

1 The Utah Supreme Court upheld that dismissal, and they did so  
2 on the ground that the issue of defamatory meaning is a  
3 question of law. The court concluded that it is not defamatory  
4 to say that a Democrat is impliedly supporting a Republican  
5 senator. I would urge the Court to take a look at the Cox v.  
6 Hatch case. I think that does give grounds for the Court to  
7 rule at least on the defamatory meaning issue on a motion to  
8 dismiss.

9 Now, if the Court were to convert this to a summary  
10 judgment motion or even a 12(c), the only thing that is  
11 relevant is for this Court to look at the articles. They were,  
12 referenced by the plaintiffs. I have put all of the articles  
13 about The Militant into evidence and so has the Deseret Morning  
14 News and the Tribune, so that the articles are before the  
15 Court, and you have indicated that you have looked through  
16 them. The only question is whether a reasonable reader --

17 THE COURT: I have read all of the Tribune and all of  
18 the Deseret News articles. I have not read all of yours.

19 MR. DRYER: I think that you will find that basically  
20 they deal with the same subjects. They all talk about that  
21 they were filed and --

22 THE COURT: I have read a good bit of them, but I  
23 have not read all of them. That was beyond the call.

24 MR. DRYER: I understand.

25 THE COURT: I am not one of the 150 regular --

1 MR. DRYER: -- regular readers in Utah.

2 THE COURT: It would have been good grounds for  
3 recusal.

4 MR. DRYER: All that is required for Your Honor to do  
5 is to read the articles and determine whether or not a  
6 reasonable reader could find them to be defamatory, and  
7 determine whether they did attribute them to someone or not,  
8 and also look at the context in which the story is read to see  
9 whether they are this hyperbole or rhetoric that the U.S.  
10 Supreme Court said in labor disputes we are going to tolerate.  
11 There is no discovery that is needed in order to do that.

12 My final point relates to this issue of fired. It is  
13 not The Militant who says they were fired. It is not the  
14 Tribune or the Deseret News that said they were illegally  
15 fired. Maybe the editorial is separate, but it is clear that  
16 in the context of the news articles, that the context is that  
17 this is what the miners are claiming. They are claiming that  
18 they were fired. The mine says, no, you guys walked off. In  
19 fact, that issue was before the National Labor Relations Board.  
20 I am not making this representation, but I have a recollection  
21 that maybe the original source of this fired came from a news  
22 conference that the United Mine Workers had. They issued a  
23 press release and it was in the context of this rhetoric about  
24 what had happened and, yes, we settled this but, you know, the  
25 miners were fired. Even though the company didn't admit that

1 they were fired, the result is the fact that they are being  
2 reinstated.

3 So the relief for them being fired was granted, and  
4 it is the functional equivalent of being fired. There is a  
5 whole variety of case law that says as long as you get the gist  
6 right, and if you don't have it technically right it is all  
7 right as far as a defamation claim is concerned. A reasonable  
8 reader reading these articles will understand that that is what  
9 this whole dispute is about, or at least one of the parts of  
10 this dispute. Were they fired? Were they not?

11 Now, if the N.L.R.B. had adjudicated that issue, and  
12 suppose they determined that the miners were not fired, from  
13 that point forward if the newspapers thereafter were to report  
14 that they had been fired, again, depending upon the context,  
15 and if that is not opinion or something else, that could be  
16 considered a false statement that would be capable of  
17 defamatory meaning.

18 But the context is that in order for that to be  
19 defamatory, it would be that the miners were illegally fired,  
20 because employers have the right to fire employees all the  
21 time. So to falsely say that you fired someone is not  
22 defamatory. It may be defamatory of the employee to have been  
23 said you were fired, and that may damage the employee's  
24 reputation, but it does not damage an employer's reputation to  
25 falsely say that you fired one of your employees.

1           Now, if you said you illegally fired them, again,  
2 depending upon the context, that is potentially defamatory. I  
3 think we ought not to get too hung up on this fired versus walk  
4 out because it is clear as you read the articles, at least,  
5 that it is in the context of that is what was claimed by the  
6 miners and, in fact, there has been no determination in a court  
7 of law or by the N.L.R.B. one way or the other.

8           Thank you.

9           THE COURT: Thank you, Mr. Dryer.

10           Do you want to say anything in response or have you  
11 said everything that you need to?

12           MR. HANSEN: I don't think I need to respond.

13           THE COURT: Thank you, Mr. Hansen.

14           I have several defendants left. Who is going to go  
15 next?

16           MS. RIVLIN: I will.

17           THE COURT: Is this the United Mine Workers of  
18 America?

19           MS. RIVLIN: Yes. I am Judy Rivlin.

20           THE COURT: Judy Rivlin.

21           MS. RIVLIN: I am here on behalf of the union and the  
22 employees and officers that were sued. I want to take it up in  
23 a slightly different direction and something that hasn't been  
24 addressed yet, and that is the federal claims other than the  
25 defamation, but that are alleged in this lawsuit, and I think

1 they are susceptible to a 12(b)(6) motion. The Federal Courts  
2 don't have jurisdiction on these issues because the N.L.R.B.  
3 has exclusive jurisdiction. This is based on case law and the  
4 N.L.R.B.'s preemption. The Supreme Court lead case on this is  
5 Garmon from 1959, and that law has been upheld in every circuit  
6 and it has been applied here and it is still good law. It says  
7 if anything that is arguably within the range of things that  
8 could be subject to unfair labor practice issues, that the  
9 N.L.R.B. has the exclusive jurisdiction. That is what we have  
10 here.

11 The allegations of picketing and work stoppages and  
12 that it was alleged to be unlawful, all of that is within the  
13 gamut of proper N.L.R.B. jurisdiction. Charges were filed by  
14 both sides and the charges were resolved. This is something  
15 that the N.L.R.B. has dealt with and the N.L.R.B. is still  
16 dealing with it.

17 THE COURT: You're not suggesting that that spills  
18 over into reporting by newspapers?

19 MS. RIVLIN: I am not equipped to speak on that  
20 subject, Your Honor. I know that we have able counsel  
21 representing the newspapers and that is not an issue that I  
22 have been asked to look at, and I frankly can't tell you the  
23 scope of it. I think there is obviously an interest in this  
24 story, and I think it would be permitted, but I don't have the  
25 legal authority to tell you one way or the other.

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THE COURT: Let me interrupt you and ask.

None of you have made that argument. Do any of you mean to?

MR. O'BRIEN: We wish it did.

MR. HUNT: No, Your Honor.

THE COURT: It would seem that it does not extend that far. Federal preemption is one thing, but to move into the zone of --

MS. RIVLIN: I think that there are other protections that give them that protection, but it may not be the N.L.R.B. preemption.

THE COURT: Thank you.

MS. RIVLIN: Even Mr. Hansen agrees that the reinstatements were tied to the N.L.R.B. procedures. In this case the N.L.R.B. from the beginning to the end, it was that the charges alleged unfair labor practices as in the complaint, and the reinstatements were pursuant to the N.L.R.B., and whether they were fired or struck or whatever, it does not really matter, they were all matters that were presented to the N.L.R.B. and the N.L.R.B. has looked at those and reviewed it and made a determination.

It is jurisdictional based, what the plaintiffs have alleged is jurisdictional based. It is 29 U.S.C. Section 185 which is a part of the Labor Relations Act, and it is a provision which refers to contracts between parties. It gives

1 courts, Federal Courts jurisdiction to consider violations of  
2 the collective bargaining agreements, but there has been no  
3 collective bargaining agreement breached that is at issue in  
4 this case. It has pled no basis for bringing this under the  
5 labor laws. The allegations that they have brought under 29  
6 U.S.C. 185 pertain to and typically arise when somebody has  
7 been fired and it violates a contract or it is a grievance and  
8 arbitration and whether or not the arbitration was properly  
9 held or not. There are 301 actions all the time but this is  
10 not that kind of a lawsuit.

11 They have briefed it as if it was 301 preemption, and  
12 301 is in Section 185 of the code, and that just has no  
13 application. Plaintiffs say it has no application and we  
14 agree. The only jurisdictional basis for pleading it is this  
15 29 U.S.C. 185 and there is just nothing here. There is just no  
16 basis for pursuing this, so it should be dismissed on that  
17 basis.

18 On the first claim which was added in this third  
19 amended complaint, they seek declaratory relief.

20 THE COURT: Second amended complaint.

21 MS. RIVLIN: In the third version of this complaint,  
22 which is the second amended complaint, they add a new claim for  
23 declaratory relief. In our brief we give a number of reasons  
24 why there is no basis for obtaining that relief. They don't  
25 have standing to raise the so-called immigration claims. Those

1 are federally enforceable, not brought by the litigants, and  
2 they touch on some RICO suggestions of criminal conduct but,  
3 again, they have not pled those and it is not a RICO complaint.  
4 They have not alleged the RICO elements.

5 Most important and what is compelling is the recent  
6 development where what they are seeking in this declaratory  
7 relief is to have a finding that the firings were lawful. I  
8 believe the board, the N.L.R.B. itself put you on notice by a  
9 filing at the beginning of the year, and I also submitted to  
10 the Court -- I was unaware that the board had done it itself --  
11 but the complaint has an issue alleging that the firings of the  
12 employees just over 14 months ago on the eve of the election,  
13 and the employees were fired, and those firings have been  
14 alleged by the N.L.R.B. to be unlawful based on support for the  
15 union. So for this Court to now issue a ruling that the  
16 firings were lawful would stand in complete contravention of  
17 what the N.L.R.B. is aggressively pursuing and is pursuing as  
18 this complaint has progressed.

19 The first amended complaint was filed -- actually it  
20 was served on the employees as they were voting. We think that  
21 it was intended to chill the press and to chill the organizing  
22 efforts, and not only the workers at C.W. Mining but elsewhere  
23 within the state or within the country. It has been a heavy  
24 hand at trying to stifle the organizational rights of these  
25 employees.



1 THE COURT: Maybe that gives these gentlemen an  
2 additional argument as well. You're helping them. They could  
3 claim they were clairvoyant and that they knew that the  
4 N.L.R.B. was --

5 MS. RIVLIN: We had filed the charges, it is just  
6 that the complaint -- the charges were filed over a year ago --

7 THE COURT: Okay.

8 MS. RIVLIN: -- making those allegations.

9 THE COURT: Now, are you addressing the second claim  
10 for relief or are you still on the first?

11 MS. RIVLIN: Well, I don't have much more to say  
12 about that first claim for relief.

13 THE COURT: Okay. I was not sure if we had moved --

14 MS. RIVLIN: The second claim is the unfair labor  
15 practices, and that is the first one that I addressed, which is  
16 the Section 301 preemption and the Garmon preemption, so at  
17 this point I feel like I have addressed the first two causes of  
18 action.

19 THE COURT: Okay.

20 MS. RIVLIN: The remaining state claims are all tied  
21 to the same group of facts. There are no separate facts that  
22 are alleged, and so all of the remaining claims that I would  
23 speak about, the defamation claims which are the third claims,  
24 but the other state claims are all based on the same pot of  
25 facts and there is nothing new or different, so they should

1 rise or fall -- we think there is no basis for any of the other  
2 claims, the invasion of privacy, the intentional interference  
3 of economic relations, the negligence, the civil conspiracy,  
4 all of those are integrally related to the unfair labor  
5 practice allegations.

6           As far as the defamation lawsuit, we are very much in  
7 the same position as The Militant at this point. The  
8 allegations are lengthy and they are vague and they are  
9 unenlightening. There have been a large number of statements  
10 made, but we don't know which ones are alleged to be  
11 defamatory. We don't know what they allege to be false and who  
12 it is against. Directly applicable to the United Mine Workers  
13 and the workers is the great scope of the Linn protections.  
14 Only if the plaintiffs can establish actual malice can they  
15 survive the Linn preemption.

16           The only allegations they have made are conclusory  
17 statements, but on these facts this was a peaceful labor  
18 dispute. Nothing extraordinary happened. The lives of the  
19 workers has been grossly disrupted. It has been a traumatic  
20 event for them. But in terms of the normal kind of dispute and  
21 in terms of labor relations there is nothing extraordinary  
22 about this dispute. An employee was disciplined and other  
23 employees stood up with him and they lost their jobs. They  
24 came back to work. They worked awhile and they filed for the  
25 N.L.R.B. election and that election was conducted and they were

1 fired again. There is nothing unusual about what has happened  
2 here.

3 The things that people have been speaking about have  
4 been about what is going on. There have been no extraordinary  
5 statements and there has been no extraordinary conduct. The  
6 speech which they have uttered has always been about the labor  
7 dispute and about what has motivated them and about how it has  
8 progressed. So with the strong direction and protection that  
9 the Supreme Court has given through the Linn decision and the  
10 things that have followed, we think there is nothing here that  
11 can meet the high standard that the plaintiffs need to meet.

12 I think in my reply brief I cited, and I know that  
13 co-counsel Richard Rosenblatt has referred to this case from  
14 the Third Circuit, Beverly Enterprises, which when people in  
15 the course of a labor dispute are alleged to be criminals, even  
16 that is not defamatory. We don't have anything like that here.  
17 So I think there is nothing that they have alleged that meets  
18 the actual malice standard.

19 The last thing I would like to say in terms of what  
20 they have pled at this point, the elements of defamation, and  
21 the person who Mr. Hansen cited as the person who may have been  
22 injured by one of these statements he was talking about is  
23 Mr. Reynolds, the mine manager, and he is one of the  
24 plaintiffs. If he has not produced, you know, some kind of  
25 specific evidence of how he has been injured by a particular

1 statement, and I suggest that they have failed in their notice  
2 obligations and pleading obligations.

3 THE COURT: Thank you, Ms. Rivlin.

4 Mr. Hansen.

5 MR. HANSEN: I would like to get all the defamation  
6 arguments out of the way first. Taking Ms. Rivlin's last  
7 statement that the plaintiffs have not produced evidence, we  
8 are not at that point yet. We are at a Rule 12(b)(6) motion.  
9 We don't have to produce evidence.

10 THE COURT: Well, she framed her argument that there  
11 was insufficient notice.

12 MR. HANSEN: Yes, she had made that argument and it  
13 is the same argument that the newspapers all made, and all the  
14 counter arguments apply equally. I would just ask you to take  
15 a look at what they have said and consider the arguments that  
16 have been made. I don't think they need repeating here.

17 THE COURT: Okay.

18 MR. HANSEN: The need to allege and prove malice,  
19 that is not what Linn requires. Since there has been so much  
20 discussion about that this whole controversy arose in the  
21 context of a labor dispute, I think we need to take a close  
22 look at the Linn case. At least one of the defendants has even  
23 gone so far as to mischaracterize what the case said. I'm  
24 quoting from the case. Labor disputes are ordinarily heated  
25 affairs and the language that is commonplace there might well

1 be deemed actionable per se in some state's jurisdictions.  
2 Indeed, representation campaigns are frequently characterized  
3 by extreme charges and counter charges, unfounded rumors,  
4 vituperations and personal accusations and misrepresentations  
5 and distortions. Both labor and management often speak  
6 recklessly, embellishing their respective positions with  
7 imprecatory language. Each one of the defendants said that the  
8 court held that that kind of language cannot be defamatory.  
9 That is not true. That is not what the Linn case said.

10 In the very next sentence, after making all those  
11 comments the court said, it is therefore necessary to determine  
12 whether liable actions in such circumstances might interfere  
13 with the national labor policy. Then they went on to do an  
14 analysis of that national labor policy and the National Labor  
15 Relations Act, and the relationship of that act to state law  
16 claims and they came up with a conclusion, two holdings that  
17 outline the context in which defamation actions are not  
18 preempted.

19 The Court first said, we therefore limit the  
20 availability of state remedies for liable to those instances in  
21 which the complainants can show that the defamatory statements  
22 were circulated with malice and caused them damage. And we  
23 expect that that is the standard that we have to meet. We have  
24 to look at what the court meant by malice and what the court  
25 meant by cause of damage. On the malice part the court said

1 that actual malice -- that is not the malice we are talking  
2 about. The court said, the standards annunciated in New York  
3 Times vs. Sullivan are adopted by analogy. Construing the act  
4 to permit recovery of damages only for defamatory statements  
5 published with knowledge of their falsity or with reckless  
6 disregard of whether they are true or false guards against  
7 abuse libel actions envisioned by the act. So that is the  
8 malice standard that we have to meet.

9           Where the Linn case applies, which is to the  
10 participants in the labor controversy, that is the U.M.W.A. and  
11 its agents and workers, we have to show that the statements  
12 that they made that we contend are libelous, that they either  
13 knew that they were false or they said it with reckless  
14 disregard to whether they were true or false. That is our  
15 burden. The complaint adequately alleges that in this case.

16           On the damage question, the Court said we therefore  
17 hold that a complainant may not recover except upon proof of  
18 such harm, which may include general injury to reputation,  
19 consequent mental suffering and allineation of associates,  
20 specific items of pecuniary loss, or in whatever form would be  
21 recognized by state tort law.

22           So in this context the court was really trying to  
23 draw a distinction between state court actions where if it is  
24 defamatory per se you don't need to actually prove damages that  
25 they are assumed presumed. In this context the damages are

1 presumed even if it is defamatory per se. We do have to prove  
2 the injury, but it can be any kind of injury that is recognized  
3 by state tort law. We think the complaint adequately alleges  
4 that those injuries have occurred and we accept that burden,  
5 and we know that we are going to have to go forward at some  
6 point and meet that burden or lose the case. At this point in  
7 the proceedings that is where the burden lies and the complaint  
8 adequately alleges those elements.

9 Ms. Rivlin argued that our other state court, state  
10 crimes are preempted. We cited specific cases that  
11 specifically hold that only defamation claims are not preempted  
12 but that the intentional infliction of emotional distress  
13 claims are not preempted, and that in general we have specific  
14 case authority for the proposition that the state court actions  
15 we have brought in this case are not preempted by the National  
16 Labor Relations Act. That is the only argument that has been  
17 raised in this motion to dismiss, to support or dismiss our  
18 state law claims.

19 We are left now with the federal claims. On the  
20 second claim, I am going to submit that without argument.

21 As far as the first claim, no argument has been made  
22 that the National Labor Relations Act preempts our first claim  
23 so we don't need to get into that on the first claim. No  
24 argument has been made that it is preempted. The arguments  
25 that were made is that the plaintiffs don't have standing to

1 bring that claim, and that they have not alleged that claim  
2 with sufficient particularity. I think Ms. Rivlin misconstrues  
3 what is required to show standing. One of the arguments was  
4 that private litigants don't have standing to prosecute a  
5 federal criminal statute. Well, that is true, but that is kind  
6 of irrelevant. We are talking about RICO which is a part of  
7 the declaratory judgment action, and the RICO statutes  
8 specifically confer authority on private litigants to bring  
9 civil actions for violations of the RICO statute. That  
10 necessarily includes the power to litigate whether the  
11 predicate acts were committed, and so in bringing the RICO  
12 action one is not prosecuting the criminal claims, but one does  
13 have to establish the fact that those criminal laws were  
14 violated to establish the predicate acts under which a civil  
15 RICO claim is brought.

16 We would submit that the elements of a RICO action  
17 are adequately alleged, certainly sufficient to form a  
18 responsive pleading which is all that is required. One  
19 argument was made or a citation was made to an unreported case,  
20 so I took a look at it, and it is Edgison versus Dickinson, and  
21 the argument was made to establish a RICO claim that the  
22 plaintiffs have to prove that their injuries were caused by the  
23 investment in racketeering income in the enterprise. That only  
24 applies to a claim brought under Section 1962 subpart A of the  
25 RICO statute.



1 Well, the plaintiffs have not alleged a claim under  
2 that section, we have alleged claims under 1962(b) and 1962(C),  
3 and that argument does not apply to the claims that were  
4 brought here.

5 I think that covers it, Your Honor.

6 Do you have any questions?

7 THE COURT: I don't at this point. Thank you,  
8 Mr. Hansen.

9 Ms. Rivlin, do you want to say anything in response?

10 MS. RIVLIN: I think I am happy to let my colleague  
11 continue on.

12 THE COURT: Now, it is Mr. --

13 MR. ROSENBLATT: Mr. Rosenblatt.

14 THE COURT: And you represent?

15 MR. ROSENBLATT: The individual miners.

16 THE COURT: Thank you.

17 MR. ROSENBLATT: I am going to try and address these  
18 in the order in which they are pled with one exception, and I  
19 will leave the defamation until the end. I am going to try not  
20 to repeat a lot of what has been said. In my outline I wrote  
21 at the beginning good morning, Your Honor, and we are well past  
22 good morning. I will try to keep that in mind.

23 THE COURT: We are having so much fun it seems like  
24 morning.

25 MR. ROSENBLATT: First, as to the first claim for

1 relief, what I am now hearing for the first time, because I  
2 sure didn't understand it from the complaint, is that the first  
3 claim for relief is a RICO claim. Though, if you read it, they  
4 seek declaratory judgment that a criminal statute has been  
5 violated. That is what they seek, at least in part. As we  
6 point out in our briefs, both the mine workers and the  
7 individual miners, this Court does not have the jurisdiction to  
8 make such a declaration. That is something for the U.S.

9 Attorney. It does not have the jurisdiction to make such a  
10 declaration in this setting where an individual is bringing a  
11 claim that there has been a violation of a criminal statute.

12 They also say that they want a declaration that the  
13 RICO statute has been violated. Well, in RICO, 1964(c), it  
14 makes it clear that they can only have standing if they can  
15 allege and prove that the plaintiffs suffered injury to his  
16 business or property by the conduct constituting the violation.  
17 Now, the conduct that they have, the so-called predicate acts  
18 that they have, are the alleged violations of the immigration  
19 statutes by people working for them without proper  
20 documentation. That is the allegation in the complaint.

21 Well, that does not follow, that because somebody  
22 worked with illegal documentation that that caused the  
23 plaintiffs to suffer any damage to their business or property.  
24 They have not alleged that that particular conduct caused any  
25 damage to their business or property. So they have not met the

1 1964(c) requirement for standing, and they try to get around it  
2 by saying all they are asking for is declaratory relief that we  
3 violated RICO. You can't get around the requirements of RICO.  
4 As one who has unfortunately been involved in some RICO suits,  
5 there is a very stringent pleading requirement in RICO cases  
6 the courts have found because of the serious nature of the  
7 allegations and the potential treble damages that are involved,  
8 and the courts require very precise pleading, and here they  
9 have not even met the first step. Therefore, what is now being  
10 characterized as a RICO claim should be dismissed. That is the  
11 first claim for relief.

12 As to the second claim for relief, which is under the  
13 best of any characterization a Section 301 claim, there are  
14 numerous reasons that that should be dismissed. My guess is  
15 that the plaintiffs understand that since they didn't even  
16 raise an argument in response to Ms. Rivlin's argument on why  
17 it should be dismissed. I am not going to repeat all of those,  
18 I am just going to add an additional reason why a 301 claim  
19 should be dismissed against the individual miners. That is  
20 because it is well settled that under Section 301, an  
21 individual cannot be sued for damages under Section 301, so the  
22 Court does not have jurisdiction under Section 301 to allow the  
23 plaintiffs to pursue their claims that the individual caused  
24 them damage under section 301. I have cited the Supreme Court  
25 case on that. So in addition to the many reasons why the

1 Section 301 case fails, as to the individual miners there is  
2 that additional reason.

3 The third claim is the defamation claim and I will  
4 get to that last. Let me deal with claims four, five, six and  
5 seven. All of those claims are preempted. Now, as we point  
6 out in our brief, they are preempted because they arise out of  
7 the same set of facts as the N.L.R.B. case. That is called  
8 Garmon preemption. That is based on the Garmon decision by the  
9 U.S. Supreme Court. Now, the plaintiffs stood up here and they  
10 said, well, we point to cases where the N.L.R.B. cannot preempt  
11 such claims. In the brief I received, at pages 11 and 12, they  
12 didn't cite the Garmon cases, they cited the Section 301  
13 preemption cases. We are not saying that claims four through  
14 seven are preempted because of Section 301. We are saying they  
15 are preempted because of the N.L.R.B. That is the reason they  
16 are preempted because they arise out of the exact same set of  
17 facts that would be litigated in front of the N.L.R.B. and they  
18 are preempted.

19 That brings us to the defamation claim. I am going  
20 to somewhat repeat a point made by Mr. Dryer at length, and I  
21 will do it more briefly, only because you have heard it before,  
22 not because he talked too long. We have here in this case  
23 hundreds of alleged claims against the individual defendants  
24 for defamation. As a background to this, these claims, because  
25 it is a labor dispute and in light of Linn, the Linn decision,

1 these claims are all preempted unless the plaintiff can allege  
2 and prove that they are made with actual malice, what has been  
3 referred to as the New York Times standard, the reckless  
4 disregard.

5 In this case, they have failed to allege, other than  
6 in a conclusory paragraph at the end of all of the defamation  
7 that just says they were made with actual malice, they have  
8 failed to allege any reckless disregard, any facts to show  
9 actual malice by any of the individuals at all. If they don't  
10 even allege that, then these claims are preempted against the  
11 individual miners. They fail to point out who was defamed by  
12 what claim. We have no knowledge as to who was allegedly  
13 defamed by each claim. This is a notice pleading, but we have  
14 no notice. We have none. We have absolutely no notice of who  
15 has been defamed by any claim at all.

16 This shotgun approach, and you have already told them  
17 to fix it once, and they did it for the two newspapers but they  
18 have never done it for us. If you go through this, what they  
19 have done is they have taken every claim, every statement that  
20 our individuals made that was published in some forum and they  
21 have alleged that it is defamation. They have not explained at  
22 all where the actual malice is. They have not said who has  
23 been defamed and we have no notice of any of that. If we had  
24 to go into discovery in this case that would be the first thing  
25 that we would have to do, and they should be doing that up

1 front. That is what the complaint should do, instead of taking  
2 every statement that has ever been made. Just while I was  
3 sitting there I just opened to one particular page of this,  
4 page 18, and I looked at it and it was the defamation allegedly  
5 made by Alyson Kennedy. Here is one of the examples. I guess  
6 it is paragraph 18 of the second amended complaint, paragraph  
7 95-L. The workers were fired from our jobs. That is the  
8 alleged defamatory statement.

9 The next one is female workers still don't have a  
10 separate place to shower or change. That is an alleged  
11 defamatory statement. That is an example. I could go through  
12 this complaint and there are hundreds of them here. That is an  
13 example. They have failed to meet what the Court required them  
14 to do to allege with particularity who was defamed and the  
15 actual malice of the individual making the defamatory remark.  
16 If they don't have actual malice, then the defamation claims  
17 are preempted.

18 You asked early on about motive, and you asked  
19 Mr. Hansen what would be the motive for bringing this case, and  
20 I would just point out, Your Honor, and I can't prove motive  
21 and I don't have to prove any motive for why they brought this  
22 case, but I would point out to you that this complaint was  
23 first served on the individual miners as they were entering the  
24 election booth to decide whether or not to vote for the United  
25 Mine Workers. The real purpose behind this complaint against

1 the individual miners was nothing more than to intimidate them  
2 in their attempting to exercise their democratic rights.

3 Thank you.

4 THE COURT: Thank you very much, Mr. Rosenblatt.

5 Any response, Mr. Hansen?

6 MR. HANSEN: The first claim for relief is not solely  
7 a RICO claim. It is pretty clear, and I just need to briefly  
8 summarize, that 28 U.S.C. 2201 states any case of an actual  
9 controversy in any U.S. court with jurisdiction may declare the  
10 rights of any interested party even if further relief is not  
11 sought. So if this Court has jurisdiction then it can declare  
12 the rights of any interested party in the case of an actual  
13 controversy. We would ask the Court to look at the first claim  
14 for relief, particularly the paragraphs that say that C.W.  
15 Mining Company is entitled to a declaratory order as to certain  
16 specific things to show that we are asking for declaratory  
17 relief in addition to a declaration that RICO was violated.

18 Mr. Rosenblatt argued that C.W. Mining Company's  
19 claim of a RICO violation only alleges that the predicate acts  
20 were those involved by the few workers that are identified that  
21 were illegally obtaining the employment. If you actually look  
22 at the pleading you will see that that is not an accurate  
23 statement. The predicate acts, among other things,  
24 specifically include all of the defamation that was made with  
25 the intent that may be sent out by way of radio or television

1 communication in interstate commerce, and every single  
2 statement that is attributed to those workers was sent out over  
3 the wire, among other things. I personally saw them on the  
4 internet which requires a wire transmission. So every single  
5 publication that was made was made in furtherance of this  
6 scheme to defraud that is alleged under RICO, and there were  
7 literally dozens if not hundreds of predicate acts under 18  
8 U.S.C. Section 1383, and so it goes well beyond the illegally  
9 obtaining of employment.

10 The allegation is that these people obtained  
11 employment illegally and then went to the U.M.W.A. for the  
12 purpose of basically muscling the C.W. Mining Company to giving  
13 them higher wages and greater fringe benefits and things they  
14 were not entitled to, and they knew they were not entitled to  
15 because they knew they were there illegally, and if they in  
16 fact were ever found out then they would be fired.

17 I am not going to stand up here and go through this  
18 entire pleading, but I think we have adequately pleaded both  
19 the predicate acts and the pattern of racketeering activity and  
20 the existence of the enterprise and the specific facts that  
21 constitute violations of 1962 subparts B and C.

22 THE COURT: How were you hurt? It is getting late in  
23 the day, but you allege it in your complaint, and how did this  
24 fraudulent use or alleged use of Social Security information to  
25 get a job with you and get paid by your client, how did that



1 hurt you?

2 MR. HANSEN: I can say a couple of things. There are  
3 more things that I could say here right now, but one of them is  
4 that upon discovery that these workers were here illegally C.W.  
5 Mining Company gave them an opportunity to correct that status,  
6 and when they were not able to under federal law, they had no  
7 choice but to fire them. Because of all of the adverse  
8 publicity that had been generated C.W. Mining Company was not  
9 able to replace those workers. They lost production and they  
10 lost contracts and they were not able to fill them.

11 THE COURT: You think the adverse publicity came  
12 because of their use of these false Social Security numbers?  
13 Didn't the adverse --

14 MR. HANSEN: But for the fact that they obtained  
15 their employment illegally they would not have been there to  
16 generate all the publicity.

17 THE COURT: There would never have been a labor  
18 dispute but for the fact that they obtained their employment  
19 illegally? That is your position?

20 MR. HANSEN: Well, I wish I had a crystal ball, Your  
21 Honor.

22 THE COURT: Well, you seem to be linking the two.  
23 When I asked how did this damage you, this what you're claiming  
24 is a fraudulent use of Social Security information and  
25 obtaining jobs illegally and how did that lead to your damage,

1 and you seem to be linking your injury to the adverse  
2 publicity. It seems that what you're claiming as the adverse  
3 publicity came from the labor dispute. That was not over  
4 hiring illegals directly, it was over allegations of unfair  
5 working conditions and unfair pay by the miners. I am just  
6 seeing how the causation works here.

7 MR. HANSEN: Well, the adverse publicity was  
8 generated largely by people who were not entitled to be  
9 employed there in the first place because of their illegal  
10 employment.

11 THE COURT: That is what got it started?

12 MR. HANSEN: Yes.

13 THE COURT: By the way --

14 MR. HANSEN: In fact, a good part of the ensuing  
15 adverse publicity was as a result of firing these miners upon  
16 discovering that they were illegal.

17 THE COURT: That was the catalyst for a lot of this?

18 MR. HANSEN: That was kind of what happened later in  
19 the sequence of events, yes.

20 THE COURT: You don't disagree with Ms. Rivlin when  
21 she reminds the Court that there was a finding by the National  
22 Labor Relations Board adverse to your client with respect to  
23 the reasons for firing these people?

24 MR. HANSEN: There has not been any such ruling yet,  
25 Your Honor.

1 THE COURT: What is the status of it then, as you  
2 understand it?

3 MR. HANSEN: I would be happy to have Mr. Kingston  
4 address that. I am here to make the arguments in opposition to  
5 the motions to dismiss the complaint, but keep in mind that my  
6 clients are the I.A.U.W.U. and its officers. There is a  
7 hearing and it was originally set to begin --

8 THE COURT: Could I interrupt you?

9 Set me straight on this.

10 MS. RIVLIN: The general counsel of the N.L.R.B. has  
11 issued a complaint alleging violations of the National Labor  
12 Relations Act and it is set for a hearing before an  
13 administrative law judge.

14 THE COURT: Thank you. All right.

15 MR. HANSEN: That is right. The hearing has been  
16 continued. Mr. Kingston can speak more directly to that. He  
17 has been directly involved in that. My clients are not.

18 Mr. Rosenblatt argued with the preemption of the  
19 state claims that we have not cited any cases under the  
20 National Labor Relations Act. I don't have the cases in front  
21 of me, but my notes indicate that the cases we have cited are  
22 dealing with holding that the National Labor Relations Act did  
23 not preempt those claims, and if my notes are wrong I  
24 apologize. My notes say that the Allis Chalmers case, a U.S.  
25 Supreme Court Case, holds that the National Labor Relations Act

1 did not preempt the claim for intentional interference with  
2 economic relations.

3           The Sever versus Alaskan case cited that as the  
4 authority for that proposition. Belnap versus Hail, a Supreme  
5 Court case said that the National Labor Relations Act does  
6 not -- preempts state fraud claims. Linn upheld that the Act  
7 does not preempt defamation claims, and we have already  
8 discussed that case. So I would submit that the test really  
9 can be stated quite simply in one way, and the question is  
10 whether one has to look at the terms of the collective  
11 bargaining agreement to determine whether the state tort claim  
12 exists. If you can resolve the state tort claim without resort  
13 to looking at the collective bargaining agreement then it is  
14 not preempted.

15           Mr. Rosenblatt argued that the complaint does not  
16 allege who was defamed by a particular claim. Again, we are  
17 dealing with notice pleadings. I think when you say that C.W.  
18 Mining Company did a certain thing, and that tends to danger  
19 the reputation of the C.W. Mining Company, and if it alleges  
20 something and if it is not true, then it would be defamed. If  
21 it states that the I.A.U.W.U. officers did a certain thing,  
22 then the I.A.U.W.U. officers were defamed. Each and every one  
23 of the statements that were made are statements that some  
24 particular person or some particular entity committed certain  
25 things, and in each case that person or entity or group are the

1 ones that have been defamed. I think it does identify them  
2 with particularity.

3 I think that is really all of the points that  
4 Mr. Rosenblatt raised.

5 THE COURT: Thank you, Mr. Hansen.

6 Did you want to respond?

7 MR. ROSENBLATT: Just a few points.

8 Let me say on the predicate act, they don't allege  
9 that defamation is a predicate act. If you look at paragraph  
10 69 of the complaint, the fraudulent workers' violations of --  
11 and then they cite various criminal statutes -- are predicate  
12 acts of racketeering activity under 18 U.S.C. Section 1961.  
13 That is what they allege are the predicate acts. That is the  
14 conduct that they have to show, that that conduct led to the  
15 injury to business or property.

16 I might also point out as an aside, if you read this,  
17 this does not say that C.W. Mining is the one who has RICO  
18 claims. It says the plaintiffs. It does not distinguish among  
19 the plaintiffs. It has Mr. Hansen's client just as easily as  
20 everyone else. There is no distinguishing that this is a claim  
21 being brought by C.W. Mining, which is a problem that permeates  
22 this whole complaint.

23 On the preemption argument, I think the problem is,  
24 with all due respect to Mr. Hansen, that he does not understand  
25 the difference between Section 301 preemption and N.L.R.B.

1   preemption, N.L.R.A. preemption. What he said to you was it is  
2   not preemption if you can decide it without looking at the  
3   collective bargaining agreement. That is 301 preemption. That  
4   is not N.L.R.A. preemption. Those are the kinds of cases that  
5   he cites in this case. We are not alleging that claims four  
6   through seven are preempted by Section 301, because there is no  
7   collective bargaining, we are alleging they are preempted by  
8   the N.L.R.A. I cited cases in my initial brief in which  
9   intentional interference with economic relations was preempted  
10   by the N.L.R.A. That is the Wallace case out of Oregon where  
11   common law fraud was preempted. That is the Columbus case out  
12   of the Seventh Circuit, where invasion of privacy is preempted.  
13   All of those are by the N.L.R.A., and that is the District  
14   Court of Massachusetts. If it raises out of the same set of  
15   facts as would be determined by the N.L.R.B. then it is  
16   preempted. Therefore, it is preempted under Garmon and not  
17   under Section 301.

18                 That is our response.

19                 I would note for the Court that we have now had two  
20   arguments on Section 301 and Mr. Hansen has not even made any  
21   argument to contradict what is the well settled law, and if he  
22   does not move to immediately dismiss it then he is pursuing a  
23   claim that he knows has no merit and Rule 11 sanctions should  
24   be granted.

25                 Thank you.

1 THE COURT: Thank you.

2 We have one group of defendants left and that is  
3 George Neckel and Jobs With Justice, and I believe Mr. Hatch is  
4 here to speak on their behalf.

5 Mr. Hatch.

6 MR. HATCH: Very briefly, Your Honor.

7 As I was just sitting back here and listening, I  
8 began to think about of lot of things and I was able to edit a  
9 whole bunch of my comments. One that I have come up with, and  
10 as somebody who has lived in this community almost all of my  
11 life, most of my adult life and have been involved in  
12 participating with and on behalf of labor, I find it very  
13 ironic that here we have management claiming that they have  
14 been defamed by firing employees for union activity. It has  
15 been my experience in this community that that does not hold  
16 people up to ridicule around here, it usually holds them in  
17 esteem. Maybe the fact that this complaint has been filed  
18 shows that there may be a positive turn in attitude in this  
19 state that I have been looking for most of my life.

20 My clients are participants in the labor dispute.  
21 Jobs With Justice is a 503-C organization. It takes the  
22 position of labor and working people and advocates as a  
23 nonprofit charity and educates on their behalf and takes their  
24 position. They are participants in this labor dispute. As  
25 such, it is our view that they have the full and heightened

1 standard of protection as afforded participants of state  
2 defamation claims that the Linn case articulates.

3 I do, though, want to just briefly state this. There  
4 are about a dozen statements that are attributed to my clients,  
5 and a lot of them are very similar to what has been alleged  
6 about the newspapers and with the actual miners themselves and  
7 their union, United Mine Workers. But some of these  
8 statements, and this goes back to the 12(b)(6) motion concept,  
9 Your Honor, and when it is appropriate to dismiss without going  
10 into summary judgment.

11 On page 55, paragraph D, this is one of the allegedly  
12 defaming statements that my client made. Nickels said, the  
13 mine bosses are taking advantage of miners. Well, I would like  
14 to say that it is an undisputed fact, but I will say that it is  
15 really my opinion, and in my opinion I don't see how that  
16 statement can ever be defamatory under any context. It is  
17 clearly an opinion. The next one above that is they are  
18 exploiting people. In my opinion this looks like organized  
19 crime. The one above that, my client allegedly made the  
20 statement that the I.A.U.W.U. does not represent the workers'  
21 interests. Again, I don't see how, as a matter of law, in any  
22 context that kind of a statement can be defamatory.

23 Particularly then when you lay over this the  
24 undisputed fact that this is a contentious labor dispute, and  
25 the kind of protections that Linn does apply to that, and as a



1 matter of law without further discovery this case should be  
2 dismissed. The newspapers have different sets of protections  
3 but the same kind of a high standard as the miners themselves,  
4 all of them do, and I guess it gets down to what is happening  
5 in the world. I think it is in terms of speech, and I think  
6 what is going on, and Your Honor hit it right on the head, that  
7 in this society we afford a great deal of leeway for speech as  
8 a matter of value that we honor.

9 If we don't, if we don't, our courts are too small  
10 and too few, that every false statement anybody makes in a  
11 labor dispute from both sides, and both sides will be in court  
12 and being litigated, and that is just not the value that this  
13 society holds dear, and this case should be dismissed at this  
14 level without requiring the parties to go through discovery.

15 Thank you.

16 THE COURT: Thank you, Mr. Hatch.

17 Did you want to say anything in response to  
18 Mr. Hatch, Mr. Hansen?

19 MR. HANSEN: Yes.

20 First of all, Jobs With Justice is not a participant  
21 in this labor dispute, then he quotes the Deseret News, and the  
22 only argument that was really made was whether any of the  
23 statements made by Jobs With Justice are capable of defamatory  
24 meaning. Well, let's look at some of those actual statements.  
25 This is on page 54, paragraph B. It says, Jobs With Justice is

1 saying the workers were illegally fired from their jobs after  
2 they participated in union activity. The miners have no health  
3 insurance and work in dangerous conditions that can lead to  
4 countless injuries.

5 As far as my client, and we finally get to one that  
6 actually talks about my client, and this goes clear back to  
7 1978 when they were first created, this so-called union has  
8 been owned and operated and controlled by the powerful Kingston  
9 family. The union holds no meetings and its officers are not  
10 elected, they are appointed by members of the Kingston family.

11 THE COURT: Well, you claim that that is untrue, I  
12 take it?

13 MR. HANSEN: It is absolutely untrue.

14 The very first allegation in subparagraph 8 on page  
15 53 says, 80 miners were fired for trying to organize a union.  
16 Workers are forced to work with injuries. They denied workers  
17 compensation. Those are pretty specific allegations which if  
18 are untrue are clearly defamatory. We only need one defamatory  
19 statement to sustain an action for defamation. I think as far  
20 as Jobs With Justice is concerned that is pretty clearly  
21 established.

22 Thank you.

23 THE COURT: I guess you would have to agree that  
24 those kinds of statements that are included in the paragraph  
25 that you referred to are the same statements that the employees

1 of C.W. Mining made in the context of a labor dispute?

2 MR. HANSEN: I think at one time or another one or  
3 more of the employees have stated those same things.

4 THE COURT: In the context of a labor dispute?

5 MR. HANSEN: Yes.

6 It is not as clear on some of these things, and I am  
7 not sure that I have seen any statements by the workers that  
8 the union holds no meetings and the officers are -- I may be  
9 mistaken.

10 THE COURT: Isn't it fair to say, though, that an  
11 allegation that was made repeatedly during and in connection  
12 with this labor dispute was that the employees did not feel  
13 that the I.A.U.W.U. was a union that was fairly representing  
14 their complaints against the company, but was rather an entity  
15 that was beholdng to the bosses of the company?

16 MR. HANSEN: First, the I.A.U.W.U. is not beholdng  
17 to the bosses of the company.

18 THE COURT: I am only asking if that was their  
19 allegation, Mr. Hansen, not what the truth of it is. Wasn't  
20 that a central theme of the dispute?

21 MR. HANSEN: I think some of them, not all of them,  
22 may have made that kind of an assertion. I think that those  
23 that did knew it was not true. The fact is that none of these  
24 people ever came to the I.A.U.W.U. and asked for their help.  
25 They were already dealing with the United Mine Workers Union

1 secretly for weeks if not months before any of the things at  
2 the mine transpired. Their purpose from the get-to was to try  
3 to get the I.A.U.W.U. out and the U.M.W.A. in. They could care  
4 less about how anxious the I.A.U.W.U. was to help them. They  
5 didn't want their help. They wanted them out and the U.M.W.A.  
6 in and it is as simple as that.

7 THE COURT: Right. And for absolutely no good reason  
8 because the I.A.U.W.U. was fairly and vigorously asserting  
9 their rights?

10 MR. HANSEN: Any time any worker has come to the  
11 I.A.U.W.U. for help, the I.A.U.W.U. has stepped in and offered  
12 that help.

13 THE COURT: Now, if I have this straight from Ms.  
14 Rivlin, if this complaint that has been lodged by the general  
15 counsel and the N.L.R.B. actually becomes heard through the  
16 hearing process and a finding is made supporting that claim  
17 that your client C.W. Mining illegally fired miners for --

18 MR. HANSEN: Keep in mind that is Mr. Kingston's  
19 client and not mine.

20 THE COURT: Well, you have said that you're talking  
21 on behalf of both of them today.

22 MR. HANSEN: Yes.

23 THE COURT: If that happens, do you still have a  
24 defamation case?

25 MR. HANSEN: Well, there are a number of things that

1 have been said other than the fact that these workers were  
2 illegally fired, so that would be the only thing that would be  
3 resolved by that part of it.

4 THE COURT: You would acknowledge that if that  
5 happens you would have to give up on at least that aspect of  
6 your defamation claim?

7 MR. HANSEN: I would think that if the N.L.R.B. came  
8 out with a decision that declared that the workers had been  
9 illegally fired for protected union activity, that the claims  
10 for defamation based on that statement would fail at that  
11 point.

12 Now, Mr. Kingston, I don't know if you would agree  
13 with that or not.

14 MR. KINGSTON: I would not.

15 THE COURT: You would not? You think they are still  
16 alive?

17 MR. KINGSTON: Yes.

18 THE COURT: It is still an unfair statement or  
19 finding of fact?

20 MR. KINGSTON: We would take it through the judicial  
21 process after the administrative process, yes.

22 THE COURT: Thank you. Okay. Thanks to you all.

23 I think we are done.

24 Did you have something?

25 MR. HATCH: I'm sorry, yes. One is regarding my

1 comments. All of my clients' comments are attributed to  
2 comments from the miners. Even the one that they pointed to,  
3 in fact in their own complaint on page 19, one of the miners  
4 was saying that the I.A.U.W.U. does not have meetings and  
5 elections. Everything that my clients said came from the  
6 miners. To say that they are not participants in a labor  
7 dispute, and that is the one I want to comment on, is viewing a  
8 labor dispute in too narrow of a context. You look at the  
9 entire history of labor in this country on both sides, allies,  
10 spouses, sisters, brothers, the union, fellow locals, one side  
11 and the other side, trade groups and employee groups, they get  
12 together and they participate jointly in these disputes. In  
13 labor that is called solidarity. To say that my clients are  
14 not participants in this dispute is to deny a fundamental fact  
15 about labor in this country and the history of labor.

16 Thank you.

17 THE COURT: Thank you.

18 Mr. Sandack, do you need to address this?

19 You don't oppose his motion to quash?

20 MR. HANSEN: Your Honor, we have stipulated that they  
21 are not parties to this lawsuit and should be out.

22 MR. SANDACK: I look at it a different way. I have  
23 the stipulation and I can give it to the Court, but we  
24 basically agreed that the service was ineffective because my  
25 client is not a defendant. He has made a motion to amend the

1 complaint, be allowed to amend it at one point to add them, and  
2 he is also withdrawing that motion with this stipulation. So I  
3 would withdraw my motion to quash in the sense that --

4 THE COURT: You are not a defendant.

5 MR. SANDACK: I am not a defendant, and he is also  
6 agreeing that the service was not on a defendant, including --  
7 I will submit it.

8 THE COURT: You should.

9 MR. HANSEN: We oppose the motion to quash only on  
10 the grounds that there was nothing to be quashed.

11 THE COURT: I got that.

12 MR. SANDACK: It only took four memorandums to figure  
13 that out.

14 THE COURT: Right. They didn't sue you. Be  
15 relieved.

16 I'm going to need to take most of this under  
17 advisement.

18 Mr. Dryer?

19 MR. DRYER: If I might, I have located the source of  
20 the miners were fired statement.

21 THE COURT: Okay.

22 MR. DRYER: To supplement the record on that point,  
23 ironically it is from the plaintiffs' complaint, paragraph 107,  
24 under the heading defamations by the U.M.W.A. It reads as  
25 follows: On October 6, 2003, the U.M.W.A. issued a press

1 release and published it on its web site. It gives the site.  
2 Portions were also published in the September/October 2003  
3 issue of the United Mine Workers Journal stating, at the United  
4 Mine Workers of America, U.M.W.A. special convention last week  
5 in Las Vegas, the U.M.W.A. international president Cecil  
6 Roberts pledged that the union will assist the coal miners who  
7 were fired from the C.W. Mining Company's Bear Canyon Mine. 74  
8 miners' jobs were terminated after they protested the firing of  
9 one of their leaders for seeking union representation.

10 Then the next couple of pages are also quotations  
11 from U.M.W.A.'s press releases relating to that issue and also  
12 the exploitation of miners and non-union representation by the  
13 I.A.U.W.U. as well. I would submit that the law is clear that  
14 the newspapers are entitled to rely on information that is  
15 provided from an authoritative or credible source such as a  
16 press release from the U.M.W.A.

17 May I take 30 seconds on a jurisdictional issue?  
18 That does impact all three of the newspaper defendants.

19 THE COURT: Okay.

20 MR. DRYER: Thank you.

21 We have now learned through oral clarification from  
22 plaintiffs' counsel that they are attempting to allege a RICO  
23 claim in their first cause of action, among other things, and I  
24 would just note that as Mr. Rosenblatt noted, the elements are  
25 not properly pled. Be that as it may, RICO claims are not



1 preempted by the National Labor Relations Act. If the Court  
2 were inclined to dismiss the labor claims for lack of  
3 jurisdiction, I would say that the Court does have the  
4 authority to recognize jurisdiction on this RICO claim and then  
5 exercise its pendant jurisdiction to decide the state  
6 defamation claims. Because the last thing that the newspapers  
7 would want, having lived under the cloud of this lawsuit for a  
8 year and a half, and having expended hundreds of hours  
9 concerned about it and a significant amount of attorney's fees,  
10 is to have the Court dismiss this for lack of jurisdiction and  
11 then have the plaintiffs simply refile it in state court, and  
12 then this last year and a half has been for --

13 THE COURT: What is the jurisdictional basis for a  
14 defamation claim in the third claim for relief in the second  
15 amended complaint?

16 MR. DRYER: Pendant jurisdiction.

17 THE COURT: Only supplemental jurisdiction?

18 MR. DRYER: Correct.

19 THE COURT: Okay. Thank you.

20 As I say, I feel I need to do some further work on  
21 this to make an opinion, with the exception of two of the  
22 defendants. I'm going to grant the motion to dismiss with  
23 regard to the Salt Lake Tribune and the Deseret Morning News,  
24 finding specifically that the statements alleged to be  
25 defamatory are not capable of conveying defamatory meaning.

1 Many of them are clearly opinion.

2 I'll flesh this out in a written opinion. But that  
3 they are not, quote, of and concerning, unquote, the  
4 individually named plaintiffs. A main reason for my wanting to  
5 grant this motion at this time is my view that those statements  
6 that are alleged to constitute defamation as against the two  
7 newspapers, those two newspapers, are lacking in sufficient  
8 allegations of pleading itself, and the articles that are  
9 referred to by the pleadings to show a sufficient link between  
10 the alleged false statements and their capacity, number one, to  
11 carry any defamatory meaning as to anyone. But equally  
12 important to me is that there is no effort to show that the  
13 plaintiffs, even after my request last time to make this more  
14 specific as to who did what to whom, to show that those very  
15 few sentences among the hundreds or thousands of sentences that  
16 have been written about this very public labor dispute, that  
17 those few sentences in the Deseret Morning News and the Salt  
18 Lake Tribune could be argued are not attributed directly to  
19 someone else, and are false, and were the reasons someone was  
20 defamed.

21 Looking at them in the broader context of this entire  
22 package of publicity that is framed within the complaint  
23 itself, it strikes me is a border line violation of Rule 11, if  
24 not clearly a violation. Notice pleading allows you to proceed  
25 with litigation, but on such a flimsy foundation, I have a real

1 concern about it and for that reason I'm also awarding  
2 attorney's fees and costs to the two newspapers.

3           The Militant I see differently. Mr. Hansen is  
4 correct, quantitatively and qualitatively they are in a  
5 different category. I'm going to have to look at it. By  
6 ruling this way for the two newspapers I'm not suggesting that  
7 the motion to dismiss raised by The Militant and the other  
8 defendants will or will not be granted. But at the present  
9 time I'm only comfortable enough with the case made by the  
10 Tribune and the Deseret Morning News that this should stop.

11           I will do this, Mr. Hansen and Mr. Kingston, without  
12 prejudice. If there comes a time, and if, and this is an if,  
13 if this case does proceed with more discovery and more  
14 illumination on what the facts are and what facts exist from  
15 which an argument can be made that someone was actually defamed  
16 from a statement made by another person, you may seek leave of  
17 court to amend your pleadings to add back in either the Salt  
18 Lake Tribune or the Deseret Morning News if you can show that  
19 you have a sufficient factual predicate for making such a  
20 claim.

21           I admire Mr. Hansen's honesty earlier today when he  
22 said in response to a question from me, and I think it was a  
23 fair and honest statement, and I don't mean to misquote you if  
24 I do, but that your clients were defamed by all of this  
25 publicity. That as a result of all of this publicity you

1 deemed it negative and unfair and defamatory. That does not  
2 mean you can take everyone that was involved in publishing a  
3 report about this incident as being legally libel for the  
4 alleged diminution in reputation or whatever other defamatory  
5 injury you claim your clients suffered.

6           You cast a wide, wide net and it appears that anybody  
7 who said anything that you found to be false about your  
8 clients, and you have caused them to expend already large sums  
9 of money in an attempt to defend themselves, and ironically  
10 when you did distill down your complaint to some degree, and I  
11 share some of Ms. Rivlin's and Mr. Dryer's concerns, in  
12 particular that it is still a broad, broad way that you're  
13 framing your claims about their clients, but you did distill it  
14 down for the two newspapers and left a clear picture of what  
15 the newspapers did and what they reported, but I cannot find  
16 that it states a claim upon which relief can be granted. They  
17 are not capable of defamatory meaning in the context in which  
18 they are written.

19           I'll write this up, I think, both ways, and I'll find  
20 it on a 12(b)(6) ground, but I will recognize it also under the  
21 parameters of Rule 12(c) and Rule 56. I do not find, and I  
22 want to make this clear, that I do not find that recognizing  
23 that this may have Rule 56 implications, that it would require  
24 the Court to open up this factual inquiry any farther than it  
25 has already been opened up by a specific reference to the very

1 articles themselves. That allows you on your own if you want  
2 to conduct some factual investigation, or if further discovery  
3 in this case allows you to claim, yes, we have found  
4 information that we can now point to which shows that these  
5 sentences, two or three, and most of the articles by the  
6 Tribune and Deseret News don't even in my view come close to  
7 expressing a falsehood. And even if you can say a given  
8 sentence is false on its face in your view, it cannot be  
9 seriously argued that in the context of the entire article,  
10 just that article, that any reasonable reader could come away  
11 believing that that has improperly defamed or left a defamatory  
12 accusation against one of your clients.

13 I will try to spell that all out in a written  
14 opinion, but I will award reasonable attorney's fees to date  
15 expended by the Salt Lake Tribune and the Deseret Morning News  
16 for their costs and fees incurred in defending this lawsuit.

17 For the rest of you, you're just going to have to  
18 wait until I can issue a written opinion.

19 Thank you for your arguments today.

20 We'll be in recess.

21 (Proceedings concluded.)  
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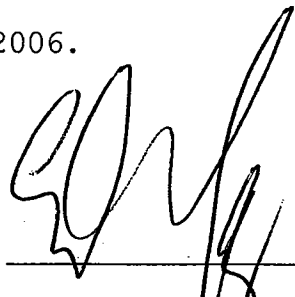
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STATE OF UTAH )  
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COUNTY OF SALT LAKE )

I, Ed Young, do hereby certify that I am  
Official Court Reporter for the United States District Court  
for the District of Utah;

That as such Reporter I attended the hearing  
of the foregoing matter on 2-17-06, and  
thereat reported in Stenotype all of the testimony and  
proceedings had, and caused said notes to be transcribed  
into typewriting; and the foregoing pages numbered from 1  
to 135 constitute a full, true and correct report of the  
same.

DATED at Salt Lake City, Utah, this 28<sup>th</sup> day  
of Feb., 2006.



Ed Young, U.S. Court Reporter  
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