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

DAVID RUDOVSKY and LEONARD SOSNOV,	:	CIVIL ACTION – JURY TRIAL DEMANDED
Plaintiffs,	:	
v.	:	NO. 09-CV-727
WEST PUBLISHING CORPORATION, WEST SERVICES INC., AND THOMSON LEGAL AND REGULATORY INC. t/a THOMSON WEST	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM OF LAW IN RESPONSE
TO DEFENDANTS' MOTION FOR RECONSIDERATION

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Dated: August 12, 2010

Plaintiffs David Rudovsky, Esquire ("Rudovsky") and Leonard Sosnov, Esquire ("Sosnov"), by and through their undersigned counsel, respectfully submit this memorandum of law in response to defendants' motion for reconsideration.

I. INTRODUCTION

A leading treatise on defamation law states:

> A libelous or slanderous communication that, under the law of the relevant jurisdiction, can support a cause of action without proof of special damages is referred to as libel per se or slander per se, respectively. No concept in the law of defamation has created more confusion.

Robert D. Sack, Sack on Defamation § 2.8.1 (4th ed. 2010). As Judge Sack explains, the confusion occurs in part because, although libel and slander are governed by different standards, litigants and courts sometimes mistakenly apply libel standards to slander cases, and vice versa.[1]

This case is a perfect example of that confusion. In their summary judgment briefs, both West and the plaintiffs engaged in extensive discussions of standards that apply to slander cases – despite the fact that this case is, of course, a libel action. Plaintiffs' counsel apologize to the Court for contributing to this confusion.

In its motion, West argued that the statements at issue in this case were not "defamatory *per se*," because they did not fall into one of four traditional categories: (1) allegations that the

[1] The Superior Court of Pennsylvania has explained the difference between libel and slander as follows:

> Libel may be defined conveniently as "A method of defamation expressed by print, writing, pictures, or signs." Black's Law Dictionary 824 (5th ed. 1979). Slander, broadly, is usually understood to mean oral defamation. *Id.* at 1244.

Agriss v. Roadway Express, Inc., 334 Pa. Super. 295, 319-20, 483 A.2d 456, 469 (1984). The written statements at issue in this case constitute libel, not slander.

plaintiff committed a crime; (2) allegations that would tend to injure the plaintiff in his or her trade, business, profession, or office; (3) allegations that the plaintiff has contracted a loathsome disease; and (4) allegations of serious sexual misconduct.

Plaintiffs argued that the statements fit into the second category, because they go to the core of plaintiffs' professional reputations as lawyers, law professors, legal writers, and authorities on Pennsylvania criminal law and procedure. What plaintiffs did not realize at the time (and, thus, did not argue in their brief) was that under Pennsylvania law, ***all libels are defamatory per se***. The four categories of statements listed above are relevant only to allegations of ***slander***.

As a result of the parties' oversight, the Court did not have the benefit of any briefing on the point that Pennsylvania law deems all libels to be defamatory *per se*. Thus, the Court was left to resolve the question that the parties did brief, namely, whether the statements at issue would tend to injure the plaintiffs in their professional capacities. In its July 15, 2010 Memorandum and Order, the Court wrote that "a jury could conclude that the pocket part constituted defamation *per se*, because the work . . . 'ascribes to another conduct . . . that would adversely affect his fitness for the proper conduct of his lawful business.'" Mem. at 6, quoting Restatement (Second) of Torts § 573 (1977).

In its motion for reconsideration, West posits that the Court erred because the issue of whether a statement is defamatory *per se* is a question of law for the Court. Plaintiffs agree that this is a question of law for the Court. However, in this case, there can be only one answer. Because all libels are defamatory *per se* under Pennsylvania law, the written statements at issue in this case are defamatory *per se*, as a matter of law.

The bottom line is that the Court's decision to deny West's motion for summary judgment on plaintiffs' defamation claims was absolutely correct. However, plaintiffs do not oppose reconsideration, given that the parties had not provided the Court with a complete and accurate explication of Pennsylvania law.

Plaintiffs leave it to the Court's discretion whether to amend the July 15, 2010 Memorandum in light of the authorities discussed herein. In the event that the Court decides to amend the Memorandum, plaintiffs have attached a proposed form of Order for the Court's consideration.

II. SUMMARY OF ARGUMENT

Motions for reconsideration are granted sparingly, in only the most exceptional of circumstances. They are not to be used as vehicles to reargue issues that already have been considered and decided by the Court. However, that is precisely what West's motion for reconsideration attempts to do.

West is correct that the question of whether statements are defamatory *per se* is a matter of law for the Court to decide. In all other respects, however, West's motion misstates Pennsylvania law. And, it fails to provide any basis whatsoever for overturning the Court's July 15, 2010 Order, or for granting summary judgment in favor of West.

West makes three arguments, each of which is wrong as a matter of law. West argues that (1) Pennsylvania law distinguishes between "libel *per se*" and other types of libel; (2) a libel plaintiff is required to prove special damages in cases that do not involve "libel *per se*;" and (3) Pennsylvania law distinguishes between statements that are libelous on their face, and statements that are libelous only by reference to extrinsic facts.

West is incorrect on all three points. First, Pennsylvania law does ***not*** distinguish between "libel *per se*" and other types of libel – instead, these distinctions only apply to slander cases. Second, libel plaintiffs in Pennsylvania are ***never*** required to prove special damages – instead, the special damages requirement only applies in certain slander cases. Third, Pennsylvania law has eliminated the distinction between statements that are libelous on their face, and those that are libelous only by reference to extrinsic facts.

West's motion falls far short of meeting the stringent standards that must be met before a Court will grant a motion for reconsideration. West's motion should be denied.

III. ARGUMENT

A. Standards Governing Motions for Reconsideration

"Reconsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of judicial resources." *Muhammad v. Weis,* 2009 WL 3260592, at * 1 (E.D. Pa. Oct. 7, 2009). The purpose of a motion for reconsideration is "to correct 'manifest errors of law or fact or to present newly discovered evidence.'" *Calhoun v. Mann,* 2009 WL 1321500, at * 1 (E.D. Pa. May 12, 2009), quoting *Harsco Corp. v. Zlotnicki,* 779 F.2d 906, 909 (3d Cir. 1985), *cert denied,* 476 U.S. 1171 (1986).

To succeed on a motion for reconsideration on the ground of clear error of law or fact, the movant must "show that there were facts or legal issues properly presented but overlooked by the court in its decision." *Blue Mountain Mushroom Co., Inc. v. Monterey Mushroom, Inc.,* 246 F. Supp. 2d 394, 398-99 (E.D. Pa. 2002), quoting E.D. Pa. Local Rule of Civ. Proc. 7.1(g) cmt., 6.b. "Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration as it is improper to ask the Court to rethink what [it] has already thought through–rightly or wrongly." *Flamer v. Coleman,* 2010 WL 1946899, at * 1 (E.D. Pa. May 13, 2010) (quotation omitted).

"Motions for reconsideration do not allow parties a second bite at the apple by rehash[ing] arguments which have already been briefed by the parties and considered and decided by the Court." *Cradle of Liberty Council, Inc. v. City of Philadelphia*, 2010 WL 68874, at * 2 (E.D. Pa. Jan. 6, 2010) (quotation omitted). "In other words, such a motion is not properly grounded on a request that a court rethink a decision it has already made." *Drysdale v. Woerth*, 153 F. Supp. 2d 678, 682 (E.D. Pa. 2001), *aff'd*, 53 Fed. Appx. 226 (3rd Cir. 2002). "Nor may a motion for reconsideration be used to revisit or raise new issues with the benefit of hindsight provided by the court's analysis." *Knipe v. SmithKline Beecham*, 583 F. Supp. 2d 553, 586 (E.D. Pa. 2008) (quotations omitted).

B. The Court Should Deny West's Motion for Reconsideration

1. Under Pennsylvania Law, *All* Libels Are Defamatory *Per Se*

West's first argument is that Pennsylvania law distinguishes between "libel *per se*" and other types of libel. West is wrong.

Pennsylvania did away with the distinction between "libel *per se*" and other types of libel more than 25 years ago, in *Agriss v. Roadway Express, Inc.*, 334 Pa. Super. 295, 483 A.2d 456 (1984). The trial court in *Agriss* granted a compulsory nonsuit, finding that the words complained of were not "libel *per se*" and that the plaintiff had failed to prove special damages. The Superior Court of Pennsylvania reversed, holding that ***all*** libels are defamatory *per se*.

The Superior Court acknowledged that with respect to ***slander***, some statements are considered to be defamatory *per se*, while others are not. However, the Court held that all libels are defamatory *per se*. The Court deemed it appropriate to apply different rules to libel and slander because of the different nature of the resulting harm:

> The willingness of the law to presume damages for all libels as opposed to all slanders arose partly from the greater permanency,

> dissemination, and credence, and hence the greater harm, supposed naturally to attend defamations in printed or written form.

334 Pa. Super. at 322, 483 A.2d at 470. See also *Collins v. Dispatch Pub. Co.*, 152 Pa. 187, 190, 25 A. 546, 547 (1893) ("For obvious reasons, the presumption that words are defamatory arises much more readily in cases of libel than in cases of slander. Many words which if printed and published would be presumed to have injured the plaintiff's reputation will not be actionable *per se* if merely spoken. A slander may be uttered in the heat of the moment, and be almost as quickly forgotten; while the same words, written and published, not only show greater deliberation and malice, but are almost certain to inflict greater and more enduring injury.").

Subsequent cases have reaffirmed the principle that Pennsylvania law does not distinguish between "libel *per se*" and other types of libel. See, e.g., *Rhine v. Dick Clark Productions, Inc.*, 2000 WL 14875, at * 3 (E.D. Pa. Jan. 10, 2000) (citing *Agriss* for the proposition that "the distinction between slander per se and non slander per se remains although the distinction between libel per se and libel per quod has been abrogated"), *aff'd*, 254 F.3d 1078 (3d Cir. 2001).

2. Under Pennsylvania Law, Libel Plaintiffs Are *Never* Required to Prove Special Damages

West's second argument is that unless the statements at issue are defamatory *per se*, a plaintiff is required to prove special damages. However, as detailed above, Pennsylvania law clearly provides that ***all*** libels are defamatory *per se*. A necessary corollary is that under Pennsylvania law, libel plaintiffs are ***never*** required to prove special damages.

As clearly stated by the *Agriss* Court, "Pennsylvania definitely follows the general rule that ***any libel is actionable without proof of special damages***." 334 Pa. Super. at 324, 483 A.2d at 472 (emphasis added).

The *Agriss* Court noted that "the American Law Institute, in both the First and Second Restatements of Torts, consistently has adhered to the traditional rule that all libels are actionable 'per se,' irrespective of special harm." 334 Pa. Super. at 323, 483 A.2d at 471. Indeed, the Restatement (Second) of Torts expressly states that proof of special damages is not required in libel cases:

> One who falsely publishes matter defamatory of another in such a manner as to make the publication a libel is subject to liability to the other although no special harm results from the publication.

Restatement (Second) of Torts § 569 (1977).

In *Agriss*, the Superior Court adopted § 569 as the law of Pennsylvania. 334 Pa. Super. at 326, 483 A.2d at 473. See also *id.*, 334 Pa. Super. at 327, 483 A.2d at 473 ("there is no sense and no reason in jurisprudence to impose a further artificial restriction, in the form of the need to prove 'special damages,' on the defamed plaintiff who seeks recovery for a 'libel per quod.'"). Accordingly, "***a plaintiff in libel in Pennsylvania need not prove special damages*** or harm in order to recover; he may recover for any injury done his reputation and for any other injury of which the libel is the legal cause." 334 Pa. Super. at 328, 483 A.2d at 474 (emphasis added).

The Superior Court has reaffirmed this principle on multiple occasions. See, e.g., *Curran v. Philadelphia Newspapers, Inc.*, 376 Pa. Super. 508, 512 n.3, 546 A.2d 639, 640 n.3 (1988) ("all libels are actionable without proof of special harm"), *appeal denied*, 522 Pa. 576, 559 A.2d 37 (1989); *Dougherty v. Boyertown Times*, 377 Pa. Super. 462, 471, 547 A.2d 778, 782 (1988) ("In *Agriss* . . . this Court held that a plaintiff in libel in Pennsylvania need not prove special damages or harm in order to recover;" "Pennsylvania has adopted the rule of Restatement (Second) of Torts § 569 (1977), that all libels are actionable without proof of special harm")

(quotation omitted); *Walker v. Grand Central Sanitation, Inc.*, 430 Pa. Super. 236, 248, 634 A.2d 237, 243 (1993) ("all libels . . . are actionable without proof of special damage"), *appeal denied*, 539 Pa. 652, 651 A.2d 539 (1994); *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 334 (Pa. Super. 2008) ("Pennsylvania has adopted the rule of Restatement (Second) of Torts, § 569 (1977), that all libels are actionable without proof of special harm."), *appeal dismissed*, 603 Pa. 146, 982 A.2d 1223 (2009).

The federal courts also have recognized that Pennsylvania law does not require libel plaintiffs to prove special damages. See, e.g., *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1080 (3d Cir.) ("In *Agriss*, the Superior Court reasserted the traditional rule under Pennsylvania law that a plaintiff may recover in a libel suit without proving special damages . . . . Thus Marcone need not have established any actual pecuniary harm") (citation omitted), *cert. denied*, 474 U.S. 864 (1985); *Sprague v. American Bar Ass'n*, 276 F. Supp. 2d 365, 369 (E.D. Pa. 2003) ("Pennsylvania caselaw unambiguously holds that general damages are sufficient in libel cases"); *Caplan v. Fairchild Publications Corp.*, 1985 WL 4464, at * 2 (E.D. Pa. Dec. 13, 1985) (citing *Agriss* as "announcing the rule that all libel is actionable without proof of special damages").

3. Pennsylvania Law Does Not Distinguish Between Statements that Are Libelous on Their Face, and Those that Are Libelous Only with Reference to Extrinsic Facts

West's next argument is that "a statement only constitutes libel *per se* when its defamatory meaning is apparent on its face; if extrinsic facts are required to understand the libel, it is not *per se* defamatory." West Mem. at 4. Once again, West has misstated Pennsylvania law.

First, as detailed above, under Pennsylvania law, ***all*** libels are deemed to be defamatory *per se*. Second, Pennsylvania law has expressly rejected any distinction between libels that are defamatory on their face (referred to as "libels *per se*") and libels that are not defamatory on their face (referred to as "libels *per quod*").

In *Agriss*, the Superior Court of Pennsylvania referred to the "libel *per se*/libel *per quod*" distinction as one of the "oldest shibboleths" of defamation law. 334 Pa. Super. at 317, 483 A.2d at 468. The Court then decided to do away with the distinction altogether:

> We have come to the conclusion that the "per se/per quod" distinction is without validity in the modern law of libel, and should be abolished as a means of allocating the plaintiff's burden of proof in a libel case.

334 Pa. Super. at 318, 483 A.2d at 468. See also *id.*, 334 Pa. Super. at 327, 483 A.2d at 473 ("there is no longer any sound reason to distinguish for purposes of actionability between libels which are 'defamatory on their face' and libels which are defamatory through extrinsic facts and circumstances. . . . No Pennsylvania case in this century has stated a rationale for why libels not defamatory on their face should be any less actionable than libels defamatory on their face."); *id.*, 334 Pa. Super. at 328, 483 A.2d at 474 ("to make recovery contingent on whether the damage was done by words 'defamatory on their face' merely adds another irrelevant factor to the equation.").

In *Walker*, the Superior Court reiterated that *Agriss* "eviscerated the distinction between libel *per se* and libel *per quod*." 430 Pa. Super. at 248, 634 A.2d at 243.

4. <u>West Has Mischaracterized the Authorities Upon Which It Relies</u>

As detailed above, West's arguments misstate Pennsylvania law. To make matters even worse, West mischaracterizes the authorities upon which it relies.

a. The Sack Treatise

In its brief, West "quotes" the Sack treatise for the following proposition:

> All libel was once actionable without proof of special damages.… Most jurisdictions, however, have embraced a different rule. Only libel whose defamatory meaning is apparent on the face of the communication is libelous per se (without proof of special damages). If on the face of the statement it is not libelous, but in light of extrinsic facts known by the recipient it is libelous, it may support a cause of action only with proof of "special damages."

West Mem. at 4, quoting Robert D. Sack, Sack on Defamation § 2.8.3 (April 2009).

West has used an ellipsis to conceal the most important part of the passage, and to make it appear that two separate paragraphs in the treatise are actually one single paragraph. In the section omitted by West, Judge Sack expressly notes that Pennsylvania does not follow the rule espoused by West. Instead, under Pennsylvania law (and the Restatement), ***all*** libels are libelous *per se*. Thus, the first paragraph of the passage from the treatise states in full:

> All libel was once actionable without proof of special damages. ***Thus, to use the term "per se" correctly, all communications that were libelous were also libelous per se. According to a study made in 1965 in preparation for the Restatement (Second) of Torts, Iowa, Minnesota, Mississippi, New Jersey, Pennsylvania, Texas, Washington, and Wisconsin all probably adhere to this rule, as do Delaware, Massachusetts, Tennessee, and Vermont. The Restatement, too, has since adopted it***.

Sack on Defamation § 2.8.3 (emphasis added; footnotes omitted). The remaining material quoted by West (beginning with "[m]ost jurisdictions") appears in the subsequent paragraph of the treatise.

West also cites the Sack treatise for the proposition that "a statement only constitutes libel *per se* when its defamatory meaning is apparent on its face; if extrinsic facts are required to understand the libel, it is not per se defamatory." West Mem. at 4, citing Sack on Defamation § 2.8.3. As noted above, Judge Sack makes it quite clear that Pennsylvania does not follow the

rule espoused by West. Moreover, the Restatement notes that West's position is a "minority position" whose "principal justification" has been "eliminated:"

> Some courts have taken the position that a libelous publication is actionable per se only if its defamatory meaning is apparent on its face and without reference to extrinsic facts; otherwise proof of harm is required. The principal justification urged for this minority position—that if the defendant did not himself know of the extrinsic facts he would be held liable without fault—has now been eliminated by the current constitutional rule that the plaintiff must show fault on the part of the defendant regarding the defamatory character of the communication.

Restatement (Second) of Torts § 569, comment b.

b. *Clemente* and Other Slander *Per Se* Cases

West writes in its brief that:

> West correctly stated in its summary judgment brief that, in Pennsylvania, "defamation *per se* arises **only** by 'words imputing (1) criminal offense, (2) loathsome disease, (3) business conduct, or (4) serious sexual misconduct.'" West's SJ Br. at 9 (quoting Clemente [v. Espinosa], 749 F. Supp. [672] at 677 [(E.D. Pa. 1990)] (emphasis added).

West Mem. at 4 (emphasis in original).

To the contrary, West did not "correctly state[]" the holding of *Clemente*, either in its summary judgment brief or in its motion for reconsideration. *Clemente*, unlike this case, involved ***slander*** – specifically, oral statements allegedly made by one union local CEO to another union local CEO about the plaintiff attorney. The section of the *Clemente* opinion "quoted" by West is entitled "Slander Per Se." See 749 F. Supp. at 677. And, in that section, the Court makes it very clear that it is talking only about the standards applicable to ***slander*** actions:

> A plaintiff may succeed in a claim for defamation absent proof of special harm where the spoken words constitute slander per se. Only four categories of words may constitute slander per se. They are: words imputing (1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct.

> Restatement (Second) of Torts § 570 (1977). Plaintiff claims that the alleged defamatory remarks constitute slander per se in that they impute to him both a criminal offense and business misconduct.

Id.

West continues its mischaracterization of Pennsylvania law by writing that "courts finding defamation *per se* have done so only when the allegedly defamatory words themselves directly impute '(1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct' as set forth in Clemente." West Mem., pp. 5-6. Remarkably, every single Eastern District case cited by West in the following string cite is – like *Clemente* – a ***slander*** case, ***not*** a libel case. See *Keeshan v. Home Depot U.S.A., Inc.*, 2001 WL 310601, at * 14 (E.D. Pa. Mar. 27, 2001) ("Mr. Keeshan is not required to prove special damages as part of his prima facie case because the alleged defamatory statement is slander per se"), *aff'd*, 35 Fed. Appx. 51 (3d Cir. 2002); *AMI Affiliates, Inc. v. United States Dept. of Housing and Urban Development*, 1995 WL 752387, at * 5 (E.D. Pa. Dec. 15, 1995) ("This court agrees with Plaintiffs and finds that the alleged statement by Defendant Alexander, if made, was slanderous per se, and, therefore, that Plaintiffs are not required to prove special damages"); *Hensley v. Nationwide Mut. Ins. Co.*, 1999 WL 391071, at * 2 (E.D. Pa. June 14, 1999) ("A person asserting a slander claim must plead special damage unless the claim is for slander *per se*"); *Klump v. Nazareth Area School Dist.*, 425 F. Supp. 2d 622, 638 (E.D. Pa. 2006) ("Slander per se, which plaintiffs allege, allows them to prevail in a defamation claim without proving special harm").[2]

[2] West also cites to a Middle District decision, *Capozzi v. Lucas*, 2004 WL 5572908 (M.D. Pa. Aug. 25, 2004), *aff'd*, 148 Fed. Appx. 138 (3d Cir. 16, 2005). Although the statement at issue in *Capozzi* was a letter, the District Court found that it was "defamatory *per se*" as an imputation of business misconduct. See 2004 WL 5572908, at ** 7-8. Capozzi thus appears to be an example of a court mistakenly applying the concept of slander *per se* to a libel case.

Thus, contrary to West's argument, it is ***not*** true that "in Pennsylvania, defamation *per se* arises **only** by words imputing (1) criminal offense, (2) loathsome disease, (3) business misconduct, or (4) serious sexual misconduct." West Mem., p. 4 (emphasis in original; internal quotation marks omitted). Instead, ***slander*** *per se* arises only by words falling into one of these four categories. By contrast, as detailed above, ***all*** libels are "libel *per se*."

c. The Restatement

West's citation to the Restatement (Second) of Torts is also misleading. West notes that "as the Court's decision states, Pennsylvania follows the Restatement (Second) Torts § 573 for defamation affecting business, trade or profession." West Mem., p. 4. However, by its express terms, § 573 applies only to ***slander***, not libel:

> § 573. ***Slanderous*** Imputations Affecting Business, Trade, Profession Or Office
>
> One who publishes a ***slander*** that ascribes to another conduct, characteristics or a condition that would adversely affect his fitness for the proper conduct of his lawful business, trade or profession, or of his public or private office, whether honorary or for profit, is subject to liability without proof of special harm.

Restatement (Second) of Torts § 573 (emphasis added). Libel cases, by contrast, are governed by § 569, which expressly provides that proof of special damages is not required in libel cases.

d. Pre-*Agriss* Cases

Finally, on page 8 of its brief, West cites *McCabe v. Village Voice, Inc.*, 550 F. Supp. 525 (E.D. Pa. 1982), and *Fogel v. Forbes, Inc.*, 500 F. Supp. 1081 (E.D. Pa. 1980), for the proposition that defamation plaintiffs are required to prove special damages. In fact, neither case supports West's argument.

Both *McCabe* and *Fogel* pre-date the Superior Court's 1984 *Agriss* opinion. Thus, to the extent that either case speaks in terms of "libel *per se*," or suggests that libel plaintiffs are

required to prove special damages, they are no longer good law. Indeed, Judge Lord – who wrote the *McCabe* opinion – wrote three years later that:

> Finally, defendant argues that the news article was not libelous *per se* but was, if anything, libelous *per quod*, and therefore that special damages should be, but have not been, alleged. In dismissing this argument, I need do nothing more than refer to the thorough, reasoned and persuasive opinion of Judge Cirillo in *Agriss v. Roadway Express, Inc.*, 334 Pa.Super. 295, 317-29, 483 A.2d 456, 468-74 (1984) (announcing the rule that all libel is actionable without proof of special damages). *See Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1079-80 (3d Cir.1985) (discussing *Agriss* with approval).

Caplan v. Fairchild Publications Corp., 1985 WL 4464, at * 2 (E.D. Pa. Dec. 13, 1985).

CONCLUSION

In summary, West's motion for reconsideration misstates Pennsylvania law, fails to bring relevant authority to the Court's attention, and relies on case law that has been overruled. West provides no basis whatsoever for entering summary judgment in its favor on plaintiffs' defamation claims.

If the Court decides to amend its July 15, 2010 Memorandum in light of the authorities discussed herein, plaintiffs respectfully request that the Court do so in a manner consistent with the proposed form of Order submitted herewith.

Respectfully submitted,

s/ Noah H. Charlson

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Dated: August 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August, 2010, I served a true and correct copy of the foregoing Plaintiffs' Memorandum of Law in Response to Defendants' Motion for Reconsideration upon the following counsel for defendants, as follows:

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