317	03/22/05	Email regarding editorial process	A. Blauner	T. O'Brien		NP
318	03/22/05	Email regarding editorial process	T. O'Brien	A. Blauner		NP
319	03/22/05	Email among author, editor, and counsel, requesting and conveying legal advice	R. Wolff	H. Kilpatrick T. O'Brien		AC WP

Doc No	Date	Description	From	To	Party Claim
320	03/22/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
321	03/22/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
322	03/22/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
323	03/22/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
324	03/23/05	T. O'Brien letter to or from newsgathering source			NP
325	03/23/05	Notes of interviews with newsgathering source			NP
326	03/23/05	T. O'Brien email to or from newsgathering source			NP



Doc No	Date	Description	To	From	Privileged Claim
327	03/23/05	Notes of interview with confidential newsgathering source			NP
328	03/25/05	T. O'Brien letter to or from newsgathering source			NP
329	03/28/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck	NP
330	03/28/05	T. O'Brien email to or from newsgathering source			NP
331	03/28/05	T. O'Brien email to or from newsgathering source			NP
332	03/28/05	T. O'Brien email to or from newsgathering source			NP
333	03/28/05	T. O'Brien email to or from newsgathering source			NP

Doc No	Date	Description	To	From	Pin	Claim
334	03/28/05	T. O'Brien email to or from newsgathering source				NP
335	03/28/05	Email regarding newsgathering process and notes of interview with newsgathering source	T. O'Brien	J. Plambeck		NP
336	03/28/05	Notes of interview with newsgathering source				NP
337	03/28/05	Notes of interview with newsgathering source				NP
338	03/29/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
339	03/29/05	Notes of interview with newsgathering source				NP
340	03/30/05	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	Party Claim	Party Claim
341	03/31/05	T. O'Brien email to or from newsgathering source				NP
342	03/31/05	Notes of interview with newsgathering source				NP
343	03/31/05	Notes of interview with newsgathering source				NP
344	03/31/05	Notes of interview with newsgathering source				NP
345	04/01/05	Materials from newsgathering source				NP
346	04/01/05	Notes of interview with newsgathering source				NP
347	04/01/05	Notes of interview with newsgathering source				NP

Doc No.	Date	Description	To	From	Patent No.	Claim
348	04/04/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff		NP
349	04/04/05	Email regarding editorial and newsgathering processes as well as draft portion of Work	R. Wolff A. Blauner	T. O'Brien		NP
350	04/06/05	Notes of interview with newsgathering source				NP
351	04/07/05	Notes of interview with newsgathering source				NP
352	04/08/05	Email including notes of interview with newsgathering source	T. O'Brien	J. Plambeck		NP
353	04/08/05	Email regarding newsgathering process	T. O'Brien	J. Plambeck		NP
354	04/08/05	Materials from research assistant regarding newsgathering process				NP

Doc No	Date	Description	FOI	From	CC	Priv. Claim
355	04/08/05	Email regarding editorial process	T. O'Brien	A. Blauer		NP
356	04/08/05	Notes of interview with newsgathering source				NP
357	04/11/05	Materials from newsgathering source				NP
358	04/14/05	T. O'Brien email to or from newsgathering source				NP
359	04/16/05	Notes of interview with newsgathering source				NP
360	04/18/05	T. O'Brien email to or from newsgathering source				NP
361	04/18/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff		NP

Doc No	Date	Description	To	From	Priv Claim
362	04/18/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
363	04/18/05	Notes of interview with newsgathering source			NP
364	04/18/05	Notes of interview with newsgathering source			NP
365	04/18/05	Notes of interview with newsgathering source			NP
366	04/19/05	Notes of interview with newsgathering source			NP
367	04/20/05	T. O'Brien email to or from newsgathering source			NP
368	04/20/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP

Doc No	Date	Description	To	From	Print Claim
369	04/21/05	T. O'Brien email to or from newsgathering source			NP
370	04/21/05	T. O'Brien email to or from newsgathering source			NP
371	04/21/05	T. O'Brien email to or from newsgathering source			NP
372	04/21/05	T. O'Brien email to or from newsgathering source			NP
373	04/21/05	T. O'Brien email to or from newsgathering source			NP
374	04/21/05	T. O'Brien email to or from newsgathering source			NP
375	04/21/05	T. O'Brien email to or from newsgathering source			NP

Dios No.	Date	Description	In	From	to	Poly Claim
376	04/21/05	Notes of interview with newsgathering sources				NP
377	04/22/05	Notes of interview with newsgathering source				NP
378	04/22/05	Notes of interview with newsgathering source				NP
379	04/25/05	T. O'Brien email to or from newsgathering source				NP
380	04/25/05	T. O'Brien email to or from newsgathering source				NP
381	04/25/05	Email regarding editorial process	T. O'Brien	R. Wolff		NP
382	04/25/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien		NP



Doc No	Date	Description	To	From	Category (claim)
383	04/25/05	Notes of interview with newsgathering source			NP
384	04/26/05	Email regarding editorial and newsgathering processes	A. Blauner R. Wolff	T. O'Brien	NP
385	04/27/05	T. O'Brien fax to or from newsgathering source			NP
386	04/27/05	T. O'Brien email to or from newsgathering source			NP
387	04/27/05	T. O'Brien email to or from newsgathering source			NP
388	04/27/05	T. O'Brien email to or from newsgathering source			NP
389	04/27/05	T. O'Brien email to or from newsgathering source			NP

Doc. No.	Date	Description	To	From	ec	Priv	Chain
390	04/27/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien			NP
391	04/27/05	Email regarding editorial process	R. Wolff	T. O'Brien			NP
392	04/27/05	Notes of interview with newsgathering source					NP
393	04/28/05	T. O'Brien email to or from newsgathering source					NP
394	04/28/05	T. O'Brien email to or from newsgathering source					NP
395	04/28/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien			NP
396	04/29/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien			NP

Doc No	Date	Description	To	From	Pat. No.	Pat. Claim
397	04/29/05	Notes of interview with newsgathering source				NP
398	05/05/05	T. O'Brien email to or from newsgathering source				NP
399	05/05/05	T. O'Brien email to or from newsgathering source				NP
400	05/05/05	Notes of interview with newsgathering source				NP
401	05/06/05	T. O'Brien email to or from newsgathering source				NP
402	05/06/05	Notes of interview with newsgathering source				NP
403	05/06/05	Notes of interview with newsgathering source				NP

Doc No.	Date	Description	Who	From	Prisoner's Claim
404	05/06/05	Notes of interview with newsgathering source			NP
405	05/09/05	Email reflecting and conveying legal advice	T. O'Brien	C. Nolan	AC WP
406	05/09/05	Notes of interview with newsgathering source			NP
407	05/11/05	Email reflecting and conveying legal advice	H. Kilpatrick	C. Nolan	AC WP
408	05/12/05	T. O'Brien email to or from newsgathering source			NP
409	05/12/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP
410	05/13/05	Email regarding editorial process	T. O'Brien	R. Wolff	NP

Doc No	Date	Description	To	From	Priority
411	05/15/05	T. O'Brien email to or from newsgathering source			NP
412	05/16/05	T. O'Brien email to or from newsgathering source			NP
413	05/17/05	Notes of interview with newsgathering source			NP
414	05/18/05	Letter from newsgathering source			NP
415	05/18/05	T. O'Brien letter to or from newsgathering source			NP
416	05/18/05	Letter from counsel detailing services rendered in connection with Work	TWBG	C. Nolan	AC WP
417	05/18/05	T. O'Brien email to or from newsgathering process			NP

Doc. No.	Date	Description	To	From	Primary Claims
418	05/18/05	T. O'Brien email to or from newsgathering source			NP
419	05/18/05	T. O'Brien email to or from newsgathering source			NP
420	05/18/05	T. O'Brien email to or from newsgathering source			NP
421	05/18/05	Email between counsel	H. Kilpatrick	C. Nolan	AC WP
422	05/18/05	Letter from counsel detailing services rendered in connection with Work	TWBG	C. Nolan	AC WP
423	05/18/05	Notes of interview with newsgathering source			NP
424	05/19/05	T. O'Brien email to or from newsgathering source			NP

Doc No	Date	Description	To	From	PNV Claim
425	05/19/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
426	05/19/05	Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff	NP
427	05/19/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
428	05/19/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP
429	05/23/05	T. O'Brien notes regarding editorial process			NP
430	05/25/05	T. O'Brien email to or from newsgathering source			NP
431	05/26/05	T. O'Brien letter to or from newsgathering source			NP

Doc No.	Date	Description	Location	From	Accession	Claim
432	05/27/05	T. O'Brien email to or from newsgathering source				NP
433	05/27/05	T. O'Brien email to or from newsgathering source				NP
434	05/28/05	Materials from newsgathering source				NP
435	06/01/05	Email regarding editorial process	A. Schwartz	J. Pinter	S. Crews	NP
436	06/01/05	Email regarding editorial process	S. Crews	J. Pinter	A. Schwartz R. Wolff	NP
437	06/01/05	T. O'Brien email to or from newsgathering source				NP
438	06/01/05	T. O'Brien email to or from newsgathering source				NP



Doc No	Date	Description	To	From	Pay Claim
439	06/01/05	T. O'Brien email to or from newsgathering source			NP
440	06/01/05	Email regarding editorial process	R. Wolff	T. O'Brien	NP
441	06/01/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
442	06/01/05	Email regarding editorial and newsgathering processes	R. Wolff	T. O'Brien	NP
443	06/01/05	Notes of interview with newsgathering source			NP
444	06/02/05	T. O'Brien email to or from newsgathering source			NP
445	06/02/05	Notes of interview with newsgathering source			NP

Doc No.	Date	Description	To	From	Party	Claim
446	06/03/05	Email regarding editorial process	A. Schwartz	A. Lynch	S. Crews	NP
447	06/07/05	Email conveying advice of counsel regarding Work	R. Nissen	D. Gonzalez		AC WP
448	06/08/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
449	06/13/05	Email regarding editorial process	T. O'Brien	R. Castillo		NP
450	06/13/05	Email conveying advice of counsel regarding Work	R. Wolff	C. Nolan		AC WP
451	06/14/05	Email requesting and conveying legal advice regarding VidLit	C. Ross	K. Leonard-O'Keefe	H. Kilpatrick	AC WP
452	06/14/05	Email conveying advice of counsel regarding Work	R. Wolff K. Leonard-O'Keefe	C. Ross	H. Kilpatrick	AC WP

ID/Case No.	Date	Description	To	From	Party (Claim)
453	06/16/05	Email regarding editorial process	R. Castillo	R. Wolff	NP
454	06/16/05	Email regarding editorial process	T. O'Brien R. Wolff	R. Castillo	NP
455	06/20/05	Materials from newsgathering source			NP
456	06/21/05	Email forwarding notes regarding editorial process	R. Castillo	R. Wolff	NP
457	06/22/05	Email regarding editorial process of audio Work	D. Kao	A. Loschert	NP
458	06/23/05	Email regarding editorial process	T. Whatley	R. Castillo	NP
459	06/27/05	Memo regarding editorial process	M. Harter	R. Castillo	NP

Brie No.	Date	Description	To	From	Brien Claim
460	06/27/05	Memo regarding editorial process	M. Harter	R. Castillo	NP
461	06/27/05	Materials from newsgathering source			NP
462	06/28/05	T. O'Brien notes involving editorial process			NP
463	06/28/05	Email reflecting and conveying legal advice	T. O'Brien	C. Nolan	AC WP
464	06/28/05	Email reflecting and conveying legal advice	T. O'Brien R. Wolff	C. Nolan	AC WP
465	06/29/05	Email reflecting legal advice	TWBG	P. Lebedda	AC WP
466	06/29/05	Email among author, editor and counsel regarding legal advice	T. O'Brien R. Wolff	C. Nolan	AC WP

Doc No	Date	Description	To	From	Party
467	06/29/05	Email requesting and conveying legal advice regarding Work	R. Wolff A. Blanner T. O'Brien H. Kilpatrick	C. Nolan	AC WP
468	06/29/05	Email conveying advice of counsel regarding Work	R. Wolff T. O'Brien	C. Nolan	AC WP
469	06/29/05	Email conveying advice of counsel regarding Work	C. Nolan	J. LaVine	AC WP
470	06/29/05	Email regarding editorial process	TWBG-WB-COVERART TWBG-WB-EDITORIAL TWBG-WB-PUBLICITY TWBG-WB-SUBSIDIARY RIGHTS	R. Wolff  P. Lebedda H. Kowal	NP

Doc No.	Date	Description	To	From	Private/Claim
471	06/29/05	Email conveying advice of counsel regarding Work	R. Castillo	R. Wolff	WP AC
472	06/29/05	E Email conveying advice of counsel regarding Work	R. Castillo	R. Wolff	AC WP
473	06/30/05	Email regarding editorial process	A. Schwartz H. Duong S. Crews	PAAATER1@aol.com	NP
474	06/30/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	P. Lebedda	NP
475	06/30/05	Email regarding editorial process	P. Lebedda	R. Wolff	NP
476	06/30/05	Email conveying advice of counsel regarding Work	R. Wolff	C. Nolan H. Kilpatrick J. Pinter L. Pockell J. Raab	AC WP

Doc No.	Date	Description	To	From	Party Claim
477	06/30/05	Email conveying advice of counsel regarding Work	R. Wolff	C. Nolan	H. Kilpatrick J. Pinter L. Pockell J. Raab AC WP
478	06/30/05	Email regarding editorial process	TWBG-WB- CHANGEMEMO	P. Lebedda	NP
479	07/01/05	Email regarding editorial process	PAATER1@aol.com	A. Schwartz	A. Schwartz NP
480	07/1/05	Email regarding editorial process	R. Castillo	R. Wolff	NP
481	07/1/05	Memo regarding editorial process	R. Castillo	T. Whatley	NP
482	07/05/05	Letter from counsel detailing services rendered in connection with Work	TWBG	C. Nolan	AC WP
483	07/05/05	Letter from counsel detailing services rendered in connection with Work	H. Kilpatrick	C. Nolan	AC WP

Doc#	Date	Description	To	From	CC	Priv	Class
484	07/05/05	Email regarding editorial process	A. Schwartz H. Duong S. Crews	PAATER1@aol.com			NP
485	07/05/05	Email between counsel	H. Kilpatrick	C. Nolan			AC WP
486	07/05/05	Email regarding editorial process	R. Wolff	T. O'Brien			NP
487	07/05/05	Letter from counsel detailing services rendered in connection with Work	TWBG	C. Nolan			AC WP
488	07/06/05	Email regarding editorial process	PAATER1@aol.com	A. Schwartz	A. Schwartz		NP
489	07/07/05	Email regarding editorial process	A. Schwartz H. Duong S. Crews	PAATER1@aol.com			NP
490	07/07/05	Email regarding editorial process	D. Kao	A. Loschert			NP



Doc No	Date	Description	To	From	CC	Printed
491	07/11/05	Email regarding editorial process	J. Pinter	R. Wolff	T. O'Brien	NP
492	07/11/05	Email to counsel requesting legal advice and to author regarding editorial process	C. Nolan T. O'Brien	R. Wolff		AC WP NP
493	07/12/05	Email regarding editorial process	R. Wolff	A. Schwartz	A. Schwartz	NP
494	07/12/05	Email regarding editorial process and reflecting legal advice	R. Wolff	A. Schwartz	A. Schwartz	AC WP
495	07/12/05	T. O'Brien email to or from newsgathering source				NP
496	07/12/05	Email among author, editors and counsel regarding legal advice	C. Nolan J. Pinter	R. Wolff	T. O'Brien	WP AC
497	07/12/05	Email reflecting and conveying legal advice	C. Nolan	T. O'Brien		AC WP

Doc No.	Date	Description	To	From	CC	Party Claim
498	07/12/05	Email from counsel conveying legal advice	R. Wolff J. Pinter	C. Nolan	T. O'Brien	AC WP
499	07/13/05	Email regarding editorial process	A. Schwartz	J. Pinter	R. Wolff	NP
500	07/13/05	Email regarding editorial process and seeking advice of counsel	C. Nolan T. O'Brien	R. Wolff	J. Pinter	AC WP
501	07/13/05	Email regarding editorial process	T. O'Brien	R. Castillo		NP
502	07/13/05	Email regarding editorial process	R. Wolff	T. O'Brien		NP
503	07/13/05	Email regarding editorial process	R. Wolff	J. Pinter		NP
504	07/13/05	Email regarding editorial process	R. Wolff	J. Pinter		NP

Doc. No.	Date	Description	To	From	CC	By
505	07/14/05	T. O'Brien notes regarding editorial process				NP
506	07/14/05	Email regarding editorial process	R. Castillo	T. O'Brien	R. Wolff	NP
507	07/15/05	Email regarding editorial process	T. O'Brien R. Castillo	R. Wolff		NP
508	07/15/05	Memo regarding editorial process	T. Whatley	R. Castillo		NP
509	07/20/05	Memo regarding editorial process	J. Foster	R. Castillo		NP
510	07/21/05	Email regarding editorial process	D. Kao	J. McElroy		NP
511	07/21/05	Email regarding editorial process of audio Work	D. Kao	J. McElroy		NP

Doc. No.	Date	Description	To	From	Party	Claim
512	07/22/05	Email regarding editorial process	A. Blauner E. Battaglia R. Nissen T. O'Brien	R. Wolff	J. Pinter	NP
513	07/23/05	Email regarding editorial and newsgathering processes	R. Castillo R. Wolff	T. O'Brien		NP
514	07/25/05	Email regarding editorial process	R. Castillo	R. Wolff	T. O'Brien	NP
515	07/25/05	Email regarding editorial process	R. Castillo	T. O'Brien		NP
516	07/25/05	Memo with draft portion of Work	K. Ingersoll	R. Castillo		NP
517	07/26/05	Email conveying advice of counsel regarding Work	L. Bonner	R. Nissen		AC WP

Doc No	Date	Description	To	From	Party or Claim
518	07/26/05	Email regarding editorial process and draft portion of Work	J. Spivey	R. Castillo	NP
519	07/26/05	T. O'Brien email to or from newsgathering sources			NP
520	07/26/05	Email regarding editorial and newsgathering processes	R. Castillo R. Wolff	T. O'Brien	NP
521	07/26/05	Memo regarding editorial process	J. Spivey T. Whatley	R. Castillo	NP
522	07/26/05	Memo regarding editorial process	J. Spivey T. Whatley	R. Castillo	NP
523	07/27/05	T. O'Brien email to or from newsgathering source			NP
524	07/27/05	Email regarding editorial and newsgathering processes	R. Wolff R. Castillo	T. O'Brien	NP

Doc. No.	Date	Description	To	From	cc	By
525	08/08/05	Email regarding editorial process	D. Kao	T. O'Brien		NP
526	08/10/05	Email regarding editorial process and draft portion of Work	T. Whatley	R. Castillo	J. Spivey	NP
527	08/10/05	Memo regarding editorial process and draft portion of Work	T. Whatley	R. Castillo		NP
528	08/10/05	Memo regarding editorial process	R. Wolff	R. Castillo		NP
529	08/10/05	Memo regarding editorial process	R. Wolff	R. Castillo		NP
530	08/15/05	Memo regarding editorial process	T. Whatley	R. Castillo		NP
531	08/15/05	Memo regarding editorial process and draft portion of Work	R. Castillo	T. Whatley		NP

Doc No	Date	Description	To	From	Party (Glsim)
532	08/19/05	Email regarding editorial process	J. Pinter	T. O'Brien	NP
533	08/29/05	Email regarding editorial process	J. Pinter K. Cora	R. Wolff	NP
534	08/31/05	Notes regarding editorial process	J. Spivey T. Whatley R. Castillo H. Kilpatrick	J. Spivey	NP
535	09/05/05	T. O'Brien email to or from newsgathering source			NP
536	09/12/05	Email regarding editorial process	J. Impocco	L. Ingrassia	NP
537	09/19/05	Email conveying advice of counsel regarding Work	T. O'Brien R. Wolff K. Leonard-O'Keefe	C. Ross	AC WP

Doc No	Date	Description	To	From	Party Claim
538	09/19/05	Email conveying advice of counsel regarding Work	T. O'Brien R. Wolff K. Leonard-O'Keefe	C. Ross	AC WP
539	09/23/05	Draft agreement with Warner Books/New York Times involving advice of counsel			WP AC
540	09/27/05	Email conveying/requesting advice of counsel regarding Work	T. O'Brien	R. Wolff	AC WP
541	09/27/05	Email requesting advice of counsel regarding Work	T. O'Brien	K. Leonard	AC WP
542	09/29/05	Email involving/requesting advice of counsel regarding Work	T. O'Brien	R. Wolff	AC WP
543	10/03/05	Email from counsel conveying legal advice regarding VidLit Agreement	K. Leonard-O'Keefe	M. Schachter	AC WP



Doc No	Date	Description	To	From	cc	Party Column
544	10/03/05	Email from counsel regarding VidLit	K. Leonard-O'Keefe C. Ross R. Wolff H. Kilpatrick	T. O'Brien		AC WP
545	10/03/05	Email involving/requesting advice of counsel regarding VidLit	C. Ross	K. Leonard-O'Keefe	L. Dubelman M. Otis R. Wolff H. Kilpatrick	AC WP
546	10/04/05	Email conveying advice of counsel regarding Work	T. O'Brien	D. Corneal		AC WP
547	10/05/05	T. O'Brien email to or from newsgathering source				NP
548	10/13/05	Email regarding advice of counsel	L. Bonner	R. Wolff		AC WP

Doc No.	Date	Description	To	From	Party	Claim
549	10/14/05	Email regarding editorial process	T. O'Brien	R. Castillo	R. Wolff	NP
550	10/19/05	T. O'Brien email to or from newsgathering source				NP
551	10/19/05	Email involving/requesting legal advice regarding VidLit	T. O'Brien	K. Leonard	L. Dubelman R. Wolff H. Kilpatrick R. Nissen	AC WP
552	10/19/05	Email involving/requesting legal advice regarding VidLit	T. O'Brien K. Leonard	R. Wolff	L. Dubelman H. Kilpatrick R. Nissen	AC WP
553	10/20/05	Email from counsel regarding Work	T. O'Brien	D. McCraw		AC WP
554	10/20/05	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	cc	Priv Claim
555	10/20/05	Email involving/requesting legal advice regarding Work	L. Ingrassia T. O'Brien	D. McCraw		AC WP
556	10/21/05	Email requesting advice of counsel regarding Work	C. Ross H. Kilpatrick C. Nolan	R. Wolff		AC WP
557	10/21/05	Email from counsel conveying legal advice regarding Work	T. O'Brien	C. Nolan		AC WP
558	10/21/05	Email from counsel conveying legal advice regarding Work	T. O'Brien	P. O'Brien		AC WP
559	10/21/05	Email involving/requesting legal advice regarding Work	T. O'Brien	D. McCraw		AC WP
560	10/21/05	Email involving/conveying legal advice regarding Work	T. O'Brien	D. McCraw		AC WP
561	10/21/05	Email involving/conveying legal advice regarding Work	T. O'Brien	D. McCraw		AC WP

Doc No	Date	Description	To	From	Priv	Claim
562	10/21/05	Email regarding legal advice	T. O'Brien R. Nissen J. Romanello	R. Wolff	C. Ross C. Nolan H. Kilpatrick J. Pinter	AC WP
563	10/21/05	Email regarding legal advice	T. O'Brien R. Nissen J. Romanello	R. Wolff	C. Ross C. Nolan H. Kilpatrick J. Pinter	AC WP
564	10/21/05	Email reflecting and conveying legal advice	R. Wolff R. Nissen	T. O'Brien	C. Ross	AC WP
565	10/21/05	Email involving/requesting legal advice regarding Work	R. Wolff R. Nissen	T. O'Brien	C. Ross	AC WP
566	10/21/05	Email reflecting and conveying legal advice	T. O'Brien	C. Nolan		AC WP

Doc No	Date	Description	To	From	Case No.	Party Claiming
567	10/21/05	Email involving/requesting legal advice regarding Work	T. O'Brien R. Wolff R. Nissen	T. O'Brien	C. Ross	AC WP
568	10/21/05	Email involving/requesting legal advice regarding Work	R. Wolff R. Nissen J. Romanello	T. O'Brien	C. Ross H. Kilpatrick J. Pinter	AC WP
569	10/21/05	Notes of interview with newsgathering sources				NP
570	10/26/05	Email involving advice of counsel regarding VidLit Agreement	C. Ross	M. Schachter		AC WP
571	10/26/05	Email involving advice of counsel regarding VidLit Agreement	C. Ross M. Schachter K. Leonard-O'Keefe M. Thomas M. Otis H. Kilpatrick S. Cottrell	M. Pietsch		AC WP

Doc No.	Date	Description	To	From	Page	Claim
572	10/26/05	Email involving advice of counsel regarding VidLit Agreement	M. Schachter K. Leonard-O'Keefe M. Thomas M. Otis H. Kilpatrick S. Cottrell M. Pietsch	C. Ross		AC WP
573	10/26/05	Email involving advice of counsel regarding VidLit Agreement	K. Leonard-O'Keefe M. Thomas M. Otis H. Kilpatrick C. Ross S. Cottrell M. Pietsch	M. Schachter		AC WP
574	10/26/05	Email involving advice of counsel regarding VidLit Agreement	K. Leonard-O'Keefe	M. Schachter		AC WP
575	10/26/05	Email regarding legal advice	T. O'Brien	C. Ross		AC WP

Doc No	Date	Description	To	From	CC	Priv Class
576	10/26/05	Email involving legal advice regarding Work	T. O'Brien R. Nissen J. Romanello	R. Wolff	C. Ross C. Nolan H. Kilpatrick J. Pinter	AC WP
577	10/26/05	Email involving legal advice regarding Work	T. O'Brien R. Nissen J. Romanello	R. Wolff	C. Ross H. Kilpatrick J. Pinter	AC WP
578	10/27/05	T. O'Brien email to or from newsgathering source				NP
579	10/28/05	Email involving legal advice regarding Work	K. Leonard-O'Keefe M. Schachter	C. Ross	M. Thomas H. Kilpatrick	AC WP
580	10/28/05	Email involving advice of counsel regarding VidLit Agreement	M. Schachter	K. Leonard-O'Keefe	M. Thomas H. Kilpatrick C. Ross	AC WP
581	10/31/05	Email involving/requesting legal advice regarding Work	D. McCraw T. O'Brien	L. Ingrassia	J. Impoco	AC WP

Doc No	Date	Description	To	From	By	Claim
582	10/31/05	Email involving/requesting legal advice regarding Work	T. O'Brien	D. McCraw	J. Impoco	AC WP
583	10/31/05	Email involving/requesting legal advice regarding Work	L. Ingrassia	D. McCraw	J. Impoco	AC WP
584	11/01/05	Email involving/requesting legal advice regarding VidLit	T. O'Brien R. Wolff	C. Nolan	H. Kilpatrick	AC WP
585	11/01/05	Email involving/requesting legal advice regarding VidLit	R. Wolff	T. O'Brien	H. Kilpatrick C. Nolan	AC WP
586	11/01/05	Email involving/requesting legal advice regarding VidLit	C. Nolan R. Wolff	T. O'Brien	H. Kilpatrick	AC
587	11/04/05	T. O'Brien email to or from newsgathering source				NP
588	11/07/05	T. O'Brien email to or from newsgathering source				NP



Doc No	Date	Description	To	From	CC	Privileged Claim
589	11/07/05	Notes of interview with newsgathering source				NP
590	11/08/05	T. O'Brien email to or from newsgathering source				NP
591	11/08/05	Materials from newsgathering source				NP
592	11/08/05	T. O'Brien email to or from newsgathering source				NP
593	11/08/05	Materials from newsgathering source				NP
594	11/11/05	Email requesting advice of counsel regarding Work	H. Kilpatrick	T. LoBriglio	C. Ross M. Schachter C. Mason	AC WP
595	11/15/05	Draft letter from counsel conveying legal advice	T. O'Brien	D. McCraw		AC WP

Doc No.	Date	Description	To	From	Priority
596	11/15/05	Email conveying advice of counsel regarding Work	T. O'Brien	D. McCraw	AC WP
597	11/15/05	Email among author, editor and counsel involving editorial process and seeking legal advice	D. McCraw L. Ingrassia	T. O'Brien	AC WP
598	11/17/05	Email among counsel regarding VidLit	H. Kilpatrick M. Schachter	C. Ross	AC WP
599	11/18/05	Email involving/requesting advice of counsel regarding Work	M. Schachter	D. McCraw	AC WP
600	11/18/05	Email regarding editorial process	H. Duong	A. Schwartz	NP
601	11/21/05	Email involving advice of counsel regarding VidLit / Learning Annex	M. Schachter R. Wolff K. Leonard-O'Keefe	H. Kilpatrick	AC WP
602	11/21/05	Email requesting advice of counsel regarding VidLit / Learning Annex	M. Schachter R. Wolff	K. Leonard-O'Keefe H. Kilpatrick	AC WP

Doc. No.	Date	Description	To	From	Officer	Entry (Claim)
603	11/21/05	Email involving advice of counsel regarding VidLit / Learning Annex	R. Wolff K. Leonard-O'Keefe	M. Schachter	H. Kilpatrick	AC WP
604	11/21/05	Email requesting advice of counsel regarding VidLit / Learning Annex	M. Schachter	R. Wolff		AC WP
605	11/21/05	Email requesting advice of counsel regarding VidLit / Learning Annex	M. Schachter C. Ross	R. Wolff	K. Leonard O'Keefe	AC WP
606	11/21/05	Email involving advice of counsel regarding VidLit / Learning Annex	C. Ross R. Wolff	M. Schachter		AC WP
607	11/21/05	Email requesting advice of counsel regarding VidLit / Learning Annex	R. Wolff	C. Ross	M. Schachter	AC WP
608	11/22/05	Letter involving advice of counsel regarding VidLit / Learning Annex	K. Hertz L. Dubelman	M. Schachter		AC WP
609	11/22/05	Letter involving advice of counsel regarding VidLit / Learning Annex	K. Hertz L. Dubelman	M. Schachter		AC WP

Doc No	Date	Description	To	From	Claim
610	11/22/05	Letter involving advice of counsel regarding VidLit / Learning Annex	K. Hertz L. Dubelman	M. Schachter	AC WP
611	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	M. Schachter	C. Ross	AC WP
612	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	C. Ross	M. Schachter	AC WP
613	11/22/05	Email requesting advice of counsel regarding VidLit / Learning Annex	M. Schachter K. Leonard-O'Keefe	R. Wolff C. Ross	AC WP
614	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	M. Schachter	C. Ross	AC WP
615	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	M. Schachter R. Wolff K. Leonard-O'Keefe	H. Kilpatrick C. Ross	AC WP
616	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	R. Wolff K. Leonard-O'Keefe	M. Schachter C. Ross H. Kilpatrick	AC WP

Doc No.	Date	Description	To	From	AC WP
617	11/22/05	Email requesting advice of counsel regarding VidLit / Learning Annex	M. Schachter	R. Wolff	AC WP
618	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	R. Wolff	M. Schachter	AC WP
619	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	C. Ross	M. Schachter	AC WP
620	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	L. Dubelman	K. Hertz	AC WP
621	11/22/05	Email involving advice of counsel regarding VidLit / Learning Annex	B. Zanker	R. Wolff	AC WP
622	11/23/05	Email involving advice of counsel regarding VidLit / Learning Annex	J. Irizarry-Diaz	M. Schachter	AC WP
623	11/28/05	Memo and letter involving advice of counsel regarding VidLit / Learning Annex	K. Leonard M. Otis R. Wolff	M. Schachter  H. Kilpatrick T. LoBriglio C. Ross	AC WP

Doc No.	Date	Description	To	From	Party Claim
624	11/28/05	M. Schachter notes of Counsel regarding Trump Article			AC WP
625	12/12/05	Memo and letter involving advice of counsel regarding VidLit / Learning Annex	T. LoBrigio	M. Schachter	AC WP
626	12/20/05	Notes of interview with newsgathering source			NP
627	01/07/06	Email regarding editorial process	R. Wolff	T. O'Brien	NP
628	01/19/06	Email regarding editorial process	T. O'Brien E. Battaglia A. Blauner	R. Wolff	NP
629	01/25/06	T. O'Brien email to or from newsgathering source			NP
630	01/25/06	T. O'Brien email to or from newsgathering source			NP

Doc No.	Date	Description	To	From	Subject	Party Claim
631	01/25/06	T. O'Brien email to or from newsgathering source				NP
632	01/26/06	T. O'Brien email to or from newsgathering source				NP
633	01/26/06	Email conveying advice of counsel regarding Work	C. Ross M. Schachter	T. O'Brien	C. Nolan R. Wolff J. Romanello D. McCraw	AC WP
634	01/27/06	T. O'Brien email to or from newsgathering source				NP
635	01/27/06	T. O'Brien email to or from newsgathering source				NP
636	01/29/06	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	From	To	Apply	Column
637	01/29/06	T. O'Brien email to or from newsgathering source				NP
638	02/02/06	T. O'Brien email to or from newsgathering source				NP
639	02/03/06	Email regarding editorial process	TWBG-FIELDSALES J. Stolper R. Chung B. Clark	A. Moore		NP
640	02/09/06	Email regarding editorial process and conveying legal advice	M. Otis	J. Raab		AC WP
641	02/14/06	Email regarding editorial process	R. Wolff	T. O'Brien		NP
642	02/15/06	Email regarding editorial process	P. Lebedda	R. Wolff	J. Pinter	NP
643	02/15/06	Email regarding editorial process	H. Duong	H. Duong		NP



Doc No	Date	Description	To	From	Emp Column
644	02/15/06	Email regarding editorial process	R. Wolff	T. O'Brien	NP
645	02/15/06	Email regarding editorial process	R. Wolff	P. Lebedda	NP
646	02/15/06	Email regarding editorial process	R. Wolff	P. Lebedda	NP
647	02/15/06	Email regarding editorial process	H. Duong	R. Wolff	NP
648	02/15/06	Email regarding editorial process	T. O'Brien	R. Wolff	NP
649	02/15/06	Email regarding editorial process	P. Lebedda	R. Wolff	NP
650	02/15/06	Email regarding editorial process	P. Lebedda	R. Wolff	NP
651	02/16/06	Email regarding editorial process	J. Pinter	R. Wolff	NP
652	02/16/06	Email regarding editorial process	J. Pinter	R. Wolff	NP

Doc No.	Date	Description	To	From	Source	Priority
653	02/17/06	Email regarding editorial process	A. Schwartz	M. Redding	S. Crews	NP
654	02/17/06	Email regarding editorial process	R. Wolff	T. O'Brien		NP
655	02/17/06	Email regarding editorial process	T. O'Brien	R. Wolff		NP
656	02/17/06	Email regarding editorial process	TWBG-FIELDSALES	A. Moore		NP
657	02/17/06	Email regarding editorial process	TWBG-FIELDSALES	A. Moore		NP
658	02/17/06	Email regarding editorial process	H. Duong	A. Schwartz	A. Schwartz	NP
659	02/20/06	Email regarding editorial process	R. Wolff	T. O'Brien		NP
660	02/20/06	Email regarding editorial process	R. Wolff	T. O'Brien		NP

Doc No.	Date	Description	To	From	Privileged Claim
661	02/20/06	Email regarding editorial process	T. O'Brien	R. Wolff	NP
662	02/21/06	Email regarding editorial process	R. Wolff	H. Duong	NP
663	02/21/06	Email regarding editorial process	R. Wolff	H. Duong	NP
664	02/21/06	Email regarding editorial process	H. Duong	R. Wolff	NP
665	02/21/06	Email regarding editorial process	H. Duong	R. Wolff	NP
666	02/21/06	Email regarding editorial process	H. Duong	R. Wolff	NP
667	02/23/06	Email regarding editorial process	R. Wolff	R. Nissen	NP
668	02/23/06	Email regarding editorial process	R. Wolff	T. O'Brien	NP
669	02/23/06	Email regarding editorial process	A. Blauner	R. Wolff	NP

Doc No.	Date	Description	To	From	Occurrence	Priv Claim
670	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff		NP
671	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff	H. Duong	NP
672	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff	H. Duong	NP
673	02/23/06	Email regarding editorial process	R. Wolff	R. Nissen		NP
674	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff	H. Duong	NP
675	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff		NP
676	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff		NP
677	02/23/06	Email regarding editorial process	R. Nissen	R. Wolff	H. Duong	NP
678	02/27/06	T. O'Brien email to or from newsgathering source				NP

Doc No	Date	Description	To	From	Private Claim
679	02/28/06	T. O'Brien email to or from newsgathering source			NP
680	03/01/06	Email regarding editorial process	R. Wolff	T. O'Brien	NP
681	03/01/06	Email regarding editorial process	J. Raab B. Guzman	R. Wolff	NP
682	03/02/06	Email regarding editorial process	T. O'Brien	R. Wolff	NP
683	05/01/06	Notes of interview with newsgathering source			NP
684	06/29/06	Notes of interview with newsgathering source			NP
685		Notes of interview with confidential newsgathering source			NP

Doc. No.	Date	Description	From	Type	Claim
686		Notes of interview with confidential newsgathering source			NP
687		Notes of interview with confidential newsgathering source			NP
688		Notes of interview with confidential newsgathering source			NP
689		Notes of interview with confidential newsgathering source			NP
690		Notes of interview with confidential newsgathering source			NP
691		Notes of interview with confidential newsgathering source			NP
692		Notes of interview with confidential newsgathering source			NP

Doc No.	Date	Description	To	From	Priv (claim)
693		Notes of interview with confidential newsgathering source			NP
694		Notes of interview with confidential newsgathering source			NP
695		Notes of interview with confidential newsgathering source			NP
696		M. Schachter notes of counsel regarding VidLit / Learning Annex			AC WP
697		H. Kilpatrick notes of counsel regarding legal issues			AC WP
698		Materials from newsgathering source			NP
699		Materials from newsgathering source			NP

Doc. No.	Date	Description	To	From	Access	Classification
700		Materials from newsgathering source				NP
701		T. O'Brien notes regarding newsgathering process				NP
702		T. O'Brien correspondence to or from newsgathering source				NP
703		T. O'Brien notes regarding newsgathering process and materials from newsgathering sources				NP
704		T. O'Brien fax to or from newsgathering source				NP
705		T. O'Brien notes regarding newsgathering process				NP
706		T. O'Brien notes regarding newsgathering process				NP



Doc. No.	Date	Description	To	From	Apply Claim
707		T. O'Brien notes regarding newsgathering process			NP
708		Payment to counsel for legal services in connection with Work	C. Nolan	TWBG	AC WP
709		Draft of Work			NP
710		Draft of audio Work			NP
711		Draft of audio Work			NP
712		Draft of Work			NP
713		Draft of audio Work			NP
714		Draft portion of Work			NP
715		Draft portion of Work			NP

Doc No	Date	Description	To	From	Priv. Claim
716		Draft portion of Work			NP
717		Draft portion of Work			NP
718		Draft portion of Work			NP
719		Draft portion of Work			NP
720		Email including notes of interview with confidential newsgathering source	T. O'Brien	J. Plambeck	NP
721		Draft portion of Work			NP
722		Notes of interview with confidential newsgathering source			NP
723		Research regarding newsgathering process			NP

Doc No	Date	Description	To	From	Occ	Priv (claim)
724		Research regarding newsgathering process				NP
725		Notes of interview with newsgathering source				NP
726		T. O'Brien notes regarding newsgathering process				NP
727		T. O'Brien notes regarding newsgathering process				NP
728		T. O'Brien notes regarding newsgathering process				NP
729		T. O'Brien notes regarding newsgathering process				NP
730		T. O'Brien notes regarding newsgathering process				NP

Doc No	Date	Description	Source	From	PEP	Claim
731		T. O'Brien notes regarding newsgathering process				NP
732		Draft portion of Work				NP
733		T. O'Brien notes regarding newsgathering process				NP
734		Draft portion of Work				NP
735		Draft portion of Work				NP
736		Draft portion of Work				NP
737		Draft portion of Work				NP

Doc No.	Date	Description	To	From	CC	Priv (Claim)
738		T. O'Brien's notes regarding newsgathering process				NP
739		Notes of interview with newsgathering source				NP
740		Draft portion of Work				NP
741		Draft portion of Work				NP
742		T. O'Brien's notes regarding newsgathering process				NP
743		Draft portion of Work				NP
744		Draft portion of Work				NP

Doc No	Date	Description	To	From	Apply Claim
745		Draft portion of Work			NP
746		Draft portion of Work			NP
747		Draft portion of Work			NP
748		T. O'Brien's notes regarding newsgathering process			NP
749		Draft portion of Work			NP
750		Notes of interview with confidential newsgathering source			NP
751		T. O'Brien notes regarding editorial process			NP

Doc No.	Date	Description	To	From	CC	Party Column
752		Draft portion of Work				NP
753		T. O'Brien notes regarding editorial process				NP
754		Draft portion of Work				NP
755		T. O'Brien notes regarding editorial process				NP
756		T. O'Brien notes regarding editorial process				NP
757		Draft portion of Work				NP
758		Draft portion of Work				NP

ID No.	Date	Description	To	From	Priority Class
759		Draft portion of Work			NP
760		Draft portion of Work			NP
761		Materials from newsgathering source			NP
762		Email including notes of interview with confidential newsgathering source	T. O'Brien	J. Plambeck	NP
763		Notes of interview with confidential newsgathering source			NP
764		Notes of interview with newsgathering source			NP
765		Notes of interview with newsgathering source			NP



Doc No.	Date	Description	To	From	CC	Party Claim
766		Draft portion of Work				NP
767		Draft portion of Work				NP
768		Draft portion of Work				NP
769		Draft portion of Work				NP
770		Draft portion of Work				NP
771		Draft portion of Work				NP
772		Draft portion of Work				NP
773		Draft portion of Work				NP
774		Transmittal sheet regarding editorial process				NP

Doc No.	Date	Description	To	From	NP or Claim
775		Draft portion of Work			NP
776		Draft portion of Work			NP
777		Notes regarding editorial process of audio Work	D. Kao	A. Hong	NP
778		Letter concerning editorial process of audio Work	C. De Montebello	D. Kao	NP
779		Draft of Work			NP
780		Draft portion of Work			NP
781		Draft of Work			NP

Doc No.	Date	Description	To	From	cc	Pen. Claim
782		Draft portion of Work				NP
783		Draft portion of Work				NP
784		Notes regarding editorial process and conveying legal advice				AC WP NP
785		Notes regarding editorial process	J. Spivey T. Whatley R. Castillo H. Kilpatrick	J. Spivey		NP
786		Memo regarding editorial process	J. Spivey T. Whatley	R. Castillo		NP
787		Draft portion of Work				NP

Doc No.	Date	Description	To	From	Phy Claim
788		Draft portion of Work			NP
789		Notes regarding editorial process			NP
790		Draft of Work			NP
791		Draft portion of Work			NP
792		Draft portion of Work			NP
793		Draft portion of Work			NP
794		Draft portion of Work			NP

Doc No	Date	Description	To	From	CC	Priv Claim
795		Draft portion of Work				NP
796		Draft portion of Work				NP
797		Draft portion of Work				NP
798		Draft portion of Work				NP
799		Draft portion of Work				NP
800		Email regarding editorial and newsgathering processes	T. O'Brien	R. Wolff		NP
801		Email regarding editorial process	T. O'Brien	R. Wolff		NP

Doc No.	Date	Description	To	From	Case No.	Claim
802		Draft portion of Work				NP
803		Document regarding editorial process				NP
804		Memo regarding editorial process	L. Jorstad	R. Castillo		NP
805		Correspondence regarding editorial process	R. Castillo	L. Jorstad		NP
806		Notes regarding editorial process				NP
807		Draft portion of Work				NP
808		Draft portion of Work				NP

Doc No	Date	Description	To	From	cc	By/Claim
809		Draft portion of Work				NP
810		Notes regarding editorial process				NP
811		Notes regarding editorial process				NP
812		Draft portion of Work				NP
813		Draft of Work				NP
814		Draft portion of Work				NP
815		Draft portion of Work				NP

Doc No	Date	Description	To	From	CC	Apply Claim
816		Draft portion of Work				NP
817		Draft portion of Work				NP
818		Draft portion of Work				NP
819		Draft portion of Work				NP
820		Draft portion of Work				NP
821		Draft portion of Work				NP
822		Draft portion of Work				NP



Doc No	Date	Description	To	From	Pay Claim
823		Draft portion of Work			NP
824		Draft portion of Work			NP
825		Draft portion of Work			NP
826		Draft portion of Work			NP
827		Draft portion of Work			NP
828		Draft portion of Work			NP
829		Draft of Work			NP

Doc No.	Date	Description	To	From	Page Base Claim
830		T. O'Brien notes regarding newsgathering process			NP
831		Notes of interview with confidential newsgathering source			NP
832		Notes of interview with newsgathering source			NP
833		Notes of interview with newsgathering sources			NP
834		T. O'Brien notes regarding newsgathering process			NP
835		T. O'Brien notes regarding newsgathering process			NP
836		T. O'Brien notes regarding newsgathering process			NP

Doc No.	Date	Description	To	From	CC	Party Claim
837		T. O'Brien notes regarding newsgathering process				NP
838		T. O'Brien notes regarding newsgathering process				NP
839		T. O'Brien and E. Dash draft and notes regarding editorial process				NP
840		T. O'Brien and E. Dash draft and notes regarding editorial process				NP
841		T. O'Brien notes regarding newsgathering process				NP
842		Research regarding newsgathering process				NP
843		T. O'Brien notes regarding newsgathering process				NP

Doc No.	Date	Description	To	From	CC	Priv. Claim
844		T. O'Brien notes regarding newsgathering process				NP
845		T. O'Brien notes regarding newsgathering process				NP
846		T. O'Brien notes regarding newsgathering process				NP
847		Materials from newsgathering source				NP
848		Materials from newsgathering source				NP
849		Materials from newsgathering source				NP
850		T. O'Brien notes regarding newsgathering process and confidential newsgathering sources				NP

Doc. No.	Date	Description	No.	From	Page No.	By Whom Claimed
851		Notes of interview with confidential newsgathering sources				NP
852		Notes of interview with confidential newsgathering source				NP
853		Notes of interview with newsgathering source				NP
854		Notes of interview with confidential newsgathering source				NP
855		Notes of interview with confidential newsgathering source				NP
856		Notes of interview with confidential newsgathering sources				NP
857		Notes of interview with confidential newsgathering source				NP

Doc No.	Date	Description	To	From	Claim
858		Notes of interview with newsgathering sources			NP
859		Notes of interview with confidential newsgathering source			NP
860		Notes of interview with confidential newsgathering source			NP
861		Notes of interview with confidential newsgathering source			NP
862		Notes of interview with confidential newsgathering source			NP
863		Notes of interview with newsgathering source			NP
864		Notes of interview with newsgathering source			NP

Doc No	Date	Description	Title	Entity	cc	Pay (Claim)
865		Draft portion of Work				NP
866		Draft portion of Work				NP
867		Draft portion of Work				NP
868		Draft portion of Work				NP
869		Draft portion of Work				NP
870		Draft portion of Work				NP
871		T. O'Brien notes regarding newsgathering process				NP

KEY

AC = Attorney-client privilege, including common interest and joint defense privileges

WP = Work product doctrine

NP = New Jersey's newsperson's privilege (N.J.S.A. 2A:48A-21 to 21.8) and any applicable shield law protection afforded by other states, as well as constitutional (federal and state) and common law journalistic privileges



DEFENDANTS' SUPPLEMENTAL PRIVILEGE LOG  
MARCH 10, 2008

DONALD J. TRUMP  
V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS INC.

DOCKET NO. CAM-L-545-06

Doc No.	Date	Description	To	From	Party (Claim)
980	12/21/2004	Email from S. Rohr of Rohr Talent Public Relations to T. O'Brien as part of the newsgathering process, regarding an interview with a potential source	T. O'Brien	S. Rohr	NP
981	01/12/2005	Email from J. Impoco, at <i>The New York Times</i> , to T. O'Brien as part of the newsgathering process, regarding interview scheduling	T. O'Brien	J. Impoco	NP
982	01/16/2005	Email from J. Plambeck, Research Assistant, to T. O'Brien for the purpose of newsgathering, discussing research and potential interviews	T. O'Brien	J. Plambeck	NP

Doc No	Date	Description	To	From	CC	Party Contact
983	03/14/2005	Email from K. Slutsky to T. O'Brien as part of the newsgathering process, regarding D. Trump's golf course businesses and additional research for Work	T. O'Brien	K. Slutsky		NP
984	03/22/2005	Email from R. Wolff, VP, Executive Editor, to T. O'Brien as part of the editorial process, regarding draft portions of the Work and plan for chapters of the Work	T. O'Brien	R. Wolff		NP
985	03/22/2005	Email from R. Wolff, VP, Executive Editor, to T. O'Brien for editorial and newsgathering purposes, regarding golf courses and draft portions of the Work	T. O'Brien	R. Wolff		NP
986	04/14/2005	Email from J. Pinter, former Assistant Editor, to T. O'Brien for editorial and newsgathering purposes, regarding draft portions of the Work	T. O'Brien	J. Pinter		NP

Doc No	Date	Description	To	From	ac	Priv	Crim
987	04/27/2005	Email from T. O'Brien to confidential newsgathering source unrelated to D. Trump, as part of the newsgathering process, regarding D. Trump's professional reputation	Confidential newsgathering source	T. O'Brien			NP
988	04/28/2005	Email from A. Blauner, Author's Agent, to T. O'Brien as part of the editorial process, regarding draft portions of the Work	T. O'Brien	A. Blauner			NP
989	04/28/2005	Email from T. O'Brien to A. Blauner, Author's Agent, as part of the editorial process, regarding draft portions of the Work	A. Blauner	T. O'Brien			NP
990	05/15/2005	Email from confidential newsgathering source unrelated to D. Trump, as part of the newsgathering process, with passing mention of D. Trump	T. O'Brien	Confidential newsgathering source			NP
991	08/15/2005	Email to confidential newsgathering source unrelated to D. Trump, as part of the newsgathering process, with passing mention of the Work	Confidential newsgathering source	T. O'Brien			NP

ID No.	Date	Description	To	From	Type of Claim
992	09/02/2005	Email from D. Cadden, Professor at Quinnipiac University, to T. O'Brien as part of the newsgathering process, attaching articles relating to online universities	T. O'Brien	D. Cadden	NP
993	09/06/2005	Email from D. Cadden, Professor at Quinnipiac University, to T. O'Brien as part of the newsgathering process, regarding online universities	T. O'Brien	D. Cadden	NP
994	09/16/2005	Email from D. Swaabe, at Mullen advertising and PR firm, to T. O'Brien as part of the newsgathering process, regarding advertising and related materials	T. O'Brien	D. Swaabe	NP
995	10/13/2005	Email from D. Cadden, Professor at Quinnipiac University, to T. O'Brien as part of the newsgathering process, regarding online universities	T. O'Brien	D. Cadden	NP
996	11/10/2005	Email from counsel regarding Work	T. O'Brien	D. McCraw	AC WP

Doc No	Date	Description	To	From	CC	Priority
997	01/02/2006	Email from T. O'Brien to D. Robinson, at <i>The New York Times</i> , as part of the newsgathering and editorial processes, regarding potential <i>New York Times</i> article	D. Robinson	T. O'Brien		NP
998	01/3/2006	Email from L. Parker to T. O'Brien providing legal advice	T. O'Brien	L. Parker		AC WP
999	02/03/2006	Email from D. Robinson, at <i>The New York Times</i> , to T. O'Brien as part of the newsgathering and editorial processes, regarding potential <i>New York Times</i> article	T. O'Brien	D. Robinson		NP
1000	02/03/2006	Email from T. O'Brien to D. Robinson, at <i>The New York Times</i> , as part of the newsgathering and editorial processes, regarding potential <i>New York Times</i> article	D. Robinson	T. O'Brien		NP

Doc. No.	Date	Description	To	From	Priv. Claim
1001	02/27/2006	Email from D. Robinson, at <i>The New York Times</i> , to T. O'Brien as part of the newsgathering and editorial processes, regarding potential <i>New York Times</i> article	T. O'Brien	D. Robinson	NP
1002	10/14/2007	Email from A. Marcus to T. O'Brien as part of the newsgathering process, attaching the text of a newspaper article about the Chicago project	T. O'Brien	A. Marcus	NP
1003	10/18/2007	Email from T. O'Brien to A. Marcus as part of the newsgathering process, in regard to newspaper article about the Chicago project	A. Marcus	T. O'Brien	NP

**KEY**

AC = Attorney-client privilege, including common interest and joint defense privileges

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DEFENDANTS' SUPPLEMENTAL REDACTION LOG  
MARCH 10, 2008

DONALD J. TRUMP  
v.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS INC.

DOCKET NO. CAM-L-545-06

Doc No.	Production No.	Date	Description	To	From	See	Priv. Claim
217	TOB-EF-00007906	08/11/04	Non-responsive portion of email from J. Rothschild to T. O'Brien for the purpose of newsgathering, discussing potential sources unrelated to reporting on D. Trump	T. O'Brien	J. Rothschild		NP
218	TOB-EF-00007907 - TOB-EF-00007908	08/11/04	Non-responsive portion of email from T. O'Brien to J. Rothschild for the purpose of newsgathering, discussing potential sources unrelated to reporting on D. Trump	J. Rothschild	T. O'Brien		NP

Doc No	Production No	Date	Description	To	From	Category
219	TOB-EF-00007910	04/18/05	Non-responsive portion of email from T. Einerson to T. O'Brien, pertaining to private personal matters	T. O'Brien	T. Einerson	
220	TOB-EF-00007911	04/18/05	Non-responsive portion of email from T. O'Brien to G. O'Brien, pertaining to private personal matters	G. O'Brien	T. O'Brien	
221	TOB-EF-00007912 - TOB-EF-00007916	05/19/05	Non-responsive portion of email from D. Corneal to T. O'Brien, pertaining to private personal matters	T. O'Brien	D. Corneal	
222	TOB-EF-00007924 - TOB-EF-00007928	05/20/05	Non-responsive portion of email from D. Corneal to T. O'Brien, pertaining to private personal matters	T. O'Brien	D. Corneal	



Doc. No.	Production No.	Date	Description	To	From	cc	Priv. Claim
223	TOB-EF-00007929 - TOB-EF-00007930	05/24/05	Non-responsive portion of email from D. Corneal to T. O'Brien, pertaining to private personal matters	T. O'Brien	D. Corneal		
224	TOB-EF-00007934 - TOB-EF-00007936	08/22/05	Non-responsive portion of email from T. O'Brien to B. Snead, pertaining to private personal matters	B. Snead	T. O'Brien		

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DEFENDANTS' SUPPLEMENTAL PRIVILEGE LOG  
 JUNE 12, 2008

DONALD J. TRUMP  
 V.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS INC.

DOCKET NO. CAM-L-545-06

Doc No.	Date	Description	To	From	CC	Priv. Claim
1004	03/24/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of March 24, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP
1005	03/25/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of March 25, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP
1006	03/25/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of March 25, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP

Doc No	Date	Description	To	From	CC	Priv Claim
1007	03/25/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of March 25, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP
1008	04/30/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of April 30, 2004, regarding Trump Hotels and Casino Resorts, for the purpose of editorial and newsgathering processes				NP
1009	05/03/2004	Email from A. Marcus to T. O'Brien as part of newsgathering process, including information on DGE requirements	T. O'Brien	A. Marcus		NP
1010	05/04/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of May 4, 2004, regarding Trump Hotels and Casino Resorts, for the purpose of editorial and newsgathering processes				NP

Doc No	Date	Description	To	From	cc	NPV Claim
1011	08/25/2004	Notes written by E. Dash, <i>New York Times</i> journalist, for newspaper article by T. O'Brien and E. Dash, regarding D. Trump, for the purpose of editorial process				NP
1012	08/26/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of August 26, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP
1013	08/27/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of August 27, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP
1014	08/27/2004	Draft of newspaper article by T. O'Brien and E. Dash, <i>New York Times</i> journalist, as of August 27, 2004, regarding D. Trump, for the purpose of editorial and newsgathering processes				NP

Doc No	Date	Description	To	From	Page Count
1015	11/01/2004	Draft proposal of Work, maintained in the files of T. O'Brien, for editorial purpose			NP
1016	03/17/2005	Draft summary of information to be included in Work, for the purpose of editorial process, including information from confidential newsgathering sources			NP
1017	06/17/2005	Draft portion of Chapter Six of Work, maintained in the files of T. O'Brien, for the purpose of editorial process			NP
1018	06/28/2005	Note from T. O'Brien to R. Wolff and C. Nolan reflecting legal advice and including a draft portion of Chapter Six of Work, for the purpose of editorial process	R. Wolff C. Nolan	T. O'Brien	NP AC WP
1019	07/13/2005	Draft copy for front and back jacket and flap for Work, as of July 13, 2005, for the purpose of editorial process			NP

Doc No.	Date	Description	To	From	CC	Priv Claim
1020	07/13/2005	Draft copy for front and back jacket and page 1 for Work, as of July 13, 2005, for the purpose of editorial process				NP
1021	Undated	Notes written by T. O'Brien for the purpose of newsgathering, including contact information for potential sources				NP

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice.

2. The second part of the document outlines the procedures for handling discrepancies between the recorded amounts and the actual cash received. It states that any such discrepancy must be investigated immediately.

3. The third part of the document describes the process of reconciling the accounts at the end of each month. It requires that the total of the recorded transactions must match the bank statement.

4. The fourth part of the document discusses the role of the auditor in verifying the accuracy of the records. It notes that the auditor should check the supporting documents for each entry.

5. The fifth part of the document concludes by stating that the integrity of the financial records is essential for the success of the organization. It calls for strict adherence to the established procedures.

ANDREW BLAUNER PRIVILEGE LOG  
 AUGUST 24, 2007

DONALD J. TRUMP  
 v.

TIMOTHY L. O'BRIEN, TIME WARNER BOOK GROUP INC., AND WARNER BOOKS INC.

DOCKET NO. CAM-L-545-06

Doc No	Date	Description	To	From	CC	Privileged
1	12/08/04	Email from R. Wolff, VP, Executive Editor, to A. Blauer, Author's Agent, discussing timing and publisher's announcement of Work, for the purpose of addressing the dissemination and delivery of Work	A. Blauer	R. Wolff		NP
2	12/08/04	Email from R. Wolff, VP, Executive Editor, to A. Blauer, Author's Agent, discussing timing and publisher's announcement of Work, for the purpose of addressing the dissemination and delivery of Work	A. Blauer	R. Wolff		NP





Date	Description	To	From	Party
3	Email from E. Battaglia, VP, Associate Publisher, to R. Wolff, VP, Executive Editor, and A. Blauner, Author's Agent, discussing timing and publisher's announcement of Work, for the purpose of addressing the dissemination and delivery of Work	R. Wolff A. Blauner	E. Battaglia	NP
4	Email from T. O'Brien to A. Blauner, Author's Agent, as part of editorial process, discussing progress in drafting Work and future interviews for obtaining information for possible inclusion in Work	A. Blauner	T. O'Brien	NP
5	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email from R. Wolff, VP, Executive Editor, as part of editorial process, and including comments on draft chapter of Work and discussion of further chapters of Work	A. Blauner	T. O'Brien	NP

Doc No.	Date	Description	To	From	cc	Priv. (claim)
6	01/07/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email from R. Wolff, VP, Executive Editor, as part of editorial process, and including comments on draft chapter of Work and discussion of further chapters of Work	A. Blauner	T. O'Brien		NP
7	01/26/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email exchange with R. Wolff, VP, Executive Editor, as part of editorial process, discussing revisions to subtitle of Work	A. Blauner	T. O'Brien		NP
8	01/26/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email exchange with R. Wolff, VP, Executive Editor, as part of editorial process, discussing revisions to subtitle of Work	A. Blauner	T. O'Brien		NP
9	01/26/05	Email from T. O'Brien to R. Wolff, VP, Executive Editor, copying A. Blauner, Author's Agent, as part of editorial process, discussing revisions to subtitle of Work	R. Wolff	T. O'Brien	A. Blauner	NP

Doc No	Date	Description	To	From	Party Claim
10	01/27/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email exchange with R. Wolff, VP, Executive Editor, as part of editorial process, discussing revisions to subtitle of Work	A. Blauner	T. O'Brien	NP
11	02/01/05	Email from T. O'Brien to A. Blauner, Author's Agent, as part of editorial process, discussing revisions to subtitle of Work	A. Blauner	T. O'Brien	NP
12	02/03/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email from R. Wolff, VP, Executive Editor, as part of editorial process, including comments on draft chapter of Work	A. Blauner	T. O'Brien	NP
13	02/03/05	Email from T. O'Brien to A. Blauner, Author's Agent, discussing reaction of R. Wolff, VP, Executive Editor, to draft chapter of Work	A. Blauner	T. O'Brien	NP
14	02/09/05	Email from T. O'Brien to A. Blauner, Author's Agent, including discussion of possible related article for publication	A. Blauner	T. O'Brien	NP

Doc No	Date	Description	To	From	cc	PIN Claim
15	02/09/05	Email from T. O'Brien to R. Wolff, VP, Executive Editor, as part of editorial process, including discussion of ideas for chapters of Work, discussion of possible related article for publication, and discussion of information about D. Trump obtained by T. O'Brien in the course of newsgathering	R. Wolff	T. O'Brien		NP
16	03/02/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email exchange with R. Wolff, VP, Executive Editor, including comments on draft chapter of Work	A. Blauner	T. O'Brien		NP
17	03/22/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email from R. Wolff, VP, Executive Editor, as part of editorial process, including comments on draft chapter of Work	A. Blauner	T. O'Brien		NP
18	03/22/05	Email from T. O'Brien to A. Blauner, Author's Agent, forwarding email exchange with R. Wolff, VP, Executive Editor, as part of editorial process, discussing author's progress in drafting Work	A. Blauner	T. O'Brien		NP

Doc No	Date	Description	To	From	Re Claim
19	04/04/05	Email from T. O'Brien to R. Wolff, VP, Executive Editor, and A. Blauner, Author's Agent, attaching draft of Chapter Five of Work, for the purpose of editorial process	R. Wolff A. Blauner	T. O'Brien	NP
20	04/07/05	Email involving/reflecting legal advice regarding Work	A. Blauner	R. Wolff J. Pinter	AC WP
21	04/13/05	Email from T. O'Brien to A. Blauner, Author's Agent, as part of editorial process, discussing author's progress on Work	A. Blauner	T. O'Brien	NP
22	05/12/05	Email from T. O'Brien to A. Blauner, Author's Agent, discussing the editorial process of the Work, as well as its dissemination and delivery	A. Blauner	T. O'Brien	NP
23	Undated	Draft of Chapter Six of Work, undated, maintained in the files of A. Blauner, Author's Agent, for the purpose of editorial process			NP

Doc No	Date	Description	To	From	cc	Rev Claim
24	Undated	Draft of Chapter Three of Work, undated, maintained in the files of A. Blauner, Author's Agent, for the purpose of editorial process				NP
25	Undated	Draft of Chapter Two of Work, undated, maintained in the files of A. Blauner, Author's Agent, for the purpose of editorial process				NP
26	Undated	Early draft proposal of Work, maintained in the files of A. Blauner, Author's Agent, for editorial purpose				NP
27	Undated	Full draft of Work, undated, maintained in the files of A. Blauner, Author's Agent, for the purpose of editorial process				NP
28	Undated	Draft of Prologue and Chapter One of Work, undated, maintained in the files of A. Blauner, Author's Agent, for the purpose of editorial process				NP

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**Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>**

---

**From:** Castillo, Robert - TWBG -Editorial <bob.castillo@twbg.com>  
**Sent:** Tuesday, July 26, 2005 5:42 PM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
**Subject:** FW: photos, etc.

Rick:

I responded to Tim about this, and noted that the detergent ad would probably need to come from All, not Donald. I can probably run this by Heather, but I have two alternatives that would save ourselves some trouble. (And I wanted to run them by you first before approaching Tim.):

1. Just delete both "Trump Organization" photos (Mar-A-Lago and the detergent ad). That takes us down to 22 photos, which would give the designer a little more room to play with. (The 24 photos we had is, I think, the limit of what can be done with a single 8-page insert.)
2. I looked at the permissions and saw that apparently Tim has already paid for the use of two photos we're dropping (Donald pointing and yelling—a typical pose—and the "icon" shot of him and Marilyn lookalike): the fee was \$250 apiece to Reuters. Seems a waste—and I'm surprised actually that Tim didn't say anything about the cuts—so we could also just replace the two Trump Organization photos with these two if you feel we need two dozen photos.

Can we talk Wednesday?

Bob

-----Original Message-----

**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Tuesday, July 26, 2005 2:38 PM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
**Cc:** Castillo, Robert - TWBG -Editorial <bob.castillo@twbg.com>  
**Subject:** RE: photos, etc.

Rick and Bob —

The "courtesy of's": All I have is an e-mail from NYMA on their photos. On the Trump photos: it's the same on the pic of Mar-A-Lago that they supplied.

The All detergent ad is something Trump sent to me in the mail, which I then scanned digitally.

I'll forward the e-mail from NYMA that they gave me when they sent me the photos. If we ask Trump for "courtesy of" documentation now, he's going to try to diddle with us. Your call. Let me know.

Tim

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com> [mailto:rick.wolff@twbg.com]  
**Sent:** Tuesday, July 26, 2005 2:31 PM  
**To:** tob@nytimes.com  
**Cc:** bob.castillo@twbg.com  
**Subject:** FW: photos, etc.

Tim - we're coming down the home stretch! Please check out Bob's note below regarding "courtesy of" permissions. Can we get those? Thanks, Rick

-----Original Message-----

**From:** Castillo, Robert - TWBG -Editorial <bob.castillo@twbg.com <mailto:bob.castillo@twbg.com>>  
**Sent:** Tuesday, July 26, 2005 10:21 AM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com <mailto:rick.wolff@twbg.com>>  
**Subject:** RE: photos, etc.

Rick/Tim:



I made some minor corrections to the credits, to match the credit lines required on the permissions, but that's the only changes I've made. (Tim: I'll be sure to forward a copy of the insert layout for your review.)

Please note also that in addition to the Times, I don't have explicit permissions from the New York Military Academy and Trump Organization. Even if these are truly "courtesy of"-which means no fee is paid-I should still have the agreements just to be on the safe side.

Thanks  
Bob

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com) <<mailto:rick.wolff@twbg.com>>>  
**Sent:** Tuesday, July 26, 2005 9:28 AM  
**To:** 'Tim O'Brien'  
**Cc:** Castillo, Robert - TWBG -Editorial <[bob.castillo@twbg.com](mailto:bob.castillo@twbg.com) <<mailto:bob.castillo@twbg.com>>>; Pinter, Jason - TWBG - Editorial <[jason.pinter@twbg.com](mailto:jason.pinter@twbg.com) <<mailto:jason.pinter@twbg.com>>>  
**Subject:** RE: photos, etc.

Tim - you're right - there's nothing in captions that would cause legal concerns. Jason didn't change any copy. Also, due to space concerns, I've decided to delete 3 of the 27 photos - the Trump yacht, the Marilyn lookalike shot, and the Mouth that Roared. Otherwise, the others are in. Finally, I will need those NY Times permissions as soon as possible. Thanks, Rick

-----Original Message-----

**From:** Tim O'Brien [<mailto:tob@nytimes.com>] <<mailto:tob@nytimes.com>>  
**Sent:** Monday, July 25, 2005 3:04 PM  
**To:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com) <<mailto:rick.wolff@twbg.com>>>  
**Subject:** RE: photos, etc.

no, i'm sure he never saw them. but there's nothing in the captions that Trump could sue for, is there?  
also, i don't know if Jason amended or changed any of the captions after he got them....

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com) <<mailto:rick.wolff@twbg.com>>>  
<<mailto:rick.wolff@twbg.com>> <<mailto:rick.wolff@twbg.com>>>  
**Sent:** Monday, July 25, 2005 2:50 PM  
**To:** [tob@nytimes.com](mailto:tob@nytimes.com) <<mailto:tob@nytimes.com>>  
**Subject:** RE: photos, etc.

Tim - did Chris Nolan give a legal okay on the captions?

-----Original Message-----

**From:** Tim O'Brien [<mailto:tob@nytimes.com>] <<mailto:tob@nytimes.com>>  
**Sent:** Monday, July 25, 2005 2:11 PM  
**To:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com) <<mailto:rick.wolff@twbg.com>>>  
**Subject:** RE: photos, etc.

P.s.

I'm sure you're aware that Melania's nipple apparently is on display in one of the photos. Jason said the photo people would do whatever they needed to do....

and they had elected at one point to possibly drop the Vogue cover of Melania in her wedding dress -- but i told him that cover was a huge seller for Vogue and that it would be a draw for female readers. he said they were reconsidering (i told him they could dump the photo of Trump's yacht and keep the Vogue cover if they need to lose a photo to make room...)

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com) <<mailto:rick.wolff@twbg.com>>>  
<<mailto:rick.wolff@twbg.com>> <<mailto:rick.wolff@twbg.com>>  
**Sent:** Monday, July 25, 2005 1:58 PM  
**To:** [tob@nytimes.com](mailto:tob@nytimes.com) <<mailto:tob@nytimes.com>>  
**Subject:** RE: photos, etc.

Tim - the disc just arrived with the permissions! Thank you! Can you send me the captions one more time (I have them on Jason's computer, but he's on vacation this week). Rick

-----Original Message-----

**From:** Tim O'Brien [<mailto:tob@nytimes.com>] <<mailto:tob@nytimes.com>>  
<<mailto:tob@nytimes.com>>  
**Sent:** Monday, July 25, 2005 12:31 PM  
**To:** Wolff, Richard - TWBG -Editorial <[rick.wolff@twbg.com](mailto:rick.wolff@twbg.com)>  
<<mailto:rick.wolff@twbg.com>>>  
**Subject:** photos, etc.

Hi Rick -

Am sending over the photo disc and copies of the permissions. You'll have all of them except the ones from the Times - they have agreed to let me use them and accepted payment but have been slow to process the paperwork. I asked them for written permissions again on Friday and will forward them to you as soon as I have them.

Thanks.

Tim

---

Tim O'Brien  
The New York Times  
229 W.43rd Street  
New York, NY 10036

212-556-7131

From: emi.battaglia@twbg.com  
Sent: Thursday, July 14, 2005 11:52 AM  
To: tob@nytimes.com; rick.wolff@twbg.com; BLAUNER@aol.com  
Cc: jennifer.romanello@twbg.com; rob.nissen@twbg.com  
Subject: RE: confidential / TRUMP

Just wanted to add here that we are asking the outlets to sign non disclosure agreements...we don't want a big chunk of the book out there with no books in the stores.

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Wednesday, July 13, 2005 4:08 PM  
To: Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; BLAUNER@aol.com; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>

Subject: RE: confidential / TRUMP

great by me....

thanks!

-----Original Message-----

From: rick.wolff@twbg.com [mailto:rick.wolff@twbg.com]  
Sent: Wednesday, July 13, 2005 3:59 PM  
To: BLAUNER@aol.com; emi.battaglia@twbg.com  
Cc: tob@nytimes.com  
Subject: RE: confidential / TRUMP

Andrew - it was decided not to embargo the book because we want it to generate some excitement and buzz before it pubs. Clearly if Mr. Trump takes exception to Tim's work and starts making noise about the book before pub time, that will only help to excite the masses - and that's a good thing. Or at least that's the game plan. Rick

-----Original Message-----

From: BLAUNER@aol.com [mailto:BLAUNER@aol.com]  
Sent: Wednesday, July 13, 2005 3:39 PM  
To: Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Battaglia, Emi - TWBG - Advertising and Promotion <emi.battaglia@twbg.com>

Subject: confidential / TRUMP

Hi. Just checking in to confirm something about Tim's Trump book. I understand now that bound galley will be available starting within about two weeks.

Are we going with an embargo, here, per se, or not? I was just consulting with Tim, I wasn't sure, and but he's concerned that as soon as Donald sees the book in its entirety, he will go ballistic, and he raises the question of whether we want to save that particular PR pop for the fall?

Not sure how to do a galley mailing without running some decent risk that a copy would find its way to Donald, right? One of the flip-sides of it all, of course, is that if nobody can see the book until it pubs, we lose all kinds of opportunities with all kinds of reviewers, media, etc who need long leads.



3499a

TOB-EF-00000260

So.....please advise. Thanks.

AB

Andrew Blauner  
Blauner Books Literary Agency  
263 Cumberland Street, #4  
Brooklyn, NY 11205  
(718) 858-2416  
Blauner@aol.com

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From: rob.nissen@twbg.com  
Sent: Monday, September 19, 2005 5:21 PM  
To: tob@nytimes.com; rick.wolff@twbg.com; BLAUNER@aol.com; emi.battaglia@twbg.com  
Subject: RE: Trump PR

Tim:

I was only saying that we don't typically place our business authors in Wal-Mart for signings because most of them are not appropriate and we like to do author events where we know we can generate a substantial crowd - the author's hometown for instance, or, in conjunction with another event he/she may be doing.

I'm not suggesting TrumpNation wouldn't be suitable. I agree with your points and as I said, I'm happy to pursue it. The book will be for sale through Wal-Mart everywhere, but if you want to do an actual event at a store it would have to be around here, or, if you plan on being on the road where we can do one around your schedule. Either way, I'm more than willing to set it up if possible. When I said "suggest a store where it might work," I meant a Wal-Mart location. Maybe that was confusing...

Rob

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Monday, September 19, 2005 4:55 PM  
To: Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; BLAUNER@aol.com; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Bonner, Laura - TWBG -Editorial <laura.bonner@twbg.com>

Subject: RE: Trump PR

Rob, et al --

This response stumps me completely since Trump is, obviously, not just a business figure. His appeal lies well beyond the average business reader -- he's got more name recognition than most celebrities and far more than most business figures. He's a cult figure and (in all his effervescent weirdness) a cultural icon. So I'm at a loss as to why we wouldn't be targeting middle-American readers and Apprentice viewers who follow Trump because he's more than just a business guy -- he fascinates those people.

If I'm off-base on this, or you think I'm wrong, I'll back off from this -- but I just don't get it.

Tim

3501a

.TOB-EF-00000463

-----Original Message-----

From: rob.nissen@twbg.com [mailto:rob.nissen@twbg.com]  
Sent: Monday, September 19, 2005 4:18 PM  
To: tob@nytimes.com; rick.wolff@twbg.com; BLAUNER@aol.com; emi.battaglia@twbg.com;  
laura.bonner@twbg.com  
Subject: RE: Trump PR

It's not typically a venue we pursue - at least on the business book side. If you want to suggest a store where you think it might work, I'm happy to pursue it.

60 Minutes did have the ms and now have the galley - which they confirmed receiving - but have only told me no decision has been made. That was at the end of August and I've not been able to get another response from them. But as I said, I will keep on them.

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Monday, September 19, 2005 3:51 PM  
To: Nissen; Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; BLAUNER@aol.com; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Bonner, Laura - TWBG -Editorial <laura.bonner@twbg.com>

Subject: RE: Trump PR

Thanks Rob. i'll forward your e-mail and number to Lisa and vice-versa.

are we not doing anything at Wal-Mart because it's not worth doing anything at Wal-Mart or because we're overlooking it? i'm not asking in a snarky way or critical -- i just don't know this turf and am leaving it up to your good judgment. maybe i recollect it wrong on 60 Minutes, but I thought they had an advance manuscript months ago and were interested.

thanks.

-----Original Message-----

From: rob.nissen@twbg.com [mailto:rob.nissen@twbg.com]  
Sent: Monday, September 19, 2005 3:43 PM  
To: tob@nytimes.com; rick.wolff@twbg.com; BLAUNER@aol.com; emi.battaglia@twbg.com;  
laura.bonner@twbg.com  
Subject: RE: Trump PR

Tim:

I'm happy to work with Lisa provided she and I coordinate in advance on who she will be contacting. This way we won't be double-pitching anyone. I think it'd be best if she and I talk first and see if there's a way to work out a game plan. I can then send her the materials she needs. You can pass my phone number on to her or let me have hers.

As for your questions: we don't have any Wal-Mart signings set up. I just confirmed today actually that USA Today has sent the galley out to a reviewer for the Money section - I've also sent artwork to the art dept. That's a pretty good sign, but I do not have a

confirmed date on if/when something will run.

Book party we don't have planned, but would be happy to assist in any way if you think you want to do one in NYC. Normally, we don't host parties but will help in sending out invitations, getting books/posters there, etc.

60 Minutes is still up in the air. I've not heard back from them one way or the other but I will keep on top of them. Do let me know about Imus and CNBC (I've had discussions there as well and want to be sure we coordinate that.)

Rob

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Monday, September 19, 2005 2:37 PM  
To: Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; BLAUNER@aol.com; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Bonner, Laura - TWBG -Editorial <laura.bonner@twbg.com>

Subject: Trump PR

Hi Folks --

I just had lunch with a woman named Lisa Dallos, a former publicist with Jann Wenner and Tina Brown who now is working with a new shop, Freud Communications, started by some former Harvey Weinstein/Miramax people. She's also been with NBC and CNN -- she has tons of contacts.

She, nor I, want to step on any marketing/PR toes at Warner Books, but she offered to reach out to people on the book (pro bono) if you guys want her to -- she has great radio, TV, and print contacts. All she needs from us is a galley, press kit, marketing strategy, etc. But if that intrudes on what you folks are doing there's no need to involve her.

She also asked if we're doing any signings at Wal-Mart; the status of a story or a review in USA Today, and if there's a book party planned in Manhattan. She said she could help on the party front (with Tina Brown or somebody akin) if nothing is in the works.

I was at an event last week with Don Imus and I think he'd be in to have me on the show when the book comes out. More on this later. I also can get on CNBC during their premium morning hours -- some people there have already expressed interest to me and offered to help.

Has anything gelled with 60 Minutes or any possible follow-on excerpts after the Times excerpt runs?

3503a

TOB-EF-00000465

I'm going out of town on Friday and will be back on 10/3.

Thanks,

Tim

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3504a

TOB-EF-00000466



**From:** Tim O'Brien [tob@nytimes.com]  
**Sent:** Thursday, November 17, 2005 1:11 PM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; rob.nissen@twbg.com;  
BLAUNER@aol.com; emi.battaglia@twbg.com  
**Subject:** RE: learning annex

Rick --

I'm not disagreeing with Rob on any approach he's taken -- I was talking about another route that we actually haven't taken yet. I'm not saying we should target the events. I'm saying we should piggyback on the publicity preceding the events, because that's been sizeable in every town in which Trump's spoken (and the general reader in those markets -- not those attending the Annex events -- don't know the book is even out there).

Thanks.

-----Original Message-----

**From:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com> [mailto:rick.wolff@twbg.com]  
**Sent:** Thursday, November 17, 2005 12:51 PM  
**To:** rob.nissen@twbg.com; tob@nytimes.com; BLAUNER@aol.com; emi.battaglia@twbg.com  
**Subject:** RE: learning annex

Guys - I think Rob's approach makes the most sense here. We already know where Trump is going to appear in advance and clearly it's the best way to get the word out to the local media, like we did in Chicago, to do some muck-raking on The Donald. Besides, my sense is that people who go to these Annex events don't want to hear that Trump is a phony. Rick

-----Original Message-----

**From:** Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>  
**Sent:** Thursday, November 17, 2005 12:03 PM  
**To:** 'Tim O'Brien'; 'Andrew Blauner'; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>  
**Subject:** RE: learning annex

I agree that we should reach out to media in the cities where Trump will be. It worked with the Chicago Trib so with a little advance planning we could probably get more.

Rob

-----Original Message-----

**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Thursday, November 17, 2005 11:25 AM  
**To:** Andrew Blauner; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>  
**Subject:** learning annex

Good morning folks --

Andrew forwarded to me the back-and-forth on the Learning Annex stuff and I just wanted to share a thought.

I don't think we ever expected the Learning Annex to directly partner with us on this book and jointly promote it alongside Trump's "How to Get Rich" tour (we of course, already know Donald's secret: have a rich father). It doesn't surprise me that the people that Rob spoke with there turned him down: And if you folks are reluctant to step on Kiyosaki's toes, I truly understand and appreciate that from a business standpoint and the following thoughts are moot. If otherwise....

There's no reason we have to partner with the Learning Annex to take advantage of those events. There is a massive amount of publicity preceding each of those events and we should be piggybacking the publicity, not the event itself. Although we didn't do anything prior to the New York event, we already had all of the buzz generated by the Times except so perhaps that didn't matter. We got going at the last minute on the Chicago event, but it still generated two mediocre hits in the Chicago Trib, in stories that then circulated on the wires.

I think there are like 6 or 7 of these events left. If we start planning a couple of weeks in advance of each of them and book local TV and radio interviews to offer an alternative to what Donald is peddling, that seems like something that would generate sales. And can we combine that with some sort of local print ads prior to his arrival?

As far as my friends in Chicago getting the TrumpNation postcards circulated inside that event -- I bought them tickets and they went inside and handed them out. It took them an hour. But, as Rob pointed out, that didn't seem to generate much of anything. So maybe doing that is just like a low-bore direct mail campaign with a small percentage of respondents and isn't worth anybody's time.

That's the end of me being a nuisance today.

Thanks for everything.

Best,

Tim

---

Tim O'Brien  
The New York Times  
229 W.43rd Street  
New York, NY 10036

212-556-7131

---

From: rick.wolff@twbg.com  
Sent: Tuesday, March 15, 2005 11:45 AM  
To: tob@nytimes.com; rob.nissen@twbg.com; emi.battaglia@twbg.com  
Cc: Blauner@aol.com  
Subject: RE: Trump books in PW

AB - just spoke with Keith Kelly...chances are he's going to call you. He pressed me hard for what kind of advance we paid. I didn't reveal anything on that front- that's up to you.

I also told him that this was something of an exclusive to the Post, since we haven't sent an official press release out yet. Slater's book, by the way, is authorized by Trump - I made sure to tell Keith that Tim's is definitely not authorized. Rick

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Tuesday, March 15, 2005 10:52 AM  
To: Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>

Cc: Blauner@aol.com  
Subject: RE: Trump books in PW

I got off the phone with Keith about 15 minutes ago. He said he wants to do something tonight with this -- said he knew Rick and would call him. Hope it was okay to do this and that I haven't stepped on anyone's toes...yell at my if I have and I'll stay out of the way from now on.

-----Original Message-----

From: rob.nissen@twbg.com [mailto:rob.nissen@twbg.com]  
Sent: Tuesday, March 15, 2005 10:51 AM  
To: rick.wolff@twbg.com; tob@nytimes.com; emi.battaglia@twbg.com  
Cc: Blauner@aol.com  
Subject: RE: Trump books in PW

I could call him. I'll ask him to call you and Tim for quotes and info. If that's good with everyone, I'll call him this morning.

Rob

-----Original Message-----

From: Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
Sent: Tuesday, March 15, 2005 10:20 AM  
To: 'Tim O'Brien'; Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>

Cc: Blauner@aol.com  
Subject: RE: Trump books in PW

3507a

TOB-EF-00000443

Then let's give the story to Keith Kelly today. He'll love it. Emi? Rob?  
Who calls Keith? Rick

-----Original Message-----

From: Tim O'Brien [mailto:tob@nytimes.com]  
Sent: Tuesday, March 15, 2005 9:51 AM  
To: Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>

Cc: Blauner@aol.com  
Subject: RE: Trump books in PW

You folks announce now whenever you're comfortable. It would be good to have Donald on board longer, but I'm in good shape with him. I will see him tomorrow night and can try to squeeze in another long interview with him.

Keith Kelly would be the one to go to on this at NY Post....I know him.

-----Original Message-----

From: emi.battaglia@twbg.com [mailto:emi.battaglia@twbg.com]  
Sent: Tuesday, March 15, 2005 9:49 AM  
To: rick.wolff@twbg.com; rob.nissen@twbg.com  
Cc: Blauner@aol.com; tob@nytimes.com  
Subject: RE: Trump books in PW

I saw too....we aren't mentioned b/c we have been keeping the books under wraps so i do agree that we need to make some announcement soon but when Tim is comfortable. I'd give it as exclusive to either the New York Times or the NY post....PW can always follow. Btw, we don't need Nora's advice on who to give it to at PW...

-----Original Message-----

From: Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
Sent: Tuesday, March 15, 2005 9:35 AM  
To: Battaglia, Emi - TWBG -Advertising and Promotion <emi.battaglia@twbg.com>; Nissen, Rob - TWBG -Advertising and Promotion <rob.nissen@twbg.com>

Cc: 'Blauner@aol.com'; 'Tim O'Brien'  
Subject: Trump books in PW

Emi and Rob - on p. 12 of this week's PW there's a big feature on upcoming Trump books (our book is not mentioned)...this AM, Imus had Robert Slater on for 20 minutes (Slater's new book on Trump is a puff piece, but Prentice-Hall has announced a 200,000 first print). I do believe the time has come to let the world know of our Trump book. The PW piece was written by Raya Kuzyk....who should we contact at PW about our book? How about Steve Zeitchick? Should we ask Nora Rawlinson for her advice? Please let me know your thoughts - thanks, Rick

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**From:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com> [rick.wolff@twbg.com] on behalf of rick.wolff@twbg.com  
**Sent:** Friday, March 18, 2005 10:23 AM  
**To:** tob@nytimes.com  
**Subject:** RE: is this okay amigo?

Thanks Tim for all of your patience on this! We're good to go. Rick

-----Original Message-----

**From:** Tim O'Brien [mailto:tob@nytimes.com]  
**Sent:** Friday, March 18, 2005 10:00 AM  
**To:** Wolff, Richard - TWBG -Editorial <rick.wolff@twbg.com>  
**Subject:** is this okay amigo?

TrumpWorld is the first book to bring readers deeply inside the gilded, loopy, over-the-top joyride that is life with the Donald. From the multimillion-dollar deals and flashy toys to the glamorous babes and high-stakes rivalries, TrumpWorld is a tour of all things Donald and it is a gripping tale informed by thorough, revealing reporting and unusual cooperation from Mr. Trump himself. Among TrumpWorld's revelations:

THEN PICK UP WITH BULLET POINTS

-----  
Tim O'Brien  
The New York Times  
229 W.43rd Street  
New York, NY 10036

212-556-7131

DONALD J. TRUMP,

Plaintiff,

v.

TIMOTHY L. O'BRIEN, TIME WARNER  
BOOK GROUP INC., and WARNER  
BOOKS INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: CAMDEN COUNTY

DOCKET NO. CAM-L-545-06

CIVIL ACTION

---

REPLY MEMORANDUM OF LAW OF DEFENDANTS TIMOTHY L. O'BRIEN,  
TIME WARNER BOOK GROUP INC., AND WARNER BOOKS INC.,  
IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS

---

REED SMITH LLP  
Princeton Forrestal Village  
136 Main Street, Suite 250  
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Princeton, New Jersey 08543-7839

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Andrew J. Ceresney, Esq.  
Of Counsel

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Defendants respectfully submit this Reply Memorandum in Further Support of Defendants' Motion to Dismiss the Complaint.

PRELIMINARY STATEMENT

Trump's Memorandum of Law in Opposition to Defendants' Motion to Dismiss ("Opposition" or "Opp.") does not refute the fundamental premise of Defendants' Motion to Dismiss: Trump has failed to allege, as a matter of law, a viable claim for defamation.

First, the statement at the heart of the Complaint – one paragraph in the Book that cites three sources who thought that Trump is worth \$150 million to \$250 million, which appears immediately following numerous estimates provided by Trump and others – is simply not defamatory when read, as it must be, in the context of the Book's detailed discussion of the various estimates of Trump's wealth. Trump's claim to the contrary rests on his assertion that O'Brien endorsed the \$150 million to \$250 million estimate of Trump's wealth and rejected all other estimates (see Opp. at 3, 6-7, 16, 24-25), a baseless claim unsubstantiated by the actual text of the Book. The Book asks the non-defamatory question about how much Trump is worth – just as many others have asked since well before the Book was published – but offers no definitive answer to the question. It does not endorse the \$150 million to \$250 million estimate or otherwise conclude that Trump is not a billionaire. Because it is not defamatory to raise a question about Trump's wealth, Trump's claim fails.

Second, even if one were to accept Trump's mischaracterization of the Book as having endorsed the \$150 million to \$250 million estimate, the statement still would not be actionable. Defamation law redresses statements that bring disrepute among reasonable members of the community or that expose an individual to hatred, contempt, or ridicule. An estimate that someone is worth approximately \$200 million does not and has never satisfied this standard.

In an effort to salvage his complaint, Trump advances a new contention: that the Book is defamatory because it states that Trump misled the public about his net worth. (See id. at 3, 20-22.) As an initial and dispositive matter, this claim was never pleaded in his Complaint, and this alone justifies dismissal of his claim. In any event, the Book never stated that Trump "lied" about his net worth. Rather, in addition to reporting the challenged estimate, the Book indisputably reported: (1) Trump's own vastly disparate estimates; (2) estimates by Forbes that Trump challenged; and (3) a detailed chart of assets identified by Trump's Chief Financial Officer ("CFO"). To permit Trump to advance a libel claim based on this theory would effectively penalize O'Brien for reporting Trump's and Forbes' varied estimates and noting their inconsistencies. The law wisely does not countenance such a claim.

Third, the Complaint fails to plead facts showing that defendants published a false statement with actual malice, i.e., with knowledge of falsity or in reckless disregard of the truth. Though Trump's Opposition purports to identify eleven bases of actual malice (see id. at 27-32), it is clear that even if credited, none can form the basis for a finding of actual malice. Trump can no more contrive a claim of malice based on defendants' reference to estimates by confidential sources (see Opp. at 30-31), from which no negative inference may be drawn under New Jersey law, than he can premise his claim on a supposed failure by O'Brien to request information from Trump about his debts and liabilities after Trump and his subordinates failed to provide O'Brien with this obviously critical information (see Opp. at 28 & n.10).

Fourth, Trump has narrowed the alleged oral statements that he now claims are actionable to two: (1) O'Brien's alleged statements that Trump "adds zeros here and there"; and (2) "Trump's net worth is definitely inflated. *Forbes Magazine* puts his worth at \$2.7 billion, but I

am almost certain that is a complete work of fiction.” (Id. at 5, 34; Complaint ¶ 32.) These statements do not imply that Trump is worth \$150 million to \$250 million, or even that Trump is not a billionaire; the statements are simply colorful, figurative, and vague expressions that are not actionable. Moreover, the fair import of each statement is that Trump is prone to exaggeration about his net worth, that Trump himself has made diverse claims about the size of his fortune, and, as to the second statement, that Forbes’ estimates are also subject to question. Such statements are not defamatory as a matter of law, and do not portend actual malice, as the Book reports on the vastly disparate estimates that Trump indisputably has provided over time.

Fifth, all of the challenged statements are additionally protected by the fair comment doctrine as commentary on a matter of public concern. Accordingly, Trump has failed to refute the legal bases for defendants’ Motion to Dismiss, and the Complaint should be dismissed.

#### ARGUMENT

##### I. The Complaint Fails to Meet the Applicable Pleading Standards

Under even the most liberal of pleading standards, the Complaint fails to make out an actionable claim of defamation. But contrary to Trump’s contention (see Opp. at 12-13), the Complaint is subject to the heightened pleading standard for defamation claims set forth, *inter alia*, in Darakjian v. Hanna, 366 N.J. Super. 238, 248-49 (App. Div. 2004).<sup>1</sup> Particularly with regard to an allegation of actual malice, the court held that the plaintiff must allege particularized facts that “*substantiate* the assertion.” Id. at 247 (emphasis added); accord Zoneraich v.

<sup>1</sup> Trump tries to evade the Darakjian standard by protesting that his Complaint contains more “detailed, extensive allegations of fact” than the complaint filed in Darakjian. (Opp. at 13.) But he misses the point. The length of Trump’s Complaint is irrelevant to the standard that should be applied by the Court. Moreover, Trump’s allegations do not, for example, *substantiate* an assertion of actual malice because, among other reasons, they confirm that O’Brien did not have information about Trump’s debts and liabilities that would have enabled O’Brien to ascertain Trump’s *net* worth or the truth or falsity of the sources’ estimates.

Overlook Hosp., 212 N.J. Super. 83, 101-02 (App. Div. 1986). To determine whether words are actionable, "a court must scrutinize the language 'according to the fair and natural meaning which will be given it by reasonable persons of ordinary intelligence.'" Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 765 (1989) (citing Romaine v. Kallinger, 109 N.J. 282, 290 (1988).)

## II. The Complaint Fails to Plead Defamatory Statements

Because the Book merely recounted O'Brien's inquiry into Trump's net worth, did not endorse the sources' estimate, and concluded that Trump is extremely wealthy (referring to him as a "lucky billionaire" (Book at 174 (quoting The Boise Weekly, Jan. 12, 2005)), Trump's Complaint fails to set forth any actionable libelous statements.

### A. It is Not Defamatory to Ask How Much Trump is Worth

Trump does not dispute that it is not defamatory to raise questions about the scope of Trump's wealth by presenting, without endorsement, the estimate Trump challenges as one among many different estimates. (See Opp. at 24-26); see, e.g., Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1098 (4th Cir. 1993). Desperate to salvage his fatally deficient claim, Trump instead asserts groundlessly that O'Brien definitively endorsed the estimate of the three confidential sources. In fact, Trump purports to specify the "false statements that are readily susceptible of a defamatory meaning," but lists only one statement identified in the Complaint from the Book itself: i.e., "Trump's net worth is less than \$250 million." (Opp. at 16.) Although he also cites two other purportedly libelous oral statements allegedly made by O'Brien while promoting the Book (Opp. at 16), which are addressed below (see infra at 22-23), Trump's action rests on his contention that defendants "endorsed" the \$150 million to \$250 million estimate of Trump's net worth reported in the Book. (Opp. at 3, 6-7, 16, 24-25.) Apparently,

Trump presumes that the Court will not read the chapter at issue and instead will rely exclusively on Trump's distorted allegations.

1. The Book Does Not Endorse the \$150 Million to \$250 Million Net Worth Estimate

Trump baldly ignores the actual text of the Book and the context of the sources' estimate, which belies his "endorsement" theory, and he utterly fails to address the obvious signals to the reader that the Book probes the extent of Trump's fortune without offering a definitive quantum in answer. As Trump concedes, the context of a statement is important. (Id. at 14.) "A sentence or phrase may not be seized upon and detached from its context to support an action for libel, if the publication as a whole is not, in fact, defamatory." Dressler v. Mayer, 22 N.J. Super. 129, 135 (App. Div. 1952). To test for defamatory meaning, the court must "give the disputed language a fair reading in the context of the publication as a whole," Pisani v. Westchester Cty. Health Care Corp., 424 F. Supp. 2d 710, 716 (S.D.N.Y. 2006) (quoting Karedes v. Ackerley Group, Inc., 423 F.3d 107, 114 (2d Cir. 2005)), "according to the fair and natural meaning which will be given them by reasonable persons of ordinary intelligence," Dressler, 22 N.J. Super at 135; see also Romaine, 109 N.J. at 290.

Chapter Six of the Book recounts numerous different valuations -- including several disparate valuations from Trump himself -- to explain the uncertainty regarding the extent of Trump's net worth. As the Book notes, according to any of these valuations, Trump is a wealthy man "by anyone's standards." (Book at 154.) Among the estimates set forth in the Book are:

- Every Forbes 400 estimate of Trump's net worth from 1982 until 2004, which range from less than \$0 to \$2.6 billion, spanning more than two pages of Chapter Six. (Book at 150-52 (quoting Forbes.)
- Trump's challenges to Forbes' estimates, as publicly reported by Forbes; for example, in 1999, "[h]e even estimates his own net worth (\$4.5 billion). But no matter how hard we try, we just can't prove it"; and in 2000, "In the Donald's world, worth more



than \$5 billion. Back on Earth, worth considerably less.” (Book at 152 (quoting Forbes.)

- Trump’s claim in August 2004 of a net worth of \$4 billion to \$5 billion. (Book at 153.)
- Trump’s claim, on the very same day in August 2004, that his casino holdings were two percent of his wealth, rendering his net worth approximately \$1.7 billion. (Book at 153)
- A brochure in Trump’s Palm Beach club from the fall of 2004 stating that Trump was worth \$9.5 billion. (Book at 154.)
- Trump’s own claim in early 2005 of a net worth of \$5 billion to \$6 billion. (Book at 153.)
- The claim by Trump’s CFO in April 2005 that Trump is worth \$6 billion, although the list of assets he identified to O’Brien (a detailed chart of which was also included in the Book), totaled only approximately \$5 billion. (Book at 154-55.) This is followed by the admission by Trump’s CFO, the man charged with monitoring, tracking, and accounting for Trump’s assets and liabilities, that he misplaced a billion dollars of Trump’s wealth in the list. (Book at 153.)<sup>2</sup>

The only reasonable conclusion to draw from the Book is that O’Brien was understandably uncertain about the quantum of Trump’s net worth. Immediately following the Book’s presentation of these multiple but inconsistent statements by Trump and others, O’Brien notes his “confus[ion]” and explains that he “asked around for guidance,” reporting another estimate: “[t]hree people with direct knowledge of Donald’s finances, people who had worked closely with him for years, told me that they thought [Trump’s] net worth was somewhere between \$150 million and \$250 million. By anyone’s standards this still qualified Donald as comfortably wealthy, but none of these people thought he was remotely close to being a billionaire.” (Id. at 154.)

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<sup>2</sup> Trump does not dispute any of these reported accounts in his Complaint or Opposition.

O'Brien does not indicate in any way that he concurs with this estimate, and not surprisingly, Trump does not point to any statement in the Book that constitutes endorsement of this estimate. Indeed, rather than let the estimate stand unchallenged in the Book, O'Brien immediately reports Trump's denial of the estimate. And the Book states that O'Brien then went further, offering Trump an opportunity to explain. He quotes Trump's rationale: "You can go ahead and speak to guys who have four-hundred-pound wives at home who are jealous of me," said Trump, "but the guys who really know me know I'm a great builder." (*Id.* (quoting Trump, Interview of Trump, Apr. 25, 2005).) Thereafter, directly facing the challenged estimate, the Book prints a full-page chart listing Trump's claimed assets obtained from Trump's CFO. Making it even clearer that defendants did not endorse the \$150 million to \$250 million estimate, Chapter Six concludes with a reference to Trump as a "lucky billionaire" (*Id.* at 174 (quoting *The Boise Weekly*, Jan. 12, 2005)), and the Book's jacket cover refers to Trump as "America's favorite billionaire bad boy." Thus, the Book neither endorses the sources' estimate nor concludes that Trump's financial status is anything other than a "billionaire."

2. The Book's Critical Examination of Trump's Net Worth is Not Defamatory

Lacking any explicit or even implicit endorsement by O'Brien of the \$150 million to \$250 million estimate, Trump asserts that O'Brien's so-called endorsement of this estimate is evidenced by the fact that "O'Brien criticizes, directly and with snide and sarcastic comments, the valuations by Trump and his representatives that place Trump's net worth in the billions." (*Opp.* at 24.) Certainly, O'Brien raises questions about Trump's own widely divergent claims about his net worth — rhetorically and understandably asking, for instance, whether a \$2.3 billion to \$3.3 billion jump in Trump's own net worth assessment *on the same day* meant that Trump was "living in his own private zone of wildly escalating daily inflation." (*Book* at 153-54.)

O'Brien also raises questions about Forbes' valuations, citing *Trump's own opinion* that Forbes provides "a sloppy, highly arbitrary estimate of certain people's net worth." (Id. at 161 (quoting Donald Trump, Trump: Surviving at the Top.)) Far from endorsing any particular estimate, the Book makes clear that O'Brien's skepticism comes in reaction, *inter alia*, to Trump's inconsistent assessments and the problems with Forbes' methodology. The skepticism O'Brien expresses cannot be read to endorse any particular estimate or convey that Trump is not a billionaire.

Furthermore, O'Brien's skepticism does not, as a matter of law, bestow defamatory meaning on the Book. See, e.g., Pope v. Chronicle Publ'g Co., 95 F.3d 607, 614 (7th Cir. 1996) ("sarcasm and implicit criticism" did not render statement defamatory); Granada Biosciences, Inc. v. Barrett, 958 S.W.2d 215, 223 (Tex. App. 1997) ("[e]ven if the Forbes article could be considered as embracing a 'hint' of sarcasm," it was not reasonably capable of defamatory meaning and therefore was not actionable as to plaintiff); Hunt v. Tangel, No. 01A01-9705-CV-00199, 1997 Tenn. App. LEXIS 914, at \*8 (Tenn. Ct. App. Dec. 19, 1997) (dismissing complaint after holding that plaintiff could not state a defamation claim by alleging that challenged statement "was made in a sarcastic tone of voice").<sup>3</sup> Trump can no more usurp defendant's

<sup>3</sup> Trump attempts to distinguish Chapin, 993 F.2d 1087, by claiming that the "defendant in Chapin did nothing more than raise a question about where money donated for Gift Pacs for U.S. troops in Saudi Arabia was going" (Opp. at 26.) In fact, the challenged article in Chapin was rife with skepticism about the plaintiff's conduct in running a charity that shipped care packages to American soldiers. The article described the plaintiff as charging "hefty mark-ups" for the care packages, pointed out that the plaintiff made "conflicting statements," and remarked that "[i]t might be easier for GIs to pick dates off a nearby date palm" in Saudi Arabia than to rely on plaintiff's care packages. Chapin, 993 F.2d at 1099-1102. The federal appellate court unhesitatingly affirmed the grant of defendant's motion to dismiss, confirming that a defendant is insulated from liability even if the author questions the interview subject's views or actions with a flippant tone.

Trump's attempt to distinguish Lee v. Bankers Trust, 166 F.3d 540 (1999) fails as well. He claims that unlike the defendants in Lee, "the Book states outright that Trump lied about his net worth in an attempt to dupe the public." (Opp. at 27.) But the Book states no such thing, and of course Trump does not point the Court to any language in the Book that Trump "lied" about his net worth. Lee is directly on point in holding that merely raising suspicion cannot amount to defamation, even when it may imply a possible answer that could harm the

editorial discretion as to stylistic expression than Trump can quell O'Brien's investigation into the net worth question. See Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241, 258 (1974); Janklow v. Newsweek, Inc., 788 F.2d 1300, 1304 (8th Cir. 1986) (en banc).

In sum, as Trump's Opposition points out, an excerpt of the Book was published in The New York Times under the headline "What's He Really Worth?" and "accompanied by a large graphic of Trump surrounded by question marks." (Opp. at 7.) The question and the graphic convey the point of Chapter Six of the Book – the Chapter recounts an inquiry and uncertainty, rather than endorsing any particular estimate of Trump's net worth.<sup>4</sup>

B. It Is Not Defamatory to Claim Someone is Worth \$150 Million to \$250 Million

Even if the Book could be read as an endorsement of the \$150 million to \$250 million estimate – which it cannot – Trump still has failed to plead adequately-defamatory meaning. It

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plaintiff. Trump also attempts to distinguish Lee by arguing that the case concerned "defamation by conduct." (Opp. at 27.) This is a red herring. The court in Lee analyzed the defendant's alleged conduct (searching the plaintiff's office and refusing to allow him to come to work for a few days) as constituting a communication that conveyed "intimations of a suspicion" that the plaintiff had been involved in wrongdoing. See Lee, 166 F.3d at 546.

<sup>4</sup> Trump makes the unfounded claim that O'Brien "fabricated" the controversy (Opp. at 23) about Trump's net worth. In fact, the controversy plainly preceded O'Brien's investigation. For years, Trump's net worth has been the subject of public speculation. Mere examples of pre-existing questions about the controversy include articles from over a decade ago entitled, How Rich Is Trump?, Paul Wiseman, USA Today, Mar. 6, 1990, at 8B ("What's bigger than Donald Trump's ego? The difficulty of pinpointing his net worth"); Manhattan's Favorite Guessing Game: How Rich is Donald, Richard L. Stern and John Connolly, Forbes, May 14, 1990, at 92; and Trump's Net Worth Not So Easy to Calculate, David Henry, USA Today, Sept. 30, 1996 at 2B. They also include more recent articles, such as a Fortune article published in April 2004, which specifically challenged Trump's claims that he is a billionaire: "Of course, no magician worth his salt reveals his secrets, and Trump is no different. *Is he worth the billions that he says he is? Or is it more like a few hundred million, as several ex-associates say? Outsiders have never gotten to the bottom of his finances, despite his near bankruptcy in the early 1990s, and weeks of digging by FORTUNE yielded only murk.*" Daniel Roth, The Trophy Life, Fortune, Apr. 19, 2004, at 70 (emphasis added). And in an unsupported conspiracy theory, Trump hypothesizes that the Washington Post failed to engage in its own reportorial work and instead "merely parrot[ed]" an article by O'Brien that appeared in The New York Times the previous day. (Opp. at 23.) In reality, the Washington Post article was a 3,000 word profile that drew on a face-to-face interview with Trump and also included quotes from former New York City mayor Ed Koch, two securities analysts who followed the stock and bonds of Trump's company, and other sources. It does not cite O'Brien's reporting. See David Segal, He's the Top: His Casino Business May Be Down, But Donald Trump Is on a Roll, Wash. Post, Sept. 9, 2004, at C1. Articles appended at Ceresney Certif., Exs. E, F accompanying defendants' initial Memorandum, and Ceresney Supplemental Certif., accompanying this Memorandum, Exs. A-C.

simply is not defamatory, as a matter of law, to state that someone has a net worth of \$150 million to \$250 million. Reasonable members of the community would not hold Trump in disrepute even if they believed that he is worth \$200 million, and unsurprisingly, Trump offers no legal support for such a novel proposition.<sup>5</sup> Moreover, although "reasonable persons of ordinary intelligence" is the applicable standard, Romaine, 109 N.J. at 290, Trump's undisputed, cavalier response to O'Brien shows the negligible degree to which he believes the sources' statement would subject him to disrepute even among his financial peers; as Trump said, "the guys who really know me know I'm a great builder." (Book at 154.)

Trump's Opposition also resorts to a new theory: *i.e.*, that the Book "states outright that Trump lied about his net worth in an attempt to dupe the public," and that Trump thereby suffered harm. (Opp. at 27; see also id. at 2-4, 16.) First, Trump's Complaint does not base his

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<sup>5</sup> Trump resorts instead to cases in which challenged statements allegedly pertained to the plaintiff's trade, profession, or conduct of his business. See Opp. at 15 (citing Lutz v. Royal Ins. Co. of Am., 245 N.J. Super. 480, 492-93 (App. Div. 1991) (challenged statements accused plaintiff of sexist behavior, disloyalty to his employer, and disruptive conduct in the workplace; statements resulted in plaintiff's firing); Golub v. Enquirer/Star Group Inc., 681 N.E. 2d 1282, 1283 (NY 1997) (affirming dismissal of defamation complaint after holding that statement that plaintiffs' decedent had cancer "did not defame her in her trade, business or profession") (emphasis added); Printing Mart-Morristown, 116 N.J. at 766 (holding that accusations that plaintiff printers were unqualified, "did unreasonably-priced, inadequate work," and "were 'ripping off' a client" could be defamatory).) It is not Trump's profession, trade, or business to be a billionaire. Nor do any of the cases on which he relies concern statements involving the attribution of great wealth to the individual at issue. As defendants pointed out, even calling someone impoverished is not defamatory as a matter of law. (See Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss at 15.)

Trump also relies on Kforce, Inc. v. Alden Pers., Inc., 288 F. Supp. 2d 513 (S.D.N.Y. 2003) (cited in Opp. at 15, 18), in which the court granted defendants' motion to dismiss, holding that a "claim of unprofitability or lack of success in a particular geographic area" is not defamatory *per se*. Kforce, 288 F. Supp. 2d at 517. The court went on to observe that although it may be defamatory to make statements that falsely negate the "entire business existence" of a plaintiff or "impugn . . . integrity or competence with allegations of fraud or lack of creditworthiness," even these statements may not give rise to liability when made about "a well-established corporation." Id. at 517-18 (quoting Edwards X-Ray Co. v. Ritter Dental Mfg. Co., 210 N.Y.S. 299 (1925)). Under this authority – which Trump himself asks the Court to follow – Trump's claims clearly fail because even the confidential sources' estimate of approximately \$200 million does not negate Trump's "entire business existence" or impute fraud or lack of creditworthiness.

defamation claim on the assertion that the Book called him a "liar";<sup>6</sup> he concocts this theory only in opposition to defendants' Motion. But New Jersey courts have held repeatedly that plaintiffs asserting defamation claims must plead the specific statements about which they complain. See, e.g., Kotok Bldg. v. Charvine Co., 183 N.J. Super 101, 106 (Law Div. 1981) (plaintiff must plead the defamatory words and the meaning that plaintiff attached to them so that defendant can be apprised of charges attributed to him); see also Voorhees v. Preferred Mut. Ins. Co., 246 N.J. Super. 564, 570 (App. Div. 1991) (complaint deficient where specific statements alleged to be defamatory were not quoted). Trump therefore is bound by his own allegations.

Even if the newly contrived allegations could be considered, they would still not state a viable claim. Nowhere does the Book state that Trump is a "liar" or is "dishonest." Rather, Trump takes issue with statements (See Opp. at 16) that merely express disagreement with Trump's own widely varying assertions about his net worth. The Book reports that three sources disagreed with Trump by offering an estimate of his wealth that was less than what Trump claimed (Book at 154), and O'Brien, while not endorsing any particular estimate, allegedly expressed disagreement with Trump's inconsistent claims about his net worth by saying that Trump's "net worth is definitely inflated," he "adds zeros here and there," and Trump "doesn't have much money to invest" (Opp. at 16). Disagreeing with Trump is by no means equivalent to calling him a liar. At most, the challenged statements suggest -- as have many other publications -- that Trump tends to exaggerate and is a self-promoter. This is not defamatory as a

<sup>6</sup> In the Complaint, Trump alleges that "the thrust of the book is that Trump is an unskilled and dissembling businessman, whose wealth is a very small fraction of what Trump says it is" (Complaint ¶ 16), but he does *not* allege that the defendants stated that Trump deliberately *lied* about his net worth. Rather, the Complaint repeatedly relies on the Book's claimed endorsement of the \$150 million to \$250 million estimate, and it asserts that a so-called endorsement of this lower estimate was defamatory. (See e.g., Complaint ¶¶ 1, 2, 4, 6, 17, 18, 29, 30.) In any event, even stating false facts that contradict what a plaintiff has said about himself is not susceptible of a defamatory meaning as a matter of law when, as here, "[t]here is no evidence that defendants intended to cast plaintiff as a liar or as a person who would deliberately falsify information . . . as a means of defrauding [another]." Singer v. Beach Trading Co., 379 N.J. Super. 63, 81 (App. Div. 2005).

matter of law. As the Seventh Circuit has held, a statement that someone promotes his own interests, even to the extent of "sharp dealing" and "sedulous . . . self-interest," does not give rise to a viable defamation action. Wilkow v. Forbes, 241 F.3d 552, 557 (7th Cir. 2001).

Moreover, courts have recognized that statements of disagreement "belong[] to the language of controversy rather than to the language of defamation" and are not actionable simply because they state or imply that a person is not to be trusted, is a liar, or even has committed a criminal act. Dilworth v. Dudley, 75 F.3d 307, 310 (7th Cir. 1996) (defendant's statements of disagreement with the plaintiff, a mathematics researcher, were not defamatory although defendant called plaintiff a "crank" who was convinced by his own false theorem); see also Ray v. Dillard Dep't Stores, No. CIV.A.3:98-CV-1931-R, 2000 WL 4258, at \*2 (N.D. Tex. Jan. 3, 2000) (false accusation by employee of the defendant department store that plaintiff improperly tried to return a suit she had not bought at the store was not defamatory, even if the plaintiff "were called a liar" in the course of the disagreement); Kevorkian v. Am. Med. Ass'n, 602 N.W.2d 233, 235, 240 (Mich. Ct. App. 1999) (defendants' statements, among others, that plaintiff, an advocate of assisted suicide, engaged in "criminal practices," "pose[d] a great threat to the public," and "perverts the idea of the caring and committed physician," were not defamatory when "[s]uch alleged defamation is grounded here in nothing more than the fact that defendants are in disagreement with plaintiff's position"). Just as the plaintiffs in these cases tried unsuccessfully to turn their disagreements into actionable claims, Trump labors to convert statements of disagreement with his own claims of wealth into grounds for defamation.

Trump's effort to punish defendants for participating in the public discussion about his wealth, simply because he disagrees with one of the published results of O'Brien's investigation,

should not be countenanced by the court. Trump's disappointment does not give rise to a cognizable defamation claim. As the Court stated in Kevorkian:

Where an alleged defamatory statement, occurring in the course of a public debate initiated or perpetuated by plaintiff himself, is focused precisely on a matter lying at the heart of the debate, it is hard to understand how tort law could be implicated. Indeed, it is hard to imagine anything that could more effectively chill legitimate public debate.

Id. at 240.

Furthermore, the Book discloses the bases for the statements of disagreement with Trump's assertions about his net worth. See supra at 5-6 (discussing Book's reporting of widely varying claims that Trump made about his wealth). This renders the statements non-actionable. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 18-19 (1990) (statement of opinion can be actionable only when it implies undisclosed defamatory facts or rests on stated facts that are incorrect or incomplete). Indeed, even accusations of outright *lying* are not defamatory when the defendant "disclose[s] the factual basis for his disagreement" with the plaintiff, thereby "allowing the reader to draw her own conclusion" about what the truth is. Schnare v. Ziessow, 104 Fed. Appx. 847, 852 (4th Cir. 2004); accord Phantom Touring, Inc. v. Affiliated Publ'ns, 953 F.2d 724, 730 (1st Cir. 1992) ("Because all sides of the issue, as well as the rationale for [the author's] view, were exposed, the assertion of *deceit* reasonably could be understood only as [the author's] personal conclusion about the information presented, not as a statement of fact.") (emphasis added). In effect, holding defendants liable on this theory would essentially penalize them for reporting the varied and inconsistent estimates of Trump's net worth, including those from *Trump himself*. Because Trump has failed to plead a defamatory statement, his Complaint should be dismissed.



### III. The Complaint Fails to Plead Facts Demonstrating Actual Malice

Trump concedes that he must plead facts that, if proved, would establish that defendants published the challenged statements with actual malice, meaning with knowledge that they were false or in reckless disregard of the truth. (See Opp. at 27.) See N.Y. Times v. Sullivan, 376 U.S. 254, 279-80 (1964); Darakjian, 366 N.J. Super. at 250. As a matter of law, Trump has inadequately pleaded actual malice, furnishing yet another independent ground for dismissal of this Complaint. Trump does not dispute that O'Brien received wildly disparate estimates from several different sources, including from publicly available sources and Trump himself, and that O'Brien did not have information regarding Trump's indebtedness and liabilities. Therefore, O'Brien's discussion in Chapter Six of the uncertainty surrounding Trump's net worth could not have been reported with actual malice. Nor given these circumstances could O'Brien have known that the sources' estimate of \$150 million to \$250 million was false. Trump seeks to obfuscate the issue by ticking off eleven purported bases for actual malice in the apparent hope that the Court will presume that actual malice exists because of the sheer number of allegations. (See Opp. 27-32.) However, even assuming each of the plaintiff's allegations is accurately stated, actual malice still cannot be shown as a matter of law.

#### A. Shield Law and Constitutional Protections Preclude Any Inference of Actual Malice from Defendants' Maintenance of the Confidentiality of Sources

Trump tries to contrive an inference of actual malice by contending that "Defendants' invocation of the Shield Law to conceal the identities of the anonymous sources is itself evidence of malice." (Opp. at 31.) But this assertion is directly contradicted by controlling New Jersey Supreme Court precedent that Trump does not even cite to the Court. In Maressa v. New Jersey Monthly, 89 N.J. 176 (1982), the Supreme Court flatly rejected the argument that reliance on anonymous sources gives rise to an inference of actual malice, noting that "in New Jersey a

media defendant's refusal to name its source cannot support an inference that no source existed." Id. at 198.<sup>7</sup>

In an effort to evade the clear pronouncement by the New Jersey Supreme Court that defendants are insulated from any adverse inference, Trump claims that the New Jersey Shield Law does not apply here because it applies only to "members of the news media carrying out news media functions." (Opp. at 31.) There is no question, however, that the New Jersey Shield Law – as well as constitutional protections – apply to the Book. O'Brien was indisputably engaged in news gathering "for the purpose of gathering, procuring, transmitting, compiling, editing or disseminating news for the general public," N.J.S.A. 2A:84A-21, as Trump well understood when he consented to be interviewed and recorded by O'Brien on several occasions for the Book. Publication of the Book clearly constitutes "printed . . . means of disseminating news to the general public." Id.; see Maressa, 89 N.J. at 188 ("The Legislature plainly expressed its intent that all significant news-gathering activities be protected."). Moreover, O'Brien plainly was covered by the statute in all of his reporting activities because he was and is "connected with, or employed by news media," i.e., not only Warner Books but also The New York Times. N.J.S.A. 2A:84A-21.<sup>8</sup> And in addition to statutory protections, constitutional protections apply.

<sup>7</sup> Maressa went on to set a high standard for inferring actual malice in circumstances in which a media defendant invoked the Shield Law protections, requiring that the plaintiff demonstrate that the content of the challenged report was defamatory as a matter of law, and that the defendant failed to take reasonable means to verify the report's accuracy in "gross violation of the standards of responsible journalism" that "approaches the level of publishing a knowing, calculated falsehood." Id. at 199-200. Nowhere in his numerous allegations has Trump alleged facts that could meet this high standard of proof. Indeed, the Book explicitly noted (see Book at 154), and Trump does not dispute, that O'Brien went to Trump with the \$150 million to \$250 million estimate provided by the three confidential sources to give Trump an opportunity to substantiate a different net worth, and the Book expressly reported Trump's denial. This precludes any inference that O'Brien did not engage in responsible journalism.

<sup>8</sup> To the extent that Trump seeks to rely on New York law, New York's shield statute similarly protects O'Brien's sources. See N.Y. Civ. Rights Law § 79-h (similarly protecting professional journalists, among others); Torah Soft Ltd. v. Drosnin, No. 00 Civ. 0676, 2001 U.S. Dist LEXIS 18614, at \*13-16 (S.D.N.Y. Nov. 14, 2001) (describing legislative amendments to the New York Shield Law that extended protection to authors

See In re Napp Techs., Inc., 338 N.J. Super. 176, 188 (Law. Div. 2000) (analyzing constitutional protections after addressing applicability of New Jersey Shield Law). Book authors have readily been held to be subject to constitutional journalistic privilege. See, e.g., Shoen v. Shoen, 5 F.3d 1289, 1293 (9th Cir. 1993). (“[I]t would be unthinkable to have a rule that an investigative journalist, such as Bob Woodward, would be protected by the privilege in his capacity as a newspaper reporter writing about Watergate, but not as the author of a book on the same topic.”).

B. None of Trump’s Other Allegations Demonstrates Actual Malice

None of the other allegations of actual malice supports a finding of actual malice.

Alleged Access to Trump’s Financial Information. In his Opposition, Trump effectively concedes that he failed to provide O’Brien with information about his liabilities and indebtedness or the valuation of his properties during O’Brien’s meeting with Trump’s subordinates. (See Opp. at 28 & n.10.) This is a critical admission, because without this crucial information – the importance of which would clearly have been apparent to Trump, his CFO, and his legal adviser prior to O’Brien’s visit – O’Brien was unable to determine Trump’s *net* worth. O’Brien therefore could not have reported the \$150 million to \$250 million estimate with knowledge that it was false.

In an attempt to save this allegation, Trump now asserts in his Opposition that his in-house lawyer and CFO would have “answered any of O’Brien’s questions, including questions about debts and liabilities, had O’Brien only asked.” (Opp. at 28 n.10.) But Trump’s Complaint alleges only that his subordinates were directed to provide “comprehensive information . . .

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of investigative books). The unpublished New York state trial court decision cited by Trump, Spirewell v. NYP Holdings, Inc., No. 122923/02, 2006 N.Y. Slip Op. 50816U (N.Y. Gen. Term Apr. 7, 2006) (Opp. at 31) is contrary to established New York precedent and is currently on appeal. Moreover, Spirewell’s outcome is distinguishable on its facts and has no applicability here because the protections of New Jersey law apply as set forth in Maressa.

detailing his *holdings, assets and ownership thereof*." (Complaint ¶ 19 (emphasis added)). Further, even in the Opposition, Trump claims only that his subordinates would have answered questions about his indebtedness; he does not even argue that they would have provided documentary proof. (Opp. 27-28 and n.10.) Such unverified claims would not have given O'Brien sufficient information to make a definitive determination of Trump's net worth.

Even accepting as true Trump's new assertions that O'Brien failed to ask Trump's agents for additional information, Trump's claims still fail as a matter of law. The U.S. Supreme Court has long held that a journalist's failure fully to investigate a story before publication does not prove actual malice. See St. Amant v. Thompson, 390 U.S. 727, 733 (1968) ("Failure to investigate does not in itself establish bad faith."). Courts have held repeatedly that declining to gather information from potential sources is not proof that a defendant acted with actual malice. See Gray v. St. Martin's Press, Inc., 221 F.3d 243, 252 (1st Cir. 2000) (author "was under no obligation to exhaust every possible witness before winding up her investigation"); Goodrich v. Waterbury Republican-Am., Inc., 448 A.2d 1317, 1327 (Conn. 1982) (reporter's "mere failure to interview the plaintiff personally, in light of the articles she wrote" was not reckless as a matter of law). O'Brien's alleged failure to press Trump's CFO for information regarding Trump's indebtedness that he did not voluntarily divulge certainly cannot amount to actual malice.

Alleged Conversation with Scarbrough. Trump claims that in a telephone conversation with Michelle Scarbrough, his in-house counsel, O'Brien "admitted" that he knew that Trump's ownership of Trump Place, a Manhattan West Side development, was "by itself worth more than \$500 million." (Opp. at 28.) Even accepting this allegation as true -- which it is not -- O'Brien's alleged verbal acknowledgment that Trump's ownership of the Trump Place residential development was worth more than \$500 million does not show actual malice, because the value

of Trump's interest in a single property says little, if anything, about his overall net worth, without additional information regarding Trump's other assets, debts, and liabilities. Nor does it even account for the outstanding mortgage or other indebtedness on this particular property.

Update of The New York Times Excerpt. Resorting to an allegation that appears nowhere in the Complaint, Trump now points to The New York Times excerpt that appeared just days before the Book's release, in which O'Brien added a parenthetical to the paragraph containing the \$150 million to \$250 million estimate and noted that "Donald's casino holdings have *recently* rebounded in value, perhaps adding as much as \$135 million to these estimates." (Opp. at 28 (emphasis added).) Trump suggests that the exclusion of this parenthetical from the Book demonstrates malice. This unfounded allegation confirms Trump's desperation. Of course, even though the Book was released a few days after the excerpt, the Court certainly can take judicial notice of the obvious and well-known fact that a Book's deadline for submission is routinely months prior to the release date, as Trump, an author himself, well knows. See N.J.R.E 201(b) ("such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute" may be judicially noticed). Thus, far from demonstrating actual malice, the inclusion of the parenthetical – which ultimately increased the net worth estimated by the three sources – negates actual malice, and points to a careful attempt to ensure that the published information was up to date, within the constraints of the different publication schedules for daily newspapers and books.

So-Called "Crude" and "Deficient" Net Worth Calculations. Trump next asserts that O'Brien engaged in "crude" and "deficient" net worth calculations, which demonstrate that he was acting with actual malice. (Opp. at 29.) Trump's assertion rests on two groundless bases.

First, Trump avers that defendants “ignored [the] value” of Trump’s brand name “as if it did not exist” and that the brand name alone is worth “hundreds of millions, if not billions.” (*Id.*) But Trump’s CFO told O’Brien that the value of “Licensing/merchandising Trump name” was worth an estimated \$40 million, and O’Brien expressly reported that very figure in the chart on page 155 of the Book. Moreover, Trump does not allege that O’Brien had access to any statement of the value of Trump’s brand name other than Trump’s own estimate. Trump’s valuation of his brand name is subjective and inherently unverifiable, and thus cannot be the basis for Trump’s defamation claim. See, e.g., Ward v. Zelikovsky, 136 N.J. 516, 531 (1994) (“Requiring that a statement be verifiable ensures that defendants are not punished for exercising their First Amendment right to express their thoughts.”).

Second, Trump claims that O’Brien relied upon an unreliable tax assessor valuation in valuing 40 Wall Street. (See Opp.: at 29 (citing Book at 172).) In fact, O’Brien did not “value” 40 Wall Street based on the tax assessment. He mentions the assessment among other figures, including Trump’s claimed valuation: “Donald does own 40 Wall Street, which he spent about \$35 million to buy and refurbish in 1996. The building has about \$145 million in debt attached to it, and New York City assessors value the property at about \$90 million. Donald values it at \$400 million.” (Book at 171-72.) The Book reaches no conclusion about the appropriate valuation, about Trump’s actual equity in the building, or about how the assessor’s valuation should be viewed in light of Trump’s estimate.

O’Brien’s Alleged Personal Animus Toward Trump. Trump next alleges that O’Brien harbored personal animus toward him, and had a history of “maligning Trump in articles over the years.” (Opp. at 29.) It is hard to square such allegations of long-standing observed animus with Trump’s decision to conduct several lengthy interviews with O’Brien for the Book (none of

which Trump claims have been distorted or misstated in the Book). But in any event, it is well-settled under U.S. Supreme Court precedent that *common law malice*, or animus, is not evidence of *actual malice*. Harte-Hanks Comms. v. Connaughton, 491 U.S. 657, 666 (“It also is worth emphasizing that the actual malice standard is not satisfied merely through a showing of ill will or ‘malice’ in the ordinary sense of the term.”); Sullivan, 376 U.S. at 279-80 (defining actual malice as publishing a defamatory falsehood “with knowledge that it was false or with reckless disregard for whether it was false or not”).<sup>9</sup>

Increased Book Sales. Next, Trump claims that O’Brien had another “motive to knowingly disregard the truth – to increase sales of the Book.” (Opp. at 30.) This alleged motive cannot establish actual malice, since it has no bearing on the defendants’ alleged knowledge or reckless disregard of the falsity of the Book. Moreover, such a generic allegation, which describes the motive of nearly every author, including Trump himself, cannot amount to proof of actual malice. As the U.S. Supreme Court stated, “[n]or can the fact that the defendant published the defamatory material in order to increase its profits suffice to prove actual malice. . . . If a profit motive could somehow strip communications of the otherwise available constitutional protection, our cases from New York Times to Hustler Magazine would be little more than empty vessels.” Harte-Hanks Comms., 491 U.S. at 667.

Forbes’ Different Conclusions. Trump confirms in his Opposition that Forbes’ conclusions were based on the “same materials . . . made available to O’Brien” (Opp. at 32), while also conceding that those materials did not include critical information about liabilities and indebtedness necessary to determine Trump’s net worth (Opp. at 28 & n.10). Thus, the fact that

<sup>9</sup> Trump’s additional allegation that O’Brien intimidated sources (see Opp. at 29) is not only false, but in any event is irrelevant because Trump does not allege that O’Brien intimidated sources in the course of reporting on Trump’s net worth in particular.

Forbes reached conclusions different from sources who had worked with Trump, particularly based on the incomplete information provided to Forbes, cannot be a basis for inferring actual malice by the defendants. See, e.g., Dairy Stores, Inc. v. Sentinel Pub. Co., 104 N.J. 125, 157-58 (1986) (ruling that despite author's knowledge of test results contradicting what author reported, actual malice was not established); Liberty Lobby, Inc. v. Anderson, No. 81-2240, 1990 U.S. Dist. LEXIS 19587, at \*24-25 (D.D.C. May 2, 1990) (“[D]efendants’ knowledge of the existence of a contradictory source, without more, does not constitute clear and convincing evidence of actual malice.”) (citing Brown v. Herald Co., 698 F.2d 949, 951 (8th Cir. 1983)).

O’Brien’s Alleged Unreliability. Trump’s allegation that the defendant publishers “should have known that O’Brien was an unreliable and irresponsible reporter” (Opp. at 32) is contradicted by the fact that *Trump himself* readily participated in the Book by sitting down with O’Brien on multiple occasions, allowing O’Brien to tape-record his interviews, and making his CFO and in-house lawyer available for interviews by O’Brien. Moreover, Trump repeatedly acknowledges that O’Brien is a “veteran reporter” who has worked for The Wall Street Journal and The New York Times. (Opp. at 6, 29.) Trump offers no basis to conclude that the publishers should have had any reason to doubt the reporting of a veteran business journalist employed by two of the most prominent news organizations in the country.

Refusal to Retract as Alleged Evidence of Actual Malice. Finally, Trump claims that the defendants’ refusal to retract the single paragraph in the Book containing the \$150 million to \$250 million estimate, “even after those statements were demonstrated to be false and defamatory,” is evidence of actual malice. (Opp. at 32.) But Trump has failed to allege any facts to support the essential premise of this allegation — *i.e.*, that the statements in the Book have been



demonstrated to be false and defamatory. And as shown above, Trump has not refuted the gist of Chapter Six, which is that there is vast uncertainty surrounding Trump's net worth.

In sum, despite the laundry list of actual malice allegations, none of them would "permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." St. Amant, 390 U.S. at 731.<sup>10</sup> Trump has failed to allege any valid reason for the defendants to have had serious doubts about the truth of the challenged estimate or point to any information in O'Brien's possession that would have definitively demonstrated Trump's net worth.<sup>11</sup>

#### IV. O'Brien's Alleged Oral Statements Are Not Actionable

Trump has implicitly withdrawn his allegations about other oral statements by O'Brien, and pared down his allegations of defamatory oral statements to two oral statements O'Brien allegedly made while promoting the Book: i.e., "Trump's net worth is definitely inflated.

<sup>10</sup> Trump relies on Khan v. N.Y. Times Co., 710 N.Y.S.2d 41 (App. Div. 2000), to support his argument that his allegations suffice to demonstrate actual malice. In fact, Khan is a helpful case to the contrary, showing the difficulty of meeting the actual malice standard, even when a reporter's actions were subject to question. For example, in Khan, the reporter's failure to contact the plaintiff with respect to the second article, even after plaintiff corrected the reporter's mistake in a first article, and allegedly obtained from the reporter a promise that the reporter would verify information with him in the future, amounted to insufficient evidence of actual malice where the reporter had obtained the information from "a reputable news source and had no reason to doubt the veracity of information in the nature of historical fact." Id. at 79. Here, the situation is far different as it is clear from the Book that after he received disparate estimates from Trump, O'Brien was spurred to "ask around for guidance," elicited estimates from *three* sources who had worked with Trump *for years* and were in a position to know, then went to Trump with the estimates to afford him an opportunity to refute the estimates, and reported Trump's denial and the basis for it. (Book at 154.)

<sup>11</sup> The three cases cited by Trump in support of his claim that defendants were reckless (see Opp. at 33) are inapposite. In two of these cases, the defendants had substantial reasons for doubting the statements of the source of the information. See Pep v. Newsweek, Inc., 553 F. Supp. 1000, 1002 (S.D.N.Y. 1983) (sole source for article was "a convicted felon, 'a swindler,' and 'a con man'"); Vasquez v. O'Brien, 445 N.Y.S.2d 305, 307 (3d Dep't 1981) (defendant made potentially false statements based on his own observations and personal knowledge). In the third case, Costello v. Ocean County Observer, 136 N.J. 594, 619 (1994), the court granted summary judgment on the libel claim and held that "failing to investigate more fully merely establishes possible negligence - it does not establish subjective knowledge of falsity or serious doubt about the truth of the story. . . . [Plaintiff] fails to point to any proof suggesting that [defendant] actually doubted that [the source's] claim was true or doubted that the complaint was pending." (internal citations omitted). In the instant case, Trump has failed to plead any facts to suggest that defendants in fact knew definitively the precise quantum of Trump's net worth and therefore in fact doubted the sources' estimate.

*Forbes Magazine* puts his worth at \$2.7 billion, but I am almost certain that is a complete work of fiction" (Complaint ¶ 32), and Trump "adds zeroes here and there" (Complaint ¶ 31). From the truncated excerpts provided by Trump in his Complaint, it is clear that these statements use loose, figurative language that do not imply specific facts and therefore are not actionable. See, e.g., Milkovich, 497 U.S. at 20.

Trump complains nevertheless that these statements suggest that "Trump is not, and has lied about being, a billionaire" and that they reflect O'Brien's endorsement of "the conclusions of three people that Trump is worth \$150 to \$250 million." (Opp. at 35.) There simply is no basis for attributing either of these meanings to these statements. Neither statement connotes an endorsement of the \$150 million to \$250 million estimate, or even implies that Trump is not a billionaire. Rather, they are colorful and figurative means of pointing out Trump's penchant for providing wildly differing estimates of his net worth -- including estimates in the billions -- during a short period of time, which is well-documented in the Book, see supra at 5-6, and that have been remarked upon by numerous business analysts, including Forbes. Indeed, the statement about Trump's net worth being "inflated" is actually a reference to Forbes' estimate, not Trump's. Thus, reasonable listeners would have heard the statements in context, and thus they are not actionable.

Nor, given the indisputably limited and contradictory information available to O'Brien, could these statements have been made with actual malice. As the Book reports, and as Trump does not dispute, over the course of several months in 2004 and 2005, Trump himself gave O'Brien estimates of his net worth that ranged from \$1.7 billion to \$4 billion to \$5 billion on a single day, to \$5 billion to \$6 billion a few months later, at the same time that a brochure at Trump's Palm Beach club claimed he was worth \$9.5 billion. (See Book at 153-54.) Given

these inconsistencies, O'Brien could not have had any reason to doubt the veracity of his statement that Trump "adds zeroes here and there." Moreover, O'Brien is alleged to have made the statements in the context of a discussion about the Book, thereby drawing from the facts set forth in the Book, which fully disclosed the bases for O'Brien's conclusions. See Milkovich, 497 U.S. at 20; Schnare, 104 Fed. Appx. at 852; Chapin, 993 F.2d at 1093; see supra at 7-9.

V. The Challenged Statements Are Protected by the Fair Comment Doctrine

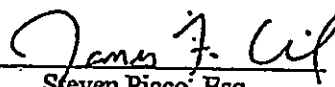
The fair comment doctrine applies as yet another independent basis on which to defeat Trump's claims, as the challenged statements consist of commentary on a matter of public concern: Trump's wealth. Trump claims the doctrine does not apply because his wealth is not a matter of public concern. (Opp. at 36.) But Trump readily concedes that he is a "world-famous business, real estate developer and public personality" who participates in real estate ventures, produces and stars in the television show "The Apprentice," is the chairman of an online university, and engages in highly regulated and high profile gaming enterprises. (Complaint ¶ 30; Opp. at 5.) By making perceptions of his wealth an allegedly critical factor to the success of his business empire, including real estate and casino holdings that are imbued with "public and governmental interests," Turf Lawnmower Repair, Inc. v. Bergen Record Corp., 139 N.J. 392, 413 (1995) (quoting Sisler v. Gannett Co., 104 N.J. 256, 275 (1986)), Trump has "voluntarily and knowingly engaged in conduct that one in his position should reasonably know would implicate a legitimate public interest, engendering the real possibility of public attention and scrutiny," Dairy Stores, 104 N.J. at 143 (1986) (quoting Sisler, 104 N.J. at 274 (1986)). Having played up his wealth to catch the public eye, Trump cannot now claim that his wealth is not a matter of public concern or interest.

CONCLUSION

For the foregoing reasons and those stated in Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss, defendants Timothy L. O'Brien, Time Warner Book Group, Inc., and Warner Books, Inc. respectfully request that the Court grant their Motion to Dismiss the Complaint with prejudice.

Dated: July 14, 2006

REED SMITH LLP

By:   
Steven Picco, Esq.  
James F. Dial, Esq.

Mary Jo White, Esq.  
Andrew J. Ceresney, Esq.  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022

REDACTED

-----Original Message-----

From: Michael U. Bowe  
Sent: Friday, October 21, 2005 2:45 PM  
To: 'David E McCraw/CORP HQ/NYTIMES'  
Subject: RE: FW: Trump's Partnership Interest

David, I just got off the phone with Mr. O'Brien. I have never experienced more unprofessional and unhinged conduct by a purported reporter. He obviously has no interest in the truth and expressed his intent to go forward with a story that he now knows is categorically false. Please call me immediately.

-----Original Message-----

From: David E McCraw/CORP HQ/NYTIMES [mailto:mccraw@nytimes.com]  
Sent: Friday, October 21, 2005 12:26 PM  
To: Michael U. Bowe  
Subject: RE: FW: Trump's Partnership Interest

Mike,

Thanks. We'll take a look. Tim will likely call you after he reviews them.

David E. McCraw  
Counsel  
The New York Times Co.  
229 W. 43rd St.  
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phone: (212) 556-4031  
fax: (212) 556-4634  
e-mail: mccraw@nytimes.com

3541a

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TR000092476

**REDACTED**

"Michael J. Bowe"  
<MBowe@kasowitz.com>

om>

To

<mccraw@nytimes.com>

10/21/2005 12:23  
PM

cc

Subject

FW: Trump's Partnership Interest

David, the attached are from the court filings of Mr. Trump's partners in the pending litigation over Trump Place and acknowledge Mr. Trump owns a 30% interest. I note also that this fact is not only acknowledged by Mr. Trump's partners but has also been reported by numerous leading publications. To state otherwise would be knowingly and categorically false. If you require more, or have any questions, please give me a call at (212) 506-1777.

3542a

TOB-EF-00000121

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-----Original Message-----

From: Trevor Welch

Sent: Friday, October 21, 2005 12:08 PM

To: Michael J. Bowe

Cc: Jennifer S. Recine

Subject: Trump's Partnership Interest

(See attached file: Trump's Partnership Interest.pdf)

REDACTED

"Michael J. Bowe"  
<MBowe@kasowitz.com>

To

<mccraw@nytimes.com>

10/21/2005 12:39  
PM

cc

Subject

FW:

Affidavits from Mr. Trump's partners attesting to his 30% partnership interest in Trump Place.

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-----Original Message-----

From: Jennifer S. Recine

Sent: Friday, October 21, 2005 12:30 PM

3544a

TOB-EF-00000066



To: Michael J. Bowe  
Cc: Trevor Welch  
Subject:

From Gross Affidavit submitted in opposition to appellate injunction.

Jennifer S. Recine, Esq.  
Kasowitz, Benson, Torres & Friedman LLP  
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Phone: (212) 506-1916  
Fax: (212) 506-1800  
(See attached file: TrumpOwnershipGross.pdf)

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MARC E. KASOWITZ  
212-506-1710

November 9, 2005

Mr. Lawrence Ingrassia  
Business Editor  
The New York Times Co.  
229 West 43<sup>rd</sup> St.  
New York, N.Y. 10036-3913

Dear Mr. Ingrassia:

We represent Donald J. Trump. We write to demand the retraction and correction of the false and defamatory article published about Mr. Trump in *The New York Times* on Sunday, October 23, 2005, entitled "What's He Really Worth," written by Timothy L. O'Brien.

This article is baseless and false. It contains outright falsehoods concerning, among other things, Mr. Trump and his business dealings, and was published by *The New York Times* with malicious and intentional disregard for the truth. Among other things, the article egregiously and intentionally misrepresents Mr. Trump's net worth, claiming that three anonymous sources -- who the article said had "direct knowledge" of Mr. Trump's finances -- told O'Brien that Mr. Trump's "net worth was somewhere between \$150 million and \$250 million." Moreover, in an editor's note, *The New York Times*, referring to Mr. Trump, states that "sometimes his riches are hard to find."

What is shocking is that the *Times* and O'Brien well knew that the article was baseless and false even before it was published. Mr. Trump provided O'Brien with, among other things, complete access to Allen Weisselberg, The Trump Organization's chief financial officer; a detailed summary of Mr. Trump's holdings prepared by Michelle Scarbrough, a Trump lawyer; and the books and records substantiating that detailed summary -- all of which confirm the falsity of O'Brien's reporting and the truth concerning Mr. Trump's net worth. As Ms. Scarbrough informed the *Times* prior to publishing the article, O'Brien spoke only briefly with Mr. Weisselberg, virtually ignored the books and records provided by Ms. Scarbrough, and, instead,

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spent the remaining 2-1/2 hours of a 3 hour meeting attempting to flirt with Ms. Scarbrough. (A copy of Ms. Scarbrough's October 21, 2005 letter to you is enclosed herewith.)

*Forbes Magazine* has now had access to the same materials but, unlike the *Times*, actually reviewed those materials. *Forbes's* review confirmed that, at a minimum, Mr. Trump's net worth is well over \$2.7 billion, more than ten times the erroneous figure deliberately published by the *Times*. Not only is \$2.7 billion an extremely conservative valuation, but it expressly does not even include the enormous value of the Trump brand name. (A copy of the broadcast transcript of Neil Cavuto's November 7, 2005 interview of *Forbes* is enclosed herewith.)

It is shocking that the *Times* proceeded with the publication of this article, notwithstanding that it had been specifically advised that O'Brien's information was false and that documents and other information containing the truth had been available to, but had been disregarded by, the *Times's* reporter.

That the *Times* proceeded to publish the article anyway was not only reckless and malicious, but yet another indication of the unconscionable decline in the *Times's* reporting standards. O'Brien -- whose journalistic career has, to say the least, been plagued with a history of accusations of personal vindictiveness and credibility problems in his "reporting" -- now joins the ranks of Mr. Blair, Mr. Raines and Ms. Miller. The only difference here is that the *Times* knew or recklessly disregarded the truth before it published the false, shoddy and irresponsible story in question.

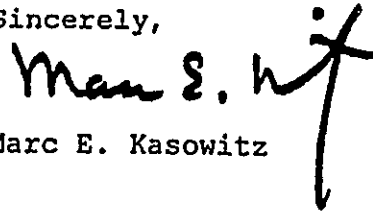
Mr. Ingrassia, the *Times's* statement that Mr. Trump's "riches are hard to find" is false, and the *Times* and O'Brien knew it was false. You were advised where to look -- the books and records -- but, unlike *Forbes*, you chose not to. Instead, you relied on "anonymous sources" -- who (if they existed at all) were no more reliable than the "sources" invoked by other recent, discredited *Times* reporters.

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Accordingly, we demand a retraction and correction of this "story," displayed at least as prominently in the paper as the original article.

Sincerely,



Marc E. Kasowitz

MEK/mg  
Encl.

cc: Mr. Arthur Ochs Sulzberger Jr.  
Mr. Bill Keller  
Mr. Byron Calame  
Solomon B. Watson, IV, Esq.  
David E. McCraw, Esq.  
Barry B. Langberg, Esq.

LEXSEE



Analysis  
As of: Apr 09, 2009

Ross J. Di Lorenzo, Appellant, v. New York News, Inc., et al., Respondents

[NO NUMBER IN ORIGINAL]

Supreme Court of New York, Appellate Division, Second Department

81 A.D.2d 844; 1981 N.Y. App. Div. LEXIS 11522; 7 Media L. Rep. 1452

May 6, 1981

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant public official sought review of the order of the Supreme Court, Kings County (New York), which granted the motion for summary judgment of the respondents, a newspaper and its reporter and dismissed the complaint. The court, on its own motion, recalled its earlier decision on a motion by the newspaper for leave to appeal the court's order to the appellate court, vacated its earlier decision and amended it as set forth herein.

**OVERVIEW:** A public official's defamation action sought damages for an article falsely reporting that he had been convicted of perjury. The lower court granted the newspaper's motion for summary judgment. On appeal, the court ruled that the plaintiff submitted sufficient evidence of material factual issues which precluded the granting of summary judgment. The court ruled that at the summary judgment stage in a defamation action, a public figure plaintiff was required only to submit evidence which showed a genuine issue of material fact from which a reasonable jury could find actual malice with convincing clarity, and did not need to prove actual malice to the motion court. The reporter for the newspaper testified that he did not check his files or a former article written about the official when he wrote the defamatory article. Also, the official testified that the reporter harbored ill feelings toward him because he did

not hire someone for his campaign on the reporter's recommendation. The court found that a jury could find that the reporter's failure to check his facts, when, as here, it was easy for him to do so, evidenced a reckless disregard for the truth.

**OUTCOME:** The court reversed the grant of summary judgment dismissing public official's defamation claim and reinstated the complaint.

**CORE TERMS:** actual malice, reporter, retraction, malice, defamatory, perjury, summary judgment, candidate, libel, public figure, reckless disregard, good faith belief, recollection, convicted, hostility, indicted, falsity, indictment, awareness, printed, defamation action, public official, prior knowledge, sufficient evidence, several years, reasonably find, above-entitled, summarization, simultaneous, unspecified

LexisNexis(R) Headnotes

*Civil Procedure > Summary Judgment > Standards > Genuine Disputes*

*Civil Procedure > Summary Judgment > Standards > Materiality*

*Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Defamation > Public Figures*

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[HN1]At the summary judgment stage in a defamation action which has constitutional implications, a public figure plaintiff is required only to submit evidence which shows a genuine issue of material fact from which a reasonable jury could find actual malice with convincing clarity. Concern for the First Amendment should not be transformed into a requirement that the plaintiff prove actual malice to the motion court.

*Torts > Intentional Torts > Defamation > General Overview*

[HN2]"Actual malice" is a term of art, created to express the standard of liability that must be established before recovery can be permitted in public figure or public official defamation. The "actual malice" standard was defined as defamatory publication with knowledge that it was false or with reckless disregard of whether it was false or not. Further refinements of the concept conditioned recovery on publication with a high degree of awareness of probable falsity. Sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication was required to demonstrate reckless disregard. Intentional disregard is a term that has been used to explain "actual malice." The most recent formulation noted that to be liable, the alleged defamer of public officials or of public figures must know or have reason to suspect that his publication is false. A standard of liability which encompasses innumerable subtleties of the defendant's mind set and conduct, is exceedingly difficult to apply to the varying circumstances of each case. However, the one constant underlying the decisions in this area is that those varying circumstances, taken as a whole, must provide reasons to question the truth of the publication.

*Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Speech > Defamation > General Overview*

*Torts > Intentional Torts > Defamation > Defenses > Privileges > Constitutional Privileges*

*Torts > Intentional Torts > Defamation > Procedure*

[HN3]Clearly the concepts underlying malice and actual malice are not the same, but this does not preclude a relationship between them. Malice means ill will, spite, or hostility. "Actual malice" concerns the defendant's attitude toward the truth. Motive and intent may be adduced for the purpose of establishing by accumulation and by appropriate inference the fact of defendant's

recklessness. Thus the jury can permissibly consider malice among the other more obvious circumstances supporting the inference of actual malice. The defendants in defamation litigation involving First Amendment considerations tend to assert their good faith belief in the truth of their statements at the time they were written. Nevertheless, proof of malice alone may not be sufficient to justify a finding of "actual malice."

*Torts > Damages > Mitigation*

*Torts > Intentional Torts > Defamation > Procedure*

*Torts > Intentional Torts > Defamation > Remedies > Retractions*

[HN4]A retraction in its traditional role is considered some evidence of lack of ill will and can be used to mitigate damages. More recently prompt postlibel retractions have been given weight as factors demonstrating lack of malice where circumstances permit an inference of good will and accidental publication of the libel. However, a prompt retraction standing alone is not sufficient to show lack of actual malice as a matter of law.

JUDGES: [\*\*1] Hopkins, J. P., Gibbons, Rabin and O'Connor, JJ., concur.

OPINION

[\*844] On this court's own motion our decision in the above-entitled case [\*845] dated February 3, 1981 is recalled and vacated and the following decision is substituted therefor: Motion by defendants for leave to appeal to the Court of Appeals from an order of this court dated October 20, 1980 [78 AD2d 669] which determined an appeal from an order of the Supreme Court, Kings County, entered April 30, 1979. Motion denied. On this court's own motion, decision in the above-entitled case is amended to read as follows: In an action to recover damages for libel, the plaintiff appeals from an order of the Supreme Court, Kings County, entered April 30, 1979 which granted the defendants' motion for summary judgment and dismissed the complaint. Order reversed, with \$ 50 costs and disbursements, motion denied and complaint reinstated. This appeal concerns a defamation action brought by Ross Di Lorenzo, a former Civil Court Judge and an admitted public figure, against the New York News, Inc., and one of its reporters, John Toscano. Di Lorenzo seeks to recover damages for the publication of an article in the *New* [\*\*2] *York Daily News* in which Toscano falsely reported, immediately prior to the

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Democratic primary for Brooklyn Borough President in which Di Lorenzo was a candidate, that Di Lorenzo had been convicted of perjury. After discovery was complete, the defendants moved for summary judgment and the motion was granted. The plaintiff appeals from that determination. [HN1]At the summary judgment stage in a defamation action which has constitutional implications, a public figure plaintiff is required only to submit evidence "which shows a genuine issue of material fact from which a reasonable jury could find actual malice with convincing clarity" (*Nader v de Toledano*, 408 A2d 31, 49; see, also, *Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065; *Rinaldi v Holt Rinehart & Winston*, 42 NY2d 369; *James v Gannett Co.*, 40 NY2d 415). Concern for the First Amendment should not be transformed into a requirement that the plaintiff prove actual malice to the motion court (*Nader v de Toledano supra*, p 49). In the instant case Special Term determined that Di Lorenzo had failed to establish material questions of fact which would be sufficient to warrant an ultimate finding of actual [\*\*3] malice. We disagree. In August, 1973 Di Lorenzo was indicted for eight counts of perjury in the first degree and one count of obstructing governmental administration. Thereafter the obstruction charge was dismissed prior to trial; he was acquitted after two trials of six of the perjury counts; of the remaining perjury counts, one was dismissed on motion by the Special Prosecutor and the other was apparently abandoned. Toscano did not cover these events but was aware of them at the time they occurred. Several stories concerning the outcome were published in the *Daily News*. In April, 1977 Toscano, whose assignment had included local politics in Brooklyn and Queens for the past eight years, wrote an article concerning Di Lorenzo's entry into the primary race. His account of Di Lorenzo's criminal difficulties was consistent with the facts. "Di Lorenzo, 69, left the bench about two years ago after being indicted for perjury growing out of his testimony in a disciplinary proceeding before a judicial tribunal. He was eventually cleared on all counts." The story was written shortly after Toscano had had dinner with Di Lorenzo. Di Lorenzo claims that during that meeting the resolution [\*\*4] of the indictment was discussed in detail. Toscano admits only that a passing reference to the outcome may have been made and that after this meeting, he "did not have a clear understanding of the various legal steps leading to dismissal of the charges." A little more than four months after the first story, in the week preceding the September, 1977 primary, Toscano wrote a "round-up" article for the

Brooklyn section of the *Sunday Daily News* concerning the candidates and issues involved in the Brooklyn Borough President race. It contained the following [\*\*46] erroneous statement: "Di Lorenzo, a powerful Democratic Leader from Bay Ridge before he went on the bench, was convicted of perjury charges several years ago, which were subsequently dropped." The entire "Brooklyn section" was printed and distributed to newsstands at least one day before the edition's sale date, to be held for assembly with the other sections of the Sunday paper upon their later delivery. At some unspecified time and in some unspecified manner, the *Daily News* discovered the error and printed the following retraction on the editorial page of the main Sunday section: "BEG PARDON In today's Brooklyn [\*\*5] Living section, printed late last week, it is erroneously reported that Ross Di Lorenzo, a former Civil Court judge, was convicted of perjury charges several years ago. In fact, he was acquitted of all charges last year. The News regrets this error." The collated *Sunday Daily News*, dated September 4, 1977, was sold to the Brooklyn public containing both the erroneous comment and the retraction. At his deposition Toscano admitted that at the time he wrote the defamatory statement he did not consult his own files or former article, he did not check the paper's morgue files, and he did not inquire of other reporters in the city room or anyone else. He repeatedly testified that he thought his recollection of the facts was correct and that he believed the erroneous comment to be true when he wrote it. However, when asked for his specific recollection of the facts in September, 1977, Toscano replied: "My honest recollection was that he had been indicted by Mr. Nadjari and that subsequently he was out from under the indictment. Whether it was thrown out or whether it was after trial, that wasn't clear in my mind." In his opposing affidavits Di Lorenzo implied that Toscano harbored [\*\*6] bad feelings towards him. The basis for this hostility was Di Lorenzo's refusal to follow Toscano's recommendation that a particular person be given a public relations job in Di Lorenzo's campaign. Di Lorenzo asserted that the defamatory comment was written after Toscano learned of Di Lorenzo's decision. Resolution of this case requires clarification of the concepts of "actual malice". [HN2]"Actual malice" is a term of art, created to express the standard of liability that must be established before recovery can be permitted in public figure or public official defamation cases (*Cantrell v Forest City Pub. Co.*, 419 U.S. 245, 251). First articulated in *New York Times Co. v Sullivan* (376 U.S.

254, 280) the "actual malice" standard was defined as defamatory publication "with knowledge that it was false or with reckless disregard of whether it was false or not." Further refinements of the concept followed in Garrison v Louisiana (379 U.S. 64, 74) where recovery was conditioned on publication with a "high degree of awareness of \* \* \* probable falsity". In St. Amant v Thompson (390 U.S. 727, 731) "sufficient evidence to permit the conclusion that the defendant in fact entertained [\*\*7] serious doubts as to the truth of his publication" was required to demonstrate reckless disregard. Intentional disregard was the term used to explain "actual malice" in Reliance Ins. Co. v Barron's (442 F. Supp. 1341, 1350). The most recent formulation appears in Herbert v Lando (441 U.S. 153, 160) where it was noted that "To be liable, the alleged defamer of public officials or of public figures must know or have reason to suspect that his publication is false." Needless to say, a standard of liability which encompasses innumerable subtleties of the defendant's mind set and conduct, is exceedingly difficult to apply to the varying circumstances of each case. However, the one constant underlying the decisions in this area is that those varying circumstances, taken as a whole, must provide reasons to question the truth of the publication (James v Gannett Co., 40 NY2d 415, 424, *supra*). The defendants in the instant case note the heavy burden of the defamed plaintiff under the "actual malice" standard and contend that he [\*847] has presented no evidence which would defeat the assertions of good faith belief in the truth of the publication. We believe that, despite [\*\*8] the protestations of good faith, a jury could reasonably find that there were reasons to doubt the truth of the comment, which should have alerted Toscano. Some of the most significant suggestions of possible falsity arise from the comment itself. Initially we note that accusations of criminal convictions are serious, indeed (see Rinaldi v Holt Rinehart & Winston, 42 NY2d 369, *supra*). Serious charges with potential for great harm require investigation (Goldwater v Ginzburg, 414 F2d 324, 329, cert den 396 U.S. 1049). But it is not the implication of the comment alone, it is the appearance of the statement within the subject matter of the article which should have triggered further substantiation (cf. St. Amant v Thompson, *supra*, p 732). The primary focus of the article was providing voters with a summarization of the candidates, their qualifications and viewpoints. Di Lorenzo was presented as a serious candidate. A felony conviction tends to cause voter rejection. Awareness of this potential disapproval prevents most candidates with

such a background from entering an election. Thus the reporter had cause to investigate the factual basis of the statement. There [\*\*9] are other reasons upon which a jury could choose to reject the defendants' assertions of good faith belief in the truth of the statement. It is clear that the reporter had prior knowledge of the proceedings which led to Di Lorenzo's acquittal, both from the reports at the time of their occurrence and from the discussion during the dinner he had with Di Lorenzo. That knowledge is reflected in the accurate summarization contained in the first article. The defendants contend, however, that there is no evidence to show that Toscano recalled that knowledge four months later when he wrote the article in question. While there is not direct evidence showing accurate recall, there is sufficient circumstantial evidence, given the prior knowledge and the suggestions of untruth inherent in the statement itself, to permit a jury to find that the reporter was less than candid concerning his level of recall at the time of the defamatory article. Moreover, actual knowledge at the time of publication need not be demonstrated or inferred where the reporter's acknowledged recollection is insufficient to support the comment he wrote. Toscano knew that Di Lorenzo was indicted and that subsequently [\*\*10] Di Lorenzo was "out from under" the indictment. He did not know Di Lorenzo was convicted. A jury could reasonably find that the reporter's insufficient recall alone should have motivated him to check before he wrote. The reporter's failure to check the facts becomes more significant when consideration is given to the ease with which those facts could have been checked. Toscano could have checked his previous article, or the newspaper's morgue files, or spoken to a fellow reporter who had testified at Di Lorenzo's trial and who worked in Toscano's office. Coupling the ease of investigation with the lack of time pressure generally associated with "hot news", a jury could find that the reporter's failure to check evidenced a "reckless disregard for the truth" (see Widener v Pacific Gas & Elec. Co., 75 Cal App 3d 415; see, also, Carson v Allied News Co., 529 F2d 206, 211; Vandenburg v Newsweek, Inc., 507 F2d 1024, 1026; Goldwater v Ginzburg, 414 F2d 324, 339, cert den 396 U.S. 1049, *supra*). Another circumstance which could support the inference of actual malice is the reporter's alleged hostility. The defendants assert, however, that any alleged malice is [\*\*11] not a determinative factor since "actual malice" does not mean hostility. [HN3] Clearly the concepts underlying malice and actual malice are not the same, but this does not preclude a relationship between them. Malice means ill will, spite, or hostility. "Actual



malice" concerns the defendant's attitude toward the truth (Cantrell v Forest City Pub. Co., 419 U.S. 245, 252, [\*848] *supra*). "[Motive] and intent may be adduced for the purpose of establishing by accumulation and by appropriate inference the fact of defendant's recklessness" (Cochran v Indianapolis Newspapers, 372 NE 1211, 1220; see Goldwater v Ginzburg, *supra*, p. 342; Hotchner v Castillo-Puche, 404 F Supp 1041, 1047). Thus the jury can permissibly consider malice among the other more obvious circumstances supporting the inference of actual malice. As noted in Herbert v Lando (441 U.S. 153, 170, *supra*), the defendants in defamation litigation involving First Amendment considerations tend to assert their good faith belief in the truth of their statements at the time they were written. Nevertheless we caution that proof of malice alone may not be sufficient to justify a finding of "actual malice" [\*\*12] (see Letter Carriers v Austin, 418 U.S. 264, 281; Greenbelt Pub. Assn. v Bresler, 398 U.S. 6, 10-11). Although defendant New York News, Inc., will be liable for publication with actual malice on the theory of *respondeat superior* if the reporter is found to have acted in reckless disregard (Cantrell v Forest City Pub. Co., 419 U.S. 245, 253, *supra*; Karaduman v Newsday, Inc., 51 NY2d 531), it asserts, in its own right, that the simultaneous publication of the retraction with the defamatory comment evidences its concern for the truth, and that therefore summary judgment in its favor is warranted. [HN4]A retraction in its traditional role is considered some evidence of lack of ill will and can be

used to mitigate damages (see Prosser, Torts [4th ed], § 116; 1 Seelman, Law of Libel and Slander in State of New York, par 325). More recently prompt postlibel retractions have been given weight as factors demonstrating lack of malice where circumstances permit an inference of good will and accidental publication of the libel (cf. Hoffman v Washington Post Co., 433 F Supp 600, *affd* 578 F2d 442; Sack, Libel, Slander, and Related Problems, ch V.5.2.4). However, a prompt [\*\*13] retraction standing alone is not sufficient to show lack of actual malice as a matter of law (Kerwick v Orange County Pub. Div. of Ottaway Newspapers, 53 NY2d 625). In this case, however, we confront a simultaneous publication of the libel with its retraction. Defendant New York News, Inc., has admitted publishing the defamatory statement with an awareness of its falsity. Publishing a defamatory falsehood with knowledge that it is untrue constitutes actual malice. New York News, Inc., without providing the details of the discovery of the falsity or the decision to retract in this manner rather than reprint, has asserted that the retraction demonstrates a concern for the truth, given the exigencies and logistics of circulation. In view of the absence of facts on this record, we must refrain from resolving the issue, and note merely that the matter should be resolved at trial. In conclusion, we hold that plaintiff has submitted sufficient evidence of material factual issues which precludes the granting of summary judgment.

LEXSEE



Caution

As of: Apr 09, 2009

FIRST INTERSTATE CREDIT ALLIANCE, INC., Plaintiff, v. LEROY C.  
CLARK, Defendant

No. 89 Civ. 3263 (MBM)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK

1989 U.S. Dist. LEXIS 14523; 11 U.C.C. Rep. Serv. 2d (Callaghan) 1012

December 4, 1989, Decided; December 5, 1989, Filed

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff creditor filed suit to recover an amount it claimed that defendant guarantor owed on behalf of the guarantor's company, which defaulted on payments on an installment contract to purchase equipment. The creditor filed a motion for summary judgment.

**OVERVIEW:** The guarantor executed a personal guaranty for equipment purchased by the guarantor's company. The creditor contended that the guarantor defaulted. The creditor was the highest bidder at the sale, then filed suit for a deficiency balance, plus interest and attorney fees. The guarantor alleged that he did not know what the guaranty was, that he voluntarily returned the equipment, and that the creditor did not receive a fair price for the equipment. The court granted the creditor summary judgment as to liability but denied its motion as to damages. The court found that the guarantor's claim that he did not read the instrument was not a defense to liability. Further, the fact that he voluntarily returned the equipment did not change its status as a repossessed item. However, there were genuine issues of material fact regarding the damages because the creditor may not have conducted a commercially reasonable sale of the equipment, there was conflicting evidence over payment

of one installment, and there was a genuine issue regarding the reasonableness of attorney fees.

**OUTCOME:** The court granted the creditor's motion for summary judgment as to the guarantor's liability but denied the motion as to damages.

**CORE TERMS:** machine, guaranty, attorneys' fees, reasonableness, resale, commercial reasonableness, installment, machinery, auction, purchase price, summary judgment, issues of material fact, secured party, repossessed, collateral, genuine, purchase agreement, excavator, genuine issue, price paid, commercially reasonable, defaulted, default, notice, sales contract, owes, resale price, attorney's fees, issue of fact, mitigate damages

LexisNexis(R) Headnotes

*Contracts Law > Defenses > Fraud & Misrepresentation > General Overview*

*Contracts Law > Defenses > Unconscionability > General Overview*

*Contracts Law > Types of Contracts > Guaranty Contracts*

[HN1]A guarantor's assertion that the guaranty was not

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explained to him or her, even if true, does not relieve the guarantor of liability under the contract unless there is evidence of fraud, overreaching, or unconscionability.

*Commercial Law (UCC) > Secured Transactions (Article 9) > Default > Creditor Misbehavior > Commercially Reasonable Conduct*

*Commercial Law (UCC) > Secured Transactions (Article 9) > Default > Foreclosure & Repossession > Disposition of Collateral*

*Torts > Business Torts > General Overview*

[HN2]In New York, the Uniform Commercial Code sets forth the manner in which a secured party should mitigate damages in the event of a default and repossession of property. N.Y. U.C.C. Law § 9-504(3) provides that the sale or disposition of collateral by a secured party after default may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. To succeed in a suit for a deficiency judgment, the secured party must carry its burden of establishing the commercial reasonableness of every aspect of the disposition of the collateral. Two tests measure the commercial reasonableness of a resale of collateral: the "procedures" test, which examines the procedural fairness of the sale; and the "proceeds" test, which looks solely to the price received for the goods. Some authorities suggest that optimizing resale price is the prime objective of the code's default mechanisms and that the other factors listed are merely designed to ensure that the highest price is achieved. Others would have commercial reasonableness turn on the procedures employed.

*Commercial Law (UCC) > General Provisions (Article 1) > General Overview*

*Commercial Law (UCC) > Sales (Article 2) > General Overview*

*Commercial Law (UCC) > Secured Transactions (Article 9) > Default > Creditor Misbehavior > Commercially Reasonable Conduct*

[HN3]Under a procedures analysis, codified in New York's Uniform Commercial Code, the price received for the repossessed goods is only one factor in determining the commercial reasonableness of a resale. N.Y. U.C.C. Law § 9-504 requires reasonableness of "method, manner, time, place and terms," and sets forth certain requirements such as reasonable notification of the sale. Further, N.Y. U.C.C. Law § 9-507 provides that the fact

that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. This standard for reasonableness requires that the sale conform with reasonable commercial practices among dealers in the type of property sold. N.Y. U.C.C. Law § 9-507.

*Commercial Law (UCC) > Secured Transactions (Article 9) > Default > Foreclosure & Repossession > Public Sale*

[HN4]Courts have carved out a narrow exception that shifts the focus from the procedures observed during the resale to the price paid for the collateral when the price paid is much lower than the purchase price. Although under N.Y. U.C.C. Law § 9-507, a low price alone does not determine lack of reasonableness, a wide or marked discrepancy between the sale price and the value of the property will trigger close scrutiny even in the face of procedural propriety.

*Civil Procedure > Remedies > Costs & Attorney Fees > General Overview*

[HN5]Attorney fees unilaterally fixed by contract are no less subject to the test of reasonableness than attorney fees awarded by the court.

*Contracts Law > Contract Conditions & Provisions Contracts Law > Defenses > Unconscionability > General Overview*

[HN6]A provision obligating a lessee to pay an assignee's attorney fees necessarily implies that the amount be reasonable when viewed in the context of the actions required to be taken to enforce the assignee's rights. Such a provision raises the question of unconscionability.

COUNSEL: [\*1] BARBARA M. WILMIT, Hood & Stein, Attorneys for Plaintiff, Haverstraw, New York.

LEROY C. CLARK, Defendant Pro Se.

OPINION BY: MUKASEY

OPINION

OPINION AND ORDER

MICHAEL B. MUKASEY, UNITED STATES

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DISTRICT JUDGE

In this action, plaintiff First Interstate Credit Alliance, Inc. (FICA) seeks to recover a sum it claims defendant Leroy Clark owes as guarantor of his company's debts. FICA alleges that the company, Clark & Co., defaulted on payments due under an installment sales contract it had signed to purchase a Caterpillar excavator, and that defendant now owes FICA the difference between the amount left to be paid under the sales contract and the amount received upon resale of the equipment, plus attorneys' fees and miscellaneous expenses. (See Pl. Exh. H) Plaintiff now moves for summary judgment, asserting that there are no issues regarding either defendant's liability under the guaranty and contract or the damages assessed against him. Because there are genuine issues of material fact regarding the damages claimed in this case, I grant plaintiff's motion as to liability but deny it as to damages.

I.

On July 18, 1988, Leroy Clark purchased on behalf of Clark & Co. a Caterpillar Model 211 Excavator from [\*2] Southworth Machinery, Inc. and entered into an installment sales contract in which Clark & Co. agreed to pay the purchase price in 48 monthly installments, at an annual interest rate of 12.5 percent. (Pl. Exh. A) He had previously been renting this machine from Southworth and already had paid Southworth \$ 16,916 in rent and taxes which Southworth subtracted from the purchase price. On August 26, 1988, Southworth assigned this installment contract to FICA, and defendant later executed a personal guaranty to FICA by signing a densely printed and worded form containing numerous waivers and other legal provisions.<sup>1</sup>

<sup>1</sup> It is unclear when Clark signed this guaranty. Plaintiff alleges that Clark signed it on November 8, 1988, but the one-page form is not dated. Defendant in his Rule 3(g) statement responds that he signed "other papers on July 18, 1988 that had to do with buying this machine from Southworth Machinery, Inc. It seems silly for me to sign this paper on Nov. 8, 1988 when I turned the machine back in Nov. 2, 1988." The date on which the guaranty was signed is not a material issue of fact, as defendant attaches the guaranty to his statement and does not dispute having signed it.

[\*3] Plaintiff contends that defendant defaulted by failing to make the payment due on September 7, 1988. Defendant, however, attaches to his Rule 3(g) statement copies of checks, two of which evidence a payment in September to Southworth Machinery in the amount due under the purchase agreement. (Def. Exh. C) Nonetheless, at some point defendant realized he would not be able to make additional payments under the purchase agreement, and returned the machine to Southworth on November 2, 1988. At that time, someone at Southworth allegedly told him that the machine was worth more than he paid for it and that Southworth would sell the machine for him and pay off the amount owed. On December 22, 1989, defendant received a certified letter from FICA giving him notice of a public auction of the machine.

At this auction, which FICA publicized through notices to individuals and in two publications, FICA itself allegedly was the highest bidder, and bought the machine for \$ 40,000. It now asserts that defendant owes the deficiency balance of \$ 32,865.31<sup>2</sup> plus interest and attorneys' fees, which are set at 20 percent on the guaranty. Defendant, appearing pro se, asserts that he did not know what [\*4] the guaranty was when he signed it, that the machine was not repossessed because he voluntarily returned it to the seller, and that plaintiff did not receive a fair price for the machine on resale.

<sup>2</sup> This sum apparently is calculated based on the assumption that Clark & Co. did not make the September payment. Although the alleged payment was made to Southworth and not to FICA, it nevertheless raises a genuine issue regarding the calculation of damages in this case, as it was paid by Clark & Co. in connection with the purchase agreement in question.

II

Defendant's last claim regarding the fairness of the price paid for the machine on resale does raise a genuine issue of material fact regarding plaintiff's damages. Defendant's liability on the debt as a matter of law, however, is not in question. [HN1] Defendant's assertion that the guaranty was not explained to him, even if true, does not relieve him of liability under the contract unless there is evidence of fraud, overreaching or unconscionability.<sup>3</sup> *Gillman v. Chase Manhattan Bank, N.A.*, 73 N.Y.2d 1, 11, 537 N.Y.S.2d 787, 791-92 (1988); *Pimpinello v. Swift & Co.*, 253 N.Y. 159, 162-63 (1930);

*Richardson Greenshields* [\*5] *Securities, Inc. v. Metz*, 566 F. Supp. 131 (S.D.N.Y. 1983); *Gaskin v. Stumm Handel GmbH*, 390 F. Supp. 361, 366 (S.D.N.Y. 1975). See also J. Calamari & J. Perillo, *The Law of Contracts*, § 9-42 (3rd ed. 1987) (A "party who signs an instrument manifests assent to it and may not later complain that he did not read the instrument or that he did not understand its contents").

3 The guaranty provides that it shall be interpreted according to the laws of New York. (Pl. Exh. C)

Further, that defendant gave back the machine voluntarily does not affect the machine's status as a repossessed item. Also, defendant does not deny that his company defaulted on the payments, nor that the note was secured by the machine. Therefore, plaintiff's possible failure to hold a commercially reasonable sale and the resulting issue over damages does not preclude summary judgment as to liability alone. <sup>4</sup> See *Paco Corp. v. Vigliarola*, 611 F. Supp. 923, 925 (E.D.N.Y. 1985), *aff'd*, 835 F.2d 1429 (2d Cir. 1987).

4 This decision in no way precludes a very sharp reduction in or elimination of damages at trial if there is evidence that plaintiff could have mitigated damages by selling the machine at a much higher price.

[\*6] Nevertheless, there are genuine issues of material fact regarding the amount of damages that plaintiff may assert, including the commercial reasonableness of the sale and the amount of attorneys' fees which plaintiff requests.

#### A. Commercial Reasonableness of Sale

[HN2] In New York, the Uniform Commercial Code sets forth the manner in which a secured party should mitigate damages in the event of a default and repossession of property. Section 9-504(3) provides that the sale or disposition of collateral by a secured party after default "may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable." To succeed in a suit for a deficiency judgment, the secured party "must carry its burden of establishing the commercial reasonableness of every aspect of the disposition of the collateral." *Kohler v. Ford Motor Credit*, 93 A.D.2d 205,

208, 462 N.Y.S.2d 297 (2d Dep't 1983). See *Credit Alliance Corp. v. David O. Crump Sand & Fill*, 470 F. Supp. 489, 494 (S.D.N.Y. 1979).

Two tests measure the commercial reasonableness of a resale of collateral: the [\*7] "procedures" test, which examines the procedural fairness of the sale; and the "proceeds" test, which looks solely to the price received for the goods. "[S]ome authorities suggest that optimizing resale price is the prime objective of the code's default mechanisms and that the other factors listed are merely designed to ensure that the highest price is achieved. . . . Others would have commercial reasonableness turn on the procedures employed." *Bankers Trust Co. v. Dowler & Co.*, 47 N.Y.2d 128, 135 (1979) (cites omitted). Under either test, the sale at issue here is questionable enough to prevent summary judgment for plaintiff.

Under a proceeds analysis, doubt definitely exists regarding the extent to which plaintiff optimized the resale price. Defendant has presented evidence that a 1986 model Caterpillar 211 Excavator was sold at auction for \$ 61,000. <sup>5</sup> Here, FICA bought the 1987 model Caterpillar 211 Excavator at the auction for \$ 40,000; defendant paid \$ 67,500 for the machine at issue just a few months prior to the sale, and Southworth sells 1988 models for \$ 80,000 (Def. Affidavit).

5 This figure is listed in the publication *Toe Bid*, which lists prices received at auction for various pieces of machinery.

[\*8] [HN3] Under a procedures analysis, codified in New York's Uniform Commercial Code, the price received for the repossessed goods is only one factor in determining the commercial reasonableness of a resale. N.Y.U.C.C. § 9-504 requires reasonableness of "method, manner, time, place and terms," and sets forth certain requirements such as reasonable notification of the sale. Further, N.Y.U.C.C. § 9-507 provides that the "fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner." This standard for reasonableness requires that the sale conform with "reasonable commercial practices among dealers in the type of property sold." U.C.C. § 9-507. Plaintiff here alleges that because it sent notice of the sale to two newspapers, potentially interested parties and the defendant, there is no issue of fact regarding the reasonableness of the sale.

[HN4] Courts, however, have carved out a narrow exception that shifts the focus from the procedures observed during the resale to the price paid for the collateral when the price [\*9] paid is much lower than the purchase price. Although under UCC § 9-507, a low price alone does not determine lack of reasonableness, "a wide or marked discrepancy between the sale price and the value of the property will trigger close scrutiny even in the face of procedural propriety." Federal Deposit Insurance Corp. v. Forte, 94 A.D.2d 59, 463 N.Y.S.2d 844, 850 (2d Dep't 1983). See In re Zsa Zsa Ltd., 352 F. Supp. 665 (S.D.N.Y. 1972) (Pollack, J.), *aff'd*, 475 F.2d 1393 (2d Cir. 1973); Federal Deposit Insurance Corp. v. Herald Square Fabrics, 81 A.D.2d 168, 439 N.Y.S.2d 944, 955 (2d Dep't 1981); Central Budget Corp. v. Garrett, 48 A.D.2d 825, 825-26, 368 N.Y.S.2d 268 (2d Dep't 1975); Kohler v. Ford Motor Credit Co., 93 A.D. 2d at 208.

Here, the discrepancy between the purchase price and the price received, taking into account also the newness of the machine, casts some doubt on the adequacy of the steps plaintiff took to mitigate damages, and presents an issue of fact regarding the commercial reasonableness of the sale.

#### B. Attorneys' Fees

Plaintiff claims as part of its damages attorneys' fees equal to 20 percent of the deficiency sought; [\*10] in this case, \$6,573.06. The small print on the guaranty signed by Clark contains the term that 20 percent attorneys' fees will be added to any judgment against the guarantor. However, because such an attorneys' fees provision must be reasonable, and plaintiff submits no evidence as to the amount of time spent by attorneys on

this matter, there is a genuine issue regarding the reasonableness of this sum. [HN5] "Attorney's fees unilaterally fixed by contract are no less subject to the test of reasonableness than attorney's fees awarded by the court." Federal Deposit Insurance Corporation v. Kassel, 72 A.D.2d 787, 421 N.Y.S.2d 609, 611 (2d Dep't 1979). This court has dealt with the 20 percent attorneys' fees provision in the past, and has found that [HN6] "the provision . . . obligating the lessee to pay the assignee's attorney's fees necessarily implies that the amount be reasonable, when viewed in the context of the actions required to be taken to enforce the assignee's rights." First Interstate Credit Alliance v. Brown, No. 88 Civ. 1558, slip op. at 12 (S.D.N.Y. Dec. 28, 1988). In Leasing Service Corporation v. Jones, No. 81 Civ. 4721 (S.D.N.Y. July 8, 1982), Judge Haight [\*11] concluded that such a provision "raises the question of unconscionability." Jones, No. 81 Civ. 4721.

\* \* \*

Genuine issues of material fact exist in this case regarding the damages asserted by plaintiff, because: (1) plaintiffs may not have conducted a commercially reasonable sale of the repossessed machinery; (2) there is conflicting evidence regarding whether defendant paid the September installment under the purchase agreement; and (3) there is a genuine issue regarding the reasonableness of attorneys' fees. Accordingly, plaintiff's motion for summary judgment is denied as to damages, and granted as to liability.

SO ORDERED:

Dated: December 4, 1989

LEXSEE



Cited

As of: Apr 09, 2009

**WHITNEY HOUSTON, Plaintiff, - against - THE NEW YORK POST CO., INC.,  
FLORENCE ANTHONY and BILL HOFFMAN, Defendants.**

93 CIV. 4408 (KTD)

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK**

1996 U.S. Dist. LEXIS 19705

**December 19, 1996, Decided  
January 10, 1997, FILED**

**DISPOSITION:** [\*1] Defendants' motion for summary judgment denied, plaintiff's cross-motion for summary judgment denied, defendants' motion for summary judgment on plaintiff's claim for punitive damages granted, and plaintiff's cross-motion for leave to amend her complaint granted.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff, a famous professional singer, filed a libel action against defendants, a newspaper and its employees, after the newspaper falsely reported that the singer had been hospitalized following an overdose of diet pills. Defendants moved for summary judgment on the singer's entire claim and her claim for punitive damages. The singer cross-moved for summary judgment on the issue of defendants' liability for compensatory and punitive damages.

**OVERVIEW:** A reporter received an anonymous tip that the singer had overdosed on illegal drugs and had been admitted to the hospital at which the caller was employed. One of the employees called the singer's former publicist to confirm the story. The former publicist allegedly told the employee about the singer's

depression and use of diet pills, but the publicist denied making the statements. The newspaper published an article stating that the singer had overdosed on prescription diet pills after having been severely depressed about her weight. In fact, the singer had been performing in a different state on the night in question and neither overdosed nor was admitted to a hospital. The singer filed a suit for libel, and both parties sought summary judgment. The court held that defendants were entitled to summary judgment only on the singer's punitive damages claim because the singer failed to allege facts showing intentional and deliberate wrongdoing by defendants. The singer failed to show that the article was fabricated by defendants, who presented a consistent and plausible explanation of how the article developed. Thus, a triable issue existed as to actual malice.

**OUTCOME:** The court granted defendants' motion for summary judgment on the singer's claim for punitive damages but otherwise denied the parties' motions for summary judgment. The court also granted the singer's cross-motion for leave to amend her complaint.

**CORE TERMS:** summary judgment, per se, defamatory, punitive damages, defamation, actual malice, profession, leave to amend, suicide, diet, pills, attempted suicide,

performing, overdosed, overdose, confirm, competently, depression, malice, injure, phone, anonymous, cross-motion, matter of law, single act, libel action, expenses incurred, public figure, clear and convincing evidence, special damages

LexisNexis(R) Headnotes

*Civil Procedure > Summary Judgment > Motions for Summary Judgment > General Overview*

*Civil Procedure > Summary Judgment > Opposition > General Overview*

*Civil Procedure > Summary Judgment > Standards > General Overview*

[HN1]Summary judgment is appropriate where, viewing the evidence in a light most favorable to the non-movant, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. To defeat a motion for summary judgment, the non-moving party must designate specific facts showing that there is a genuine issue for trial.

*Torts > Intentional Torts > Defamation > Defenses > Privileges > Qualified Privileges*

*Torts > Intentional Torts > Defamation > Procedure*

[HN2]In a defamation action, a public figure plaintiff may not recover for damages absent proof by clear and convincing evidence that the statement was published with malice.

*Civil Procedure > Pleading & Practice > Pleadings > Heightened Pleading Requirements > Special Damages*

*Civil Procedure > Remedies > Damages > Special Damages*

*Torts > Intentional Torts > Defamation > Defamation Per Se*

[HN3]Under New York law, a writing is defamatory per se if it charges an individual with having committed a crime, attributes to the individual a loathsome disease, charges a woman with unchastity, or would tend to injure an individual in his or her profession. Any otherwise defamatory statement requires allegations of special damages.

*Torts > Intentional Torts > Defamation > Defamation Per Se*

[HN4]A sort of general reputational harm through the stigma of depression and attempted suicide does not constitute defamation per se.

*Torts > Intentional Torts > Defamation > General Overview*

[HN5]Although defamation by implication is actionable under New York law, the law of defamation has never required clarification of the plain meaning of language as a prophylactic to contorted interpretations.

*Torts > Intentional Torts > Defamation > Defamation Per Se*

*Torts > Intentional Torts > Invasion of Privacy > Public Disclosure of Private Facts > General Overview*

[HN6]Words are defamatory per se if they affect a person in his or her profession by imputing to the person misconduct, incapacity, unfitness, or lack of any qualification deemed necessary for the conduct of the profession. This category of per se defamation does not extend to cover characteristics of one's private life that do not keep one from performing competently. But it does include discussion of private characteristics or conduct that do prevent one from performing competently in his or her professional life.

*Torts > Business Torts > General Overview*

*Torts > Intentional Torts > Defamation > Defamation Per Se*

[HN7]Under the "single instance rule," a statement that relates to a single act of business or professional misfeasance is not actionable, absent special damages. The single instance rule, however, has never been extended to include a non-business mistake that affects business competency.

*Evidence > Procedural Considerations > Burdens of Proof > Clear & Convincing Proof*

*Torts > Intentional Torts > Defamation > Defenses > Privileges > Qualified Privileges*

*Torts > Intentional Torts > Defamation > Procedure*

[HN8]A public figure plaintiff must prove by clear and convincing evidence that the defendant acted with actual malice in publishing a defamatory falsehood. This standard requires a showing of knowledge that the statement was false or reckless disregard for the truth. Reckless disregard is not measured by whether a



reasonably prudent man would have published, or would have investigated before publishing. Rather, it requires a finding that the publisher had a high degree of awareness of its probable falsity or in fact entertained serious doubts as to the truth of his publication. Nonetheless, a defendant cannot automatically escape liability by attesting to the fact that the publication was made with a belief that the statements therein contained were true. Rather, the belief must be based on good faith.

*Criminal Law & Procedure > Scierter > General Intent Torts > Damages > Punitive Damages > Conduct Supporting Awards*

*Torts > Intentional Torts > Defamation > Remedies > Damages*

[HN9] Under New York state law, punitive damages in a libel action are appropriate where there are circumstances of aggravation and outrage, such as spite or malice, or a fraudulent or evil motive on the part of the defendant and where plaintiff makes a showing, by clear and convincing evidence, that the wrongdoing was intentional and deliberate.

*Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings > Leave of Court*

*Civil Procedure > Pleading & Practice > Pleadings > Heightened Pleading Requirements > General Overview*  
*Civil Procedure > Remedies > Damages > Special Damages*

[HN10] Generally, leave to amend is appropriate where a plaintiff has failed to allege special damages with specificity.

*Civil Procedure > Remedies > Damages > General Overview*

*Torts > Damages > Compensatory Damages > General Overview*

*Torts > Intentional Torts > Defamation > Remedies > Damages*

[HN11] A defamation plaintiff is entitled to recover reasonable expenses incurred in mitigating damages.

**COUNSEL: APPEARANCES:**

CINQUE & CINQUE, P.C., Attorney for Plaintiff, New York, NY, Of Counsel: James P. Cinque, Esq.

SQUADRON, ELLENOFF, PLESENT, SHEINFELD &

SORKIN, LLP, Attorneys for Defendants, New York, NY, Of Counsel: Slade R. Metcalf, Esq., Dori Ann Hanswirth, Esq.

**JUDGES: KEVIN THOMAS DUFFY, U.S.D.J.**

**OPINION BY: KEVIN THOMAS DUFFY**

**OPINION**

**MEMORANDUM AND ORDER**

**KEVIN THOMAS DUFFY, U.S.D.J.:**

Plaintiff Whitney Houston commenced this libel action after defendant New York Post falsely reported that she had been hospitalized following an overdose of diet pills. She does not allege any monetary damages in diminished audio or video recording sales, but alleges personal humiliation and "mental anguish" along with expenses for "damage control." She seeks compensatory damages of \$ 10,000,000 and punitive damages of \$ 50,000,000. Defendants have moved for summary judgment on plaintiff's entire claim and plaintiff's demand for [\*2] punitive damages. Plaintiff has cross-moved for summary judgment on the issue of defendants' liability for compensatory and punitive damages. In her memo supporting her cross-motion, plaintiff also seeks leave to amend her complaint. For the reasons stated below, defendants' motion for summary judgment is denied, plaintiff's cross-motion for summary judgment is denied, defendants' motion for summary judgment on plaintiff's claim for punitive damages is granted, and plaintiff's cross-motion for leave to amend her complaint is granted.

**Background**

Plaintiff is a world-famous professional singer and entertainer. Defendant New York Post ("Post") is the corporate publisher of a major daily newspaper. Defendants Florence Anthony ("Anthony") and Bill Hoffman ("Hoffman"), worked for the Post.

On Friday, June 25, 1993, David Miller ("Miller"), then a reporter for the Post, received an anonymous phone call claiming that Houston had overdosed on illegal drugs and had been admitted to the hospital at which the caller was employed. The caller further stated that defendant's husband was with her, along with an acquaintance, Eddie Murphy. Miller called Florence Anthony at her home in an effort [\*3] to confirm the

story. Anthony was in Orlando, Florida that weekend. After receiving the message on Saturday morning, Anthony phoned Regina Brown ("Brown") to confirm the report knowing that Brown, a former publicist for Houston, maintained close contacts with members of the plaintiff's family. Defendant alleges that Brown agreed to make some calls in an effort to confirm the story, and that Brown told Anthony of plaintiff's use of diet pills and of her depression. Brown denies making these statements. Anthony claims that she made several attempts to confirm the story, calling plaintiff's public relations firm and receiving no answer, attempting to call Lois Smith, plaintiff's publicist, but not being able to obtain her phone number, and finally calling plaintiff's company, Nippy, Inc., receiving no answer.

After speaking with Brown, Anthony phoned Hoffman, at the Post and relayed to him what Brown had allegedly told her. Hoffman started working on the article on Sunday, June 27, 1993. He phoned the Mount Sinai Hospital in Miami which refused to either confirm or deny that Houston had been treated there. Hoffman claims he also attempted to contact Mr. Murphy's manager but was unsuccessful. [\*4] Hoffman reviewed the Post's file of articles about plaintiff, some of which contained information about plaintiff's recent struggle controlling her weight. Hoffman then wrote the Article which was published the next day, June 28, 1993.

The article stated that plaintiff had been hospitalized because she "overdosed on prescription diet pills" after having been severely depressed about her weight. It further stated that the overdose caused plaintiff to suffer an acute heart arrhythmia, for which she was taken to the coronary care unit of Miami's Mount Sinai Guggenheim Pavilion and released 90 minutes later. In fact, plaintiff was performing that evening in Washington, DC. She neither overdosed nor was admitted to Mount Sinai Hospital at that time. Moreover, there is no such building as the Guggenheim Pavilion at Miami's Mount Sinai Hospital. Defendants have admitted to the falsity of the article, and indeed printed a conspicuous correction on June 30, 1993.

#### Discussion

[HN1] Summary judgment is appropriate where, viewing the evidence in a light most favorable to the non-movant, "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter [\*5] of law." FED. R. CIV. PRO. 56 (1996);

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986). To defeat a motion for summary judgment, the non-moving party must designate "specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986). [HN2] In a defamation action, a public figure<sup>1</sup> plaintiff may not recover for damages absent proof by clear and convincing evidence that the statement was published with malice. Curis Pub. Co. v. Butts, 388 U.S. 130, 18 L. Ed. 2d 1094, 87 S. Ct. 1975 (1967).

1 Neither side in this action disputes that plaintiff Houston qualifies as a public figure.

#### I. Defamation *Per Se*

[HN3] Under New York law, a writing is defamatory per se if it charges an individual with having committed a crime, attributes to the individual a loathsome disease, charges a woman with unchastity, or would tend to injure an individual in his or her profession. Gunsberg v. Roseland Corp., 34 Misc. 2d 220, [\*6] 225 N.Y.S.2d 1020, 1021 (Sup.Ct. 1962). Any otherwise defamatory statement requires allegations of special damages.

Plaintiff Houston argues that the article is defamatory per se for two reasons. First, she argues that "it implied to the average reader that plaintiff was so depressed and despondent that she attempted to take her life by overdosing on diet pills." (Pl's Mem. at 10). Second, plaintiff argues that the article is defamatory per se in that it "had a tendency to injure plaintiff in her profession since it implied a mere matter of days before she was to begin an extensive tour that she was mentally and physically unable to perform." (Pl's Mem. at 10-11).

Reading plaintiff's arguments in light of the four categories of per se defamation it is clear that, as a matter of law, the article is not defamatory per se under any of the first three categories. It does not allege that plaintiff committed a crime.<sup>2</sup> Likewise, the article does not attribute to plaintiff a loathsome disease, i.e. a contagious disease which causes Plaintiff "to be shunned or avoided." Rade v. Press Pub. Co., 37 Misc. 254, 75 N.Y.S. 298 (Sup. Ct. Kings Co. 1902). Nor does the [\*7] article allege unchastity. Rather, plaintiff's only theory is that the article tends to injure her in her profession.

2 The common law's characterization of suicide as a crime has been repealed in most, if not all,

jurisdictions. See, e.g., N.Y. PENAL LAW §§ 2302, 2303 (McKinney 1996). Moreover, as explained below, the plain language of the article does not imply that plaintiff attempted suicide. It merely states that she overdosed on prescription weight loss medication and provides facts suggesting that she was taking the medication for legitimate reasons.

Plaintiff's first argument (that the article implies she attempted suicide) standing alone seems to allege a sort of general reputational harm through the stigma of depression and attempted suicide. [HN4]Such harm does not constitute defamation per se. Even if it did, plaintiff's argument strains to find this implication of suicide in a way that is impermissible under the law.<sup>3</sup>

3 The article never mentions the term "suicide". Instead, plaintiff's theory is premised on a belief that the term "overdose" necessarily implies an attempt at suicide. As evidence that the article implies suicide, plaintiff relies on the fact that the article states "that plaintiff 'overdosed on prescription diet pills' during 'a desperate battle to control her weight,' at a time when 'her depression was aggravated' and when she was 'depressed and irritable.'"

Plaintiff's reasoning is flawed. The term "overdose" alone does not imply a suicide attempt, especially where the drug involved is diet pills. To find otherwise would, in effect, require a publisher to use terms like "non-suicide-attempt overdose" when reporting such an event. [HN5]Although defamation by implication is actionable under New York law, the law of defamation has never required clarification of the plain meaning of language as a prophylactic to contorted interpretations. See, e.g., Drug Research Corp. v. Curtis Pub. Co., 7 N.Y.2d 435, 439-40, 199 N.Y.S.2d 33, 166 N.E.2d 319 (1960) (language must be tested by a fair, not a broad, meaning since speech restraint is involved). Moreover, plaintiff's suggestion that inclusion of facts regarding her desperate weight struggle enhanced the implication of attempted suicide is specious. In fact, inclusion of these facts demonstrates that plaintiff had a legitimate reason for taking this medication and thereby militates against any implication of attempted suicide.

[\*8] Plaintiff's second argument or theory more squarely alleges that the article is defamatory per se in that it tended to injure her in her profession. Under this prong, [HN6]words are defamatory per se if they "affect a person in his or her profession by imputing to the person misconduct, incapacity, unfitness, or lack of any qualification deemed necessary for the conduct of the profession." Lasky v. American Broadcasting Co., Inc., 606 F. Supp. 934, 937 (S.D.N.Y. 1985). This fourth category of per se defamation does not extend to cover characteristics of one's private life that do not keep one from performing competently. Aronson v. Wiersma, 65 N.Y.2d 592, 493 N.Y.S.2d 1006, 483 N.E.2d 1138 (1985).<sup>4</sup> But it does include discussion of private characteristics or conduct that do prevent one from performing competently in his or her professional life. See Sadowy v. Sony Corp. of America, 496 F. Supp. 1071 (S.D.N.Y. 1980).

4 Aronson also stands for the proposition that statements cannot be defamatory per se if reference to extrinsic facts is necessary to give them a defamatory import. Aronson, 65 N.Y.2d 592, 594, 493 N.Y.S.2d 1006, 483 N.E.2d 1138 (1985). This, however, is a very narrow rule that applies only to cases where extrinsic facts are necessary to even understand the nature of the allegations. See e.g., Newsday, Inc. v. C.L. Peck Contractor, Inc., 87 A.D.2d 326, 451 N.Y.S.2d 415, 417 (1st Dept. 1982).

[\*9] In this case, plaintiff argues that defendants' article tended to damage her by suggesting that she was physically and mentally unable to perform. I find that the article does suggest such incapacity in that it stated that plaintiff was suffering from cardiac problems, and depression, along with a weight problem. Moreover, in this case, although the acts concern plaintiff's private conduct, they do involve characteristics that would prevent her from performing competently as an entertainer. Similarly, in Sadowy, an allegation of alcoholism and womanizing met the per se standard, in light of circumstances showing that in their factual context the statements tended to disparage plaintiff professionally. Accordingly, under the more general rule that a publication is defamatory per se if it imputes to a plaintiff incompetence, incapacity, or unfitness in the performance of her profession, the article here qualifies as defamatory per se. See Van Lengen v. Parr, 136 A.D.2d 964, 525 N.Y.S.2d 100 (4th Dept. 1988).

Defendants argue that plaintiff's claim is barred from being defamatory per se by the single instance rule. [HN7] Under this rule, "a statement that relates to a [\*10] single act of business or professional misfeasance is not actionable, absent special damages." Sadowy v. Sony Corp. of America, 496 F. Supp. 1071, 1077-78 (S.D.N.Y. 1980). The single instance rule, however, has never been extended to include a non-business mistake that affects business competency. Thus, in Sadowy this Court refused to extend the rule to statements that "smack[] more of reporting a characteristic of the plaintiff, i.e., that she is professionally unreliable or irresponsible, than of reporting one single act or omission which in some way reflects badly on his professional competence." Sadowy, 496 F. Supp. at 1078; see also Armstrong v. Simon & Schuster, Inc., 85 N.Y.2d 373, 625 N.Y.S.2d 477, 480 n.5, 649 N.E.2d 825 (1995).

The facts here distinguish this case from those in which the single instance rule has been applied. The article does not allege a single act of professional misfeasance. Rather, it reports acts outside the scope of plaintiff's work that would lead a reasonable person to believe that she was physically and mentally incapable of performing her work competently. As such, the single instance rule is inapplicable.

## II. Actual Malice

[\*11] [HN8] A public figure plaintiff must prove by clear and convincing evidence that the defendant acted with actual malice in publishing the defamatory falsehood. Curtis Pub. Co. v. Butts, 388 U.S. 130, 18 L. Ed. 2d 1094, 87 S. Ct. 1975 (1967). This standard requires a showing of "knowledge that [the statement] was false" or "reckless disregard" for the truth. New York Times v. Sullivan, 376 U.S. 254, 280, 11 L. Ed. 2d 686, 84 S. Ct. 710 (1964). Reckless disregard "is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing." St. Amant v. Thompson, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 88 S. Ct. 1323 (1968). Rather, it requires a finding that the publisher had a "high degree of awareness of its probable falsity or in fact entertained serious doubts as to the truth of his publication. Only if there is a factual basis upon which a jury could find a subjective awareness of probable falsity can defendants' motion for summary judgment be denied." Loeb v. New Times Comm. Corp., 497 F. Supp. 85, 92 (S.D.N.Y. 1980) (internal citations omitted). Nonetheless, a

defendant "cannot automatically escape liability by . . . attesting [\*12] to the fact that the publication was made with a belief that the statements therein contained were true." A.E. Hotchner v. Castillo-Puche, 404 F. Supp. 1041, 1049 (S.D.N.Y. 1975). Rather, the belief must be based on good faith. St. Amant, 390 U.S. at 732.

In the instant case, the recklessness of the reporters is at the heart of the accusations. Plaintiff contends that the defendants did not adequately investigate the story prior to publication. Defendants contend that they made a number of efforts to contact the plaintiff and her representatives, but those attempts were unsuccessful. Defendant says that it relied on corroborating information supplied by Regina Brown. Brown now denies the statements attributed to her.

### a. Defendants' Argument Regarding Actual Malice

In their original motion, defendants sought summary judgment on plaintiff's entire claim, arguing inter alia an absence of malice. In the beginning of their reply memorandum, defendants re-assert their motion. At the end of that reply, however, defendants write:

Had Brown's deposition testimony supported Anthony's recollection of their conversations, it would have been proper for the Court to grant [\*13] summary judgment in favor of defendants on the issue of constitutional malice. However, Brown has denied making many of the statements that Anthony remembers and that were part of Anthony's notes. The credibility of Anthony versus Brown presents an issue of fact precluding the availability of summary judgment here, at least with respect to judgment in favor of the defendants.

Thus, by its own admission, defendants concede that summary judgment is inappropriate here with respect to the issue of actual malice. Accordingly, I must deny defendants' motion for the reason stated.

### b. Plaintiff's Argument Regarding Actual Malice

Because "proof of actual malice calls a defendant's state of mind into question" the issue "does not readily lend itself to summary disposition." Hutchinson v.

Proxmire, 443 U.S. 111, 120 n.9, 61 L. Ed. 2d 411, 99 S. Ct. 2675 (1978). Nonetheless, plaintiff argues that she has established beyond question defendants' actual malice by showing that the article was: "(1) 'fabricated;' (2) 'so inherently improbable that only a reckless man would have put [it] in circulation;' or (3) 'based wholly on an unverified anonymous phone call.'" (quoting St. Amant, [\*14] 390 U.S. at 732).

Plaintiff here, however, has presented no evidence that the article was fabricated by the defendants. In contrast, defendants have presented a consistent and quite plausible explanation of how the article developed. Likewise, the article at issue is not "inherently improbable." To the contrary, the tip was corroborated by many subtle details that were consistent with known aspects of plaintiff's life. For example, plaintiff had recently completed a pregnancy in which she was known to have gained considerable weight and she was said to be accompanied by her acquaintance Mr. Murphy. Finally, defendants' article was not based wholly on an unverified anonymous telephone call. Rather, as described above, the facts alleged in the phone call were corroborated by previously reported articles detailing related circumstances and facts.

Accordingly summary judgment on the entire claim is not appropriate at this time for either party to this action.

### III. Punitive Damages

[HN9]Under New York state law, punitive damages in a libel action are appropriate where there are "circumstances of aggravation and outrage, such as spite or malice, or a fraudulent or evil motive on [\*15] the part of the defendant" and where plaintiff makes a showing, by clear and convincing evidence, that the wrongdoing was "intentional and deliberate." Prozeralik v. Capital Cities Comm., Inc., 82 N.Y.2d 466, 480, 605 N.Y.S.2d 218, 626 N.E.2d 34 (1993); see also Williams v. City of New York, 508 F.2d 356, 361 (2d Cir. 1974) (requiring "criminal intent" for imposition of punitive damages). Even if every material fact is construed in a light most favorable to plaintiff Houston, she fails to meet this burden. In publishing the article, defendants omitted the most unsavory aspects of the anonymous tip, such as alleged use of illegal drugs. Moreover, within 48 hours defendants published a conspicuous, clear, and lengthy correction. These facts, and the complete absence of any compelling evidence of evil motive presented by the

plaintiff, make it clear that no reasonable person could find that the article was published with the type of personal hatred or ill will required to sustain a claim for punitive damages in a libel action. Thus, the plaintiff's punitive damages claim is dismissed.

### IV. Leave to Replead

In response to defendants' motion, plaintiff has requested "leave [\*16] to amend her complaint [to allege special damages] for expenses incurred in 'damage control'". [HN10]Generally, leave to amend is appropriate where a plaintiff has failed to allege with special damages with specificity. See, e.g., Drug Research Corp. v. Curtis Pub. Co., 7 N.Y.2d 435, 441, 199 N.Y.S.2d 33, 166 N.E.2d 319 (1960). Defendants here argue that plaintiff is barred as a matter of law from recovering for any such expenses because they constitute attorneys fees. While it is true that plaintiff may not be entitled to recover attorneys' fees, [HN11]a defamation plaintiff is entitled to recover reasonable expenses incurred in mitigating damages. Den Norske Ameriekalinje Actiesselskabet v. Sun Printing & Publishing Ass'n, 226 N.Y. 1, 122 N.E. 463 (1919).

In the present case, the parties dispute whether plaintiff's expenses were attorneys' fees or expenses incurred in mitigating the damages from the article. In light of the fact that defendants published a complete correction/retraction within 48 hours, plaintiff's allegation of \$ 30,000 of expenses in "damage control" seems high. Nonetheless, plaintiff shall be permitted leave to amend her complaint to detail these expenses.

### [\*17] Conclusion

For the foregoing reasons, defendant's motion for summary judgment on plaintiff's entire claim is denied. Plaintiff's cross-motion for summary judgment is denied. Defendants' motion for summary judgment on plaintiff's claim for punitive damages is granted. Plaintiff's motion for leave to amend the complaint is granted.

SO ORDERED.

Dated: New York, NY

December 19, 1996

KEVIN THOMAS DUFFY, U.S.D.J.



LEXSEE 2005 U.S. DIST LEXIS 14422

METROPOLITAN OPERA ASSOCIATION, Plaintiff, v. LOCAL 100, et al.,  
Defendants.

00 Civ. 3613 (LAP)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK

2005 U.S. Dist. LEXIS 14422

July 19, 2005, Decided

July 26, 2005, Filed

**PRIOR HISTORY:** Metro. Opera Ass'n v. Local 100, Hotel Emples. & Rest. Emples. Int'l Union, 2004 U.S. Dist. LEXIS 17093 (S.D.N.Y., Aug. 27, 2004)

**COUNSEL:** [\*1] For Metropolitan Opera Association, Inc., Plaintiff: Charles A. Stillman, Stillman & Friedman, P.C., New York, NY; Deborah E. Lans, Cohen Lans LLP, New York, NY.

For Local 100, Hotel Employees and Restaurant Employees International Union, Henry Tamarin, individually, and in his capacity as President of Local 100, Hotel Employees and Restaurant Employees International Union, Defendants: Daniel Engelstein, Stillman & Freidman, P.C., New York, NY; Daniel Engelstein, Levy, Ratner & Behroozi, P.C., New York, NY; Steven M. Edwards, Hogan & Hartson, LLP, New York, NY.

For Dennis Diaz, individually and in his capacity as Organizer of Local 100, Hotel Employees and Restaurant Employees International Union, Defendant: Daniel Engelstein, Stillman & Freidman, P.C., New York, NY; Daniel Engelstein, Levy, Ratner & Behroozi, P.C., New York, NY.

**JUDGES:** Loretta A. Preska, United States District Judge.

**OPINION BY:** LORETTA A. PRESKA

**OPINION**

**OPINION AND ORDER**

LORETTA A. PRESKA, United States District Judge:

Defendants Local 100, Hotel Employees and Restaurant Employees International Union ("Local 100"), Henry Tamarin and Dennis Diaz (collectively "Defendants") presently move to dismiss the damage claims [\*2] of Plaintiff Metropolitan Opera Association ("Plaintiff"). For the reasons set forth below, Defendants' motion is denied.

*I. Background*

The history of this case is set forth in detail in an Opinion dated January 28, 2003. I restate only those facts that are pertinent to this motion. Plaintiff originally commenced this action against Defendants in New York State Supreme Court on May 1, 2000, claiming that Defendants improperly involved Plaintiff in a labor dispute between Local 100 and Restaurant Associates Corporation ("RA"), Plaintiff's food service provider. On May 12, 2000, Local 100 removed the case to this Court. Thereafter, by Order dated October 24, 2001, I directed that liability issues be tried prior to damage issues and that discovery with respect to liability conclude by December 31, 2001. Trial was eventually scheduled for April 15, 2002.

On the eve of trial, April 10, 2002, I granted Plaintiff's request for permission to file a motion for sanctions. On April 11, 2002, Plaintiff filed a motion for judgment on liability and attorney's fees against Defendants, pursuant to Fed. R. Civ. P. 26 and 37 [\*3], 28 U.S.C. § 1927 and the Court's inherent power. Reviewing the motion and finding it not to be frivolous, I stayed all other proceedings, including trial, to allow the parties to brief the issues. Plaintiff's motion for judgment as to liability and sanctions in the form of attorney's fees against Defendants was granted. *Metropolitan Opera Association v. Local 100*, 212 F.R.D. 178 (S.D.N.Y. 2003)(the "Default Judgment"). In an Opinion dated August 27, 2004 (the "Reconsideration Opinion"), Defendants' subsequent motion for reconsideration of the Default Judgment was denied. *Metropolitan Opera Association v. Local 100*, 2004 U.S. Dist LEXIS 17093 (S.D.N.Y. Aug. 27, 2004).

On February 10, 2003, counsel was present at a status conference to determine how to proceed with the damages and sanctions phase of the case. During the conference, Defendants' counsel suggested that Plaintiff should respond to outstanding interrogatories and document requests relating to damages. Plaintiff's counsel responded that "the requests were, as you may recall, for all of the contribution records and all of the ticket sales and so forth, and it is not [\*4] our intention to rely on that kind of data to prove damages." (Transcript, Feb. 10, 2003 at 18.)

Defendants have made this representation by Plaintiff the subject of their instant motion to dismiss Plaintiff's damage claims. Specifically, Defendants argue that: (1) Plaintiff cannot recover damages without showing financial harm; and (2) Plaintiff's alleged "mitigation damages" do not constitute actual injury and are not compensable as a matter of law.

## II. Discussion

### A. Recovery Without Showing Financial Harm

Defendants contend that the Court must examine Plaintiff's damage claims in accordance with the special standard required of defamation claims made in the context of a labor dispute. Specifically, Defendants argue that in order to recover damages, Plaintiff must make a showing of actual harm, which, according to *United States v. Linn*, "may include general injury to reputation, consequent mental suffering, alienation of associates,

specific items of pecuniary loss, or whatever form of harm would be recognized by state law." 383 U.S. 53, 65, 15 L. Ed. 2d 582, 86 S. Ct. 657 (1966).

Despite *Linn's* broad definition of actual harm, Defendants argue that as a corporation, [\*5] Plaintiff may show reputational harm only through financial loss. *Wolf Street Supermarkets, Inc. v. McPartland*, 108 A.D.2d 25, 487 N.Y.S.2d 442, 449 (4th Dept. 1985)(holding that, unlike a natural person, a corporation does not have feelings and cannot suffer emotional harm). According to Defendants, a failure to show financial loss is an admission that a corporation has not suffered reputational loss.

There are a number of flaws in this approach. Specifically: (1) Defendants ignore the effect of the Court's prior rulings; (2) *Linn* does not apply on the present facts because Plaintiff has alleged constitutional malice and because this case does not involve a labor dispute; and (3) even assuming *Linn* applies, Defendants misunderstand and misapply the "actual harm" standard contained in *Linn*.

### 1. Prior Rulings in this Case

The Default Judgment granted "plaintiff's motion for judgment as to liability against defendants." *Met. Opera*, 212 F.R.D. at 231. Upon entry of a default judgment, the wellpleaded allegations of a complaint are to be accepted as true, except those relating to the amount of damages. See, e.g., *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 108 (2d Cir. 1997); [\*6] *Bambu Sales, Inc. v. Ozak Trading, Inc.*, 58 F.3d 849, 854 (2d Cir. 1995). As I noted in the Reconsideration Opinion, "a default effectively constitutes an admission that . . . the acts pleaded in a complaint violated the laws upon which a claim is based and caused injuries as alleged." *Met. Opera*, 2004 U.S. Dist. LEXIS at \*51 (quoting *In re Crazy Eddie Sec. Litig.*, 948 F. Supp. 1154, 1160 (E.D.N.Y. 1996). Plaintiff's Amended Complaint alleges that Defendants' acts have damaged Plaintiff by, among other things, causing Plaintiff to initiate and pursue this action and causing Plaintiff reputational harm, and these allegations are deemed admitted as a consequence of the Default Judgment. (Complaint, PP 44, 97, 113, 118, 123-26, 131-32, 137, 141.)

Defendants nevertheless maintain that to read the Default Judgment as an admission of the *fact* of damages

reduces this proceeding to an inquest. Defendants note that neither the *Transatlantic* nor *Bambu* cases bifurcated liability and damages, as has been done here, and argue that where liability and damages are bifurcated, a plaintiff must establish a causal link between the alleged wrong [\*7] and the damages sought in the damages phase, even if liability has already been established. *Zhejiang Tongxiang Import & Export Corp. v. Asia Bank, N.A.*, 352 F. Supp. 2d 469, 470 (S.D.N.Y. 2005); see also *Trehan v. Von Tarkanyi*, 63 B.R. 1001, 1009 n.12 (S.D.N.Y. 1986)(Pollack, J.)(following default judgment establishing liability, "plaintiff is required to introduce evidence to prove the extent of damages and, based on this evidence, the court must determine whether the relief requested flows from the facts."); *Meehan v. Snow*, 494 F. Supp. 690 (S.D.N.Y. 1980)(applying the "flows from the facts" principle in a defamation action).<sup>1</sup>

1 Though the proposition that a plaintiff must establish a causal link between the alleged wrong and the damages sought in a bifurcated trial is sound case law, it does not appear to be a concept addressed in the *Zhejiang* case that Defendants cite. Rather, *Zhejiang* involved a shipment under a bill of lading. Summary judgment was granted on the issue of liability in favor of the plaintiff in 2001. It was not until 2003, however, that the question of plaintiff's contributory negligence was settled; therefore, as a damage figure had not been reached, the question of prejudgment interest had arisen. *Zhejiang*, 352 F. Supp. 2d at 469-71.

In resolving the issue, the *Zhejiang* Court specifically explained that its case was different from one in which liability and damages are bifurcated, *id.* at 472, despite Defendants' unambiguous representation that the case was an "action bifurcated into liability and damages phases, with causation and damages considered together." (Def's. Reply, 1.) In fact, *Zhejiang* more accurately stands for a proposition that supports Plaintiff's position:

In making that determination [whether the summary judgment opinion is deemed a verdict, report or decision under N.Y. C.P.L.R. 5002], the Court must look to see if that opinion [deciding liability in favor of a plaintiff] represented the

point at which plaintiff's right to be compensated for the damages [it] sustained became [] fixed in law. In bifurcated trials this occurs when the verdict holding the defendant liable is rendered, since at that point the defendant's obligation to pay the plaintiff is established, and the only remaining question is the precise amount that is due.

*Id.* at 472.

[\*8] While Defendants' review of the case law is accurate, it is of no particular import to the present question. There is no doubt that Plaintiff must establish a causal link between Defendants' alleged wrongs and the damages sought, and Plaintiff does not argue otherwise. However, the causal link is simply that the damages sought are of the type that flows from the wrongdoing. See, e.g., *Flaks v. Koegel*, 504 F.2d 702 (2d Cir. 1974). Consequently, to the extent that Defendants currently argue that Plaintiff can prove no damages attributable to Defendants' acts, that argument is foreclosed by the Default Judgment. The *fact* of damages is no longer in dispute; it is the *amount* of damages that is left to be determined.

## 2. The Damage Law Applicable to Plaintiff's Claims

Notwithstanding Defendants' failure to account adequately for the effect of the Default Judgment, they still mistakenly rely on *United States v. Linn* for the proposition that to recover damages, Plaintiff must show particular financial loss. *Linn* states that, where certain language in a labor dispute is *per se* actionable, the "amount of damages which may be recovered depends [\*9] upon evidence as to the severity of harm." *Linn*, 383 U.S. at 65. As previously noted, "proof of such [actual] harm may include general injury to reputation, consequent mental suffering, alienation of associates, specific items of pecuniary loss, or whatever form of harm would be recognized by state tort law." *Id.* However, there are two reasons why this action does not fall under the *Linn* standard for actual harm: (1) Plaintiff has alleged constitutional malice; and (2) as I previously described both in the granting Plaintiff injunctive relief and in the Reconsideration Opinion, this case cannot be considered a labor dispute.



Initially, according to *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349, 41 L. Ed. 2d 789, 94 S. Ct. 2997 (1974), to recover "presumed or punitive damages," a defamation plaintiff need only show "actual injury" when he cannot show constitutional malice, *i.e.*, knowledge of falsity or reckless disregard for the truth. Here, Plaintiff has, in fact, alleged constitutional malice in its Complaint, and, as a result of the Default Judgment, such allegations are deemed true. (Complaint, PP 32, 67, 96, 99, 112, 114, 117, 127, 133, 138.) Defendants' [\*10] argument that Plaintiff must show actual harm pursuant to *Linn* is therefore incorrect.

Additionally, *Linn* limits its requirement that a defamation plaintiff show actual harm to labor disputes. *Linn*, 383 U.S. at 65. I have already spoken in detail on the issue of whether this case may be considered a labor dispute:

Even under the hypertechnical definition of federal labor law, there was no "labor dispute" here. The dispute between the Union and RA -- regarding the means by which Local 100 would seek to recognize the RA workers at the Met, election or card check -- did not concern the terms or conditions of employment or . . . the association of or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment." Norris-LaGuardia Act, 29 U.S.C. § 113(c).

*Met. Opera*, 2004 U.S. Dist. LEXIS at \*70. In response, Defendants represent that the Court of Appeals, in *Metropolitan Opera Ass'n. v. Local 100*, 239 F.3d 172, 178-79 (2d Cir. 2001), "ruled" that this case involves a labor conflict. (Def's. Reply, 6.) This is an overstatement. [\*11] In hearing an appeal of the granting of Plaintiff's motion for injunctive relief, though the Court of Appeals mentioned *Linn*, it only did so in consideration of Defendants' First Amendment rights. 239 F.3d at 178-79. As my original opinion granted Plaintiff's motion in the alternative, *Met. Opera*, 2000 U.S. Dist. LEXIS 11151, 2000 WL 872829, the question of whether or not Plaintiff and Defendants were actually involved in a labor dispute was not squarely presented or addressed on appeal. This differs markedly from the original opinion granting injunctive relief and the Reconsideration Opinion, where I specifically considered whether the present case could

be considered a labor dispute under the Norris-LaGuardia Act. As previously stated, I found no such conflict between Plaintiff and Defendants -- the labor dispute existed between Defendants and RA. Therefore, the actual harm requirement outlined in *Linn* is not applicable to this case.<sup>2</sup>

<sup>2</sup> It is also worth noting, however, that despite the fact that the actual harm standard outlined in *Linn* is not applicable to this case, Plaintiff maintains that it can show actual harm. Plaintiff proposes to show damages to reputation, trade, business dealings, image, good name and fame, and the like. These damage items certainly fall under the definition of actual harm offered in *Linn* or the more detailed definition of actual harm offered in *Gertz*, as explained below.

[\*12] 3. *The Definition and Applicability of "Actual Harm"*

Defendants maintain that Plaintiff is subject to the actual harm requirement contained in *Linn* and that as a corporation, Plaintiff's failure to show financial harm means that it cannot recover damages. Even assuming that *Linn* actually applies to Plaintiff's damage claims, Defendants' argument nevertheless mischaracterizes and misapplies the actual harm standard. Initially, Defendants have offered a definition of actual harm that is too narrow. Secondly, Defendants misstate the law with respect to Plaintiff's status as a corporation; there is, in fact, no special damage rule covering a corporation's defamation claims.

*Gertz* clarifies the definition of actual harm offered in *Linn*:

Suffice to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by the defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although [\*13] there need be no evidence which assigns an actual dollar value to the injury.

*Gertz*, 418 U.S. at 349-50. The proposition that a plaintiff need not "assign an actual dollar value to the injury" is completely at odds with Defendants' assertion that Plaintiff must show particular evidence of pecuniary loss. *Id.*<sup>3</sup> This is further supported by a series of cases both inside and outside of the Second Circuit. *See, e.g., Dalbec v. Gentleman's Companion, Inc.*, 828 F.2d 921, 925 (2d Cir. 1987)(plaintiff met her burden by, among other things, submitting evidence that defamatory statements had negatively changed the opinion of community residents about her); *Brown v. Petrolite Corp.*, 965 F.2d 38, 45-46 (5th Cir. 1992)(burden met through testimony as to the cost of advertising that would be required to combat the defamation); *Israel Travel Advisory Serv., Inc. v. Israel Identity Tours, Inc.*, 61 F.3d 1250 (7th Cir. 1995)(award of actual damages where witnesses testified that they were almost fooled by the defamatory statements); *Rombom v. Weberman*, 2002 N.Y. Misc. LEXIS 769, 2002 WL 1461890 (Sup. Ct. Kings Co. June 13, 2002), [\*14] *aff'd*, 309 A.D.2d 844, 766 N.Y.S.2d 88 (2d Dept. 2003)(burden met where plaintiff's testimony was that defamatory statements were specifically designed to discourage potential clients from hiring him).  
 4 The applicable case law quite simply does not require that a defamation plaintiff produce particular evidence of pecuniary loss to establish actual harm and recover damages.

3 To reach this assertion, Defendants cite a group of cases (from which *Gertz* is notably absent) that are either inapplicable or discuss a defamation damage standard other than actual harm. Defendants cite *Intercity Maint. Co. v. Local 254*, 241 F.3d 82 (1st Cir. 2001) for the proposition that *Linn* requires a defamation plaintiff to supply evidence, such as lost contracts, to show actual harm. Yet whereas *Intercity* (and *Linn*) involved a labor dispute — a conflict over the collective bargaining agreement between an employer and the union — as stated above, this case does not. Further, the *Intercity* Court dismissed the plaintiff's claims because the plaintiff had "failed to introduce more than a scintilla of evidence of reputational harm or other specific damages," not, as Defendants suggest, for a singular failure to provide evidence of a specific kind of damages. *Intercity*, 241 F.3d at 86. Thus, *Intercity* does not support Defendants' intimation that Plaintiff here must show a specific kind of damages.

*Gateway Theatrical of Bellport, Inc. v. Assoc. Musicians of Greater N.Y.*, 240 A.D.2d 538, 658 N.Y.S.2d 692 (2d Dept. 1997), only involved a discovery motion where plaintiffs, who claimed damage to their business in addition to reputation, were directed to disclose financial records. No mention is made, as Defendants represent, that the ordered financial disclosure was material to "determine plaintiff's alleged actual damages." (Def's. Br., 10).

*Eden Park Health Svc. v. Otley*, 87 A.D.2d 967, 451 N.Y.S.2d 250 (3d Dept. 1982) is similarly inapplicable. While Defendants offer the case for the proposition that a defamation plaintiff in a labor dispute must allege actual injury, here, Plaintiff and Defendants are not involved in labor dispute and, in any event, Plaintiff has, in fact, alleged actual injury in its Complaint. (Complaint, PP 44, 97, 113, 118, 123-26, 131-32, 137, 141.) *Sager v. Local 1199*, 238 A.D.2d 152, 655 N.Y.S.2d 953 (1st Dept. 1997) and *Newsday, Inc. v. C.I. Peck Contractor, Inc.*, 87 A.D.2d 326, 451 N.Y.S.2d 415 (1st Dept. 1982), are irrelevant for the very same reason.

[\*15]

4 Defendants object to this line of cases on the grounds that none involves a corporate plaintiff or features a labor dispute. As was shown earlier however, this case does not involve a labor dispute, and, as will be shown shortly, there is no special damage rule for a corporate plaintiff.

Defendants argue, however, that this principle does not apply to a corporate plaintiff. Though Defendants suggest that "reputational harm to a corporation can only manifest itself in financial loss," they do so without legal citation. (Def's. Br., 8.) In fact, there is no special rule applicable to corporations for quantifying reputational injury.

Initially, Defendants' contention that a corporation may only show reputational harm through specific pecuniary loss defies courts' basic understanding of defamation damages. I have already noted in this case that there is an "inability to measure accurately damage to reputation or goodwill" as well as an "inability to determine with precision which [of Plaintiff's] donors determined not to make contributions as a result of the Union's activities." *Met. Opera*, 2000 WL 872829 [\*16]

at \*5. Judge Easterbook also noted the difficulty of such proof in *Israel Travel Advisory Service, Inc.*:

How does [plaintiff] prove a counterfactual proposition about the behavior of persons who bought [its competitor's] services? [Plaintiff] was able to prove that lies had been told, but the extent of their effect was bound to be problematic. That is why general damages are available in the law of defamation.

61 F.3d at 1255. This principle does not somehow become

irrelevant for a corporate plaintiff; reputational damages are no easier to quantify for a corporate plaintiff than for an individual plaintiff.

Defendants cite *Wolf St. Supermarkets, Inc. v. McPartland*, 108 A.D.2d 25, 487 N.Y.S.2d 442, 449 (4th Dept. 1985), a labor dispute applying *Linn's* actual harm requirement, for the proposition that a corporation does not have feelings and cannot suffer emotional harm — yet the *Wolf* court itself held that the plaintiff-employer "could have shown from direct testimony from persons in the community that the statements were understood by them to impeach the plaintiff's integrity or business methods causing them to shop [\*17] elsewhere." *Id.* Thus, *Wolf* falls into the standard line of cases allowing a corporate plaintiff to show actual harm to reputation and recover damages based on types of loss other than specific instances of pecuniary business loss. See *Harwood v. Pharmacal Co. v. Nat'l Broadcasting Co.*, 9 N.Y.2d 460, 464, 174 N.E.2d 602, 214 N.Y.S.2d 725 (1961)(holding that plaintiff corporation did not have to offer proof of specific lost sales or relationships); *Den Norske Ameriekalinje Actieselskabet v. Sun Printing and Pub'g. Ass'n.*, 226 N.Y. 1, 10-11, 122 N.E. 463 (N.Y. 1919)(holding that an averment of specific damage is not necessary for a corporation in per se libel cases). The categories of evidence that a defamation plaintiff may use to show actual harm are described in *Gertz* above, and Defendants offer no case to contradict the established rule that a corporate plaintiff may show reputational harm using any or all of those categories of evidence.

#### B. Recovery of Mitigation Damages

Defendants also argue that Plaintiff may not recover attorney's fees as mitigation damages in connection with

this case.<sup>5</sup> Defendants state that mitigation damages are only available for efforts [\*18] undertaken to mitigate the effects of the alleged defamation and that to recover attorney's fees under such a theory would violate the American Rule, providing that each party bears its own litigation expenses unless an award is authorized by agreement between the parties, statute or court rule. *Alaska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 247, 44 L. Ed. 2d 141, 95 S. Ct. 1612 (1975).

5 As a threshold matter, it is worth noting the incompatibility of Defendants' two arguments on this motion. Defendants first insist that Plaintiff can only show actual harm by offering specific items of pecuniary loss and that Plaintiff cannot and will not show such items. It seems inconsistent for Defendants then to decry Plaintiff's effort to include one of those specific items of pecuniary loss, attorney's fees generated in combating the alleged defamation, as unrecoverable.

It is Defendants' position on this issue, not Plaintiff's, that is novel. The general rule regarding attorney's fees is that a plaintiff [\*19] in a defamation action has the right, "at the risk of the wrongdoer," to "attempt by a reasonable and proper effort to prevent damage liable to result from the wrongful act which has been committed against him" and to recover from the defendant the costs thereby incurred. *Den Norske*, 226 N.Y. at 9. Plaintiff instituted this action "to protect the Met's name, its patrons, its donors, its contributors' names and reputations against — to stop what the Met believes is defamation of the Met as well as those of other people, trespass and harassment." (Declaration of Deborah Lans, dated March 4, 2005, P 11.)

Courts have consistently found attorney's fees generated in the course of action that Plaintiff describes above recoverable as mitigation damages. See *Houston v. The New York Post*, 1996 U.S. Dist. LEXIS 19705 (S.D.N.Y. 1997)(legal fees recoverable by plaintiff in a defamation action incurred as part of her mitigation damages, notwithstanding the general rule against recovery of fees); *DePinto v. Rosenthal & Curry*, 237 A.D.2d 482, 655 N.Y.S.2d 102, 103 (2d Dept. 1997)("litigation expenses incurred in an attempt to avoid, minimize or [\*20] reduce the damage" caused by defendant's wrongful conduct recoverable); *Hogan v. Herald Co.*, 84 A.D.2d 470, 446 N.Y.S.2d 836 (4th Dept.

1982), *aff'd*, 58 N.Y.2d 630, 444 N.E.2d 1002, 458 N.Y.S.2d 538 (1982)(legal fees properly pleaded within claim for actual injuries); *Jones v. Maher*, 62 Misc. 388, 116 N.Y.S. 180 (N.Y. Sup. Ct. 1909), *aff'd*, 141 A.D. 919, 125 N.Y.S. 1126 (2d Dept. 1910)(damages included plaintiff's legal fees and other costs as a consequence of unlawful conduct of defendants, a union and its officers).

The cases that Defendants cite in opposition are either irrelevant or misrepresented. In *Orlowski v. Koroleski*, 234 A.D.2d 436, 651 N.Y.S.2d 137 (2d Dept. 1996), and *Gallo v. Montauk Video*, 178 Misc. 2d 1069, 684 N.Y.S.2d 817 (2d Dept. 1998), both cases that Defendants cite for the proposition that attorney's fees are not recoverable as actual damages, neither plaintiff requested reimbursement of the fees as defamation damages caused by defendants' wrongful conduct but rather as ordinary attorney's fees. The *Orlowski* and *Gallo* courts' recitation of the American Rule, therefore, did not concern the question [\*21] of whether or not the fees were recoverable as mitigation damages.<sup>6</sup>

<sup>6</sup> *Camatron Sewing Machine, Inc. v. F.M. Ring Assoc. Inc.*, 179 A.D.2d 165, 582 N.Y.S.2d 396 (1s Dept. 1992), and *Rosano's Farm Store, Inc. v. Int'l Collection Service, Inc.*, 115 A.D.2d 195, 495 N.Y.S.2d 264 (3d Dept. 1985), are also cited to for the proposition that "it is beyond dispute that attorney's fees in a defamation action do not constitute 'actual damages.'" (Def's. Br., 18.) However, neither of these cases involved a defamation claim at all. *Camatron* concerned a dispute over a lease and *Rosano's* concerned a breach of contract. Appending these cases as support for the notion that attorney's fees are not recoverable in a defamation action is, charitably, dubious.

Defendants do cite *Seattle Times Co. v. Seattle Mailer's Union*, 664 F.2d 1366 (9th Cir. 1982) for a general statement against including attorney's fees as compensatory damages, but *Seattle Times* specifically concerned a breach of a collective bargaining agreement under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and is insufficient to overcome the substantial authority holding fees appropriate as mitigation damages in a defamation action.

[\*22] The parties disagree over the proper interpretation of two additional cases, although upon

review of each case, Plaintiff's interpretation is more reliable. Plaintiff cites *American Fed. of Musicians v. Reno Riverside Hotel, Inc.*, 86 Nev. 695, 475 P.2d 220 (Sup. Ct. Nevada 1970), a defamation case which held the following:

The compensatory damage award was the exact amount of counsel fees incurred and paid by the hotel to its counsel for services incident to this litigation . . . . This suit apparently prevented further damage. It is appropriate in some cases to consider attorney's fees as an item of damage. Since the institution of this litigation by the hotel was due to the activity of [the union], and the expenditure for representation of counsel was necessary, the trial court properly treated that expenditure as damage.

475 P.2d at 222. Defendants counter that *American Fed. of Musicians*, to the extent that it suggests that attorney's fees can be recovered as damages, was overruled by *Sandy Valley Assocs. v. Sky Ranch Estate Owners Ass'n*, 117 Nev. 948, 955 n.7, 35 P.3d 964 (2001).

Defendants apparently seize on the [\*23] language in footnote 7 of the *Sandy Valley* opinion: "The following cases involved issues relating to attorney fees as an element of damage. Any language in these cases that suggests attorney fees were considered pursuant to a rule, statute or agreement is disapproved." *Id.* Had Defendants read only four paragraphs further in the *Sandy Valley* opinion, however, they would have encountered the Court's specific guidance as to inclusion of attorney's fees as damages in cases involving tortious conduct:

In contrast, when a party claims it has incurred attorney fees as foreseeable damages arising from tortious conduct or a breach of contract, such fees are considered special damages. They must be pleaded as special damages in the complaint pursuant to NRCP 9(g) and proved by competent evidence just as any other element of damages . . . . Finally, when attorney fees are considered as an element of damages, they must be the natural and proximate consequence of the injurious conduct.

*Id.* at 969. This language can only be responsibly read as upholding the *American Fed. of Musicians* decision, and therefore Defendants' interpretation of the case is [\*24] entirely meritless.

The parties also clash over the proper interpretation of *Wachs v. Winter*, 569 F. Supp. 1438 (E.D.N.Y. 1983). Defendants cite *Wachs* for the proposition that "attorney's fees incurred in and management time spent commencing and prosecuting a defamation action are not considered to be mitigation damages." (Def's. Br., 12.) Defendants further represent that *Wachs* "denied plaintiffs [request for] attorney's fees incurred in prosecuting his defamation claim." *Id.* Even a cursory reading of the *Wachs* opinion reveals the exact opposite to be true.

Emmanuel Wachs was an Israeli lawyer, representing himself *pro se*. *Id.* at 1441. He claimed, as compensatory damages, 560 hours attributable to the action, for a total of \$ 84,000. *Id.* at 1448. The *Wachs* court drastically reduced this request to \$ 12,000, but nevertheless *granted* Plaintiff's request for attorney's fees as compensatory damage -- even going so far as to reimburse Mr. Wachs' law clerks "for their assistance in

preparing his defense." *Id.* That Defendants cited the *Wachs* opinion for the notion that attorney's fees are *not* [\*25] recoverable as a mitigation expense is, charitably, perplexing.

In sum, I find that attorney's fees are properly recoverable as mitigation damages, in accordance with the considerable authority outlined above. Defendants' motion on this issue is denied.

#### IV. Conclusion

Accordingly, Defendants' motion to dismiss Plaintiff's damage claims (Docket No. 100) is denied.

Counsel shall confer and inform the Court by letter no later than August 1, 2005 as to how they wish to proceed.

#### SO ORDERED

July \_\_, 2005

Loretta A. Preska, U.S.D.J.

LEXSEE

[\*1] FRANCIS J. ROCHE, Appellant, v CLAVERACK COOPERATIVE  
INSURANCE COMPANY et al., Respondents.

505669

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, THIRD  
DEPARTMENT

2009 NY Slip Op 1390; 2009 N.Y. App. Div. LEXIS 1389

February 26, 2009, Decided

February 26, 2009, Entered

**NOTICE:**

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Plaintiff attorney sought review of an order from the Supreme Court, Columbia County (New York), which, inter alia, granted defendant law client's motion for summary judgment dismissal of the attorney's complaint. The attorney alleged multiple claims, including defamation, fraud, and conspiracy, arising from the client's alleged fabrication of documents to the attorney's professional liability insurer (PLI) for purposes of contribution.

**OVERVIEW:** The client was an insurer that retained the attorney to represent its insureds. After a jury verdict was rendered against one the client's insureds, it sought contribution from the attorney's PLI based on the client's potential claim against the attorney for alleged failures in his representation. The attorney's PLI contributed to the settlement and then refused to renew the attorney's insurance. The attorney filed suit, claiming that the client fabricated conversations with him. The trial court granted summary judgment to the client. On appeal, the court found that there was no evidence that the allegedly

fabricated statements were true, and the attorney sufficiently asserted special damages. Accordingly, claims for defamation, injurious falsehood, and fraud withstood challenge. However, the prima facie tort cause of action was properly dismissed. There was no independent civil conspiracy tort in New York, and no medical evidence of severe emotional distress to support an intentional infliction of emotional distress claim. As it was likely that the client's counsel would be a witness, disqualification under N.Y. Code Prof. Resp. DR 5-102(A), (22 NYCRR 1200.21(a)) was proper.

**OUTCOME:** The court modified the order of the trial court by affirming the summary judgment dismissal of the prima facie tort and civil conspiracy claims. The court reversed the judgment as to all other claims, and it granted the attorney's motion to disqualify the client's counsel.

**CORE TERMS:** causes of action, summary judgment, settlement, fabricated, wrongful death, false statement, defamation, special damages, conversations, prima facie tort, iv denied, factual question, disqualify, policy limits, defamation per se, injurious falsehood, emotional distress, questions of fact, obtain money, properly dismissed, material fact, misrepresentation, intentionally, inappropriate, malpractice, justifiably, infliction, conspiracy, conveyed, settle

LexisNexis(R) Headnotes

Page 1

*Civil Procedure > Summary Judgment > Motions for Summary Judgment > General Overview*

[HN1] While a motion for summary judgment is not authorized by statute until issue has been joined (CPLR 3212(a)), a court can consider the motion where the parties chart their own procedural course and treat a summary judgment motion as if issue had indeed been joined.

*Evidence > Procedural Considerations > Burdens of Proof > Allocation*

*Torts > Intentional Torts > Defamation > Elements > General Overview*

[HN2] To constitute defamation, a plaintiff must prove that the defendants made a false statement, published that statement to a third party without privilege, with fault measured by at least a negligence standard, and the statement caused special damages or constituted defamation per se.

*Torts > Intentional Torts > Defamation > Defenses > Privileges > General Overview*

[HN3] If documents are fabricated, they are not conveyed with good faith as required for the common interest privilege to defamation to apply.

*Torts > Intentional Torts > Prima Facie Tort > Elements*

[HN4] Prima facie tort is established where a defendant intentionally inflicts harm, without excuse or justification, through acts that would otherwise be lawful, and special damages are suffered.

*Torts > Business Torts > Fraud & Misrepresentation > Actual Fraud > Elements*

[HN5] Fraud is established where a defendant knowingly misrepresents a material fact, someone justifiably relies upon that misrepresentation, and a plaintiff is thereby injured.

*Torts > Procedure > Multiple Defendants > Concerted Action > Civil Conspiracy > General Overview*

[HN6] New York does not recognize an independent cause of action for civil conspiracy to commit a tort.

*Civil Procedure > Counsel > Withdrawals*

*Legal Ethics > Client Relations > Accepting Representation*

[HN7] An attorney shall withdraw from representation if the attorney "ought to be called as a witness," i.e., if the attorney's testimony is necessary. N.Y. Code Prof. Resp. DR 5-102(A), (22 NYCRR 1200.21(a)).

COUNSEL: [\*\*1] David Seth Michaels, Spencertown, for appellant.

Knych & Whritenour, L.L.C., Syracuse (Matthew E. Whritenour of counsel), for respondents.

JUDGES: Before: Mercure, J.P., Rose, Lahtinen, Kane and Malone Jr., JJ. Mercure, J.P., Rose, Lahtinen and Malone Jr., JJ., concur.

OPINION BY: Kane

OPINION

MEMORANDUM AND ORDER

Kane, J.

Appeal from an order of the Supreme Court (Donohue, J.), entered September 10, 2008 in Columbia County, which, among other things, granted defendants' motion for summary judgment dismissing the complaint.

For approximately 25 years, defendant Claverack Cooperative Insurance Company retained plaintiff as an attorney to represent its insureds. In one such wrongful death matter, a jury rendered a verdict finding Claverack's insureds 75% liable on a \$ 4,206,780 judgment. Claverack retained counsel, who wrote to Zurich Insurance Company plaintiff's professional liability insurance carrier regarding a potential claim due to plaintiff's alleged failure to keep Claverack apprised of the progression of the wrongful death matter and failure to settle the matter within Claverack's policy limits. The letter sought Zurich's contribution to a postjudgment settlement in the wrongful death matter. Counsel attached [\*\*2] to the letter six memoranda that defendants allege were contemporaneous memorializations of telephone conversations between plaintiff and defendants Maureen Hess and Katherine Buckley, who are officers and directors of Claverack. Plaintiff contends that the memoranda were fabricated to compel Zurich to contribute to the settlement, which Zurich offered to do.

After Zurich declined to renew plaintiff's policy, plaintiff commenced this action seeking damages for defamation, defamation per se, injurious falsehood, prima facie tort, [\*2] intentional infliction of emotional distress, fraud and conspiracy<sup>1</sup>. Defendants moved for summary judgment dismissing the complaint. Plaintiff cross-moved to disqualify defendants' counsel and opposed defendants' motion on the merits and as premature because no answer had been served. Defendants cross-moved seeking an order nunc pro tunc curing their failure to serve an answer. Supreme Court determined that no nunc pro tunc order was necessary, granted defendants' motion dismissing the complaint and denied plaintiff's cross motion as moot. On plaintiff's appeal, we modify and reinstate certain causes of action.

1 While the complaint seems to address statements [\*\*3] in counsel's letter to Zurich as well as the memoranda written by Hess and Buckley, on appeal plaintiff limits his argument to the memoranda.

Initially, Supreme Court did not err in considering the motion for summary judgment despite defendants' failure to first serve an answer. [HN1]While a motion for summary judgment is not authorized by statute until issue has been joined (see CPLR 3212 [a]; Berle v Buckley, 57 AD3d 1276, 1277, 869 N.Y.S.2d 679, 681 [2008]), the court could consider the motion because "the parties charted their own procedural course and treated defendants' summary judgment motion as if issue had indeed been joined" (Ryan v Bettiol, 211 AD2d 844, 845, 620 N.Y.S.2d 625 [1995]; see Kline v Town of Guilderland, 289 AD2d 741, 741 n. 734 N.Y.S.2d 333 [2001]; cf. Yule v New York Chiropractic Coll., 43 AD3d 540, 541-542, 840 N.Y.S.2d 837 [2007]).

Supreme Court erred in granting defendants summary judgment dismissing the defamation causes of action. [HN2]To constitute defamation, plaintiff must prove that defendants made a false statement, published that statement to a third party without privilege, with fault measured by at least a negligence standard, and the statement caused special damages or constituted defamation per se (see Dillon v City of New York, 261 AD2d 34, 38, 704 N.Y.S.2d 1 [1999]). [\*\*4] Plaintiff contends that defendants intentionally fabricated the memoranda to contain numerous false statements. The memoranda purportedly describe conversations concerning the trial in the wrongful death matter,

implying that plaintiff did not convey settlement offers or attempt to settle within the policy limits. These statements were published to Zurich suggesting that plaintiff committed malpractice, thus implicating his business reputation. [HN3]If the memoranda were fabricated, they were not conveyed with good faith as required for the common interest privilege to apply (cf. Lerwick v Krna, 29 AD3d 1206, 1208, 815 N.Y.S.2d 767 [2006], *lv denied* 7 NY3d 712, 857 N.E.2d 1134, 824 N.Y.S.2d 603 [2006]; Demas v Levitsky, 291 AD2d 653, 661, 738 N.Y.S.2d 402 [2002], *lv dismissed* 98 NY2d 728, 779 N.E.2d 188, 749 N.Y.S.2d 477 [2002]). Plaintiff sufficiently asserted special damages, including that he was required to pay a deductible under his malpractice insurance policy and pay a higher premium to a new company when Zurich declined to renew his policy due to this claim (compare Stanton v Carrara, 28 AD3d 642, 642, 813 N.Y.S.2d 515 [2006]). Any dispute concerning the causal relationship between the claim and these damages is a factual question. Because questions of fact exist concerning the elements of defamation, [\*\*5] the court improperly dismissed plaintiff's two defamation causes of action.

Questions of fact preclude a grant of summary judgment dismissing the injurious falsehood cause of action. On that cause of action, plaintiff alleges that defendants conveyed false statements with an intent to harm plaintiff, and plaintiff was harmed due to those statements (see Gilliam v Richard M. Greenspan, P.C., 17 AD3d 634, 635, 793 N.Y.S.2d 526 [2005]; Hirschhorn v Town of Harrison, 210 AD2d 587, 588, 619 N.Y.S.2d 810 [1994]). As previously noted, plaintiff sufficiently asserted special damages. Plaintiff contends that Hess and Buckley included false statements in the memoranda [\*3] concerning phone conversations in which plaintiff was a participant, with the intent to force plaintiff or his insurance company to contribute to the settlement. Hess and Buckley averred that the memoranda accurately memorialized those conversations. This conflict creates a credibility question which cannot be resolved on affidavits, making summary judgment inappropriate.

[HN4]Prima facie tort is established where a defendant intentionally inflicts harm, without excuse or justification, through acts that would otherwise be lawful, and special damages are suffered (see Freihofer v Hearst Corp., 65 NY2d 135, 142-143, 480 N.E.2d 349, 490 N.Y.S.2d 735 [1985]). [\*\*6] To establish this cause of



action, plaintiff contends that defendants fabricated the memoranda to obtain money from plaintiff and Zurich. If the memoranda are legitimate, defendants are protected by the defense of truth. If they are false, plaintiff cannot establish the elements of prima facie tort because providing false statements to obtain money is not otherwise lawful. Thus, regardless of any factual question concerning the legitimacy of the memoranda, the prima facie tort cause of action was properly dismissed.

[HN5] Fraud is established where a defendant knowingly misrepresents a material fact, someone justifiably relies upon that misrepresentation and the plaintiff is thereby injured (*see Scaturro v Suter*, 57 AD3d 1283, 1283, 870 N.Y.S.2d 143 [2008]; *Cohen v Colistra*, 233 AD2d 542, 543, 649 N.Y.S.2d 540 [1996]). Similar to his other causes of action, plaintiff contends that defendants purposely falsified the memoranda to induce plaintiff and Zurich to contribute to the settlement in the wrongful death matter. There is a question of fact as to whether, if the memoranda did constitute misrepresentation of material facts, Zurich justifiably relied on the memoranda or conducted its own investigation which led it to [\*\*7] contribute to the settlement. Due to this factual question, summary judgment was inappropriate on the fraud cause of action.

Due to plaintiff's failure to present medical evidence of severe emotional distress, defendants were entitled to dismissal of plaintiff's speculative cause of action for intentional infliction of emotional distress (*see Valentas v Johns*, 257 AD2d 352, 353, 683 N.Y.S.2d 56 [1999], *lv dismissed* 93 NY2d 958, 716 N.E.2d 700, 694 N.Y.S.2d 635 [1999]; *Christenson v Gutman*, 249 AD2d 805, 809, 671 N.Y.S.2d 835 [1998]; *Augat v State of New York*, 244 AD2d 835, 837, 666 N.Y.S.2d 249 [1997], *lv denied* 91 NY2d 814, 698 N.E.2d 956, 676 N.Y.S.2d 127 [1998]). As [HN6] New York does not recognize an independent cause of action for civil conspiracy to commit a tort, that claim was properly dismissed (*see Salvatore v Kumar*, 45 AD3d 560, 563-564, 845 N.Y.S.2d 384 [2007], *lv denied* 10 NY3d 703, 883 N.E.2d 1011, 854 N.Y.S.2d 104 [2008]; *Jebran v LaSalle Bus. Credit, LLC*, 33 AD3d 424, 425, 824 N.Y.S.2d 224

[2006]).

Hess and Buckley argue that they cannot be individually liable under any cause of action, as they drafted the memoranda as agents of Claverack. If they fabricated the memoranda, as plaintiff claims, they were presumably acting outside their employment. As officers and directors of Claverack, they possibly stood to personally benefit from a settlement of the wrongful [\*\*8] death claim. Thus, we do not grant summary judgment to the individual defendants in their personal capacities.

We must now address plaintiff's cross motion to disqualify defendants' counsel, as that issue is no longer moot. [HN7] An attorney shall withdraw from representation if the attorney "ought to be called as a witness," i.e., if the attorney's testimony is necessary (Code of Professional Responsibility DR 5-102 [A] [22 NYCRR 1200.21 (a)]; *see S & S Hotel Ventures Ltd. Partnership v 777 S.H. Corp.*, 69 NY2d 437, 444, 508 N.E.2d 647, 515 N.Y.S.2d 735 [1987]; *Burdett Radiology Consultants v Samaritan Hosp.*, 158 AD2d 132, 134, 557 N.Y.S.2d 988 [1990]). In his affidavit, defendants' counsel made his testimony relevant, and possibly necessary, by stating that the memoranda were in Claverack's file when he first reviewed it, months prior to the time when plaintiff alleges that the memoranda [\*\*4] were fabricated. Thus, as counsel's testimony may be necessary to address the legitimacy of the memoranda, plaintiff's cross motion should be granted.

Mercuré, J.P., Rose, Lahtinen and Malone Jr., JJ., concur.

ORDERED that the order is modified, on the law, without costs, by reversing so much thereof as granted defendants' motion for summary judgment on the [\*\*9] first, second, third and sixth causes of action and as denied plaintiff's cross motion to disqualify defendants' counsel; defendants' motion denied to said extent, plaintiff's cross motion granted and defendants' counsel disqualified; and, as so modified, affirmed.

Not Reported in A.2d, 2007 WL 2188200 (N.J.Super.A.D.)  
(Cite as: 2007 WL 2188200 (N.J.Super.A.D.))

**H**Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
RULES BEFORE CITING.

Superior Court of New Jersey,  
Appellate Division.  
STEVENS INSTITUTE OF TECHNOLOGY, Plain-  
tiff-Appellant/Cross-Respondent,

v.

Ronald HINE, Aaron Lewit and Fund for a Better  
Waterfront, Inc., Defen-  
dants-Respondents/Cross-Appellants.

Argued Jan. 18, 2007.  
Decided July 31, 2007.

On appeal from Superior Court of New Jersey, Law  
Division, Hudson County, HUD-L-288-03.

Timothy J. O'Neill argued the cause for appel-  
lant/cross-respondent (Windels Marx Lane & Mit-  
tendorf, attorneys; Mr. O'Neill, of counsel and on the  
brief; Charles M. Fisher, on the brief).

Edward Lloyd argued the cause for respondents/  
cross-appellants (Environmental Law Clinic, Colum-  
bia Law School, and New Jersey Appleseed Public  
Interest Law Center, attorneys; Mr. Lloyd, Renee  
Steinhagen and Ira Karasick, on the brief).

Diane Stolbach argued the cause for non-party res-  
pondents Diane Gans and George Vallone (Kraemer,  
Burns, Mytelka, Lovell & Kulka, attorneys; Arnold K.  
Mytelka, of counsel; Ms. Stolbach, on the brief).

Before Judges WEFING, PARKER and C.S. FISHER.

PER CURIAM.

\*1 Plaintiff Stevens Institute of Technology ("Stevens") appeals from trial court orders granting summary judgment to defendants Ronald Hine, Aaron Lewit and Fund for a Better Waterfront ("Fund"), as well as from various other orders entered by the trial court prior to the grant of final summary judgment. Defendants cross-appeal from the denial of their application for counsel fees, costs and sanctions. After

reviewing the record in light of the contentions advanced on appeal, we affirm in part, reverse in part and remand for further proceedings.

The disputes between the parties require that we balance the rights of plaintiff to protect its reputation and standing in the community and the rights of defendants to express their views on certain of plaintiff's activities. The disputes, moreover, occurred in the context of increasing development along the Hudson County waterfront, leaving a shrinking amount of land available either for private development or for public use.

The matter has a complex factual and procedural background which must be set forth in order to analyze the issues on appeal. Because we are considering an appeal from a grant of summary judgment, we view the facts in the most favorable light to Stevens. Atlantic Mut. Ins. Co. v. Hillside, 387 N.J.Super. 224, 230 (App.Div.), certif. denied, 189 N.J. 104 (2006).

I

Plaintiff Stevens, a private institution of higher education organized as a not-for-profit corporation, is located in Hoboken on a campus overlooking the Hudson River. The Fund is also a not-for-profit corporation. The Fund's stated purpose, according to its certificate of incorporation, is "educational and legal efforts to improve the environment, the waterfront, the quality of life in Hoboken and neighboring communities." Its by-laws authorize it to engage in efforts directed to "1) improvement of the environment and quality of life along the Hudson River; 2) promotion of a public waterfront along the Hudson River fully accessible to and for the enjoyment of the public; and 3) advocacy of appropriate development along the Hudson River." Defendant Hine is the executive director of the Fund, and defendant Lewit is the president of the Fund.

During the late 1990's Stevens began the planning for the construction of a new six-story building on campus to be known as the Babbio Center for Technology Management. The selected site contained serpentine

Not Reported in A.2d, 2007 WL 2188200 (N.J.Super.A.D.)  
(Cite as: 2007 WL 2188200 (N.J.Super.A.D.))

rock, which includes the mineral chrysotile. Chrysotile contains asbestos fibers, and when chrysotile is disturbed, it tends to break along its cleavage planes, releasing asbestos fibers. Stevens, aware of the presence of serpentine rock and that construction of the Babbio building would necessitate blasting, retained consulting and environmental engineers, PMK Group, to advise it as to the best method of proceeding.

After inspecting the site and conducting two different forms of testing, PMK issued a report to Stevens in February 1999 containing a number of recommendations, including "use of constant wetting of the intact rock at the point of excavation, as well as of the waste as it is generated and during the course of its handling on-site." The report also dealt with the question of disposing of the loose rock generated by the blasting.

\*2 The waste generated by the excavation of serpentine bedrock is not classified as an asbestos-containing waste subject to prevailing asbestos waste control regulations, nor is its handling subject to prevailing asbestos contracting regulations. Therefore, the waste rock is not subject to the packaging, transport and disposal requirements promulgated by these codes for "commercial" asbestos-containing waste.

Given the potential that the handling of this material will result in the release of some amount of fugitive airborne asbestos fibers, it is recommended that the rock waste be controlled during its transport and immediately landfilled. Specifically, we recommend that the rock waste:

(i) be kept wet during transport in secured, covered vehicles; and

(ii) be transported directly to a landfill where it would be dumped and covered on a daily basis without further crushing or other processing.

We are aware that such rock waste could be subject to stockpiling at a location other than a landfill, and could foreseeably be utilized as a component of a fill or ultimately sold as a component for some other bulk commercial product. It is our opinion that the waste rock's potential to act as a source of airborne asbestos fiber release as a result of its handling away from the excavation site constitutes a liability con-

cern motivating this disposal scheme.

Those involved in the planning and construction of the Babbio Center were aware of these recommendations. The November 27, 2001, minutes of the meeting of the planning team, which included representatives of the contractors, contain the following statements:

9. Creamer and Terminal were requested to review their excavation plan with Stevens. Creamer has requested PMK's soil/rock profile ... to assist them in this process.

10. The site needs to be well watered to avoid excessive dust. Stevens will perform air sampling of the site to insure asbestos threshold levels are not exceeded.

The importance of watering the site was again stressed to the contractor in a memo from the physical plant director of Stevens. "As a reminder, the PMK report dated 2/5/99 recommends, 'use of constant wetting of the intact rock at the point of excavation, as well as the waste as it is generated and during the course of its handling on-site.' "

At the same time that Stevens was proceeding with the planning and development of the Babbio Center, efforts were also under way to develop the large parcel of land at the northern end of Hoboken previously occupied by the Maxwell House coffee plant. The Fund took a strong interest in the various development proposals and worked closely with two of the prospective developers, Daniel Gans and George Vallone, to see to the inclusion of public park land as part of the development. Stevens also had an interest in participating in the development of this tract, which was in very close proximity to its campus. The minutes of meetings of the Fund's board reveal that the members opposed the proposals submitted by Stevens.

\*3 In late 2000, Stevens received approval from the Hoboken Planning Board to proceed with the Babbio Center. The record before us does not contain the proceedings before that board and whether any of the defendants in this matter appeared in connection with the Stevens application.

In the initial planning stages, Stevens envisioned the construction of a multi-level garage accompanying the

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Babbio Center. According to the record before us, Stevens revised its plans in this regard in light of the opposition such a garage generated in the surrounding community and replaced the multi-level garage with a one-level garage. Stevens nonetheless hoped in the future to obtain approval for such a multi-level garage and wanted to build the Babbio Center with a forty-foot foundation wall with that prospect in mind. In October 2001 the president of Stevens wrote the following letter to Hoboken's zoning officer:

As you know, Stevens Institute of Technology recently received Planning Board approval for a new Management Building with a 105-space garage structure below the building.

Presently, we are hoping to construct a deeper foundation to the garage structure, with an overall depth of approximately 40 feet. Stevens takes this action at its own risk. We hope in the future to include this foundation area as part of a soon-to-be adjacent garage, which will be the subject of a new application.

If Stevens does not receive approval for the new garage structure, then the foundation of the Management Building will be nothing more than a foundation, with no access on entry points. No action by you or any city official to permit this foundation will be deemed by Stevens to be an approval to construct anything more than the approved 105-space garage structure below the Management Building. Further, Stevens will not hold the city or any official responsible for Stevens' potential inability to construct a larger garage structure, if same is denied by the Planning Board.

There is no indication in the record before us that Hoboken expressed any reservations to this approach, which we infer involved greater excavation and more blasting than would otherwise be necessary.

Construction did not commence immediately upon receipt of that approval. It was not until March 2002 that Stevens received an initial blasting permit to commence excavation of the foundation for the Center. Prior to commencing any blasting, the contractor notified the various entities that would potentially be affected, including the North Hudson Sewer Authority, Hoboken's Department of Environmental Services,

Verizon, Hoboken's Water Company, Public Service Electric & Gas, and the Army Corps of Engineers. There is no indication in the record that the blasting continued beyond the six- to eight-week period initially envisioned.

Blasting commenced on the morning of March 11, 2002. The site, however, was not watered, as had been consistently recommended. According to the deposition of Roger Cole, who was the Vice President of Facilities and Support Services for Stevens, this was due to certain drought restrictions that had been imposed. Stevens had requested a waiver of these restrictions to permit watering of the site, but its request was denied. Stevens appealed that denial and was ultimately able to obtain approval from the Hoboken Board of Health and the New Jersey Department of Environmental Protection ("DEP") to commence watering.

\*4 Neighbors in the vicinity of the work observed dust clouds being generated by the blasting and contacted defendant Hine who began to investigate. He learned that the site contained serpentine rock and contacted several geologists to learn more about the nature of that substance. As a result of the information he obtained, Hine attempted to contact Cole, leaving a message asking whether Stevens was testing and monitoring for the presence of asbestos. He also contacted a member of the Hoboken city council.

On the morning of April 8, 2002, Cole returned Hine's call. Hine inquired about whether Stevens was monitoring the site, and Cole responded, "No, I don't think so, but let me get back to you." Hine did not wait for any further information but posted an entry on the Fund's website entitled, "Stevens Institute of Technology Blasts Away Historic Serpentine Rock at Castle Point Possibly Sending Asbestos Into Air." Within the entry, Hine stated that Stevens had been blasting and excavating serpentine rock and that the "rock usually contains asbestos, sometimes in a form considered highly dangerous. No precautions or monitoring has taken place as Terminal Construction Company detonates explosives ... each weekday, sending clouds of dust high in the air.... The major health risks linked to asbestos are asbestosis, mesothelioma and lung cancer."

Later that afternoon, however, Cole telephoned Hine

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and informed him that he had looked into the matter and learned that monitoring was, in fact, taking place. The following day, Hine modified his earlier entry on the Fund website by removing the sentence which had stated that no "precautions or monitoring has taken place." He did not, however, indicate in any way that the entry had been amended.

Members of the board of the Fund met that day and discussed the issue. The minutes of that meeting contain the following statement:

- 1) Steven's garage excavation-Procedures and protocols have not been taken by Steven's.

Ron [defendant Hine] discovered the rock they are blasting contains asbestos. Aaron [defendant Lewit] collected a sample of dust and sent to be tested. Asbestos is dangerous when it becomes airborne. Steven's did not report any of this to any governmental agency. They have been monitoring, and there was one day where the numbers spiked and other days with significant levels in the air. Steven's is not wetting down the site. Several government oversight agencies are denying jurisdiction because it is naturally occurring. What it comes down to is this: whether or not there were significant levels or posed minimal health hazard, Stevens told no one and tried to cover it up, denying the public's right to information and thereby taking away the public's choice to take precautions, such as close windows, not walk by, take shoes off at the door, etc.

These same minutes stated that Stevens was planning to build a garage with space for seven hundred fifty cars without the approval of the planning board and that the asbestos issue "damages Stevens credibility."

\*5 On April 9, Hine made additional entries to his article on the Fund's website, stating "[a] recent test by a Stevens' consultant confirmed that the dust surrounding the construction site contains high levels of asbestos" and that "[n]o precautions have been taken thus far to water down the excavation site or, during the blasting, to prevent the dust from spreading throughout the neighborhood."

Shortly thereafter, Michael Mooney, a science teacher, happened to drive by the scene en route to picking up his young son who was attending an event at a

nearby elementary school. Mooney recognized the presence of serpentine rock and was aware that it contained asbestos. He spoke to a teacher at the school and said the children should not be taken to any of the parks near the excavation site while the blasting continued. Mooney also met defendant Lewit and mentioned the issue to him. Lewit obtained samples, and testing confirmed the presence of asbestos.

A small percentage of the air samples that were taken in the same time frame also revealed the presence of asbestos. Although the levels exceeded that permitted by the federal Environmental Protection Agency's Asbestos Hazard Emergency Response Act, 15 U.S.C.A. §§ 2641 to 2654, they did not exceed the permissible exposure limit set by the Occupational Safety and Health Administration ("OSHA"). The record contains subsequent reports prepared by Benjamin Safirstein, M.D., and David M. Kichula, C.I.H., during the course of this litigation. Dr. Safirstein served as plaintiff's expert in the field of pulmonary medicine while Mr. Kichula was plaintiff's expert in industrial hygiene. Their reports concluded that the excavation, and the slight release of asbestos, did not pose a health risk or hazard.

On April 18, Hine, on behalf of the Fund, wrote to the mayor of Hoboken. His letter included the following:

It is urgent that you respond to the health hazard posed by the continued blasting and excavation of the parking garage site.... There are many unanswered questions as Stevens ... continues to suppress information and minimize the problem. For a full month, from when the blasting began on March 11 to April 12, Stevens ... withheld from the public their knowledge that this operation was sending asbestos into the air, occasionally at levels exceeding the federal [EPA] standards. During this same time period, Stevens failed to take the most basic of precautionary measures, refusing to hydrate the site and control the dust.

He also wrote that "[n]early every day significant amounts of chrysotile (white asbestos) have been detected by Stevens' own monitoring system" and that "[w]e have spent considerable time talking to state and local officials regarding this problem."

The blasting activities naturally resulted in waste rock

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requiring disposal. It was initially trucked by Empire Ltd. to a temporary stockpile area for clean soil or rock located in Carlstadt, a site within the jurisdiction of the New Jersey Meadowlands Commission. For reasons evidently not connected to these defendants, the owner of adjoining premises became concerned about this stockpiling, and the Commission was contacted. The Commission issued a cease and desist order, prohibiting the dumping of any more asbestos-containing rock. The Commission rejected PMK's contention that the waste rock qualified as clean fill, and Stevens was ordered to wet and cover the existing waste with a minimum of two feet of clean fill. It also had to make alternate arrangements to dispose of the balance of the waste rock.

\*6 On May 3, 2002, the *Jersey Journal* published two short pieces on the blasting operation, one by Cole and one by Lewit. They ran side by side on a page headed "Opinion", with the further subheading "In Your Opinion." In Lewit's article, he stated "toxic dust settled on Sinatra Park and the Little League Field, [and] went into the air over Hoboken." He also wrote that "[w]hile contaminating our air, Stevens ... pursues the purchase of the remaining waterfront properties. Stevens ... now appears to be the latest waterfront developer to thwart Hoboken's vision of a continuous waterfront park."

The following week, on May 12, the Fund's website published another letter which stated in pertinent part:

Remember that windstorm a couple of weeks ago, which blew all that filthy grit into your skin, eyes, and lungs? Thanks to excavating by the Stevens Institute of Technology permitted by the City of Hoboken, that could have contained asbestos.

On June 9, the *Hoboken Reporter* published a letter to the editor from Hine in which he wrote:

[t]he removal of 20 to 30 thousand cubic yards of serpentine rock at Stevens ... has posed a serious health crisis for our community. Recent tests commissioned by the New Jersey Meadowlands Commission ... reveal asbestos levels as high as 15 percent in this rock. Two samples contained 10 percent actinolite, a potent carcinogen, whose sharp needle-like fibers can readily become airborne.

....

This is perhaps our first lesson in the dangers posed by the partnership between the City of Hoboken and Stevens.... This is a serious, serious problem that demands forceful action on the part of the City, Stevens, the State DEP and other agencies that are obligated to protect our health and safety.

In September, Hine wrote to the Hoboken Planning Board, complaining that the actual construction under way did not conform with the approvals Stevens had previously received. We interpret this letter to refer to the decision on Stevens' part, which we noted earlier, to construct a forty-foot foundation wall for the Babbio Center. In December, Hoboken issued a stop work order but eventually permitted completion of the Babbio Center itself.

On December 22, the *Hoboken Reporter* published another letter from Hine, in which he stated that "[t]he excavation provided further evidence of Stevens' arrogance as they failed to notify the public of the potential asbestos hazard and proceeded to dump this hazardous material in the Meadowlands illegally."

In January 2003, Stevens commenced this suit, seeking damages for defamation, invasion of privacy and prima facie tort. Defendants filed their answer and in April moved for partial summary judgment, dismissing the claims for prima facie tort and invasion of privacy. Plaintiff cross-moved to compel discovery.

At the conclusion of argument on these motions in June, the trial court granted partial summary judgment, dismissing the claim of invasion of privacy but denied the motion with respect to prima facie tort. As to discovery, the trial court limited defendants' obligation to produce documents to those published between January 1, 2000, and January 15, 2003, the date plaintiff filed its complaint. In addition, the trial court permitted only the depositions of defendants Hine and Lewit.

\*7 In November, plaintiff returned to the trial court, seeking discovery from Gans and Vallone, evidently to explore whether there had been an understanding of some sort between the two developers and defendants that defendant Fund would have a significant, if not exclusive, role in administering the park they were

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proposing in conjunction with the Maxwell House site. According to plaintiff, defendants were motivated by this potential to oppose Stevens' efforts to become involved in the development of the tract. In January 2004, the trial judge denied the request to depose the two men and in March refused a request for reconsideration.

Defendants filed another motion for summary judgment, seeking to dismiss plaintiff's claims for defamation and for prima facie tort. Plaintiff identified ten statements it deemed defamatory: 1) Hine's posting of April 8, 2002, on the Fund's website that "no precautions or monitoring" was being done in connection with the blasting; 2) Hine's postings of April 11 that the "dust surrounding the construction site contains high levels of asbestos" and 3) that "[n]o precautions have been taken thus far to water down the excavation site or, during the blasting, to prevent dust from spreading throughout the neighborhood; 4), 5) and 6) those portions of Hine's letter of April 18, to Hoboken's mayor, set forth earlier in this opinion; 7) Lewit's statement to the *Jersey Journal* of May 3, that "toxic dust settled on Sinatra Park and the Little League field [and] went into the air over Hoboken"; 8) the May 12 letter published on the Fund's website, set forth earlier; 9) Hine's June 9 letter to the editor of the *Hoboken Reporter*, set forth earlier; and 10) Hine's December 22 letter to the *Hoboken Reporter*, set forth earlier.

The trial court heard extensive oral argument on defendant's motion. Indeed, the argument spanned three days, and the trial court made rulings on various aspects of the motion at different points throughout the argument. In sum, the trial court held that seven of the ten statements identified by Stevens as defamatory were either true or were not verifiably false statements of fact but three of the statements were, for purposes of summary judgment, reasonably susceptible of false and defamatory meaning, and possibly made with malice, that is, published knowingly or with reckless disregard for the truth. It nonetheless granted summary judgment with respect to the defamation count, finding that Stevens had failed to present a sufficient issue of fact as to whether these three statements harmed Stevens' reputation or caused it other damages.

The trial court, however, denied defendants' motion for summary judgment on the prima facie tort claim

and granted plaintiff's motion to amend that count. It also extended discovery for an additional ninety days on that count.

Shortly thereafter, Stevens again renewed its motion to depose Gans and to compel him to produce certain documents. The trial court again denied the application to depose Gans but did permit plaintiff to serve him with ten interrogatories. Plaintiff's subsequent motion to compel more specific answers to its interrogatories was denied.

\*8 In December, defendants renewed their motion for summary judgment with respect to the remaining claim of prima facie tort. That motion was granted in February, and this appeal followed.

On appeal, Stevens contends that the trial court erred in dismissing its claim of prima facie tort, in dismissing its claim of defamation and in limiting its ability to take discovery.

## II

We turn first to plaintiff's claim that the trial court erred in dismissing its claim of prima facie tort. In this count of its complaint, Stevens recited the following allegations as the basis for its claim: that defendants had engaged in a course of wrongful conduct designed to harass and discredit it, disrupt its activities, harm its business relationships, and generally make it difficult for it to function in the Hoboken community; that they had maliciously published or persuaded or attempted to persuade others to publish false statements in an effort to create a public health scare and harm its reputation in the community; that they had routinely made complaints to government officials to incite controversy, generate investigatory action and stop construction of the Babbio Center; and that they had prodded journalists to investigate Stevens and publish derogatory information about it.

A prima facie tort "is designed to redress unjustified 'intentional, willful or malicious harms' where no adequate common law or statutory remedy exists." *Silvestre v. Bell Atl. Corp.*, 973 F.Supp. 475, 485 (D.N.J.1997), *aff'd without opinion*, 156 F.3d 1225 (3d Cir.1998). See also *Aikens v. Wisconsin*, 195 U.S. 194, 204, 25 S.Ct. 3, 5, 49 L. Ed. 154, 159 (1904) (Justice Holmes wrote that "prima facie, the inten-

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tional infliction of temporal damages is a cause of action, which, as a matter of substantive law, whatever may be the form of pleading, requires a justification if the defendant is to escape").

This court has recognized the existence of a prima facie tort cause of action. *Trautwein v. Harbourt*, 40 N.J.Super. 247, 266 (App.Div.), *certif. denied*, 22 N.J. 220 (1956). See also *Perry v. Gold & Laine, P.C.*, 371 F.Supp.2d 622, 627 (D.N.J.2005). In *Trautwein*, the court rejected a cause of action for malicious exclusion from membership in a fraternal organization, but found "no difficulty with the theoretical concept ... that intentional, willful or malicious harms of any kind are actionable unless justified." *Supra*, 40 N.J.Super. at 266.

However, in *Taylor v. Metzger*, 152 N.J. 490, 522-23 (1998), a case involving a claim of racial discrimination under the Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to -42, the Supreme Court reviewed the theoretical basis of the prima facie tort doctrine as well as the reasoning of *Trautwein* and declined to recognize a claim in prima facie tort under the facts of that case. The Court defined prima facie tort, in accordance with the *Restatement*, as proving that "[o]ne who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability." *Id.* at 522 (quoting *Restatement (Second) of Torts* § 870 (1979)).

\*9 The Taylor Court explained that "[a] prima facie tort cause of action would encompass the 'intentional, willful and malicious harms' that fall within the gaps of the law. Prima facie tort claims have been most frequently permitted only in the limited situations in which plaintiffs would have no other causes of action." *Id.* at 523 (citation omitted). The Court reasoned that

[t]he LAD prohibits racial harassment in the workplace and, in this case, forbids the conduct of defendant that allegedly gives rise to the prima facie tort claim. Moreover, the tort of intentional infliction of emotional distress encompasses the conduct that in these circumstances would be targeted by a claim based on prima facie tort. Even if allegations

of racial harassment were insufficient to state an LAD claim or a claim of intentional infliction of emotional distress, a prima facie tort cause of action should not be used to overcome those deficiencies. *Prima facie tort should not be invoked when the essential elements of an established and relevant cause of action are missing.* "Prima facie tort should not become a 'catch-all' alternative for every cause of action which cannot stand on its legs."

[*Ibid.* (citations and quotation omitted, emphasis added).]

We consider the Taylor analysis wholly applicable here. Plaintiff's claim of prima facie tort is essentially encompassed within its claim of defamation. Whether or not plaintiff prevailed upon its claim for defamation is immaterial to the analysis. The tort of defamation afforded plaintiff a legal avenue to seek to redress the wrongs allegedly caused by defendants' conduct, and there was thus no "gap" to fill through a prima facie tort claim.

Further, plaintiff's claim of prima facie tort was predicated upon the same conduct as its claim of defamation. *LoBiondo v. Schwartz* illustrates the deficiency in this regard with plaintiff's prima facie tort claim. 323 N.J.Super. 391 (App.Div.), *certif. denied*, 162 N.J. 488 (1999). In that case, the plaintiffs sued the defendants, who had opposed expansion of a beach club owned by the plaintiffs, alleging defamation, intentional interference with business advantage and intentional infliction of emotional distress. *Id.* at 395-96. The jury returned a verdict in the plaintiffs' favor on all three counts. *Id.* at 405. On appeal, we reversed, finding no evidence of malice that would support a defamation claim. *Id.* at 413. We held that the dismissal of the defamation claim also demanded dismissal of the remaining claims. *Id.* at 417.

[I]f an intentional tort ... is predicated upon the same conduct on which the defamation count is predicated, the defamation cause completely comprehends the malicious interference cause. That is to say, if the alleged defamation is not actionable, then its consequences are also not actionable because the conduct that caused those consequences was privileged.... It would obviously be intolerably anomalous and illogical for conduct that is held not to constitute actionable defamation nevertheless to be



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relied on to sustain a different cause of action based solely on the consequences of that alleged defamation. Thus, since there was no actionable defamation here, there can be no claim for damages flowing from the alleged defamation but attributed to a different intentional tort whose gravamen is the same as that of the defamation claim.

\*10 [*Ibid.* (citations omitted).]

From our review of the record, we are satisfied that, contrary to plaintiff's argument, the same conduct of defendants underlies plaintiff's claim of prima facie tort as underlies its claim of defamation.

It would make no sense ... to deem certain expressions immune from suit as libel, and then find them sufficient in the identical factual context to constitute a prima facie tort; or to make truth an absolute defense in libel and defamation suits, but then to allow a prima facie tort claim based on the same facts merely because defendant was motivated by ill will and caused economic injury.

[ *Nat'l Nutritional Foods Ass'n. v. Whelan*, 492 F.Supp. 374, 384 (S.D.N.Y.1980).]

We recognize that the trial court, in granting summary judgment on the claim of prima facie tort, expressed the view that this court might expand the scope of a prima facie tort "to include factual situations in which other torts brought on the same facts fail." We decline to do so. We consider such an expansion inappropriate in light of the views expressed by our Supreme Court in *Taylor v. Metzger*, *supra*. We are satisfied the trial court correctly granted summary judgment on plaintiff's claim of prima facie tort.

### III

We turn now to plaintiff's claim that the trial court erred in dismissing its claim of defamation. There are several aspects to plaintiff's argument. Initially, they contend that the trial court erred in treating two of the statements in issue as statements of opinion, and thus not subject to a claim of defamation.

Our Supreme Court has recognized that " 'summary judgment practice is particularly well-suited for the

determination of libel [and defamation] actions' because those actions tend to 'inhibit comment on matters of public concern.' " *DeAngelis v. Hill*, 180 N.J. 1, 12 (2004) (quoting *Dairy Stores, Inc. v. Sentinel Publ'g Co.*, 104 N.J. 125, 157 (1986)). See also Pressler, *Current N.J. Court Rules*, comment 5 on R. 4:46-2 (2007) ("summary judgment technique is encouraged in defamation actions"). Moreover, "[i]n order to survive a summary judgment motion, a plaintiff must produce substantial evidence of actual malice." *Hopkins v. City of Gloucester*, 358 N.J.Super. 271, 279 (App.Div.2003).

"Defamation imposes liability for publication of false statements that injure the reputation of another." *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 765 (1989). "[T]he elements of a defamation claim are: (1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher." *DeAngelis, supra*, 180 N.J. at 13 (citing *Restatement (Second) of Torts, supra*, at § 558).

False statements about public officials or, in this case, a public institution are not actionable unless published with actual malice.<sup>FN1</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L. Ed.2d 686, 706-07 (1964); *DeAngelis, supra*, 180 N.J. at 13; *Lynch v. N.J. Educ. Ass'n*, 161 N.J. 152, 165 (1999). "To satisfy the actual malice standard, [the] plaintiff must establish by clear and convincing evidence ... that [the] defendant published the statement with 'knowledge that it was false or with reckless disregard of whether it was false.' " *DeAngelis, supra*, 180 N.J. at 13 (quoting *Sullivan, supra*, 376 U.S. at 279-80, 285-86, 84 S.Ct. 726, 729, 11 L. Ed.2d at 706-07, 710) (citation omitted); *Gulrajaney v. Petricha*, 381 N.J.Super. 241, 255 (App.Div.2005). "A publisher's hostility or ill will is not dispositive of malice." *DeAngelis, supra*, 180 N.J. at 14.

<sup>FN1</sup>. It was undisputed below that plaintiff was a "public institute" and that the actual malice standard applied.

\*11 "Whether the meaning of a statement is susceptible of a defamatory meaning is a question of law for the court." *Ward v. Zelikovsky*, 136 N.J. 516, 529 (1994). In determining whether statements are defa-

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matory, courts “must consider the content, verifiability, and context of the challenged statements.” *Ibid.* “The ‘content’ analysis requires courts to consider the ‘fair and natural meaning that will be given [to the statement] by reasonable persons of ordinary intelligence.’ “ *DeAngelis, supra*, 180 N.J. at 14 (quoting *Ward, supra*, 136 N.J. at 529 and *Romaine v. Kallinger*, 109 N.J. 282, 290 (1988)). In that regard, while the “use of epithets, insults, name-calling, profanity and hyperbole may be hurtful to the listener and are to be discouraged, ... such comments are not actionable.” *Ibid.* (citing *Ward, supra*, 136 N.J. at 529-30). An “analysis of verifiability requires courts to determine whether the statement is one of fact or opinion,” with statements of opinion enjoying absolute immunity as a matter of constitutional law. *Ibid.*

Plaintiff asserted that the statement of defendant Hine in his letter of April 18 to Hoboken's mayor that the excavation site was a health hazard and his statement in his June 9 letter to the *Hoboken Reporter* that the excavation posed a “serious health crisis” were defamatory.<sup>FN2</sup> The trial court found these statements to be statements of opinion and thus not actionable. Plaintiff contends they were demonstrably false statements of fact.

FN2. The portion of Hine's letter of April 18 at issue stated:

[i]t is urgent that you respond to the health hazard posed by the continued blasting and excavation of the parking garage site.... There are many unanswered questions as Stevens ... continues to suppress information and minimize the problem. For a full month, from when the blasting began on March 11 to April 12, Stevens ... withheld from the public their knowledge that this operation was sending asbestos into the air, occasionally at levels exceeding the federal ... [EPA] standards. During this same time period, Stevens failed to take the most basic of precautionary measures, refusing to hydrate the site and control the dust.

The June 9 letter stated:

[t]he removal of 20 to 30 thousand cubic yards of serpentine rock at Stevens ... has

posed a serious health crisis for our community. Recent tests commissioned by the New Jersey Meadowlands Commission ... reveal asbestos levels as high as 15 percent in this rock. Two samples contained 10 percent actinolite, a potent carcinogen, whose sharp needle-like fibers can readily become airborne.

....

This is perhaps our first lesson in the dangers posed by the partnership between the City of Hoboken and Stevens.... This is a serious, serious problem that demands forceful action on the part of the City, Stevens, the State DEP and other agencies that are obligated to protect our health and safety.

“A factual statement can be proved or disproved objectively while an opinion statement generally cannot.” *Ibid.*

Only if the statement “suggested specific factual assertions that could be proven true or false could the statement qualify as actionable defamation.” The more fact based the statement, the greater likelihood that it will be actionable. Conversely, where the statement consists of “[i]oose, figurative or hyperbolic language, [it] will be ... more likely to be deemed non-actionable as rhetorical hyperbole or a vigorous epithet.”

[*Id.* at 14-15 (citations omitted).]

“Pure” expressions of opinion on matters of public concern are protected and are not actionable. *Kotlikoff v. Cmty. News*, 89 N.J. 62, 68-69 (1982).

Here, the trial court correctly characterized these two statements in Hine's letters of April 18 and June 9 as expressions of opinion by Hine. Defendants were told by several reliable sources that the asbestos released during blasting could pose a health hazard. That plaintiff's expert reports belie that conclusion does not establish a claim for defamation. Statements premised on matters that are subject to scientific debate are generally considered statements of opinion and not capable of having a defamatory meaning. *Freyd v.*

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Whitfield, 972 F.Supp. 940, 945-46 (D.Md.1997).

We are persuaded, nonetheless, that there is merit to plaintiff's contention that the court should not have granted summary judgment on this issue when the time for discovery had not yet elapsed. By the time the trial court ruled on defendants' motion for summary judgment, plaintiff had not completed deposing defendant Hine. The trial court may have been skeptical about plaintiff's ability to produce sufficient evidence in a continued deposition to defeat defendants' motion. Plaintiff should not, however, have been deprived of the opportunity to do so. Standridge v. Ramey, 323 N.J.Super. 538, 547 (App.Div.1999).

\*12 We are also persuaded that there is merit to plaintiff's contention that the trial court erred in concluding that it had presented insufficient evidence of damage. In connection with defendants' motion, plaintiff pointed to its interrogatory answers to the effect that it had suffered mitigation damages, that is, its employees were forced to divert considerable time and energy at the expense of Stevens in order to respond to the charges put forth by defendants. Plaintiff contended that its employees were compelled to attend meetings of the City Council and the Planning Board to address defendants' statements; to reply to a complaint defendants filed with OSHA; and to respond to the Commission's actions in refusing to accept further waste rock and ordering the placement of a two-foot earthen cover over the material already in place.

The trial court deemed this insufficient for failure to detail the employees in question and the amount of loss Stevens incurred. We are unable to agree. Initially, the parties have not pointed us to any reported New Jersey authority which would preclude such mitigation damages in a defamation suit, and we are unable to perceive a reason in logic or policy why they should not be deemed a proper item of damage. The Court of Appeals for the Third Circuit, applying New Jersey law, concluded that New Jersey would allow such mitigation damages. Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1150 (3d Cir.1990).

If a party has a valid claim for defamation and has expended time and effort to lessen the damage to its reputation, it should be compensated for those efforts. A failure to do so would not make it whole. Defendants were fully entitled to explore the nature of those

damages in discovery; their failure to do so should not serve to plaintiff's detriment.

#### IV

Plaintiff's remaining argument is that the trial court erred in precluding it from deposing Gans and Vallone. We agree, particularly in the context of this matter, in which plaintiff contended that defendants' opposition to this project sprang in large measure from defendants' expectation that they would benefit from the development proposed by Gans and Vallone. That Gans and Vallone ultimately did not proceed with this development does not detract from the motives posited by Stevens. We consider the substitute put forth by the trial court, the submission of ten written interrogatories, to be an unsatisfactory technique to attempt to obtain sufficient information to support plaintiff's claim (if, indeed, it will be able to do so at all.)

We are sensitive, as was the trial court, to the need to protect Gans and Vallone from harassing and intrusive questioning. That need should be met, however, by proper limitations upon the scope of their depositions, not by preventing them entirely.

#### V

Defendants have cross-appealed from the trial court's denial of their application for sanctions and counsel fees of \$861,800. The trial court denied the application on the ground that plaintiff's claims were not frivolous. In light of the fact that we have determined that the matter must be remanded to the trial court for further proceedings on plaintiff's defamation claim, we are unable to conclude that this litigation may fairly be characterized as frivolous for purposes of N.J.S.A. 2A:15-59.1 and R. 1:4-8. The trial court's order in that regard is affirmed.

#### VI

\*13 Any party reviewing this matter cannot escape noticing the acrimony with which this litigation has been conducted. Litigation is, by definition, an adversarial process, and we recognize that both sides have a great deal at stake. A long-established institution of higher learning has been accused of acting in gross disregard of the public health and of various incidents of deceit and lack of candor. An organization

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ostensibly organized to seek a better environment for its community has been accused of disregarding the truth in favor of its own self-interest. We trust, nonetheless, that the parties and their counsel will strive to conclude the remand proceedings swiftly, reasonably and professionally.

So much of the Order of July 29, 2004, as granted summary judgment to defendants on Count 2 of the complaint sounding in defamation is reversed and the matter remanded to the trial court. The Order of February 6, 2005, granting summary judgment to defendants on the claim of prima facie tort is affirmed. The Order of July 24, 2005, denying defendants' motion for fees, costs and sanctions is affirmed.

On the appeal, the orders under review are affirmed in part and reversed in part and the matter remanded to the trial court for further proceedings. On respondents' cross-appeal, the order under review is affirmed. We do not retain jurisdiction.

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DONALD J. TRUMP,

Plaintiff,

vs.

TIMOTHY O'BRIEN, TIME WARNER  
BOOK GROUP INC., WARNER BOOKS  
INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAMDEN COUNTY

Docket No. L-545-06

**CERTIFICATION OF PLAINTIFF  
DONALD J. TRUMP**

I, Donald J. Trump, of full age, certify as follows:

1. I am the plaintiff in the above-referenced matter and the Chief Executive Officer and President of The Trump Organization, 725 Fifth Avenue, New York, New York 10022. I have personal knowledge of the facts contained in this certification in accordance with R. 1:6-6.

2. In mid-October 2005, I received an advance copy of *TrumpNation: The Art of Being the Donald* ("the Book"). I was immediately struck by the enormity of false information contained therein.

3. After defendants published the Book and an excerpt of the Book in *The New York Times*, I noticed a decline in my reputation and I lost business deals. I believe these consequences were the result of the Book and the excerpt.

4. In an effort to reach those who were negatively persuaded by the published statements and convince them of the truth -- that I was and am a multi-billionaire with a strong and thriving business -- I decided to take out advertisements in national newspapers that are well-regarded in the business and real-estate communities. I felt that this was a strong way to combat the negative information published about me and to staunch the loss of business I was experiencing as a result of the publications.

5. After advising Rhona Graff-Riccio, a Vice President and my assistant at The Trump Organization, of my plans, I asked her to take the lead on this project and to handle all the necessary details.

6. Ms. Graff-Riccio prepared a four-page, full-color gatefold advertisement depicting my real-estate holdings. The advertisement was published in *The New York Times*, *New York Magazine*, and *The New York Post*.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Donald J. Trump

DATED: April 24, 2009

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DONALD J. TRUMP,

Plaintiff,

vs.

TIMOTHY O'BRIEN, TIME WARNER  
BOOK GROUP INC., WARNER BOOKS  
INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAMDEN COUNTY

Docket No. L-545-06

CERTIFICATION OF DONALD J.  
TRUMP, JR.

I, Donald J. Trump, Jr., of full age, certify as follows:

1. I am a Vice President of Development at The Trump Organization, 725 Fifth Avenue, New York, New York 10022. I have personal knowledge of the facts contained in this certification in accordance with R. 1:6-6.

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2. As a Vice President of Development at The Trump Organization, I, along with my sister Ivanka Trump, among other things, negotiate and oversee real estate licensing deals for The Trump Organization.

3. I participated in the negotiation and execution of real estate licensing deals prior to the publication of *TrumpNation: The Art of Being the Donald* ("the Book") and an excerpt of the Book in *The New York Times*.

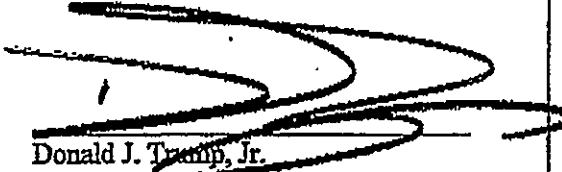
4. Since the publication of the Book and the excerpt of the Book in *The New York Times*, I have noticed that potential business partners for licensing deals have been less enthusiastic about licensing the Trump name.

5. I have also noticed that licensing deals take longer to complete.

6. I have also noticed that the number of questions from investors concerning the value of the Trump brand has greatly increased.

7. It is my belief that all of these changes are the result of the Book and the excerpt of the Book in *The New York Times*.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Donald J. Trump, Jr.

DATED: 4/23/09

1101719.1



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Attorneys for Plaintiff Donald J. Trump

DONALD J. TRUMP,

Plaintiff,

vs.

TIMOTHY O'BRIEN, TIME WARNER  
BOOK GROUP INC., WARNER BOOKS  
INC.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART  
CAMDEN COUNTY

Docket No. L-545-06

**CERTIFICATION OF IVANKA  
TRUMP**

I, Ivanka Trump, of full age, certify as follows:

1. I am a Vice President of Development at The Trump Organization, 725 Fifth Avenue, New York, New York 10022. I have personal knowledge of the facts contained in this certification in accordance with R. 1:6-6.

2. As a Vice President of Development at The Trump Organization, I, along with my brother Donald J. Trump, Jr., among other things, negotiate and oversee real estate licensing deals for The Trump Organization.

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3. I participated in the negotiation and execution of real estate licensing deals prior to the publication of *TrumpNation: The Art of Being the Donald* ("the Book") and an excerpt of the Book in *The New York Times*.

4. Since the publication of the Book and the excerpt of the Book in *The New York Times*, I have noticed that potential business partners for licensing deals have been less enthusiastic about licensing the Trump name.

5. I have also noticed that licensing deals take longer to complete.

6. I have also noticed that the number of questions from investors concerning the value of the Trump brand has greatly increased.

7. It is my belief that all of these changes are the result of the Book and the excerpt of the Book in *The New York Times*.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Ivanka Trump

DATED:

April 24, 2009

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