

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas J. Russo, Sr., Circuit Court Judge

Case No. 2012-CP-21-0301

Akim A. Anastopoulo.....Appellant,

v.

Edward R. Cole, Turner Padget Graham and Laney P.A.,
and Nationwide Mutual Insurance Company.....Respondents.

RECORD ON APPEAL

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Anastopoulo Law Firm, LLC
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Attorney for Appellant

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Cole and Turner Padget**

RECEIVED
MAY 09 2013

SC Court of Appeals

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**Attorney for Respondent
Nationwide**

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Akim A. Anastopoulos,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 FEB -1 AM 9:01

Plaintiff(s)

2012-CP - 21-

301

vs.

FLORENCE COUNTY, SC

Edward R. Cole, Turner Padgett, et. al

Defendant(s)

(Please Print)

Submitted By: Eric M. Poulin

Address: 2850 Ashley Phosphate Rd.

North Charleston, SC 29418

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☒ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399) Conspiracy, Negligent Supervision, Retention, Defamation | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (999)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: 1/31/2012

Record on Appeal
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CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT, P. & G.S.
FLORENCE COUNTY, S.C.

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

AKIM A. ANASTOPOULO,)

Plaintiff,)

v.)

EDWARD R. COLE, individually)

and as employee/agent of TURNER,)

PADGET, GRAHAM & LANEY,)

P.A., and TURNER, PADGET,)

GRAHAM & LANEY, P.A., and)

NATIONWIDE MUTUAL)

INSURANCE COMPANY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-21-

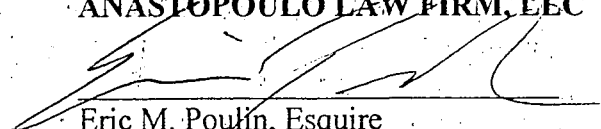
SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or their attorney, Akim A. Anastopoulos, at his office, 2850 Ashley Phosphate Rd., Suite B, North Charleston, South Carolina 29418, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

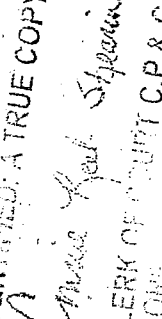
Dated at North Charleston, South Carolina on the 2 day of February, 2012.

ANASTOPOULO LAW FIRM, LLC


Eric M. Poulin, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Road
North Charleston, SC 29418
(800) 313 2546

Charleston, South Carolina
Feb 2, 2012

Record on Appeal
- Page 5 -

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CLERK OF COUNTY C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
FLORENCE COUNTY, SC
2012 FEB -1 AM 9:01

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

AKIM A. ANASTOPOULO,)

Plaintiff,)

v.)

EDWARD R. COLE, individually)
and as employee/agent of TURNER,)
PADGET, GRAHAM & LANEY,)
P.A., and TURNER, PADGET,)
GRAHAM & LANEY, P.A., and)
NATIONWIDE MUTUAL)
INSURANCE COMPANY,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-21-

301

COMPLAINT
(Jury Trial Demanded)

2012 FEB - 1 AM 9:01
CLERK OF COURT
SOUTH CAROLINA

The Plaintiff, complaining of Defendants, alleges and says as follows:

1. That the Plaintiff, Akim A. Anastopoulos, is a citizen and resident of Charleston County, State of South Carolina.
2. That upon information and belief, Defendant Edward R. Cole (herein "Defendant Cole"), is a citizen and resident of Horry County, State of South Carolina and can be served with process at 2411 North Oak Street, Suite 301, Myrtle Beach, South Carolina 29577.
3. That upon information and belief, Defendant Turner, Padget, Graham & Laney, P.A. (herein referred to as "Defendant Law Firm") is a professional association organized and existing pursuant to the laws of the state of South Carolina, and is licensed to do business in South Carolina. The registered agent for Defendant Law Firm, is Edward W. Laney who can be served with process at 1901 Main Street, 17th Floor, Columbia, South Carolina 29401.

CERTIFIED A TRUE COPY
Clerk of Court
SOUTH CAROLINA
CLERK OF COURT
SOUTH CAROLINA

4. That upon information and belief, Defendant Nationwide Mutual Insurance Company (herein referred to as "Defendant Insurance Company") is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio and is authorized to transact business in the State of South Carolina.
5. That upon information and belief, Defendant Nationwide carries on, contracts for, and does substantial business deriving in a large revenue there from in the State of South Carolina, County of Horry.
6. That the incidents that are the subject of this action occurred in the State of South Carolina.
7. That this Court has jurisdiction over the parties and the subject matter of this action.
8. That at all times material to the incidents made the basis of this action Defendant Insurance Company retained Defendant Law Firm to represent them in the matter of *Carlotta Motsinger v. Nationwide Mutual Insurance Company* being litigated in the United States District Court for the District of South Carolina (Case Number: 4:11-cv-01734-RBH).
9. That during all events giving rise to the actions alleged herein Defendant Cole was employed by Defendant Law Firm as an attorney in their Myrtle Beach Office located at 2411 North Oak Street, Suite 301, Myrtle Beach, South Carolina 29577.
10. That in this capacity Defendant Cole was assigned and given control and authority of the legal processes related to *Carlotta Motsinger v. Nationwide Mutual Insurance Company* by Defendant Law Firm.
11. That in this capacity Defendant Cole was responsible for representation of Nationwide Mutual Insurance Company on behalf of Defendant Law Firm.

12. That during all events giving rise to the actions alleged herein, and on all days cited hereto, Defendant Cole was acting in the course and scope of his employment at Defendant Law Firm.
13. That during all events giving rise to the actions alleged herein, Plaintiff served as counsel for Carlotta Motsinger in her case against Nationwide Mutual Insurance Company.
14. That during all events giving rise to the actions alleged herein, Plaintiff has been the victim of defamatory and libelous accusations and statements, from Defendant Cole while in the course and scope of his employment.
15. That the defamatory and libelous statements complained about herein are not contained in any pleadings and/or are not relevant or pertinent to the issues in the case *Nationwide Mutual Insurance Co. Carlotta Motsinger*.
16. That at all times material to the incidents made the basis of this action, Defendant Cole was acting by and through his employer Defendant Law Firm as an employee/agent of Defendant Law Firm, and was at all times material acting within the course and scope of his employment or agency in performing duties for, and on behalf of Defendant Law Firm.
17. That at all times material to the incidents made the basis of this action, Defendant Cole was acting by and through his employer Defendant Law Firm in a representative agency of Defendant Insurance Company.
18. That Defendant Law Firm is vicariously liable, due to the negligence of their employee as agent, as is set forth more full above, for proximately causing injuries and/or damages to Plaintiff, under the doctrines of *respondeat superior*, *agency*, and/or *ostensible apparent agency*.

FOR A FIRST CAUSE OF ACTION
(Defamation)

19. Plaintiff restates and re-alleges each and every allegation set forth above as if stated herein verbatim.
20. That all statements listed individually herein below were known by Defendants to be published as part of the public record, and to the Court, and/or other parties without privilege.
21. That all statements listed individually herein below are false, defamatory, and were created with actual malice, with the specific intent of harming Plaintiff.
22. That all statements were not relevant to pending proceedings which only relate to Carlotta Motsinger's "marital status" and are thereby not subject to judicial proceedings immunity.
23. That these false statements about Plaintiff have had enormous negative impact on Plaintiff, professionally and personally, which Defendants knew or should have known would occur.
24. That these false statements were made by Defendants, and on behalf of the other Defendant Insurance Company.
25. That because Defendants' statements about Plaintiff are libelous *per se*, in most cases, Plaintiff is presumed to have sustained damage from the contentions by Defendants, and in fact has had substantial reputations damages, intangible damages, personal damages, and monetary damages.
26. That Plaintiff, is for purposes of defamation analysis, a private, not a public figure.
27. That Defendants' representations were false, were known to be false when made, or were made with reckless disregard for their truth or falsity.

28. That Defendants' statements were published to third parties in each case.
29. Conduct by the Defendants has caused damage to Plaintiff, will continue to cause damage to Plaintiff both now and in the future, and he is entitled to actual and punitive damages, and other damages that the Court may deem appropriate.
30. That Defendant Cole did accuse Plaintiff and his client, Carlotta Motsinger, to be engaged in a "nefarious scheme" to get a determination in Horry County Family Court of her common law marriage to William Workman and referred to the same that resulted in a determination of their marriage by the Court as a "sham proceeding." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.4, 12/27/2011)
31. That Plaintiff and his client were never in any way engaged in a villainous plot as the terms "nefarious scheme" define, and are not "villainous band of thieves" as nefarious may be defined, and that Defendant never had reliable information to support the same.
32. That Defendant Cole described Plaintiff's representations to the Court in his professional capacity, and overall work for his client as a "blatant, shameful exercise in deceit." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.5, 12/27/2011)
33. That Plaintiff has never deceived Nationwide, or the Court, and that Defendant Cole's representation of the same negatively impacts Plaintiff's reputation in the community, and his ability to practice law.
34. That Defendant Cole has stated that Plaintiff has "completely disregarded his professional obligations" through "duplicity" in an official Court proceeding.

35. That Defendant Cole is not in a position to assert such statements as fact having no evidence, or proof of the same, and that such statement negatively impacts Plaintiff's reputation in the community, and his ability to practice law.
36. That such statement negatively impacts Plaintiff's reputation in the community, and his ability to practice law.
37. That Defendant Cole called Plaintiff "double-dealing" and has "abused the legal process." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.10, 12/27/2011).
38. That Plaintiff has not abused the legal process or participated in "double-dealing" and that by so falsely accusing Plaintiff, Defendant Cole has negatively impacted Plaintiff's reputation in the community, and his ability to practice law.
39. That Defendant Cole has stated that Plaintiff is "absurd" and "dishonest" and that the aims by which he has represented his client is "nothing short of shameful." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.10, 12/27/2011).
40. That Plaintiff has always conducted himself in an honest manner, and that the statements by Defendant Cole only serve to negatively impact Plaintiff's reputation in the community, and his ability to practice law.
41. That Defendant Cole has stated that Plaintiff has engaged in a "sham legal proceeding" with the "intention of misleading the Court" and has "blatantly attempted to use the fruit of that poisonous tree to bludgeon Nationwide." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.11, 12/27/2011).
42. That Plaintiff has not, and would never participate in a sham legal proceeding, and to assert the Courts of this State would carry on such a proceeding is not only unhelpful to

the aims of justice, but only serves to increase distrust in the justice system, and defame Plaintiff individually.

43. That Defendant Cole refers to Plaintiff's and his client's conduct as "shameful."

Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.12, 12/27/2011).

44. This represents a factual allegation that is utterly and completely false and only serves to negatively impact Plaintiff's reputation in the community, and his ability to practice law.

45. That Defendant Cole refers to Plaintiff as having created a "witches' brew." Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.12, 12/27/2011).

46. That Plaintiff is not a witch, does not practice Wicca, and that the term witch is a derogatory term which only serves to negatively impact Plaintiff's reputation in the community, his ability to practice law, and his image before the Courts of this State.

47. That Defendant Cole refers to Plaintiff as "perfidious" in expanding the use of negative personal language directed towards the Plaintiff. Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint (p.13, 12/27/2011)

48. That Plaintiff is not deceitful, or untrustworthy, or perfidious and that Defendant Cole, by indicated as much, has negatively impacted Plaintiff's reputation in the community, and his ability to practice law.

49. That Defendant Cole accuses Plaintiff of "harassing" and "oppressing" Nationwide, along with his injured client in a "campaign of deceit and subterfuge" to use Nationwide's legal rights against it "as a club." Defendant's Motion for Protective Order (p.2-3, 12/27/2011).

50. That Plaintiff has not engaged in any such deceit, is not guilty of harassment, and Defendant Cole has no honest basis upon which to levy such a claim, rendering it false and only serving to negatively impact Plaintiff's reputation in the community, and his ability to practice law.

51. That Defendants have accused Plaintiff of attempting to force "Nationwide into capitulation by bluster, threats, outright trickery, and ill-conceived lawsuit."

Memorandum in Support of Motion by Defendants, et al. to Dismiss Amended Complaint, or Alternatively, to Drop or Sever Claims Against Mary Alice Johnson from Claims Against These Defendants (p.6, 03/22/2011).

52. That Plaintiff has not engaged in trickery, and that all litigation actions have been legal maneuvers within the confines of the law. Further, that accusing Plaintiff of filing an "ill-conceived lawsuit" only serves to negatively impact Plaintiff's reputation in the community, and his ability to practice law.

53. That Defendant Cole has referred to Plaintiff's counsel and his actions on behalf of his client as "silly and juvenile motions." Defendant's Email, December 23, 2011.

54. That Plaintiff takes the litigation process seriously, and any statements to the contrary only serve to negatively impact Plaintiff's reputation in the community and his ability to practice law.

55. That Defendant Cole has referred to Plaintiff's practice of law as a "sorry, shameful course of conduct" serving only as "procedural and factual abuse foisted" on the Court. Defendant's Response in Opposition to Plaintiff's Motion to Compel Discovery (p. 2, 01/06/2012).

56. That Plaintiff is not shameful, and has not participated in any procedural or factual abuse foisted upon any court, and that statements to the contrary only serve to negatively impact Plaintiff's reputation in the community, the court, and his ability to practice law.
57. That Defendant Cole stated "Mr. Anastopoulo intentionally misled the Family Court" in a court document filed in United States District Court. Defendant's Response in Opposition to Plaintiff's Motion to Compel Discovery (p. 3, 01/06/2012).
58. That Plaintiff has never and would never mislead a court, especially intentionally, and to explicitly state as much is false, and defamatory on its face when stated against an Officer of the Court, as Plaintiff is.
59. That Defendant Cole stated Plaintiff attempted to "bludgeon Nationwide into submission." Defendant's Response in Opposition to Plaintiff's Motion to Compel Discovery (p. 3, 01/06/2012).
60. That Plaintiff has never attempted to physically or metaphorically bludgeon any individual, corporation, or Defendant in any matter into submission and Defendant's statement as such is false, misleading, and only serves to negatively impact Plaintiff's reputation in the community, and his ability to practice law.
61. That Defendant Cole has stated that Plaintiff has used "scurrilous conduct" to "extort" monies from a Defendant in another suit. Defendant's Response in Opposition to Plaintiff's Motion to Compel Discovery (p. 3, 01/06/2012).
62. That Plaintiff has never extorted anything from anyone, and to state as much only serves to accuse an Officer of the Court, as Plaintiff is, of questionable and illegal conduct of which Defendants have no proof or evidence to support. Therefore such statements only

serve to negatively impact Plaintiff's reputation in the community, and his ability to practice law.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT LAW FIRM
(Negligent Supervision)

63. Plaintiff restates and re-alleges each and every allegation set forth above as if stated herein verbatim.

64. That Defendant Cole was an employee of Defendant Law Firm, at all times material to this action:

65. That as of January 1, 2012, Defendant Cole had been an employee of Defendant Law Firm for a period exceeding one year.

66. That at all times material to this suit Defendant Cole was utilizing the chattel, including computer, buildings, and internet connections, owned by Defendant Law Firm.

67. That at all times material to this suit Defendant Law Firm had actual knowledge of their ability to control Defendant Cole's conduct as a result of their employee / employer relationship.

68. That at all times material to this suit Defendant Law Firm had constructive knowledge of their ability to control Defendant Cole's conduct as a result of their employee / employer relationship.

69. That Defendant Law Firm had actual knowledge of the necessity and opportunity for exercising control of Defendant Cole as a result of his role, preparing documents and assisting firm clients.

70. That Defendant Law Firm knew of Defendant Cole's propensity for temper, rage, personal attacks, and false statements.

71. That Defendant Law Firm should have known of Defendant Cole's propensity for temper, rage, personal attacks, and false statements.
72. That Defendant Law Firm employed Defendant Cole to prepare documents and assist firm clients.
73. That Defendant Cole, while under the employment of Defendant Law Firm was responsible for the above-mentioned defamatory and libelous statements with respect to Plaintiff.
74. That Defendant Law Firm knew that the individual statements made by Defendant Cole with respect to Plaintiff were false.
75. That Defendant Law Firm knew or had reason to know that the individual statements made by Defendant Cole with respect to Plaintiff would be published to third parties.
76. That Defendant Law Firm knew or should have known that the individual statements were not and are not necessary to further the litigation of *Carlotta Motsinger v. Nationwide Mutual Insurance Company*.
77. That Defendant Law Firm knew or had reason to know that the individual defamatory statements made by Defendant Cole with respect to Plaintiff would cause Plaintiff damage.
78. That it was reasonably foreseeable to Defendant Law Firm that the individual defamatory statements made by Defendant Cole with respect to Plaintiff would cause Plaintiff damage.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANT LAW FIRM
(Negligent Retention)

79. Plaintiff restates and re-alleges each and every allegation set forth above as if stated herein verbatim.

80. That Defendant Law Firm knew of the defamatory and libelous statements contained in documents prepared by Defendant Cole.
81. That Defendant Law Firm should have known of the defamatory and libelous statements contained in documents prepared by Defendant Cole.
82. That Defendant Law Firm knew that Defendant Cole was preparing documents and assisting firm clients while under their supervision.
83. That Defendant Law Firm did not reprimand, or discipline Defendant Cole for making defamatory and libelous statements about Plaintiff, and/or other individuals.
84. That Defendant Cole is still employed by Defendant Law Firm as of the filing of this action.

FOR A FOURTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Conspiracy)

85. Plaintiff restates and re-alleges each and every allegation set forth above as if stated herein verbatim.
86. Defendants against whom defamation is alleged have together as two or more persons combined for the purpose of injuring the Plaintiff, thereby causing him special damage.
87. Defendants, in combination, have conspired to commit an overt act by publishing false and defamatory statements to third persons about the Plaintiff, which are untrue and were done pursuant to a common design resulting in special damages to the Plaintiff.
88. Defendants through their actions have combined and conspired for the purpose of harming the Plaintiff, and which is furthered by their unlawful acts of defamation.
89. Defendants together conspired to injure Plaintiff by harming his reputation and his credibility by asserting false and misleading statements about the Plaintiff calling into question his personal, legal, and occupational qualities and characteristics.

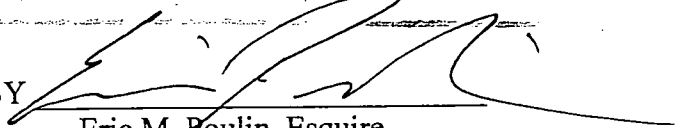
90. Such harm was done to negate Plaintiff's effectiveness and credibility with the Court, his client, and the public and to position Defendants in a superior negotiating position in another suit in which the parties are adversaries.

91. Such harm has resulted in damages to the Plaintiff including special damages.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, and actual, for the cost and disbursements of this action; and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

Eric M. Poulin, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
Feb 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padgett, Graham &
Laney, P.A., and Turner Padgett, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELVETH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

**DEFENDANT NATIONWIDE'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

**TO: ERIC M. POULIN, ESQUIRE AND THE ANASTOPOULO LAW FIRM,
ATTORNEYS FOR PLAINTIFF:**

Defendant Nationwide Mutual Insurance Company ("Defendant Nationwide"), by and
through undersigned counsel, hereby answers Plaintiff's Complaint in the above-captioned case
as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiff's Complaint is denied unless
said allegations are specifically admitted herein.
2. Defendant Nationwide has insufficient information to admit or deny the
allegations contained in Paragraph 1. To the extent a response is required the
allegations are admitted upon information and belief.
3. Defendant Nationwide has insufficient information to admit or deny the
allegations contained in Paragraph 2. To the extent a response is required the
allegations are admitted upon information and belief.

4. Defendant Nationwide has insufficient information to admit or deny the allegations contained in Paragraph 3. To the extent a response is required the allegations are admitted upon information and belief.
5. Defendant Nationwide admits the allegations contained in Paragraph 4.
6. Defendant Nationwide admits the allegations contained in Paragraph 5 only to the extent that Defendant Nationwide conducts business in Horry County, State of South Carolina. Defendant Nationwide is without sufficient information to admit or deny the remaining allegations pertaining to "substantial business" and "large revenue" derived from Horry County, State of South Carolina. To the extent a response is required the allegations are denied.
7. Defendant Nationwide admits the allegations of Paragraph 6 only to the extent that the matter referenced in the Complaint, *Carlotta Motsinger v. Nationwide Insurance Company*, Case Number: 4:11-cv-01734-RBH, is pending in the State of South Carolina. Defendant Nationwide denies the allegations to the extent they allege that any wrongful acts by Defendant Nationwide occurred in the State of South Carolina.
8. The allegations of Paragraph 7 state a legal conclusion and do not require a response. To the extent a response is required Defendant Nationwide admits that this Court has jurisdiction over the parties and subject matter of this action.
9. Defendant Nationwide admits the allegations contained in Paragraph 8 only to the extent that it retained Defendant Turner Padgett Graham & Laney, P.A ("Defendant Turner Padgett") to represent Defendant Nationwide in the matter of *Carlotta Motsinger v. Nationwide Insurance Company*, Case Number 4:11-cv-

07134-RBH, which is pending in the United States District Court for the District of South Carolina. All remaining allegations of Paragraph 8 are denied.

10. Defendant Nationwide is without information to admit or deny the allegations of Paragraph 9 with regard to Defendant Cole's status at Defendant Turner Padgett. Defendant Nationwide admits the allegations contained in Paragraph 9 only to the extent that Defendant Edward Cole was affiliated with Defendant Turner Padgett at its Myrtle Beach office since the matter of *Carlotta Motsinger v. Nationwide Insurance Company* (hereinafter "the underlying matter") was commenced.
11. Defendant Nationwide admits the allegations contained in Paragraph 10 upon information and belief.
12. Defendant Nationwide admits the allegations contained in Paragraph 11 upon information and belief.
13. The allegations of Paragraph 12 do not pertain to Defendant Nationwide and further, state a legal conclusion, thus no response is required. To the extent factual allegations are asserted, Defendant Nationwide is without sufficient information to admit to admit or deny the allegations as set forth. To the extent a response is required the allegations are denied.
14. Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 13. To the extent a response is required Defendant Nationwide admits only that, upon information and belief, Plaintiff is counsel of record for Carlotta Motsinger in the above-referenced matter upon information and belief.

15. The allegations contained in Paragraph 14 do not pertain to Defendant Nationwide and further state a legal conclusion for which no response is required. To the extent a response is required the allegations are denied.
16. The allegations contained in Paragraph 15 do not pertain to Defendant Nationwide and thus, no response is required. To the extent a response is required the allegations are denied.
17. The allegations contained in Paragraph 16 do not pertain to Defendant Nationwide and further, state a legal conclusion for which no response is required. To the extent a response is required the allegations are denied.
18. Defendant Nationwide admits the allegations contained in Paragraph 17 only to the extent that Defendant Cole in his capacity as an attorney with Defendant Turner Padget did provide legal representation for Defendant Nationwide in the underlying matter. All remaining allegations of Paragraph 17 are denied.
19. The allegations contained in Paragraph 18 do not pertain to Defendant Nationwide and further state a legal conclusion for which no response is required. To the extent a response is required the allegations are denied.
20. The allegations contained in Paragraph 19 restate and re-allege prior allegations of Plaintiff. Defendant Nationwide reaffirms and re-alleges each of its responses set forth above as fully and effectually as if set forth herein verbatim.
21. Defendant Nationwide denies the allegations contained in Paragraph 20.
22. The allegations contained in Paragraph 21 do not pertain to Defendant Nationwide and state legal conclusions for which no response is required. To the

extent factual assertions are alleged and/or that a response is required, Defendant Nationwide denies the allegations.

23. The allegations contained in Paragraph 22 do not pertain to Defendant Nationwide and state legal conclusions for which no response is required. To the extent factual assertions are alleged and/or that a response is required, Defendant Nationwide denies the allegations.

24. The allegations contained in Paragraph 23 do not pertain to Defendant Nationwide and state legal conclusions for which no response is required. To the extent factual assertions are alleged and/or that a response is required, Defendant Nationwide denies the allegations.

25. Defendant Nationwide denies the allegations contained in Paragraph 24.

26. The allegations contained in Paragraph 25 do not pertain to Defendant Nationwide and state legal conclusions for which no response is required. To the extent factual assertions are alleged and/or that a response is required Defendant Nationwide denies the allegations.

27. The allegations contained in Paragraph 26 state legal conclusions for which no response is required. To the extent factual assertions are alleged and/or that a response is required Defendant Nationwide denies the allegations.

28. Defendant Nationwide denies the allegations contained in Paragraph 27.

29. Defendant Nationwide denies the allegations contained in Paragraph 28.

30. Defendant Nationwide denies the allegations contained in Paragraph 29.

31. The allegations contained in Paragraph 30 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a

document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.

32. Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 31 pertaining to: alleged actions by the Plaintiff; alleged actions by "his client," and to information alleged to have been lacking by an unnamed Defendant. To the extent a response is required the allegations are denied.
33. The allegations contained in Paragraph 32 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
34. The allegations of Paragraph 33 do not pertain to Defendant Nationwide. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 33 pertaining to alleged actions by the Plaintiff or Defendant Cole. To the extent a response is required the allegations are denied.
35. The allegations of Paragraph 34 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 34 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.

36. The allegations of Paragraph 35 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 35 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
37. The allegations of Paragraph 36 do not pertain to Defendant Nationwide and thus do not require a response. To the extent a response is required the allegations are denied.
38. The allegations contained in Paragraph 37 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
39. The allegations of Paragraph 38 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 38 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
40. The allegations contained in Paragraph 39 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.

41. The allegations of Paragraph 40 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 40 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
42. The allegations contained in Paragraph 41 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
43. The allegations of Paragraph 42 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 40 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
44. The allegations contained in Paragraph 43 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
45. The allegations of Paragraph 44 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient

information to admit or deny the allegations contained in Paragraph 44 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.

46. The allegations contained in Paragraph 45 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.

47. The allegations of Paragraph 46 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 46 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff.

48. The allegations contained in Paragraph 47 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.

49. The allegations of Paragraph 48 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 48 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.

50. The allegations contained in Paragraph 49 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
51. The allegations of Paragraph 50 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 50 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
52. The allegations contained in Paragraph 51 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
53. The allegations of Paragraph 52 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 52 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
54. The allegations contained in Paragraph 53 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to an email purportedly sent by Defendant Cole and Defendant Nationwide craves

reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.

55. The allegations of Paragraph 54 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 54 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
56. The allegations contained in Paragraph 55 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
57. The allegations of Paragraph 56 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 56 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.
58. The allegations contained in Paragraph 57 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
59. The allegations of Paragraph 58 do not pertain to Defendant Nationwide and thus

do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 56 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff. To the extent a response is required the allegations are denied.

60. The allegations contained in Paragraph 59 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
61. The allegations of Paragraph 60 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 56 pertaining to alleged actions by Defendant Cole or the alleged impact on Plaintiff.¹ To the extent a response is required the allegations are denied.
62. The allegations contained in Paragraph 61 do not pertain to Defendant Nationwide and thus no response is required. Moreover, the allegations refer to a document purportedly filed in the underlying matter and Defendant Nationwide craves reference to the document to identify statements contained therein. To the extent a response is required the allegations are denied.
63. The allegations of Paragraph 62 do not pertain to Defendant Nationwide and thus do not require a response. Moreover, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 56 pertaining

¹Defendant Nationwide assumes the reference to "Defendant's statement" contained in Paragraph 60 refers to Defendant Cole.

conduct of Defendant Cole or the Plaintiff. To the extent the allegations pertain to Defendant Nationwide or to the extent a response is required the allegations are denied.

64. The allegations contained in Paragraph 63 restate and re-allege prior allegations of Plaintiff. Defendant Nationwide reaffirms and re-alleges each of its responses set forth above as fully and effectually as if set forth herein verbatim.
65. The allegations of Paragraph 64 do not pertain to Defendant Nationwide and thus no response is required. To the extent a response is required Defendant Nationwide admits the allegations contained in Paragraph 9 only to the extent that Defendant Edward Cole was affiliated with Defendant Turner Padget at its Myrtle Beach office since the matter of *Carlotta Motsinger v. Nationwide Insurance Company* (hereinafter "the underlying matter") was commenced.
66. The allegations of Paragraph 65 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 65 pertaining to Defendant Cole's status at Defendant Turner Padget. To the extent a response is required the allegations are denied.
67. The allegations of Paragraph 66 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 66. To the extent a response is required the allegations are denied.
68. The allegations of Paragraph 67 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient

information to admit or deny the allegations contained in Paragraph 67. To the extent a response is required the allegations are denied.

69. The allegations of Paragraph 68 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 68. To the extent a response is required the allegations are denied.
70. The allegations of Paragraph 69 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 69. To the extent a response is required the allegations are denied.
71. The allegations of Paragraph 70 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 70. To the extent a response is required the allegations are denied.
72. The allegations of Paragraph 71 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 71. To the extent a response is required the allegations are denied.
73. The allegations of Paragraph 72 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 72. To the extent a response is required the allegations are admitted upon information and belief.

74. The allegations of Paragraph 73 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 73. To the extent a response is required the allegations are denied.
75. The allegations of Paragraph 74 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 74. To the extent a response is required the allegations are denied.
76. The allegations of Paragraph 75 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 75. To the extent a response is required the allegations are denied.
77. The allegations of Paragraph 76 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 76. To the extent a response is required the allegations are denied.
78. The allegations of Paragraph 77 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 77. To the extent a response is required the allegations are denied.
79. The allegations of Paragraph 78 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 78. To the

extent a response is required the allegations are denied.

80. The allegations contained in Paragraph 79 restate and re-allege prior allegations of Plaintiff. Defendant Nationwide reaffirms and re-alleges each of its responses set forth above as fully and effectually as if set forth herein verbatim.
81. The allegations of Paragraph 80 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 80. To the extent a response is required the allegations are denied.
82. The allegations of Paragraph 81 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 81. To the extent a response is required the allegations are denied.
83. The allegations of Paragraph 82 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 82. To the extent a response is required the allegations are admitted upon information and belief.
84. The allegations of Paragraph 83 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient information to admit or deny the allegations contained in Paragraph 83. To the extent a response is required the allegations are denied.
85. The allegations of Paragraph 84 do not pertain to Defendant Nationwide and thus no response is required. Further, Defendant Nationwide is without sufficient

information to admit or deny the allegations contained in Paragraph 84. To the extent a response is required the allegations are admitted upon information and belief.

86. The allegations contained in Paragraph 85 restate and re-allege prior allegations of Plaintiff. Defendant Nationwide reaffirms and re-alleges each of its responses set forth above as fully and effectually as if set forth herein verbatim.

87. Defendant Nationwide denies the allegations contained in Paragraph 86.

88. Defendant Nationwide denies the allegations contained in Paragraph 87.

89. Defendant Nationwide denies the allegations contained in Paragraph 88.

90. Defendant Nationwide denies the allegations contained in Paragraph 89.

91. Defendant Nationwide denies the allegations contained in Paragraph 90.

92. Defendant Nationwide denies the allegations contained in Paragraph 91.

93. Defendant Nationwide denies that the Plaintiff is entitled to any relief requested in the prayer for relief.

FOR A SECOND DEFENSE

94. Defendant Nationwide adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

95. Plaintiff has failed to state a claim for which relief may be granted on any of the causes of action set forth in the complaint. As such, the Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

96. Defendant Nationwide adopts and re-alleges each and every allegation set forth

above as if fully repeated herein.

97. Defendant Nationwide at no time a) made any statement with a defamatory meaning; b) published any statement with actual or implied malice; c) made any false statement regarding Plaintiff; d) published any false statement regarding Plaintiff; and e) Plaintiff cannot show legally presumed or special damages as a result of the alleged defamation. Thus Plaintiff's claim must fail as a matter of law.

FOR A FOURTH DEFENSE

98. Defendant Nationwide adopts and re-alleges each and every allegation set forth above as if fully repeated herein.
99. Defendant Nationwide at no time directed, commanded, or knowingly authorized Defendant Cole to make or publish any defamatory or libelous statements and thus Plaintiff's claims must fail as a matter of law.

FOR A FIFTH DEFENSE

100. Defendant Nationwide adopts and re-alleges each and every allegation set forth above as if fully repeated herein.
101. Defendant Nationwide cannot be held vicariously liable for the alleged tortious acts of hired outside counsel and thus, Plaintiff's claims must fail as a matter of law.

FOR AN SIXTH DEFENSE

102. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.
103. Defendant Nationwide at no time directed, commanded, or controlled Defendant

Turner Padgett Graham & Laney's hiring and/or supervision of Defendant Cole nor did Defendant Nationwide knowingly authorize or ratify any wrongful acts by Defendant Turner Padgett or Defendant Cole. As such, Plaintiff's claims must fail as a matter of law.

FOR A SEVENTH DEFENSE

104. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

105. Defendant Nationwide cannot be held vicariously liable for the alleged negligence of hired outside counsel's law firm and thus, Plaintiff's claims must fail as a matter of law.

FOR AN EIGHTH DEFENSE

106. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

107. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, Plaintiff is a public figure and has failed to assert and cannot prove constitutional malice as required. Accordingly the Plaintiff's claims must fail as a matter of law.

FOR A NINTH DEFENSE

108. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

109. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, the alleged statements are protected by an absolute, qualified or conditional privilege, including but not limited to the

privilege protecting publication of judicial proceedings and public records and thus Plaintiff's claims must fail as a matter of law.

FOR A TENTH DEFENSE

110. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

111. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, Defendant Cole's alleged statements about Plaintiff, to the extent proven, constitute fair comment and therefore are not actionable. Accordingly, Plaintiff's claims must fail as a matter of law.

FOR AN ELEVENTH DEFENSE

112. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

113. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, Defendant Cole's alleged statements, to the extent they are proven, are expressions of opinion protected by the Constitutions of the United States and the State of South Carolina and therefore are not actionable. As such, Plaintiff's claims must fail as a matter of law.

FOR A TWELFTH DEFENSE

114. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

115. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, Defendant Cole's alleged statements, to the extent they are proven, were true or substantially true and/or were made

with a reasonable, good-faith belief that they were true therefore Plaintiff's claims must fail as a matter of law.

FOR A THIRTEENTH DEFENSE

116. Defendant adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

117. Even if Plaintiff could state a claim for vicarious liability, and Defendant Nationwide vehemently asserts he cannot, Defendant Cole's alleged statements, to the extent they are proven, did not concern Plaintiff and/or were not published with actual or implied malice and thus, Plaintiff's claims must fail as a matter of law.

FOR A FOURTEENTH DEFENSE

118. Defendant Nationwide adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

119. Defendant Nationwide at no time combined with Defendant Turner Padgett, Defendant Cole, or any other person(s) for the purpose of injuring Plaintiff and at no time caused special damages to Plaintiff as a result of an alleged conspiracy. As such, Plaintiff's claim fails as a matter of law.

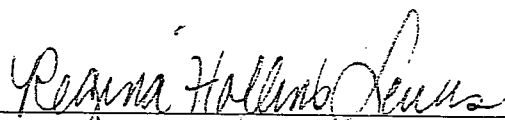
FOR A FIFTEENTH DEFENSE

120. Defendant Nationwide adopts and re-alleges each and every allegation set forth above as if fully repeated herein.

121. Defendant Nationwide at all times acted reasonably and in good faith in the exercise of her legal rights and at no time breached any duty, acted with any malice or ill-will toward the Plaintiff, or recklessly or wantonly, or with a

conscious disregard for the Plaintiff's rights, and, thus, the Plaintiff cannot sustain a claim for punitive damages. Further, punitive damages as sought by the Plaintiff are excessive, unconstitutional and violate the Due Process clause of the United States and South Carolina Constitutions.

WHEREFORE, having fully answered the Complaint, Defendant prays that the Court dismiss the Complaint and, further, prays for such other and further relief as the nature of Defendant's cause may require.



Regina Hollins Lewis

Mary Daniel Lafave

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803.790.8841 (fax)

Attorneys for Defendant

March 9, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padget, Graham &
Laney, P.A., and Turner Padget, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELVETH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

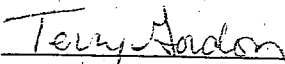
**CERTIFICATE OF
SERVICE**

I, Terry Gordon, an employee with the law firm of Gaffney Lewis & Edwards, LLC, have
this day caused to be served upon the persons named below copy of Defendant Nationwide's
Answer to Plaintiff's Complaint in the above-captioned matter via regular U.S. Mail as follows:

Eric M. Poulin, Esq.
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Road, Suite B
North Charleston, SC 29418
Attorneys for Plaintiff

Kevin Mitchell Barth, Esq.
Ballenger Barth & Hoefer
P.O. Box 107
Florence, SC 29503
Attorney for Defendant, Edward R. Cole
and Turner, Padget, Graham & Laney, P.A.

Columbia, South Carolina
March 9, 2012


Terry Gordon

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE #: 12-CP-21-301
Akim A. Anastopoulos,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER AND COUNTERCLAIM
	)	OF EDWARD R. COLE AND TURNER,
Edward R. Cole, individually,	)	PADGET, GRAHAM & LANEY, P.A.
And as employee/agent of	)	
Turner, Padget, Graham & Laney,	)	
P.A., and Turner, Padget,	)	
Graham & Laney, P.A., and	)	
Nationwide Mutual Insurance	)	
Company,	)	
	)	
Defendants.	)	

FILED
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 FLORENCE COUNTY, SC

The Defendants, Edward R. Cole and Turner, Padget, Graham & Laney, P.A. answering the Complaint of the Plaintiff herein, would respectfully allege and show unto this Honorable Court as follows:

AS A FIRST DEFENSE

1. That each and every allegation contained in the Complaint not herein below admitted, denied or qualified, is hereby denied and strict proof demanded thereof.

2. Admit the allegations contained in paragraphs one (1), two (2), and three (3) of the Complaint.

3. These Defendants are without sufficient information from which to admit or deny the allegations contained in paragraphs four (4) and five (5) of the Complaint, but believe the allegations to be true.

4. Admit the allegations contained in paragraphs six (6), seven (7), eight (8) and nine (9) of the Complaint.

CERTIFIED: A TRUE COPY

Connie Reel Spearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

MB

5. Admit that portion of paragraph ten (10) of the Complaint which alleges that the Defendant, Cole, was assigned to handle the referenced litigation on behalf of Nationwide Mutual Insurance Company, and on behalf of the Defendant, law firm. The remaining allegations contained in that paragraph are denied and strict proof demanded thereof.

6. Admit the allegations contained in paragraphs eleven (11), twelve (12) and thirteen (13) of the Complaint.

7. Deny the allegations contained in paragraph fourteen (14) of the Complaint and demand strict proof thereof.

8. Deny the allegations contained in paragraph fifteen (15) of the Complaint and demand strict proof thereof.

9. Admit the allegations contained in paragraphs sixteen (16) and seventeen (17) of the Complaint. To the extent that these paragraphs allege any improper conduct on the part of these two Defendants, Defendants would deny same and demand strict proof thereof.

10. Deny the allegations contained in paragraph eighteen (18) of the Complaint and demand strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION

11. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

12. Admit that portion of paragraph twenty (20) of the Complaint which alleges that the relevant statements were made by the Defendant, Cole, as part of the public Court records and were made to the Court in said pleadings. The remaining allegations

contained in that paragraph are denied and strict proof is demanded thereof.

13. Deny the allegations contained in paragraphs twenty one (21), twenty two (22), twenty three (23), twenty four (24), twenty five (25), twenty six (26), twenty seven (27), twenty eight (28), and twenty nine (29) of the Complaint and demand strict proof thereof.

14. As to paragraphs thirty (30), thirty one (31) and thirty two (32) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that these paragraphs allege any improper statements, Defendants deny same and demand strict proof thereof.

15. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph thirty three (33) of the Complaint and would therefore deny same and demand strict proof thereof.

16. As to any allegations outlined in paragraph thirty four (34) of the Complaint, Defendants would crave reference to the actual document in which the language would have been used. To the extent that paragraph thirty four (34) of the Complaint alleges any improper actions or statements on the part of the Defendants, Defendants deny same and demand strict proof thereof.

17. Deny the allegations contained in paragraphs thirty five (35) and thirty six (36) of the Complaint and demand strict proof thereof.

18. As to paragraph thirty seven (37) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the



extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

19. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph thirty eight (38) of the Complaint and would therefore deny same and demand strict proof thereof.

20. As to paragraph thirty nine (39) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

21. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph forty (40) of the Complaint and would therefore deny same and demand strict proof thereof.

22. As to paragraph forty one (41) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

23. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph forty two (42) of the Complaint and would therefore deny same and demand strict proof thereof.

24. As to paragraph forty three (43) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

25. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph forty four (44) of the Complaint and would therefore deny same and demand strict proof thereof.

26. As to paragraph forty five (45) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

27. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph forty six (46) of the Complaint and would therefore deny same and demand strict proof thereof.

28. As to paragraph forty seven (47) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

29. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph forty eight (48) of the Complaint and would therefore deny same and demand strict proof thereof.

30. As to paragraph forty nine (49) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

31. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph fifty

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(50) of the Complaint and would therefore deny same and demand strict proof thereof.

32. As to paragraph fifty one (51) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

33. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph fifty two (52) of the Complaint and would therefore deny same and demand strict proof thereof.

34. Admit the allegations contained in paragraph fifty three (53) of the Complaint.

35. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph fifty four (54) of the Complaint and would therefore deny same and demand strict proof thereof.

36. As to paragraph fifty five (55) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

37. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph fifty six (56) of the Complaint and would therefore deny same and demand strict proof thereof.

38. As to paragraph fifty seven (57) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the

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extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

39. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph fifty eight (58) of the Complaint and would therefore deny same and demand strict proof thereof.

40. As to paragraph fifty nine (59) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

41. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph sixty (60) of the Complaint and would therefore deny same and demand strict proof thereof.

42. As to paragraph sixty one (61) of the Complaint, Defendants crave reference to the actual Court document for a recitation of exactly the verbiage used in that document. To the extent that this paragraph alleges any improper statements, Defendants deny same and demand strict proof thereof.

43. That Defendants are without sufficient information from which to admit or deny the allegations contained in paragraph sixty two (62) of the Complaint and would therefore deny same and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION

44. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

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45. Admit the allegations contained in paragraphs sixty four (64), sixty five (65), sixty six (66), sixty seven (67), and sixty eight (68) of the Complaint.

46. Deny the allegations contained in paragraphs sixty nine (69), seventy (70), and seventy one (71) of the Complaint and demand strict proof thereof.

47. Admit the allegations contained in paragraph seventy two (72) of the Complaint.

48. Deny the allegations contained in paragraphs seventy three (73), seventy four (74), seventy five (75), seventy six (76), seventy seven (77), and seventy eight (78) of the Complaint and demand strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION

49. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

50. Deny the allegations contained in paragraphs eighty (80), eighty one (81), and eighty three (83) of the Complaint and demand strict proof thereof.

51. Admit the allegations contained in paragraphs eighty two (82) and eighty four (84) of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION

52. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

53. Deny the allegations contained in paragraphs eighty six (86), eighty seven (87), eighty eight (88), eighty nine (89),

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ninety (90) and ninety one (91) of the Complaint and demand strict proof thereof.

AS A FURTHER DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

54. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

55. These Defendants allege, as an affirmative defense, to each of the Plaintiff's causes of action, that all conduct and statements being complained of by the Plaintiff were made during the course of judicial proceedings and in Court documents relating to the pending judicial proceedings, and are protected and covered by the doctrine of actual privilege. Defendants are therefore informed and believe that this privilege would bar Plaintiff's claims under each of his causes of action.

56. Defendants therefore would move before the Court for an Order dismissing Plaintiff's claims with prejudice, based upon the fact that all statements being complained of are protected by privilege.

AS A FURTHER DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

57. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

58. These Defendants allege, as an affirmative defense, to each of the Plaintiff's causes of action, that all statements and conduct being complained of by the Plaintiff were made during the course of judicial proceedings and in pleadings and documents

relating to the pending judicial proceedings, and are protected and covered by the doctrine of qualified privilege. Defendants are therefore informed and believe that this privilege would bar Plaintiff's claims under each of his causes of action.

59. Defendants therefore would move before the Court for an Order dismissing Plaintiff's claims with prejudice, based upon the fact that all statements being complained of are protected by privilege.

**AS A FURTHER DEFENSE BY WAY OF AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION**

60. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

61. In the event that the statements being complained of by Plaintiff are not protected as privileged, these Defendants allege, as an additional affirmative defense, to all of the Plaintiff's causes of action, that the Plaintiff is a public figure and that prior to recovering for any alleged statements on Defendants' part, Plaintiff would be required to prove that the statements were made with actual malice, and would be required to do so by clear and convincing evidence.

62. More specifically, Plaintiff spends vast sums of money in many forms of media outlets to create the impression that he is a public figure, even to the point of having his own television show. As a result of the expenditure of these funds and the relentless media presence by Plaintiff, Plaintiff has attempted to portray himself as a public figure, and therefore should be treated as such as it relates to the allegations in the within litigation.

HB

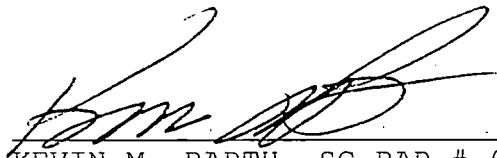
AS A FURTHER DEFENSE BY WAY OF COUNTERCLAIM

63. Each and every allegation contained herein above is reiterated as fully as if set forth herein verbatim.

64. In the event the within litigation is ended in Defendants' favor, Defendants would respectfully allege that they would be entitled to sanctions from the Plaintiff pursuant to S.C. Code Ann., Section 15-36-10, et. Seq., known as the South Carolina Frivolous Civil Proceedings Sanctions Act.

WHEREFORE, the Defendants having answered the Complaint of the Plaintiff herein, would respectfully pray for an Order as follows:

1. Dismissing the Plaintiff's Complaint with prejudice.
2. Granting Defendants judgment against Plaintiff for sanctions as appropriate under the South Carolina Frivolous Civil Proceedings Sanctions Act.
3. For such other and further relief as this Court may deem just and proper.



KEVIN M. BARTH, SC BAR # 0559
ATTORNEY FOR DEFENDANTS
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
843-662-6301 PHONE
843-664-8384 FAX
Email: kbarth@hbbh.net

Florence, South Carolina

February 16, 2012

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

) IN THE COURT OF COMMON PLEAS
) TWELFTH JUDICIAL CIRCUIT
) CASE #: 12-CP-21-301

Akim A. Anastopoulos,

Plaintiff,

v.

Edward R. Cole, individually,

And as employee/agent of

Turner, Padgett, Graham & Laney,

P.A., and Turner, Padgett,

Graham & Laney, P.A., and

Nationwide Mutual Insurance

Company,

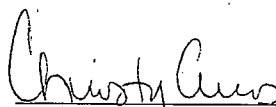
Defendants.

CERTIFICATE OF MAILING

I, the undersigned, of the law offices of Ballenger, Barth & Hoefer, do hereby certify that I have served all counsel in this action with a copy of the foregoing pleading by causing a copy of the same to be mailed by United States mail, postage prepaid, to the following address(es):

PLEADING: Answer and Counterclaim of Edward R. Cole and Turner, Padgett, Graham & Laney, P.A.

COUNSEL SERVED: Eric M. Poulin
Anastopoulos Law Firm
2850 Ashley Phosphate Rd.
North Charleston, SC 29418



CHRISTY GRAVES
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301

Sworn to and subscribed before me
this 20th day of February, 2012



Notary in and for South Carolina

My Commission Expires: 5-27-18

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Akim A. Anastopoulou

☐ Plaintiff

v.

Edwards R. Cole, individually and as employee/agent
of Turner, Padgett Graham & Laney, P.A. et al

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

12-CP-21-0301

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Eric M. Poulin, Esquire. Bar No. ---

Address:

2850 Ashley Phosphate Road, Ste B

North Charleston, SC 29418

phone: (800) 313-2546 fax:

e-mail: fmsmith@bellsouth.net

Defendant's Attorney:

Regina Hollins Lewis 68539

Address:

3710 Landmark Drive, Ste 109

Columbia, SC 29204

(803) 790-8830 fax: (803) 790-8841

e-mail: rlewis@glelawfirm.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Dismiss

Estimated Time Needed: 30 min Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Regina Hollins Lewis
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

July 5, 2012

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padget, Graham &
Laney, P.A., and Turner Padget, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

**DEFENDANTS' MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM**

COME NOW DEFENDANTS Edward R. Cole, individually and as employee/agent of Turner Padget Graham & Laney, P.A.; Turner Padget Graham & Laney, P.A.; and Nationwide Mutual Insurance Company (hereinafter, collectively, the "Defendants"), who hereby move this Court for an Order dismissing Plaintiff's Complaint pursuant to Rule 12(b)(6) *S.C.R. Civ.P.*

PROCEDURAL POSTURE

Plaintiff filed his original Summons and Complaint with this Court on February 1, 2012; against the Defendants, all of whom timely responded. An answer was filed on behalf of Nationwide by its counsel on March 12, 2012 and an answer was filed on behalf of Defendants Cole and Turner Padget Graham and Laney by their counsel on February 16, 2012. Plaintiff's Complaint alleges causes of action for defamation, negligent supervision, negligent retention, and conspiracy. *See* Compl. Exhibit A. In their responsive pleadings to Plaintiff's Complaint, Defendants affirmatively pleaded the defense of failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) *S.C.R. Civ.P.* Specifically, Defendants assert that Plaintiff's

Complaint should be dismissed because all of the alleged defamatory statements were rendered in pleadings filed with the courts of South Carolina; thus, such statements are protected by the absolute privilege for judicial proceedings and not actionable. See Answer of Defendant Nationwide attached as Exhibit B ¶ 95; Answer of Defendant Ed Cole and Turner Padgett attached as Exhibit C ¶¶ 55, 56.

ARGUMENT

The Defendants move to dismiss Plaintiff's causes of action for defamation, negligent supervision, negligent retention, and conspiracy. Plaintiff has failed to state a cause of action for which relief can be granted because all alleged defamatory statements in the Complaint were made in the course of judicial proceedings and thus the defamation claim fails as a matter of law. As the remaining claims are all based upon the allegations set forth by Plaintiff in support of his defamation claim, those claims also fail as a matter of law.

South Carolina law is well established that statements made in the course of proceedings are protected by absolute privilege and, therefore, not actionable. Specifically, the law provides that "[t]he absolute privilege attaching to judicial proceedings embraces communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in course of proceeding, any statements made by witnesses in the course of proceedings, and even statements in the course of negotiation of a settlement." *Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393 at 398 (D.S.C. 1968).

Here, Plaintiff alleges that he has been the victim of defamatory and libelous statements made by Defendant Cole during the course and scope of performing his duties as an attorney representing Nationwide in *Motsinger v. Nationwide Mutual Insurance Company* Civil Action No.: 4:11-cv-01734-RBH (hereinafter referenced as "Motsinger Lawsuit"). See *Compl.* ¶¶ 8, 9,

10,11, 12, and 14. Plaintiff readily admits that all "statements listed... were known by Defendants to be published as a part of the public record, and to the Court". *Id.* at ¶ 20.

Plaintiff's Complaint fails to state a cause of action because all statements referenced in the Complaint quote and directly reference pleadings filed in the Motsinger Lawsuit. Such statements are defined as "arguments or statements by counsel in course of proceeding" which are specifically referenced by the controlling law and protected by the absolute privilege of judicial immunity. *Corbin*, 278 F. Supp. 393 at 398. Therefore, Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action under Rule 12(b)(6) *S.C.R. Civ.P.*

The liability of Defendants Turner Padgett Graham & Laney and Nationwide are contingent upon liability of Defendant Cole and, as set forth, Plaintiff has failed to state a claim for which relief may be granted against Defendant Cole. Accordingly, the claims of negligent hiring, negligent supervision and conspiracy must also be dismissed as to all of the Defendants as those claims are all based on the flawed defamation claim that cannot be sustained.

WHEREFORE, the Defendants respectfully request that the Court grant them the following relief:

- a) Enter an Order dismissing the Plaintiff's Complaint;
- b) Set a hearing on this matter in open court;
- c) Enter an Order granting to the Defendants all attorneys' fees and costs incurred in defending said claims since February 1, 2012, including the filing of this Motion;
- d) Such other and further relief as the nature of the Defendants' cause may require.

This Motion is based on the applicable law, the South Carolina Rules of Civil Procedure and the evidence and arguments of counsel to be offered at a hearing on the matter.

Respectfully Submitted,



Regina Hollins Lewis, SC BAR #68539
Mary D. LaFave, SC BAR #75366
GAFFNEY LEWIS & EDWARDS, LLC
3710 Landmark Drive, Suite 109
Columbia, South Carolina 29204
803.790.8838 (office)
803.790.8841 (fax)
Counsel for Nationwide Mutual Insurance
Company

June 21st, 2012
Columbia, South Carolina

Kevin Mitchell Barth *with the express permission*
Kevin Mitchell Barth, SC BAR #0559 *CMH*

BALLENGER BARTH & HOEFER

P.O. Box 107

Florence, South Carolina 29503

Counsel for Defendant, Edward R. Cole
and Turner, Padgett, Graham & Laney, P.A.

June __, 2012
Florence, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Akim A. Anastopoulos,
Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padget, Graham &
Laney, P.A., and Turner Padget, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

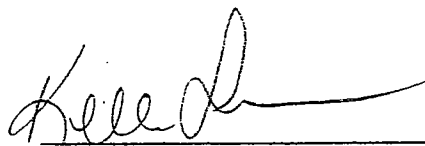
Defendants.

IN THE COURT OF COMMON PLEAS
TWELVETH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

**CERTIFICATE OF
SERVICE**

This is to certify that a copy of the foregoing **Defendant Nationwide's Motion to Dismiss for Failure to State a Claim** has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 5th day of July, 2012:

Eric M. Poulin, Esq.
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Road, Suite B
North Charleston, SC 29418
Attorney for Plaintiff



Kelli F. Spinks

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padgett, Graham &
Laney, P.A., and Turner Padgett, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELVETH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

**DEFENDANTS' MEMORANDUM IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants Edward R. Cole, individually and as employee/agent of Turner Padgett Graham & Laney, P.A (hereinafter "Cole"); Turner Padgett Graham & Laney, P.A., (hereinafter individually referred to as "TPGL" and Nationwide Mutual Insurance Company (hereinafter "Nationwide") (hereinafter, collectively, the "Defendants"), submit this memorandum in support of their Motion to Dismiss and in response to Plaintiff's Reply to the Motion. Plaintiff's Complaint should be dismissed because it fails to state facts sufficient to constitute any cause of action against Defendants for which relief can be granted. Specifically, Plaintiff's claim against Defendants for defamation fails as a matter of law because the Complaint does not set forth facts sufficient to establish that any of the alleged statements are not protected by an absolute privilege.

PROCEDURAL POSTURE

Plaintiff filed his Summons and Complaint with this Court on February 1, 2012, against the Defendants, all of whom timely responded. Plaintiff's Complaint alleges causes of action for defamation, negligent supervision, negligent retention, and conspiracy. Defendants' Answer

included the defense of failure to state facts sufficient to constitute a cause of action, pursuant to Rule 12(b)(6) S.C.R. Civ. P. Defendants pleaded the affirmative defense of failure to state a claim upon which relief may be granted as required under Rule 12. Specifically, Defendants assert that Plaintiff's Complaint should be dismissed because each of the alleged defamatory statements was published in pleadings filed or during hearings and Plaintiff has failed to establish in his Complaint that such statements are not protected by an absolute privilege.

STATEMENT OF PLAINTIFF'S ALLEGATIONS

In his Complaint, Plaintiff seeks to recover damages for defamation, negligent supervision, negligent retention, and conspiracy on the basis that he was damaged by statements allegedly made by Defendant Cole during the course of legal proceedings. Plaintiff alleges that he has been the subject of defamatory and libelous statements made by Defendant Cole during the course of Cole's defense of the case of *Motsinger v. Nationwide Mutual Insurance Company* Civil Action No.: 4:11-cv-01734-RBH (hereinafter referenced as "*Motsinger* case"). His claims against TPGL and Nationwide are derivative claims of those asserted against Defendant Cole.

Plaintiff alleges that in various pleadings Defendant Cole filed with the Court in the *Mostinger* Lawsuit, Plaintiff is described as an "absurd," "dishonest," "double-dealing" attorney who has "abused the legal process" by engaging in "sham legal proceeding[s]" with the "intention of misleading the Court" in an attempt to "bludgeon Nationwide into submission." (Compl. ¶41). Additionally, Plaintiff alleges that Defendant Cole accused Plaintiff and his client Carlotta Motsinger (hereinafter "*Motsinger*") of engaging in a "sham proceeding" in state court regarding Motsinger's common law marriage." (Compl. ¶ 30). Plaintiff further alleges Defendant Cole described Plaintiff's overall work for his client as a "blatant, shameful exercise in deceit." (Compl. ¶ 32). Finally, Plaintiff alleges that Defendant Cole stated in "an official

Court proceeding” that Plaintiff “completely disregarded his professional obligations” through “duplicity.” (Compl. ¶34).

Plaintiff’s sole allegation which references a statement not contained in the *Motsinger* case Court proceedings involves an alleged E-mail correspondence between Plaintiff and Defendant Cole. Plaintiff asserts that Defendant Cole sent him an email on December 23, 2011 which referred to Plaintiff’s “action on behalf of his client as ‘silly and juvenile motions’” (Compl. ¶53).¹

Plaintiff alleges that Defendants knew that Defendant Cole’s statements detailed in the Complaint were knowingly published as a part of the public record and “were made with actual malice, with the specific intent of harming Plaintiff.” (Compl. ¶¶20-21). Plaintiff states that the allegedly defamatory statements were not relevant to the *Motsinger* case and therefore not protected by judicial proceedings immunity in ¶22 of the Complaint but fails to provide any supporting facts to support such a conclusion.

STANDARD OF REVIEW

I. S.C.R.Civ.P. 12(b)(6)

When considering a Rule 12(b)(6) motion, the court reviews the sufficiency of the complaint. A complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)(internal quotations marks omitted). A complaint “must contain ‘sufficient factual matter,

¹ Defendants are not in possession of the email referenced. Moreover, Plaintiff has not provided a copy of the December 23, 2011 email to counsel for Defendants as requested in discovery served on May 16, 2012. However, the parties do not disagree that such a communication would be between counsel and it would be Defendants’ position that such a communication would require the same analysis to thwart the protections of judicial immunity as those statements contained in pleadings and addressed in detail below.

accepted as true, to 'state a claim to relief that is plausible on its face.'" *Nemet Chevrolet, Ltd. v. Consumer Affairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)). While the court must construe the factual allegations of the Complaint in the light most favorable to the plaintiff, the court need not accept the legal conclusions, inferences, or arguments that are drawn from the facts. *Id.* at 253. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 500 U.S. at 555. Looking solely at the factual allegations set forth on the face of the Complaint, and viewing them in the light most favorable to the Plaintiff, a court must grant a Rule 12(b)(6) motion "if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Brown v. Theos*, 338 S.C. 305 (S.C. Ct. App. 1999) (quoting *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209 (S.C. Ct. App. 1998)).

ARGUMENT

Plaintiff's Complaint must be dismissed because Plaintiff failed to state facts sufficient to constitute a cause of action against Defendants.

Plaintiff alleges that he has been the subject of defamatory and libelous statements made by Defendant Cole while Cole was in the course and scope of his employment as an attorney by Defendant TPGL and was representing Nationwide in the *Motsinger* case.

In order to sustain a cause of action for defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488,

494 (S.C. 2002), quoting, *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998).

Plaintiff's Complaint alleges the defamatory statements were made by Defendant Cole in the pleadings and hearings of the *Motsinger* case. All of the statements referenced are alleged to have pertained to the litigation strategy or actions taken by counsel in the *Motsinger* case. South Carolina law is well established that defamatory statements made in the course of judicial proceedings are protected by absolute privilege and, therefore, not actionable. *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936); see *Redfearn v. Pusser*, 276 S. C. 506, 280 S. E. 2d 206 (1981); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945). Specifically, the law provides that "[t]he absolute privilege attaching to judicial proceedings embraces communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in the course of proceeding, any statements made by witnesses in the course of proceedings, and even statements in the course of negotiation of a settlement." *Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393 at 398 (D.S.C. 1968).

This privilege applies even if the statements were made maliciously and with knowledge of their falsity. *Brewer*, 180 S. C. 325 at 327 (1936). The privilege protects the statements of judges, parties, and witnesses offered in the course of judicial proceedings. *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam). It protects not only trial and deposition testimony, but also statements in pleadings, affidavits, communications between counsel, statements by counsel to prospective witnesses and in general "any utterance arising out of any judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial actions of any official nature provided those steps bear reasonable relationship

to it.” *Corbin v. Washington Fire & Marine Insurance Co.*, 278 F. Supp. 393, 398 (D. S. C.) (dicta), *aff’d per curiam*, 398 F. 2d 543 (4th Cir. 1968); *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945); *Rodgers v. Wise*, 193 S. C. 5, 7 S. E. 2d 517 (1940); *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936).

The “relevancy” requirement is intended to be interpreted broadly. “[L]ibelous or defamatory statements in pleadings, when pertinent or material or relevant to real issues involved, are privileged...and in determining [the pertinency or materiality or relevancy of such statements] pleadings must be liberally interpreted and all doubts resolved in favor of relevancy.” *McKesson & Robbins, Inc. v. Newsom et. ux.*, 206 S.C. 269, 33 S.E.2d 585 (1945) (citing *Texas Company v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936)).

In *Brewer, supra*, the Supreme Court upheld the lower court’s determination that alleged libelous or defamatory statements contained in pleadings, when pertinent or material or relevant to real issues involved, are privileged and that the materiality or relevancy of such statements must be liberally interpreted and all doubts resolved in favor of relevancy. *Brewer, supra*, 180 S.C. 325 at 326-327 (1936).

In the case at bar, all statements of which Plaintiff complains appeared in court pleadings, or were communicated during court proceedings or communications between counsel. In his Complaint, Plaintiff has merely recited a conclusion of law which fails to show that any of the statements purportedly made by Defendant Cole in pleadings and proceedings are not subject to judicial immunity. To the contrary, even in the light most favorable to the Plaintiff as the non-moving party to the present Motion, Plaintiff’s defamation claim fails to overcome the broad relevancy interpretation on which South Carolina law is founded. Plaintiff makes no factual

allegations to support his legal conclusion that immunity does not apply and, in fact, freely admits that "all statements" in the Complaint were published as part of the public record and to the court. In light of the absence of factual support provided by Plaintiff that the alleged statements are not relevant, these statements clearly must be viewed as subject to the absolute privilege and therefore Plaintiff's defamation claim must fail. As to the only statement that was not made in the context of the court filings or proceedings, that being the statement allegedly included in the E-mail between Plaintiff and Defendant Cole, that statement would likewise fail to constitute actionable defamation because it was not published to a third party. Since "publication" is a requisite element of the tort of defamation, the statement cannot support a claim therefor. *See, Fleming, supra.*

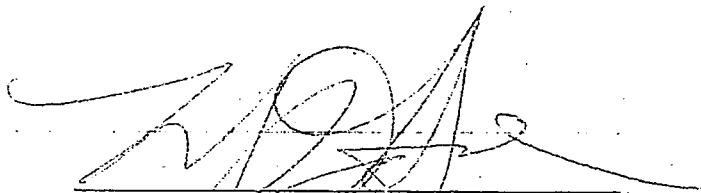
CONCLUSION

It is well established under South Carolina law that statements made in the course of proceedings on issues before the court are protected by absolute privilege and, therefore, not actionable. Plaintiff alleges that the statements referenced in the Complaint are "not relevant" but sets forth no facts or legal authority to support such a conclusion. Essentially, Plaintiff assigns a label to the statements in making a formulaic recitation of this element, which is insufficient to overcome Rule 12(b)(6). As a result, Plaintiff's causes of action do not defeat absolute privilege protections for judicial proceedings and fail as a matter of law.

Defendant Turner Padgett Graham & Laney, P.A.'s liability and Defendant Nationwide's liability are contingent upon Defendant Cole's liability and, as set forth, Plaintiff has failed to state a claim for which relief may be granted against Defendant Cole. Accordingly, the claims of negligent hiring, negligent supervision and conspiracy must also be dismissed as to all of the Defendants as those claims are all derivative of the materially flawed defamation claim, which

cannot be sustained.

Respectfully Submitted,



Regina Hollins Lewis, SC BAR #68539

Mary D. LaFave, SC BAR #75366

GAFFNEY LEWIS & EDWARDS, LLC

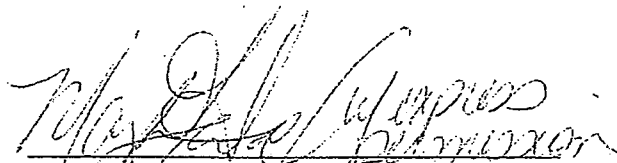
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Counsel for Defendant, Edward R. Cole
and Turner, Padgett, Graham & Laney, P.A.



August 1, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Akim A. Anastopoulo,)

Plaintiff,)

vs.)

Edward R. Cole, individually and as)
employee/agent of Turner, Padget, Graham &)
Laney, P.A., and Turner, Padget, Graham &)
Laney, P.A. and Nationwide Mutual)
Insurance Company,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

FILED
2012 JUL 30 PM 12:47
CLERK OF COURT & C.S.
FLORENCE COUNTY, SC

INTRODUCTION

Plaintiff Akim Anastopoulo and Defendant Cole are opposing counsel in an action currently pending in the District Court. The issue in that case is whether Defendant Cole's client, Nationwide breached its contract and acted in bad faith toward Mr. Anastopoulo's client. Said action is not about Akim Anastopoulo; he is simply an attorney of record for one of the parties. Nonetheless, in pleadings and other correspondence in said case, Defendant Cole described Attorney Anastopoulo, Plaintiff in this action as, among other things, an "absurd," "dishonest," "double-dealing" attorney who has "abused the legal process" by engaging in "sham legal proceeding[s]" with the "intention of misleading the Court" in an attempt to "bludgeon Nationwide." Plaintiff Anastopoulo then served a Summons and Complaint on Defendants alleging that these statements are defamatory. Defendant Nationwide does not deny in their Motion to Dismiss that Defendant Cole made these statements. Instead, Defendant Nationwide filed a 12(b)(6) Motion to Dismiss, based solely on its assertion that its statements are absolutely privileged as judicial proceedings. Plaintiff Anastopoulo (herein "Plaintiff") now files this Memorandum in opposition to Defendant Nationwide's (herein "Defendant") Motion to Dismiss and would show that the subject statements are not privileged because they are not relevant or pertinent to the issues in the case.

CERTIFIED A TRUE COPY
Cornie Red-Spinner
CLERK OF COURT C.P. & C.S.
FLORENCE COUNTY, S.C.

ARGUMENT

In considering Defendant's 12(b)(6) motion to dismiss, this Court "must base its ruling solely on allegations set forth in the complaint." Spence v. Spence, 368 S.C. 106, 116 (2006). This Court must deny Defendant's motion because "The facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief." Id. Further, since Plaintiff has alleged sufficient facts to entitle Plaintiff to relief, this Court must deny Defendant's motion even if it "doubts the plaintiff will prevail in the action." Id. at 116-17.

Defendant asserts that Plaintiff's claim for defamation fails as a matter of law because Defendant Cole's defamatory statements are absolutely privileged. (Def. Mot. to Dis. p.2). Defendant claims absolute privilege because Cole made the defamatory statements in judicial pleadings. Id. In support of its position, Defendant cites a single sentence from the federal case of Corbin v. Washington Fire & Marine Ins. Co. as persuasive. Id. The selected sentence states that "the absolute privilege attaching to judicial proceedings embraces communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in course of proceeding, any statements made by witnesses in the course of proceedings, and even statements in the course of negotiation of a settlement." Corbin v. Washington Fire & Marine Ins. Co., 278 F. Supp. 393, 398 (D.S.C. 1968).

However, the above quoted passage is an incomplete statement of the law in South Carolina. Instead, the complete law is that statements made in the course of judicial proceedings are absolutely privileged *only if they are relevant and pertinent to those proceedings*. McKesson & Robbins, Inc. v. Newsome, 33 S.E.2d 585, 587 (1945) (emphasis added). Indeed, the sentence from Corbin immediately following the one cited by the Defendant says that absolute privilege extends to such statements only "as long as [they are] relevant to the issues of that proceeding." Id. at 398.

In any case, there is no need to look to the Federal courts for persuasive authority here because McKesson & Robbins, Inc. v. Newsome is controlling authority from the South Carolina Supreme Court, and it is directly on point. In McKesson the Court held that to be covered by absolute privilege, statements made in pleadings must be "pertinent or material or relevant to real issues involved." McKesson & Robbins, Inc. v. Newsome, 33 S.E.2d 585, 587 (1945); See also Pond Place Partners, Inc. v. Poole, 351 S.C. 1 (Ct. App. 2002) (pleadings absolutely privileged

only "if they are relevant and legitimately related to the issues and inquiry at trial"); Crowell v. Herring, 392 S.E.2d 464, 468 (Ct. App. 1990) (statements absolutely privileged only where "pertinent and reasonably related" to the litigation); Manley v. Manley, 291 S.C. 325 (Ct. App. 1987) (defamatory matter in pleadings absolutely privileged only "if relevant and pertinent to the issues in the case").

Defendant made the statements giving rise to this action in the pleadings of a case to determine the marital status of Plaintiff's client. (Plaintiff's Complaint ¶22). In the pleadings, Cole described Plaintiff as an "absurd," "dishonest," "double-dealing" attorney who has "abused the legal process" by engaging in "sham legal proceeding[s]" with the "intention of misleading the Court" in an attempt to "bludgeon Nationwide." (Plaintiff's Complaint p. 6). Viewed in the light most favorable to the Plaintiff as required by Spence, Cole's statements are not relevant or pertinent to whether Plaintiff's client in that action is married. Spence, 386 S.C. 116. Therefore, Cole's defamatory statements cannot be treated as privileged for the purpose of considering Defendant's 12(b)(6) motion. McKesson, 33 S.E.2d at 587.

Defendant Nationwide does not deny in their Motion to Dismiss that Cole made the defamatory statements; indeed, the statements are contained in the Record. (Def. Mot. to Dis. p.3). Instead, Defendant's 12(b)(6) motion to dismiss depends entirely on Defendant's mistaken assertion of privilege. Because Cole's statements cannot be treated as privileged under the controlling standard set forth in Spence and McKesson, Defendant's motion must fail as a matter of law. Spence, 386 S.C. at 116; McKesson, 33 S.E.2d at 587.

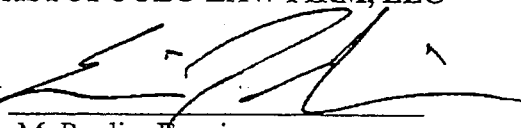
Moreover, to successfully defeat Defendant's 12(b)(6) motion to dismiss, Plaintiff does not need to *prove* that Defendant's statements are not privileged. Plaintiff's burden is merely to allege facts which, when viewed in the light most favorable to Plaintiff, show that Defendant Cole's statements are not privileged. Spence, 386 S.C. at 116. The Plaintiff has met this burden. In paragraph fifteen (15) of Plaintiff's Complaint, Plaintiff alleges that "the defamatory and libelous statements complained about . . . are not relevant or pertinent to the issues in the case." (Plaintiff's Complaint ¶15). Thus, on its face Plaintiff's complaint states a claim for which relief may be granted under the laws of this state.

PRAYER

For the reasons set forth above, the Plaintiff respectfully requests that this Court DENY Defendant's 12(b)(6) Motion to Dismiss.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

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2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888

ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina
7-27, 2012

State of South Carolina)
County of Florence)

In the Court of Common Pleas
Sixth Judicial Circuit
2012-CP-21-0301

Akim A. Anastopoulo,
Plaintiff,

vs.

Edward R. Cole, Turner Padgett
Graham and Laney P.A.,
and Nationwide Mutual
Insurance Company,
Defendants.

Transcript of Record

August 15, 2012
Florence, South Carolina

B E F O R E:

The Honorable Thomas J. Russo, Sr., Judge

A P P E A R A N C E S:

Eric M. Poulin, Esquire
Attorney for the Plaintiff

Kevin M. Barth, Esquire
Attorney for Defendants Cole/TPGL

Regina H. Lewis, Esquire
Attorney for Defendant Nationwide Mutual Ins. Co.

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
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No Exhibits Introduced.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:50 a.m.)

THE COURT: All right. We got several motions -- is it three?

MR. POULIN: Yes, sir. I think ---

THE COURT: We got ---

MR. POULIN: --- so.

THE COURT: --- a motion for partial summary judgment, motion to dismiss, and motion to compel? Does that sound right?

MS. LEWIS: That's correct, Your Honor.

MR. BARTH: Yes, sir.

THE COURT: All right. All right. So we've got -- now, Mr. Barth, you represent Mr. Cole and ---

MR. BARTH: --- and ---

THE COURT: --- Turner Padgett?

MR. BARTH: Yes, sir, Your Honor, I do. I represent the defendants: Turner Padgett Graham & Laney, and Edward R. Cole -- Edward R. Cole, Your Honor.

THE COURT: Okay. And, Ms. Lewis, you represent Nationwide?

MS. LEWIS: That is correct, Your Honor.

THE COURT: Now, am I -- am I correct that -- oh, what -- what was the name of it? I'll think of something else.

Okay. So -- all right. How -- how do y'all want to

1 take them?

2 MS. LEWIS: Your Honor, if I may, the motion to
3 dismiss, I would like to have that heard first, because the
4 -- because the ---

5 THE COURT: Because it ---

6 MS. LEWIS: --- discovery ---

7 THE COURT: --- might be ---

8 MS. LEWIS: --- is basically ---

9 THE COURT: --- dispositive ---

10 MS. LEWIS: --- contingent upon that; and then, I
11 guess, the motion for partial summary judgment.

12 THE COURT: All right. Be happy to hear from you,
13 ma'am.

14 MS. LEWIS: Thank you, Your Honor. May it please the
15 Court: Your Honor, the motion to dismiss has been filed by
16 all defendants on Mr. Akim Anastopoulo's complaint in which
17 he asserts causes of action for defamation, negligent
18 supervision, negligent retention, and conspiracy against
19 Attorney Cole, against his law firm, and against Nationwide
20 Mutual Insurance Company.

21 Your Honor, the allegations of the complaint arise out
22 of an underlying case that is now pending in federal court.
23 And the statements that are at issue are all statements
24 that are contained in memos that were filed -- in -- in --
25 in two memos that were filed in that case by Mr. Cole, as

1 well as one e-mail that was sent from Mr. Cole to Mr.
2 Anastopoulo himself without copying anybody in which, you
3 know, there were some words exchanged.

4 It is our position that all of the statements at issue
5 are completely and absolutely privileged. And for that
6 reason, the plaintiff has failed to state a claim for which
7 relief can be granted under Rule 12(b)(6), and we would ask
8 that the motion be granted on those grounds.

9 I will try to keep this brief, Your Honor, but I think
10 it's important that -- for the Court to have a little bit
11 of background on the underlying claim that's now pending in
12 federal court. It's a little convoluted, and it's a little
13 complex. But essentially, the -- the claims arise out of
14 two memos, as I've stated, that Mr. Cole filed in the
15 underlying claim.

16 The underlying claim is *Motsinger v. Nationwide*. And
17 in that case Ms. Motsinger is represented by Mr. Akim
18 Anastopoulo, who is the plaintiff here, in a bad-faith
19 action that she brought against Nationwide. The long and
20 short of the case was that there was a car accident, and
21 there arose an issue under the UIM policy as to whether or
22 not Ms. Motsinger was common-law married to the -- the
23 person whose policy was at issue.

24 THE COURT: Okay.

25 MS. LEWIS: The case started in circuit court, with

1 Nationwide filing a declaratory-judgment action to have the
2 circuit court declare whether or not there was a marriage
3 -- a common-law marriage. Because if there was, then the
4 policy applied wasn't done. Mr. Anastopoulo filed a -- his
5 law partner filed a motion to dismiss that action, saying
6 that the Court did not have -- this Court did not have
7 jurisdiction to determine the existence of a common-law
8 marriage; that the family court had exclusive jurisdiction
9 over that issue.

10 According to Mr. Cole's memo, there were some
11 conversations between the attorneys at that time -- and I
12 think at that time there -- there were different attorneys
13 -- that the parties agreed that they would dismiss -- that
14 Nationwide would dismiss its complaint in circuit court and
15 would refile the complaint -- the -- the declaratory-
16 judgment action in family court.

17 Based on that agreement, the circuit court action was
18 dismissed. Nationwide then filed the declaratory-judgment
19 action in family court. And Mr. Anastopoulo again filed a
20 motion to dismiss. This time he said that Nationwide
21 lacked standing in the family court to seek a declaratory
22 judgment as to a marriage between Mr. -- Ms. Motsinger and
23 -- and the gentleman in question.

24 Thereafter, in the memo -- and all of this -- all the
25 information that I'm giving you is -- is -- is taken from

1 the memo that's at issue in this case. Thereafter, Mr.
2 Anastopoulo filed a separate action in family court against
3 the putative husband, not naming Nationwide -- not
4 notifying Nationwide, not giving Nationwide any notice of
5 it -- and ultimately seeks a hearing in family court; has
6 the putative husband come in and testify. They say that
7 they've been together -- he and Ms. Motsinger say that
8 they've been together. Basically, the family court had
9 some reservations about it; asked for some tax returns,
10 because Mr. Anastopoulo asked that the order finding
11 common-law marriage be retroactive so that it would be
12 applicable, essentially, at the time that this accident
13 happened, but not saying that to the family court.

14 So the family court ultimately signs an order, finding
15 that there is a common-law marriage without Nationwide's
16 knowledge. During the proceeding in which Mr. Anastopoulo
17 was before the family court, the family court noted that
18 there was a pleading in the family-court file that had the
19 caption with Nationwide on it.

20 And Mr. Anastopoulo had some exchange with the Court
21 about that, but didn't say to the Court, you know,
22 specifically, "Yes. There is another action. This is why
23 we're here. The whole reason why we're seeking this
24 declaration is to -- is because of this policy."

25 So the Court then enters an order, finding that there

1 is a common-law marriage. The -- it's -- the Court's
2 subsequently apprised of the full story of what's going on.
3 The Court then vacates the order.

4 And then, there is an action filed in federal court,
5 which is -- which is pending. So that's kind of the
6 underlying -- the underlying case.

7 THE COURT: Okay.

8 MS. LEWIS: There are several statements made in the
9 memo that are not -- that -- that are not disputed. I
10 mean, the memo speaks for itself. I don't know if the
11 Court, you know, has a copy of it. But clearly, Mr. Cole
12 took issue with the manner in which Mr. Anastopoulos
13 litigated the case and -- and made that very clear in the
14 -- in the memo.

15 That having been said, Your Honor, there's no question
16 but that all statements were made within the course of the
17 judicial proceeding and that they're all absolutely
18 privileged. Now, what Mr. Anastopoulos has argued is that
19 the privilege is limited by a requirement of relevance or
20 pertinence or materiality; that the -- that the statements
21 that are made in the memo, in order to be subject to the
22 judicial privilege, have to be relevant. Well, the -- to
23 the -- and that is -- that is a correct statement of the
24 law.

25 But if the Court will look at the cases in which this

1 Court has applied the privilege, you will find that the
2 Court has broadly interpreted the relevancy provisions and
3 has found relevancy in the pleadings in a manner that would
4 allow the judicial privilege to apply. And it -- and it's
5 for good reason. The public policy behind that is -- is
6 obviously very sound.

7 And so the -- so we believe that just based on the
8 pleadings here, that everything on its face is privileged;
9 that the question of relevance is an issue for the Court --
10 it's not an issue of fact, obviously; it's a -- a clear
11 issue of law -- and that Mr. Cole's statements made during
12 the course of the memo -- and the memo, Your Honor, was in
13 response a -- the -- one -- the first memo was in response
14 to Mr. Anastopoulo's motion to amend his pleadings. He
15 wanted to amend his pleadings to assert an abuse-of-process
16 claim against Nationwide. And so Mr. Cole, in response to
17 that, set forth a whole litany of what had transpired in --
18 in the litigation and -- and characterize it as he did.

19 I just would like to quote for the Court -- I think
20 the -- the pivotal case which Mr. Anastopoulo acknowledged
21 in his -- in his memo is the *McKesson* case. And as I've
22 indicated, relevance is interpreted by the courts very
23 broadly for purposes of applying the privilege. And what
24 the Court has said is that: "Pleadings must be liberally
25 interpreted and all doubts resolved in favor of relevancy

1 when assessing a -- a -- a claim of this sort."

2 The only other document that was not actually filed in
3 the Court was an e-mail, Your Honor, in which Mr. Cole sent
4 an e-mail to Mr. Anastopoulos basically, you know, saying
5 something to the effect of: "Your -- you know, we'll --
6 we'll -- don't contact my client directly. You know, we'll
7 deal with these ridiculous motions of yours when we go to
8 court," or something to that effect. I don't have it right
9 in front of me.

10 But -- but that e-mail doesn't have any copies to
11 anybody. It's sent directly from Mr. Cole to Mr.
12 Anastopoulos. And we don't believe it even -- it states a
13 -- there's no publication either, as far as that is
14 concerned.

15 I would just conclude by saying, Your Honor, the
16 privilege is strong. It's difficult for a plaintiff to
17 overcome. And what the courts have said is that: The
18 privilege protects not only trial and deposition testimony,
19 but also statements in pleadings, affidavits,
20 communications between counsel, statements by counsel to
21 prospective witnesses, and in general -- quote -- any
22 utterance arising out of any judicial proceeding and having
23 any reasonable relation to it, including preliminary steps
24 leading to judicial actions of any official nature,
25 provided those steps bear reasonable relationship to it.

1 Because all of the statements at issue here, Your
2 Honor, were made during a judicial proceeding and are
3 relevant and pertinent under the Court's liberal and broad
4 construction and the application of the privilege is
5 applicable here, we would ask that the motion to dismiss be
6 granted and that all of the claims be dismissed with
7 prejudice.

8 Now, there is one claim, Your Honor, that -- in -- in
9 -- the defamation claim is as to all defendants. As best
10 as I can read the complaint, the negligent-hiring and
11 negligent-supervision claims are against the law firm and
12 not Nationwide.

13 And then, there is a conspiracy claim against all
14 defendants, which I'll just address very briefly. There's
15 nothing in the complaint that talks about what's --
16 agreement there was between Nationwide and Mr. Cole or his
17 law firm, what agreement there was or meeting of the minds
18 there was to commit a wrongful act against the plaintiff.
19 And we don't believe that -- that the complaint states a
20 sufficient claim under Rule 12(b)(6) on the conspiracy
21 claim either.

22 So for those reasons, we would ask that the motion to
23 dismiss be granted.

24 THE COURT: Thank you, ma'am.

25 MR. POULIN: Good morning, Your Honor.

1 THE COURT: Yes, sir.

2 MR. POULIN: (To Mr. Barth) I'm sorry. Do you have
3 any ---

4 MR. BARTH: I'll -- I'll reply, Your Honor, no
5 problem, after Mr. ---

6 THE COURT: All right.

7 MR. BARTH: --- Mr. Poulin.

8 THE COURT: Okay.

9 MR. POULIN: Good morning, Your Honor.

10 THE COURT: Yes, sir.

11 MR. POULIN: Eric Poulin for the plaintiff, Mr.

12 Anastopoulos. Your Honor, this is a -- a 12(b)(6) motion.
13 It's a motion to dismiss. This case is very early on. In
14 -- in fact, it's -- because we may have to get into some
15 discovery disputes later. There hasn't been very much
16 discovery that's gone on in this -- in this action.

17 And when we're looking at a 12(b)(6) motion, we can
18 only look at the complaint and the law -- the state of the
19 law, of course, as you know, as it is in South Carolina --
20 and whether or not the complaint, as it's pled, states any
21 cause of action that could -- that could give rise to a --
22 a jury verdict under the law.

23 And -- and looking at the law, we -- we've talked a
24 little bit about the McKesson case. That's a federal court
25 case, so it's -- may not be directly applicable in South

1 Carolina. But it -- it -- it pretty fairly states the law
2 as it is in South Carolina. There are also several cases
3 within South Carolina. *Woodward v. South Carolina Farm*
4 *Bureau*, which is 277 S.C. 29, is one of the leading ones.

5 And -- and the -- the law is -- is pretty much as
6 we've been discussing all morning: that the statements
7 have a -- a privilege within the judicial proceedings only
8 to the extent that they're relevant or necessary in -- in
9 making the claims in court.

10 And just as a very brief rundown, some of the things
11 that Mr. Cole said in his pleadings: He accused Mr.
12 Anastopoulo of disregarding professional obligations; of
13 being duplicitous; double-dealing; abusing the legal
14 process; being absurd; being dishonest; being shameful;
15 intentionally misleading the Court; harassing litigants;
16 oppressing litigants; engaging in deceit; engaging in
17 subterfuge; being silly; being juvenile; being abusive;
18 intentionally misleading the Court; bludgeoning Nationwide;
19 engaging in scurrilous conduct; and escorting -- extorting
20 litigants.

21 And -- and so those are all of the things that -- that
22 -- that he put into these memos. And Ms. Lewis gave you a
23 brief outline of the case -- you know, the underlying case
24 and the Motsinger case before. And -- and she didn't use
25 any of those terms. She gave you a -- a very nice outline

1 of -- of the facts.. And -- and she didn't have to use any
2 of those terms, because those terms are not necessary in --
3 in furtherance of the litigation.

4 So, Your Honor, if we look at the -- at the *Woodward*
5 *v. South Carolina Farm Bureau* case, the Court says that --
6 that: There is a privilege, of course, under judicial
7 proceedings. But the Court says -- and I'm quoting from
8 the case -- the privilege does not protect any unnecessary
9 defamation. In order for a communication to be privileged,
10 the person making it must be careful to go no further than
11 his interest or his -- his duties require.

12 So at -- you know, looking at -- at -- at the
13 statement that the courts have interpreted this privilege
14 very broadly, I think that this case seems to suggest
15 otherwise. And it -- it -- it admonishes the person making
16 the statements that they have to be careful -- very careful
17 not to go any further than their interests require.

18 This case also says -- and they're quoting -- now
19 they're quoting *Davis v.* -- I guess it's *Niederhof* -- which
20 is 246 S.C. 192, that: Abuse of a conditional privilege is
21 ordinarily an issue reserved for the jury.

22 So whether or not the statements that were made are
23 subject to the privilege, Your Honor, we believe is -- is a
24 jury question -- or, at the very least, is a question that
25 the Court would have to go outside of the pleadings to look

1 at. And, of course, Rule 12(b)(6) would allow the Court to
2 turn this into a summary-judgment motion. But being that
3 there has been no discovery to date, no depositions, we
4 believe that summary judgment would be premature.

5 And I would point Your Honor to Paragraph 22 in our
6 complaint. We state that: All the statements were not
7 relevant to the pending proceedings and are thereby not
8 subject to judicial-proceedings immunity.

9 So we would argue, Your Honor, that based purely on
10 the 12(b)(6), the motion-to-dismiss argument that we're
11 here for today, as we look at the state of the law, the law
12 says that the privilege does not extend to communications
13 that are not necessary and relevant to the litigation.
14 We've alleged in our complaint that, in fact, the
15 statements were not necessary and relevant to the
16 litigation. We believe that through further discovery,
17 we'll be able to prove that to a jury.

18 But I -- I think, based purely upon on the 12(b)(6)
19 standard, that we have alleged a cause of action that would
20 allow us to proceed with the case and, therefore, would be
21 -- it -- it -- it -- it wouldn't be proper for the Court to
22 dismiss on those grounds.

23 THE COURT: All right, sir.

24 MR. POULIN: Thank you.

25 THE COURT: Mr. Barth?

1 MR. BARTH: May it please the Court, Your Honor: I
2 would just -- we join in Nationwide's motions to dismiss.
3 But I would just point out to Your Honor the -- the case
4 that's pending in federal court that gave rise to these
5 memos deal with an -- with insurance coverage in an
6 underlying accident. One of their causes of action they
7 were talking about is bad faith.

8 Now, Mr. Cole's comments weren't ideal. I'll be the
9 first to say I probably wouldn't have written the memo like
10 he did. But the fact of the matter is when he was
11 describing the way that Mr. Anastopoulo had handled the
12 family-court action, the underlying action, etc., those
13 were the descriptive terms he used. He used them in memos
14 to the Court. How can they not be relevant to the issues
15 of bad faith or even abuse of process that they want to
16 add?

17 So, Your Honor, as to the relevance, they are clearly
18 relevant to the issues that were before the Court in the
19 underlying action, which brings Your Honor back to the --
20 to the nuts and bolts of it. Our comments that are made in
21 judicial settings, in judicial pleadings, can they be the
22 subject of a lawsuit such as this? Because if not, I mean,
23 the -- the lawsuit cannot stand, period, because every
24 single thing that they have alleged and gone through all
25 those words they're talking about, with the exception of

1 the word -- I think it was "silly" -- with the exception of
2 the phrase that says: "You're not going to depose anybody
3 until your juvenile, silly motions are heard and disposed
4 of" -- other than that, you know, which was a private e-
5 mail from Ed Cole to Anastopoulo, so they can't even get to
6 the part on that particular statement that it was ever
7 published to anybody, because it wasn't. I mean, you can't
8 publish -- publish it to the recipient ---

9 THE COURT: You agree ---

10 MR. BARTH: --- when he's ---

11 THE COURT: --- with that ---

12 MR. BARTH: --- the one ---

13 THE COURT: --- don't you ---

14 MR. POULIN: We do ---

15 THE COURT: --- sir?

16 MR. POULIN: --- Your Honor. And I -- I believe -- I
17 don't believe that the e-mail or the statements made in the
18 e-mail are actually a part of our cause of action. It was
19 disclosed to them in discovery as a discovery response, and
20 we intend to use it to prove malice, if -- if we have to go
21 down that route. But the -- the statements in that ---

22 THE COURT: Well, then ---

23 MR. POULIN: --- particular ---

24 THE COURT: --- it becomes ---

25 MR. POULIN: --- e-mail ---

1 THE COURT: --- relevant.

2 MR. POULIN: I'm sorry, Your Honor?

3 THE COURT: Then, it becomes relevant.

4 MR. POULIN: That's ---

5 THE COURT: Then ---

6 MR. POULIN: --- correct, Your Honor. But ---

7 THE COURT: --- you ---

8 MR. POULIN: --- we haven't sued for defamation based
9 upon the statements in the e-mail for -- in -- in the
10 specific e-mail.

11 MR. BARTH: Then, the bottom line is, Your Honor,
12 every single statement -- every single statement that gives
13 rise to their alleged cause of action has to do with things
14 that were written in a memo to Judge Harwell in federal
15 court. Their allegations say: "The statements below were
16 known by the defendants to be published as part of the
17 public record." And -- and they were. They were all
18 published in a judicial setting, which we contend is
19 privileged.

20 And that's -- I mean, that -- that's the long and
21 short of it, Your Honor. I don't think relevance is a
22 particularly tough hurdle to cross when they're talking
23 about bad faith. I mean, clearly, the behavior of the
24 plaintiff and the plaintiff's lawyer is an issue in a bad-
25 faith claim. Whether the insurance company handled a

1 certain -- a matter in a particular way, then nothing can
2 be more relevant than the way both sides handled the
3 underlying litigation.

4 So it gets to the bottom line: Is it protected? If
5 it is, then this whole case disappears.

6 THE COURT: All right, sir. The -- the memo that
7 y'all -- the memos that y'all reference, I'm -- I don't
8 know that I have copies of those. It's a fairly thick
9 file. And I was trying to look through to see ---

10 MS. LEWIS: Your Honor ---

11 MR. POULIN: Your Honor, in -- as an exhibit to my
12 motion for partial summary judgment -- I don't know if you
13 have that one, but I believe the memos were attached to
14 that exhibit -- or to that memo as exhibits.

15 MS. LEWIS: I think the excerpts from them may be. I
16 have full copies ---

17 MR. POULIN: Okay.

18 MS. LEWIS: --- if the Court needs them or would like
19 one.

20 THE COURT: Well, if you've got extra copies that --
21 that you could pass up, I would appreciate it. Here's the
22 problem: They may be in here.

23 MS. LEWIS: May I approach with these?

24 THE COURT: Yes, ma'am.

25 MS. LEWIS: Oops. It's not stapled. This is the

1 second.

2 THE COURT: All right. Thank you.

3 MS. LEWIS: Yes.

4 THE COURT: All right. Defendant's response to
5 plaintiff's -- okay.

6 MR. BARTH: Your Honor, while -- while Your Honor is
7 looking at that, can I also point out to Your Honor that
8 Paragraph 15 in their complaint says that: "The defamatory
9 and libelous statements complained about are not contained
10 in any pleading and/or are not relevant." If it's not the
11 e-mail -- if they're not suing on the comments made in the
12 e-mail, I don't know what is. I mean, obviously, a
13 memorandum to the Court is a pleading.

14 If their allegations say, you know, that -- that
15 particular paragraph, that they're not -- their claim is
16 not for anything that's in a pleading. I'd just point that
17 out to Your Honor. And I assume, if Your Honor finds that
18 the memo is a pleading, they're out on that basis as well.

19 MR. POULIN: All right. Your Honor, we were just
20 pointing out that -- to the Court in our complaint that it
21 -- it wasn't a -- a basis of -- of any cause of action. It
22 wasn't something that they had to state in a complaint or
23 an answer ---

24 THE COURT: It's ---

25 MR. POULIN: --- as a ---

1 THE COURT: --- clearly ---

2 MR. POULIN: --- pleading.

3 THE COURT: --- there's a ---

4 MR. POULIN: It -- it ---

5 THE COURT: --- pleading.

6 MR. POULIN: --- was a memorandum to the Court. We --
7 we acknowledge that.

8 THE COURT: Will you acknowledge that's a pleading?

9 MR. POULIN: I -- it -- I -- I don't think so, Your
10 Honor. I think that a -- a memorandum is -- is a factual
11 -- you know, it states the law and the -- the factual
12 arguments to support a motion or a -- a pleading as a
13 complaint and answer -- something of that nature. I mean,
14 we -- we do acknowledge that it was filed with the Court
15 and that there is a privilege that -- that may attach to
16 statements that are filed with the Court.

17 THE COURT: Because obviously, the -- their whole
18 position hinges on the fact that these are pleadings.

19 MR. POULIN: Well -- well, that's correct, Your Honor.
20 But I -- I guess our argument is at this stage of the
21 litigation, without any discovery, without my having the
22 chance to depose Mr. Cole and -- and find out if he
23 could've worded these things differently, if they were
24 relevant ---

25 THE COURT: I ---

1 MR. POULIN: --- and why ---

2 THE COURT: --- well, that ---

3 MR. POULIN: --- he claims ---

4 THE COURT: --- that -- now, that's not an issue,
5 right?

6 MR. POULIN: Your Honor ---

7 THE COURT: Whether he could've worded them
8 differently, that's certainly not an issue.

9 MR. POULIN: Well, it could be a ---

10 THE COURT: Yeah.

11 MR. POULIN: --- issue.

12 THE COURT: We -- we can always word things
13 differently.

14 MR. POULIN: Well, that's right, Your Honor. But you
15 -- I -- I believe, under the *Woodward* case, he -- he's got
16 to attempt -- if he can plead his case or make his
17 arguments in a memorandum without making defamatory
18 statements ---

19 THE COURT: I don't think that's the law. I think the
20 question is going to be whether or not the statements made
21 were relevant to issues in the underlying case, not that
22 they weren't the best words to choose. It's like, as Mr.
23 Barth just said, he wouldn't have used those words, if he
24 would've drafted that pleading. But that doesn't mean that
25 it makes him, you know, subject to -- to a liability. So I

1 -- I don't know -- I mean, I -- I -- I understand your --
2 your argument. I -- but I -- I -- I don't think taking Mr.
3 Cole's deposition and having him admit that he could've
4 said it better is -- is -- is relevant.

5 MR. POULIN: Or whether -- whether it was necessary at
6 all, why -- why he contends that it was necessary for him
7 to raise those allegations.

8 THE COURT: Okay. I -- I guess were not -- I'm -- I
9 think everyone in here will agree it could've been said
10 better. That's not the issue. The issue is that what was
11 being said, that -- that those comments or statements were
12 relevant to the issues in the case, not that he could've
13 said them better or he could've said them another way. I
14 -- I -- I -- I'm -- I clearly don't believe that that's the
15 standard we're looking at.

16 MR. POULIN: Well ---

17 THE COURT: I mean ---

18 MR. POULIN: --- and, Your Honor, I -- I -- I agree
19 with you on that. I -- I think -- but as we stated several
20 times, the question is whether they were relevant. The
21 question ---

22 THE COURT: Right.

23 MR. POULIN: --- the question -- and I -- our -- I --
24 I believe ---

25 THE COURT: It's a ---

1 MR. POULIN: --- our ---

2 THE COURT: --- relevance ---

3 MR. POULIN: --- the basis ---

4 THE COURT: --- question.

5 MR. POULIN: --- of our argument today is that that's
6 a question probably that has to be left to the jury. And
7 even if it is a question that the Court can take up, that
8 the Court couldn't take it up on a 12(b)(6) motion and we
9 would have to turn this into summary judgment motion and
10 look at -- obviously, consider factors outside the face of
11 the pleadings, which we would say would be premature at
12 this time.

13 THE COURT: Well, I -- I -- if I'm -- if I'm listening
14 correctly to -- to their position, they're -- what --
15 they're not asking the Court to look in -- at anything
16 outside the pleadings. And I don't think you are either.
17 Because we all agree that the -- the private e-mail between
18 Mr. Cole and Mr. Anastopoulos is not the basis for your
19 action.

20 MR. POULIN: That's correct.

21 THE COURT: So all we're talking about are pleadings,
22 correct?

23 MR. POULIN: Correct. But I -- I'm talking about the
24 pleadings in -- in this case, in the defamation case, to
25 look outside of our complaint, I think. If the complaint

1 alleges that -- that the statements made in the other
2 pleading -- call them "pleadings" ---

3 THE COURT: Okay.

4 MR. POULIN: --- or "memoranda" ---

5 THE COURT: So you -- I -- I got you. I understand.

6 What you're saying is that under 12(b)(6), you're looking
7 at the answer and the complaint.

8 MR. POULIN: In this action. That's right ---

9 THE COURT: In this ---

10 MR. POULIN: --- Your Honor.

11 THE COURT: --- action?

12 MR. POULIN: And in our -- in our complaint, we allege
13 that the -- that the defamatory statements were not
14 necessary in furtherance of the other litigation. And
15 based upon that allegation, based upon the laws that exist,
16 there's a possibility that -- that that could -- that a
17 jury -- a reasonable jury could return a verdict on that
18 issue.

19 MS. LEWIS: May -- may I, Your Honor?

20 THE COURT: Yes, ma'am.

21 MS. LEWIS: If the Court confines itself to their
22 complaint, which quotes extensively from the memos that are
23 at issue, looking at the four corners of that complaint,
24 the Court can make a determination -- the Court must --
25 relevance is not a question of fact for a jury. The -- the

1 Court -- in this context, what the courts have said is that
2 the -- the Court determines whether or not it's relevant
3 and that relevance is to be broadly -- broadly construed.
4 In pleadings -- the relevance in pleadings should be
5 broadly construed. And I think on pleadings, you know --
6 some call answer and complaint only pleadings, but it's
7 clear that the privilege applies to any document that's
8 filed, any communication that -- that -- that's filed with
9 the Court.

10 So if you look at the four corners of the complaint --
11 and that's why we filed it as a 12(b)(6) and not as a
12 summary judgment -- because we're not attaching affidavits
13 or needing any deposition testimony. It's very clear, as
14 Mr. Barth said, that what they've alleged in the complaint
15 are all statements that they've quoted from memos that were
16 filed in the other case. The only question before the
17 Court is to whether or not those statements were relevant
18 to those proceedings. And that is what we have argued
19 today: that under the broad interpretation of relevance
20 for purposes of -- of assessing claim, that the statements
21 are relevant, as stated in their complaint that they've
22 alleged; and that on that basis, the complaint should be
23 dismissed.

24 THE COURT: Okay.

25 MS. LEWIS: Thank you.

1 THE COURT: All right. Well, listen, I -- I'm going
2 to need to read these and -- and read the -- the -- the
3 case that y'all -- the cases that y'all have cited. And I
4 -- I will do that.

5 Now, so that -- having said that, I think I need to
6 hear from you on the other issue -- on the other motions
7 and then ---

8 MR. POULIN: Your Honor, my motion for partial summary
9 judgment might be very easy to dispose of.

10 THE COURT: All right.

11 MR. POULIN: Basically, all we're asking for in that
12 motion is just for partial summary judgment -- is that Mr.
13 Cole -- Defendant Cole actually said what we've alleged in
14 the complaint. And the -- the only reason we had to bring
15 that motion is in -- in all of the defendants' answers, to
16 our specific paragraphs, they've craved reference and deny
17 -- I don't know if they deny, but they, you know, crave
18 reference. And I -- I think it's been admitted today that
19 he actually said what he said. And that is all we're
20 asking for in our partial-summary-judgment motion.

21 THE COURT: Well, do the -- do these not speak for
22 themselves?

23 MS. LEWIS: They do, Your Honor. I don't think a --
24 an entry of summary judgment is warranted on that issue.
25 There's no dispute that the memos speak for themselves;

1 that they were filed. I the file-stamped copies are on the
2 top, showing that they were filed. And -- and they say
3 what they say.

4 THE COURT: Yeah. I mean, I -- I -- I'm not
5 understanding that that's a summary-judgment ---

6 MS. LEWIS: I ---

7 THE COURT: --- issue.

8 MR. POULIN: Well, it may -- and the only reason, Your
9 Honor, is, like I said, because we -- in -- in -- in our
10 complaint, we listed each statement ---

11 THE COURT: Yeah.

12 MR. POULIN: --- in -- in a separate paragraph. And
13 in their responses -- in their ---

14 THE COURT: They ---

15 MR. POULIN: --- answer ---

16 THE COURT: --- denied it?

17 MR. POULIN: --- they denied or craved reference. So
18 we just wanted ---

19 THE COURT: Okay.

20 MR. POULIN: I mean, as long as we're all on the same
21 page that he -- he said what he said, that's all we're ---

22 THE COURT: I ---

23 MR. POULIN: --- asking for.

24 THE COURT: Okay. And -- and clearly, they -- the --
25 the memos do speak for themselves. And so we'll just allow

1 them to -- to stand for what they are. All right. So --
2 so I guess I'm -- I'm ---

3 MR. BARTH: Our position ---

4 THE COURT: --- I'm not ---

5 MR. BARTH: --- Your Honor ---

6 THE COURT: --- granting your ---

7 MS. LEWIS: Your ---

8 THE COURT: --- motion. I ---

9 MS. LEWIS: Well ---

10 THE COURT: But -- but ---

11 MS. LEWIS: --- well, it's -- it's -- a summary
12 judgment is as a matter of law. This is a factual issue as
13 to whether or not ---

14 THE COURT: Yeah.

15 MS. LEWIS: --- there is a factual -- but it -- so
16 there's -- summary judgment is not the appropriate
17 mechanism for doing that anyway. So that -- that would be
18 a factual finding by the Court that the memos are what they
19 are. So I don't think that that's appropriate. But I
20 think the issue really is moot. I think we've all ---

21 THE COURT: I think everyone agrees that the memos
22 speak for themselves. And so -- at least so that the
23 record can be clear, I'm going to deny the motion as to
24 summary judgment and just allow the memos to stand for --
25 for themselves.

1 MS. LEWIS: Thank you.

2 THE COURT: Where -- where does that leave us now?
3 Any other motions pending?

4 MS. LEWIS: It leave us with a motion to compel by
5 Nationwide.

6 THE COURT: All right.

7 MS. LEWIS: And I would note, Your Honor, that the
8 plaintiff has also filed a motion to compel. But it's --
9 it's scheduled for September 4th, so I don't think that one
10 is before the Court today.

11 THE COURT: Well, let me ask you this: Is everyone
12 prepared to take it up, or do you want to wait till
13 September?

14 MR. POULIN: Well, we're prepared to take ---

15 THE COURT: I don't ---

16 MR. POULIN: --- it up if they are.

17 THE COURT: Are y'all prepared to -- I don't know.

18 MS. LEWIS: Yes.

19 THE COURT: I ---

20 MS. LEWIS: We -- we're prepared. I mean, that's --
21 that's ---

22 THE COURT: Why don't we go ahead and hear it, instead
23 of having y'all -- all come back in September. And again,
24 all this is going to be based on -- or pending whatever my
25 decision is on your 12(b)(6). But rather than have

1 everybody reassemble, if you're -- if you're -- I don't
2 want to make anybody go forward if you're not prepared to
3 go forward on -- on their motion to compel. But I -- I
4 think we probably can take it all up now.

5 MS. LEWIS: That's fine, Your Honor.

6 THE COURT: So let -- let me hear from Nationwide,
7 then.

8 MS. LEWIS: Your Honor, Nationwide filed a motion to
9 compel discovery responses based on deficient responses
10 that we -- responses that we believe to be deficient. I
11 don't know if the Court has a copy of the filed motion,
12 along with the actual discovery responses and the letter
13 that we wrote to Mr. Poulin, outlining our objections. It
14 was filed on June 26th ---

15 THE COURT: It was on ---

16 MS. LEWIS: --- 2012.

17 THE COURT: Filed ---

18 MS. LEWIS: It's not ---

19 THE COURT: --- filed ---

20 MS. LEWIS: --- a major ---

21 THE COURT: --- June 26th?

22 MS. LEWIS: Correct, Your Honor.

23 THE COURT: All right. Let me -- let me see if I can
24 -- I wish we were able -- I wish these files were indexed.
25 And I realize that's impossible, but still can wish it.

1 (To the deputy clerk of court) Melissa?

2 DEPUTY CLERK OF COURT: Yes, sir.

3 THE COURT: If a matter is filed, like, on June 26th,
4 would it be chronological in here?

5 DEPUTY CLERK OF COURT: It should be.

6 THE COURT: So that ---

7 DEPUTY CLERK OF COURT: Let me go through ---

8 THE COURT: --- so that I have -- like, I -- I have
9 this stuff May the 21st. And then, from May the 21st, it
10 jumps to July the 16th.

11 DEPUTY CLERK OF COURT: Let me see what ---

12 THE COURT: So ---

13 DEPUTY CLERK OF COURT: --- what date it was clocked
14 in.

15 THE COURT: --- do I need to keep looking to see if
16 something was filed later or ---

17 DEPUTY CLERK OF COURT: Yes, sir. I'll pull it up now
18 and see if I can see exactly when it was filed.

19 THE COURT: Would it -- would these have -- would --
20 would they have been attached as exhibits to anything that
21 -- that you may have submitted?

22 MS. LEWIS: Your Honor, the -- the defendant
23 Nationwide Mutual Insurance Company's motion to compel that
24 was filed on June 26th had, as attachments to it, exhibits
25 -- our discovery to them, their responses to us, and our

1 letter to Mr. Poulin. And our -- I'm sorry ---

2 MR. BARTH: Your ---

3 MS. LEWIS: --- but I don't have ---

4 MR. BARTH: Your Honor ---

5 MS. LEWIS: --- another copy.

6 MR. BARTH: --- I have an extra -- I -- I have my
7 copy. And since I'm not really part of this motion, Your
8 Honor can look at mine if you want.

9 THE COURT: I'm going to let Melissa look ---

10 MR. BARTH: You could ---

11 THE COURT: --- and we can proceed at least ---

12 MR. BARTH: Yes. That's my copy ---

13 THE COURT: Thank you.

14 MR. BARTH: --- of -- of what the parties are
15 discussing with Your Honor.

16 THE COURT: Okay. All right. Thank you. All right.
17 Ms. Lewis, go ahead.

18 MS. LEWIS: Thank you, Your Honor. In the
19 interrogatories, Your Honor, there -- at the back of that
20 package, there's a letter dated June 15th of 2012 that my
21 office wrote to Mr. Poulin regarding the deficiencies in
22 the -- in their responses. And it outlines the
23 interrogatories that are at issue. And I can go through
24 them one by one if the Court would like or however the
25 Court thinks it most expeditious to do it.

1 But -- but the first one on there requests damages and
2 -- it was Interrogatory No. 9. And the interrogatory asked
3 to: "Set forth a detailed accounting of all monetary
4 damages incurred as a result of the injuries enumerated in
5 the complaint. Such statements should include all
6 information or computations used and a detailed
7 justification for each figure."

8 And the response is that: "Plaintiff's damages are
9 detailed in the complaint. These damages will be valued by
10 a trier of fact."

11 And the purpose of the -- the deposition, Your Honor,
12 is that he's -- there's an indication it was lost business.
13 And to the extent that there is an value or a monetary
14 amount that -- that is being claimed, then I think that
15 Nationwide is entitled to that information and not to just
16 refer us back to the complaint and say that the jury will
17 determine value. Obviously, I understand that in a case of
18 this type, there are some noneconomic damages that, if the
19 case proceeded, would likely be determined by a jury. But
20 our -- our interrogatory was asking for specific financial
21 information. And in that vein we don't believe that the
22 answer was -- is sufficient.

23 THE COURT: All right. Mr. Poulin, you want to
24 address those as she brings them up?

25 MR. POULIN: Sure, Your Honor. And this -- you know,

1 this is a -- I guess a tough case that in a car accident,
2 we would have medical bills and lost wages. It -- it's --
3 it's a little bit hard to quantify the damages ---

4 THE COURT: Well ---

5 MR. POULIN: --- on -- on ---

6 THE COURT: --- you -- I mean ---

7 MR. POULIN: --- this type ---

8 THE COURT: --- if -- if ---

9 MR. POULIN: --- of case.

10 THE COURT: --- you're going to claim damages for lost
11 opportunities, lost business, or whatever, apparently
12 that's occurred and you can -- because you've got to prove
13 your damages.

14 MR. POULIN: That's correct, Your Honor. We will have
15 to -- eventually, I think, we'll probably have to hire a --
16 an expert on -- on that issue to run the numbers. And, of
17 course, the expert would be disclosed and that he would
18 generate a report that we'd be more than happy to produce
19 to the defendants, and -- and he could be deposed on that
20 issue.

21 At this time we don't have hard numbers. And -- and
22 part of the reason is -- and -- and if you look at
23 defamation law -- and I think the reason that the
24 defamation law is as it is, is the category -- there's
25 different categories of defamation. And when you defame

1 somebody, either accusing them of breaking or a law or you
2 defame them in their professional field, it could be
3 defamation per se, where damages are presumed just by
4 making the statement.

5 And we believe that this is an action in defamation
6 per se. And we believe that one of the reasons the law has
7 sort of evolved that way to -- to have a defamation per se
8 is that sometimes these types of damages are -- are
9 difficult to quantify. We'll do our best, and we intend to
10 hire ---

11 (Whereupon, Mr. Barth conferred with Ms. Lewis.)

12 MR. POULIN: --- an expert. And -- and like I said,
13 we'll be more than happy to disclose that information as we
14 can. And -- and, you know, we're more than happy to -- I
15 guess we can -- we can supplement our response to give them
16 sort of an answer now, but we would reserve the right to, I
17 guess ---

18 THE COURT: Sure.

19 MR. POULIN: --- amend that and supplement it.

20 THE COURT: Well, and, of course, these are always
21 subject to amending and -- and to updating. So if -- if
22 you -- if you have -- if you have any figures or monetary
23 loss that you're claiming, go ahead and -- and make them
24 aware of that at this point, with the understanding,
25 obviously, that as you -- as you hire an expert to evaluate

1 what further damages there may be, that will always be
2 supplemented.

3 MS. LEWIS: That's ---

4 THE COURT: Okay?

5 MS. LEWIS: Yes. And -- and we have no problem with
6 that being supplemented. Our -- our issue with the answer
7 was that it said the damages are detailed and the
8 complaint. And the complaint, at Paragraph 25, does
9 specifically reference monetary damages. And so that's
10 what our interrogatory was going to and was ---

11 THE COURT: Okay. All right. Then, the -- the next
12 one, you said, is 10, I think?

13 MS. LEWIS: Yes. Ten is -- is basically the same --
14 it -- it's similar to 9. It's asking particularity all
15 damages or injuries, again, getting back to monetary
16 damages. And our objection was it -- it -- there was an
17 objection to the extent it seeks attorney-client
18 privileged, work-product doctrine, or trial strategy and
19 then again referred back to the complaint. So I think the
20 Court's ruling on 9 basically covers 10.

21 THE COURT: Okay.

22 MR. POULIN: Yeah. And we'll supplement 10 as well,
23 Your Honor.

24 THE COURT: All right, sir.

25 MS. LEWIS: On 13, 14, 15, and 16, we asked if there

1 has been any specific damage to the plaintiff's ability to
2 practice law, their reputation in the community, and the
3 image before the courts of the state. And again, we
4 understand the claim of defamation per se. But what we're
5 seeking in that -- if they're -- if Mr. Anastopoulo has had
6 someone say, "Well, you know, because you acted that way in
7 this Motsinger case, we're not doing business with you," or
8 has had the Court -- anything that -- that has actually
9 occurred specifically in response to that, then we believe
10 we're entitled to it. And that's -- that's what those
11 interrogatories are directed to. And -- and it may be ---

12 THE COURT: All right.

13 MS. LEWIS: --- that Mr. Poulin agrees with that. And
14 if he does and there's something to be supplemented, then
15 we're ---

16 MR. POULIN: I do. I -- I agree. And again, that --
17 that may be something that we have to supplement as we go
18 forward because, you know, the loss of -- part of our
19 practice is based on -- on referrals on some of the complex
20 bad-faith cases. And we believe this -- you know, with
21 this being out there on the -- on the federal record, it
22 could, going forward -- you know ---

23 THE COURT: It ---

24 MR. POULIN: --- we -- we don't know for sure right
25 now what ---

1 THE COURT: Right.

2 MR. POULIN: --- the damages are.

3 THE COURT: In other words ---

4 MR. POULIN: But we will ---

5 THE COURT: Right. You -- I don't mean -- your
6 damages are completely speculative. They may happen; they
7 may not; we don't know.

8 MR. POULIN: It -- that's -- well, that -- that
9 probably is true. But I think that's why defamation per se
10 is -- has evolved -- the law has evolved the way that ---

11 THE COURT: But ---

12 MR. POULIN: --- it has.

13 THE COURT: But where these questions ask for specific
14 -- in other words, where -- where they ask for, you know,
15 specific issues, you know: Have you had anyone file this?
16 Or have you had any -- you know, certainly, you can respond
17 to those.

18 MR. POULIN: That's correct, Your Honor.

19 THE COURT: Okay.

20 MR. POULIN: And I will. I will supplement ---

21 THE COURT: And then, of course ---

22 MR. POULIN: --- all these ---

23 THE COURT: --- these are all going to be -- and
24 they're going to be subject ---

25 MR. POULIN: --- subject ---

1 THE COURT: --- to supplementing because of the nature
2 of this type of case.

3 MS. LEWIS: Okay. And, Your Honor, the last
4 interrogatory, I mean, I think, is the same -- it -- it
5 asked for: ". . . any accountant, tax preparer, bookkeeper
6 who has kept or prepared books with regard to income,
7 property, business, or financial affairs, 2008 through the
8 present."

9 They have indicated: "It's overly broad, unduly
10 burdensome, and unlikely to lead to admissible evidence."

11 And we limited it to the 2008 year because Mr.
12 Anastopoulo did allege again monetary damages. So we
13 believe that that's relevant on the issue of monetary -- on
14 -- on the issue of monetary damages. To the extent it's
15 something that needs to be supplemented, we're fine with
16 that.

17 But we disagree with the objection that, in and of
18 itself, it's unduly burdensome or overly broad and just
19 shouldn't be answered at all. That's Interrogatory 18,
20 Your Honor.

21 THE COURT: Well -- well, what is the -- I -- I'm --
22 I'm not understanding the objection as being ---

23 MR. POULIN: In speaking with Mr. Anastopoulo -- and I
24 -- I think if -- if I sat down with Ms. Lewis, we -- we
25 probably -- well, maybe could work these issues out. But

1 he -- they -- and -- and this will come in more in some of
2 the requests for produce that they're -- they're attempting
3 to compel. But they're seeking a lot of documents that
4 have to do with his -- his personal income, his
5 investments.

6 THE COURT: Well, I ---

7 MR. POULIN: --- and -- and ---

8 THE COURT: --- know ---

9 MR. POULIN: --- and income -- you know, that -- it --
10 that doesn't relate to the law practice or to this
11 litigation. And if we can ---

12 THE COURT: This ---

13 MR. POULIN: --- narrow ---

14 THE COURT: --- this interrogatory doesn't ask for any
15 of that. "State the name and the address of any
16 accountant, tax preparer, bookkeeper, or other firm or
17 entity who has kept or prepared books, documents, with
18 regards to your income, property, business, or financial
19 affairs." It -- they're asking for the -- the name and ---

20 MR. POULIN: They've got ---

21 THE COURT: --- the address of his bookkeeper.

22 MR. POULIN: And -- and I'll get that to her ---

23 THE COURT: Okay.

24 MR. POULIN: --- this afternoon.

25 THE COURT: All right..

1 MR. BARTH: Your Honor, closely related to -- to all
2 of that is a number -- and -- and Mr. Poulin just mentioned
3 that the request to produce -- I -- I don't want to butt in
4 on Nationwide's motion. But the long and short of it is
5 Mr. Anastopoulo's complaint, particularly the defamation in
6 Paragraph 25, alleges -- in addition to other things, it
7 says: "And, in fact, the plaintiff has suffered
8 substantial personal damages."

9 Now, the request to produce that the lawyers have
10 fashioned are things like media-syndication agreements,
11 income tax returns for 2008 forward -- you know, a lot of
12 information that deal with a number of issues, one of which
13 is whether or not he's a public figure. And they're
14 objecting to that, just like they objected to answering the
15 interrogatories. Because the long and short of it is they
16 don't want to produce any financial information for us.

17 And what we're waiting on, Your Honor, when he's
18 alleged personal damages ---

19 MS. LEWIS: And ---

20 MR. BARTH: --- and monetary damages. We're entitled
21 to see his personal tax returns. We're entitled to see his
22 corporate tax returns. I don't know if that TV show is a
23 separate entity. We're entitled to see all of it, because
24 he's alleged: (1) he's not a public figure; and (2) that
25 he and his business have suffered monetary damages and

1 personal damages.

2 And in every single wreck case I've been in, when I
3 allege lost wages or loss of ability to earn, etc., I have
4 to produce my client tax returns -- business tax returns,
5 personal tax returns, profit-and-loss statements -- because
6 there's no other way for me to prove for a client that
7 they've lost these wages because of an automobile accident
8 without producing them. That doesn't mean they're
9 admissible. But if it's subject to leading us to
10 admissible information, we're entitled to it.

11 And his complaint is the one that has led us there.
12 And we can go through four or five of them. But it's
13 exactly the same type of information we want in the
14 interrogatories. And we're entitled to it, Your Honor.

15 THE COURT: Mr. Poulin, Mr. Anastopoulo brought this
16 action. He's an experienced lawyer -- trial lawyer. He --
17 he had to know, in bringing this action, that he was going
18 to subject himself to producing those documents. That's
19 part of the damages he's claiming. So where -- why are we
20 objecting to things that are clearly appropriate?

21 MR. POULIN: Well, again, I don't think that Mr.
22 Anastopoulo has any objection to producing any documents
23 that have to do with the law firm or with that practice.

24 THE COURT: Personal. His -- his complaint said he
25 has suffered personal injury ---

1 MR. POULIN: But ---

2 THE COURT: --- personal ---

3 MR. POULIN: --- but ---

4 THE COURT: --- damages.

5 MR. POULIN: Damage to his -- his reputation -- I -- I
6 don't think that we're claiming any -- any lost business
7 opportunities or lost wages on the personal end as a result
8 of the defamation. We're ---

9 THE COURT: Well ---

10 MR. POULIN: --- claiming personal ---

11 THE COURT: --- well ---

12 MR. POULIN: --- personal ---

13 THE COURT: --- read the -- read the complaint.

14 MR. POULIN: Your ---

15 MS. LEWIS: Monetary and personal.

16 MR. BARTH: Paragraph 25, Your Honor, says: "The
17 plaintiff has, in fact, suffered substantial reputation
18 damages, intangible damages, personal damages, and monetary
19 damages." And those are the categories of things that Ms.
20 Lewis and I want to see.

21 MR. POULIN: And -- and the monetary damages that we
22 allege in the complaint and that we're more than happy to
23 -- to turn over are -- you know, anything related to the --
24 to the law firm.

25 MR. BARTH: That's not what it says, Your Honor. His

1 complaint -- it says "personal." And the man ---

2 THE COURT: All right.

3 MR. BARTH: --- has all these personal interests
4 around the country and has spent a great deal of time and
5 energy portraying himself as this special person and
6 special kind of lawyer, etc. And he's alleged personal
7 damages. And whether he's on that show with the robe or
8 he's on the TV commercial, that's him personally.

9 And we're entitled to see -- that's why one of the
10 things I wanted to see, when I put some of these together,
11 I want to see his media agreements. And I want to see the
12 bobbleheads. And the reason I need to see that, Your
13 Honor, is because him personally -- if he's selling less
14 bobbleheads and he contends it's because of this; or he's
15 been taken out of some syndication, his show, because of
16 this lawsuit -- we're entitled to see that. We can't have
17 that sprung on us at trial. That's personal.

18 You know, and we don't know if he's going to take the
19 position that his TV show is or isn't related to his
20 lawsuit. We hadn't seen the tax returns, so we don't know
21 who owns what. But if it's got to do with his persona as
22 "Extreme Akim Anastopoulo," we're entitled to see it. And
23 if there's been any change in the money he earned before
24 his lawsuit and the money he's earned since the Motsinger
25 lawsuit, we're entitled to know that and we're entitled to

1 have our experts look at it.

2 THE COURT: Are -- are you -- are you telling the
3 Court that Mr. Anastopoulo is going ahead and taking the
4 position or wants to amend his complaint to say that any
5 damages he may have suffered are going to relate solely to
6 his law practice and to nothing else?

7 MR. POULIN: I ---

8 THE COURT: I mean, because if -- if he wants to -- to
9 -- to limit himself in that fashion, that's fine. But if
10 he's going to come in and claim personal damages and
11 personal injury, you know, and all this, he -- he's going
12 to play by the same rules that every citizen in this
13 country plays by when they get involved in a lawsuit such
14 as this.

15 MR. POULIN: I -- I agree, Your Honor. And I -- I
16 will speak with Mr. Anastopoulo to either amend the
17 complaint or, I guess, provide the documents. But it -- it
18 -- and I -- I -- I think part of -- of his issue and part
19 of our issue is that we've got -- he's got a substantial
20 amount of real estate investments that he does and -- and
21 renting properties and things like that that -- that I
22 think -- and -- and we may have to amend the complaint to
23 -- to say that we're not talking about those. But those
24 ---

25 THE COURT: Well ---

1 MR. POULIN: --- were ---

2 THE COURT: --- I mean, they ---

3 MR. POULIN: --- issues that I ---

4 THE COURT: --- they just need to know, is all I'm --
5 I mean, when I -- and when I say "they," I -- I don't mean
6 necessarily Ms. Lewis and Mr. Barth personally. Any --
7 anyone on the other side, the defense needs to understand
8 and know what it is they're facing, the -- the -- and the
9 allegations and the -- the possible liabilities they may be
10 facing. And -- and when he -- he or anyone -- when anyone
11 makes a -- a broad, sweeping allegation such as "I've
12 suffered damages personally and dah-dah-dah," now, you --
13 you've opened a pretty wide door. They need to know what
14 it is.

15 So yeah. I mean, I -- there either is going to need
16 to be a -- a -- a tailoring of this action to -- to fit
17 what he claims the damages are. But, you know, here we
18 are. And I'm not trying to tell anybody how to fashion
19 their lawsuit, Mr. Poulin.

20 But this is a defamation case: slander, libel, all
21 this stuff. That -- if -- if somebody's claiming damages
22 from that, I -- I don't know that they can -- I -- I don't
23 know that that's a -- I'm going to use a hunting term -- I
24 don't know that that's a rifle shot. I think that's a
25 shotgun shot. So he may be very -- he very well may be

1 subject to having to produce this -- this information,
2 because I don't know if -- if you're claiming damage to
3 your -- to your reputation, that -- I mean, it -- it -- it
4 just ---

5 MR. POULIN: I -- I understand.

6 THE COURT: The -- the way it currently is, they're
7 entitled to this information. And so that -- that's going
8 to need to be responded to and -- and -- and objecting to
9 it as being either overly broad or not -- not relevant just
10 isn't going to -- isn't going to suffice.

11 MR. POULIN: I understand.

12 MR. BARTH: Might Your Honor put a -- I don't want to
13 ride anybody, but we've got ADR rules and we ---

14 THE COURT: Yeah. I ---

15 MR. BARTH: --- kind of ---

16 THE COURT: --- know.

17 MR. BARTH: --- need to -- we ---

18 THE COURT: Yeah.

19 MR. BARTH: --- can't even analyze the thing. Can you
20 put a short time limit on this? I mean, whether he amends
21 it or not, we're ---

22 THE COURT: Yeah.

23 MR. BARTH: --- entitled to his personal tax returns.
24 We're entitled to his business tax returns. We're entitled
25 to his business profit-and-loss statements. I'm --

1 amending or not, most of the stuff we're asking for,
2 regardless, we're going to be entitled to because it is in
3 conjunction with the -- the media portrayal of his lawsuit
4 and his -- his lawyering abilities. So ---

5 THE COURT: Sure.

6 MR. BARTH: --- I mean, we -- we'd like Your Honor to
7 put a short time limit on it so that we can get cranking
8 and take these depositions before we run out of mediation
9 time.

10 THE COURT: All right. What's today? Today the 15th?

11 LAW CLERK: Yes, sir.

12 THE COURT: I'm going to give him 30 days -- that's
13 September 15th -- to have -- have those appropriately
14 responded to.

15 MS. LEWIS: Thank you, Your Honor.. That leaves now
16 Mr. Poulin's motion to compel.

17 THE COURT: All right.

18 MR. POULIN: Thank you, Your Honor. We -- similar
19 situation: We served discovery requests on -- and -- and
20 this is only toward Defendant Nationwide.

21 THE COURT: Okay.

22 MR. POULIN: And they responded. And we've alleged a
23 couple of deficiencies in their responses. And -- and we
24 believe that -- that most of them are -- are certainly
25 relevant and -- and pretty general stuff. Some of the

1 objections that they raised are subject -- saying that
2 they'll respond, subject to the entry of a confidentiality
3 order. We don't believe that the specific questions that
4 we've asked are -- really raise any issues of
5 confidentiality. Maybe -- that -- that might be an issue
6 we have to -- to look at in the future.

7 But the first one is Interrogatory No 2. We simply
8 asked them to identify any person, whether employee, agent,
9 or representative of their company, who has knowledge or
10 information regarding the allegations set forth in the
11 complaint, which is, essentially, a standard interrogatory
12 under the rules. And they -- they've objected to -- to
13 produce -- to even giving us the names of anybody who had
14 knowledge of the complaint, short of us executing a
15 confidentiality order. So that's the first one.

16 THE COURT: Ms. Lewis, what's the issue there?

17 MS. LEWIS: Well, Your Honor, the -- the overriding
18 concern is that there -- this -- the questions go to some
19 in-house counsel; who was involved; how many cases
20 Nationwide has with Turner Padgett; what the oversight is
21 with Nationwide's in-house counsel. And Nationwide has
22 concerns that it would implicate some proprietary or
23 confidential information. And they're -- they were fine to
24 give the information up, but they routinely do enter into a
25 confidentiality order for information -- company

1 information that is produced in discovery. And so we sent
2 Mr. Poulin a proposed confidentiality order; he said he
3 didn't think the confidentiality order was necessary.
4 Nationwide would not agree to give the information without
5 the confidentiality order. So that's what we ---

6 THE COURT: Well, whether it's necessary or not,
7 what's -- what's the problem with signing one?

8 MR. POULIN: I -- Your Honor, I mean, it -- I guess,
9 in general, I -- we don't have any problem with signing the
10 confidentiality order.

11 THE COURT: Guys, I ---

12 MR. POULIN: We -- we've had ---

13 THE COURT: I understand litigation is -- it doesn't
14 need to be antagonistic.

15 MR. POULIN: I -- I agree, Your Honor. And ---

16 THE COURT: If you got ---

17 MR. POULIN: --- and ---

18 THE COURT: --- no problem signing things, sign the
19 thing.

20 MR. POULIN: Well, part of the problem we've had --
21 and -- and I -- I've never had this problem with Ms. Lewis
22 or with Mr. Barth. But with -- other cases we've had with
23 Nationwide, where you -- the confidentiality order requires
24 certain things and filing things under seal and -- and --
25 and -- to experts ---

1 THE COURT: I don't know what ---

2 MR. POULIN: --- and it's ---

3 THE COURT: --- it requires.

4 MR. POULIN: --- been abused. I -- we've had
5 situations in the past where documents that should not be
6 marked "confidential" have been sent to us, marked
7 confidential. And it makes the litigation process for us
8 more burdensome and expensive to comply.

9 MS. LEWIS: Your Honor, I'm happy to go through the
10 confidentiality order with Mr. Poulin. We -- we didn't get
11 back anything substantive on the confidentiality order. I
12 don't think it refers to anything under seal. And -- and
13 I'm happy to confer with him about it, if he has concerns
14 about it, to try to address those.

15 But the other issue, Your Honor, is that Nationwide
16 has concerns about -- is that there is this bad-faith claim
17 that's also still pending in the -- in the federal court.
18 And so a lot of these questions about, you know, who is
19 reviewing all the pleadings; where are all the other cases
20 that you've given to Turner Padgett; how many cases you have
21 with Turner Padgett; who are the lawyers in-house who are
22 managing those cases -- we have some concerns about
23 information being used outside the scope of this
24 litigation. And so in order to protect that, we wanted the
25 confidentiality order to limit it to the -- the use in this

1 litigation.

2 THE COURT: Yeah. And ---

3 MS. LEWIS: And ---

4 THE COURT: --- and -- and here's -- and that is -- I
5 mean, in all litigation, I think it needs to be tailored to
6 the litigation.

7 MS. LEWIS: Right.

8 THE COURT: Well, how is that -- any of all -- how is
9 any of those things relevant to the issues in this
10 defamation case?

11 MR. POULIN: That's -- the specific interrogatory?

12 THE COURT: I don't -- I don't know. Because I
13 haven't -- I haven't seen the interrogatory. But going on
14 about the -- the number of cases that are handled by Turner
15 Padgett and what lawyers in there are handling what -- I
16 mean, how is that all relevant?

17 MR. POULIN: What we're trying to establish, I -- I
18 think, Your Honor, is whether Mr. Cole has -- has defamed
19 anybody before and whether Nationwide has knowledge of any
20 previous defamation.

21 THE COURT: Can't you ask that?

22 MR. POULIN: Well -- well, we -- we can. And -- and
23 -- and I certainly will. And that's -- I guess that's
24 another one of our questions. And this may be a
25 misunderstanding. I -- I know Ms. Lewis and her firm

1 practice a lot in federal court.

2 But beginning with Interrogatory No. 15 in our
3 requests, they state that we exceed the number that are
4 allowed under the rules. And, of course, in the -- in the
5 state court, we get 50 interrogatories. So I guess that's
6 one of the other issues. And I -- I may be able to
7 supplement. If I can ask a few more -- I've ---

8 THE COURT: Can ---

9 MR. POULIN: --- I've ---

10 THE COURT: --- can ---

11 MR. POULIN: --- only served ---

12 THE COURT: Can I suggest ---

13 MR. POULIN: --- 18 ---

14 THE COURT: Can I suggest this: At -- you know,
15 again, I'll -- I'll help in any way I can. But I've --
16 I've always found it very helpful when lawyers talk, okay?
17 It's just always just too easy to file a motion and run
18 into court and -- I -- it -- you know, I don't see a issue
19 regarding the protective order or a -- a -- you know, a
20 consent for confidential information and how that's
21 handled.

22 I think y'all should -- like -- like Ms. Lewis said,
23 look over it together and see if there's an issue in it;
24 that -- if -- if there is, that maybe they're willing to
25 compromise on that or whatever. And then, if -- if you

1 then find that -- "Judge, we -- we -- we went over this; we
2 can't come to an agreement on it. That's why we need your
3 help." I think that's what the use of the Court is, not --
4 not to address issues that would be addressed if y'all
5 simply would sit down and talk.

6 Now, I'm not trying to avoid your -- your motion here.
7 But I'm -- I'm wondering if -- if maybe it was a little
8 premature to file. I -- I -- I -- I -- I just see way too
9 many motions to compel, and then they all get resolved when
10 the parties get before the Court and the Court tells
11 everybody, "All right. Everybody grow up and act like
12 adults." You know?

13 And, I mean, it -- and I don't mean to -- to say y'all
14 aren't acting like adults. I'm just saying, I -- I think
15 that there's some of these issues y'all haven't actually
16 talked about yet. So maybe it's a little premature to be
17 filing motions to compel. Because, for me, a motion to
18 compel is where you have made every effort to receive -- to
19 receive it and the other side disagrees with you, and so
20 you've got to file a motion with the Court to have the
21 Court resolve issues that you can't resolve as lawyers. I
22 ---

23 MS. LEWIS: Your Honor, I'm -- I'm fine to do that:
24 to go back and revisit these with Mr. Poulin and to have my
25 office do that and go back and look at the confidentiality

1 order addressing substantive concerns they have with it and
2 go back through some of these. There -- there are a few
3 questions in which -- in -- that -- that are the subject of
4 this motion in which Mr. Poulin has asked for Nationwide's
5 position on professionalism. And actually -- and he lists
6 on -- in subparts all of the statements that were in the
7 memos.

8 And -- and we did object to that interrogatory. I
9 don't know how we resolve that one. But the company -- you
10 know, does the company agree that -- well, let me read --
11 quote to the Court, because this may be one that we can --
12 "Is it the position of Nationwide that describing opposing
13 counsel as (a) disregarding professional obligations; (b)
14 doing duplicitous" -- going all the way to -- "(s)
15 extorting litigants is consistent with the level of
16 professionalism in which Nationwide expects the attorneys
17 representing to -- it to conduct themselves, when such
18 descriptions are not substantive elements of the cause of
19 action?"

20 And I responded -- we responded to that by -- we
21 objected to it as position on professionalism and attorney
22 conduct is not relevant or probative of whether or not
23 there -- there's defamation in this particular case. And I
24 don't know how we get past that one. I mean, it -- you
25 know, it's just -- it -- it's just one of those questions

1 that -- that, you know, they're trying to get Nationwide to
2 say, you know, we ---

3 THE COURT: It sounds ---

4 MS. LEWIS: --- we think ---

5 THE COURT: --- like we're going back to, "Hey, I
6 would've said it better" ---

7 MS. LEWIS: Right.

8 THE COURT: --- "but I'm" ---

9 MS. LEWIS: And ---

10 THE COURT: --- "not saying that" ---

11 MS. LEWIS: That was ---

12 THE COURT: --- "it was" ---

13 MS. LEWIS: And ---

14 THE COURT: --- "improper."

15 MS. LEWIS: --- and maybe I should've said that. Mr.
16 Barth's client gave him a -- a better response than we did.
17 Instead of objecting, they said it depended on the
18 circumstances or something to that effect. And maybe I can
19 go back and craft an answer to that that'll be acceptable
20 to Mr. Poulin.

21 But the -- but that is one where, you know, I -- it's
22 not going to be cured by any confidentiality -- and there
23 are -- there are three or four like that, where they list,
24 you know, the -- all -- everything from the second memo is
25 also listed. And -- and what Mr. Poulin said in his letter

1 was -- when he filed the letter -- excuse me -- when he
2 sent us the letter with his objections in it, it says:
3 "The question was specifically tailored to cover
4 Nationwide's position on specific terms used by its counsel
5 to describe opposing counsel and whether or not Defendant
6 Nationwide expects terms of this caliber to be used by its
7 counsel."

8 And, I mean, maybe I can go back and say, you know,
9 "We like" -- you know -- I mean, that -- we just ---

10 THE COURT: That -- I ---

11 MS. LEWIS: --- we just ---

12 THE COURT: Listen ---

13 MS. LEWIS: --- didn't think ---

14 THE COURT: --- that -- that ---

15 MS. LEWIS: --- it was ---

16 THE COURT: --- question ---

17 MS. LEWIS: --- a proper ---

18 THE COURT: --- is -- how -- Mr. -- how -- how is that
19 question relevant?

20 MR. POULIN: (No audible response.)

21 THE COURT: Now -- and -- and it may be. You may be
22 able to show me why it's relevant. I -- I'm not -- is some
23 -- something's either defamation or it's not. And -- and
24 whether they think it is, how is that relevant?

25 MR. POULIN: Your Honor, we -- well, in -- in addition

1 to the defamation, we pled conspiracy and some other causes
2 of action. And we're also seeking punitive damages. And
3 we believe, under the *Gamble* test, that this would be
4 relevant to go to punitive damages, particularly where --
5 and Mr. -- I -- I could -- Mr. Anastopoulo did not want to
6 file this lawsuit.

7 He did everything he could to -- I mean, we sent
8 several letters to Mr. Cole, asking him to stop doing this.
9 And we'd like to know if Nationwide saw any of those
10 letters; if they knew that this was going on and failed to
11 step in and correct it or stop it. And that would go ---

12 THE COURT: Well, that's --

13 MR. POULIN: --- I ---

14 THE COURT: --- that's ---

15 MR. POULIN: --- I think, to the conspiracy and maybe
16 the ---

17 THE COURT: Well, that ---

18 MR. POULIN: --- punitive damages.

19 THE COURT: --- that's kind of different from, you
20 know, "Do -- do y'all approve that kind of language?" I
21 mean, that -- that's kind of different. It -- it's one
22 thing to say, "Do -- do" -- you know, "were y'all aware
23 that -- that this language was being used in pleadings by
24 -- by your counsel?"

25 And that -- and that's pretty easy to answer. "We

1 did -- we were or we were not" ---

2 MR. POULIN: Right.

3 THE COURT: --- rather than, "So do y'all approve that
4 kind of language?" I mean, I -- I don't know. I'm -- I'm
5 like Ms. Lewis: I'm not sure -- I don't -- I know how to
6 respond to that. But it goes back to what we talked about
7 earlier: is that may not be the language I would've used,
8 but I don't -- you know, if you're asking "Is -- is it our
9 position that that's libelous -- libelous or -- or
10 defamatory?" No. We don't -- we don't agree that it is in
11 the setting in which it was used."

12 I -- you know? I don't know what you're trying to get
13 from them. What -- I understand what you're saying. It --
14 Ms. Lewis, you might want to -- you -- you might want to
15 craft a response that -- that -- that -- that is simply
16 better than "We object to it."

17 I -- you -- I'm not asking you to -- because I -- you
18 don't admit it. I mean, you don't admit that it was
19 defamatory. You -- I mean, I guess I'd have to actually
20 see the interrogatory and ---

21 MS. LEWIS: Yeah. Well, there -- there are several --
22 that -- there -- it's basically 13, 14, 15, and 16. And
23 I'll read 15 verbatim, which is the one that we struggled
24 with, Your Honor, which is: "State whether an attorney is
25 fit for his business or profession if he disregards

1 personal obligations; is duplicitous; is double-dealing;
2 abuses the legal process; is absurd; is dishonest; is
3 shameful; has an intention of misleading the Court;
4 harasses litigants or counsel; oppresses litigants or
5 counsel; engages in deceit; engages in subterfuge; is
6 silly; is juvenile; is abusive; intentionally misleads the
7 Court; bludgeons a company or persons; engages in
8 scurrilous conduct; and extorts litigants."

9 And we objected to it; that any -- you know, while we
10 object to the number -- and you're correct on that -- we
11 stand corrected on that -- we further respond and object
12 that the information requested as to defendant's -- this
13 position -- this defendant's position on professional
14 fitness it not relevant, you know, to the issue of whether
15 or not the statements at issue are defamatory. Or -- and,
16 you know, I mean, I -- I can try to craft an answer if
17 that's ---

18 THE COURT: No. I ---

19 MS. LEWIS: --- the Court's order.

20 THE COURT: --- I ---

21 MS. LEWIS: But ---

22 THE COURT: --- how is that not a -- an appropriate
23 response?

24 MR. POULIN: Well, we believe it -- it may not go to
25 the liability or the issue of defamation. But I think it

1 goes to the damages. What that is, is those are all things
2 that Mr. Cole said about Mr. Anastopoulos. And we're asking
3 whether Nationwide as an entity would hire an attorney that
4 is -- that is all the things that Mr. Anastopoulos is
5 alleged to have been. And -- and I believe that that goes
6 to the damages issue.

7 THE COURT: You're asking would Nationwide hire a
8 lawyer who was accused of that conduct?

9 MR. POULIN: Essentially. I -- and maybe I can reword
10 my interrogatory. But we asked: "State whether you would
11 be discouraged from hiring or associating with an attorney
12 who" -- and then, we list all the ---

13 THE COURT: Who ---

14 MR. POULIN: --- things ---

15 THE COURT: Okay.

16 MR. POULIN: --- that Mr. ---

17 THE COURT: That ---

18 MR. POULIN: --- Cole said about Mr. Anastopoulos.

19 THE COURT: Okay. But -- but listen to what you're
20 asking. Would I hire my law clerk if somebody said he was
21 all those things?

22 MR. POULIN: (Nods head up and down.)

23 THE COURT: That -- because that's essentially what
24 you're asking; not would I hire my law clerk if he was
25 those things, but if somebody just alleged he was those

1 things. I'm -- I -- I -- I'm not -- I'm not going to not
2 hire somebody based on what somebody, in a -- I -- I --
3 it's just odd. These questions are odd.

4 MR. POULIN: Well, that's -- that's ---

5 THE COURT: The ---

6 MR. POULIN: --- what -- I'm sorry to interrupt ---

7 THE COURT: No.

8 MR. POULIN: --- Your Honor.

9 THE COURT: It -- it's just -- because it -- it's --
10 it's ---

11 MR. POULIN: It -- it ---

12 THE COURT: I mean, probably the response is, you
13 know, if you -- if you want to give them a different
14 response, I'd say: "We don't base our hiring practices
15 based on rumor or innuendo. We investigate."

16 MS. LEWIS: Your Honor, actually, one ---

17 THE COURT: That would ---

18 MS. LEWIS: --- of the ---

19 THE COURT: --- be the response.

20 MR. POULIN: But ---

21 MS. LEWIS: Yeah. One -- one of the questions does
22 ask -- 16 does ask: "State whether you would be
23 discouraged from hiring or associating with an attorney who
24 disregards professional obligations; is duplicitous" -- and
25 continues on. So there are different variations of

1 basically the same question in four or five of the
2 interrogatories.

3 But once again, I'm -- I'm -- the Court's observation
4 is well taken. I'm happy to go back and try to respond ---

5 THE COURT: But -- yeah. Because ---

6 MS. LEWIS: --- to these ---

7 THE COURT: --- on ---

8 MS. LEWIS: --- as best as I can.

9 THE COURT: On -- on -- on that is the -- the answer
10 is: "We would be discouraged if it was proven that an
11 individual operated in that fashion. But we would not make
12 that decision based on rumor or innuendo." I mean, that's
13 what you're going to get.

14 MR. POULIN: And that's fine. And that's ---

15 THE COURT: How does ---

16 MR. POULIN: --- all that ---

17 THE COURT: --- that help you?

18 MR. POULIN: Well ---

19 THE COURT: Or -- or -- I mean, I ---

20 MR. POULIN: Well -- and part of -- I -- I mean, I --
21 that's fine. I think that's all we would want. And, you
22 -- you know, for Nationwide -- or -- or any of the
23 defendants, I suppose, to go in at trial and say that any
24 of these things are not -- you know, it's not that bad. We
25 called him those things; it's not that bad. And -- and

1 that -- it goes to defamation per se as well.

2 And what we were specifically asking in that
3 interrogatory is whether you knew -- you know, if you knew
4 for a fact that somebody was -- did all these bad things,
5 would you hire him? I -- and I would think the answer
6 would be no. And that just goes to prove, I guess the --
7 the potential -- the -- the nature of the statements that
8 were made. And -- and maybe I -- maybe I didn't word it as
9 clearly as I could've. Maybe I'm not ---

10 THE COURT: Well ---

11 MR. POULIN: --- making my ---

12 THE COURT: --- because there's a ---

13 MR. POULIN: --- argument ---

14 THE COURT: --- there's a ---

15 MR. POULIN: --- as clear as ---

16 THE COURT: --- there's a big ---

17 MR. POULIN: --- as I should.

18 THE COURT: --- there's a big difference in whether I
19 know for a fact that someone is those things or whether
20 they've just been accused of being those things -- huge
21 difference. Do you not agree?

22 MR. POULIN: I do agree. And -- and again, I'm not
23 going in -- I -- it -- it wasn't my intention with this
24 interrogatory to go into -- to the issue specifically as to
25 Mr. Anastopoulo, but more to the statements that were made

1 and whether the statements would be -- in -- in other
2 words, if Nationwide would not hire somebody who is proven
3 to be -- disregarded professional obligations.

4 THE COURT: There's the difference: is proven to be.

5 MR. POULIN: But that makes the allegation of -- of --
6 for -- for instance, if -- if he had alleged that Mr.
7 Anastopoulo was a really nice guy, that -- it -- it -- may
8 -- it may be defamatory. I mean, he may not be a really
9 nice guy. But that wouldn't be -- Nationwide would say,
10 "Well, we would still hire somebody that did this." It
11 goes to the nature of the statement, is -- is what -- all
12 that we're saying.

13 If -- if the statement were proven, it would cause an
14 entity to look poorly upon the attorney. So therefore, the
15 statement itself is defamation per se.

16 THE COURT: Ms. Lewis, anything?

17 MS. LEWIS: No, Your Honor. I mean, I -- I just
18 wanted to have direction from the Court as to which -- and
19 I don't -- you know, I don't want to belabor the point or,
20 you know, go through these. But they're all slightly
21 different. And the -- for -- 14 is for: " . . . each
22 statement in any pleading related to Motsinger in which a
23 -- in -- in which any of the following terms appear.
24 Either (1) admit that the term is not necessary in
25 furtherance of litigation; or (2) explain in detail how the

1 term is necessary in furtherance of litigation."

2 And maybe, you know, I just craft a -- a better
3 response to that by saying, you know -- I -- it's -- it --
4 they were just difficult to respond to. And -- and ---

5 THE COURT: And -- and ---

6 MS. LEWIS: ---- we didn't ----

7 THE COURT: --- let me ---

8 MS. LEWIS: --- think ---

9 THE COURT: --- and -- and ---

10 MS. LEWIS: --- they were ---

11 THE COURT: --- let ---

12 MS. LEWIS: --- probative of the issue in the case.

13 And ---

14 THE COURT: It -- I don't ---

15 MS. LEWIS: --- maybe ---

16 THE COURT: --- think are either. Because the law
17 isn't "Is it necessary?" Okay? Something can be relevant
18 and not be necessary. Would you agree with that, Mr.
19 Poulin?

20 MR. POULIN: I -- I would agree with that. But I -- I
21 think the law, at least as it's stated in the -- in the --
22 the -- the *Woodward v. SC Farm Bureau* case -- and I will
23 fully disclose to the Court this is a 1981 case, and I
24 didn't have a chance to Shepardize it before I came in. I
25 believe it's still good law.

1 But the actual quote from the case is that: "The
2 privilege does not extend -- or does not protect any
3 unnecessary defamation." So I think necessity is an
4 element of -- of looking at it. That -- that's a direct --
5 well, it -- just to read the quote to you, Your Honor, it
6 says: "The privilege does not protect any unnecessary
7 defamation. In order to for a communication to be
8 privileged, the person making it must be careful to go no
9 further than his interests or duties require."

10 So I think -- the way that I read that, it -- it -- it
11 does have to be, I guess, necessary in ---

12 THE COURT: This is ---

13 MR. POULIN: --- furtherance ---

14 THE COURT: --- going to -- you know, the -- the way
15 you're -- it -- it would change the way people can plead
16 cases, period, I mean ---

17 MR. POULIN: Well, but -- but I think ---

18 THE COURT: --- as restrictive as you're -- as you're
19 trying to make it.

20 MS. LEWIS: Is -- is that -- I'm sorry. I need to
21 follow up. Is that ---

22 MR. POULIN: That's all right.

23 MS. LEWIS: --- is that case addressing a judicial-
24 proceedings privilege or some other privilege?

25 MR. POULIN: I believe that it is addressing the

1 judicial proceedings. It deals with an expert affidavit
2 that was filed in a -- a judicial proceeding.

3 But -- and -- and -- and I agree, Your Honor. I mean,
4 we -- we have to have immunity in -- in proceedings. I
5 mean, if I file a lawsuit saying someone ran a red light
6 and hurt my client, I've got to be able to say that without
7 getting sued for defamation if, in fact, he did run the red
8 light. But what I can't do is file a lawsuit and saying:
9 "The defendant, who we all know is a child molester, ran a
10 red light and struck my client."

11 That had -- it's not necessary to my -- to my claim.
12 It -- it's not true; it's defamatory. And it -- it's not
13 speech that needs to be protected. Because if it's
14 unnecessary, it -- it's not needed. And therefore, there's
15 no reason to protect unnecessary speech because it's not
16 necessary.

17 That's -- that's the position I take. And I think
18 that that is the position that the Court is -- is sort of
19 talking about in the *Woodward* case. And it's our position
20 that all these -- you know, it -- Ms. Lewis gave a -- an
21 excellent rundown of the underlying factors before. She
22 could've even, you know, said more about the way they
23 allege Mr. Anastopoulo's conduct may -- that maybe he
24 didn't act ---

25 THE COURT: Well ---

1 MR. POULIN: --- in good faith ---

2 THE COURT: --- again ---

3 MR. POULIN: --- without alleging that he ---

4 THE COURT: We're -- we're -- we're back to ---

5 MS. LEWIS: --- what I should've said ---

6 THE COURT: --- Ms. Lewis would've said it one way;

7 Mr. Barth would've said it another way; Mr. Yost may have
8 said it another way. And you may like the way Mr. Barth
9 said it, but you don't like the way that Mr. Yost said it.
10 That doesn't make Mr. Yost -- I -- in other words, that
11 doesn't place liability on Mr. Yost because he said it in
12 stronger terms or used a -- stronger adjectives to describe
13 it.

14 I mean -- and I'm not getting to the -- to the merits
15 of your case. I'm not getting to that. What I'm saying is
16 -- because I think we're getting outside of all that now --
17 is -- is whether or not it's relevant to the issues, which
18 would give it the protection of -- of -- of the immunity.

19 We're on now the -- the discovery portion. And we're
20 trying to -- to -- I'm trying to get to where y'all can
21 answer the -- get these questions answered, if -- if
22 they're appropriate questions.

23 I'm not -- I'm not sure -- and I don't think --
24 they're -- I -- I mean, I -- I -- I heard Ms. Lewis when
25 she read the question to me. But I'm not sure, without me

1 just actually reading the question, that I'm going to be
2 able to be very much help to you. Now I just got to find a
3 -- are they ---

4 MR. POULIN: Your Honor, maybe -- and -- and in light
5 of your -- your earlier ruling or admonishment, I guess,
6 perhaps I could suggest that I will withdraw my motion to
7 compel on my issues. And -- and part of it is totally my
8 fault. I didn't know for sure whether it was going to be
9 heard today or not. And I -- I probably would've sat down
10 with Mr. Lewis or LaFave or somebody at her office. But
11 perhaps I should just withdraw that at this time; try to
12 work this out with her; and then, maybe with leave to
13 refile if we can't get it worked ---

14 THE COURT: Sure.

15 MR. POULIN: --- out on that.

16 THE COURT: And I -- I'm more than happy to have you
17 refile it. And we'll -- we'll schedule it if -- if -- if
18 there's a need. But, you know, hopefully, you know, a lot
19 of this can be resolved through ---

20 MR. POULIN: I agree.

21 THE COURT: --- you know, talking with each other.
22 And if not, please, you know, absolutely, refile and we'll
23 revisit it. All right.

24 MS. LEWIS: Thank you, Your Honor.

25 MR. BARTH: Thank you, Your Honor.

1 THE COURT: I'm going to return ---

2 MR. POULIN: Thank you ---

3 THE COURT: --- these to you ---

4 MR. POULIN: --- Your Honor.

5 THE COURT: --- Mr. Barth.

6 MR. BARTH: Yes, sir. Thank you.

7 (Whereupon, the proceeding was concluded at 11:05 a.m.)

8 --- END OF TRANSCRIPT OF RECORD ---

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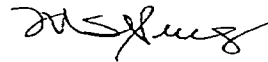
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, OFFICIAL COURT REPORTER
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE, AND COMPLETE EXCERPT OF TRANSCRIPT OF
RECORD IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE
TO APPEAL, IN THE CIRCUIT COURT FOR FLORENCE COUNTY,
SOUTH CAROLINA, ON THE 15TH DAY OF AUGUST, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M

COLUMBIA, SOUTH CAROLINA

NOVEMBER 26, 2012

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FORM 4
FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2100301

2012 AUG 27 PM 2:36

Akim A Anastopoulos

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Edward R Cole

Turner Padget Graham
& Laney Pa

Nationwide Mutual
Insurance Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

CERTIFIED: A TRUE COPY
Christie L. Spain
**CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	8/27/2012	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on **August 27, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **August 28, 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Eric Marc Poulin
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kevin Mitchell Barth
PO Box 107
Florence, SC 29503
Regina Hollins Lewis
3710 Landmark Dr., Ste. 109
Columbia, SC 29204

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Connie Reel-Shearin - Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Akim A. Anastopoulos,

Plaintiff,

vs.

Edward R. Cole, individually and as
employee/agent of Turner, Padgett, Graham &
Laney, P.A., and Turner Padgett, Graham &
Laney, P.A. and Nationwide Mutual Insurance
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
Civil Action No. 2012-CP-21-301

ORDER

2012 AUG 27 AM 10:11
CORRIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
FILED

This matter came before the Court on August 15, 2012, on Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) *S.C.R. Civ.P.* for failure to state a claim upon which relief can be granted. Defendants seek an Order dismissing the Summons and Complaint filed by Plaintiff on February 1, 2012. All parties were represented by counsel at the hearing. Present were Eric Poulin, Esquire for the Plaintiff, Regina Hollins Lewis, Esquire for Defendant Nationwide, and Kevin Barth, Esquire for Defendants Edward R. Cole and Turner, Padgett, Graham & Laney, P.A. Upon consideration of the submissions of the parties and oral argument presented, as set forth herein below, the Court hereby grants the motion to dismiss.

As set forth in Defendants' Motion to Dismiss and supporting Memorandum, Plaintiff's Complaint alleges causes of action for defamation, negligent supervision, negligent retention, and conspiracy arising out of statements made by Defendant Edward R. Cole (hereinafter "Defendant Cole") in the course of his representation of Nationwide and as an employee of Defendant Turner, Padgett, Graham & Laney, P.A. (hereinafter "Defendant TPGL"). Such statements, according to Plaintiff's Complaint, were rendered in pleadings, hearings, or in the

course of the lawsuit captioned *Motsinger v. Nationwide Mutual Insurance Company* Civil Action No.: 4:11-cv-01734-RBH (hereinafter referenced as "*Motsinger Lawsuit*").

In order to sustain a cause of action for defamation, the complaining party must show: (1) a false and defamatory statement was made; (2) the unprivileged statement was published to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm. *Fleming v. Rose*, 350 S.C. 488, 494 (S.C. 2002), quoting, *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998). At the hearing in this matter the parties agreed that the statements attributed to Defendant Cole were contained in memoranda of law filed in the *Motsinger* lawsuit and that the memoranda at issue are the sole basis for the claims in the present case. Defendants argue that the alleged defamatory statements are protected by the judicial proceedings privilege. This court agrees.

It is well-established that defamatory statements made in the course of judicial proceedings are protected by absolute privilege and, therefore, not actionable. *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936); see *Redfearn v. Pusser*, 276 S. C. 506, 280 S. E. 2d 206 (1981); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945). Specifically, the law provides that "[t]he absolute privilege attaching to judicial proceedings embraces communications between counsel, statements made by counsel to a prospective witness, arguments or statements by counsel in the course of proceeding, any statements made by witnesses in the course of proceedings, and even statements in the course of negotiation of a settlement." *Corbin v. Washington Fire & Marine Ins. Co.*, 278 F. Supp. 393 at 398 (D.S.C. 1968).

This privilege applies even if the statements were made maliciously and with knowledge of their falsity. *Brewer*, 180 S. C. 325 at 327 (1936). The privilege protects the statements of judges, parties, and witnesses offered in the course of judicial proceedings. *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam). It protects not only trial and deposition testimony, but also statements in pleadings, affidavits, communications between counsel, statements by counsel to prospective witnesses and in general "any utterance arising out of any judicial proceeding and having any reasonable relation to it, including preliminary steps leading to judicial actions of any official nature provided those steps bear reasonable relationship to it." *Corbin v. Washington Fire & Marine Insurance Co.*, 278 F. Supp. 393, 398 (D. S. C.) (dicta), aff'd per curiam, 398 F. 2d 543 (4th Cir. 1968); *Crowell v. Herring*, 301 S. C. 424, 392 S. E. 2d 464 (Ct. App. 1990) (per curiam); *McKesson & Robbins, Inc. v. Newsome*, 206 S. C. 269, 33 S. E. 2d 585 (1945); *Rodgers v. Wise*, 193 S. C. 5, 7 S. E. 2d 517 (1940); *Texas Co. v. C. W. Brewer & Co.*, 180 S. C. 325, 185 S. E. 623 (1936).

Plaintiff's counsel argues that the statements referenced in the Complaint are not relevant to the *Motsinger* lawsuit and thus, are not protected by absolute privilege. This court disagrees. In assessing whether statements are protected by the privilege governing judicial proceedings, the "relevancy" requirement is intended to be interpreted broadly. "[L]ibelous or defamatory statements in pleadings, when pertinent or material or relevant to real issues involved, are privileged...and in determining [the pertinency or materiality or relevancy of such statements] pleadings must be liberally interpreted and all doubts resolved in favor of relevancy." *McKesson & Robbins, Inc. v. Newsom et. ux.*, 206 S.C. 269, 33 S.E.2d 585 (1945) (citing *Texas Company v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936)). Moreover, the question of relevance is one of law for this Court. See *McKesson & Robbins, Inc.*, 206 S.C. at 275.

As the Court of Appeals observed in *Pond Place Partners v. American Federal Bank*,
351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002):

The interest of society requires that whenever men seek the aid of courts of justice, either to assert or to defend rights, of person, property or liberty, speech and writing therein must be untrammelled and free....The law gives to all who take part in judicial proceedings, judge, attorney, counsel, printer, witness, litigant, a right to speak and to write subject only to one limitation, that what is said or written bears upon the subject of litigation, that is, is pertinent, relevant, germane thereto.

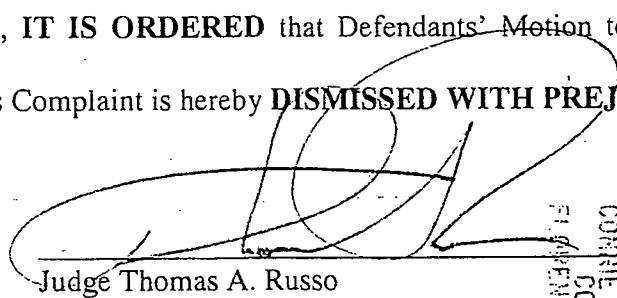
CERTIFIED: A TRUE COPY
Laurie H. Spivey
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

See id., 351 S.C. at 23, 567 S.E.2d at 892.

The Court's observation in this regard directly addresses the issues presented in the subject lawsuit and is instructive. Here, as counsel for the defendants acknowledged, while Defendant Cole may well have expressed his client's position in a different manner in the memoranda, his characterizations regarding the plaintiff's alleged handling of the litigation were pertinent and germane and therefore relevant to the proceedings. As such, the statements are absolutely privileged and cannot form the basis for a defamation claim. Thus, the claim should be dismissed. The liability of Defendants TPGL and Nationwide are contingent upon liability of Defendant Cole, consequently, the claims of negligent hiring, negligent supervision and conspiracy must also be dismissed as to all of the Defendants as those claims are all based on the defamation claim that cannot be sustained for the reasons set forth.

Based upon the foregoing, **IT IS ORDERED** that Defendants' Motion to Dismiss is hereby **GRANTED** and Plaintiff's Complaint is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.



Judge Thomas A. Russo

Florence, South Carolina

August 24, 2012

2012 AUG 27 AM 10:11
CORRIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2012-CP-301

Akim A. Anastopoulos.....Appellant,

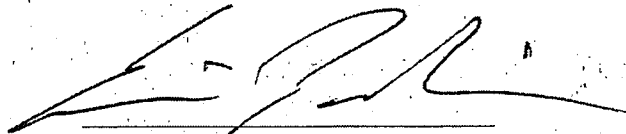
v.

Edward R. Cole, individually and as
employee/agent of Turner Padgett Graham
and Laney, P.A., Turner Padgett Graham
and Laney, P.A., and Nationwide Mutual
Insurance Company, ...Respondents.

NOTICE OF APPEAL

Akim A. Anastopoulos appeals the Order of the Honorable Thomas A. Russo, dismissing his Complaint, signed August 24, 2012 and entered August 27, 2012. Appellant received written notice of said Order on or about August 28, 2012.

September 18, 2012



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Anastopoulos Law Firm, LLC
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Attorney for Appellant

RECEIVED

SEP 24 2012

SC Court of Appeals

Other Counsel of Record:

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Attorney for Edward Cole and Turner Padgett

Regina H. Lewis
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Columbia, SC 29204

Attorney for Nationwide

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

April 22, 2013

A handwritten signature in black ink, appearing to read 'Eric M. Poulin', is written over a horizontal line.

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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas J. Russo, Sr., Circuit Court Judge

Case No. 2012-CP-21-0301

Akim A. Anastopoulos.....Appellant,

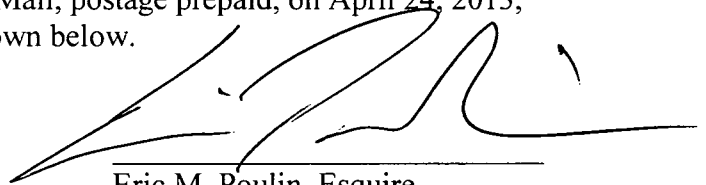
v.

Edward R. Cole, Turner Padget Graham and Laney P.A.,
and Nationwide Mutual Insurance Company.....Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal on Respondents by
depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2013,
addressed to their attorneys of record as shown below.

April 24, 2013



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Attorney for Appellant

Other Counsel of Record:

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Cole and Turner Padget**

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**Attorney for Respondent
Nationwide**

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APR 26 2013

SC Court of Appeals