COURT OF APPEALS DIVISION III

Scott Schneider,

Plaintiff-Appellant,

v.

Insurance Management Inc. d/b/a HSG Codeblue,

Defendant,

CodeBlue LLC, Nancy Puerner, John Parris, Erica Ann Hudson, and Nicole Lynn Darby,

Defendants-Respondents.

APPELLANT BRIEF

2021AP1501

(L.C. # 2019CV627) Judge Michael Schumacher Eau Claire County Branch II

BY:

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DECEMBER 19, 2021

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2. Judge Schumacher erred in granting non-conditional constitutional privilege and refusing to consider abuse of conditional privilege committed on the part of Codeblue.

3. Judge Schumacher erred by refusing to consider the ramifications, affects, and seriousness of Schneider's medical condition thoroughly explained in his opposition brief.

ORAL ARGUMENT AND PUBLICATION

Schneider does not believe that oral argument is necessary in this particular appeal process. Schneider believes the facts and evidence to back up his case are clearly and articulately demonstrated in the arguments he has written and incorporated into this Appellant brief. Schneider does believe that publication of this opinion is important due to the fact that he considers this case to be of utmost importance with regard to how poorly people with chronic fatigue syndrome, a largely misunderstood and derided illness, are treated in the workplace and in society in general and believes that should there be a favorable opinion, this will be seen as a positive for the ME/CFS Community at large.

STATEMENT OF CASE

After receiving a Right to Sue letter from the EEOC on March 13th, 2019 (App., p. 3), Schneider complained to Eau Claire County Circuit Court on December 13, 2019 (App., pp. 4-11, RA 4) that CODEBLUE et al, committed acts of Intentional Tort, a violation of Wisconsin Statute 942.01 et. Seq. defined as Defamation of Character in the form of Libel Per Se and Slander Per Se (Slander Per Se

added in the Summary Judgement Opposition Brief). The acts of Libel Per Se and Slander Per Se were committed several times during the final 6 months of the Year 2018 and resulted in the wrongful termination of Schneider as well as monetary, emotional, and medical damages stemming from communicating the defamatory information to 3rd party State Government Investigative Bodies with express malice due to negligent disregard for the veracity of the actual events that had unfolded. Schneider alleges these 4 employees were party to false allegations that Schneider: 1) Committed the act of stalking, defined as Intolerable Work Behaviors, a crime of moral turpitude that resulted in his wrongful termination, in which there was a refusal to investigate whether said stalking defamation and 2) An allegation of harassment, defined as Intolerable Work Behaviors, that also led to Schneider's wrongful termination, in which there was a refusal to investigate whether said harassment or said incident even occurred. All the above conduct led Schneider to believe there existed the legal elements to establish a Prima Facie Case of Wrongful Termination due to Defamation of Character in the form of Slander Per Se and Libel Per Se.

On February 27, 2020, after Schneider had served multiple Notice of default judgments against Codeblue et al, a hearing was held in this Court in which the merits of Schneider's motion for default judgment were argued with Matthew Cornetta, Matthew J Cornetta (App., pp. 11-13, RA 31). Mr Cornetta argued that Schneider's Summons lacked the legal element of personal jurisdiction over Codeblue. Schneider then did further research and understood that Harmon Solutions Group, which had existed as a subsidiary with Codeblue, operating together under the holding of Insurance Claims Management Incorporated, was brought out by Strategic Claim on June 26, 2018, or just a week after Schneider was fired. Because only the HSG portion of the HSG/Codeblue corporate partnership was dissolved and Codeblue decided to continue to operate as its own independent corporate entity no longer under the protective holding of Insurance Claims Management, it became an LLC and assumed all of the liabilities for prior acts defamation when Harmon Solutions Group was partnered with them under the common ownership. Schneider changed the defendant in his Summons and Complaint from Insurance Claims Management Incorporated DBA HSG Codeblue, to Codeblue LLC, which was his 5th Amended Complaint that was served upon the Matthew Cornetta on March 2nd, 2020 (App., pp. 14-22, RA 32). Attorney Cornetta

accepted this amended version with the name Codeblue as the official corporate entity in the Summons and Complaint and filed his answer on April 16th, 2020 (App., pp. 23-26, RA 37). Once the HSG portion of Codeblue had been brought out by Strategic Claim Incorporated along with Insurance Claims Management Incorporated that happened to own this partnership and Codeblue decided to remain an independent company, it established itself as a limited liability corporation and called itself Codeblue LLC. Once the amended complaint was served and answered by Codeblue, several pretrial conferences were held during the remaining year of 2020. Schneider filed a motion for joinder of claims from a separate lawsuit he filed against the 4 named employees implicated in this lawsuit caption in August 2020 (App., pp. 26-52, RA 42). The motion was granted by Order on October 26, 2020 (App., pp. 52-54, RA 49) and a letter and Order was sent to both parties from the Court on October 28, 2020 (App., pp. 54-56, RA 51). After a Zoom hearing on November 17, 2020, a scheduling order was issued (App., pp. 56-58, RA 52) and Discovery was exchanged including numerous interrogatories asked and answered by Codeblue into the first half of the year 2021. On June 1st, 2021, Codeblue et. al, filed a Motion for Summary Judgment at the Dispositive Motion Deadline (App., pp. 56-80, RA 53). Schneider was given until July 1st to file a reply brief (App., pp. 80-82, RA 64) and Schneider submitted this brief July 1st (App., pp. 82-200, RA 67). A July 9th hearing was held at the Eau Claire County Circuit Court Branch 2 regarding the merits of this case with both parties participating (no transcript ordered). On August 23rd, 2021, a Zoom conference call was held in which a very brief oral decision was made regarding the Motion for Summary Judgment filed by Codeblue et. al, in which Judge Michael Schumacher sided with Codeblue in the Motion for Summary Judgment. The case was then officially dismissed with a Court Order on that same date (App., pp. 248-249, RA 75). Schneider filed his Notice of Appeal on August 30th, 2021 (App., pp. 249-250, RA 78). A Judgment on Order, Bill of Costs, and Judgment Lien/Satisfaction Notice were filed on September 2nd, 2021, by Codeblue and signed by Judge Schumacher (App., pp. 250-256, RA 84, 85, 86). The case currently stands closed and awaiting appeal.

STATEMENT OF FACTS

1. Codeblue stated on the night of June 11th 2018, Scott Schneider stood by the elevator on 1st floor of its Call Center building located at 404 S Barstow St in Eau Claire, WI for 30 minutes after the end of his shift

and then when indirect supervisor Erica Hudson came down the elevator at the end of her shift, proceeded to follow her out of the Call Center building demanding to know if she was trying to avoid him. (App. p. 202, Exh A, RA 68)

2. Codeblue terminated Mr Schneider on June 19th, 2018, for Intolerable Work Behaviors as a result of their claim of this incident. (App. p. 203, Exh B, RA 68,)

3. Codeblue based its determination of the occurrence of this incident on a single claimed statement of harassment filed by Erica Hudson on June 15th, 2018.

4. This actual statement is neither personally furnished nor signed by Ms Hudson.

5. Instead, Codeblue relies on a statement purported to be from Ms Hudson on the Corrective Action Form dated June 19th, 2018 and referenced in Exh A, filled out by Operations Manager Nicole Darby and Schneider's direct supervisor Vanessa Bluem.

6. Additional to the generic statement on the Corrective Action Form, an unsigned statement was furnished by an unknown member of the management team or Human Resources Department to the Unemployment Insurance Division adjudicator on July 17, 2018 in response to the adjudicator's investigation of Schneider's request for unemployment. This statement repeats the very thing that was on the Corrective Action Form, detailing how the Call Center management furnished an escort to the parking lot for Ms Hudson after her shift was over, for an undefined amount of time after Schneider was terminated, because they were afraid for her safety (App. p. 204, Exh C, RA 68).

7. Codeblue did not initiate any formal investigation of the incident to verify whether or not the incident occurred as Codeblue stated. There was no witness, video, or security evidence provided by Codeblue indicated in any of their Initial Statements, Interrogatories, or RDPs. Schneider was not interviewed or given a chance to tell his side of the story.

8. The subsequent claims that Codeblue put forth to the Wisconsin Unemployment Insurance Department in the form of Discharge Questionnaire and Separation Notice Forms, as well as the Corrective Action Form and unsigned statement shown in Exh A-B-C, resulted in the denial of unemployment benefits for Schneider. Furthermore, when Schneider initiated, via legal administration, a pursuit of an investigation of this issue through the Equal Rights Division in June 2018, the actions of Human Resources Manager Nancy Puerner to continue to promulgate these statements strongly

contributed to the ERD leveling a charge of No Probable Cause on behalf of Codeblue in January 2019, thereby denying any justice or ability to recover damages in this manner. (App. pp. 82-83, RA 66)

9. Schneider suffers from chronic fatigue syndrome, a legitimate, poorly understood, and much stigmatized condition in which his body does not produce normal energy causing him to struggle with never ending pain and exhaustion, a disease process that Codeblue was thoroughly aware of due to his having undergone two separate FMLA Leaves during the Years of 2017 and 2018 due to same, and that also resulted in the inability of Schneider to perform full time hours at least the last six months of his employment. This termination and subsequent shutdown of unemployment benefits did not allow Schneider to recover from the setbacks caused by the loss of this job and his inability to find sustainable new work that was suitable for the condition he was struggling with (App. pp. 205-206, Exh D, RA 68, RA 70). This resulted in Schneider becoming homeless in the Fall of 2019 through the Winter and early Spring of 2020. The effects of all of this combined to result in emotional and medical damages to Schneider, including a consistent worsening of his chronic fatigue syndrome starting with Codeblue's refusal to reasonably accommodate him in the Fall of 2017 through the end of his employment there and through the time that Schneider was homeless. Schneider's disease process would have led to making it nearly impossible for him to carry out the claims that Codeblue have made about his actions on the night of June 11, 2018.

10. Discovery exchanged late in the year 2020 clearly shows there are no witnesses to the above event, no video corroboration, and no security evidence of any kind collected, furnished, or kept to verify that anything of the sort of happened on June 11, 2018. Initial Interrogatory answers from Codeblue indicate claims of witness corroboration and video evidence but follow up Interrogatories and Requests for Document production yield absolutely no verified truth to these claims (App. pp. 207-214, Exh E, RA 68, 69)

11. Schneider sat next to Ms Hudson for the first 18 months of his employment and they worked closely together until she became a supervisor in December 2017.

12. Schneider not only denies that he behaved in this manner on June 11th, 2018 but denies that any incident happened at all on June 11, 2018. Instead, he asserts that he had a benign encounter with Ms Hudson on June 4th, 2018, at the back exit of the building in which he apologized for something he had

said to her on social media 2 weeks earlier. The encounter was neither confrontational nor was it aggressive in any way and occurred when Schneider went down to the vending machine to pull out a bag of Cheetos right after he had completed his shift after 9:00 PM on Monday, June 4th. The day had been extraordinarily busy and Schneider had not been able to finish all of his lunch because he had used the bathroom during part of that break and the Call Center was busy and there were no other opportunities to stop in the break room for a brief stint. As he was retrieving the Cheetos, Ms Hudson came out of the elevator and walked quickly by behind him going out the exit doors 2 feet to his right. Schneider, having no idea Ms Hudson would even exit this way, stepped to his right and pushed through the first set of doors and called out to her. Ms Hudson turned around and answered him amicably. He then apologized. Schneider has proof of this encounter occurring via a Facebook message that he communicated to Ms Hudson when he came home after making this apology to her, in which he repeats just about the exact statement he said to her in the back exit of the building, a statement which Ms Hudson acknowledges with a "Good night" reply to the message (App. p. 215, Exh F, p. 3 right side column, top RA 68).

11. Codeblue uses timecard information (App. p. 216, Exh G, RA 68) from June 11th to show that Schneider got off of his shift at 8:35 PM, which would have given him the ample time they claim for him to walk down to the elevator shaft area and to wait for Ms Hudson for 30 minutes while her shift ended and she came down the elevator. Schneider does not deny he was in the Call Center on the night of June 11th but only because he walked down the Call Center stairs and went out to his car to go home after his shift was done only to realize that he had forgotten to sort out some training notes and other information at his desk and to hang some decorative things in his cubicle that had been sitting in his car for nearly two months after he came back from FMLA leave in April. Schneider states after sitting in his car for a few minutes, he went back through the building and up the elevator into the Call Center and went to his desk where he sorted out the information and old training notes that he didn't have time to do during his active shift, hung the decals in his cubical and shredded the old documents at the Call Center paper shredder and the next row before going back downstairs, going back to his car, and going home for the night. He did not have any encounter with Ms Hudson on June 11, 2018, nor did he talk to Hudson at all that day.

11. In addition to the allegations Codeblue has stated regarding June 11th, 2018, Ms Hudson's statement being used by Codeblue also omits other seemingly amicable interactions with Ms Hudson in the week

leading up to June 15th, 2018, to make it look like Mr Schneider was pursuing Ms Hudson without her want or permission.

12. Schneider believes that these false and unproven statements made about his behavior on June 11, 2018, amount to several commissions of the act of libel and slander in the last six months of 2018, acts that led to serious allegations against him, causing obvious and provable damage.

ARGUMENTS

Judge Schumacher did not follow Summary Judgment Methodology by neglecting to take any legal arguments and inferences in favor of the non-moving party:

Although this is a Court case that is based on Wisconsin State law, there is legal precedence from the Federal Courts regarding the basis for which a summary judgment motion should be refused to be granted. According to Fed.R.Civ.P. 56(a) A district Court "shall grant summary judgment 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." Jacobs v. NC Administrative Office of the Courts, 780 F. 3d 562, 569 - Court of Appeals, 4th Circuit 2015. It is the district Court's job to view the facts and inferences arising from them in the light most favorable to the non-moving party, weighing them thus to determine if "`there is no genuine dispute. as to any material fact and the movant is entitled to judgment as a matter of law.'" Woollard v. Gallagher, 712 F. 3d 865, 874 - Court of Appeals, 4th Circuit 2013. A dispute is genuine if "a reasonable jury could return a verdict for the nonmoving party." Dulaney v. Packaging Corp. of America, 673 F. 3d 323, 330 - Court of Appeals, 4th Circuit 2012 For purposes of summary judgment consideration, the substantive law identifies which facts are material, Henry v. Purnell, 652 F. 3d 524, 548 - Court of Appeals, 4th Circuit 2011, A fact is material if it "`might affect the outcome of the suit under the governing law. Libertarian Party of Virginia v. Judd, 718 F. 3d 308, 313 - Court of Appeals, 4th Circuit 2013. “By its very terms, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported Motion for Summary Judgment ; the requirement is that there be no genuine issue of material fact. As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will

not be counted. See generally 10A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2725, pp. 93-95 (1983). This materiality inquiry is independent of and separate from the question of the incorporation of the evidentiary standard into the summary judgment determination. That is, while the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs. Any proof or evidentiary requirements imposed by the substantive law are not germane to this inquiry, since materiality is only a criterion for categorizing factual disputes in their relation to the legal elements of the claim and not a criterion for evaluating the evidentiary underpinnings of those disputes." Anderson v. Liberty Lobby, Inc., 477 US 242, 248 - Supreme Court 1986.

Given the wide legal precedence and the breath of established Case rulings with regard to Summary Judgment Methodology it is a wonder and a source of bewilderment to Schneider that Judge Schumacher seems to have completely glossed over numerous inferences that could be made in his favor with regard to the argument, analysis, and the evidence involved in this case. It is one thing for there to be no inferences, no substantive law or case precedence upon which to stand on to draw inferences, no evidence which to back up the claims that Schneider is making with regard to the events that unfolded on June 11th, 2018; and there to be nothing for the Judge to fall back on with regard to taking the material and factual events that Schneider has stated, quoted, and explained to give him any reason to draw those inferences. However, given that Schneider, even with his disease condition nearly wore himself out voice dictating an 85 page brief (because he can barely type much at all) that was a massive hurdle for him to do in 30 days with editing and using text reading software, thoroughly explaining every single argument, legal standing, case precedence, and clearly delineating his stand against the claims of Codeblue painting them in as nearly a black and white fashion as possible and then struggling with subsequent four months of near complete physical dysfunction in which he could only basically sit on his couch and do 10% of his normal activities before finally recovering, it is a wonder to Schneider that this was the case. Schneider feels like he was being passed over and disregarded because he was a pro se litigant. Schneider understands that with the court situation in the nearly post-COVID pandemic era that there is a lot on the Court's plate and he realizes that. However, that doesn't mean that he should be denied proper

due process and justice in this case. Schneider is not making accusations and means no disrespect but this is how he feels after the judgment that was made on August 23rd during the Zoom meeting between himself, Judge Schumacher, and Codeblue via the auspices of Matthew J Cornetta. Less the court think he is speaking purely in hyperbole, Schneider will delineate those inferences starting here. Judge Schumacher made his ruling based on two legal fronts, the first being the affirmative defense of the substantive truth of the matter. The second being the grant of conditional non-constitutional privilege to Codeblue. With regard to the substantive truth of the matter at hand - Judge Schumacher stated in his Zoom meeting that the plaintiff “Followed Ms Hudson out the door,” and therefore that was a substantive truth that Schneider committed the act that Codeblue accused him of. That clearly and plainly is an inference made in the favor of the defendant and that is where Schneider believes he erred. If Judge Schumacher were to take into consideration inferences made in the favor of Schneider, there is no doubt to Schneider that there is an obvious material and legal difference between what Codeblue accused him of doing and when they accused him of doing it versus what actually happened. According to Judge Schumacher, following Ms Hudson out of the Call Center is the reason for Schneider being fired and therefore because of that there is no legal material dispute that needs to be settled by a court trial. This is where Schneider vehemently disputes not only the factual version given by Codeblue but also insists that, that dispute directly segues into the legal material dispute he claims exists here. Schneider did not follow Erica Hudson out of the building. Schneider admits that he had an encounter with Ms Hudson but it was a benign and nonconfrontational encounter in which he did not follow her out of the building in any manner shape or form. Ms Hudson walked quickly by him after she came down the elevator shaft and he was pulling a bag of Cheetos out of the vending machine next to the first set of doors that led out onto the back exit on the Graham Street side of the Call Center building. Schneider took two steps to his right to push through the door and called out to Ms Hudson as he walked to the top of the steps and leaned against the railing. Ms Hudson turned around, willingly answered him, and he issued his apology. This is not following Ms Hudson out of the building. There was no following. There was no need to follow because Ms Hudson stopped and talked to him. Why is this significant? Because Codeblue accused Schneider of standing in front of the elevator shaft for 30 minutes after his shift was over waiting for Ms Hudson to come down the elevator at the end of her shift and then when she stepped out of the elevator

shaft, he pursued her out of the building demanding to know if she was trying to avoid him. Not only then did Codeblue claim that Schneider really did follow her out of the building but the absolute implication was that he practically chased her out to the parking lot across the street but according to Ms Hudson's supposed statement - he couldn't make it out that far because she was able to walk much more quickly than he does. This is the statement that Codeblue used to fire him. This is the statement that was furnished to the Wisconsin Unemployment Insurance Department via the Discharge Questionnaire and Separation Notice. This is what Codeblue claims to be the actual absolute sequence of events that occurred on June 11th, 2018. Schneider denies anything happened on June 11th, 2018, and instead states that there was an encounter on June 4th, 2018, but that encounter does not resemble anything Codeblue is accusing him of. It is miles apart from what Codeblue has stated to have happened and it cannot be walked back because it's published and it is out in the public domain and Codeblue has submitted evidence that that's exactly what it stated that Schneider did. And that is what is at issue here. That is what Schneider is accusing Codeblue of with regard to committing the act of defamation: The very thing that Codeblue is accusing him of having done and stating that it unequivocally happened and unapologetically happened in the statements used to terminate him. It is the legal version of events he has always taken issue with, with regard to this lawsuit since it was first filed and as far back as when he started the Equal Rights Division Investigation in June of 2018 shortly after he was terminated. In order for there to be no material factual dispute or legal factual dispute due to the substantive truth defense - there has to be very little in the way of difference between the potential defamatory statement and what the plaintiff actually states happened. Judge Schumacher stated that because Schneider followed Ms Hudson out of the building that what Schneider says occurred isn't material. Schneider states that something wholly different happened and has evidence to back this up. That is material. Schneider then states that Codeblue has not presented any evidence to suggest or corroborate that what happened on the night of June 11th, 2018, actually did happen as they themselves have directly stated it and he not only has evidence to show they have not presented proof of any kind, he has readily available evidence via Interrogatory responses that they fabricated the entire incident. That is legal because it adds up to defamation. In the state of Wisconsin there need to be three elements available to demonstrate libel:

1. A false statement

2. Communicated by speech, conduct or in writing to a person other than the person defamed; and,

3. The communication is unprivileged and the communication tends to harm one's reputation so as to lower him or her in the estimation of the community or to deter third parties from associating or dealing with him or her.

(1) Aaron Minc, The Minc Law Guide to Wisconsin Defamation Law, MINCLAW.COM, (September 19, 2019), https://www.minclaw.com/wisconsin-defamation-law-state-guide/

Codeblue, unequivocally accusing Schneider, spreading this accusation among themselves, terminating him, and publishing these statements to third party Government bodies while claiming them to be true statements in spite of the lack of proper investigation and proof that they occurred, fulfils every single requirement of this Common law precedence. Therefore, this is a legal factual dispute that is presented by Schneider's argument and the combination with the material evidence gives rise to numerous inferences that would lead a reasonable jury to conclude that Codeblue through various motivations published completely defamatory statements that were damaging to Schneider. Taken against the arguments of the opposing party, these are inferences that need to be made because they are readily available to be made with regard to carrying out proper Summary Judgment Methodology. Judge Schumacher erred by failing to carry out this proper methodology and apply these inferences to the legal situations presented in this case. Schneider either engaged in the behavior and carried out the actions that Codeblue accused him of on June 11th, 2018, or he didn't. Schneider claims that he didn't and Schneider has evidence to show that he didn't and he has evidence to show that Codeblue does not have any proof that he did, refused to engage in a proper investigation, and fabricated it. Any absolute truth defense obviously fails this criterion, and the substantial truth defense fails as well because of the striking difference in the way that both parties present their versions of events and the fact that Schneider has evidence to show that his version of events is more provable than theirs. Codeblue should not be granted their Motion for Summary Judgment because this cannot be decided by a Judge. A jury needs to weigh the credibility of the evidence presented or not presented on both sides. It is grossly unfair to deny

Schneider his day in court to prove that he's innocent of the things that Codeblue accused him of and to be potentially made whole again due to the damage that it caused him.

Judge Schumacher erred in granting non-conditional constitutional privilege and refusing to consider abuse of conditional privilege committed on the part of Codeblue. The Matthew Cornetta talked about conditional or qualified privilege in his Motion brief, protecting the communication between Ms Hudson to Ms Darby to HR and Codeblue Management to discuss and then promulgate the allegations forward regarding his stalking behavior on the night of June 11th, 2018. He states the communication of all of this information whether slanderous or libelous and all of actions that flow from it, involve the protection of a common interest between members of Management presumably in the protective interest of their place of business, making those statements therefore privileged and immune from defamatory liability. He then seems to make the suggestion that the publication of these false statements to public entities like the Wisconsin Unemployment Insurance Division and the Equal Rights Division of the State of Wisconsin are part and parcel to a protection of a public interest involving the safety of employees. He cites a couple of pretty well-known cases in the State of Wisconsin Legal addressing similar issues of defamation law. Schneider, however, believes that their actions taken all together starting in August of 2017, the spring of 2018, and finally the termination of Schneider with the lack of proper investigation, specter of the company buyout (App. pp. 132-134, RA 66), and discriminatory animus adds up to abuse of privilege.

The Restatement of Torts 2nd edition 1977, defines defamation of character as such:
Restatement (2d) of Torts § 558. Elements Stated To create liability for defamation there must be: (a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher [with respect to the act of publication]; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. § 559. Defamatory Communication Defined A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. § 578. Liability of Republisher. [With the exception of

the rule stated in Section 581], one who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it. § 581. Transmission of Defamation Published by Third Person. (1) . . . one who only delivers or transmits defamatory matter published by a third person is subject to liability if, but only if, he knows or has reason to know of its defamatory character. . . . § 12. Reason to Know; Should Know . . . "reason to know" [means] the actor has information from which a person of reasonable intelligence . . . would infer that the fact in question exists, or that such person would govern his conduct upon the assumption that such fact exists.

Here we have given all of the elements, a legally material factual dispute that exists as to whether or not Codeblue committed the acts of slander and libel that led to their termination of Schneider and the denial of benefits and the denial of proper and just deliberation by the Equal Rights Division, all of which led to damage to Schneider. In addition to the strong factual legal material dispute that is involved regarding the commission of the actual elements of the Act of defamation per se, there is also the factual legal dispute regarding the existence or establishment of conditional non-constitutional privilege, which if it doesn't exist, then would lead to the conclusion of there being an abuse of that privilege thereby making all of the statements uttered and published by Codeblue in this entire instance to be those of a defamatory nature but also a defamatory per se nature and making them completely liable for their agents violating the statute via the Doctrine of Respondeat Superior. In Section 12 of the Restatement of Torts there is the definition of legal foreknowledge. As inferred by the use of the term conditional privilege, it is a privilege that is dependent upon the actions that were committed and the conditions that surrounded those actions but also fed into the commission of those acts with regard to communicating false information that was damaging to Schneider. In Schneider's understanding of the concept of legal privilege in defamation cases, there are legally two categories of privilege: Absolute privilege, which is the absolute constitutionally-protected defamatory speech that stems from executive, judicial, and legislative proceedings in both the State and National bodies of government, Court proceedings, communication to and between members of law enforcement, etc; most everything else falls into the category of a qualified or non-constitutional conditional privilege with various protections for certain types of communication actions based largely on title, position, and situation. For example, in many cases the attorney-client

privilege is a very strongly respected and enforced qualified, non-constitutional privilege that allows a lawyer to communicate almost exclusively with his or her client without anybody else having the right to be party to those communications without permission and the position of being a journalist affords strong protection to keep sources anonymous in a number of situations. However, because the privilege is conditional, (unlike absolute privilege which is immune from legal ramifications no matter what is said), it does not afford universal protection. The sworn legal enemy of non-constitutional privilege is malice, which in the legal concept of defamation is the intention or the negligence of the defamer in the communication of a potentially slanderous or libelous statement. There are three kinds of malice: 1. Implied malice. 2. Absolute malice. 3. Express malice. Implied malice is assumed in defamation cases whereby there is no question regarding the existence of privilege of any kind and the statements are uttered without question of any kind of protection. Absolute malice involves uttering a statement which the defamer knows is entirely false or is aware that the statement is very likely or has entirely a propensity to be some kind of false statement or completely and totally dismisses any notion of investigating or corroborating whether or not the said statement is potentially or likely defamatory. It is an accusation that is leveled when public figures accuse other persons or institutions, either public or private, of committing the act of defamation of character. It involves a higher bar because public figures or those involved in public controversies are considered to be held to a higher standard of tolerating things that are said about them due to their proximity to a public position. 3. Express malice or malice of a more ordinary negligence. Express malice involves the commission of a defamatory statement that can be inherently said or shown to be communicated with some kind of spite, hatred, ill-will, or lack of regard for the subject of the defamatory statement. The Restatement of Torts is an established general guide for the court system to help define what legally constitutes defamation, malice, and therefore abuse of privilege and its various forms. In order to further understand how these things are defined in various jurisdictions, they must be understood from the vantage point of State law. Wisconsin civil jury instructions document 2500 details all of these Wisconsin State law requirements and categorizations.

According to Wi Civ Jr 2500:

Wisconsin Law Library, 2500 Defamation: Law Note for Trial Judges, WILAWLIBRARY.GOV, https://wilawlibrary.gov/jury/files/civil/2500.doc,

In the State of Wisconsin, in the legal setting of a private individual who is suing a private entity for defamation, in order to establish an abuse of privilege, Schneider needs to establish express malice. Schneider believes that the first element demonstrating this express malice is Codeblue's negligence in refusing to follow their own investigative handbook procedures in the event of Ms Hudson's harassment complaint. This shows Ms Darby's willingness to neglect the possibility that Schneider was innocent and not capable of carrying out such actions, thus indicating her's and Codeblue's disregard for the truth and for the well-being of Schneider, a disabled individual who was a member of a protected class. Her unwillingness to engage in the proper channels that are required in the setting of a harassment complaint align with Codeblue's sanctioning of this cutting off the process that is required to truly determine if an employee accused of something as serious and nefarious as harassment and stalking, committed those serious Acts, is a breach of her duty as an Operations Manager and is a breach of Codeblue's duty as the managers of a Call Center. Because there was a completely legal and nonthreatening alternative to wholesale terminating Schneider, in the form of suspending him, allowing a proper investigation to proceed, there is no reason that Codeblue can claim that their move to cut off Schneider's due process had anything truly to do with employee safety. Furthermore, the lack of corroborating evidence on top of this breach of duty and the fact that in Interrogatories Ms Hudson and Ms Darby both made it a point to state that such evidence existed but did not and have not ever proffered up such evidence, also shows a pointed desire and ambition on their part to further defame Schneider from the get-go. Combining this with the discriminatory animus that will be explained further down, not only in this case but is the centerpiece of an additional lawsuit against the Company for ADA violations clearly presents a question of a material legal dispute that by law is required to be settled by a court or jury. This defeats any conditional non-constitutional privilege. This entire situation differs from the court cases that the Matthew Cornetta, Michael Cornetta, has presented as a means of demonstrating Codeblue's non-conditional privilege defamation protections. He talks quite a bit in Pages 12 through 18 in the brief, particularly pages 12 Through 15, about Codeblue and the Wisconsin Unemployment Insurance Division, as well as

the Equal Rights Division, sharing a common interest. That would be a common interest, I suspect, in the safety and efficacy of Codeblue being able to run its business? He seems to be trying to make the case that because these discussions and communications regarding Schneider's behavior were kept strictly internal within the company and also only communicated only to individuals in an official capacity at the UI Division and the ERD that this seems to mitigate the effects of and the possibility of those statements being defamatory in nature and causing damage to Schneider. This is unequivocally not true. Just because Codeblue's statements regarding Schneider were not published in a newspaper or communicated to a reporter for a story on WEAU-TV13, doesn't take their defamation's sting away. When the words of the defamation statute indicate harming one's reputation and damaging one's reputation or esteem in the community so that third parties are discourage from associating with him or her, that doesn't necessarily mean that the words have to be cast far and wide or preached on every street corner in the city of Eau Claire. Schneider worked in a Call Center. When Ms Hudson came in to Ms Darby's office fabricating the story about Schneider waiting in front of the elevator for 30 minutes for her to come out of the elevator and then chasing her down demanding to know if she was trying to avoid him, she was talking to Schneider's Operations Manager who oversaw the position that for nearly two years of his life had been his sole means of livelihood; therefore, when Ms Darby heard this, Schneider was immediately diminished further in the eyes of someone vitally important to his work community. When Ms Darby assumed without even considering taking the proper due process road and breaching her duty to ensure that the rights of a protected employee were not wholly trampled upon, therefore showing absolute breach of duty and care as well as the lack of any due care or concern for the truth of the matter at hand and then communicated this to Mr Parris and the Legal Department of Codeblue, and communicated in such a way that it was taken as a true statement on his face she and these individuals then also further diminished Schneider, who was already maligned in the eyes of the Codeblue Community. How much damage was done? How much was Schneider further damaged and diminished in the eyes of his work community in regard to these fabricated statements? He was terminated from his position. That is an absolute disconnect from engaging with those in his work community and it was arbitrarily forced upon him and sealed off by the directive to terminate because of the fabricated statements that were used to rationalize the termination. When Codeblue communicated the Separation Notice and Discharge

Questionnaire along with the associated statements and Corrective Action forms to the Wisconsin Unemployment Insurance Division after Schneider filed for unemployment insurance (who by the way was well within his rights to do so), these same fabricated statements were Instrumental in the decision by the Unemployment Insurance Division of the State of Wisconsin to deny unemployment benefits to Schneider because the statements that were supplied by Codeblue falsely accused him of misconduct. This also harmed the reputation of Schneider in the eyes of his work community; however, in a higher-level work community, the one that was supposed to help him stay afloat after a job loss, one that he had paid money into for that exact purpose. That money was now sealed off and taken away from him while he was struggling with the ravages of a disabling condition, the very same one that Codeblue had neglected for nearly 8 months prior to his termination. In addition, he had to work to completely over-compensate for the lost unemployment wages which meant that he would have to work almost double for an extended period of time in order to be eligible for further benefits, something that he never was able to overcome and all of this because statements were made to the UI Department that were not true, thus lowering his reputation and his esteem in his work community. Lastly, when Schneider pursued legal action with the Wisconsin Equal Rights Division to try to regain some semblance of understanding and justice for what he felt was wrongful action against him by Codeblue, which was also within his rights as well, the same false statements and allegations that were promulgated by Codeblue were repeated by Nancy Puerner to the ERD complaint investigator. So much so that it affected the outcome of the investigation to the point that the investigative complaint officer refused to even listen to or do his due diligence to investigate Schneider's side of the story (App. pp. 216-226, Exh H, RA 70). This led to a decision of No Probable Cause from the Equal Rights Division and that has led to the insanity over the last three years for Schneider including the filing of these lawsuits and homelessness during the winter with his disabling condition where he stumbled into a worldwide pandemic that shut the world down before he was able to, fortunately, extract himself off the street. In the estimation and esteem of the Equal Rights Division, the section of the Department of Workforce Development in the State of Wisconsin that enforces and regulates the rights of on the job workers, Schneider was diminished and impugned to the point of basically being libeled an opportunistic and sociopathic stalker due largely to the words that were communicated to him by Codeblue Management and an overworked and incompetent complaint

investigator who took her words on their face value because they were from the employer and she represented a company and that trumped anything Schneider claimed. So, in regard to being diminished in the community at large, the concept of community doesn't have to be defined in any traditional sense in order for there to be damage to the reputation and the esteem that a particular individual suffers with regard to his standing in any community. To buttress his arguments regarding the common interest in his Motion for Summary Judgment Brief, the Matthew Cornetta, Attorney Matthew J Cornetta, cited Zinda versus Louisiana Pacific Corp. Zinda v. Louisiana Pacific Corp., 149 Wis. 2d 913, 440 N.W.2d 548 (Wis. 1989) This lawsuit, he claims, demonstrates the legality of broadcasting defamatory-sounding statements about a terminated employee because the statements were protected by a conditional privilege. In this case, Zinda falsified his own employment records so he could be hired by the Louisiana-Pacific Corp. When Louisiana-Pacific Corp found out that he had doctored his employment application document they justly terminated him. When the company noted Zinda's termination in the company newsletter under the section whereby it normally disclosed the comings and goings of all new and recently former employees, Zinda took exception and filed a charge of defamation against his old employer. There is just one problem that exists in this comparison between Zinda versus Louisiana-Pacific Corp and Schneider versus Codeblue, et al. The statement printed in the Louisiana Pacific Corp newsletter was a true statement. Zinda did doctor his employment application documents and left out important information that would have led to his not being hired by Louisiana-Pacific Corp. This was not a fabricated statement. Zinda did not dispute that he left this important information out of the employment application and therefore was not disputing the reason for him being fired. He was instead stating that the fact that the company published this in their newsletter, in the usual place where such things were commonplace noted as part of the information that was printed and exchanged as a means of Louisiana-Pacific Corp keeping an open channel about information to its employees. Contrary to what the Attorney Cornetta is stating and no matter how he tries to frame the argument, Schneider is disputing out and out that not only what Codeblue said happened on the night of June 11th, 2018 happened at all, he is also claiming they have no evidence it happened, and they only have the unofficial unsigned statement of Erica Hudson typed out by someone else on a Corrective Action form accusing him of harassment without even having carried out the officially company sanctioned due process investigation for it. The first affirmative defense against

defamation of character is the absolute truth. If something that happened is the Undisputed Truth then a defamation case cannot go forward. If the statement that is being labeled as being defamatory is not a false statement, then there is no case of defamation. That is why Zinda versus Louisiana-Pacific Corp could not survive summary judgment. It is the belief of Schneider, backed up vociferously by this brief, that statements and allegations from Codeblue concerning the night of June 11th, 2018, are patently and absolutely false at their very foundation. A company does not have the right to just go off broadcasting false and nearly criminal charges against another employee based upon the simple, uninvestigated statement of another employee no matter where they are situated in that particular business, to everybody and anybody just because they feel they have the power to make the assumption and make the assumption stick because they are a business. Even the right of a business to make an informational reference regarding a former employee to another business that happens to ask for the reference, is protected by conditional privilege, unless the business maliciously or through negligence, lack of care, or breach of duty presents false information to the other businesses as a reference that is not an opinion-based evaluation and therefore damages that individual and leads to them not being able to regain employment in their chosen field. That is an abuse of privilege. The conditional privilege allows employers to make statements to other employers about previous employees that, while they may be defamatory sounding on their face, gives them protection to issue such information if the information is job-related opinioned-based and absolutely true or has been corroborated to be true through reasonable care and due diligence. It is not a free-for-all to just throw around damaging statements about former employees literally at will and because there is a vendetta of carelessness or bias. The Matthew Cornetta also cited Olsen vs 3M Company in his Motion Brief, which two former employees of the 3M Company in Prairie du Chien, Wisconsin brought a defamation suit, among other things, against their former employer after they were terminated due to allegations of sexual harassment against a female employee. The 3M Company issued a press release in the local media stating that the two employees were terminated and two employees were forced to resign due to allegations of sexual assault and harassment. The pull quote that the Matthew Cornetta uses to summarize his point of view on Olsen is the following: “Defamatory conduct otherwise actionable may escape liability because the defendant acts in furtherance of an interest of social importance — an interest that is entitled to protection even at the expense of uncompensated harm

to Schneider." Olson v. 3M Co., 188 Wis. 2d 25, 36 (Wis. Ct. App. 1994). He further states: "Even if the statements made by Codeblue and the other Defendants related to Schneider's conduct during employment were not true, they would be fully protected under the conditional privilege and there is no evidence that such privilege was abused" (App., pp. 75, RA 54). So, in other words, says Cornetta according to Olson, an employer, corporate entity of any kind, media conglomerate, or any other public or private outfit could just summarily throw out uninvestigated and uncorroborated fabrications, fibs, stories, exaggerations, rumors, and accusations of immoral and criminal conduct about everybody and anybody, even if untrue, unproven, or unsubstantiated and it is universally protected by right of conditional privilege so that it could never rise to the level of defamation of character? Let's take a look at exactly what the Olsen Court expounded upon when it made this statement. The two employees, only identified in the case text as Olson and Konichek, were part of the centerpiece of an investigation conducted by 3M Management starting in December 1990 when Konichek complained to his plant manager that Yong C.'s husband approached him and demanded that he stop harassing his wife. This opened up a full investigation in which 3M interviewed Yong C. in early January 1991 and then proceeded to thoroughly investigate all of the allegations stemming from this interview by interviewing 18 employees, including Olson and Konichek, gathering information and affidavits from those who were working on the floor around Olson and Konichek, as well as Yong C., Yong C. herself was interviewed at least 3 times, and Olson and Konichek were also interviewed - an astounding three times!!! The majority of the interviews took place between January 31st and February 4th, 1991. After the full-on Investigation was conducted, 3M Management took three full days of deliberations to sort through all of the evidence from both sides and figure out whether or not there were violations of the company harassment policy. In regard to Olson and Konichek, here is what the 3M investigation found:

"In December 1990, Konichek complained to 3M production manager Stu Bosworth that Yong C.'s husband had demanded that he quit harassing Yong C. Bosworth took Konichek to Paul Ginkel, 3M's human resources manager. Konichek told Ginkel about the demand. Ginkel talked to Yong C. two days later. Yong C. told Ginkel that there was a bet that someone — she did not name who at the time — would get her into bed in thirty days, and that someone on the crew had spread her legs and said

something to others such as "come and get it." Because Yong C. became distraught while relating these incidents, Ginkel discontinued the interview and arranged for her interview by Karen Eichman, 3M's employee assistance counselor. That interview took place in early January. Ginkel brought Byron Nesheim from 3M's human resources department at its Minnesota headquarters into the investigation. In early January, Nesheim and Ginkel interviewed the managers and members of Olson and Konichek's crew, including Olson and Konichek. Subsequently, Susan Hafner, from 3M's security services department, became involved in the investigation. Hafner and Nesheim conducted another round of interviews with Olson and Konichek and about one dozen 3M crew members, managers and former employees. Nesheim and Hafner interviewed Yong C. on January 23. She said that Konichek: in front of other crew members, pulled her legs apart and said "make our wish come true"; spread rumors that he and Yong C. had sex together; forcibly spread her legs while sticking out his tongue in a licking motion; told her he wanted a "blow job"; put his hand down her blouse; and committed many other inappropriate acts and gestures toward her. Yong C. said that Olson: asked her to perform a strip tease for money; offered to wash her back if she would wash his; told her to move to Las Vegas where she could work as a prostitute and he could be her pimp; asked her for a "quickie"; grabbed his crotch and moved toward her while Konichek held her legs apart; told her that he liked Asian women because they are "tighter" than American women; and subjected her to other harassing conduct. Yong C. also alleged harassment and unwanted touching by other co-employees.

Id at 40

On January 28, Yong C. filed a formal written complaint with the Prairie du Chien Police Department against Olson, Konichek and other individuals alleging sexual assault and harassment. Terry Zinkle, assistant chief and captain of the department, interviewed her and began an investigation."

This is one huge, major reason why Schneider has raised such issue with Codeblue's claims regarding June 11, 2018. Codeblue did not conduct a fair two-sided investigation to determine if indeed what Ms Hudson said occurred had any verifiable truth to it at all. The problem for Olson and Konichek was that at the end of the day, with 3M looking through all the statements on both sides after conducting a deliberate, well-balanced investigation, the cascade of interviews revealed Olson and Konichek to have

inconsistencies in their various statements and stories over the span of their interviews, while Yong C. was shown to be consistent and sincere and never wavered from what she stated had happened and those around her corroborated it with official statements.

“On February 5 and 7, Hafner and Nesheim met with a number of 3M human resources and employee relations personnel, and 3M general counsel to report their findings. Schultz recommended that 3M seek resignations from Olson, Konichek and two other individuals, and that if they did not resign, they should be discharged immediately. The others present agreed with his recommendation.”

Id. at 41

3M employed Olson and Konichek on a production line at 3M's Prairie du Chien plant. It terminated their employment on February 14, 1991, after allegations of harassment, including sexual harassment, were made against them by a co-employee, Yong C. 3M and the Prairie du Chien Police Department each conducted investigations of the allegations. Each issued a press release the day after the terminations and Schultz and Police Chief Gary Knickerbocker each spoke to reporters. 3M's press release stated:

An investigation by 3M into allegations of harassment at its Prairie du Chien, Wisconsin, plant resulted in the termination of two production employees and the resignation of two production employees Thursday. The Company launched the investigation last December immediately after it was notified of the alleged activities. "Our position is very clear: incidents of this nature simply are not tolerated at 3M facilities," said Prairie du Chien plant manager Maynard Schultz. Schultz added that all employees at Prairie du Chien had received training about 3M's policy prohibiting harassment of any type.

Id at 34

This is ultimately the reason why the court decided on appeal in Olson believing there was no abuse of conditional privilege. First off, the press release did not identify Olson and Konichek by name to make it even ascertainable they were two of the four discharged. But more importantly, it wasn't because the statements that 3M made in it were any less truthful or more false than others, it was because 3M had conducted a thorough, two-sided investigation that went on for 2 months and when it deliberated, those deliberations were officially documented, and it came up with what it felt was the most accurate version of

the truth given the information that they had uncovered via it's due process deliberations. The court says so itself further down in the actual case text:

“Olson's and Konichek's submissions do not dispute the extent of the investigation conducted by 3M, and they largely corroborate 3M's account of the information that it gathered during the investigation. ***This distinguishes Calero v. Del. Chem. Corp., 68 Wis.2d 487, 228 N.W.2d 737 (1975), on which Olson and Konichek rely. In Calero, the employer made no attempt to investigate the charges. Id. at 508, 228 N.W.2d at 749.***

Faced with a large amount of information from numerous employees, much of it conflicting, 3M had to make credibility determinations to decide whether its harassment policy was violated. 3M retains its conditional privilege even if it disbelieved Olson and Konichek, rejected their definition of harassment, and did not speak to everyone who might have had negative things to say about Yong C. To retain its conditional privilege, all that is required is that 3M not act with reckless disregard of the truth in making statements about Konichek's and Olson's conduct. The record, including all reasonable inferences drawn in Olson and Konichek's favor, does not reveal a genuine dispute of material fact on this issue. Nothing supports Olson and Konichek's contention that 3M's investigation was a sham.

Id at 42-43

Being the subject of Codeblue’s termination, Schneider can only dream that they would have given Ms Hudson's allegations against him the same kind of time and attention that 3M gave to one individual who inadvertently ended up disclosing her concerns to Management if only because her husband went after Konichek for his behavior and Konichek reported that to Management. Being that Ms Hudson's allegations were false, a thorough investigation such as this would have revealed all the evidence that Schneider has provided in this brief if it were necessary and believes it would have cleared his name. It is not because Codeblue reported the reason for his termination to the Unemployment Insurance Division and the Equal Rights Division that Schneider filed this suit for defamation of character. It's precisely because the allegations were unfounded, were one-sided, not properly and thoroughly investigated, and

the communication of all of these false allegations caused both of these agencies to deny proper legal adjudication and denial of benefits and due process outcome. It is not because it was reported, it was because what was reported is not true, and it was arrived at with a wanton disregard for the veracity of the allegations and resulted in significant damages to Schneider's life and his disabling condition. If they were furthering the public interest or common interest, what kind of Interest were they furthering? The interest of an employer to destroy the life, character, and reputation of a former disabled employee? If due diligence were undertaken, this likely would not have happened. If discriminatory animus hadn't been present, due diligence likely would have been undertaken. If only Codeblue had thought Schneider's employment was worthy of this type of investigation. Unfortunately, it did not. All of this tied together leads to a strong legal assertion of wrongful termination due to defamation of character in the form of slander per se and libel per se. Because there is a legal dispute that has presented itself regarding the true nature of the allegations for which Codeblue terminated him and the motivation behind them, a jury must weigh the evidence involved and make a decision so as to ascertain whether or not there was a violation of Wisconsin defamation law. Judge Schumacher erred by not taking these inferences into his decision when stating that Codeblue was within its rights with regard to conditional privilege in its communication, discussion, and publication of the statement contained in the Harassment Complaint purportedly made by Erica Hudson. For starters, Codeblue had no business discussing rumored accusations among its members of management and making a determination without opening a formal investigation, and publishing to any third parties including those of a Government insurance benefit and investigative bodies as to the veracity of Ms Hudson's claims without any evidence of witness, video, security footage or otherwise demonstrating that Schneider committed the incident they claim he carried out on June 11, 2018. Furthermore, any kind of Codeblue's refusal of due process investigation to carry out said purported incident according to its Handbook Policies regarding employee reports of harassment, (App., pp. 226-230, Exh I, RA 69) and its decision to call said harassment Intolerable Work Behaviors in spite of labeling Schneider's behavior as harassment, defeats its claim that they themselves believe the behavior occurred and there was a full investigation. It took Codeblue four days to make the decision to terminate Schneider after they reported Erica Hudson made her Harassment Complaint. A full and complete investigation would have taken far longer than this if Codeblue had been willing to carefully and

judiciously explore the claims of Ms Hudson and dissected the lack of evidence at hand. While some forms of harassment can be construed as intolerable work behaviors, the company Harassment and Offensive Behavior Policy clearly states that a claim of harassment has to be investigated by the company and that has to follow a certain procedure. None of this was followed and the fact that Codeblue management in the form of Nicole Darby, Human Resources, and the Legal Department refused to follow that procedure and simply declared Schneider guilty as charged and passed off his behavior as those of intolerable work violations shows their willingness to take whatever sloppy shortcuts that it could to rid Codeblue of Schneider's position regardless of the truth. A looming corporate buyout and a discriminatory animus would be more than enough ammunition to drive this kind of unjustifiable action. These clearly are things that a reasonable jury could easily sort through and return of verdict of libel and wrongful termination given the preponderance of the evidence against Codeblue, including the obvious, provable falsity of the statement, omissions that are included in the statement, and the end rush to neglect a properly conducted due-process investigation. All of these things were clearly explained to the brief presented to Judge Schumacher on July 2nd, 2021. All of this evidence is presented along with the information presented in that brief. The utterances of these false statements and their publication clearly amounts to express malice in the form of negligence and recklessness with regard to the actual occurrence of the matter at hand. This can only come from ill will, spite, other things that Codeblue had against Schneider because of prior transgressions as an employee and his struggles with a disabling medical condition, none of which have to do with whether or not he carried out the incident they accused him of carrying out in actuality. To avoid these inferences in favor of Schneider, the non-moving party, against the unverified claims that Codeblue has made all along and grant them free will to promulgate clearly false charges, is to not properly consider Summary Judgment Methodology. The situation may have been conditionally privileged but the conversations, communications, and their subsequent publications were not.

Judge Schumacher erred by refusing to consider the ramifications, affects, and seriousness of Schneider’s medical condition thoroughly explained in the brief. Aside from the obvious inferences that the events that took place were factually different from what Schneider knows to be defamation,

another set of inference missed by Judge Schumacher involves the particular set of medical evidence that Schneider - due to his disabling medical condition, diagnosed
chronic fatigue syndrome or myalgic encephalomyelitis, did not have the ability to stand at an elevator exit for 30 minutes lying in wait for Ms Hudson.

(2) National Institutes of Health, *About ME/CFS*, NIH.GOV, https://www.nih.gov/mecfs/about-mecfs- , February 6, 2017 (Accessed October 25, 2021),

Schneider lives in a HUD sponsored disabled apartment, and has a State disabled permanent parking pass that started out as a temporary six-month in April 2018 and was upgraded to permanent in November 2018 as the temporary expired (App. pp. 230-231, Exh J, RA 68). This was issued because he has difficulties walking past 100 to 200 ft at a time without having to stop and rest due to pain and exhaustion issues. Schneider walks around only by sheer willpower, exhibits a limp favoring his right hip due to weakness and soreness, and can engage in limited activities, including moving around in a confined 5 ft area with limited arm and leg movements, cannot reach his arms over his head, rotate his arms completely around in a 360° circle, cannot lift more than 3 to 5 lbs. at one time, and carry more than one to three pounds over any distance depending upon the severity of his disease and the amount that his symptoms are aggravated. Schneider can achieve some component of carrying out menial physical tasks but must rest for at least 5 minutes or more between activities. Exceeding these activity limits causes Schneider to develop completely disabling exhaustion and pain to the point that it readily shuts down or disrupts his abilities to function in that moment and has to sit down and rest for 20 minutes to several hours. This will cause a further exaggeration of symptoms, potentially magnifying these struggles for days in a cumulative effect due to a central component of the disease called post-exertional malaise (PEM).

(3) Centers for Disease Control and Prevention, Treatment of ME/CFS, https://www.cdc.gov/me-cfs/treatment/index.html, January 28, 2021 (Accessed October 25, 2021)

PEM is the result of the process of over-stressing the body when carrying out normal human activities, which causes an exacerbation and worsening of all symptoms and is the result of the exertional intolerance posited above.

(4):

Centers for Disease Control, *What is ME/CFS,* CDC.GOV, https://www.cdc.gov/me-cfs/healthcare-providers/clinical-care-patients-mecfs/treating-most-disruptive-symptoms.html (Accessed June 3, 2021, 6:09 PM)

PEM usually onsets after the body has performed too much activity. People with ME/CFS can find their exhaustion, pain, and other symptoms aggravated by any physical and even mental activity and that can be a very subtle amount of activity depending on how much the disease is aggravated, almost a ridiculously subtle amount of activity and like opening and closing a door, taking a bath, or even lifting a liter bottle of pop off of a desk could cause a person to experience more pain and exhaustion, enough to have their symptoms increase to the point that it renders them dysfunctional. This is especially true in severe cases, like me. With rest a person may get their function back to baseline after several minutes to even hours but classic and serious PEM usually shows up 12-24 hours after they have done more activity than their body can handle as an energy deficit in which the body cannot replenish and so it falls into a more diseased state. This is quite often also referred to also as a “crash” by people in the ME/CFS community and it can last for days, weeks, or even months depending upon the intensity of the overactivity and therefore the severity of the resulting PEM. In the most catastrophic cases, a person ends up being confined to a bed in a dark room with blinders on and ear plugs in because they cannot withstand even the most minute amount of energy without being sent into PEM and they have to be fed through an IV because they don't have the energy to even digest food. Too much and too frequent overactivity can worsen the illness as the body becomes further and further entrenched in the processes that drive these symptoms.

(5) Workwell Foundation, *Educational Videos,* Post Exertional Malaise (scroll down to middle of the page), WORKWELLFOUNATION.ORG, https://workwellfoundation.org/educational-videos/, (Accessed June 17, 2021, 6:32 PM)

Post-exertional malaise can vary its disabling components depending upon what kind of activities were done prior to the onset of the PEM. In the case of June 4 and June 11, 2018, Schneider would have worked two 8-hour back-to-back shifts both Sunday and that Monday. This was the heaviest part of his schedule with Mondays being the busiest day of the week from start to finish aside from Saturdays. His energy depletion and level of PEM would have been nearly off the charts by the end of Monday evening's shift. Schneider, at that time still being somewhat capable of maneuvering around in the grueling 100 to 200 ft avenues in which he would need to get himself across the street and out to his car to go home, would be able to at least limp his way there. He also would, on June 11, after approximately 5 minutes of sitting in his car and resting, have some capability of walking back into the building and up the elevator to sit at his desk and slowly organize things in his cubicle. He then could have had enough energy to shred the documents and then meander his way back to his car. However, he would not have had any ability to stand in place for 30 minutes as stated in Codeblue's complaint against him and sustained by Ms Darby and Ms Puerner in their statements afterwards. Moving for short periods of time can be achieved by Schneider; however, any sustained movement or activity of any kind (more than 5-10 minutes) with the same muscles being anchored in the same position would have been impossible for Schneider to bear, especially after such a prolonged marathon for himself with his illness. This is also why he could walk down the stairs out of the Call Center but could not go back up the stairs. Schneider would have to sit. As pictures of the lower level in the building demonstrate, (App. pp. 232-244, Exh K, RA 71), there is no place to sit anywhere near the elevator shaft. The only way Schneider could sit anywhere near where the alleged stalking took place would be in the office receptionist area or the back exit where Schneider had his encounter with Ms Hudson. Neither places would allow Schneider to know when Ms Hudson would be coming out of the elevator and which way she was moving.

Schneider's condition is called chronic fatigue syndrome in the United States but is better known around the rest of the world as myalgic encephalomyelitis.

(6) ME-Action, *World Health Organization,* ME-PEDIA.ORG, https://me-pedia.org/wiki/World_Health_Organization#ICD-10_classification_of_ME.2FCFS (Accessed June 3, 2021, 6:05 PM)

It has been documented in various forms and under various names for nearly 150 years. Unofficial accounts go back further centuries. Researchers are exploring its similarities to long COVID.

(7) Proceedings of the National Academies of Sciences of the United States of America, Redoximbalance links COVID-19 and myalgic encephalomyelitis/chronic fatigue syndrome, PNAS.ORG, https://www.pnas.org/content/118/34/e2024358118, August 24, 2021

It has been one of the most disregarded medical conditions around the world, being neglected by physicians and governments alike even though the World Health Organization has considered it a neurological disease since 1969. The United States has now at least on the government level finally taken the disease seriously when the Institutes of Medicine in 2015 put out a 300 Page plus book entitled *Beyond Myalgic Encephalomyelitis/Chronic Fatigue Syndrome: Redefining an Illness*

(8) National Libraries of Medicine, *Beyond Myalgic Encephalomyelitis/Chronic Fatigue Syndrome: Redefining an Illness,* PUBMED.GOV https://www.nap.edu/catalog/19012/beyond-myalgic-encephalomyelitischronic-fatigue-syndrome-redefining-an-illness (Accessed June 3, 2021, 6:27 PM)

that declared chronic fatigue syndrome to not be a psychological condition but rather a biological illness that needs to be taken seriously. As time has gone on, some governments around the world have developed a few diagnosing guidelines. In the United States, the relevant guidelines are from the centers

for disease control. The onset of the disease normally occurs in persons aged 30 to 45 but can occur at any age and in the majority of cases onset after a viral or bacterial infection such as mononucleosis, colds, flus, Lyme's disease, potential COVID-19 and strep throat etc. The initial infection and the symptoms involved usually go away and leave, instead, the CFS symptoms of extreme exhaustion, disturbed and unrefreshing sleep, muscle pain, cognitive impairment and the added punishment of post exertional malaise remain. Aside from these five symptoms, there can be one or more of the following: deep muscle pain, postural orthostatic tachycardia syndrome and there can be up to 60 or more other varied accompanying symptoms that go with this core set that result from an overloaded central nervous system. These all must be present for at least six months or more before a diagnosis can be considered. In order for a patient to be diagnosed with chronic fatigue syndrome they first have to be given a thorough workup that shows they are not suffering from any other kind of diagnosable medical condition and that all other possible medical conditions that could lead to exhaustion are treated or excluded. Because there is so little understanding and tolerance of chronic fatigue syndrome it is often a lengthy time between onset and diagnosis. Unfortunately, the majority of people with CFS are too ill to do much of anything except for rest and symptom management even if they do find a mainstream physician to help them out. I am of the severe level and my physical functioning has gotten worse and worse as I've gone along and been pushed to endure more and more terrible suffering from a world that doesn't understand that there is a subset of people who have a disease that doesn't get better with movement. People who are ignorant or prejudiced think that someone like myself are lazy or have an attitude problem. Codeblue has checked all of these boxes and has been instrumental in completely worsening my disease. The most challenging thing for myself, aside from the exhaustion, is the extraordinary muscle pain that I deal with throughout my body, worse in the neck, shoulders, and upper back. Baseline research indicates that CFS is a disease where the body cannot produce enough energy in the muscles and cells for unknown reasons so the body cannot adequately produce its own energy, recover from exertion of energy, or maintain enough energy to do what normal human beings are able to carry out. The exhaustion then doesn't allow me to be able to walk long distances, exercise, lift objects, or sustain normal activities for any reasonable period of time. This budding research further indicates that for those who have CFS, when the body is pushed past its ability to create its fragile energy, the body systems become overly stressed and the body

releases immunological inflammation of various kinds which may lead to increase in pain and a flu-like effect. This is a cursory understanding as of this time. This dysfunction may be caused by a body that may be stuck in an immunological overdrive and permanently enters a “sickness state”. It's not yet clear what may lead to this happening. Further research is ongoing.

As referenced to above, with all the things that happened between October 2017 and June 19th, 2018, all of the things that were done by management to gloss over and not do everything that was possible to communicate faithfully with Schneider, to make sure that his disabling condition was accommodated in the workplace, was not done. Both the EEOC and the WEFL talk about a good faith effort and a negotiating good faith effort between management and the employee. In October 2017 when John Parris, HR Manager, and party to this suit said Schneider couldn't stand up in his chair while taking insurance processing claims calls, something he quite routinely did to relieve muscle tension from sitting back against his chair for prolonged periods of time - Schneider went to Mr Parris to talk to him about negotiating an accommodation. Mr Parris then, instead of negotiating with him, sat Schneider in a chair at a desk that he directed him to sit in without any kind of negotiation or meeting with Schneider, one that he did not agree to, in a situation that would not help him thrive with his condition and dictated he accept that "accommodation" and stay there. Schneider ended up rescinding that request by asking his GP to sign a statement saying so, under the duress caused by Mr Parris (App. pp. 245-247, Exh L, RA 70). When Schneider got that delivered to Mr Parris later that day, his supervisor at that time; Hayley Zblewski, came to his desk and told him that Mr Parris said, Schneider "*No longer had to abide by the accommodation* but *could no longer complain about anything regarding his issues with sitting all day long in a chair*". Not being able to engage flexibly in this changing of position cause schneider's condition to rapidly worsen in the fall of 2017, so much so that Schneider ended up going on a second FMLA leave from January to March of 2018. Vanessa Bluem, who became his supervisor when Hayley resigned shortly after, did not want to negotiate a favorable schedule when Schneider came back from his second FMLA Leave in April 2018. She shoved a schedule in front of him that was not going to work with his illness which forced him to run to go back to multiple medical providers and try to find out what hours she could possibly be satisfied with. Finally, Schneider had a meeting with Ms Darby in Mid-May 2018 where he specifically

asked her to help him formulate a plan where he could sit down and talk with all of the supervisors on the call floor to help facilitate further understanding of his chronic fatigue syndrome and identify what kinds of things could be done to help improve the situation on the work floor; a proposal which she refused, and suggested Schneider go back to talk to Bluem.

Schneider, then, by virtue of suffering from this very illness and Codeblue worsening this illness via its discriminatory animus and the amount of work that he had performed in the 16 employee hours prior to the said incident occurring, would have made it physically impossible for him to stand in front of the elevator shaft for 30 minutes after his shift was over and on top of that chase Ms Hudson out of the building through the exit doors and onto the sidewalk and attempt to pursue her towards the parking lot across the street as is claimed by Codeblue. Could Schneider limp downstairs to a vending machine at the end of his shift and then go to his car? Sure, at his own pace, but he wouldn't be standing around on his own two feet for half an hour and then practically running after another employee. Could Schneider waddle down the stairs to his car and after five minutes of rest and, after being frustrated by the fact that he forgot, once again, to bring certain items up to his desk for the thousandth time in the span of 2 months, grab some decals, limp back into the building, and use the elevator to go back up to the Call Center, sit back down again, sort out some information on his desk, then get back up, go down the stairs, and back out to his car just across the street to go home as with what happened on June 11th, 2018. Absolutely. But chasing Erica Hudson through a hallway into a back exit after standing in front of the elevator without any kind of sitting aids for 30 minutes. No. This also was clearly spelled out in the brief presented to Schumacher. A reasonable jury could take the information and the ample evidence provided regarding Schneider's condition and its severity and make the conclusion that it simply was not possible for Schneider to behave in the manner that Hudson claims on June 11th, 2018. This was also clearly explained in the brief and this inference in Schneider's favor was clearly missed by Judge Schumacher.

CASE PRECEDENCE

There are several older Wisconsin cases that established the meaning and the directive behind current Wisconsin defamation law, many of them having to do with the establishment of defamation legal

concepts that were evolving in this country during the 1960's and 1970s, and specifically in response to a few Landmark Supreme Court cases and a revision of the Restatement of Torts in 1977. I will note them here in summary form. It is important to understand that even though many of these cases were decided 50 to 60 years ago or more, they do have a continued standing with regard to Wisconsin defamation Law in 2021.

***Otten v. Schutt*, 15 Wis. 2d 497, 504 (Wis. 1962)**

The Appellate Court reversed a verdict that was originally overturned on appeal after the trial court had decided initially that Lester Shutt had been guilty of uttering a defamatory statement to West Bend Police Chief George Weinert. Appeal motions after the verdict reversed the jury finding of defamation and the award of punitive damages. The Appellate Court reaffirmed the original jury verdict that concluded Shutt had defamed Sylvester Otten, a teenager whom he communicated to Chief Weinert had been the individual who had participated in shoplifting activities at the JCPenney store that he managed. It turned out that Sylvester Otten was not the individual who had participated in the shoplifting but instead it was another member of his family. The Appellate Court held that while in most situations communication of criminal activity to a law enforcement officer or agency is protected by conditional privilege, the privilege is abused and thus lost when the communication that is uttered is defamatory, such as when stated via spite or bad faith, blames an innocent person.

The law relating to defamatory communications is based on public policy. The law will impute malice where a defamatory publication is made without sufficient cause or excuse, or where necessary to protect the interests of society and the security of character and reputation; but where the welfare of society is better promoted by a freedom of expression, malice will not be imputed. Anno. 63 A.L.R. 1113. See also Flynn v. Western Union Telegraph Co. (1929), 199 Wis. 124, 225 N.W. 742.

It is the duty of citizens to give to police or other officers such information as they may have respecting crimes which have been committed and that public policy requires that communications of this kind, at least if made in good faith, be protected as privileged. 33 Am. Jur., Libel and Slander (1961 Cum. Supp.), p. 23, sec. 137. A communication to a law-enforcement officer is generally held to be qualifiedly privileged if it is made in good faith and for the purpose of helping to bring a criminal to justice. 33 Am. Jur., Libel

and Slander, p. 136, sec. 137. See also Hathaway v. Bruggink (1919), 168 Wis. 390, 170 N.W. 244, and Joseph v. Baars (1910), 142 Wis. 390, 125 N.W. 913. But the mere fact that the person to whom a statement respecting the commission of crime was made happened to be an officer does not serve to protect the utterer, on the ground of privilege, from liability for libel and slander, where the statement was not made for purposes of apprehension or punishment of one who had committed a crime.

The burden is on defendant to prove privilege as a defense to an action for defamation. 53 C.J.S., Libel and Slander, p. 332, sec. 220. "When the defendant has established a prima facie case of privilege, it ordinarily devolves upon Plaintiff to rebut this showing by proof of actual malice,

want of good faith, or due care, etc., where such matters are material." 33 Am. Jur., Libel and Slander, p. 245, sec. 264. See also Restatement, 3 Torts, p. 299, sec. 613.

In Hathaway v. Bruggink, supra (p. 395), this court said that "The case here is controlled by the case of Joseph v. Baars. . . . There a communication to a village marshal by the defendant, for the purpose of having criminal proceedings instituted against Plaintiff therein, was held to be a privileged communication if written in good faith, . . ." The testimony establishes that Schutt did not contact the chief of police in order to institute criminal proceedings or for any other valid and proper police purpose. Therefore, Schutt's conversation was not protected as a conditional privilege. The occasion was privileged, but the conversation was not.

***Hett v. Ploetz*, 20 Wis. 2d 55, 58-62 (Wis. 1963)**

Summary judgment was granted to defendant Ploetz, who had sent an appraisal concerning, Hett, a recently dispatched speech therapist for the Cudahy School District. The appraisal that was sent to the prospective employer was critical of Hett's ability to perform his job as a speech therapist. The tone of the appraisal was surprising to Hett, however the Court ruled that the appraisal letter was protected by conditional privilege because it strictly communicated the conclusion of 6 different teachers in the school district in regard to Hett's measured inadequacies as a speech therapist and his ability to relate to the children that he was helping. Because the speech communicated by the reference appraisal was based on weighted and deliberated criticism and was not stating private or internal information of an inflammatory or personal nature.

It is clear that Ploetz's allegedly defamatory letter was entitled to a conditional privilege. Ploetz was privileged to give a critical appraisal concerning his former employee so long as such appraisal was made for the valid purpose of enabling a prospective employer to evaluate the employee's qualifications. The privilege is said to be "conditional" because of the requirements that the declaration be reasonably calculated to accomplish the privileged purpose and that it be made without malice. Hoan v. Journal Co. (1941), 238 Wis. 311, 328, 298 N.W. 228; Rude v. Nass (1891), 79 Wis. 321, 329, 48 N.W. 555. Restatement, 3 Torts, p. 252, sec. 595.

In Rude v. Nass, supra, at page 328, the following statement of Massachusetts' Mr. Chief Justice SHAW is quoted approvingly:

"`Where words imputing misconduct to another are spoken by one having a duty to perform, and the words are spoken in good faith, and in the belief that it comes within the discharge of that duty, or where they are spoken in good faith to those who have an interest in the communication, and a right to know and act upon the facts stated, no presumption of malice arises from the speaking of the words, and therefore no action can be maintained in such cases without proof of express malice.'"

Lord BLACKBURN has said:

"`Where a person is so situated that it becomes right in the interests of society that he should tell to a third person facts, then, if he bona fide and without malice does tell them, it is a privileged communication.'"

See Rude v. Nass, supra, page 329.

The public-school official who expresses an opinion as to the qualifications of a person who has submitted an application for employment as a schoolteacher should enjoy the benefits of a conditional privilege. See Anno. 136 A.L.R. 543, 549.

The Absence of Malice.

As previously noted, the employee had given Ploetz's name as a reference and had authorized that an inquiry be made of him. The letter contains certain factual matters as well as expressions of opinion. The factual portions are not contradicted by any pleading before this court. Thus, the following statement contained in the letter written by Ploetz stands unchallenged:

"Last year, our six principals and elementary coordinator unanimously recommended that he be no longer retained in our system as a speech correctionist. He, therefore, was not offered a contract to return this year."

The expression of opinion of which Hett complains is contained in the following portion of the defendant's letter:

"We feel that Mr. Hett was not getting the results that we expected in this very important field. I, personally, feel that Mr. Hett does not belong in the teaching field. He has a rather odd personality, and it is rather difficult for him to gain the confidence of his fellow workers and the boys and girls with whom he works."

In our opinion, the record before us establishes that this expression of opinion is not founded in malice. The background of the relationship of Hett and Ploetz satisfactorily demonstrates that the latter's negative recommendation was grounded on the record and not upon malice. Ploetz was not an intermeddler; he had a proper interest in connection with the letter he wrote.

The letter in question did not exceed the scope of the inquiry put to Ploetz by the prospective employer. The evidentiary facts which have been included in this record tend to show that the statements in Ploetz's letter were based upon matters within the latter's knowledge. The record discloses that six school principals had in fact submitted the report to which Ploetz's letter referred; their report was critical of Hett's professional and personal qualifications. The report was submitted to Ploetz approximately nine months before the letter in question, and it recommended that Hett not be retained as speech therapist in the Cudahy school system for the following stated reasons:

"1. He lacks professional competence. "2. His teaching is ineffective. "3. He shows immaturity for the work. "4. His unprofessional relationships with the students. "5. He has not arranged for parent conferences."

Lawrence v. Jewell Companies, Inc., 53 Wis. 2d 656, 657-58 (Wis. 1972)

Talks about slander per se and the abuse of privilege removing any conditional privilege from Communications between a traveling salesman and sales client about , another traveling salesman, who sold to those same clients.

Henry R. Lawrence commenced this action to recover for slander against the defendants Jewell Companies, Inc. (Jewell), David Theisen, Kenneth Trehey, and Gary Williams. He alleged Jewell, through its agents Theisen, Trehey and Williams, made false and defamatory statements about him. Lawrence was employed by Jewell as a salesman until his discharge in April of 1968 ***and the alleged statements were to the effect he had overcharged his customers, juggled his books, and stole from his customers and from Jewell. The complaint alleged, as a result of these false statements, Lawrence had been unable to obtain steady employment, had been nervous and upset, and required medical treatment. (bolding courtesy of Appellant)***

"The case was tried to a jury, but before submitting the case, the court ruled as a matter of law the statements of Trehey and Williams, which were made to other employees of Jewell, were conditionally privileged. Only questions concerning the liability of Jewell and Theisen were submitted and in the special verdict the jury found Theisen made the statements alleged, that the statements were not true, that he had made the statements in the scope of his employment, and that he abused any conditional privilege he might have had. The jury awarded Lawrence compensatory damages of $25,000 and punitive damages of $1,500. The defendants Jewell and Theisen made six motions after verdict, all of which were denied, either expressly or deemed overruled because they were not decided within two months of the date of the verdict (sec. 270.49, Stats.). Judgment was entered on the verdict on November 27, 1970."

Laughland v. Beckett, 870 N.W.2d 466, 473-76 (Wis. Ct. App. 2015)

A more modern take on the definition and the commission of defamation of character.

Beckett was dating Laughlin's ex-girlfriend and he spent at least three months making statements about Laughlin on his Facebook page that he named after Laughlin, for the specific purpose of making it look like Laughlin was incriminating himself, by placing statements on the page that Laughlin was involved in fraudulent and criminal banking activities. Beckett appealed a bench verdict that ruled in favor of defamation per se against him and thus ordering him to pay out punitive damages. In this appeal, Beckett argues that his statements regarding Laughlin were substantially true and also were merely opinion and because they were merely opinion they did not rise to the level of defamation.

The court in this appeal reviews the definition of defamation in light of Beckett's assertion that true statements and opinion do not equal defamation. The court finds that Beckett's statements about

Laughlin had no basis in truth to begin with and that Beckett had presented no evidence in the court trial nor did he possess any evidence on the record to support what he said about Laughlin as being substantially true. The court also stated that because Beckett's statements were not grounded in truth that the action of stating them as mere opinion did not remove their defamatory nature.

Unlike stating honest opinions that are an expression of a person's feelings or preferences, Becket's opinions were entirely based on the repetitive theme that Laughlin was defrauding banks, thereby making the language an expression of a fallacy whose only effect was to cause damage to Laughlin. In other words, malice. It is for the same reason that Codeblue cannot stand behind its assertions that they believed Ms Hudson statements against Schneider were founded in truth just because she uttered them when they did not undertake a proper investigation to find out if what she said actually could be corroborated as having happened.

Beckett argues that his Facebook posts were not defamatory because: (1) the statements were substantially true; (2) the statements were simply his opinions; and (3) Laughland did not prove harm to his reputation.

20 When reviewing the circuit court's findings in a bench trial, we will not overturn the circuit court's factual findings unless they are clearly erroneous. See Wis. Stat. § 805.17(2). We search the record for evidence to the court's factual findings. See Johnson v. Merta, 95 Wis.2d 141, 154, 289 N.W.2d 813 (1980).

21 "The first inquiry in evaluating a defamation claim is whether the communication is capable of a defamatory meaning, that is, whether the words complained of are 'reasonably capable of conveying a defamatory meaning to the ordinary mind and whether the meaning ascribed by the defamer is a natural and proper one.' " Bauer v. Murphy, 191 Wis.2d 517, 523, 530 N.W.2d 1 (Ct.App.1995) (citation omitted; brackets in Bauer). "The determination is one of law for the [circuit] court, and our review is de novo." Id. (internal citation omitted).

22 "The elements of a common law action for defamation are: (1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the one defamed; and (3) the communication is unprivileged and tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her." Uecker, 323 Wis.2d 798, ¶ 8, 780

N.W.2d 216. If we determine that the statements at issue are defamatory, we must consider the defenses alleged. See id. "Truth is a complete defense." Id. Opinions are also considered defenses to defamation under certain circumstances. See Milkovich v. Lorain Journal Co., 497 U.S. 1, 13, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990)

(Under the common law principle of "fair comment," legal immunity is afforded for the honest expression of opinion on matters of public interest when based upon a true or privileged statement of fact not made solely for the purpose of causing harm.).

A. Beckett's statements were not substantially true.

23 "Substantial truth" is a defense to a defamation action. Prahl v. Brosamle, 98 Wis.2d 130, 141, 295 N.W.2d 768 (Ct.App.1980), abrogated on other grounds by Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999). The doctrine of substantial truth provides that " '[s]light inaccuracies of expression' " do not make the alleged defamation false. Lathan v. The Journal Co., 30 Wis.2d 146, 158, 140 N.W.2d 417 (1966) (citation omitted). Here, the circuit court found that Beckett failed to establish that his statements were "substantially true" or "slight inaccuracies of expression." The record supports the circuit court's findings.

24 Among the many assertions made by Beckett on the fictitious Laughland Facebook page are the following:

- *Laughland is "a low life";*
- *Laughland is a "preying swindler";*
- *Laughland is a "loser";*
- *Laughland "defrauded banks";*
- *Laughland engaged in "underhanded business practices";*
- *Laughland was "corrupt" and a "debt to society";*
- *Laughland "manipulated banks and credit card companies"; and*
- *If Marquette University offered a class in bank manipulation, Laughland would be the perfect candidate.*

Beckett claims that these statements are all based on public records. In fact, they are based only on Beckett's speculation about the meaning of those public records. Beckett cites foreclosure, bankruptcy and collection actions filed by several banks against Laughland as support for his (Beckett's) contention

that Laughland committed "fraud" and "misrepresentation." At trial, however, Beckett provided no evidence that the claims made by the banks involved allegations of Laughland's fraud, deceit or bank "manipulation." Indeed, Beckett conceded that he had virtually no documentation to support his claims. We conclude that the "public record" documentation before us contains no evidence that Laughland "defrauded banks," was "corrupt," was "a swindler," had "underhanded business practices," or "manipulated banks and credit card companies."25 Apparently as part of Laughland's August 15, 2013 response to Beckett's discovery demands, Beckett obtained redacted copies of Laughland's tax returns from 2009 through 2012. These returns report business losses. Beckett claims the business losses are evidence that Laughland was dishonest with taxing authorities, making Beckett's posts at least substantially true. In the context of this defamation suit, that claim is a non-starter. Beckett posted his defamatory allegations between January 10, 2010, and April 27, 2010. Beckett does not demonstrate in the record that he had those documents at the time of his defamatory posts. Thus, Laughland's tax returns could not have been the source of any knowledge Beckett had when he was posting on the fictitious Laughland Facebook page.

26 ***There is not a scintilla of support in the record for Beckett's claim that Laughland engaged in fraudulent tax activities. Similarly, Beckett's public declarations that Laughland's foreclosure and bankruptcy constituted fraud and made Laughland a "corrupt" "low life loser," among other things, are nothing more than Beckett's speculation. As such, Beckett's attempts to defend his defamatory postings as "substantially true" have no support in the record.*** *Beckett's posts were defamatory and intentionally published by Beckett, who had no reason to believe his statements were substantially true.*

B. Beckett's statements were not protected opinions.

27 Having determined that the statements are defamatory, we turn to whether they are protected by a privilege. Beckett argues that the posts were simply statements of his opinion. As explained in Wis. JI—Civil 2500:

Generally, the defamatory communication must be a statement of fact. An expression of opinion generally cannot be the basis of a defamation action. However, where the defamer departs from expressing "pure opinion" and communicates what the courts have described as "mixed opinion," then liability may result ...

"Mixed opinion" is a communication which blends an expression of opinion with a statement of fact. This type of a communication is actionable if it implies the assertion of undisclosed defamatory facts as the basis of the opinion. (Internal citation omitted.) ***However, "communications are not made nondefamatory as a matter of law merely because they are phrased as opinions, suspicions or beliefs." Converters Equip. Corp. v. Condes Corp., 80 Wis.2d 257, 263–64, 258 N.W.2d 712 (1977). 28 We conclude that Beckett's statements were all variations of the underlying (and unsubstantiated) factual assertion that Laughland engaged in fraudulent financial activity. Beckett's Facebook posts did not merely opine that Laughland was a "low life loser." Rather, Beckett made specific allegations—many written in the first person—accusing Laughland of defrauding banks, "manipulating banks and credit card companies" and engaging in "underhanded business practices." As stated, the record contains no factual basis for Beckett's assertions, even if we view them as "opinions." The evidence supports the circuit court's conclusion that Beckett's statements were not protected "opinions."***

Calero v. Del Chemical Corp. 68 Wis. 2d 487 (1975) 228 N.W.2d 737

A classic case that details most of the elements surrounding basic private individual defamation of character legal dispute complete with the question of conditional privilege that is very similar in many ways to the situation the two adversaries in this brief find themselves. Mario Calero worked favorably for the Dell Chemical Corporation as an accountant for a number of years when he was subjected to verbal abuse by the company president and decided that he wanted to move on to a different place of employment. He had quickly tendered his resignation but his direct supervisor Robert Bagemihl asked him to stay on to help train in his replacement. During his time at Del Chemical Corporation Mr Calero had designed his own index card filing system for organizing company purchase invoices and it had been effective enough that he had received numerous raises and had been promoted to Director of Purchasing. Mr. Calero decided he would stay on and help his soon-to-be ex-boss get the new trainee in order. While he was training his replacement, another fledgling accountant who was setting up his own department in a Del Chemical subsidiary business in Reno, Nevada, a Richard Danen, called Mr. Calero

and kindly asked him if he would help him set up and organize his purchasing in the same manner that Mr. Calero had done at the Wisconsin site. Mr Danen asked for Mr. Calero to send him copies of his purchasing invoices so that he may best learn how to utilize his means of recording purchases. Mr Calero then began making copies of his purchasing invoices in the office in front of everybody, which he then sent off to Mr Danen to help him with this request**. On an adjacent Monday, Mr. Calero came into the office and was told he was being immediately terminated by Mr Bagemihl because Mr. Bagemihl told him that he had heard an office rumor from several other employees that Mr Calero was starting his own company with another former employee and hijacking company records as well as recruiting other employees to join the new corporation. Mr. Calero denied these accusations and said that he was supplying the purchasing invoices to Mr. Danen.** He then stated that he returned the invoice cards that he had been copying back to Mr. Bagemihl and also turned over his corporate car keys, office keys, and company credit card and took a cab home, never returning. **Throughout the next four years Mr. Calero went through a number of jobs in the accounting field, having to start over a number of times and only rarely making it back to the money he was making at Del Chemical Corporation. During this time he was using Mr Bagemihl and Del Chemical Corporation as a reference on his job applications. On at least two occasions he was fired or demoted from positions after using Del Chemical Corporation as a direct reference and soon discovered copies of Reference statements that Mr Bagemihl had furnished to these companies fully repeating what he had accused Mr. Calero of when he was being terminated. Mr. Calero filed suit against Mr Bagemihl accusing him of defamation of character.** *In court:*

"Mr. Bagemihl testified that upon accusing the plaintiff, the plaintiff made no response or explanation whatever and did not deny any of the charges. Mr. Bagemihl could not recall the plaintiff mentioning anything about Danen. Furthermore, he testified that when he went to the plaintiff's office, the plaintiff did not give him the copies of the purchasing cards but gave him only his keys and credit card. Mr. Bagemihl said that he made no request for a return of the cards. ***Mr. Bagemihl admitted he had no personal knowledge whatever as to plaintiff's starting a competing business, hiring away employees, or copying records. He testified he first heard the plaintiff was starting a competing business the week before November 13th from several other employees. He did not discuss it with the plaintiff***

then although he termed it a "pretty well-known office rumor." He testified that he was told that the plaintiff and James Nooyen, another employee, were starting a competing business and both were fired November 13, 1967. Mr. Bagemihl also admitted he made no attempt to investigate or verify any of these reports. He said he had no reason to doubt the truthfulness of his informants and so he did nothing but listen to the people who confided in him. Both the plaintiff and Mr. Nooyen denied that they had taken any steps to organize or participate in a competing business on or before November 13th. *The record does contain articles of incorporation for an American Municipal Chemical Corporation dated November 18, 1967, signed by the plaintiff and Mr. *492 Nooyen. Mr. Nooyen testified that he and the plaintiff decided after they were fired that for financial reasons they should start a company. Mr. Nooyen, however, testified that about a week after signing the corporate papers he backed out of the operation altogether because he felt he needed more money.*

The plaintiff's testimony was that he believed there were two such corporations; he said the one of November 18th was really Mr. Nooyen's idea but that it ended quickly and that in December of 1967, the plaintiff joined with some friends unconnected with the Del Chemical Corporation and tried to start another enterprise with the same name. He said that the new company started in earnest in January of 1968, with the plaintiff as the president. He worked for that company until June of 1968, without compensation, and then left the firm. Mr. Nooyen was never involved in that business. While the American Municipal Chemical Corporation was in the same business as Del Chemical after it began in January, 1968, both the plaintiff and Mr. Nooyen denied that prior to November 13, 1967, when they were discharged from Del Chemical, that they were organizing any competing business. The sources of Mr. Bagemihl's information appear to have been rumors relayed to him by two secretaries. Another employee, Gary Umhoefer, is the source of the information regarding Mr. Nooyen's supposed solicitation of Mr. Umhoefer for employment.

There is no evidence in the record that the plaintiff ever tried to get "key" or other personnel to leave Del Chemical Corporation. The plaintiff specifically denied it. Mr. Bagemihl again relied on informants within the office and he admitted he made no effort to verify reports about soliciting employees. Mr. Nooyen testified that his conversation with Mr. Umhoefer involved only a possibility at most and that he had no intention at that time of starting a competing business.

*493 The plaintiff denied in his testimony that he was "helping himself" to confidential corporation records for his private use. **Again Mr. Bagemihl admitted he had no direct personal experience with which to support this charge. He stated that others had told him that the plaintiff was copying corporate records and he believed them. He said when he first fired the plaintiff he was under the impression the plaintiff was removing the records from the premises, but then admitted his informants had told him only that they had seen the plaintiff copying the records during working hours. This was done in plain view. None had told him that they had seen the plaintiff leaving with the records. Mr. Bagemihl also admitted he made no attempt to ascertain from those seeing the plaintiff copying the records any reason as to why the plaintiff may have been doing so. Mr. Bagemihl testified that he could not recall having asked Mr. Danen anything about it, nor could he recall Mr. Danen telling him anything about the records.**

Mr. Danen, on the other hand, said in a deposition in Reno on September 22, 1973, that he had spoken to Mr. Bagemihl before going to Reno about getting copies of the cards and that Mr. Bagemihl had not voiced objection. He said that he did call the plaintiff after arriving in Reno and requested copies of the cards. He said that he also spoke to Mr. Bagemihl about the cards sometime after arriving in Reno and eventually did receive copies either in November or December.

There was testimony from secretaries of the company that the plaintiff had also asked for some cards referred to as formulation cards, but they, being suspicious, kept the cards from him and reported this fact to Mr. Bagemihl.

After leaving Del Chemical, the plaintiff was unemployed until January of 1968, when he began working, without compensation, for the company which he had *49forhelped form (American Municipal Chemical Corporation). He remained there for six months. He then found employment as a general accountant with National Tape Distributors at $135 a week. By November of 1968, he was being considered for promotion to comptroller. His desk was just outside the door of the office of his superior and he heard this man call Mr. Bagemihl and ask about the plaintiff's work history. About fifteen minutes later, the plaintiff was called into his superior's office and his employment was terminated, effective immediately, and he was given a week's severance pay. He was then unemployed for two months and obtained a job with the O. L. Schilffarth Company in January of 1969. During this time he averaged about five job applications a week.

He was employed as comptroller at Schilffarth and made $10,000 a year but left in October of 1971, because the company went out of business. He then worked one month for $240 a week for First National Leasing Company. He listed Del Chemical as a previous employer on the application and he was terminated after one month when they reviewed his work history. He was then unemployed from November 1971, until July of 1972, and in that period made over 200 job applications. On all of these he listed Del Chemical as a previous employer, never as a reference. ***When the plaintiff did find employment again in July of 1972, it was in Arizona and he testified he felt he had to leave Wisconsin to search for employment because Mr. Bagemihl's comments to prospective employers here were too harmful to overcome and he testified he felt demoralized and humiliated.*** *Included in the record are forms from three companies requesting information from Mr. Bagemihl about the plaintiff; these were filled out by Mr. Bagemihl in January and March of 1972, and stated that Mr. Bagemihl had:*

*". . . dismissed Mr. Calero when I learned he was starting a competing company, `helping' himself to confidential *495 corporate records about suppliers and formulations and attempting to hire away from us various key personnel."*

A fourth form, also completed by Mr. Bagemihl, states he would not consider rehiring the plaintiff and when asked to rate the plaintiff's character on a table from above average to unsatisfactory he wrote in "Yes he was something of a character." On a form from the Internal Revenue Service where the plaintiff was being considered for a job in 1969, Mr. Bagemihl wrote the above-quoted explanation as the reason for his dismissal of the plaintiff. The plaintiff also testified that he had seen a communication to the retail credit bureau with comments from Mr. Bagemihl indicating that the plaintiff was a disloyal employee. Mr. Bagemihl admitted at the trial that until these incidents of November of 1967, he considered the plaintiff to be a very good worker.

Here we have all the elements that this PLAINTIFF is dealing with regard to this opposing party: A slew of false accusations, not investigated in any way shape or form, and taken at face value from not just one but numerous employees, some of them having high esteem in the eyes of the Department Manager Mr Bagemihl, all of which on their foundation are denied by the PLAINTIFF, shown with demonstrated proof

that what was said to have happened did not happen, openly disputed by the plaintiff and yet the powers that be from Del Chemical Corporation in the form of Mr Bagemihl continued to promulgate these statements as if they were the absolute truth, communicating them to third-parties, in this case other employers, and the result was a disastrous outcome for Mr. Calero. And, if you remember from above, employer references are one of the common interest, non-constitutional, conditionally privileged forms of speech the Matthew Cornetta speaks of that is granted to the supervisory personnel on a most basic level in every single business. So here we have a situation whereby the management of a corporation utters not only a potentially defamatory judgment regarding a former employee without even investigating the veracity of the sources providing those defamatory statements, he continues to spread these false and unfounded accusations to other employers upon reference request, in spite the former employee denying all the allegations and trying when he can to move on from the cruel and unnecessary actions used to dispatch him from the company. And here is the definite question regarding conditional or qualified privilege thrown into the mix. The case reached trial and even in court the Dell Chemical Corporation manager continued to deny any in spite of the fact that there was absolutely no corroborating evidence to back up Mr Bagemihl's reasons for firing him.

The trial was had before a jury in October of 1973, and the jury returned a verdict finding that Mr. Bagemihl had uttered or published defamatory statements concerning the plaintiff, that they were not substantially true and awarded damages of $3,000 for injuries to the plaintiff's feelings and to his general reputation and good name in the community, the sum of $7,000 for loss of income and punitive damages of $9,000. The defendant's motions after verdict were denied on December 4, 1973, and the judgment on the verdict in favor of the plaintiff was entered for $19,000 damages and $572.80 costs on December 14, 1973.

CONCLUSION

INFERENCES AVAILABLE IN SCHNEIDER'S FAVOR, NOT MADE	**INFERENCES MADE ON BEHALF OF CODEBLUE**
Had an amicable and benign, inadvertent	**Waited for Ms Hudson in front of elevator for**

encounter with Erica Hudson on June 4th, 2018, in which he apologized.	**30 minutes On June 11, 2018; followed Ms Hudson aggressively out of the elevator and out of the building demanding to know if she was trying to avoid him.**
Accusations of harassment and stalking behavior uttered by Hudson on June 15th, 2018, to Operations Manager Nicole Darby, Darby communicating said messages to HR and legal department with no corroborating witness, video, or security evidence to verify Hudson's claims, no company due process harassment investigation carried out per company handbook, Schneider terminated four days later without having told his side of the story. Uncorroborated statement. communicated to Unemployment Insurance Department and the Equal Rights Division investigative government bodies.	**Conditionally privileged non-constitutional communication.**
Schneider denies this incident ever happened and has evidence of his apology on June 4th, 2018.	
Schneider's has evidence of extensive medical issues that would have made it impossible for him to have carried out the incident as Codeblue stated.	
Corporate buyout of Harmon Solutions Group portion of company on June 26, 2018, or one week after Schneider's termination.	

Due to all of the inferences available to Schneider above and related arguments in this brief, Schneider asks this Court to reverse Judge Schumacher's errant decision to grant Codeblue its Motion for Summary Judgment, rescind the Judgment on Order, Bill of Costs, and Judgment Lien/Satisfaction Notice and to remand the case back to Circuit Court Branch 2 for further proceedings.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

ELECTRONICALLY SIGNED BY Scott Schneider 11:07 PM DECEMBER 19, 2021.