

WALLACE DUNN	(	IN THE DISTRICT COURT
	(	
vs.	(	OF ECTOR COUNTY, TEXAS
	(	
MATTHEW CODAY, OIL & GAS WORK-	(	358 th JUDICIAL DISTRICT
ERS ASSOCIATION, INC.	(	

AMENDED COUNTER-CLAIM

TO THE HONORABLE JUDGE OF THE COURT:

MATTHEW CODAY, OIL & GAS WORKERS ASSOCIATION, INC., Defendant and now Counter-Plaintiff, files this Amended Counter-Claim, complaining of Wallace Dunn, Plaintiff and now Counter-Defendant, and in support thereof would show:

1,

(The Parties)

MATTHEW CODAY, Defendant and now Counter-Plaintiff, is an individual and resident of Ector County, Texas.

WALLACE DUNN, Plaintiff originally and now Counter-Defendant, is an individual and resident of Ector County, Texas. New service is not requested as a copy of this Amended Counter-Claim will be filed with the electronic filing system of the Ector County District Clerk, with instructions to forward a copy to his attorney.

For sake of inconvenience, Counter-Plaintiff will be referred to as “Coday” and Counter-Defendant as Dunn.

2.0

(Factual Background)

Dunn commenced suit against Coday by filing an Original Petition with the District Clerk of Ector County, Texas. Reference is made to the Original Petition and incorporated herein as if copied verbatim. Coday timely filed an Answer and Counter-Claim to said Petition and reference is made to that pleading and incorporated herein as if copied verbatim.

The facts show that Dunn is an individual and has been a member of the Board of Trustees of Medical Center Hospital, which is an entity operated by the Ector County Hospital District, which in turn is a local government formed under the laws of the State of Texas. At all material times, Dunn was acting in his official capacity as a member of the Board of Trustees and under the color of state law.

Both Coday and Dunn maintained a social media wherein Coday would exercise his First Amendment right to comment on public affairs, including the actions of Dunn and board members, officials and employees of Medical Center Hospital.

Dunn maintained a Facebook account, specifically for his role as a board member for the Ector County Hospital District. As stated, the Ector County Hospital District is a local government established under the laws of the State of Texas. Dunn acted to block Coday on or about November 21, 2022. Dunn made subsequent statements on his Facebook page that he had blocked Coday from all of his social media. By publishing to third persons and to the public that Coday had been blocked, Dunn defamed and slandered Coday. Dunn blocked Coday knowingly and with the intent to harm Coday.

Dunn also retaliated against Coday by blocking him for Coday's exercise of his First Amendment rights of speech and of press. The retaliation proximately caused Coday

to sustain damages in the form of loss of income, mental anguish and pain and suffering and loss of reputation.

Coday was the proprietor of Oil & Gas Workers Association, Inc. He also maintained a social media and had followers from the general public. On or more than one occasion, Cody reported that Counter-Defendant had violated the federal records statute known as “HIPAA.” This was reported, in good faith, on Coday’s media site, among other places. Dunn retaliated against Coday by defaming him, retaliating against him for using his First Amendment protection of “Freedom of Speech” and “of the Press” and by attempting to act in concert with other public officials in censoring Coday.

December 05, 2022

On or about December 05, 2022, Dunn met with an Odessa police officer, Marlene Sotelo. He was in the presence of two or more people. Dunn verbally told Officer Sotelo that Coday was operating a fake oil company. He told Sotelo that Coday was crazy and erratic; that Coday damaged his vehicle; and that Coday falsely reported that Dunn violation the Federal HIPAA law. Each statement made by Dunn was false, intentionally made by him, and was intentionally made to injure or harm Coday and cause him damage and injury. As such, the foregoing false statements were made maliciously, for Dunn knew they were false, but he uttered them to third parties with the intent to injure Coday.

On or about November 18, 2022 Coday published in a local newspaper an editorial opinion, also known as an op-ed. At the time, Coday was exercising his First Amendment Right of Freedom of Speech and also Freedom of the Press. On or about November 21, 2022, Dunn, acting with others, instituted a false police report with the City of Odessa Police Department. Dunn falsely stated to the Odessa Police Department that Coday had

threatened Dunn. Dunn's false statement was uttered to a third party with the intent to harm and injure Coday, censor Coday and to retaliate against him for the exercise of his First Amendment rights of freedom of speech and freedom of the press.

November 20, 2022

Dunn wrote the following: "Matt are you drinking." Coday, in fact, did not drink at this time and had a period of sobriety. But, the rhetorical question defamed Coday by implying strongly that Coday was drinking alcohol. The communication was false was made intentionally and maliciously to harm and injure Coday.

November 10, 2024

Dunn wrote on his social media, "Since Matt Coday is too stupid to understand basic concepts will someone..." He further wrote, "Nobody's lying except Matt Coday and whoever is fielding him this worthless bullsh-t." Dunn further wrote that he had "blocked" Coday on all social media.

The use of the wording "too stupid" and "lying" was false. It was knowingly uttered by Dunn. It was also malicious for it was uttered to third persons and the public to injure and to damage Coday.

In addition, Dunn knowingly slandered and defamed Coday. He also was acting under the color of state law as a member of the Board of Trustees of Medical Center Hospital. As such, Dunn acted intentionally and knowingly to deprive Coday of liberty and property without due process of law.

Dunn also maintained an "X" account. Dunn also used this social media account for Hospital Board purposes. Dunn blocked Coday from the "X" account. Dunn's blocking Coday was retaliation for Coday's exercise of his First Amendment right of freedom of

speech and freedom of press. The retaliation was committed knowingly and intentionally and with intent to harm Coday.

Dunn, by blocking Coday, acted to retaliate against Counter Plaintiff for his exercise of his First Amendment right of speech and press.

September 24, 2024

Dunn wrote in an email to the Pelican Institute that Coday is a “provable racist.” The statement by Dunn was false, published intentionally and knowingly and with the intent to harm and injure Coday. Dunn published this statement to the third party or parties, Pelican Institute, with malice and the publication proximately caused Coday to sustain damages for mental anguish and pain and suffering, loss of reputation and loss of income.

3.0

(Causes of Action)

Dunn also said that Coday used a social platform to gave opinions that Dunn and others were misappropriating funds at Medical Center Hospital, a public facility, and that Coday made comments about Dunn’s political positions.

A.

(First Amendment Retaliation)

Dunn, by involving a police officer with the City of Odessa, Texas was acting to retaliate against Coday for exercising his First Amendment right of freedom of speech and press. Dunn was a public figure by virtue of his membership on the Board of Trustees of Medical Center Hospital. Dunn had the intent to instigate prosecution of Coday for criminal offense for Coday exercising his First Amendment right of Speech and

Press.

Coday would show that Dunn was acting in his official capacity in defaming Coday and retaliating against Coday for his exercise of First Amendment rights. Dunn was acting in his official capacity as a member of the Ector County Hospital District board, also known as the Medical Center Board. As such, Counter-Plaintiff sues Dunn as a state actor under the provisions of 42 U.S.C. Sec. 1983 for retaliation against Coday for exercising his First Amendment right. The retaliation was a proximate cause of bodily and personal damage to Coday and was a proximate cause of compensatory damages.

B.

(Slander, Defamation and Libel)

Coday would show that on numerous instances Dunn has falsely accused him of criminal conduct, “being crazy” and made false representations about his physical and/or mental well-being. Dunn made these statements as fact and without qualification. The statements made were false and Dunn had actual or constructive knowledge that the statements were false, but uttered each statement to the public with the intent to cast Coday in a false light or to harm and injure him, physically and mentally and to further damage his reputation within the community. Dunn committed slander and defamation and proximately caused Coday to sustain damages in the form of loss of income of up to \$2.5 million and future loss of earning capacity of up to \$5 million. Dunn proximately caused Coday to sustain damages in the form of mental anguish and pain and suffering. Dunn also proximately caused Coday to sustain damages in the form of loss of reputation. Coday prays for the recovery of up to \$20 million for the foregoing damages.

Coday further requests the recovery of up to \$25 million for punitive damages, for the

evidence will establish that Dunn maliciously, intentionally and knowingly slandered and defamed Cody with the stated goal of harming and damaging Coday, to inflict upon Coday general and special damages.

NEGLIGENT MISREPRESENTATION

In the alternative, Coday would show that Dunn made false and misleading statements and representations about Coday drinking alcohol, Coday's mental capacity and Coday's mental condition, i.e., calling him crazy. In the alternative, Coday would show that the foregoing statements by Dunn were uttered negligently and negligently misrepresented Coday's mental capacity, his mental condition and his sobriety. Such negligent misrepresentations, either singularly or jointly, proximately caused damages to Coday, as alleged in the foregoing paragraphs. As alternative relief, Coday prays for the recovery of up to \$25 million in compensatory damages, as alleged above, and \$25 million in punitive damages. Coday prays for any and all relief he is entitled to, both in law and in equity. Cody further prays for general relief.

4.0

(Attorney's Fees and Costs of Court)

Coday prays for the recovery of attorney's fees for prosecution of this Counter-Claim against Dunn. Coday prays for the recovery of up to \$45,000.00 for pre-trial and trial of this case. He further prays for the recovery of up to \$50,000.00 in the event this case is appealed to the Court of Appeals and to the Texas Supreme Court.

Coday prays for the recovery of costs of court and pre-judgment and post-judgment interest at the lawful rate.

Coday requests a trial by jury.

PRAYER

Wherefore, each Defendant prays that the Court, after a hearing that the Plaintiff take nothing by this suit and the Defendant have and recover costs of court.

By way of the Counter-Claim, the Counter-Plaintiff prays for the recovery of compensatory damages in the amount of up to \$25 million, punitive damages in the amount of up to \$25 million, reasonable attorney's fees and costs of court.

Respectfully submitted,

Steve Hershberger, Attorney at Law
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432-570-4014

By: /s/ Steve Hershberger
Steve Hershberger
Texas State Bar # 09543950

Attorney for /Counter-Plaintiff Matthew Coday

Certificate of Service

This is to certify that a true and correct copy of the foregoing Answer and Counter-Claim was filed on or about January 24, 2025 with the Ector County District Clerk with instructions to serve a copy of the pleading to Mr. Rahul Malhotra, Attorney at Law, 19122 U.S. Hwy 281, Ste. 324, San Antonio, TX 78258

/s/ Steve Hershberger
Steve Hershberger