

# EXHIBIT F

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

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DAVID RUDOVSKY, et al. : CIVIL ACTION  
: NO. 09-CV-727  
: :  
Plaintiffs :  
: :  
vs. : Philadelphia, Pennsylvania  
: April 14, 2009  
WEST PUBLISHING CORPORATION, :  
et at. :  
: TESTIMONY OF WITNESSES AT  
Defendants : PRELIMINARY INJUNCTION  
: HEARING  
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BEFORE THE HONORABLE JOHN P. FULLAM  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: RICHARD L. BAZELON, ESQUIRE  
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service.

1           And it was sent to us, anyway and I looked at it  
2 within a couple of days of receiving it.

3   Q.   What if anything did you learn about deficiencies in this  
4 pocket part?

5   A.   Well, what I did -- and this is what I learned -- I looked  
6 at it -- I -- I was just curious to see what kind of job they  
7 had done.

8           So, I looked at several sections where I knew there  
9 had been a fair amount of activity by the Pennsylvania courts,  
10 post-conviction, sentencing, appeals were three I think I looked  
11 at, because I was aware of certain cases that had come down  
12 which surely should have been included in any new supplement or  
13 packet part and when I looked, they weren't there. So, I found  
14 that somewhat curious and unsettling.

15           I then -- what I did was looked at the table of cases  
16 in the back just to kind of eyeball it to see if there were any  
17 cases from 2008, because normally on the cycle we prepare our  
18 pocket parts, you would have 2007 and 2008 cases.

19           I looked at all those cases and I -- I think -- I  
20 didn't see a single case cited with a 2008 date, which meant to  
21 me they had missed or had decided not to include scores of cases  
22 decided by the appellate courts relating to the material in the  
23 book.

24           I then went a little bit further and -- and kind of  
25 compared the table of cases from the 2007 pocket part, which Mr.

1 our names a year and a half previously or a year previously  
2 which we had done.

3 It -- it had, basically, they'd put a different cover  
4 on it, 2008/2009 instead of 2007/2008 and -- and that's what  
5 they did. Very upsetting.

6 Q. Professor Rudovsky, when you and Professor Sosnov prepared  
7 an annual pocket part -- which I take it you had done for a  
8 number of years before 2007/2008, is that correct?

9 A. Yes, sir.

10 Q. Approximately, how many new cases each year did you include  
11 in the new pocket part?

12 A. Finally, including -- we -- we included anywhere from a  
13 hundred to a hundred and fifty, sometimes, more new cases.

14 We would read every case that was decided by the  
15 appellate courts in Pennsylvania. We read every case in this  
16 field, decided by the U.S. Supreme Court and some selected  
17 federal cases.

18 We followed rule changes as well, statutory changes as  
19 well. We did that during the year, we accumulated all of that.

20 And then, when we distilled it and added material to  
21 the pocket part, our best estimation is that we added up to a  
22 hundred and fifty new cases each year.

23 Some were just in a string cite, it gives another  
24 authority for an established proposition. Many were new -- new  
25 principles of law or different principles of law, building on

1 what had happened before. We would explain that in the pocket  
2 part.

3 Some were questionable decisions in our mind, we would  
4 say that. Some left issues open, we would say that.

5 In other words, we'd try to bring the pocket part up  
6 to date.

7 Q. Now, Professor Rudovsky, can you identify for the Court,  
8 the cases which were cited in the prior year -- 2007/2008 --  
9 pocket part, that had been reversed by the Pennsylvania Supreme  
10 Court in the succeeding year but were not shown as having been  
11 reversed by the Supreme Court in the 2008/2009 pocket part?

12 A. They -- I can't -- from memory, they are in the amended  
13 complaint, I believe, we listed the --

14 Q. Let me -- can I show you the amended complaint, Paragraph  
15 26 and ask you if this refreshes your recollection?

16 A. Yes.

17 MR. BAZELON: May I approach, your Honor?

18 THE COURT: Go right ahead.

19 A. Yes, to my best recollection, these were the cases that on  
20 our initial review, we found were not covered by the -- by the  
21 2008/2009 pocket part where the Pennsylvania Supreme Court had  
22 actually reversed decisions of the Superior Court or the Common  
23 Pleas Court.

24 I should say, this was a sample, this was not an  
25 exhaustive study. Since then, we've found some additional ones,

1 the book for years, have known we've published the book for  
2 years, published the pocket part each year.

3           Clearly what -- in my view -- what West was saying is  
4 -- trading on our name -- saying, here's the new pocket part,  
5 it's as good as all of the other pocket parts, here's the law  
6 that you should know for 2007/2008.

7           MR. RITTINGER: Your Honor, I'd move to strike the  
8 answer as not responsive.

9           THE COURT: Oh, I think it's responsive. Objection  
10 overruled, it doesn't mean anything.

11           MR. RITTINGER: Hmm?

12           THE COURT: It's his view that since it's under -- the  
13 reader would understand he was responsible for what's in it,  
14 that's what you wanted to get, right?

15           MR. BAZELON: Yes.

16 BY MR. BAZELON:

17 Q. And Professor Rudovsky, how did you feel about that, about  
18 having your name used that way?

19 A. I -- I -- I -- it's -- it's the reason I retained you, I --  
20 I -- I was -- we -- we were both stunned. I mean, I -- I can  
21 use that word without exaggerating.

22           I can't imagine that a publisher could put out  
23 something, charge somebody for it, use our names, when it was, I  
24 -- and -- and sham is the only word that comes to mind that  
25 actually describes it.

1           There was nothing new other than these three  
2 meaningless citations in -- in this pocket part that gave the  
3 subscriber anything that was worthwhile. It was the same as  
4 they had gotten the years before.

5           And prominently displayed on that pocket part were our  
6 names.

7           And I was immediately concerned -- quite frankly --  
8 not that people would have come up to me and complained -- but  
9 someone is going to look at that, rely on it as they have over  
10 the years, look at the pocket part, there's no change in the  
11 law.

12           Sure and they Shepardize and maybe they'll find it,  
13 but if they do that, they're going to say, what are these guys  
14 doing? They didn't alert me of a -- of a new Supreme Court  
15 case.

16           THE COURT: Would you agree then that you suffered  
17 emotional distress as a result of this whole thing?

18           THE WITNESS: I -- distress, I -- I would say -- I --  
19 I won't categorize it as emotional distress, Judge, at -- at  
20 this point.

21           I was -- I -- we -- we were both professionally  
22 stunned, quite frankly, that -- that our names were being used  
23 on a sham product.

24           And that West which -- counsel is right, they have a  
25 very good reputation -- I -- I literally, couldn't believe it.

1 Q. All right.

2 A. -- add, I wouldn't expect if -- if somebody --

3 Q. No, I --

4 A. -- used it for --

5 THE WITNESS: If I can explain, your Honor?

6 THE COURT: He hasn't gotten any complaints and he  
7 wants to explain why. Go ahead.

8 A. People use this on discrete research problems. I have a  
9 problem with post-conviction, I want to see if there's case law  
10 on it, I want to see what the rule says, I'd go to that section.

11 My understanding -- and certainly it's true with what  
12 I've done -- if somebody went to that section, did it and -- and  
13 as you suggested Shepardizes as they should -- and found that we  
14 did not include -- or you did not include -- a case that was  
15 highly relevant, I wouldn't expect them to call me and complain.

16 I would expect them to think, Rudovsky and Sosnov  
17 aren't up to snuff. I wouldn't expect them to call me. I  
18 wouldn't expect a prisoner surely to say, how come you didn't  
19 have Commonwealth versus Graves with the updated cite, I -- I  
20 just wouldn't expect them to do that.

21 Q. Okay.

22 Now, in your direct testimony you talked about over  
23 the years, you got a lot of positive comments or you got  
24 questions and things of that nature, correct?

25 A. That's correct.



C E R T I F I C A T E

I do hereby certify that the foregoing is a correct transcript of the electronic-sound recording of the proceedings in the above-entitled matter.

Date: May 2, 2009

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