

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DAVID RUDOVSKY and)	09-CV-0727
LEONARD SOSNOV,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WEST PUBLISHING)	
CORPORATION, WEST SERVICES,)	
INC., and THOMPSON LEGAL)	
AND REGULATORY, INC., t/a)	
THOMPSON WEST,)	Philadelphia, PA
)	December 14, 2010
Defendants.)	10:00 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: RICHARD L. BAZELON, ESQUIRE
MATTHEW R. SKOLNIK, ESQUIRE
NOAH H. CHARLSON, ESQUIRE
BAZELON, LESS & FELDMAN, P.C.
1515 Market Street
Suite 700
Philadelphia, PA 19102

For the Defendants: AARON M. ZEISLER, ESQUIRE
JAMES F. RITTINGER, ESQUIRE
SATTERLEE STEPHENS BURKE &
BURKE, LLP
230 Park Avenue
New York, NY 10169

Audio Operator: DENNIS TAYLOR

Transcribed by: DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-0129
Office: (856) 435-7172
Fax: (856) 435-7124
E-mail: dianadoman@comcast.net

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

1 MR. RITTINGER: I'm sorry, Your Honor?

2 THE COURT: It's your turn.

3 MR. RITTINGER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. RITTINGER:

6 Q Professor, it is true that West enjoys an excellent
7 reputation in the publishing -- legal publishing field,
8 correct?

9 A I'd say it enjoys a very good reputation, and is the
10 largest, as I understand, the largest law book publisher in
11 the country. Yes.

12 Q And it enjoys an excellent reputation for the quality of
13 its work, isn't that correct?

14 A I would say it enjoys a very good reputation, I wouldn't
15 necessarily say excellent.

16 Q Okay.

17 THE COURT: Especially when the work is done by
18 Professor Rudovsky.

19 PROFESSOR RUDOVSKY: Then it's excellent.

20 BY MR. RITTINGER:

21 Q And it's advantageous to someone in your profession to
22 author books for West, isn't that correct?

23 A Yes. If it's done properly, yes.

24 Q And it's prestigious, isn't that correct?

25 A Prestigious, it certainly helps to have a book published

1 "Use of authors names. Publisher shall have the
2 right to use authors' names in connection with the work and
3 upkeep of the work. If the work or upkeep is prepared by a
4 person other than authors, publisher may identify that person
5 on the new material in any related advertising, and give him
6 or her authorship credit, in addition to, or in lieu of credit
7 given to the authors."

8 You agreed to that provision in 2000.

9 A We did.

10 Q And it goes on -- well let me ask you this question. You
11 had forgotten that that provision existed at the time that the
12 letter was written, isn't that correct?

13 A Absolutely not. It was my understanding from 1987 on,
14 that under the original contract, the 2000 contract, the 2007
15 contract, that we would do the volumes, we would do the
16 supplements.

17 If at some point we decided not to continue, we died,
18 incapacitated, or West decided they didn't want us anymore,
19 that would be fine for West to continue to publish the book.

20 What we did not agree to at anytime was the use of
21 our names on a sham, fraudulent product.

22 Q Okay. Let me just take that. So if it had not been a
23 sham product, you agree that West could have used your name on
24 a work that -- a new supplement that they had done?

25 A That's right. We absolutely anticipated that if the work

1 was adequate, West could use our names. Much of the work was
2 done by us and West could use our names.

3 Q All right. And --

4 A No problem.

5 Q -- there wouldn't be anything misleading about that,
6 because in that supplement you would have done 90 percent of
7 the work anyway. It would have been authored partially by you
8 and partially by West.

9 A That's correct.

10 Q So your complaint here isn't that they used your name on
11 the new supplement. It's they used your name on a supplement
12 that you say was a sham. That's your complaint.

13 A Our complaint, it's a sham and a fraud on the public, yes.

14 Q Right. But not that they couldn't use your names on a new
15 supplement?

16 A I've never made that claim.

17 Q Thank you. All right. I'd like to direct your attention
18 to 4(a), "Work made for hire." And I'll read that into the
19 record.

20 "The work has been specifically commissioned by the
21 publisher and will be considered a work made for hire within
22 the meaning of the United States Copyright Laws. Authors will
23 execute any documents publisher considers necessary or
24 appropriate to effectuate or record this agreement. Publisher
25 will have all rights to which an owner of a copyright is

1 questions.

2 MR. BAZELON: Objection to form.

3 THE COURT: Objection sustained.

4 BY MR. RITTINGER:

5 Q The question is that you understood that West has the
6 right to put out the supplement by itself when you didn't want
7 to do it, correct?

8 MR. BAZELON: Objection. Asked and answered.

9 THE COURT: Well he can answer it again.

10 PROFESSOR RUDOVSKY: They did, as long as it was not
11 a sham product. That's what I said before.

12 BY MR. RITTINGER:

13 Q All right. And at that time you had an 18-year
14 relationship with West with respect to this book, and a 28-
15 year relationship with respect to West with your other book,
16 correct?

17 A That's correct.

18 Q All right. And when you saw the new publication, you made
19 a determination not to talk to West, you didn't consult with
20 West, or ask West what it --

21 THE COURT: What's your question? Do you have a
22 question that's not a speech?

23 BY MR. RITTINGER:

24 Q You instead went to Mr. Bazelon, isn't that correct?

25 MR. BAZELON: Objection.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. Objection overruled. Go ahead.

PROFESSOR RUDOVSKY: We went to Mr. Bazelon to communicate with West.

BY MR. RITTINGER:

Q Yes. And you did communicate with West, is that correct?

A Absolutely.

Q All right.

MR. RITTINGER: I'd like to have Joint Exhibit 26.

MR. BAZELON: Your Honor, we have an objection to this.

THE COURT: I don't know what it is. What is it we're talking about?

MR. RITTINGER: It's Mr. Bazelon's letter to West Publishing.

MR. BAZELON: Your Honor, this is a letter that comes under Federal Rule of Evidence 804 -- 408. I'm sorry.

(Pause)

THE COURT: The objection is sustained. This is not the sort of thing that gets into evidence.

MR. RITTINGER: Your Honor, may we be heard?

THE COURT: Pardon?

MR. RITTINGER: May we be heard at sidebar?

THE COURT: Sure.

(Sidebar Begins)

MR. RITTINGER: I mean, this is the demand letter.

1 THE COURT: Pardon?

2 MR. RITTINGER: It's a demand letter. It's not a
3 settlement letter.

4 THE COURT: Of course it is.

5 MR. RITTINGER: No. He demands relief.

6 THE COURT: Read the last paragraph.

7 MR. RITTINGER: Your Honor, he has it marked as an
8 exhibit in his own case.

9 THE COURT: I don't --

10 MR. BAZELON: No, Your Honor.

11 MR. RITTINGER: We agreed upon this letter.

12 THE COURT: Is it agreed upon?

13 MR. BAZELON: No, it is not agreed upon.

14 MR. RITTINGER: Your Honor, it was agreed until
15 yesterday, or today.

16 MR. RITTINGER: Your Honor, Mr. Charlson sent me this
17 list, we spoke on Thursday. This is the list of all the
18 exhibits in the case with the parties' intentions.

19 He's not objecting to that.

20 THE COURT: Now it is. I rule on objections that I
21 hear, not that -- not by letter ahead of time.

22 MR. RITTINGER: We agreed --

23 THE COURT: Pardon?

24 MR. RITTINGER: We agreed to this letter. We --

25 THE COURT: I don't care what he agreed to. I've

1 sustained the objection, we keep the letter out. Okay?

2 (Sidebar Ends)

3 MR. RITTINGER: I'd like to have marked -- I'd like
4 to have Joint Exhibit 30.

5 THE COURT: Until the exhibit is in evidence, it
6 doesn't get put up on the screen.

7 MR. RITTINGER: I believe it's already in evidence.

8 MR. BAZELON: Your Honor, we did not object to this,
9 Your Honor.

10 THE COURT: Okay. Go ahead.

11 BY MR. RITTINGER:

12 Q Professor, you made certain demands of West, isn't that
13 correct?

14 A We did.

15 Q And one of the demands was that they write a letter to
16 their customers explaining the circumstances of the writing of
17 the 2008 supplement, isn't that correct?

18 A That's correct.

19 Q And this letter was sent out by West, isn't that correct?

20 A West did send out this letter in March of 2009.

21 MR. RITTINGER: Your Honor, I'd like to have the jury
22 take a minute to read it --

23 THE COURT: Well, make it possible. It certainly
24 can't be read in that form.

25 MR. RITTINGER: I don't know can -- is it clear

1 2009 supplement?

2 A No.

3 Q And, by the way, no one's complained to you about the
4 inadequacy of the 2008 supplement, the supplement that was
5 replaced, isn't that correct?

6 A That's correct.

7 Q And as far as you know, West never got a complaint about
8 the 2008 supplement, isn't that correct?

9 A I have no idea.

10 Q Well you took discovery in the case.

11 A I was told that West doesn't even have a process for
12 hearing complaints, but I'll take your word. If you say West
13 has never gotten a complaint, they never got a complaint.

14 MR. BAZELON: Objection.

15 THE COURT: Well your objection's to your own
16 client's answer.

17 MR. BAZELON: I withdraw it, Your Honor.

18 BY MR. RITTINGER:

19 Q Now West offered to take your names off of anything having
20 to do with the book in the future, isn't that correct?

21 A West offered at some point to take our names off the book,
22 but it didn't cure the problem. None of this cured the
23 problem.

24 The problem was that you created the problem that
25 really couldn't be cured. And that's why there's continuing

1 references, prior and later history, and comprehensive citator
2 information, including citations to other decisions and
3 secondary materials."

4 Now that appears in this supplement and every
5 supplement of late, isn't that correct?

6 A That's correct.

7 Q All right. So the likelihood of anyone -- first of all,
8 you can't identify anybody who looked at the supplement and
9 was misled, or didn't follow a case properly because of any
10 defect that you claim is in the supplement, isn't that
11 correct?

12 A Nobody's --

13 MR. BAZELON: Objection, Your Honor.

14 PROFESSOR RUDOVSKY: Nobody's contacted me about
15 that, that's correct.

16 MR. BAZELON: This has been asked and answered a
17 hundred times.

18 THE COURT: At least 12. You don't have to repeat
19 everything. Go ahead.

20 BY MR. RITTINGER:

21 Q And --

22 (Pause)

23 BY MR. RITTINGER:

24 Q Professor, in response to questions by Mr. Bazelon, you
25 acknowledged that you can't identify any loss of income, job,

1 any kind of revenue, not one cent that you have lost, as a
2 result of the publication of a supplement, isn't that correct?

3 A I cannot identify any, that's correct.

4 Q And you can't identify one person who thinks less of you,
5 whose reputation -- who believes less of you or whose -- let
6 me rephrase the question.

7 You cannot identify one person who thought less of
8 you as a result of the publication of a supplement, isn't that
9 correct?

10 A I can't identify them, unless they self identified. There
11 my be people out there. I think there are, but I don't have
12 any names.

13 Q All right. And when you complained to West, West sent out
14 a letter immediately, as has been shown to the jury, correct?

15 MR. BAZELON: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: It's been asked and answered a dozen
18 times. Do you have anything that's not repetition?

19 MR. RITTINGER: Your Honor, I'd like to just go
20 through a series of questions. I'm finishing up.

21 THE COURT: As long as they haven't been asked and
22 answered before.

23 MR. RITTINGER: Well I don't think they've been asked
24 and answered in this capacity.

25 THE COURT: What do you mean, in this capacity? He's

1 Q All right. You've acknowledged that West had the right to
2 publish the supplement, as long as it wasn't -- as long as it
3 didn't do something inaccurate, or what you call a sham,
4 correct?

5 A I've said that. Yes.

6 Q All right. And you continued to publish with West,
7 correct?

8 A I did.

9 Q All right. And yesterday there was some testimony that
10 you felt that West was unethical. Do you have any -- is this
11 the only situation that you have, in combined 50 years with
12 West, where they've done anything unethical?

13 A I haven't been with West in 50 years. I've been with West
14 for 30 years. The only information I have about West is my
15 own dealings with them.

16 Q Do you have any other examples, other than this supplement
17 which you claim was unethical for West to publish?

18 A No, this is the only thing that I think they've done
19 unethically to me, but it's a major unethical breach.

20 Q But -- and by the 50 years, I meant the combined 50 years.
21 20 years with this book, and 30 years with your police book.

22 A No. We've had minor disagreements over the years over
23 things, but nothing that I would call unethical.

24 Q And now despite no evidence of any -- let me ask you this
25 question, by the way, what is your income? What do you

1 A Yes.

2 Q And it was good for your career?

3 A Yes.

4 Q All right. And West enjoys an excellent reputation,
5 correct?

6 A I don't know that. I -- really, I -- I don't know -- I
7 know that West is the biggest publishing company. I don't
8 know what their reputation is because I don't discuss that
9 with other people. We don't sit around talking about
10 reputation of publishers.

11 Q Okay. Well, at least having a book published by West was
12 prestigious to you, is that correct?

13 A It was prestigious, not because it was published by West.
14 It was prestigious because of the -- the nature of the book
15 itself and what we did with it.

16 Q All right. Let me -- let me ask you these questions. Can
17 you identify one person who read the 2008 supplement and
18 concluded that it had any inaccuracy in it or that it was out
19 of date, other than yourself and Professor Rudovsky?

20 A I cannot identify anybody who complained to me.

21 Q Okay. Can you identify one person who read the 2009
22 supplement and concluded that it was either inaccurate or out
23 of date?

24 A I cannot identify a person who complained to me.

25 Q You have suffered not -- let me ask -- let me -- before

1 that, you were here for Professor Rudovsky's testimony
2 concerning West's ability to publish the 2009 supplement
3 without your consent. In other words, they had the right to
4 the -- to the book, and they had the right to publish the 2009
5 supplement --

6 MR. CHARLSON: Objection.

7 BY MR. RITTINGER:

8 Q -- pursuant to their contractual rights. You heard his
9 testimony in that regard.

10 MR. CHARLSON: Objection, Your Honor.

11 THE COURT: He has very good hearing, yes.

12 BY MR. RITTINGER:

13 A Yes, I heard the testimony.

14 Q Do you disagree with that?

15 A I believe that West had to -- I'm not sure which aspect
16 you mean of his testimony. I guess, basically, the essence I
17 agree with. West had --

18 Q They had the right to publish it, and assuming --

19 A And not -- but not to publish a completely worthless sham
20 product.

21 Q Right, but if it was --

22 A An incompetent and unacceptable product under our names.
23 That's not a contractual right.

24 Q Right.

25 A That's why we're here. It's not a contractual right to

1 Q You can't identify one person who thought less of you as a
2 result of that publication, isn't that correct?

3 A Yes. I cannot identify a single person.

4 Q And you can't identify one red penny that you lost as a
5 result of that publication, isn't that correct?

6 A That's correct.

7 Q You want this jury to award you money for presumption,
8 isn't that correct?

9 A I want the jury to award me money because I believe
10 there's been damage done to my reputation. And I also, I
11 think it's important that West not do this again. That West
12 -- that West not put out a sham publication like this, and
13 with somebody -- under somebody's name, and do this to the
14 consumers.

15 Q You want them to award the money to you, is that correct?

16 A Well, I'm the plaintiff in this case, so that --

17 Q Thank you.

18 A -- it couldn't be awarded to anybody else.

19 MR. RITTINGER: One second, Your Honor.

20 I have no further questions.

21 MR. CHARLSON: Nothing from us, Your Honor.

22 THE COURT: Any further questions of this witness?

23 You may step down. Thank you, sir.

24 MR. CHARLSON: Our next witness, Your Honor, will be
25 the videotaped deposition of Catherine Smith of West.