APPENDIX A [DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10331
Non-Argument Calendar

D.C. Docket No. 4:18-cv-00191-CDL

ROBERT J. FREY,

Plaintiff-Counter Defendant-Appellant,

versus

ANTHONY BINFORD MINTER,

Defendant-Counter Claimant-Appellee,

HAROLD BLACH, JR.,

Defendant-Appellee,

HUNTON ANDREWS KURTH LLP,

Respondent.

Appeal from the United States District Court
for the Middle District of Georgia

(October 1, 2020)

Before MARTIN, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Robert Frey, an attorney proceeding *pro se*, appeals the district court's summary judgment order dismissing his defamation action. He first argues that the district court erred by applying Georgia law. He also contends that the district court in the Middle District of Florida abused its discretion in transferring the action to the Middle District of Georgia. Finally, he asserts that the district court erred in denying his motion to remand the case to state court.

For the following reasons, we affirm.

I

This appeal involves a defamation lawsuit that Mr. Frey filed against Harold Blach and his attorney, Anthony Minter. The parties are familiar with the procedural history and generally agree to the underlying facts. We therefore do not recount the story in full detail.

In short, the three men became embroiled in litigation regarding Mr. Frey's former client, against whom both Mr. Frey and Mr. Blach held judgments. Mr. Blach, represented by Mr. Minter, pursued a garnishment of the client's wages in Georgia state court to satisfy his judgment, and Mr. Frey filed a third-party claim in that lawsuit. The outcome of that litigation is not of concern, other than to note that it became acrimonious and that Mr. Minter sent letters to the court and the Georgia

state bar accusing Mr. Frey of fraud. Mr. Minter communicated those accusations to a reporter for a local Georgia newspaper, who published the statements in print and online.

Mr. Frey sued Mr. Minter and Mr. Blach in the Middle District of Florida for defamation. He voluntarily dismissed the case after the district court ordered it transferred to the Middle District of Georgia. Mr. Frey then brought a substantially similar action in a Florida state court.

In the Florida lawsuit, Mr. Frey claimed that Mr. Minter's statements to the Georgia newspaper were defamatory *per se* because they involved false allegations of civil and criminal fraud, as well as violations of the Georgia Rules of Professional Conduct. Mr. Frey at first demanded $15,001 in damages but amended his complaint to request another $10,000,000 in punitive damages. The defendants removed the case to the Middle District of Florida based on diversity jurisdiction, and then filed a motion to transfer to the Middle District of Georgia. The district court granted the motion to transfer.

The transferee court in Georgia denied Mr. Frey's motions to transfer the case back to the Middle District of Florida and to remand. The district court also granted in part the defendants' Rule 12(b)(6) motion to dismiss, applying Georgia law and concluding that Mr. Frey failed to state a claim for defamation *per se* but sufficiently pled a claim for defamation *per quod*. The district court later granted the defendants'

motion for summary judgment, concluding that Mr. Frey did not present evidence of special damages (such as lost profits), which he was required to do for his remaining claim of defamation *per quod*. Mr. Frey appealed.

II

Mr. Frey first challenges the district court's conclusion that Georgia law applies to his defamation claim, although it is not clear to what end. Both Florida and Georgia require proof of special damages for a plaintiff to sustain a claim of defamation *per quod*. *See McGee v. Gast*, 572 S.E.2d 398, 401 (Ga. Ct. App. 2002); *Tip Top Grocery Co. v. Wellner*, 186 So. 219, 221 (Fla. 1938); *Hoch v. Rissman, Weisberg, Barrett*, 742 So. 2d 451, 457 (Fla. Dist. Ct. App. 1999). And the district court granted summary judgment in favor of the defendants because Mr. Frey did not offer any evidence of special damages.

It is likely that Mr. Frey hopes to establish a conflict of law with respect to the district court's earlier Rule 12(b)(6) partial dismissal so that he can maintain a claim for defamation *per se* under Florida law. Although he does not say this explicitly, we will assume as much for our analysis. And although Mr. Frey designated only the final judgment in his notice of appeal, we still have jurisdiction to review the non-final order granting in part and denying in part the motion to dismiss. *See Auto. Alignment & Body Serv., Inc. v. State Farm Mut. Auto. Ins. Co.*, 953 F.3d 707, 724–25 (11th Cir. 2020) ("[W]hen a notice of appeal designates the final, appealable

order—and does not identify specific parts of that order for appeal—we have jurisdiction to review that order and any earlier interlocutory orders that produced the judgment."). That does not change the outcome, however, because we conclude that the district court correctly applied Georgia law.

We review a choice-of-law determination *de novo* and any underlying factual findings for clear error. *See Grupo Televisa, S.A. v. Telemundo Commc'ns Grp., Inc.*, 485 F.3d 1233, 1239 (11th Cir. 2007). Neither party disputes that Florida choice-of-law rules govern, as the case was transferred from the Middle District of Florida. *See Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.3d 750, 752 (11th Cir. 1998) (explaining that "[f]ederal courts sitting in diversity apply the forum state's choice-of-law rules" and that when a case is transferred, "the transferor court's choice-of-law rules apply").

Florida resolves conflict-of-laws questions for torts using the "significant relationships test" as set forth in the Restatement (Second) of Conflict of Laws. *See Bishop v. Fla. Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980). When determining the state that has the most significant relationship to the events and the parties, courts consider "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." Restatement (Second) of

Conflict of Laws § 145 ("The General Principle"). *See also Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 694 (11th Cir. 2016). "These factors are considered according to their relative importance with respect to the particular issue." *Michel*, 816 F.3d at 694 (internal quotation marks omitted).[1]

The Restatement also includes a section on multistate defamation cases, which provides that the "state of most significant relationship will usually be the state where the person was domiciled at the time, if the matter complained of was published in that state." Restatement (Second) of Conflict of Laws § 150. Even if "some or all of the defamer's acts of communication were done in another state, if there was publication in the state of plaintiff's domicil and if the plaintiff is known only in this state and consequently his reputation only suffered injury there," the law of the plaintiff's domicile will usually be applied. *See id.* cmt. e.

That section and comment would appear at first glance to support the application of Florida law in this case. Mr. Frey's injury occurred in part in Florida, where he resides, and the article was available in Florida via the internet. The comment further provides, however, that in multistate defamation cases, the state of the plaintiff's domicile is not necessarily the state of most significant relationship "if one of the other states [in which the defamatory statement was published] has a more

[1] For quotations to the Restatement, we leave in place its archaic spelling of the word "domicil." Everywhere else, we use the modern version, "domicile."

significant relationship to the occurrence and the parties." *Id.* This may be the case where (1) the plaintiff is better known in that state than the state of his domicile; (2) the statement was "related to an activity of the plaintiff that is principally located in [that] state," (3) "the plaintiff suffered greater special damages in [that] state than in the state of his domicil," or (4) the statement's place of principal circulation was in the non-domicile state. *See id. See also Michel*, 816 F.3d at 694.

This paradigm more accurately describes the situation here, particularly with respect to the second and fourth factors. The allegedly defamatory statements were about Mr. Frey's conduct in Georgia state court proceedings. And even though the statements were published online and therefore available in Florida, the print circulation was primarily in Georgia.

With those multistate defamation principles in mind, we return to the four factors and the general principles of § 145 of the Restatement. Relevant to the first factor—the location where the injury occurred—Mr. Frey is licensed to practice law in Georgia, but he lives and maintains his law office in Florida, and he represents both Florida and Georgia citizens in matters involving Georgia or federal law. Based on those facts, it is not entirely clear where Mr. Frey's injury occurred. But we will assume—as did the district court—that the first factor weighs in favor of Florida law.

Even with that point going to Mr. Frey, the others are a wash or heavily favor the application of Georgia law. As for the second factor, the conduct causing the injury occurred in Georgia because the statements were made in Georgia by a Georgia resident and, again, the local newspaper's principal circulation is in Georgia. As to the third factor—the residence of the parties—Mr. Frey is a Florida resident, but Mr. Minter resides in Georgia and Mr. Blach resides in Alabama. This factor is a tie at best. In any event, the residency factor carries less weight here because the issues and circumstances of this case are centered in Georgia. *See Michel*, 816 F.3d at 694; Restatement (Second) of Conflict of Laws § 150 cmt. e. It is also less important given that Mr. Frey has demonstrated his willingness and ability to travel to the Middle District of Georgia, as he represents clients and has recently appeared in cases there. The fourth factor weighs heavily in favor of Georgia law because the parties' relationship is centered around the litigation that took place in Georgia.

Weighing the relevant factors, while also keeping in mind the principles specific to multistate defamation, we conclude that Georgia has the most significant relationship to this case. The district court therefore correctly applied Georgia law.

III

Mr. Frey's arguments attacking the transfer under 29 U.S.C. § 1404(a) are moot. Whether the case had proceeded in the Middle District of Florida or in the

Middle District of Georgia, Florida choice-of-law rules would still govern, Georgia law would still apply, and Mr. Frey's defamation claim would still fail on the merits.

The transferor court, in any event, did not abuse its discretion in transferring the case, and the transferee court did not err in declining to send it back. A case may be transferred to a district in which a civil action "might have been brought." § 1404(a). A civil action may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). Here, events giving rise to Mr. Frey's claim occurred in the Middle District of Georgia, which was therefore a permissible transferee venue.

Mr. Frey's arguments fail to show an abuse of discretion by the transferor court. Courts consider numerous factors in determining whether to transfer a case under § 1404(a):

> (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel v. Convergys Corp., 430 F.3d 1132, 1135 n.1 (11th Cir. 2005). Many of these factors clearly weigh in favor of transfer here. The allegedly defamatory statements were published in Georgia and the events giving rise to those statements occurred in Georgia. Mr. Frey demonstrated that he is willing and able to travel to

Georgia because he appeared in Georgia courts leading up to this case. And, notably, a court in the Middle District of Florida previously transferred a substantially similar case, which Mr. Frey voluntarily dismissed to file this action.

IV

We finally address the district court's denial of Mr. Frey's motion to remand. We review that decision *de novo*. *See City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313 (11th Cir. 2012).

A notice of removal of a civil action must be filed within 30 days of the defendant's receipt of the initial pleading. *See* 28 U.S.C. § 1446(b)(1). When the initial pleading is not removable, however, a notice of removal may be filed within 30 days of the defendant receiving "a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.* § 1446(b)(3).

Litigating on the merits, or "taking some substantial offensive or defensive action in the state court action," waives a defendant's right to remove a state court action to federal court. *See Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (internal quotation marks omitted). This type of waiver is case-specific. *See id.* "[T]he filing of a motion to dismiss in and of itself does not necessarily constitute a waiver of the defendant's right to proceed in the federal forum." *Id.* (internal quotation marks omitted).

The district court correctly denied Mr. Frey's motion to remand. The defendants litigated the motion to dismiss in state court, but only during a time when they could not have known that the case was removable. The defendants propounded jurisdictional interrogatories to Mr. Frey, but his responses were vague and did not state that he was seeking damages above the federal amount-in-controversy requirement. *See* 28 U.S.C. § 1332. Mr. Frey responded only that he sought "compensatory damages and undetermined punitive damages in such sum as a jury finds just and proper" and that he would not "speculate as to the amount of damages that may be awarded." It was only from Mr. Frey's amended complaint—and his $10,000,000 request for punitive damages—that the defendants were able to ascertain that diversity jurisdiction existed. The defendants did not waive their ability to remove because, up until that point, Mr. Frey obscured the factual basis for removal. The defendants submitted their notice of removal within 30 days of Mr. Frey filing his amended complaint.

V

For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-10026-AA

ROBERT J. FREY,

Plaintiff-Counter Defendant-Appellant,

versus

A. BINFORD MINTER,

Defendant-Counter Claimant-Appellant,

HAROLD BLACH, JR.,

Defendant-Appellee.

Appeals from the United States District Court
for the Middle District of Georgia

Before: WILLIAM PRYOR, MARTIN and ROSENBAUM, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction.

Robert J. Frey filed the instant notice of appeal from the district court's order applying Georgia law to Frey's claims, granting in part and denying in part the defendants' motion to dismiss, denying the defendants' motion for reconsideration of a state court order as moot, denying Frey's motion to remand, and denying Frey's motion to retransfer the case back to the U.S. District Court for the Middle District of Florida. Because the order did not end the case on the merits, it was not final. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000)

(noting that a final order ends the case on the merits and leaves nothing for the court to do but execute the judgment). And the district court did not certify a judgment under Federal Rule of Civil Procedure 54(b), so the dismissal of some but not all of the claims was not immediately appealable. *See* Fed. R. Civ. P. 54(b); *Supreme Fuels Trading FZE v. Sargeant*, 689 F.3d 1244, 1246 (11th Cir. 2012) (stating that an order that disposes of fewer than all of the claims against all of the parties to an action is not final and appealable, unless the district court certifies the order for immediate review pursuant to Rule 54(b)). Accordingly, we lack jurisdiction over this appeal. *See* 28 U.S.C. § 1291; *CSX Transp., Inc.*, 235 F.3d at 1327 (noting that we have jurisdiction over orders that are final or interlocutory orders that are appealable under a statute or jurisprudential exception); *Woodard v. STP Corp.*, 170 F.3d 1043, 1044 (11th Cir. 1999) (concluding that an order denying a motion to remand is not immediately appealable); *Roofing & Sheet Metal Servs., Inc. v. La Quinta Motor Inns, Inc.*, 689 F.2d 982, 988 (11th Cir. 1982) (stating that, in cases where the district court denies transfer or orders an intracircuit transfer, "appellate jurisdiction to review the district court's order is preserved on appeal from final judgment").

Any outstanding motions are DENIED as moot. No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir. R. 27-2 and all other applicable rules.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ROBERT J. FREY, *

Plaintiff, *

vs. *

CASE NO. 4:18-CV-191 (CDL)

ANTHONY BINFORD MINTER and HAROLD BLACH, JR., *

Defendants. *

O R D E R

This action involves allegations of defamation and assault by opposing counsel. Robert J. Frey claims that Defendants slandered and libeled him when Anthony Binford Minter, his opposing counsel in another action, falsely accused Frey of fraud to a newspaper reporter whose newspaper published the accusatory statements. Frey also asserts that Minter and his client Harold Blach engaged in defamation through pleadings by repeating the accusatory statements in filings before this Court and that Minter assaulted him along the way. Minter brought a counterclaim against Frey, alleging that Frey published defamatory statements about him. Presently pending are the parties' motions for summary judgment and Frey's motion for leave to amend his complaint. As discussed below, the Court denies Frey's partial summary judgment motion (ECF No. 85),

grants Defendants' summary judgment motion (ECF No. 84), and denies Frey's motion for leave to amend (ECF No. 90).

DISCUSSION

I. Motions for Summary Judgment

Frey seeks partial summary judgment on certain elements of his defamation claims. He asks the Court to conclude, as a matter of law, that Defendants' statements were false and defamatory and that Defendants' claims of privilege lack merit. Defendants, on the other hand, seek summary judgment on all of Frey's claims.

A. Summary Judgment Standard

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In determining whether a *genuine* dispute of *material* fact exists to defeat a motion for summary judgment, the evidence is viewed in the light most favorable to the party opposing summary judgment, drawing all justifiable inferences in the opposing party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A fact is *material* if it is relevant or necessary to the outcome of the suit. *Id.* at 248. A factual dispute is *genuine* if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Id.*

B. Factual Background

Blach, who is represented by Minter, held an Alabama judgment against Sal Diaz-Verson, which he has been trying to collect since 2012. Frey, who is Diaz-Verson's former lawyer, also held a judgment against Diaz-Verson for unpaid legal fees that Diaz-Verson owed him. Neither party's present statement of material facts squarely addresses the circumstances of Frey's Judgment against Diaz-Verson, but the circumstances are relevant. Based on the record in a separate action before this Court, Frey's judgment was originally obtained by Porter Bridge Loan Company against Diaz-Verson. *Blach v. Diaz-Verson*, No. 4:15-MC-5, 2017 WL 1854675, at *2 (M.D. Ga. May 8, 2017). After Diaz-Verson paid part of the judgment's balance to achieve a settlement with Porter Bridge, Porter Bridge assigned the unsatisfied balance of the judgment to Frey in late 2012, and Frey recorded it in Harris County, Georgia in early 2013. *Id.* The assignment was meant to secure Frey's right to collect a portion of the unpaid legal fees that Diaz-Verson owed to Frey. *Id.*

Diaz-Verson's former employer, AFLAC Inc., makes bimonthly payments to Diaz-Verson, twenty-five percent of which is subject to garnishment. In 2015, Blach registered his Alabama judgment in Georgia and began filing garnishment actions against Diaz-Verson in this Court and in other Georgia courts, seeking to

garnish the AFLAC payments. Frey filed third-party claims in those garnishment actions, arguing that he had a judgment that was superior to Blach's.

Blach, represented by Minter, argued that the assignment of the Porter Bridge Judgment to Frey was a fraudulent transaction.[1] In August 2016, Minter provided *Daily Report* reporter Greg Land an official statement about Blach's garnishment proceeding against Diaz-Verson. The *Daily Report* published the following statements:

- Minter "claims that he's being blocked from collecting [a judgment for his client] by [Frey], who holds a years-old judgment [Diaz-Verson]."
- "According to Minter, Frey apparently has no intention of collecting on the $300,000 judgment but is using it to block anyone else's efforts to target his ex-client's funds."
- Minter said, "I'm arguing that it's a fraudulent arrangement; impermissible, unethical, and void."
- Minter also said, "If this is permissible, any debtor could evade future creditors by arranging, under confidential terms, for an existing judgment debt to be assigned to his own attorney. The debtor's attorney could keep doing legal work to ensure the old judgment debt never gets paid, but then deny other would-be garnishors based on his 'owing' a prior judgment."

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[1] The Court later rejected that argument, twice, because Blach did not point to evidence from which a reasonable juror could conclude that the assignment was voidable as a fraudulent transaction under the Georgia Uniform Voidable Transfers Act, O.C.G.A. § 18-2-74. *Blach v. Diaz-Verson*, No. 4:15-MC-5, 2017 WL 1854675, at *5 (M.D. Ga. May 8, 2017); *Blach v. Diaz-Verson*, No. 4:15-MC-5, 2018 WL 1321038, at *3 (M.D. Ga. Mar. 14, 2018), *modified on other grounds* in 2018 WL 1598665 (M.D. Ga. Apr. 2, 2018).

Pl.'s Aff. Ex. B, Greg Land, Garnishment Action Accuses Lawyer of Using Unpaid Judgment to Block Debt Collection, *Daily Report*, Aug. 19, 2016, ECF No. 1-2 at 220-23.

C. Frey's Defamation Claims

Frey seeks summary judgment on certain elements of his defamation claims and on Defendants' privilege defense. Specifically, he asks the Court to decide, as a matter of law, that Minter's statements to *Daily Report* reporter Greg Land, which were later published in the *Daily Report*, were false and defamed Frey. He also asks the Court to decide, as a matter of law, that two 2018 filings Minter made on behalf of Blach in the garnishment action were false and defamed Frey and were not privileged under O.C.G.A. § 51-5-9.[2] Frey argues that the only fact issue remaining on his defamation claims is the issue of damages. Defendants argue that they are entitled to summary

[2] Frey added the "defamation through pleadings" claim in his second amended complaint, which he filed after the close of discovery on April 20, 2019. Pl.'s 2d Am. Compl. ¶¶ 64-73, ECF No. 78. It is based on statements in Blach's February 24, 2018 response to Frey's motion for disbursement of funds (ECF No. 315 in 4:15-mc-5) and Blach's March 1, 2018 motion for disbursement of funds (ECF No. 316 in 4:15-mc-5). These statements repeat Defendants' argument that Minter previously made to the *Daily Report*: Frey on one occasion structured the assignment of a judgment against his former client in an improper way, then used the judgment to protect his former client from other judgment holders. Although Frey alleged in his first amended complaint that the February 24, 2018 response brief evidenced "continued defamation," Am. Compl. ¶ 72, ECF No. 2, he did not seek leave to file a supplemental pleading based on the two 2018 filings. *See* Fla. R. Civ. P. 1.190(d) (requiring leave of court to file a supplemental pleading setting out events that happened after the date of the pleading to be supplemented); *accord* Fed. R. Civ. P. 15(d) (same). Even if the claim were properly before the Court, it would fail for lack of special damages, as discussed below.

judgment on Frey's defamation claims because, among other things, Frey has not presented any evidence of special damages.

"To establish a cause of action for defamation, a plaintiff must submit evidence of (1) a false and defamatory statement about himself; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special damages or defamatory words 'injurious on their face.'" *Chaney v. Harrison & Lynam, LLC*, 708 S.E.2d 672, 676 (Ga. Ct. App. 2011) (quoting *Lewis v. Meredith Corp.*, 667 S.E.2d 716, 718 (Ga. Ct. App. 2008)). Defamatory words that are "injurious on their face" without the aid of extrinsic proof are actionable as defamation *per se*. *Smith v. Stewart*, 660 S.E.2d 822, 831 (Ga. Ct. App. 2008) (quoting *Zarach v. Atlanta Claims Ass'n*, 500 S.E.2d 1, 5 (Ga. Ct. App. 1998); *see also Cottrell v. Smith*, 788 S.E.2d 772, 781 (noting that the "categories of slander have been engrafted into the libel statute, with the result that libel in the nature of the first three categories of slander" is libel *per se* and "carries with it the inference of damages"). Absent proof of defamation *per se*, a plaintiff cannot state a claim for defamation without proving special damages. *McGee v. Gast*, 572 S.E.2d 398, 401 (Ga. Ct. App. 2002) (affirming summary judgment in favor of the defendant where the plaintiff did not plead special damages or produce evidence that special damages

resulted from the defendant's allegedly defamatory words); *accord* O.C.G.A. § 51-5-4(b) (stating that unless slander or oral defamation falls within one of the three categories that Georgia recognizes as slander *per se*, "special damage is essential to support an action").

Frey contends that he may recover general damages on his defamation claim, arguing that "[t]he tortious act of defamation causes a plaintiff to suffer 'general damages' sometimes called 'presumed damages.'" Pl.'s Resp. to Def.'s Mot. for Summ. J. 4, ECF No. 92. But, as discussed above, Frey must have a valid claim of defamation *per se* to be entitled to general damages. The Court previously concluded that Frey did not state a claim for defamation *per se*.[3] Order on Mot. to Dismiss 14 (Dec. 4, 2018), ECF No. 50. Thus, to prevail on his defamation claims, Frey must establish not only that Minter made unprivileged defamatory statements about him but also that he suffered special damages as a result of those statements. "The special damages required to support an action for defamation, when the

[3] The Court made this ruling based on the allegations in Frey's original complaint as supplemented by his first amended complaint (ECF No. 1-1 & ECF No. 2). Frey did not attempt to assert a claim for defamation *per se* in his second amended complaint. Even if he had, the Court granted Frey permission to amend his complaint after the close of discovery because his original complaint contained references to Florida law and he wished to incorporate provisions of Georgia law given the Court's ruling that Georgia law applies to his defamation claim. Text Order (Mar. 6, 2019), ECF No. 69. Frey did not request, and the Court did not grant, leave to add additional factual allegations or causes of action. He was also not granted leave to attempt to resurrect claims that were previously dismissed.

words themselves are not actionable, must be the loss of money or some other material temporal advantage capable of being assessed in monetary value." *McGee*, 572 S.E.2d at 401. "The loss of income, of profits, and even of gratuitous entertainment and hospitality will be special damage if the plaintiff can show that it was caused by the defendant's words." *Id.* (emphasis omitted) (quoting *Webster v. Wilkins*, 456 S.E.2d 699, 701 (Ga. Ct. App. 1995)).

Though the Court found at the motion to dismiss stage that Frey adequately alleged special damages, to survive summary judgment on this ground he must present *evidence* of special damages. *See McGee*, 572 S.E.2d at 401 (affirming summary judgment in favor of the defendant where the plaintiff did not plead special damages or produce evidence that special damages resulted from the defendant's allegedly defamatory words). Frey did not do so. In fact, Frey did not produce any computation of damages during discovery or in response to Minter's summary judgment motion. Minter filed a motion to sanction Frey for his failure to supplement his initial disclosures to provide a computation of damages. The Court ordered Frey to show cause by July 3, 2019 why he should not be sanctioned for his failure to provide a computation of damages. Order 8 (June 12, 2019), ECF No. 88. In response to the Court's order, Frey stated that he was "not seeking more than 'compensatory damages' and 'punitive

damage.'" Pl.'s Resp. to Court Order 2, ECF No. 93. Frey further stated that the "compensatory damages" he seeks are "the standard general defamatory damages for loss to reputation, pain and suffering and emotional distress, none of which require Plaintiff to 'calculate' and disclose" specific amounts. *Id.* Again, because he does not have a claim for libel or slander per se, Frey is not entitled to recover general damages. He must prove special damages, such as lost income or profits. Given that Frey did not produce any evidence of special damages caused by Minter's allegedly defamatory statements—and apparently does not even intend to seek such damages—Defendants are entitled to summary judgment on Frey's defamation claims. Having concluded that Defendants are entitled to summary judgment on Frey's defamation claims based on his failure to present evidence of special damages, the Court need not address whether Frey proved, as a matter of law, that Defendants' statements were unprivileged, false, and defamatory. Accordingly, his motion for partial summary judgment is denied.

D. Frey's Assault Claim

In addition to his defamation claims, Frey contends that Minter is liable for civil assault based on an alleged altercation that happened on November 17, 2017, after Frey filed this action. Minter seeks summary judgment on Frey's assault claim because Frey never sought leave to add such a claim. Frey

did not state a claim for civil assault in his original complaint because the alleged assault had not yet happened. Frey did allege facts regarding the alleged assault in his first amended complaint that he filed in the Florida state court on July 2, 2018. *See* Am. Compl. ¶ 67, ECF No. 2 (alleging that Minter "made a veiled threat of death" to Frey). But, he did not add a claim for assault at that time. Rather, he stated that the new allegations were evidence of Defendants' "continued defamation with animus and malice." *Id.* at 1; *accord* Pl.'s Resp. to Defs.' Mot. for Summ. J. 10, ECF No. 92 (stating that Frey did not believe that he had legal grounds to add a civil assault claim against Minter while this action was pending in Florida). Furthermore, the Florida Rules of Civil Procedure, like Federal Rule of Civil Procedure 15(d), require leave of the court "to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fla. R. Civ. P. 1.190(d); *accord* Fed. R. Civ. P. 15(d). Frey did not seek or receive leave to add an assault claim. Therefore, any civil assault claim was not properly added when Frey filed his first amended complaint, and Minter was not on notice based on the first amended complaint that Frey intended to pursue a civil assault claim against him.

Frey also did not seek leave to add an assault claim when he asked this Court for leave to file a second amended complaint. A month before the close of discovery, Frey sought permission to amend his complaint because his original complaint contained references to Florida law and he wished to incorporate provisions of Georgia law given the Court's ruling that Georgia law applies to his defamation claims. Mot. for Leave to Amend 1, ECF No. 55. Nothing in Frey's motion suggested that Frey wished to add a new claim for civil assault. Given the Court's understanding that Frey merely wished to replace his references to Florida law with references to Georgia law, the Court granted Frey's motion for leave to amend the complaint.[4] Frey did not clearly request, and the Court certainly did not grant, leave to add an additional cause of action. Since neither the Florida state court nor this Court granted Frey leave to add a civil assault claim, the civil assault claim asserted in Frey's post-discovery second amended complaint is not properly before the Court, and it is dismissed without prejudice.

[4] Shortly after Frey filed the motion, he appealed the Court's order that denied his motion to remand, denied his motion to transfer, and granted in part Defendants' motion to dismiss. The Court deferred ruling on Frey's motion for leave to amend until after the Eleventh Circuit issued its mandate dismissing the appeal for lack of jurisdiction. By that time, discovery had closed, and the parties agreed that no additional discovery was needed.

II. Plaintiff's Motion for Leave to Amend Complaint

Nine months after the deadline for joining parties, nearly five months after the close of discovery, two months after the deadline for Plaintiff to file a second amended complaint, and two weeks after the dispositive motion deadline, Frey filed a motion for leave to file a third amended complaint. This time, Frey wishes to amend the complaint to add Minter's former law firm, Wagner, Johnston & Rosenthal, P.C., as a Defendant on Count II of his second amended complaint. Even if Count II had been properly added as a supplemental pleading and even if the Court had not dismissed all of Frey's defamation claims based on his failure to produce evidence of special damages, the Court would deny this motion. Frey knew or should have known that Minter began working at Wagner, Johnston & Rosenthal in early 2017. *See* Notice of Change of Address (Mar. 7, 2017), ECF No. 166 in 4:15-mc-5 (sent via email to all case participants, including Frey). Frey also knew or should have known that before then, Minter was a solo practitioner whose firm was called A. Binford Minter, LLC. *See* Certificate of Service (Feb. 19, 2017), ECF No. 158 at 3 in 4:15-mc-5 (sent via email to all case participants, including Frey). Frey offered no good cause why he did not seek to add Wagner, Johnston & Rosenthal, P.C. as a Defendant by the deadline set in the scheduling order.

Accordingly, his motion for leave to amend the complaint (ECF No. 90) is denied.

CONCLUSION

As discussed above, the Court denies Frey's partial summary judgment motion (ECF No. 85), grants Defendants' summary judgment motion (ECF No. 84), and denies Frey's motion for leave to amend (ECF No. 90). Frey did not seek summary judgment on Minter's counterclaim for defamation, so that claim remains pending for trial.[5] The Court plans to hold the trial during the Court's next Columbus civil trial term in March 2020.

Minter's second motion to compel (ECF No. 95) is still pending before the Court. Within seven days of the date of this Order, Minter shall notify the Court whether he intends to pursue the motion in light of today's ruling. If Minter does not withdraw the motion, he shall articulate why the information sought is relevant to his counterclaim.

IT IS SO ORDERED, this 29th day of August, 2019.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

[5] Minter's counterclaim is a permissive counterclaim under Federal Rule of Civil Procedure 13(b) because it does not arise out of the same transaction or occurrence as Frey's claim. Instead, Minter's counterclaim arises out of allegedly defamatory statements that Frey made about Minter to others. There is complete diversity among the parties, and Minter seeks $50,000 in compensatory damages and $250,000 in punitive damages, so it appears there is an independent jurisdictional basis to adjudicate the counterclaim.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ROBERT J. FREY, *

Plaintiff, *

vs. *

CASE NO. 4:18-CV-191 (CDL)

ANTHONY BINFORD MINTER and HAROLD BLACH, JR., *

Defendants. *

O R D E R

Robert J. Frey filed this defamation action against Anthony Binford Minter and Harold Blach, Jr. in Florida state court. He initially sought $15,001.00 in compensatory damages, plus punitive damages in an unspecified amount. Defendants moved to dismiss the action for lack of personal jurisdiction in Florida. The state court held a hearing and denied the motion to dismiss. Frey then amended his Complaint to seek $15,001.00 in compensatory damages and $10,000,000.00 in punitive damages. Based on the Amended Complaint, Defendants concluded that diversity jurisdiction existed and removed the action to the U.S. District Court for the Middle District of Florida. Defendants filed a motion to dismiss for failure to state a claim (ECF No. 8) and a motion to transfer the action to this Court (ECF No. 9). Frey filed a motion to remand (ECF No. 16), and Defendants filed a motion for reconsideration of the state

court's order denying their motion to dismiss (ECF No. 23). The Florida U.S. District Judge granted Defendants' motion to transfer (ECF No. 9) the action to this Court. *See* Order (Sept. 19, 2018), ECF No. 39. The other motions remain pending. After the transfer, Frey filed a motion to transfer (ECF No. 41), asking that this action be transferred back to the U.S. District Court for the Middle District of Florida if it is not remanded to the Florida state court.

For the reasons set forth below, Frey's motion to remand (ECF No. 16) and motion to transfer (ECF No. 41) are denied. Defendants do not challenge personal jurisdiction in this Court, and their motion for reconsideration of the Florida state court's order denying their motion to dismiss for lack of personal jurisdiction (ECF No. 23) is moot. Finally, Defendants' motion to dismiss for failure to state a claim (ECF No. 8) is granted in part and denied in part.

DISCUSSION

I. Frey's Motion to Remand (ECF No. 16)

If an action is removed to federal court, the plaintiff may seek remand to state court based on a "defect" with the removal. 28 U.S.C. § 1447(c). "One such defect, commonly referred to as litigating on the merits, effectively waives the defendant's right to remove a state court action to the federal court." *Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365

F.3d 1244, 1246 (11th Cir. 2004) (per curiam). Frey argues that this defect exists here because Defendants litigated their motion to dismiss for lack of personal jurisdiction in the state court. But the "litigating on the merits" waiver of the right to remove can only occur if the right to remove is apparent and the defendant takes substantial action in the state court case. Litigation *before* the right to removal becomes apparent does not waive the right to remove.

Here, Frey filed this action in state court on July 5, 2017. He sought $15,001.00 in compensatory damages and an unspecified amount in punitive damages. Compl. 18, ECF No. 1-1 at 18. Defendants propounded jurisdictional requests for admission asking Frey to admit that he seeks damages in excess of $75,000; Frey denied those requests. Notice of Removal Ex. D, Pl.'s Resp. to Defs.' Jurisdictional Reqs. for Admis. ¶¶ 1-4, ECF No. 1-1 at 48-50. Thus, the initial Complaint and Frey's jurisdictional discovery responses did not suggest that the amount in controversy exceeded the jurisdictional threshold of $75,000.00. So, when Defendants were litigating their motion to dismiss in the state court, Defendants did not have any right to remove that could be waived. This action was not removable until June 14, 2018, when Frey filed a First Amended Complaint amending his prayer for damages to seek $15,001.00 in compensatory damages and $10,000,000.00 in punitive damages.

When the action became removable, Defendants did not waive their right to remove—they filed their notice of removal on July 2, 2018, within one year of the commencement of this action and within thirty days of receiving Frey's amended complaint. For these reasons, Frey's Motion to Remand (ECF No. 16) is denied.

II. Frey's Motion to Transfer (ECF No. 41)

Frey asserts that this action should be transferred back to the U.S. District Court for the Middle District of Florida under 28 U.S.C. § 1404. Two Florida District Judges thoroughly analyzed the transfer factors and concluded that this case should be litigated in the Middle District of Georgia.[1] The Court finds no reason to transfer the action back to Florida. Frey's motion to transfer (ECF No. 41) is denied.

III. Defendants' Motion to Dismiss (ECF No. 8)

A. Choice of Law

Before the Court reaches the merits of Defendants' motion to dismiss, the Court must determine whether Florida or Georgia law applies. Frey, who lives in Florida, commenced this action in Florida contesting the publication of an article in a Georgia legal newspaper regarding a Georgia lawyer's comments on Frey's actions during Georgia litigation. Frey argues that Florida law applies in this action and that his Amended Complaint states a

[1] Before Plaintiff filed this action, he filed a substantially similar action in the U.S. District Court for the Middle District of Florida but voluntarily dismissed it after the Florida District Judge ordered that the action be transferred to this Court.

claim under Florida law. Defendant argues that Georgia law applies and that Frey fails to state a claim under Georgia law.

"Federal courts sitting in diversity apply the forum state's choice-of-law rules." *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.3d 750, 752 (11th Cir. 1998). But, "when a case is transferred from one forum to another, the transferor court's choice-of-law rules apply to the transferred case even after the transfer occurs." *Id.* Thus, the Court must apply Florida's choice-of-law rules.

Florida resolves conflict-of-laws questions for tort cases using the "significant relationships test" set forth in the Restatement (Second) of Conflict of Laws. *Bishop v. Fla. Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980) (adopting significant relationships test and rejecting the "traditional lex loci delicti rule"). The goal is to determine which state "has the most significant relationship to the occurrence and the parties under the principles stated in § 6" of the Restatement.[2] *Id.* (quoting Restatement (Second) of Conflict of Laws § 145(1) (Am. Law Inst. 1971)). When "applying the principles of § 6 to

[2] Section 6 states that "the factors relevant to the choice of the applicable rule of law include (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease in the determination and application of the law to be applied." Restatement (Second) of Conflict of Laws § 6(2) (Am. La. Inst. 1971).

determine the law applicable to an issue," the courts consider "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." *Id.* (quoting Restatement (Second) of Conflict of Laws § 145 (Am. Law Inst. 1971)); *accord Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 694 (11th Cir. 2016) (applying Florida law). These factors are considered "according to their relative importance with respect to the particular issue." *Michel*, 816 F.3d at 694 (quoting *Bishop*, 389 So.2d at 1001). In addition, the Restatement instructs that "[i]n an action for defamation, the local law of the state where the publication occurs determines the rights and liabilities of the parties," except in cases of multistate defamation. Restatement (Second) of Conflict of Laws § 149 (Am. Law Inst. 1971). In cases of multistate defamation, the Restatement instructs that the applicable law is "the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties." *Id.* § 150(1). For a natural person, "the state of most significant relationship will usually be the state where the person was domiciled at the time, if the matter complained of was published in that state." *Id.* § 150(2). However, a

state other than the state of the plaintiff's domicil may have the most significant relationship if the allegedly defamatory statement related to the plaintiff's activity in the non-domicil state or the place of principal circulation was in the non-domicil state. *Id.* § 150(2) cmt. e.

In this case, the conduct causing the injury occurred in Georgia when Minter made certain comments that were published in the *Daily Report*, a Georgia legal newspaper that is principally circulated in Georgia. Minter is a Georgia resident. The contentious relationship between Frey and Minter is centered in Georgia, where the two have been adversaries in several garnishment proceedings. The allegedly defamatory statement related to Frey's activity in Georgia litigation. The *Daily Report* article containing Minter's remarks was republished online. Frey, who lives in Florida, received a copy of it via email from a former client who also lives in Florida. Although Frey is only licensed to practice law in Georgia and is not licensed to practice law in Florida, Frey maintains his law office in Sarasota, Florida and represents Florida citizens and Georgia citizens in matters involving Georgia law or federal tax law. Frey alleges that the online publication of the article harmed him in Florida. Thus, the injury occurred at least partly in Florida where Frey lives and where the article was available via the internet.

The Court finds that (1) the "place of injury" factor weighs in favor of finding that Florida has the most significant relationship to this matter, (2) the domicil of the parties factor is neutral, (3) the two other factors weigh in favor of finding that Georgia has the most significant relationship to this matter, and (4) the allegedly defamatory statement was related to Frey's activity in Georgia and was published in a legal newspaper with its principal circulation in Georgia. Weighing these factors, the Court finds that Georgia has the most significant relationship to this matter. Accordingly, Georgia law applies.

B. Analysis

Defendants argue that Frey's Complaint fails to state a claim for defamation under Georgia law. "To survive a motion to dismiss" under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must include sufficient factual allegations "to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In other words, the factual allegations must "raise a reasonable expectation that discovery will reveal evidence of" the plaintiff's claims. *Id.* at 556. But "Rule

12(b)(6) does not permit dismissal of a well-pleaded complaint simply because 'it strikes a savvy judge that actual proof of those facts is improbable.'" *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 556).

Defendants argue that (1) Frey's Complaint fails to state a claim for defamation per se; (2) Frey's defamation claim fails because Minter's statements were truthful; and (3) Frey's claim should be stricken under Georgia's anti-SLAPP statute. The Court addresses each argument in turn.

1. The Allegedly Defamatory Statements

Frey's claims are based on Minter's statements that were reported in the *Daily Report*:

- Minter "said his efforts to garnish funds from a former Aflac executive have been repeatedly stymied by another lawyer who previously represented the executive."
- Minter "claims that he's being blocked from collecting [a judgment for his client] by [Frey], who holds a years-old judgment against the former Aflac executive [, Frey's former client]."
- "According to Minter, [Frey] apparently has no intention of collecting on the $300,000 judgment but is using it to block anyone else's efforts to target his ex-client's funds."
- "'I'm arguing that it's a fraudulent arrangement; impermissible, unethical, and void,' said Minter. 'If this is permissible, any debtor could evade future creditors by arranging, under confidential terms, for an existing judgment debt to be assigned to his own attorney. The debtor's attorney could keep doing legal work to ensure the old judgment debt never gets paid, but

> then deny other would-be garnishors based on his 'owing' a prior judgment.'"

Pl.'s Aff. Ex. B, Greg Land, *Garnishment Action Accuses Lawyer of Using Unpaid Judgment to Block Debt Collection*, Daily Report, Aug. 19, 2016, ECF No. 1-2 at 220-21.[3] The article noted that Frey assumed emeritus status with the Georgia bar in 2015. *Id.*

2. Defamation Per Se Claim

Frey contends that Minter's statements amount to defamation per se. The Georgia law distinction between defamation per se and defamation is that the plaintiff is not required to prove special damages to recover on a defamation per se claim. A "private figure" plaintiff must prove four elements to prevail on a defamation claim under Georgia law: "(1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication to a third party; (3) fault by the defendant amounting at least to negligence; and (4) special harm or the 'actionability of the statement irrespective of special harm.'" *Mathis v. Cannon*, 573 S.E.2d 376, 380 (Ga. 2002) (quoting Restatement (Second) of Torts § 558 (Am. Law Inst.

[3] The article appears in many places in the record, including as an attachment to Plaintiff's Complaint. *See* Compl. Ex. E, ECF No. 1-2 at 83-84. The Court cites the version that was attached to the Notice of Removal as one of filings in the state court proceeding because it contains the headline and the byline; the version attached to Plaintiff's Complaint does not. The body of the article is identical to the article attached to Plaintiff's Complaint.

1977)).[4] To be defamation per se, "the words are those which are recognized as injurious on their face—without the aid of extrinsic proof. Should extrinsic facts be necessary to establish the defamatory character of the words, the words may constitute slander, but they do not constitute slander per se." *Cottrell v. Smith*, 788 S.E.2d 772, 781 (Ga. 2016) (quoting *Bellemead, LLC v. Stoker*, 631 S.E.2d 693, 695 (Ga. 2006)).

The three categories of defamation per se under Georgia law are: "(1) Imputing to another a crime punishable by law; (2) Charging a person with having some contagious disorder or with being guilty of some debasing act which may exclude him from society; [and] (3) Making charges against another in reference to his trade, office, or profession, calculated to injure him therein[.]" O.C.G.A. § 51-5-4(a). Here, Frey argues that Minter imputed a crime to him and made charges calculated to injure him in his business.

In regard to imputing a crime, "[t]o constitute slander per se, . . . the words at issue must charge the commission of a specific crime punishable by law. Where the plain import of the

[4] If the plaintiff is a public figure, then a more stringent standard applies. *Mathis*, 573 S.E.2d at 380. Defendants summarily argue that the more stringent "public figure" standard applies, but they did not present a factual basis for this argument, and the Court cannot conclude based on the present record that Frey should be considered a public figure for purposes of this action. *See id.* at 381 (explaining the difference between public figures and private persons); *accord Atlanta Journal-Constitution v. Jewell*, 555 S.E.2d 175, 183 (Ga. Ct. App. 2001) (same).

words spoken impute no criminal offense, they cannot have their meaning enlarged by innuendo." *Dagel v. Lemcke*, 537 S.E.2d 694, 696 (Ga. Ct. App. 2000) (alterations in original) (quoting *Parks v. Multimedia Techs., Inc.*, 520 S.E.2d 517, 527 (Ga. Ct. App. 1999)). The statement "must give 'the impression that the crime in question is being charged, couched in language as might reasonably be expected to convey that meaning to any one who happened to hear the utterance.'" *Taylor v. Calvary Baptist Temple*, 630 S.E.2d 604, 607 (Ga. Ct. App. 2006) (quoting *Bullock v. Jeon*, 487 S.E.2d 692, 695 (Ga. Ct. App. 1997)). "[V]ague statements or even derogatory comments do not reach the point of becoming slander per se when a person cannot reasonably conclude from what is said that the comments are imputing a crime onto the plaintiff." *Id.* Here, though Minter said he believed that Frey entered a "fraudulent arrangement," his words did not accuse Frey of committing any specific crime punishable by law. Frey thus fails to state a claim for defamation per se under the "imputing a crime" category.

"As for defamation in regard to a trade, profession, or office, '[t]he kind of aspersion necessary to come under this phase of the rule of slander per se must be one that is especially injurious to the plaintiff's reputation because of the particular demands or qualifications of plaintiff's vocation. . . ." *Cottrell*, 788 S.E.2d at 781-82 (alterations in

original) (quoting *Bellemead, LLC*, 631 S.E.2d at 695). "[T]he words must either be spoken of the plaintiff in connection with his calling or they must be of such a nature such as to charge him with some defect of character or lack of knowledge, skill, or capacity as necessarily to affect his competency successfully to carry on his business, trade, or profession." *Id.* at 782 (alterations in original) (quoting *Bellemead, LLC*, 631 S.E.2d at 695). Here, though Minter's words disparage Frey's reputation as a lawyer, it is undisputed that Frey had emeritus status with the Georgia Bar when Minter's allegedly defamatory statements were published—therefore, he was not permitted to practice law. *See* Ga. State Bar R. 1-202(d) (stating that emeritus members "shall not be privileged to practice law" except in certain pro bono cases). It is not clear how Minter's statements could injure Frey in a profession from which he was essentially retired.

Furthermore, even if a disparaging statement against a retired lawyer could be considered defamation per se, "language imputing to a . . . professional man ignorance or mistake on a single occasion and not accusing him of general ignorance or lack of skill is not actionable per se." *Cottrell*, 788 S.E.2d at 782 (quoting *Kin Chun Chung v. JPMorgan Chase Bank, N.A.*, 975 F. Supp. 2d 1333, 1349 (N.D. Ga. 2013)). "A charge that plaintiff in a single instance was guilty of a mistake,

impropriety or other unprofessional conduct does not imply that he is generally unfit." *Id.* (quoting *Kin Chun Chung*, 975 F. Supp. 2d at 1349). Here, Minter argued that Frey on one occasion structured the assignment of a judgment against his former client in an improper way, then used the judgment to protect his former client from other judgment holders. This charge does not imply that Frey was generally unfit to practice law. Frey thus fails to state a claim for defamation per se under the "impugning plaintiff's business" category.

For the reasons set forth above, Frey did not adequately plead a claim for defamation per se, so damages are not inferred. Instead, he must prove special damages caused by the alleged defamation. The Court finds that Frey adequately pled special damages to avoid dismissal at this stage of the proceedings.

3. Defendants' "Truth" Defense

Defendant argues that even if Frey's Complaint adequately alleged special damages caused by Minter's statements, Frey's defamation claim is still barred because Minter's statements were truthful. Defendants are correct that truth, if proved, is a complete defense to a defamation claim. O.C.G.A. § 51-5-6. Defendants appear to contend that Minter's statements were merely statements of opinion rather than actionable statements of fact. But there is "no wholesale defamation exception for

anything that might be labeled 'opinion.' An opinion can constitute actionable defamation if the opinion can reasonably be interpreted, according to the context of the entire writing in which the opinion appears, to state or imply defamatory facts about the plaintiff that are capable of being proved false." *Gettner v. Fitzgerald*, 677 S.E.2d 149, 154 (Ga. Ct. App. 2009) (quoting *Gast v. Brittain*, 589 S.E.2d 63, 64 (Ga. 2003)). Here, Frey's defamation claim is based on Minter's statement that Frey structured the assignment of a judgment against his former client in an improper way and then, without any intention of collecting the judgment, used the judgment to protect his former client from other judgment holders. These statements certainly imply defamatory facts about Frey that are capable of being proved false. Accordingly, the Court declines to dismiss Frey's complaint on this ground at this time.

4. Georgia's Anti-SLAPP Statute

Defendants further argue that Frey's Complaint should be stricken under Georgia's anti-SLAPP (strategic lawsuits against public participation) statute, O.C.G.A. § 9-11-11.1. A SLAPP action "is a lawsuit intended to silence and intimidate critics or opponents by overwhelming them with the cost of a legal defense until they abandon that criticism or opposition." *Jubilee Dev. Partners, LLC v. Strategic Jubilee Holdings, LLC*, 809 S.E.2d 542, 544 (Ga. Ct. App. 2018) (quoting *Rogers v.*

Dupree, 799 S.E.2d 1, 5 (Ga. Ct. App. 2017)). "Georgia's anti-SLAPP statute is intended to protect persons exercising their rights to free speech and to petition." *Id.* The statute provides:

> A claim for relief against a person or entity arising from any act of such person or entity which could reasonably be construed as an act in furtherance of the person's or entity's right of petition or free speech under the Constitution of the United States or the Constitution of the State of Georgia in connection with an issue of public interest or concern shall be subject to a motion to strike unless the court determines that the nonmoving party has established that there is a probability that the nonmoving party will prevail on the claim.

O.C.G.A. § 9-11-11.1(b)(1).

The Court assumes for purposes of the present motion that Minter's statements are protected under the anti-SLAPP statute, although the Court is not convinced that Frey's present defamation action is the type of oppressive and speech-chilling litigation that the anti-SLAPP statute was intended to address. The present record viewed in the light most favorable to Frey suggests that there is a bona fide action for defamation brought in good faith and not as abusive litigation to chill Defendants' constitutional rights. Notably, Frey filed this action in July 2017, approximately two months *after* this Court concluded that Frey held a "legitimate, unsatisfied judgment against" his former client that was "superior to Blach's judgment." *Blach v. AFLAC, Inc.*, No. 4:15-MC-5, 2017 WL 1854675, at *1 (M.D. Ga. May

8, 2017), *certified question answered sub nom. Blach v. Diaz-Verson*, 810 S.E.2d 129 (Ga. 2018). Moreover, Frey met his burden of showing that there is a probability he will prevail on his claim. Although the Court may consider evidence in determining whether Frey met this burden, neither Frey nor Defendants pointed to any evidence on this issue. Therefore, the Court is left with the Complaint and its exhibits, which if taken as true and viewed in the light most favorable to Frey establish a probability of success because Frey alleges facts to support each element of a defamation claim. For these reasons, the Court declines to dismiss Frey's action under the anti-SLAPP statute.

CONCLUSION

As discussed above, Frey's motion to remand (ECF No. 16) and motion to transfer (ECF No. 41) are denied. Defendants' motion for reconsideration of the Florida state court's order denying their motion to dismiss for lack of personal jurisdiction (ECF No. 23) is moot. Defendants' motion to dismiss for failure to state a claim (ECF No. 8) is granted in part and denied in part.

IT IS SO ORDERED, this 4th day of December, 2018.

S/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10331-DD

ROBERT J. FREY,

Plaintiff - Counter Defendant - Appellant,

versus

ANTHONY BINFORD MINTER,

Defendant - Counter Claimant - Appellee,

HAROLD BLACH, JR.,

Defendant - Appellee,

HUNTON ANDREWS KURTH LLP,

Respondent.

Appeal from the United States District Court
for the Middle District of Georgia

Before MARTIN, JORDAN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Robert J. Frey is DENIED.

ORD-41

APPENDIX F

TITLE A. THE GENERAL PRINCIPLE

§ 145. The General Principle

(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.

(2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,

(b) the place where the conduct causing the injury occurred,

(c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and

(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

See Appendix for Court Citation and Cross References

Comment on Subsection (2):

e. Important contacts in determining state of most significant relationship. In applying the principles of § 6 to determine the state of most significant relationship, the forum should give consideration to the relevant policies of all potentially interested states and the relevant interests of those states in the decision of the particular issue. Those states which are most likely to be interested are those which have one or more of the following contacts with the occurrence and the parties. Some of these contacts also figure prominently in the formulation of the applicable rules of choice of law.

The place where injury occurred. In the case of personal injuries or of injuries to tangible things, the place where the injury occurred is a contact that, as to most issues, plays an important role in the selection of the state of the applicable law (see §§ 146–147). This contact likewise plays an important role in the selection of the state of the applicable law in the case of other kinds of torts, provided that the injury occurred in a single, clearly ascertainable, state. This is so for the reason among others that persons who cause injury in a state should not ordinarily escape liabilities imposed by the local law of that state on account of the injury. So in the case of false imprisonment, the local law of the state where the plaintiff was imprisoned will usually be applied. Likewise, when a person in state X writes a letter about the plaintiff which is received by a person in state Y, the local law of Y, the state where the publication occurred, will govern most issues involving the tort, unless the contacts which some other state has with the occurrence and the parties are sufficient to make that other state the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties (see § 149).

Situations do arise, however, where the place of injury will not play an important role in the selection of the state of the applicable law. This will be so, for example, when the place of injury can be said to be fortuitous or when for other reasons it bears little relation to the occurrence and the parties with respect to the particular issue (see § 146, Comments *d–e*). This will also be so when, such as in the case of fraud and misrepresentation (see § 148), there may be little reason in logic or persuasiveness to say that one state rather than another is the place of injury, or when, such as in the case of multistate defamation (see § 150), injury has occurred in two or more states. Situations may also arise where the defendant had little, or no,

reason to foresee that his act would result in injury in the particular state. Such lack of foreseeability on the part of the defendant is a factor that will militate against selection of the state of injury as the state of the applicable law. Indeed, application of the local law of the state of injury in such circumstances might on occasion raise jurisdictional questions (see § 9, Comment *f*).

The place where conduct occurred. When the injury occurred in a single, clearly ascertainable state and when the conduct which caused the injury also occurred there, that state will usually be the state of the applicable law with respect to most issues involving the tort. This is particularly likely to be so with respect to issues involving standards of conduct, since the state of conduct and injury will have a natural concern in the determination of such issues.

Choice of the applicable law becomes more difficult in situations where the defendant's conduct and the resulting injury occurred in different states. When the injury occurred in two or more states, or when the place of injury cannot be ascertained or is fortuitous and, with respect to the particular issue, bears little relation to the occurrence and the parties, the place where the defendant's conduct occurred will usually be given particular weight in determining the state of the applicable law. For example, the place where the conduct occurred is given particular weight in the case of torts involving interference with a marriage relationship (see § 154) or unfair competition (see Comment *f*), since in the case of such torts there is often no one clearly demonstrable place of injury. Likewise, when the primary purpose of the tort rule involved is to deter or punish misconduct, the place where the conduct occurred has peculiar significance (see Comment *c*). And the same is true when the conduct was required or privileged by the local law of the state where it took place (see § 163, Comment *a*).

The place where the defendant's conduct occurred is of less significance in situations where, such as in the case of multistate defamation (see § 150), a potential defendant might choose to conduct his activities in a state whose tort rules are favorable to him.

The domicil, residence, nationality, place of incorporation and place of business of the parties. These are all places of enduring relationship to the parties. Their relative importance varies with the nature of the interest affected. When the interest affected is a personal one such as a person's interest in his reputation, or in his right of privacy or in the affections of

his wife, domicil, residence and nationality are of greater importance than if the interest is a business or financial one, such as in the case of unfair competition, interference with contractual relations or trade disparagement. In these latter instances, the place of business is the more important contact. At least with respect to most issues, a corporation's principal place of business is a more important contact than the place of incorporation, and this is particularly true in situations where the corporation does little, or no, business in the latter place.

These contacts are of importance in situations where injury occurs in two or more states. So the place of the plaintiff's domicil, or on occasion his principal place of business, is the single most important contact for determining the state of the applicable law as to most issues in situations involving the multistate publication of matter that injures plaintiff's reputation (see § 150) or causes him financial injury (see § 151) or invades his right of privacy (see § 153).

In the case of other torts, the importance of these contacts depends largely upon the extent to which they are grouped with other contacts. The fact, for example, that one of the parties is domiciled or does business in a given state will usually carry little weight of itself. On the other hand, the fact that the domicil and place of business of all parties are grouped in a single state is an important factor to be considered in determining the state of the applicable law. The state where these contacts are grouped is particularly likely to be the state of the applicable law if either the defendant's conduct or the plaintiff's injury occurred there. This state may also be the state of the applicable law when conduct and injury occurred in a place that is fortuitous and bears little relation to the occurrence and the parties (see § 146, Comments *d–e*).

The importance of those contacts will frequently depend upon the particular issue involved (see Comment *d*).

The place where the relationship, if any, between the parties is centered. When there is a relationship between the plaintiff and the defendant and when the injury was caused by an act done in the course of the relationship, the place where the relationship is centered is another contact to be considered. So when the plaintiff is injured while traveling on a train or while riding as a guest passenger in an automobile, the state where his relationship to the railroad or to the driver of the automobile is centered may be the state of the applicable law. This is particularly likely to be the case if other important contacts, such as the place of injury or the place of conduct or the domicil or place

of business of the parties, are also located in the state (see, for example, § 146, Comment *e* and § 147, Comment *e*). On rare occasions, the place where the relationship is centered may be the most important contact of all with respect to most issues. A possible example is where the plaintiff in state X purchases a train ticket from the defendant to travel from one city in X to another city in X, but is injured while the train is passing for a short distance through state Y. Here X local law, rather than the local law of Y, may be held to govern the rights and liabilities of the parties.

Illustrations:

1. A and B are both domiciled in state X. A accepts B's invitation to accompany him as his guest on an automobile trip which is to start in X, go through several neighboring states and then end in X. B is insured against liability by an X insurance company. While in state Y, a neighboring state, B negligently drives the automobile off the road and A is injured. A brings suit to recover for his injuries in a court of state Z. B would not be liable to A under Y local law, since a Y statute provides that a guest passenger shall have no right of action against his host for negligently-caused injuries. B would be liable to A, however, under X local law. The first question for the Z court to determine is whether the interests of both X and Y would be furthered by application of their respective local law rules. This is a question that can only be determined in the light of the respective purposes of these rules (see Comment *c*). The interests of X would be furthered by application of the X rule if, as is probably the case, one purpose of this rule is to protect X passengers against negligent injury by X hosts. Whether the interests of Y would be furthered by application of the Y rule is more uncertain. If the only purpose of the Y rule is to protect Y insurance companies against collusion between host and guest, Y interests would not be furthered by application of the Y rule since an X insurance company is involved. In such a case, the Z court should permit A to recover against B by application of X local law. On the other hand, Y interests would presumably be furthered by application of the Y rule if at least one purpose of this rule is to protect hosts, while in Y, against the ingratitude of their guests. Among the questions for the Z court to determine in such a case would be whether X's interest in the application of its rule outweighs the countervailing interest of Y. Factors which would sup-

port an affirmative answer to this question are that A and B are both domiciled in X and that the relationship between them was centered in X. Other factors which would support application of the X rule are that the trip began and was to end in X and that it could be deemed fortuitous that the accident occurred in Y rather than in some other state. If it were to be found that a Y court would not have applied its rule to the facts of the present case, the arguments for applying the X rule would be even stronger, for it would then appear that, even in the eyes of the Y court, Y interests were not sufficiently involved to require application of the Y rule (see § 8, Comment *k*).

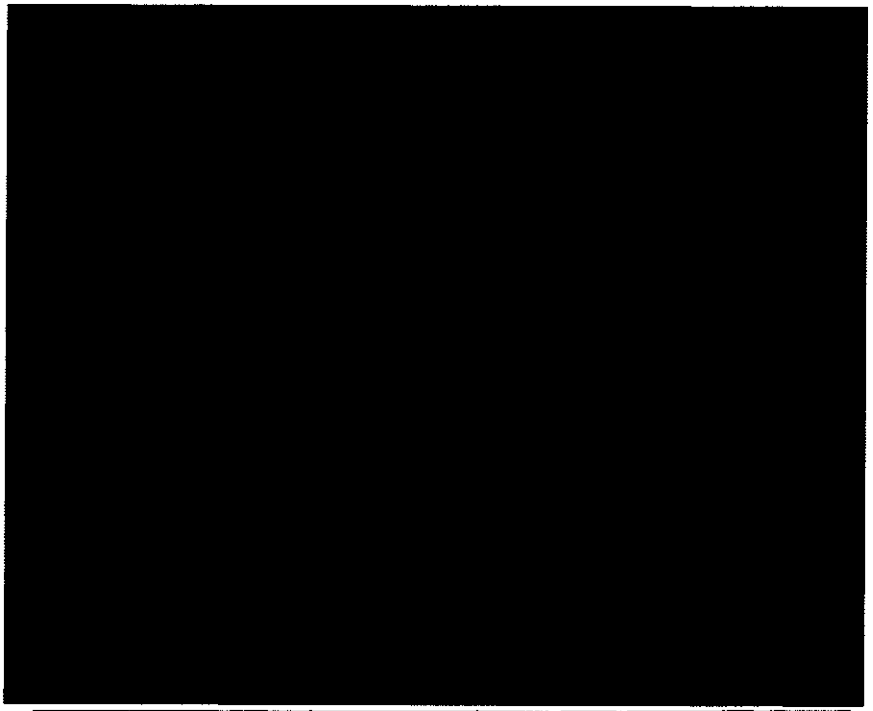
2. Same facts as in Illustration 1 except that the accident would not have occurred if the automobile had been equipped with a safety device required by Y local law, but not by the local law of X, and the question is whether B should be held liable to A as a result. In this case, Y's interests would be furthered by application of its rule since Y is clearly concerned with what are standards of acceptable conduct in Y. Among the other factors which would support application by the Z court of the Y rule in order to hold B liable are that conduct and injury occurred in Y and that Y has an obvious interest in the application of its rule. If it were to be found that an X court would have applied the Y rule to the facts of the present case, the arguments for applying the Y rule would be even stronger. For it would then appear that, even in the eyes of the X court, X interests were not sufficiently involved to require application of the relevant X rule (see § 8, Comment *k*).

Comment:

f. The tort involved. The relative importance of the contacts mentioned above varies somewhat with the nature of the tort involved. Thus, the place of injury is of particular importance in the case of personal injuries and of injuries to tangible things (see §§ 146–147). The same is true in the case of false imprisonment and of malicious prosecution and abuse of process (see § 155). On the other hand, the place of injury is less significant in the case of fraudulent misrepresentations (see § 148) and of such unfair competition as consists of false advertising and the misappropriation of trade values. The injury suffered through false advertising is the loss of customers or of trade. Such customers or trade will frequently be lost in two or more states. The effect of the loss, which is pecuniary in its nature, will normally be felt most severely at the plaintiff's headquar-

ters or principal place of business. But this place may have only a slight relationship to the defendant's activities and to the plaintiff's loss of customers or trade. The situation is essentially the same when misappropriation of the plaintiff's trade values is involved, except that the plaintiff may have suffered no pecuniary loss but the defendant rather may have obtained an unfair profit. For all these reasons, the place of injury does not play so important a role for choice-of-law purposes in the case of false advertising and the misappropriation of trade values as in the case of other kinds of torts. Instead, the principal location of the defendant's conduct is the contact that will usually be given the greatest weight in determining the state whose local law determines the rights and liabilities that arise from false advertising and the misappropriation of trade values.

The principal location of the defendant's conduct is also the single most important contact in the case of interference with a marriage relationship (see § 154). In situations involving the multistate publication of matter that injures the plaintiff's reputation (see § 150) or causes him financial injury (see § 151) or invades his right of privacy (see § 153), the place of the plaintiff's domicil, or on occasion his principal place of business, is the single most important contact for determining the state of the applicable law.

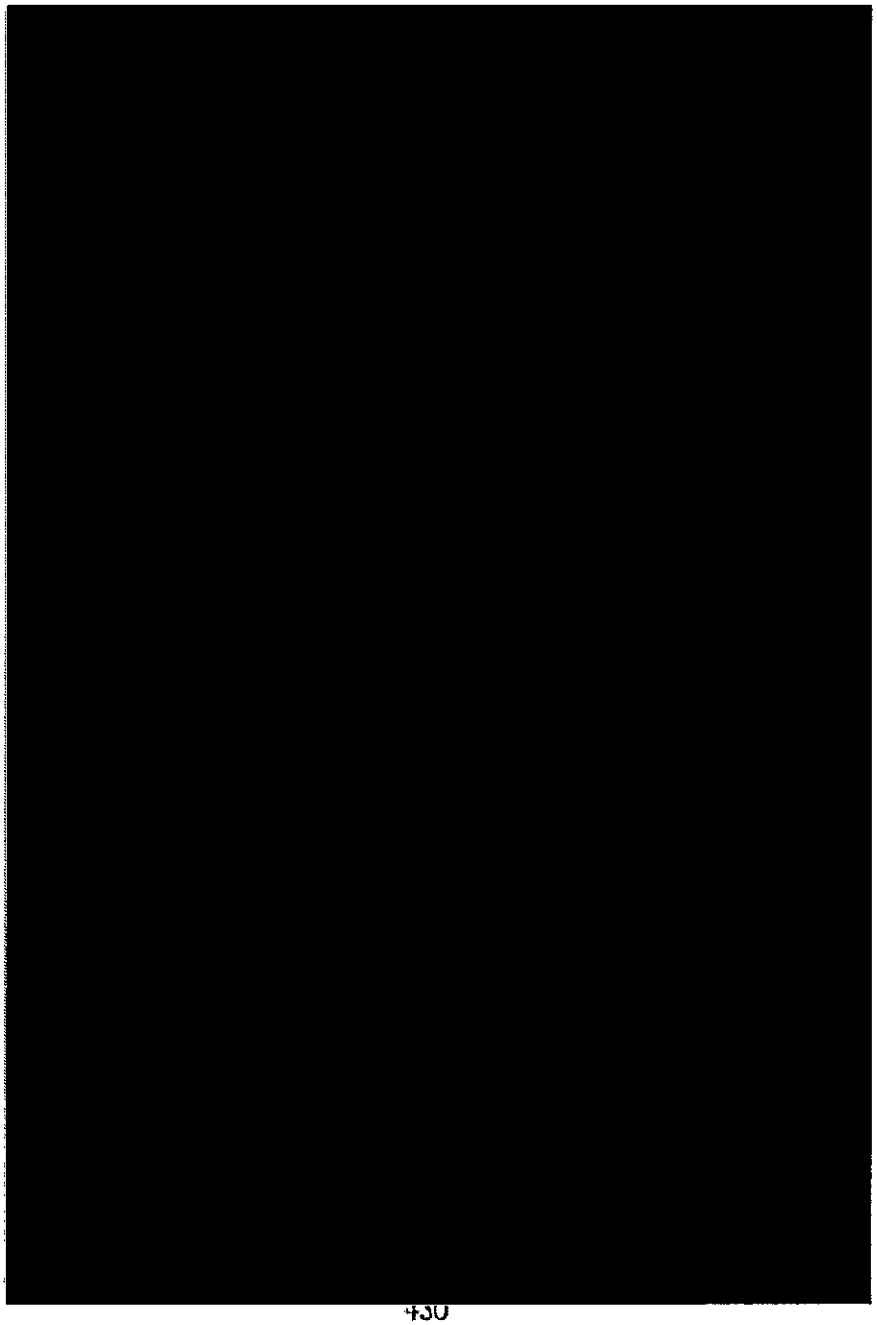


See Appendix for Court Citation and Cross References

Appendix G

TITLE B. PARTICULAR TORTS

Introductory Note: This Title deals with particular torts for which it is possible to state rules of greater precision than the general principle set forth in § 145.



APPENDIX H

§ 150. Multistate Defamation

(1) The rights and liabilities that arise from defamatory matter in any one edition of a book or newspaper, or any one broadcast over radio or television, exhibition of a motion picture, or similar aggregate communication are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.

(2) When a natural person claims that he has been defamed by an aggregate communication, the state of most significant relationship will usually be the state where the person was domiciled at the time, if the matter complained of was published in that state.

(3) When a corporation, or other legal person, claims that it has been defamed by an aggregate communication, the state of most significant relationship will usu-

ally be the state where the corporation, or other legal person, had its principal place of business at the time, if the matter complained of was published in that state.

Comment:

a. Scope of section. The rule of this Section applies in situations where a defamatory statement in an aggregate communication is published to persons other than the person defamed in two or more states. In other situations involving defamation the rule of § 149 is applicable.

b. Rationale. The rule of this Section calls for application of the local law of the state selected pursuant to the provisions of Subsection (2) and (3) unless, with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties. Whether there is such another state should be determined in the light of the choice-of-law principles stated in § 6. In large part the answer will depend upon whether some state has a greater interest in the determination of the particular issue than the state selected pursuant to the provisions of Subsections (2) and (3). The extent of the interest of each of the potentially interested states should be determined on the basis, among other things, of the purpose sought to be achieved by their relevant local law rules and of the particular issue involved (see § 145, Comments *c–d*). Particular issues are discussed in Title C (§§ 156–174).

The rule furthers the choice-of-law values of certainty, predictability and uniformity of result and of ease in the determination and application of the applicable law (see § 6).

Examples of issues in multistate defamation are whether a given communication is defamatory and, if so, whether it constitutes libel or slander, whether proof of special damages is essential to plaintiff's recovery, what persons are protected by the law of defamation, what constitutes the publication of defamatory matter, whether the publisher of defamatory matter is strictly liable or whether he is liable only if he published the defamatory matter intentionally or negligently, the circumstances under which publication of defamatory matter is protected by an absolute or by a qualified privilege, whether truth is a defense and what matters may be considered a partial defense in mitigation of damages.

c. Single publication rule. As stated in § 577A of the Restatement of Torts (Second), a "single publication rule" is applied as a matter of tort law in cases where there is a single aggregate communication to a large number of persons at one

time. In such instances, the plaintiff has only one cause of action for the publication. In his one action he will recover damages for all the harm that the communication has caused, or may be expected to cause, him. Justification for the rule is to be found in the necessity of protecting defendants and the courts from the enormous number of suits which might be brought if publication to each person reached by such an aggregate communication could serve as the foundation for a new cause of action.

A single publication rule also exists in choice-of-law. When there has been publication in two or more states of an aggregate communication of the sort described in the rule of this Section, the forum, at least in situations that do not fall within the scope of Comment *d*, will hold that the plaintiff has but one cause of action for choice-of-law purposes and will apply the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties. Otherwise, the forum might be required to consult and apply the local law of every state in which there was publication of the defamatory matter. This would mean in the case of a nation-wide broadcast or of a publication of nation-wide circulation that the forum would, at the least, have to consult and apply the local law of fifty States and of the District of Columbia.

The forum will determine the rights and liabilities of the parties in accordance with the local law of the state selected without regard to the question whether the courts of that state follow a single or a multiple publication rule.

A plaintiff, who has a right of action under the local law of the state selected by application of the rule of this Section, will recover for the entire injury the communication has caused, or may be expected to cause, him in all states in which the communication is published. This is true even if the communication is published in one or more states under whose local law the plaintiff has no right of action. A judgment rendered on the merits for either the plaintiff or the defendant will under normal principles of res judicata preclude further action between the parties with respect to the same communication. As between States of the United States, a judgment rendered under such circumstances on the merits will under full faith and credit preclude the maintenance of any further action between the parties in a sister State if the judgment has such a preclusive effect in the State of rendition (see § 95).

Illustration:

1. Suit is brought in state X to recover damages for a statement contained in a broadcast transmitted from state X and heard in states A, B, C, D and X. The statement is defamatory under the local law of A. It is not defamatory under the local law of B, C, D and X. If the X court would be led by its choice-of-law rule to apply the local law of A, the court will award the plaintiff full recovery. This will be done even though A does not follow a single publication rule, and hence, if suit had been brought in A, the A court would not have awarded plaintiff damages for the publications which occurred in B, C, D and X.

Comment:

d. When special damages suffered in two or more states. The rule of this Section under which all damages are determined under a single law may not apply in situations where the plaintiff is claimed to have suffered one kind of special damages in one state and another kind of special damages in a second state. It is possible that in such situations the local law of each of these states will be applied to determine the plaintiff's right to recover for the special damage he is alleged to have suffered within its territory.

Illustration:

2. A, who is a practicing lawyer and who is domiciled in state X, is seeking a position with a legislative committee in state Y. The B newspaper, which is published in state Z and is circulated in X, Y and Z, publishes a defamatory story about A. A sues B for defamation alleging that publication of the story caused him (a) a general loss of reputation (b) the loss of a valuable client in X and (c) resulted in his failure to obtain the position in Y. Under the rule of this Section, A's right to recover for his general loss of reputation will be determined by the local law of X unless some other state is that of most significant relationship. On the other hand, it may be that A's right to recover for the loss of his client will be determined in accordance with X local law and that Y local law will be applied to determine whether A can recover for the loss of the position.

Comment:

e. Multistate communication involving natural person. Rules of defamation are designed to protect a person's interest in his reputation. When there has been publication in two or

more states of an aggregate communication claimed to be defamatory, at least most issues involving the tort should be determined, subject to the possible limitation stated in Comment *d*, by the local law of the state where the plaintiff has suffered the greatest injury by reason of his loss of reputation. This will usually be the state of the plaintiff's domicil if the matter complained of has there been published.

If the defamer's act or acts of communication are done in the state of the plaintiff's domicil and if the matter claimed to be defamatory is there published, the local law of this state will usually be applied to determine most issues involving the tort (see § 145, Comments *d–e*). The local law of the state of the plaintiff's domicil will also usually be so applied, even though some or all of the defamer's acts of communication were done in another state, if there was publication in the state of plaintiff's domicil and if the plaintiff is known only in this state and consequently his reputation only suffered injury there. Determination of the state of the applicable law is more difficult when the defamer's act or acts of communication are done in a state other than that of the plaintiff's domicil and when the matter complained of is published in the state of the plaintiff's domicil and in one or more other states to which the plaintiff has a substantial relationship. In this last situation, the local law of the state of the plaintiff's domicil will be applied unless, with respect to the particular issue, one of the other states has a more significant relationship to the occurrence and the parties.

A state, which is not the state of the plaintiff's domicil, may be that of most significant relationship if it is the state where the defamatory communication caused plaintiff the greatest injury to his reputation. This may be so, for example, in situations where (a) the plaintiff is better known in this state than in the state of his domicil, or (b) the matter claimed to be defamatory related to an activity of the plaintiff that is principally located in this state, or (c) the plaintiff suffered greater special damages in this state than in the state of his domicil, or (d) the place of principal circulation of the matter claimed to be defamatory was in this state.

Other contacts that the forum will consider in determining which is the state of most significant relationship with respect to the particular issue include (a) the state or states where the defendant did his act or acts of communication, such as assembling, printing and distributing a magazine or book and (b) the state or states of the defendant's domicil, incorporation or organization and principal place of business.

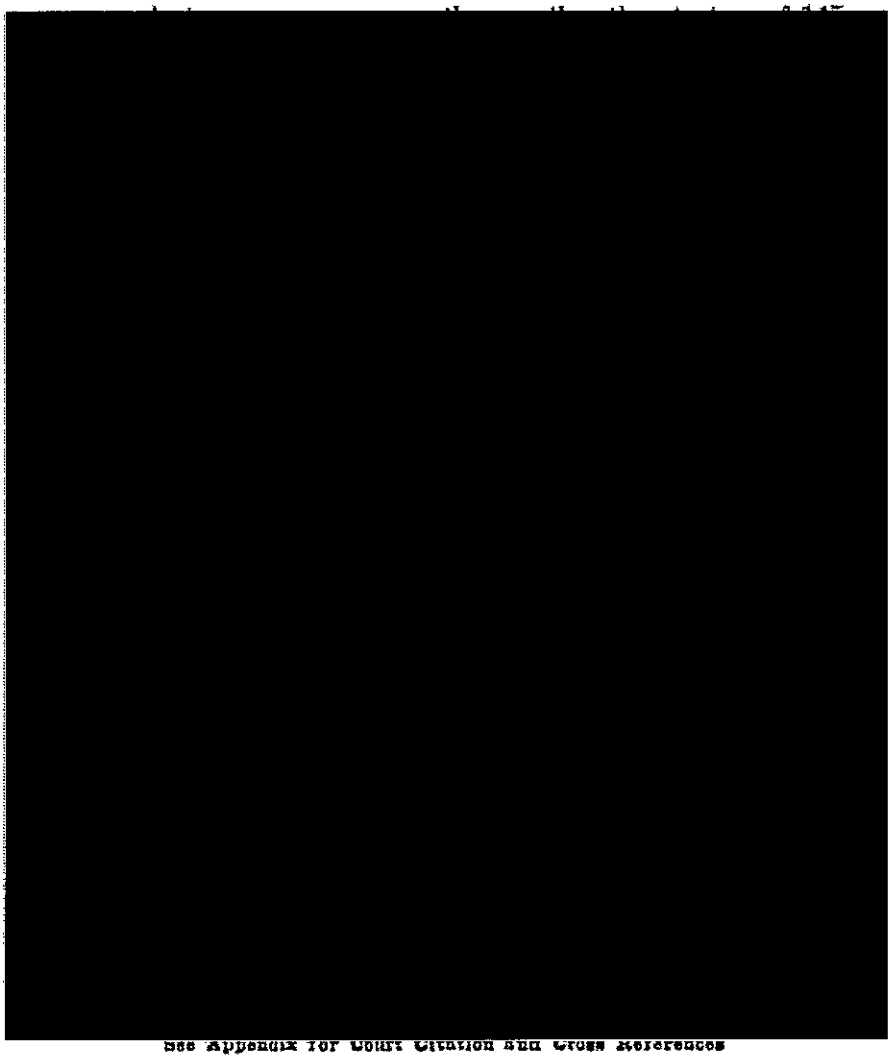
f. Multistate communication involving corporation or other legal person. What is said in Comment *e* about multistate communications involving natural persons is in general applicable to corporations and other legal persons. Legal persons, however, have no domicil (see § 11, Comment *l*). In their case the principal place of business is the most important contact in the determination of which is the state of most significant relationship and hence that of the applicable law. A legal person's principal place of business is the place where its reputation will usually be most grievously affected. Other contacts to be considered are the state of incorporation of a corporation or the state of organization of other sorts of legal persons, such as joint stock associations and business trusts. Less weight will be given to these latter contacts in the determination of the state of most significant relationship than to the principal place of business of the legal person involved.

If the defamer's act or acts of communication are done in the state of the plaintiff's principal place of business and if the matter claimed to be defamatory is there published, the local law of this state will usually be applied to determine most issues involving the tort (see § 145, Comments *d–e*). The local law of the state of plaintiff's principal place of business will also usually be applied, even though some or all of the defamer's acts of communication were done in another state, if all of the plaintiff's business is carried on in the former state. Determination of which is the state of the applicable law is more difficult when the defamer's act or acts of communication are done in a state other than that of plaintiff's principal place of business and when the matter complained of is published in the state of the plaintiff's principal place of business and in one or more other states to which the plaintiff has a substantial relationship. In this last situation, the local law of the state of the plaintiff's principal place of business will be applied unless, with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties.

A state, which is not the state of the plaintiff's principal place of business, may be that of most significant relationship with respect to the particular issue if it is the state where the defamatory communication caused plaintiff the greatest injury to its reputation. This may be so, for example, in situations where (a) the plaintiff is better known in this state than in the state of its principal place of business, as might be the case if the plaintiff does approximately the same amount of business in this state as it does in the state of its principal business and this state is the state of the plaintiff's incorporation or organization,

or (b) the matter claimed to be defamatory related to an activity of the plaintiff that is principally located in this state, or (c) the plaintiff suffered greater special damages in this state than in the state of its principal place of business, or (d) the place of principal circulation of the matter claimed to be defamatory was in this state.

Other contacts that the forum will consider in determining which is the state of most significant relationship with respect to the particular issue include (a) the state or states where the defendant did his act or acts of communication, such as assembling, printing and distributing a magazine or book and (b) the state or states of the defendant's domicil, incorporation or organization and principal place of business.



See Appendix for Court Citation and Cross References