

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

PATRICK NATHANIEL REED,

Plaintiff,

v.

SHANE RYAN, *et al*

Defendants.

Case No: 3:22-cv-01181-TJC-PDB

PATRICK NATHANIEL REED,

Plaintiff

v.

BRANDEL EUGENE CHAMBLEE, *et al*

Defendants.

Case Number: 3-22-CV-01059-TJC-PDB

ORAL ARGUMENT REQUESTED

**PLAINTIFF PATRICK NATHANIEL REED'S MOTIONS FOR  
RECONSIDERATION, TO ALTER OR AMEND A JUDGMENT, AND FOR  
RELIEF FROM JUDGMENT OR ORDER PURSUANT TO FEDERAL RULES  
OF CIVIL PROCEDURE 59 AND 60**

Plaintiff Patrick Nathaniel Reed ("Mr. Reed") hereby moves for reconsideration of the Honorable Timothy J. Corrigan's ("Judge Corrigan") September 27, 2023 Order dismissing each and every one of Mr. Reed's claims (the "Dismissal Order") - involving a total of fifty-five (55) defamatory statements. Mr. Reed respectfully requests that the Dismissal Order be reversed

and vacated, as it contains numerous manifest errors of law and fact that require Mr. Reed's motions to be granted.

## I. Legal Standard

### a. Federal Rule of Civil Procedure Rule 59

Federal Rule of Civil Procedure 59 ("Rule 59") governs the procedure for seeking and obtaining a new trial and altering or amending a judgment. "Courts recognize three grounds to support a motion under Rule 59(e): (1) an intervening change in controlling law; (2) newly discovered evidence, and (3) **manifest errors of law or fact.**" (Emphasis Added). *Scoma Chiropractic, P.A. v. Dental Equities, LLC*, 2022 U.S. Dist. LEXIS 23427, at \*6 (M.D. Fla. Feb. 9, 2022) (Emphasis Added). "A manifest error amounts to a wholesale disregard, misapplication, or failure to recognize controlling precedent." *Id.* (internal quotations and citations omitted).

### b. Federal Rule of Civil Procedure Rule 60

Federal Rule of Civil Procedure Rule 60 ("Rule 60") provides: "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons... any other reason that justifies relief." Rule 60(b)(6). The broad language of Rule 60(b)(6) was intended "to do substantial justice." *SEC v. Radius Capital Corp*, 2017 U.S. Dist. LEXIS 127557, at \*6 (M.D. Fla. Aug. 11, 2017), and the facts of this case present the truly "extreme hardship," *id.*, that more than justifies this remedy.

## II. Legal Argument

Judge Corrigan's Dismissal Order contains numerous highly prejudicial, manifest errors of law and fact that have created extreme, undue hardship for Mr. Reed that mandates reconsideration, reversal and/or vacatur of the Dismissal Order in its entirety. These manifest errors are enumerated and detailed below and in the contemporaneously filed motion titled, *Plaintiff Patrick Nathaniel Reed's Motions to Recuse the Honorable Timothy J. Corrigan Pursuant to 28 U.S.C. § 455 and 28 U.S.C. § 144* and the accompanying affidavit titled, *Affidavit in Support of Motions to Recuse the Hon. Timothy J. Corrigan Pursuant to 28 U.S.C. § 144 and § 455*.

### A. Judge Corrigan Ignored Well-Established Legal Precedent To Take This Matter Totally Out Of The Hands Of The Jury, Which Is A Manifest Error

It is extremely telling that Judge Corrigan cavalierly dismissed each and every one of the fifty-five (55) defamatory statements at issue - an impossibility - as being non-actionable statements. In doing so, Judge Corrigan admitted that he was taking this matter totally out of the hands of the trier of fact - the jury - and placing it solely into his own, holding that "[w]hether the defendant's statements constitute defamation . . . is a question of law for the court to determine," giving no role to the jury. ECF No. 91 at 25. Indeed, the word "jury" is not found a single time in Judge Corrigan's entire seventy-eight (78) page Dismissal Order.

This is contrary to well-established, black-letter case law presented to Judge Corrigan that there are many instances where the question of whether a statement is defamatory must go to a jury. For instance, *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App. 1985) found that “[a] jury issue is present whenever a phrase is ‘ambiguous and reasonably susceptible of a defamatory meaning.’” *Abrams v. Gen. Ins. Co.*, 460 So. 2d 572 (Fla. Dist. Ct. App. 1984) found that “[a] complaint cannot be dismissed if there is any possibility that the common mind could construe the publication as defamatory.” Furthermore, both *Barnes v. Horan*, 841 So. 2d 472, 476-77 (Fla. Dist. Ct. App. 1984) and *Hay v. Indep. Newspapers, Inc.*, 450 So. 2d 293, 295 (Fla. Dist. Ct. App. 1984) found that statements of mixed opinion and fact – a question that also must go to a jury – are also actionable defamation.

Judge Corrigan simply ignored all of this controlling precedent in going out of his way to declare that the question of whether the fifty-five (55) defamatory statements at issue was solely within his purview – a manifest error of law based on the facts presented to him.

**B. Judge Corrigan Ignored Well-Established Case Law To Find Each And Every One of the Defamatory Statements To Be Non-Defamatory, Which Represents A Manifest Error**

In addition to usurping the fact-finding role of the jury and improperly declaring himself as the “judge, jury and executioner” in these cases, as set forth above, Judge Corrigan further compounds this manifest error by misapplying

basic tenets of defamation law to find each and every single one of the fifty-five (55) statements at issue as “non-defamatory.”

To make matters even worse, Judge Corrigan as early as the first page of his Dismissal Order dismissing each and every single one of the fifty-five (55) false, malicious, and defamatory statements offensively downplays the defamatory statements as simply “negative media coverage” or merely “criticism of LIV generally” that is “over the top.” ECF No. 91 at 2, 5. These cavalier and dismissive statements, in particular, evidence Judge Corrigan’s predetermined, prejudicial, and biased mindset because the publications set forth in the Amended Complaints are not what “negative media coverage” looks like for a professional golfer, but instead outrageous and malicious defamatory attacks. *See* Motion to Recuse the Honorable Timothy J. Corrigan.

Mere negative media coverage or simple criticism would by way of example be something along the lines of: “player X always chokes under pressure,” or “player y really struggles on this course.” Routine “negative media coverage” or “criticism” does not contemplate falsely and outrageously branding someone a murderer, thief, cheater, and working directly for a genocidal dictator. These are two very different things. Simple “negative media coverage” or criticism does not result in a complete and total loss of sponsors, *Chamblee* ¶ 17, 18, Mr. Reed being verbally abused with profanities and threats at nearly every single event that he plays in, to the point when Mr. Reed has had to use security guards to

protect himself and his family, *Chamblee* ¶ 131, and even to endure a bomb threat halting play at Trump National Golf Course in Doral, Florida. *Chamblee* ¶ 132

This highly insulting, if not callous diminution of the defamatory publications at issue speaks for itself and proves that there were no legal or factual bases for Judge Corrigan to have reduced the well pled defamatory statements to simple negative media coverage or criticism by critics.

Judge Corrigan knew that his Dismissal Order was fundamentally wrong in this regard, which is why he for the most part did not give individual analysis to the fifty- five (55) defamatory statements at issue, and instead, as suggested by Mr. Minchin as counsel for Defendant TGC, LLC. had done, chose to group statements together in a manner that allowed for him to “gloss over” clearly defamatory statements. In stark contrast, in another case where the undersigned counsel served as counsel on until trial, *Moore v. Senate Majority PAC et al*, 4:19-cv-01855 (N.D. Al.)(the “*Moore Case*”), the Honorable Corey Maze (“Judge Maze”) was also presented with a defamation complaint involving numerous statements. Judge Maze actually took the time to go through all of the statements at issue, and in the end allowed one single statement to go to trial and be put before the jury, *Moore* ECF No. 62, which resulted in an over \$8 million dollar judgment for the Plaintiff. *Moore* ECF No. 207. This just goes to show that even just one defamatory statement can compensate the victim of defamation, and the Court therefore has a duty to parse through each and every statement even if it

might be easier to simply “gloss over” statements and lump them into groups. This egregious error must be corrected, if only to give the appellate court a workable record to rule upon.

In any event, Judge Corrigan’s Dismissal Order in this regard was clearly and intentionally wrong, particularly where the Amended Complaints contain defamatory statements which clearly and unequivocally make false statements of fact “of and concerning” and associated with Mr. Reed. Such statements by way of just a few examples include, but are not limited to:

- A. “Golf won today. **Murderers lost.**” *Chamblee* ¶ 89
- B. “**So if they’re aligning themselves with a tyrannical, murderous leader... look if you if you look at who MBS is... centralizing power, committing all these atrocities, you look at what he’s doing to the citizens of his... of his country ask yourself I mean would you have played for Stalin would you have played for Hitler would you have played for Mao would you play for Pol Pot,**” [Froggy] “**would you have played for Putin?**” [Chamblee in agreement] “**would you have played for Putin... which... and this who this guy is. He settles disputes with bonesaws.**” *Chamblee* ¶ 58.
- C. Mr. Reed is “**over there purely playing for blood money.**” *Chamblee* ¶ 63.
- D. “...either way, whether the money is against or in addition to guarantees **its still blood money and you’re still complicit in sportswashing.**” *Chamblee* ¶ 90.
- E. “**It figured that the first time anyone on Reed’s team had been honest** and open with the media, it would be a caddie admitting he’d shoved a fan.” *Ryan* ¶ 84.

- F. “When items including a watch, a putter and \$400 went missing from the locker room, **teammates suspected it was Reed who had taken them**, especially as he turned up the following day with a large wad of cash.” *Ryan* ¶ 93.
- G. “[t]he criticism of LIV defectors is not that they are doing it for the money, that is easily understood, what is not so easily understood is why **they would directly work for a regime that has such a reprehensible record on human rights.**” *Chamblee* ¶ 97.
- H. On August 28, 2022, Chamblee tweeted “[t]he IOC decides where the Olympics go...and there is a big difference between doing business in a country and **directly for a murderous regime as LIV golfers are.**” *Chamblee* ¶ 94.

These statements are pure questions of fact that are incredibly harmful to Mr. Reed’s reputation and economic well-being in his trade and profession as a professional golfer, and are therefore not only defamatory generally, but also defamatory *per se*. *Axelrod v. Califano*, 357 So. 2d 1048 (Fla. Dist. Ct. App. 1978). There was simply no way for Judge Corrigan to have had plausible grounds to find that these were statements of non-actionable opinion, evidencing a clear intent and predetermined mindset, bias, and prejudice to simply deep six the entire cases.

For example, Defendants Newsham, New York Post, and Fox Sports published “[w]hen items including a watch, a putter and \$400 went missing from the locker room, **teammates suspected it was Reed who had taken them**, especially as he turned up the following day with a large wad of cash.” This is a purely factual question. Either Mr. Reed committed theft or he had not. Of



course, he had not, and Mr. Reed has sworn statements from his college coaches to that effect as well.

Furthermore, Defendant Chamblee published, “Golf won today. **Murderers lost.**” *Chamblee* ¶ 89. This is another purely factual question, particularly because in the context of which it was made, which the Court must consider. *Smith v. Cuban Am. Nat’l Found.*, 731 So.2d 702, 705 (Fla. 3d DCA 1999). This tweet was made in reference to an order from the U.S. District Court for the Northern District of California in *Mickelson v. PGA Tour, Inc. et al*, 5:22-cv-04486) denying the plaintiffs’, who are LIV players, motion for preliminary injunctive relief. ECF No. 63. Crucially, LIV was not a party to this lawsuit, as the Plaintiffs were several professional golfers who had signed to LIV. Thus, the only possible plausible interpretation of this tweet is that Defendant Chamblee published that LIV golfers, including especially Mr. Reed, are **murderers**.

Lastly by way of an additional example, Defendants Ryan and Hachette published that, “It **figured that the first time anyone on Reed’s team had been honest** and open with the media, it would be a caddie admitting he’d shoved a fan.” *Ryan* ¶ 84. This is a purely factual statement accusing Mr. Reed and his team of being habitual liars, which is completely and totally false.

These statements, by way of just a few examples, are clearly defamatory on their face, meaning that Judge Corrigan’s Dismissal Order constitutes a clear departure from well-established case law. However, at a bare minimum, even if

Judge Corrigan found that the defamatory nature of the statements were ambiguous, his Court was presented with clear precedent that this question must go to a jury. *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App.1985). Statements that by way of just a few examples, at a minimum, also fall into this category, include but are not limited to:

- A. **"I either messaged or talked to 15 to 20 current and past tour players, some of them Hall of Fame members, over the past 24 hours and not a single player is in defense of what Patrick Reed did."** *Chamblee* ¶ 78.
- B. **"To me, this looks bad for Patrick Reed, a guy that has history of doing these things [cheating]."** *Chamblee* ¶ 86.
- C. **"I can understand [Mohammed bin Salman Al Saud's] regime wanting to become more than a petro[l] country & corporate interest to serve that part of the world. I can't understand an individual working for him."** *Chamblee* ¶ 95.
- D. **"Saudi-Backed LIV Golf is Using PGA Suit to Get Data on 9/11 Families Court Told."** *Ryan* ¶ 113.
- E. **I mean those who have sold their independence to a murderous dictator** and those who have sued their fellow professionals so they can benefit from the tours they are trying to ruin." *Chamblee* ¶ 92.
- F. The violation was so egregious that Rickie Fowler, glancing at the replay on television, quickly raised his eyebrows and said: "Whoa! What was THAT!" *Ryan* ¶ 107.
- G. **There is no greater punishment in golf than being stuck with a reputation for cheating."** *Ryan* ¶ 107

Indeed, looking at just above statement A alone, it is clear that It is clear that Defendant Chamblee did not talk to “15 to 20” players, but that he simply made this up to lend credence and fabricated weight to his malicious defamation of Mr. Reed. However, at a bare minimum, this is a purely factual question that should have gone to discovery and then a jury. Similarly, statement F is an objectively verifiable fact, and Mr. Reed should have been afforded discovery in this regard.

All of this is also notwithstanding the clearly and patently defamatory nature of the titles of the articles at issue, which make false, malicious, defamatory, and highly damaging statements “of and concerning” and associated with Mr. Reed. These include, but are not limited to: “*Don’t know they’d p\*\*\* [piss] on him if he was on fire’: The scandalous truth of golf’s biggest villain,*” Ryan ¶ 87; “*The scandalous truth about Patrick Reed, the bad boy of golf,*” *id.*; “*Reed’s reputation from Bahamas the ultimate penalty,*” Ryan ¶ 105.

In sum, Judge Corrigan – having already usurped the role of jury – compounded this error because he simply had no viable legal or factual bases to find that these statements were non-actionable. This is particularly true at the motion to dismiss stage, where there has been zero discovery as it was improperly *sua sponte* stayed by Judge Corrigan, Ryan ECF No. 41, and the only question is whether the Amended Complaint pled what needed to be pled. *Dershowitz v. Cable News Network, Inc.* 541 F. Supp. 3d 1354 (S.D. Fla. 2021). While it is clear that issues such as “of and concerning” were properly pled, by *sua*

*sponte* staying discovery, Judge Corrigan prevented Mr. Reed from putting before him evidence that the statements were "of and concerning" and associated with Mr. Reed. Judge Corrigan's intentions in retrospect have become clear and Judge Corrigan's finding that each and every one of the fifty-five (55) defamatory statements at issue were non-defamatory is a manifest error.

**C. Judge Corrigan Ignored Well-Established Precedent On What Constitutes "Of And Concerning" A Plaintiff, Which Is A Manifest Error**

Judge Corrigan, in particular, cannot and should not have taken away from the jury the question whether the defamatory statements that did not specifically mention Mr. Reed, but could be found to be "of and concerning" and associated with him. In this regard, notwithstanding Judge Corrigan preventing any discovery on this crucial issue, he also seriously erred by intentionally overlooking cases and black letter defamation law that pertains to "of and concerning," which involve a group of victims..

Well-established precedent states that the test for "of and concerning" is "who a part of the audience may reasonably think is named." Sack on Defamation § 2:9.1 (5<sup>th</sup> Ed.) "If [a defamatory statement] is intended to be about a person and is so understood by at least one recipient of the communication, the person has been defamed to that audience of at least one." *Id.* It is therefore unsurprising that under these extremely low thresholds, "[u]nder modern

practice in most states, it is enough merely to plead that the defamatory publication was made 'of and concerning' the plaintiff." *Id.*

This is particularly true with regard to the defamatory publication by Defendants Larson and Bloomberg, *Ryan* ¶¶ 113 - 119, where they prominently featured a large recognizable picture of Mr. Reed in their article titled "*Saudi-Backed LIV Golf is Using PGA Suit to Get Data on 9/11 Families Court Told.*" Despite this, Judge Corrigan incredibly ruled that "[a]s a matter of law, no reasonable person would understand the article as implicating Reed." ECF No. 91 at 38. This is egregiously obviously and intentionally wrong, and beyond bizarre. The only reasonable readers who would not understand the article as being "of and concerning" and associated with Mr. Reed are those who are blind and therefore cannot see the picture of Mr. Reed, particularly since Mr. Reed being a part of LIV is widely known, yet the exact parties to the LIV Golf v. PGA lawsuit is not. Therefore, by prominently featuring the photo of Mr. Reed for no reason other than to create the false impression that he was involved in investigating September 11, 2001 families, and publishing, "It's (meaning the issue of 9/11 family victims) has taken a more sinister turn," *Ryan* ¶ 118, Defendants Larson and Bloomberg capitalize on the fact that the public for the most part does not know that Mr. Reed was not a party to the LIV Golf v. PGA lawsuit to maliciously implicate and tie him to the defamation. This is exacerbated by the fact that Mr. Reed was among the few most prominent players to join LIV and

was one of the earliest golfers who made the switch. As such, his likeness and photo have been used profusely in the media since LIV came into being. Thus, in the public's eye, he was certainly among the top "faces" of LIV. Mr. Reed has also been the primary target of the golf media when discussing LIV, *Chamblee* ¶ 40, and in conjunction with the golf media frequently using pictures of Mr. Reed, including Defendants Bloomberg and Larson, means that most reasonable viewers would have believed that the Larson/Bloomberg Article was "of and concerning" and associated with Mr. Reed. In any event, this is a factual question for the jury that simply could not have been disposed of by Judge Corrigan at the motion to dismiss stage, particularly before any discovery has taken place.

This is exacerbated by the fact that Mr. Reed was among the few most prominent players to join LIV and was one of the earliest golfers who made the switch. As such, his likeness and photo have been used profusely in the media since LIV came into being. Thus, in the public's eye, he was certainly among the top "faces" of LIV. Mr. Reed has also been the primary target of the golf media when discussing LIV, *Chamblee* ¶ 40, and in conjunction with the golf media frequently using pictures of Mr. Reed, including Defendants Bloomberg and Larson, means that most reasonable viewers would have believed that the Larson/Bloomberg Article was "of and concerning" and associated with Mr. Reed. In any event, this is a factual question for the jury that simply could not

have been disposed of by Judge Corrigan at the motion to dismiss stage, particularly before any discovery has taken place.

In the same vein, Judge Corrigan intentionally and fundamentally erred by finding that the group libel doctrine was not applicable with regard to statements referring to LIV, despite conceding that Defendant Chamblee admitted that there were only fourteen recognizable players, ECF No. 91 at 32, therefore severely reducing the size of the “group” at issue. Judge Corrigan also gives no consideration to the case law set forth by Mr. Reed in *Fawcett Publ’ns v. Morris*, 377 P2d42 (Okla. 1962) finding the “of and concerning” requirement satisfied with regard to the entire Oklahoma Sooners football team, which was much larger than the LIV roster. *See also Neiman-Marcus v. Lait*, 13 F.R.D. 311 (S.D.N.Y. 1952); *Palmerlee v. Nottage*, 119 Minn. 351 (1912); *Fullerton v. Thompson*, 123 Minn. 136 (1913).

And again, had Judge Corrigan allowed for discovery, this would have settled the issue of “of and concerning” with Mr. Reed.

Accordingly, taken altogether, Judge Corrigan committed manifest error, as each and every one of the defamatory statements at issue was clearly “of and concerning” and associated with Mr. Reed pursuant to well-established case law.

**D. Judge Corrigan Ignored Established Case Law On Actual Malice, Which Is A Manifest Error**

Almost certainly realizing that he had no plausible basis to find each and every statement at issue as non-defamatory, Judge Corrigan made sure to also attempt to “cover his tracks” and slam every door to a jury consideration by falsely stating in a conclusory fashion that Mr. Reed had failed to allege actual malice. This was clearly because Judge Corrigan must have known that many of the statements in the Amended Complaints were patently defamatory and others that were ambiguous, which questions needed to go to a jury. *Perry v. Cosgrove*, 464 So. 2d 664 (Fla. Dist. Ct. App.1985).

However, the Amended Complaints clearly have both pled actual malice with extreme specificity, including but not limited to numerous “badges” of actual malice set forth in the article by Manual Socias titled *Showing Constitutional Malice in Media Defamation* which were conspicuously not even mentioned by Judge Corrigan once in his seventy-eight (78) page Dismissal Order. The badges which clearly are present here include, but are not limited to:

- A. failure to report exculpatory facts, *Ryan* ¶ 73;
- B. omitting pertinent information to create a false impression, *Ryan* ¶ 75, *Chamblee* ¶ 82;
- C. repetitive media attacks on the plaintiff. *Chamblee* ¶¶ 57-82, 89-98, *Ryan* ¶¶ 37, 67 - 86, ;
- D. a reporter’s ill will toward the plaintiff, *Ryan* ¶ 46;
- E. prior and subsequent defamatory statements; and
- F. refusal to publish a retraction upon learning of errors in a story. *Ryan* ¶ 122, *Chamblee* ¶ 133.

In addition to the numerous “badges” of actual malice which were present, which are clearly relevant to showing actual malice, *Herbert v. Lando* , 441 U.S.



153 (1979), the Amended Complaints also set forth in extreme detail exactly how the Defendants either knew that the statements they were making were false, or at a minimum acted with a reckless disregard for the truth. *Dershowitz v. Cable News Network, Inc.* 541 F. Supp. 3d 1354, 1367 (S.D. Fla. 2021). For instance, with regard to the fabricated statement that Mr. Reed had been accused of stealing from his college teammates, Mr. Reed had pled that he possessed sworn statements from his college coaches conclusively refuting any such accusations. Am. Comp. ¶ 94, ECF No. 34-5. Similarly, with regard to fabricated statements that Mr. Reed had intentionally cheated in his college and professional career, Mr. Reed also pled that he possessed sworn statements from his college coaches that they were unaware of any cheating accusations against him, Am. Comp. ¶ 75, and also set forth that Mr. Reed has never once been found to have intentionally cheated by the PGA Tour or any other tour or entity, period.

Taken altogether, Judge Corrigan's finding that Mr. Reed failed to allege actual malice was a clear departure of established case law, and therefore a manifest error.

**E. Judge Corrigan Found That Mr. Reed Did Not Specify Which Type Of Defamation Applied To Each Statement, Which Is False And A Manifest Error**

In his Dismissal Order, Judge Corrigan falsely writes, "[i]n his Amended Complaints, Reed does not distinguish what statements constitute each type of defamation; instead, he incorporates every alleged statement by a Defendant into

each Count against that Defendant.” ECF No. 98, fn. 9. A review of the Amended Complaints shows, however, that this is not true. Each type of defamation – defamation generally, defamation *per se* and defamation by implication – is separated into an individual count against each individual defendant. This is notwithstanding, of course, the fact that Mr. Reed filed detailed Notices of Compliance (*Reed v. Chamblee, et al* Dkt. No. 29 and *Reed v. Ryan, et al* Dkt. No. 28) setting forth exactly how he had complied with Judge Corrigan’s *sua sponte* orders, to which no objections were raised.

This is particularly true with regard to defamation by implication, which holds out the victim to “hatred, distrust, ridicule, contempt or disgrace,” *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1114 (Fla. 2008), as a result of statements which are “premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements.” *Id.* at 1107. This clearly, at a bare minimum, indisputably exists in these cases.

By way of just a few examples, statements that clearly meet this threshold include, but are not limited to:

- A. Mr. Reed is “**over there purely playing for blood money.**” *Chamblee* ¶ 63.
- B. “[n]ow he has continued his subterfuge by saying the PGA Tour could end any threat, **presumably from the Saudi blood money funding a proposed Super Golf League**, by just handing back the media rights to the players.” *Chamblee* ¶ 65.

- C. "...either way, whether the money is against or in addition to guarantees **its still blood money and you're still complicit in sportswashing.**" *Chamblee* ¶ 90
- D. "[b]y defectors I mean those who have turned their backs on the meritocracy of professional golf. **I mean those who have sold their independence to a murderous dictator and those who have sued their fellow professionals so they can benefit from the tours they are trying to ruin.**" *Chamblee* ¶ 92.

These statements are, at a minimum, defamatory by implication because it is true that Mr. Reed and LIV Golf are financed by the Saudi Public Investment Fund ("PIF"), but that in no way equates to taking "blood money," being associated with terrorists, or engaging in sportswashing, as the Defendants falsely and maliciously publish. Defendants are simply taking advantage of the general public's unfamiliarity with the PIF – which as set forth in the Amended Complaints has invested in many of the most prominent businesses in America such as Disney, Uber, Boeing, Facebook, Citigroup, Bank of America, Capcom, Nexon, Electronic Arts, Take-Two Interactive, Activision Blizzard, and Berkshire Hathaway, *Chamblee* ¶ 30, and which also owns Newcastle United F.C. of the English Premier League, *Chamblee* ¶ 31 – in order to push their defamatory agendas. Defendants omit from their defamatory statements any reference to the fact that Mr. Reed and LIV are simply financed by the PIF, creating the false implication to the public that they are employed by an alleged murderous regime and dictator as bad as Hitler, Stalin, Putin and Mao all rolled into one,

directly. This is textbook defamation by implication, and it was an egregious, manifest error for Judge Corrigan to have ignored this.

**F. Judge Corrigan's Refusal To Summarily Deny Attorneys Fees Under Florida's Anti-SLAPP Statute Is A Departure From Established Case Law, Which Is A Manifest Error**

In addition to the egregious manifest errors set forth above, Judge Corrigan has further erred by refusing to deny some of the Defendants' bogus claim for an award of attorneys and costs under Florida's Anti-SLAPP statute, which, again, is only theoretically possible given Judge Corrigan's wrongful dismissal of all fifty-five (55) defamatory statements. In doing so, Judge Corrigan writes at page 74 of his Dismissal Order, that "Federal courts sitting in diversity and applying Florida law routinely award fees under Florida's anti-SLAPP statute." This is not true. One rogue court in the U.S. Southern District Court for the Southern District of Florida, which is not binding precedent in any event as it emanates not from an appeals court but a lower court, hardly amounts to a routine granting of attorneys fees and costs. The hard fact is that all other federal courts - *Abbas v. Foreign Policy Group*, 783 F.3d 1328, 1337 (D.C. Cir. 2015); *Carbone v. CNN, Inc.*, 910 F.3d 1345 (11th Cir. 2018), *Van Dyke v. Retzlaff*, 781 F. App'x 368 (5th Cir. 2019) - as well as the Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit, the Honorable William Pryor ("Judge Pryor"), who sits above Judge Corrigan, reject this false premise. The supporting view of Chief Judge Pryor,

Judge Corrigan's superior on the Eleventh Circuit, is conveniently relegated, diminished and reduced to a shocking mere footnote, in comparison.

Judge Corrigan also ignored *Sterling v. Doe*, 2022 U.S. Dist. LEXIS 105673 (M.D. Fla. Feb. 2, 2022), where this same Court found that the Magistrate did not need to follow *Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310 (S.D. Fla. 2020) because "as the *Bongino* court itself explains, the fee-shifting provision of anti-SLAPP laws is obviously different than the pretrial dismissal anti-SLAPP provisions which conflict with and 'answer the same question' as the Federal Rules." *Id.* at 12-13. Furthermore, as pointed out by *Sterling* in prior cases where federal courts had applied Florida's Anti-SLAPP statute, the plaintiff had "had forfeited their right to challenge the anti-SLAPP law's applications under an Erie theory at the district court level." *Id.* at 12. This is clearly not the case here, as Mr. Reed more than timely challenged the applicability of the statute.

Of course, of even more relevance to the Court is the transcript of the oral argument in *Corsi v. Newsmax Media Inc et al*, 21-10480 (11<sup>th</sup> Cir.), Exhibit 1, where the panel including the Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit, Judge Pryor expressed "serious doubt" as to whether Florida's Anti-SLAPP statute could apply in federal court due its requiring a "heightened pleading standard," and also appeared to suggest that Fed. R. Civ. P. 11 answered the "same question" as Florida's Anti-SLAPP statute, rendering it inapplicable in federal court:

There's a conflict in what the - the Florida courts even say this - in how the statute works, right?...On the one hand, at least one DCA has said it does create a heightened pleading standard, right?... The other says it doesn't....: If it does, it seems to me, then it conflicts with the federal rules and it doesn't apply.....And if it doesn't create a heightened pleading standard, then it seems to me it's procedural and it also doesn't apply.....**But either way, it seems to me the statute just doesn't apply in federal court.** Exhibit 1 at 14 (emphasis added).

The thing I'm most interested, at least - I can only speak for myself - is the attorney's fees issue, and I have serious doubts about whether the anti-SLAPP statute applies in federal court. And it seems to me that if it doesn't, then a suit filed in violation of it can't give rise to an attorney's fee award.

Even so, I mean, obviously, it's just, talking off the top of my head, it seems to me like a court that finds that there is a meritless suit that's been filed and it's been filed solely because the person is trying to get back at someone and inflict costs on someone for exercising their First Amendment rights in a way that they didn't like, that that would be an improper purpose. I mean, I can't imagine - it's hard for me to imagine that a court would find that that was a proper purpose [and thus sanctionable under Rule 11]." Exhibit 1 at 29 - 30.

Judge Corrigan also essentially ignored an avalanche of case law - *Abbas v. Foreign Policy Group*, 783 F.3d 1328, 1337 (D.C. Cir. 2015); *Carbone v. CNN, Inc.*, 910 F.3d 1345 (11th Cir. 2018), *Van Dyke v. Retzlaff*, 781 F. App'x 368 (5th Cir. 2019); *Corsi v. Newsmax Media Inc et al*, 21-10480 (11<sup>th</sup> Cir.); *Sterling v. Doe*, 2022 U.S. Dist. LEXIS 105673 (M.D. Fla. Feb. 2, 2022) - in order to give credence to the holding of a rogue and undistinguishable lower court judge in the U.S. District Court for the Southern District of Florida. This is another manifest error that must be reversed.

**G. Judge Corrigan Looked Outside The Scope Of The Complaint For Defendants And Then Refused To Do So For Mr. Reed, Which Is A Manifest Error**

During the course of these cases, an attorney who Mr. Reed's legal team had learned had previously worked for Judge Corrigan, Minch Minchin ("Mr. Minchin") of Shullman Fugate, PLLC, on be, sent a USB flash drive and along with documents apparently extraneous to what was pled in the amended complaints to the chambers of Judge Corrigan. ECF No. 32. Given prior experience with the lack of candor of this counsel, Mr. Minch Minchin, counsel for Mr. Reed asked Mr. Minchin to send to him what had been sent to chambers, as Mr. Reed had no way of knowing what was put before Judge Corrigan *ex parte*. However, Mr. Minchin, who has also strangely signed his clients' motion to dismiss, and now the prominently displayed lead counsel on the Defendants' recent motion asking for an award of attorneys fees and costs, despite the fact that his senior partner and lead counsel Deanna Shullman of the firm of Shullman Fugate, PLLC having signed all other pleadings in these cases, refused, when requested, to provide copies of what was sent to chambers. As a result, Mr. Klayman reasonably moved Judge Corrigan to order Mr. Minchin to provide the materials and if not to allow Mr. Reed to have Judge Corrigan provide copies to Mr. Reed and his counsel. Mr. Reed and his counsel were concerned, legitimately, given the lack of candor of Mr. Minchin in past communications that what had been provided to chambers could be prejudicial to Mr. Reed as

outside of and not relevant to what had been alleged in the Amended Complaints. This was in the context, as Judge Corrigan was advised on the record, that a relevant video by Mr. Minchin's client, Defendant Golf Channel, had been doctored. Indeed, the statement of a forensic expert had been provided to Judge Corrigan that the video had been altered to falsely show Mr. Reed allegedly cheating at *The Hero World Challenge* on December 6, 2019. That provided more even reason to see what had been provided to Judge Corrigan. However, rather than simply ordering Mr. Minchin to provide copies of what was sent "ex parte" to chambers, or the judge providing copies to Mr. Reed's counsel, Judge Corrigan finally issued this order, belatedly, two (2) months later on March 14, 2023.

Plaintiff's Motion to Return to Defendants' Counsel USB Drive and Documents Submitted by Defendants' Counsel to Court Ex Parte Concerning Defendants' Motion to Dismiss (Doc. 41 in 3:22-cv-1059), Plaintiff's Motion for Leave to File Reply (Doc. 43 in 3:22-cv-1059), Plaintiff's Motion to Strike USB Drives and Other Exhibits and For Sanctions (Doc. 44 in 3:22-cv-1059), and Plaintiff's Motion for Leave to File Reply (Doc. 48 in 3:22-cv-1059) are **DENIED**. Providing courtesy copies is routine and does not constitute unauthorized ex parte communications.

Defendants' Motion for Leave to Conventionally File Hard Copies of Exhibits (Doc. 32 in 3:22-cv-1181) is **GRANTED. The Court will consider the materials sent by counsel. (Emphasis Added.)**

Thus, seeing that Judge Corrigan was apparently going to consider materials outside the scope of the complaints, Mr. Reed then through counsel submitted an affidavit - same as Mr. Minchin had - authenticating, documents outside the four



corners of the Amended Complaints. Despite his prior ruling in favor of Mr. Minchin, Judge Corrigan in his Dismissal Order struck this and would not consider it. Even more, in doing so, Judge Corrigan openly and with rank condensation mocks Mr. Reed and Mr. Klayman while protecting Mr. Minchin, who had worked for the jurist in the past:

A few days before the July 31, 2023 hearing on the motions to dismiss, Reed filed an Affidavit with 538 pages of attachments containing cases and a Motion for Leave to Supplement the Oppositions to Motions to Dismiss. (Docs. 82, 83 in 3:22-cv-1059; 75, 76 in 3:22-cv-1181). In the motion, Reed disingenuously said the Court indicated it “would review materials outside of the four corners of the Amended Complaints” and attached 215 pages of documents containing information about Reed’s purported “financial, reputational and emotional damage,” and “condemnation by even PGA Tour players of the defamatory tactics” of certain Defendants, along with other outside sources. (Docs. 83 in 3:22-cv-1059; 76 in 3:22-cv-1181). These voluminous filings made only days before the hearing were both untimely and improper. The Court never indicated it would consider materials outside of the four corners of the Amended Complaints; rather, the Court said it would receive courtesy copies of electronically filed pleadings and exhibits, as is routinely done. (Docs. 54 in 3:22-cv-1059; 41 in 3:22-cv-1181). **(This also means Reed’s counsel’s attacks on opposing counsel who filed courtesy copies were unwarranted.)** Accordingly, the Court denies the motion for leave to supplement and strikes the affidavit. To the extent Reed cited case law in his briefing elsewhere, the Court considered those cases. (Emphasis added). ECF No. 98, fn. 27.

Judge Corrigan’s intentional, conscious decision to treat the parties differently – openly favoring the Defendants at the expense of Mr. Reed – is clearly a manifest error that must be reversed. It is thus no wonder and coincidence that in the Defendants’ recently filed motion for an award of attorneys fees that they have

Mr. Minchin, who is not even lead counsel for the Defendant TGC, LLC., leads the pack in signing this frivolous and flawed pleading, as they all believe that Mr. Minchin, who worked for Judge Corrigan, has a special “in “ with him as a result of favoritism. *See Defendants’ Motion for Anti-SLAPP Fees*. ECF No. 92.

### **III. Conclusion**

Accordingly, Judge Corrigan’s Dismissal Order must be vacated and/or reversed in its entirety for the compelling reasons set forth herein and in Plaintiff’s contemporaneously filed motions titled, *Plaintiff Patrick Nathaniel Reed’s Motions to Recuse the Honorable Timothy J. Corrigan Pursuant to 28 U.S.C. § 455 and 28 U.S.C. § 144* and the accompanying affidavit titled, *Affidavit in Support of Motions to Recuse the Hon. Timothy J. Corrigan Pursuant to 28 U.S.C. § 144 and § 455*, as it is comprised nearly entirely of a multitude of manifest errors which ignore, overlook, or simply gloss over well-established case law and controlling precedent in his zeal to take these entire cases into his own hands, away from the jury and then get rid of them by any means possible. This is the exact type of injustice that Rule 59 and Rule 60 were meant to rectify, and thus, Mr. Reed’s motion must be granted.

Dated: October 23, 2023

Respectfully submitted,

By: /s/ Larry Klayman  
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*Counsel for Patrick Nathaniel Reed*

**CERTIFICATE OF SERVICE**

I, Larry Klayman, hereby certify that on this day, October 23, 2023, I electronically filed the foregoing with the Clerk of Court using the Court's ECF procedures. I also certify that the foregoing document is being served this day on all counsel of record through the Court's eservice procedures.

/s/ Larry Klayman

**MEET AND CONFER CERTIFICATION**

Defendants, and their counsel, particularly Mr. Minchin, predictably oppose this motion, as they apparently welcome, approve of and profit by the extrajudicial bias, prejudice and extreme favoritism exhibited by the Honorable Timothy J. Corrigan.

*/s/ Larry Klayman*

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Larry Klayman, Esq.

# EXHIBIT 1

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NO.: 21-10480

JEROME CORSI,

Appellant,

v.

NEWSMAX MEDIA, INC., et al.,

Appellees.

\_\_\_\_\_ /

TRANSCRIPTION OF AUDIO RECORDING  
OF ORAL ARGUMENT

(Pages 1 to 41)

DATE: Thursday, May 19, 2022

LOCATION: 12th Floor Courtroom  
James Lawrence King Federal Justice  
99 Northeast Fourth Street  
Miami, Florida 33132

Reported By: Gail Hmielewski  
Court Stenographer

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PROCEEDINGS

THE COURT: Oh, Corsi vs. Newsmax Media. Oh, boy.

Good morning, Ms. Isaak.

MS. ISAAK: Good morning, Judge.

THE COURT: You can begin.

MS. ISAAK: May it please the Court. My name is Melissa Isaak and I represent Jerome Corsi in this matter.

And we're arguing two main points here today, Your Honors, is that the case was properly dismissed via a 12(b)(6) motion by the District Court; and also the fee provision, the fee distribution, rather, ruling by the District Court was improper because the Florida's anti-SLAPP statute does not apply in federal court; and also, which we don't - we say it does not, but, if it did, the statute was not complied with by the lower court.

THE COURT: It seems to me the actual malice requirement is a tough one for you here.

MS. ISAAK: He is a public figure and I think the actual malice standard is a hurdle for any public figure in a defamation action, however --

THE COURT: Yeah, and I just - it just doesn't

1           seem to me that you've alleged enough to plausibly  
2           allege actual malice.

3           I mean, you know, the fact that the Newsmax  
4           defendants and Fairbanks knew Corsi doesn't know -  
5           doesn't mean they know his character for  
6           truthfulness was beyond reproach or anything like  
7           that. The fact that Newsmax has sold Corsi's books  
8           doesn't imply that they entertained serious doubts  
9           about the allegation that he plagiarized a  
10          reporting.

11          You know, just - I look at these allegations,  
12          I'm looking for where the actual malice is alleged  
13          and I'm not seeing it.

14          MS. ISAAK: I understand, sir. The  
15          defendants, they called Mr. Corsi's allegations a  
16          conspiracy theory, but Mr. Corsi would offer that  
17          those who know Roger Stone would know that that is  
18          not a conspiracy theory.

19          We allege the complaint was properly pled  
20          under Rule 8, and also there was an affidavit  
21          submitted by Mr. Corsi where he specifies that  
22          these people know him, the defendants know him and  
23          they know that the allegations made were untrue;  
24          and not only are they untrue, they're provably  
25          false.

1           Mr. Corsi is not a liar. Mr. Corsi --

2           THE COURT: Just the fact that they know him  
3 means that they know that what he says was untrue?

4           MS. ISAAK: The fact that they intimately know  
5 Mr. Corsi, that they have worked with Mr. Corsi. I  
6 understand that Newsmax sold his books, however,  
7 Mr. Corsi did allege and he pled that these are,  
8 these things are provably false.

9           And what they called him - a liar, a  
10 plagiarist, having committed fraud - these are all  
11 things that can destroy and discredit him in his  
12 trade and profession, which would be defamation  
13 per se.

14           THE COURT: Yeah, but I thought -- I mean,  
15 maybe I'm wrong about this, I thought that this was  
16 on a program where it was a sort of point  
17 counterpoint and so there was an opportunity to  
18 respond to these allegations real time provided by  
19 the station.

20           MS. ISAAK: Well, Your Honors, Mr. Klayman,  
21 Mr. Corsi's attorney, was invited on Newsmax  
22 America Talks Live. Well, he was more lured into  
23 the program. Now, counsel for defendants say that  
24 this was a debate. Mr. Klayman did not know that  
25 he was entering into a debate. In fact, the issues

1           that Mr. Klayman thought were to be discussed were  
2           the public issues related to the Mueller  
3           investigation and the results involving Roger  
4           Stone's alleged crimes of perjury, witness  
5           tampering, and obstruction of justice. Mr. Klayman  
6           was not even made aware that Ms. Fairbanks was  
7           going to be on the show until directly before the  
8           show went live.

9           So I understand the way it was presented, that  
10          this was a debate where they had an opportunity to  
11          respond, but Mr. Klayman was not given notice that  
12          this was going to be the issue of the show.

13          THE COURT: Yeah, I mean, I understand. I  
14          mean, that means sounds like a legitimate gripe  
15          against Newsmax if you just want to like write them  
16          a letter or something. I guess my point is it just  
17          seems - it seems hard to tag Newsmax with the  
18          statements of, I guess it's --

19          MALE VOICE: Fairbanks.

20          THE COURT: -- Fairbanks, given that Newsmax's  
21          role was to host these people and give them an  
22          opportunity to respond.

23          MS. ISAAK: Yes, sir, and Mr. Corsi, again, we  
24          do believe that he's properly pled under Rule 8,  
25          and also, if they were allowed to proceed to

1           discovery, Mr. Corsi believes that he would have  
2           been able to prove the allegations that he did make  
3           in his complaint.

4           Again, this is not -- Mr. Corsi is intimately  
5           familiar with Roger Stone, and the fact that  
6           Mr. Stone worked in concert with others, as joint  
7           tortfeasors to defame Dr. Corsi, was something that  
8           he believes that he could prove had the case  
9           advanced to the discovery phase.

10          THE COURT: I'll tell you, the thing that I  
11          was more interested in here was attorney's fee  
12          issue, because I have doubts about whether the  
13          anti-SLAPP statute applies.

14          MS. ISAAK: Yes, sir. We contend the  
15          anti-SLAPP statute does not apply, well, for two  
16          reasons. First, in this case, as it applied the  
17          Florida statute, which of course is just a garden  
18          variety fee-shifting statute, however, the Florida  
19          statute states with specificity that for fees to be  
20          assessed, a hearing must be scheduled. It says  
21          shall - it doesn't say may, it says shall.

22          THE COURT: Well, there has to be a violation  
23          of the statute, the Florida statute, and here's the  
24          concern I have. If the statute doesn't apply in  
25          federal court, then --

1 MS. ISAAK: We don't think the statute  
2 applies.

3 THE COURT: -- then there can't be an  
4 attorney's fee based on it, can there?

5 MS. ISAAK: No. No, sir, you're absolutely  
6 correct.

7 THE COURT: Based on its violation.

8 MS. ISAAK: Yes, sir, it's a violation. I  
9 think that --

10 THE COURT: No, I'm saying there can't be an  
11 attorney's fee award based on its violation if it  
12 doesn't apply in federal court.

13 MS. ISAAK: That's correct. That's correct,  
14 yes.

15 THE COURT: And so in order to figure out  
16 whether it applies, I mean, we would compare the  
17 language of Rule 11, right --

18 MS. ISAAK: Correct.

19 THE COURT: -- with the language, the fee  
20 language in the anti-SLAPP statute, which basically  
21 says that fees would be awarded, reasonable fees  
22 would be awarded if, "A", the suit is without merit  
23 and, "B", it's primarily filed because someone  
24 exercised the First Amendment right, right?

25 MS. ISAAK: Yes, that's correct. That's

1 correct.

2 THE COURT: Well, if we're looking under - so  
3 if we're looking under Rule 11, then, so the  
4 question is whether that captures everything that's  
5 in there, and I guess the question then is, under  
6 Rule 11, it would have to be without merit and/or  
7 filed for an improper reason, right.

8 MS. ISAAK: Yes, ma'am. Yes, ma'am.

9 THE COURT: Okay. So the question then to me,  
10 anyway, is, if it's primarily filed because  
11 somebody has exercised a First Amendment right,  
12 does that mean it's filed for an improper reason?

13 MS. ISAAK: Yes, ma'am, it would, and that  
14 would directly fall under Rule 11. The anti-SLAPP  
15 statutes covers means to dispose of cases, whether  
16 it be through a 12(b)(6), through summary judgment.  
17 It also covers how to recoup attorney's fees --  
18 I'm sorry. The rules allow, under Rule 11, where  
19 you could recoup attorney's fees, so they're  
20 saying, they're calling it "meriless" - meritless,  
21 rather --

22 THE COURT: They really aren't the same thing,  
23 though, are they? So Rule 11, in saying that  
24 there's an improper purpose, is not the same thing  
25 as filing a meritless lawsuit about someone's free

1 speech exercise.

2 MS. ISAAK: But the Florida anti-SLAPP statute  
3 says that the suit was filed for the purpose of  
4 silencing free speech or infringing on a First  
5 Amendment right, so therefore it would be an  
6 improper purpose under Rule 11.

7 THE COURT: Well, I don't know, I just -- I  
8 guess the problem with the Rule 11 argument, in my  
9 mind, is that we've said over and over and over  
10 again, and it's just common sense with the law,  
11 that if states want to have fee-shifting statutes,  
12 then they can have fee-shifting statutes for the  
13 causes of action that state law creates and those  
14 fee-shifting statutes would apply in federal court.  
15 So why isn't the way to see this as just a  
16 fee-shifting statute that, if you file a meritless  
17 defamation lawsuit, then you have to pay the other  
18 side's fees?

19 MS. ISAAK: Because it's more of a procedural  
20 rule. So the Florida fee-shifting statute gives a  
21 procedure to recoup on attorney's fees. The  
22 Florida federal - I'm sorry, the federal rules  
23 already have that. Rule 11 already allows for  
24 that.

25 THE COURT: Okay. So, I mean, we've said in



1           like seven different cases that statutes for the  
2           recovery of attorney's fees apply in federal court  
3           as just a general matter, so, I mean, what would  
4           make this conflict with Rule 11 specifically if  
5           just a normal state fee-shifting statute doesn't  
6           conflict?

7           MS. ISAAK: Well, I think if we look at most  
8           of the states' anti-SLAPP statutes, they deal with  
9           shifting burdens, they deal with heightened  
10          pleading requirements. Florida's being just a  
11          garden variety anti-SLAPP statute really is just a  
12          mirror image of the Rule 11.

13          THE COURT: Isn't the answer that this  
14          attorney's fee provision is tied to a pleading  
15          standard as opposed to, well, if you win a claim  
16          for - under the deceptive trade practices act,  
17          you're entitled to attorney's fees, the prevailing  
18          party's entitled to attorney's fees?

19          MS. ISAAK: Yes, we would offer that Rule 11  
20          always applies to pleading standards. I think if a  
21          pleading is considered --

22          THE COURT: I'm not even sure you understand  
23          my --

24          THE COURT: Let me ask a question to follow  
25          up --

1 MS. ISAAK: Okay.

2 THE COURT: -- on Judge Pryor's question. So  
3 he said, you know, isn't - doesn't this statute  
4 impose a pleading standard, and he's talking about  
5 the part of the statute that says, you know,  
6 merits, right?

7 The question is, does that part of the statute  
8 impose a pleading standard or is it just if you  
9 lose, then you pay the fees? Is there a pleading  
10 standard associated with that phrase?

11 MS. ISAAK: The heightened standard I think  
12 that's imposed in the Florida Statute goes along  
13 with the -- There's an evidentiary burden that has  
14 to be set.

15 THE COURT: Okay. When you say the heightened  
16 standard, where are you getting the idea that the  
17 Florida Anti-SLAPP Statute imposes a heightened  
18 standard?

19 MS. ISAAK: Because the Florida Anti-SLAPP  
20 Statute says that, prior to any fees being  
21 assessed, or prior to a case being dismissed under  
22 the Florida Anti-SLAPP Statute, that it must be set  
23 for a hearing. If it has to be set for a hearing,  
24 the parties are required to produce - to submit  
25 evidence on their respective positions. Now --

1 THE COURT: There's a conflict in what the -  
2 the Florida courts even say this - in how the  
3 statute works, right?

4 MS. ISAAK: Yes.

5 THE COURT: On the one hand, at least one DCA  
6 has said it does create a heightened pleading  
7 standard, right?

8 MS. ISAAK: Correct.

9 THE COURT: The other says it doesn't.

10 MS. ISAAK: That's correct.

11 THE COURT: If it does, it seems to me, then  
12 it conflicts with the federal rules and it doesn't  
13 apply.

14 MS. ISAAK: Yes, sir.

15 THE COURT: And if it doesn't create a  
16 heightened pleading standard, then it seems to me  
17 it's procedural and it also doesn't apply.

18 MS. ISAAK: Well, yes, sir --

19 THE COURT: But either way, it seems to me the  
20 statute just doesn't apply in federal court.

21 MS. ISAAK: Yes, sir, that's what we  
22 submitted, it does not apply. Between, we have  
23 Rule 8 --

24 THE COURT: May I ask a follow-up question on  
25 that? I'm not sure I understand that. So if it

1 is - if it doesn't impose a heightened pleading  
2 standard, why isn't it just a fee-shifting statute?

3 MS. ISAAK: Well, there is case law that says  
4 it's just a fee-shifting standard. It says that.

5 THE COURT: Okay. Well, if it's just a  
6 fee-shifting statute as part of the tort of  
7 defamation in Florida law, why isn't that something  
8 that applies in federal court?

9 MS. ISAAK: Because we're dealing I think  
10 specifically with anti-SLAPP as it pertains to this  
11 issue, so I --

12 THE COURT: Okay.

13 THE COURT: Well, I mean, here's the thing.  
14 This is the text of the statute - the court shall  
15 award the prevailing party reasonable attorney's  
16 fees and costs incurred in connection with a claim  
17 that an action was filed in violation of this  
18 section --

19 MS. ISAAK: Yes, sir.

20 THE COURT: -- right?

21 MS. ISAAK: Yes, sir.

22 THE COURT: And the section says - sets out,  
23 basically, a procedural requirement, right --

24 MS. ISAAK: Yes, sir.

25 THE COURT: -- and says you can't file it if

1           the suit's without merit and if it was filed  
2           because someone exercised their free speech rights.

3           MS. ISAAK: That's correct, so the court would  
4           have to make a finding that that's specifically why  
5           that was --

6           THE COURT: Filed.

7           MS. ISAAK: -- filed, right, which conflicts  
8           with Rule 8. The Rule 8 pleading requirements  
9           don't have that level of a standard. And also, for  
10          the Rule 11, Rule 11 covers all of these things  
11          already.

12          THE COURT: Okay, I think we understand your  
13          argument.

14          THE COURT: Can you just address the issue of  
15          certification? I know we sent you some questions  
16          to address, one is whether we should certify this  
17          question to the Florida Supreme Court. We've  
18          already talked about the split in the intermediate  
19          appellate courts. I just want to get your position  
20          on that.

21          MS. ISAAK: It's a quick no. I don't think  
22          that it needs to be certified to the Florida  
23          Supreme Court, because the federal rules are clear  
24          that there are other avenues for recovery and there  
25          are other avenues for dismissal of cases.

1           So I think, based upon the federal case law,  
2           and based upon the procedure that's in place for  
3           the federal court, I don't think this is  
4           necessarily an issue for the state court to decide.  
5           This -- Go ahead.

6           THE COURT: Okay. Mr. Lerner.

7           MR. LERNER: Thank you, Your Honors. May it  
8           please the Court, my name is Mark Lerner and I'm  
9           here with my colleague, Julian Jackson-Fannin, and  
10          we represent the appellees, Newsmax Media, Inc.,  
11          Christopher Ruddy, John Bachman, and John Cardillo.

12          This case is a public figure's groundless  
13          attempt to punish a media outlet for engaging in  
14          classic First Amendment protected activity because  
15          he didn't like what a guest, and only the guest,  
16          said about him on a live television broadcast.

17          As it did in *Michel v. NYP Holdings*, and  
18          numerous other cases, this Court should recognize  
19          the powerful interest in ensuring that speech is  
20          not burdened by the defense of groundless  
21          litigation and affirm the decision of the District  
22          Court in its entirety.

23          The facts here, which I think you're familiar  
24          and discussed a little bit before --

25          THE COURT: We know the facts --

1 MR. LERNER: Okay.

2 THE COURT: -- and if you want to address  
3 whether the complaint plausibly alleges actual  
4 malice, you certainly can. I don't think it does.

5 The thing I'm most interested, at least - I  
6 can only speak for myself - is the attorney's fees  
7 issue, and I have serious doubts about whether the  
8 anti-SLAPP statute applies in federal court. And  
9 it seems to me that if it doesn't, then a suit  
10 filed in violation of it can't give rise to an  
11 attorney's fee award.

12 MR. LERNER: I'm certainly happy to address  
13 the actual malice issue, although we agree,  
14 obviously, with Your Honor and with some of the  
15 skepticism addressed by the panel. So if there  
16 aren't questions on the actual malice, I am happy  
17 to move on to the questions that seem to be of more  
18 interest in terms of the application of anti-SLAPP  
19 in this case.

20 THE COURT: Let me ask you, before you get  
21 into the legal merits of the anti-SLAPP, do you  
22 really want attorney's fees in this case? Do you  
23 want this case to continue with additional  
24 litigation? I mean, is that, I mean --

25 MR. LERNER: Well, certainly, as I said

1 before, Newsmax is hoping and the individual  
2 defendants who didn't utter any of the allegedly  
3 defamatory statements don't want to be burdened by  
4 ongoing litigation. On the other hand, they do  
5 believe it makes sense to take advantage and send  
6 the message that this kind of lawsuit chills the  
7 speech that they should be protected from.

8 THE COURT: Okay.

9 MR. LERNER: So, yeah, I mean, it makes sense  
10 here that there is this fee-shifting that the  
11 Florida legislature has determined is important in  
12 this kind of case and that they --

13 THE COURT: So the question, I guess -- The  
14 reason I ask that sort of practical question is  
15 that one of our options here would be to certify  
16 this question to the Florida Supreme Court, which  
17 would, if we were to do that, would continue the  
18 litigation, right? I mean, you would just - it  
19 would just be another court, come back to us, we'd  
20 rule again, go back to the District Court, all to  
21 collect some kind of attorney's fees ward against  
22 Mr. Corsi. Do you want to do that?

23 MR. LERNER: Well, there is a principal at  
24 stake here and we agree, frankly, what little we do  
25 agree with with Ms. Isaak in terms of her position



1           that this doesn't need to be --

2           THE COURT: That it doesn't need to be  
3 certified.

4           MR. LERNER: Right, it doesn't need to be  
5 certified, exactly. So there should be no  
6 continuation of litigation on that front, because  
7 all that was applied here, frankly, was  
8 Rule 12(b)(6).

9           THE COURT: We appreciate your confidence in  
10 the 11th Circuit. Thank you.

11          MR. LERNER: Well, whether it's my confidence  
12 in the 11th Circuit or a query as to whether or not  
13 there really is a material issue of law that needs  
14 to be addressed in order for the 11th Circuit to  
15 rule on this issue, in this particular  
16 circumstance, the case doesn't turn on the answer  
17 to a material state law question because Florida  
18 law doesn't directly impose, nor did the defendants  
19 seek, a higher pleading standard here.

20          The court only ever cited application of  
21 Rule 12(b)(6) and the federal pleading standards  
22 under Iqbal and Twombly. There was no burden  
23 shifting undertaken, there was no heightened  
24 standard applied, nor is, actually, one called for  
25 in the language of the statute.

1           The language of the statute simply prohibits a  
2           lawsuit brought without merit and it provides for a  
3           person or entity may move the court for an order  
4           dismissing the action or granting final judgment in  
5           favor of that person. The person or entity may  
6           file a motion for summary judgment together with  
7           supplemental affidavit.

8           I mean, this just repeats that, okay, the  
9           procedure that's available to you under the federal  
10          rules is available to you here. You can file a  
11          motion to dismiss, you can file a motion for  
12          summary judgment. It doesn't stay discovery like  
13          some of the other cases do, anti-SLAPP laws do, it  
14          doesn't impose --

15          THE COURT: But then you would agree that  
16          there's a split in authority among the DCAs about  
17          what it does and what it doesn't do, wouldn't you?

18          MR. LERNER: It's not a hundred percent clear  
19          to me, honestly, Your Honor, in terms of what it  
20          does or doesn't do as far as a heightened pleading  
21          standard under the federal rules, right?

22          There's a question in terms of burden shifting  
23          and how you determine whether or not the case at  
24          issue falls under anti-SLAPP because there is a  
25          statement of the case being related to an

1           abridgement of First Amendment rights. And in  
2           Gundel, there was a question of going outside the  
3           pleadings in order to determine whether or not  
4           there was a First Amendment issue.

5           As far as the determination of whether the  
6           case has merit, I don't think that there's really  
7           any indication that Lam and Gundel are clearly in  
8           opposition. That question ultimately wasn't  
9           answered and again here certainly there was no  
10          heightened pleading standard applied. It was a  
11          simple 12(b)(6) plausibility standard that was  
12          applied.

13          And as Your Honor pointed out, Judge Pryor  
14          said, it doesn't rise to that level. There's just  
15          no plausibility on the notion that a claim of  
16          actual --

17          THE COURT: I agree, I agree that if,  
18          obviously, if there's no actual malice under the  
19          regular pleading standards, that's it, but for  
20          purposes of our decision on the attorney's fees  
21          issue, I mean, there is a split in authority as to  
22          whether there's a heightened pleading standard, is  
23          there not?

24          MR. LERNER: Again, I think the question of  
25          the heightened pleading standard goes to the burden

1 as far as establishing that the case falls under  
2 anti-SLAPP. That's the most you could say as far  
3 as where Gundel and Lam might be in opposition.  
4 So, but, again, it's clear on its face here there  
5 wasn't any dispute in this case. There was no  
6 heightened pleading standard, there was no --

7 THE COURT: But if it doesn't fall under  
8 anti-SLAPP you wouldn't be entitled to your fees  
9 even in -- I mean, right?

10 MR. LERNER: Yes, if it didn't fall under  
11 anti-SLAPP, but, again, this is clear on its face  
12 that the allegations of the complaint stated that  
13 the basis for the defamation claim was a broadcast  
14 from a media outlet that hosted a live public  
15 forum.

16 There was nowhere else you had to look, there  
17 was no heightened pleading, there was no  
18 burden-shifting to say, well, plaintiffs met this  
19 burden initially, now let's go to, sorry,  
20 defendants met this burden initially, now let's go  
21 to plaintiff to determine if they can establish  
22 that in fact it doesn't fall under anti-SLAPP,  
23 because I think the dispute in-between Gundel and  
24 Lam in terms of is there that shifting, does the  
25 plaintiff have to come forward now with evidence to

1 show that it doesn't fall under anti-SLAPP.

2 None of that is an issue here. It is clear on  
3 the face of the pleadings that this falls under  
4 anti-SLAPP because it relates to the exercise of  
5 First Amendment activity. And because it falls  
6 under anti-SLAPP, it is, as Judge Brasher said, a  
7 garden variety, and then, frankly, Ms. Isaak said,  
8 a garden variety fee-shifting.

9 And the court's ruling I think in Showen v.  
10 Presti (phonetic) really should be controlling.  
11 There the 11th Circuit held that Rule 11 addresses  
12 punitive sanctions, not fee-shifting, and it  
13 answers a different question from what Georgia  
14 statute was there. And the Georgia statute at  
15 issue provided for compensatory damages for  
16 frivolous suits, including attorney's fees, which  
17 is much closer to Rule 11, right. There's a  
18 frivolousness question built into the Georgia law  
19 and this court still applied that Georgia law,  
20 saying that a state's law attorney's fee provision  
21 are unequivocally substantive and then there's no  
22 question that they should apply.

23 And this has been supported by the Supreme  
24 Court numerous times as well, it says that Rule 11  
25 sanctions are not fee-shifting provisions.

1 Sanctions under Rule 11 aren't tied to the outcome  
2 of litigation. The relevant inquiry is whether a  
3 particular filing was well-founded, so the rule  
4 only calls for an appropriate sanction and  
5 attorney's fees aren't even mandated.

6 In Business Guides, the Supreme Court said  
7 that the main objective of Rule 11 is not to reward  
8 parties who are victimized by litigation, it's to  
9 deter baseless filings and curb abuses and it  
10 imposes an objective standard on those who sign  
11 papers. Rule 11 authorizes sanctions to prevent  
12 repeated abuses, which may or may not be monetary  
13 sanctions.

14 Florida, in contrast, enacted a policy to  
15 prevent anti-SLAPP suits that would, among other  
16 things, chill free speech, whether or not they're  
17 frivolous. Meritless doesn't necessarily equal  
18 frivolous. Under Florida 768.295 --

19 THE COURT: But there's something, right,  
20 there's something -- So I guess what you're  
21 saying, because I asked your friend on the other  
22 side this question, is you have to have without  
23 merit and primarily because the party exercised its  
24 First Amendment rights, right?

25 MR. LERNER: Yes.

1           THE COURT:  And so your friend on the other  
2           side says the part that says primarily - it was  
3           filed primarily because the party exercised its  
4           First Amendment rights is necessarily the  
5           equivalent of saying that it was filed for an  
6           improper purpose.  And so your position I guess has  
7           to be it's not, is that right?

8           MR. LERNER:  That's right.  I mean, you know,  
9           there may be some incidental overlap, as the courts  
10          have talked about, that where a rule is procedural  
11          if it affects a substantive right and here, you  
12          know, it's that substantive right that the Florida  
13          courts have said you can be free from a suit of  
14          defamation that impinges free speech rights and  
15          that should result in fee-shifting if it's without  
16          merit.

17          THE COURT:  I guess, you know, a lot of, I  
18          think even your Rule 11 argument goes to the  
19          definition of the phrase without merit, right?  I  
20          mean, you read without merit to say you lose the  
21          lawsuit, that's a lawsuit without merit.  It seems  
22          like maybe you could also read it to be something a  
23          little bit different to impose some kind of  
24          heightened standard.

25                 I guess, how do we answer --  It seems like we

1           have to answer that question before we get to the  
2           Rule 11 issue, right? We have to decide what the  
3           standard is before we can decide whether this  
4           conflicts with Rule 11?

5           MR. LERNER: Well, again, I mean, you know, in  
6           order to determine whether the fee-shifting  
7           applies, right, as Your Honors have pointed out,  
8           you do have to determine whether anti-SLAPP  
9           applies, and for it to apply it has to be an action  
10          that was primarily filed because a person or entity  
11          exercised the constitutional right of free speech,  
12          but that doesn't implicate a heightened pleading  
13          standard under the federal rules or Iqbal/Twombly.

14          THE COURT: Your argument is that it also  
15          isn't about whether it's an improper purpose, it's  
16          just really an inquiry into was this a lawsuit  
17          about someone speaking?

18          MR. LERNER: Correct, right, that the focus of  
19          Rule 11 in terms of curbing abuses in the court and  
20          protecting the integrity of the court and making  
21          sure that pleadings that are filed are signed  
22          knowing that there are, you know, a factual and  
23          legal basis that aren't frivolous is protecting the  
24          integrity of the system, whereas the Florida  
25          Statute, as Your Honor pointed out, is simply a



1 question of is this what this case is about.

2 THE COURT: But it's got to be more than just  
3 the fact that the case involves First Amendment  
4 issues, right? Because it says it was filed  
5 primarily because of that. I mean, so there has to  
6 be - it has to mean something more, otherwise it  
7 would just say and the case involved the exercise  
8 of First Amendment rights, right?

9 MR. LERNER: Well, primarily, I mean, there's  
10 a standard of, you know, is the primary basis for  
11 this the exercise of First Amendment rights.

12 THE COURT: When I read that, I wondered  
13 whether that meant you might have joinder of a lot  
14 of claims.

15 MR. LERNER: Exactly, and it's --

16 THE COURT: And you might have some weird like  
17 consumer fraud or, you know, allegation or  
18 something like that, but the thrust of the suit was  
19 about someone just as a "but for" kind of matter  
20 was about them exercising speech rights.

21 MR. LERNER: That's exactly right.

22 THE COURT: I mean, that could certainly be  
23 the case. You know, that's certainly one  
24 reasonable way of looking at it, but could it also  
25 reasonably be the case that it means something

1           else; that, you know, that it was filed sort of in  
2           retaliation, which is what your friend on the other  
3           side says, which is kind of different, right?  
4           Because then, then, if that's the meaning of it,  
5           then it's assuming an improper purpose, right?

6           MR. LERNER: I mean, again, it depends on your  
7           notion of what an improper purpose is, which gets  
8           you to the question of Rule 11.

9           THE COURT: I mean, you can't -- I think it  
10          would be an improper purpose to file a suit without  
11          merit because you're trying to get back at someone  
12          for saying things you don't like. Why would that  
13          not be an improper purpose?

14          MR. LERNER: It may be an improper purpose  
15          but, again, not necessarily under the rubric of  
16          Rule 11, which I think is aimed at a different kind  
17          of relief. And, again, Rule 11 is kind of - the  
18          sanctions that it provides for are prospective  
19          sanctions. They're not retrospective  
20          compensatory --

21          THE COURT: Even so, I mean, obviously, it's  
22          just, talking off the top of my head, it seems to  
23          me like a court that finds that there is a  
24          meritless suit that's been filed and it's been  
25          filed solely because the person is trying to get

1 back at someone and inflict costs on someone for  
2 exercising their First Amendment rights in a way  
3 that they didn't like, that that would be an  
4 improper purpose. I mean, I can't imagine - it's  
5 hard for me to imagine that a court would find that  
6 that was a proper purpose. Do you disagree?

7 MR. LERNER: Yeah, I understand your position,  
8 Your Honor, that it may be an improper purpose, but  
9 that doesn't necessarily mean that the fee-shifting  
10 under anti-SLAPP, and if this is a garden variety  
11 fee-shifting, as Judge Brasher is suggesting, that  
12 this court regularly recognizes, then it still  
13 applies in federal court. I mean, it is a garden  
14 variety fee-shifting, because, unlike Rule 11,  
15 again, which is prospective --

16 THE COURT: I'm sorry, but that's kind of a  
17 different issue, right? I mean, you're, I mean,  
18 maybe you're saying it's not a different issue,  
19 you're saying it doesn't even matter. Let's assume  
20 it was for an improper purpose, it still doesn't  
21 cross over completely with Rule 11, because in  
22 Rule 11 we're trying to deter this kind of bad  
23 conduct, whereas with this anti-SLAPP statute,  
24 although I think that's also trying to deter this  
25 kind of bad conduct, we're trying to compensate

1           someone for having to have to deal with this,  
2           although I think under Rule 11 you'd find that,  
3           even though it's to deter the conduct, that  
4           oftentimes the punishments that will be imposed  
5           would be imposed in such a way that you're  
6           essentially making whole the party that had the  
7           improper purpose inflicted upon them.

8           MR. LERNER: I seem out of time, but I'm happy  
9           to --

10          THE COURT: You may continue to speak, and  
11          I've got a question for you.

12          MR. LERNER: I hear everything and acknowledge  
13          all of that, but I think that there's still  
14          daylight there; that, yes, it may be for an  
15          improper purpose, and it's possible that Rule 11  
16          award in certain circumstances may have the effect  
17          incidentally of compensating somebody, but that  
18          still doesn't mean that it's, you know, the central  
19          question is the same and the compensation for  
20          having been burdened with this kind of suit, even,  
21          you know, a suit for an improper purpose, is a  
22          different question. The compensation question  
23          is --

24          THE COURT: Let me ask you this.

25          MR. LERNER: -- different than a deterrence

1 question.

2 THE COURT: Let me ask you, is there anything  
3 in the text of this statute that requires a court  
4 to determine the purpose or motive behind why a  
5 lawsuit was filed?

6 MR. LERNER: Well, only if Your Honors read --

7 THE COURT: Well, let's just read the words  
8 and -- I mean, is there anything in the words that  
9 says that a court has to determine the purpose  
10 behind a lawsuit to apply the anti-SLAPP?

11 MR. LERNER: The word purpose is not in there,  
12 right. The question is whether it was filed  
13 against another person or entity without merit and  
14 primarily because such person has exercised the  
15 constitutional right of free speech.

16 THE COURT: Yeah, and it's really whether that  
17 is - that primarily "because of" language is just  
18 "but for" kind of stuff, right, or whether it's  
19 imposing some kind of retaliatory standard, right?  
20 And it's just -- The question I was going to ask  
21 you about that is are you aware of any Florida case  
22 law that addresses that question?

23 MR. LERNER: I am not, Your Honor.

24 THE COURT: Okay. Is that another reason why  
25 we ought to certify it?

1 MR. LERNER: I don't think so, Your Honor.

2 I appreciate your time this morning,

3 Your Honors.

4 THE COURT: How much money are you trying to  
5 get in attorney's fees?

6 MR. LERNER: Well, that's the subject of a  
7 separate appeal, actually, already.

8 THE COURT: Okay.

9 MR. LERNER: I mean, right now there is a  
10 judgment for \$50,000.

11 THE COURT: Fifty thousand dollars?

12 MR. LERNER: I mean, approximately. It's a  
13 little bit less than that.

14 THE COURT: Are you sure you want to go to the  
15 Florida Supreme Court, come back here, maybe go  
16 back to the District Court, do all that just to try  
17 to get \$50,000?

18 MR. LERNER: Well, again, no, we don't want to  
19 go to the Supreme Court to do all that because  
20 we're hoping Your Honors will affirm the decision  
21 in its entirety as we've requested today.

22 THE COURT: All right.

23 MR. LERNER: We thank you for your time.

24 THE COURT: Ms. Isaak, you've got five  
25 minutes.

1           MS. ISAAK: Yes, sir. In the Carbone case, I  
2 think the court properly referenced the Abbas case,  
3 and in the Carbone case the court said that Federal  
4 Rules of Civil Procedure 12 and 56 answer the same  
5 question about the circumstance under which a court  
6 must dismiss a case before trial.

7           The Abbas case talks about an order granting a  
8 special motion to dismiss under the anti-SLAPP act.  
9 The court may grant attorney's fees and costs to  
10 the prevailing party. The act does not purport to  
11 make attorney's fees available to parties who  
12 obtained dismissal by other means, such as Federal  
13 Rule 12(b)(6), such as what we have in this case.  
14 Therefore we conclude that the case should be  
15 dismissed under 12(b)(6), attorney's fees under the  
16 anti-SLAPP statute are not available to the  
17 defendants in this case. It's our position that  
18 anti-SLAPP does not apply, period - does not apply.

19           And as far as the argument, Your Honors, that  
20 the statute says that it was filed primarily  
21 because of someone exercising the First Amendment  
22 rights, this case was filed because Jerome Corsi  
23 was in fact injured by statements that he could  
24 prove to be false. This case was not filed, nor  
25 was there a finding that this case was filed,

1 primarily for the purpose of infringing on  
2 someone's First Amendment rights.

3 THE COURT: Now, don't say purpose; it's  
4 because of, right?

5 MS. ISAAK: Because of, yes.

6 THE COURT: Because of someone's exercise of  
7 First Amendment rights --

8 MS. ISAAK: Yes.

9 THE COURT: -- right?

10 MS. ISAAK: Yes.

11 THE COURT: I mean, you filed it because of  
12 the exercise of First Amendment rights, right?

13 MS. ISAAK: Filed it because he was damaged by  
14 a provable - provably false, because the  
15 statements --

16 THE COURT: Well, you filed it because of  
17 speech, someone's speech on a news show on TV.

18 THE COURT: I mean, defamation is speech.

19 MS. ISAAK: Defamation is speech, but  
20 defamatory statements are not protected speech and  
21 that is why this was filed. There was nothing --

22 THE COURT: If you find that the claim of  
23 defamation is without merit, then you're left with  
24 it being speech and it is protected, right?

25 MS. ISAAK: Well, I understand that, sir, but



1           if this - we believe if this case was allowed to go  
2           to the discovery phase, perhaps we would have had a  
3           different result.

4           THE COURT: I understand that.

5           MS. ISAAK: But I don't think that there can  
6           be --

7           THE COURT: Let's assume for just the sake of  
8           the argument you're going to lose on whether there  
9           was a plausible allegation of actual malice.

10          MS. ISAAK: Okay.

11          THE COURT: Okay?

12          MS. ISAAK: Okay.

13          THE COURT: Then where are we?

14          MS. ISAAK: Well, if we lose that there was a  
15          plausible allegation of actual malice, then I guess  
16          we're stuck with the 12(b)(6) dismissal. However,  
17          the attorney's fees provision in the District Court  
18          was awarded pursuant to the Florida anti-SLAPP  
19          statute, does not apply in this case, it does not  
20          apply in federal court, and that is our position  
21          there.

22                 I think the federal courts have been clear,  
23                 even though there's been a split in the circuit,  
24                 there's - that it does not, it does not apply in  
25                 federal court. And we go to the case, the Georgia

1 case, the Carbone case, Georgia's anti-SLAPP  
2 statute --

3 THE COURT: I mean, none of these cases, not  
4 Carbone, none of them have to do with an award of  
5 attorney's fees.

6 MS. ISAAK: I understand that, but it has to  
7 do with the applicability of the anti-SLAPP --

8 THE COURT: We apply state laws that provide  
9 for an award of attorney's fees for claims that  
10 arise under state law --

11 MS. ISAAK: Yes, sir.

12 THE COURT: -- or fail under state law all the  
13 time, right?

14 MS. ISAAK: Yes, sir.

15 THE COURT: So why wasn't the District Court  
16 to award -- Why was the District Court wrong to  
17 award the fees here?

18 MS. ISAAK: Because they awarded the fees  
19 pursuant to the anti-SLAPP statute, the Florida  
20 anti-SLAPP statute, and that's why this is wrong.

21 Not only -- Of course, we contend that the  
22 anti-SLAPP statute has no place in federal court,  
23 it should not be applied in federal court, but,  
24 even if it was, they did not follow their own  
25 statute, which says it required a hearing. So

1           there is a higher evidentiary burden for the  
2           Florida SLAPP statute that is not - that does not  
3           apply in federal court.

4           THE COURT:   And where do you get the idea --  
5           I mean, where in the text of the statute does the  
6           idea that there's a higher evidentiary burden come  
7           from?

8           MS. ISAAK:   Because upon the filing of a  
9           dismissal under the Florida anti-SLAPP statute, and  
10          before the assessment of attorney's fees, a hearing  
11          must be scheduled.  It says "shall".  That is not  
12          something that is optional, so --

13          THE COURT:   Yeah, but, I mean, but wouldn't  
14          you have to have a hearing to assess the attorney's  
15          fees?  I mean, couldn't you apply 12(b)(6) for a  
16          motion for summary judgment, Rule 56, whatever, to  
17          the issue of merit?

18          Of course you have to have a hearing to assess  
19          attorney's fees.  I mean, you can't, you know, just  
20          magic come out of the air, you have to determine  
21          what the attorney's fees are, that kind of stuff.  
22          Why does that impose --  The idea of having a  
23          hearing, why does that say that there's a  
24          heightened evidentiary standard on the issue of  
25          whether there's merit or not?

1           MS. ISAAK: I guess because the statute --  
2           The statute, there has to be a showing that there  
3           is a violation of the anti-SLAPP statute, that this  
4           was filed primarily for - because someone exercised  
5           free speech.

6           And I understand what you're saying, Judge, I  
7           do. I think there's a difference here that there  
8           has to be a showing of that, but also --

9           THE COURT: It seems to me it's just  
10          uncontested that this is a speech case.

11          MS. ISAAK: Well, I would say it's --

12          THE COURT: I mean, the suit's about  
13          someone --

14          MS. ISAAK: A defamation?

15          THE COURT: -- speaking, right? It's a  
16          defamation suit, that's all it's about, and if it's  
17          without merit, if the claim of defamation is  
18          without merit, it was filed primarily because  
19          someone exercised their right to speak.

20          MS. ISAAK: I understand what you're saying,  
21          Judge, and Dr. Corsi was in fact damaged by  
22          provably false statements and it's his position  
23          that they are defamatory and at the very least he  
24          should have been allowed to go to the discovery  
25          phase and I don't even think there was an

1 opportunity to amend pleadings.

2 THE COURT: Okay. I think we understand your  
3 case, MS. ISAAK. And you've gone over, but you've  
4 been answering questions from us, so we're going to  
5 move to our last case.

6 MS. ISAAK: Okay.

7 THE COURT: Thank you.

8 (The audio concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

I, Gail Hmielewski, Court Stenographer, do hereby certify that the foregoing transcript, Pages 1 to and including 40, is a true and correct transcript of an audio recording that was provided to me of court proceedings.

The audio recording was provided to me by Larry E. Klayman, Esquire, and transcribed to the best of my ability.

Dated this 2nd day of June, 2022.

*Gail Hmielewski*



Gail Hmielewski, Court Stenographer

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