

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

OSVIN LEONEL CONTRERAS MADRID, : Case No: 24-cv-5229
:
Plaintiff, :
:
v. :
:
WAL-MART STORES EAST, LP, : Philadelphia, PA
: April 10, 2025
: 11:07 a.m.
Defendant. :
-----x

TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

HARRY B. GOSNEAR, ESQ.
SIMON & SIMON, PC
1818 MARKET ST., SUITE 2000
PHILADELPHIA, PA 19103
(215) 267-4666
Fax: 267-639-9006
Email: harrygosnear@gosimon.com

MARC I. SIMON, ESQ.
SIMON & SIMON, PC
18 CAMPUS BLVD, SUITE 100
NEWTON SQUARE, PA 19073
(215) 400-2251
Email: litigationmail@gosimon.com

GAETAN ALFANO, ESQ.
PIETRAGALLO GORDON ALFANO BOSIC &
RASPANTI, LLP
(215) 988-1441
gja@pietragallos.com

TATYANAH BREHOUSE, ESQ.
PIETRAGALLO GORDON ALFANO BOSIC &
RASPANTI, LLP
(215) 988-1429
tmb@pietragallos.com

1 APPEARANCES: (Continued)

2
3 FOR THE DEFENDANT: JOSHUA D. YOM, ESQ.
4 McDONNELL & ASSOCIATES
5 METROPOLITAN BUSINESS CENTER
6 860 1ST AVENUE, UNIT 5B
7 KING OF PRUSSIA, PA 19046
8 610-337-2087
9 Email: jyom@mcda-law.com

10 COURT REPORTER: JEFF LUCINI
11 CLERK'S OFFICE
12 U.S. DISTRICT COURT

13 TRANSCRIPTION SERVICE: BURKE COURT REPORTING &
14 TRANSCRIPTION, LLC
15 64 MAGNOLIA PLACE
16 WAYNE, NEW JERSEY 07470
17 WWW.BURKECOURTREPORTING.COM
18 (973) 692-0660

19 Proceedings recorded by electronic sound recording;
20 Transcript produced by transcription service.
21
22
23
24
25

INDEX

<u>PROCEEDINGS:</u>	<u>PAGE:</u>
Judge addresses all counsel	4
Judge questions Mr. Simon	8
Judge questions Mr. Gosnear	15
Colloquy between Judge and Mr. Alfano	18
Judge questions Mr. Simon	21
Argument by Mr. Alfano	25
Judge defers ruling	50

P R O C E E D I N G S

(11:07 a.m.)

THE COURT: All right. Mr. Alfano, good morning.
How are you? Thank you for your involvement in the case.

MR. ALFANO: Good morning, Your Honor.

THE COURT: Good to see you. Ms. -- is it Brehouse?

MR. ALFANO: I'm joined by my colleague, Tatyana
Brehouse.

THE COURT: Brehouse. Mr. Simon.

MR. SIMON: Morning, Your Honor.

THE COURT: Good morning. And Mr. Gosnear?

MR. GOSNEAR: Yes. Good morning, Your Honor.

THE COURT: Did I pronounce that correctly?

MR. GOSNEAR: Yeah, yeah.

THE COURT: All right. Mr. Yom.

MR. YOM: Yes. Good morning, Your Honor.

THE COURT: So we're here today due to a rule to show
cause that the court issued in the case of Mr. Contreras Madrid
against Walmart, et al. It is Case Number 24-5229. To show
cause why counsel shouldn't be sanctioned for engaging in the
conduct that is described in the court's opinion that preceded
the rule to show cause.

And I know we're going to talk about the purported
reforms that are in place, the self-imposed moratorium on work
in our court, and in essence, you know, why, in addition to the

1 underlying assertion that counsel did not do anything that
2 merits sanctions, but why the things that Judge McHugh pointed
3 out shouldn't continue to give us concern. And, you know,
4 Judge McHugh -- let me say it this way. When you get Judge
5 McHugh as mad as he got in this case, you really have to work
6 really, really hard, because Judge McHugh is one of the more
7 thoughtful, laid-back members of our court.

8 Given his prior life as a prominent member of the
9 plaintiffs' trial bar, he understands the difficulties of
10 plaintiffs' work. And for him to be put into the position of
11 having to make the findings he was forced to make in the
12 Chaudry, Shelton -- or Chaudry case goes beyond just a member
13 of the court being disappointed with the way counsel practices
14 law.

15 And I can also say at the outset that this is my 11th
16 year on this court. And judges, as I like to say, are people,
17 too. We talk about who the good lawyers are, who the bad
18 lawyers are, who the lawyers are that have little to no
19 credibility with the court. And I can say, honestly, that in
20 all my time on the court, I have never heard more of my
21 colleagues express both privately and publicly, through the
22 actions of dismissals of these cases, more concern, criticism,
23 and, fair to say, disgust with how one law firm performs.

24 And I know we have a moratorium, and you've hired
25 counsel to teach you how to properly practice law, which after

1 19 years you'd think you'd know by now. And obviously the
2 bigger question that all raises is why is that even necessary?
3 How did it get to a point where your conduct was so aberrant
4 that you had to take steps like that? You know, I think Judge
5 McHugh points out some reasons. Volume over merit would be one
6 of them.

7 But whatever comes out of this hearing and whatever I
8 decide to do, I sincerely hope that this moratorium, the steps
9 you are purportedly taking, the money you're allegedly spending
10 to correct your behavior changes things with you and your firm.
11 I'm being asked, in part, to give you a pass on what you did in
12 my case, because you've learned your lesson from Judge McHugh
13 and now you're going to implement all these great policies and
14 practices which prevent mistakes, air quotes around mistakes by
15 the way, from being made.

16 But it's not unreasonable for judges to believe and
17 for you to expect that if stuff like this continues when you
18 resume your practice in the court, you will have lost that
19 excuse. And the expectations for the quality of your
20 performance will be enhanced and your inability to meet them
21 will not be excused.

22 If that's the end result, then that will be great.
23 And we can all get back to doing what we're supposed to be
24 doing, which is lawyers investigating and researching the
25 merits of what they file in the court, and bringing meritorious

1 cases on behalf of people who are actually injured without
2 bogus expert witnesses and life care planners, and all that
3 other stuff that my colleagues, including Judge McHugh, have
4 criticized publicly and privately. Then that will be a vast
5 improvement and we can all put this in the rearview mirror.

6 I'm just one little piece in this. If I can help
7 cause that outcome or spur that outcome, then that'll be a good
8 thing. But, you know, here's the other thing. I know for a
9 fact that Judge McHugh had no desire to go to the time and
10 effort he went to, to address your firm's conduct. He has far
11 better things to do.

12 I know for a fact that this is the last place I want
13 to be today, that I didn't issue a rule to show cause because
14 it's fun or because I don't have anything else to do. Because
15 these matters, as they should be, are extremely time consuming
16 for judges, too. And this doesn't advance the ball on my
17 docket one iota. This has lost time for me. So I'm not here
18 because I want to beat anybody up, or because I'm looking to
19 sanction a lawyer again. I'm here because I really don't like
20 what happened. And I am not -- I don't have to be blind to the
21 pattern of conduct in the court that Judge McHugh publicly, and
22 others publicly and privately have concerns about in this
23 court.

24 You have counsel who I respect a great deal, who has
25 made some very good arguments in his papers. And I'm happy to

1 hear argument from counsel, obviously, want to hear that. Do
2 you have a copy, Mr. Alfano, of the complaint that was filed
3 here in this case, in the Court of Common Pleas? I have a
4 copy. I just want to make sure Mr. Simon and Mr. Gosnear have
5 that in front of them. I just have a couple of preliminary
6 questions.

7 MR. ALFANO: I do, Your Honor.

8 THE COURT: Yeah. And does that include the
9 signature and the verification pages?

10 MR. ALFANO: I believe it does. It does, Your Honor.

11 THE COURT: And Jeff, before I forget, if you would
12 please swear in Mr. Simon and Mr. Gosnear?

13 COURT CLERK: Please stand and raise your right hand.

14 (Harry Gosnear, Esq., and Marc Simon, Esq. sworn)

15 THE COURT: Thank you, both. So have a seat. So if
16 you could turn, Mr. Simon, to the signature page. You see that
17 there?

18 MR. SIMON: Yes, Your Honor.

19 THE COURT: That squiggly line that purports to be
20 someone's signature, is that yours?

21 MR. SIMON: I don't believe that I signed it.

22 THE COURT: You're going to need to pull that
23 microphone closer to you to make sure that we have -- you don't
24 have to lean over it. That'll -- that should pull right over,
25 as close as you need it to.

1 MR. SIMON: No, Your Honor.

2 THE COURT: All right, so let's start there.

3 MR. SIMON: I did approve the filing of the
4 complaint.

5 THE COURT: Okay. Well, let's start there. Why is
6 someone purporting to sign a pleading over your name who is not
7 named Marc Simon?

8 MR. SIMON: That shouldn't happen, Your Honor.

9 THE COURT: Well, obviously.

10 MR. SIMON: I approved the complaint and --

11 THE COURT: Well, I don't care if you approved it or
12 not. We'll get to that. Why is someone else affixing a
13 signature to a pleading with your name on it?

14 MR. SIMON: I don't have an answer for that, Your
15 Honor.

16 THE COURT: How can you not have an answer for that?
17 Are you filing so many of these complaints that you don't even
18 look at them?

19 MR. SIMON: No, Your Honor. I, I do look at the
20 complaints before they do get filed.

21 THE COURT: Okay. Well, we'll see how closely you
22 looked at this one. Who signed that?

23 MR. SIMON: I don't know, Your Honor.

24 THE COURT: You have no idea who purported to sign
25 your name on a complaint filed with the court, in this case

1 state court but then removed to our court. You have no idea?

2 MR. SIMON: It's one of the paralegals that I
3 indicated that I approved the complaint, who then filed it for
4 us.

5 THE COURT: Wait a minute now. A paralegal signed
6 this pleading?

7 MR. SIMON: I would assume so, Your Honor. Somebody
8 in our protocol after I approve it.

9 THE COURT: You have a protocol where paralegals sign
10 pleadings that you file over your name in federal and state
11 court?

12 MR. SIMON: I have a protocol to review the
13 complaints and approve them. And then they get filed. I
14 certainly didn't sign this, so our process, yes, Your Honor, is
15 -- was that once it's approved that backslash-S and then the
16 squiggly is signed, and then the complaint is filed.

17 THE COURT: Is that squiggly sign so that the court
18 can't tell who is actually doing it?

19 MR. SIMON: No, Your Honor.

20 THE COURT: Who signs stuff like that? That's a
21 signature of like a rock star who's just bored with being asked
22 for autographs. Name me a paralegal who signs his or her name
23 like that.

24 MR. SIMON: Nobody.

25 THE COURT: Nobody, right. So who signed it?

1 Nobody?

2 MR. SIMON: I'm sorry.

3 THE COURT: Do you file so many of these that you
4 can't be troubled enough to sign them?

5 MR. SIMON: No, Your Honor.

6 THE COURT: What do you mean no? Why don't you sign
7 the pleading?

8 MR. SIMON: I don't know how to answer that other
9 than we have -- obviously this has been brought to our
10 attention.

11 THE COURT: Wait. Who needed to bring to your
12 attention the fact that you don't sign complaints that are
13 filed under your name in courts of law?

14 MR. SIMON: Nobody.

15 THE COURT: Who needed to bring that to your
16 attention?

17 MR. SIMON: Nobody did, Your Honor.

18 THE COURT: I mean are you serious? What am I
19 supposed to take from this? Is that -- do you think that's
20 appropriate?

21 MR. SIMON: I certainly don't.

22 THE COURT: You want to venture to guess how many
23 pleadings have been filed in courts of law in this district and
24 in this state over your name that you never signed, but that
25 you're telling a court you signed it and that you have to sign

1 for purposes of Rule 11?

2 MR. SIMON: Most of them.

3 THE COURT: Yeah, most of them. Thousands, right?
4 Thousands. And you don't know why. You're an experienced
5 lawyer. Tell me what I should do with that. And tell me why
6 that alone doesn't earn you a disbarment. That's a lie. Every
7 time that's filed, you are lying to the court. You didn't sign
8 it. The rules require you to sign it. When did you start to
9 implement this practice?

10 MR. SIMON: I'm sorry. Which practice?

11 THE COURT: Where you have paralegals or people you
12 have no idea who they are signing your name on complaints.

13 MR. SIMON: I, I don't know the answer to that, Your
14 Honor.

15 THE COURT: Well, why? Why is that a hard question?
16 Think. You've been a lawyer for 19 years going on 20.

17 MR. SIMON: Sometime along the practice at my firm,
18 this was implemented.

19 THE COURT: Why on earth would a practice like this
20 be implemented?

21 MR. SIMON: I don't know the answer to that.

22 THE COURT: Because you're too lazy, inattentive, and
23 unprofessional to carefully read and sign your name to a
24 document. That's why. Because your focus is on filing as many
25 of these things as you can without regard to carefully

1 investigating, researching, approving, signing, and verifying
2 to the court. That's why. Because probably you feel like you
3 don't need to be bothered with that. That's what the little
4 people at your firm are for, right?

5 MR. SIMON: I don't feel that way, Your Honor. We,
6 we do investigate the parties. We do prepare the complaints.
7 I review them. We, we do make a good faith basis, and the
8 majority of the time sue the right parties, make the correct
9 allegations, and bring these complaints based on that search
10 that we've done, and that Your Honor has seen in some of the
11 attachments to our response here today.

12 THE COURT: I've seen far more sua sponte dismissals
13 from colleagues than attachments. What should I do about the
14 fact that I have a lawyer who purports to be a leader in the
15 plaintiffs' trial bar, as Judge McHugh points out, who has just
16 told me that for many years, many years, over the course of
17 untold numbers, perhaps in the thousands, someone else has
18 signed the pleading over his name. What do you think I should
19 do with that, and how relevant do you think that fact is to my
20 analysis of your conduct?

21 MR. SIMON: Pardon me, Your Honor. I mean --

22 THE COURT: What do you mean pardon me?

23 MR. SIMON: I think -- I think to ask the question,
24 you've answered it. Are you asking me for a response?

25 THE COURT: Yeah, I'm asking you for a response. It

1 was pretty clear. What do you think I should do with that?

2 MR. SIMON: I would hope that you would accept what
3 I'm saying that I do review these. We do prepare them. We do
4 research before we file them. Certainly, that is not my
5 signature. But the work that I've done to review the complaint
6 is an approval of what has been filed. We are -- all I can
7 explain to you is what we are now implementing. Your Honor
8 certainly may accept that or believe it's a day late and
9 significantly dollars short. But I can only do better. I
10 cannot go back and change what we had in place. All I can do
11 is, moving forward, take the actions that are needed so that I
12 don't have to be in a place where Your Honor has to take the
13 time and effort, and Judge McHugh does, to, to do these
14 hearings and to scrutinize the pleadings. Putting the measures
15 in place that we've put in are really the best answer to
16 arresting this type of product going forward.

17 THE COURT: I mean it's, it's not even another lawyer
18 signing the pleading. It's someone who's not admitted to
19 practice law. That's your protocol?

20 MR. SIMON: Not any further, Your Honor.

21 THE COURT: Is part of all that money you're giving
22 to Fox Rothschild, is one of their brilliant recommendations to
23 say, hey, Marc, you actually have to sign stuff you file in
24 court?

25 MR. SIMON: I mean it was -- it was my protocol to do

1 the peer review. It was actually counsel's recommendation to
2 engage Fox Rothschild to review what we file in this court.

3 THE COURT: Yeah. No, that's fine. And that's good
4 recommendation. And I think he's right. But my question is do
5 you need to pay a law firm to teach you that you have to sign
6 your name to a pleading that your name is on?

7 MR. SIMON: I think we need to engage them to help us
8 in our entire practice, in properly presenting to this court
9 factually relevant and correct pleadings.

10 THE COURT: So, and Mr. Gosnear, you're not off the
11 hook here either. I'm looking at page four of four of your
12 motion for leave to amend. You have that in front of you?

13 MR. GOSNEAR: Bear with me, Your Honor.

14 THE COURT: Sure. Same paralegal squiggle, huh?
15 This time over your name. Right?

16 MR. GOSNEAR: Right.

17 THE COURT: You didn't sign this either, did you?

18 MR. GOSNEAR: No. I authorized my litigation
19 coordinator to electronically sign it so it could be filed.

20 THE COURT: Your litigation coordinator?

21 MR. GOSNEAR: Yeah. I mean I wrote this for the
22 electronic filing. I, I authorized him to put my --

23 THE COURT: He's not a lawyer, either. Litigation
24 coordinator, is that your fancy title for a paralegal?

25 MR. GOSNEAR: Well, that's his -- that's his title.

1 But he is a paralegal, yeah.

2 THE COURT: Yeah, not admitted to practice law. Not
3 here, not anywhere.

4 MR. GOSNEAR: Correct.

5 THE COURT: These are legal -- this isn't even a
6 factual plea. This isn't even something you investigated.
7 This is a motion for leave to file an amended complaint. This
8 is a purely legal document that has to be signed by someone
9 admitted to practice law in this court. This would be bad if
10 it was signed by a lawyer who's not even admitted to practice
11 law here. Is this a routine practice for you, too? Just tell
12 your litigation coordinator to sign it so that it can be filed.

13 MR. GOSNEAR: Well, before the electronic filing, I
14 authorized him to sign the papers that I write with either the
15 backslash or, in this case, backslash-S-backslash.

16 THE COURT: Sir, I don't care if you file it
17 electronically or not. You can -- you can drop it over the
18 transom in my office. I could care less how I get it.

19 MR. GOSNEAR: Well, yeah. But --

20 THE COURT: You're representing to the court that you
21 signed this. And you didn't. And I don't care if you
22 authorize someone else to sign it. So that's your practice,
23 too, huh?

24 MR. GOSNEAR: Yeah.

25 THE COURT: So how many paralegals at Simon and Simon

1 do we have practicing law in the Eastern District of
2 Pennsylvania, would you guess? Mr. Simon?

3 MR. SIMON: I don't know how to answer that, Judge.

4 THE COURT: Well, you can try truthfully. That's a
5 good start.

6 MR. SIMON: I could say that --

7 THE COURT: How many paralegals are at your firm?
8 I'm sorry, litigation coordinator.

9 MR. SIMON: In the litigation department, Your Honor,
10 there's probably --

11 THE COURT: Well, how many departments do you have?

12 MR. SIMON: We have five departments, Your Honor.

13 THE COURT: What are they?

14 MR. SIMON: We have the intake department.

15 THE COURT: Okay.

16 MR. SIMON: Pre-litigation department.

17 THE COURT: Okay.

18 MR. SIMON: Litigation department.

19 THE COURT: Right.

20 MR. SIMON: Settlement department. And the
21 accounting department.

22 THE COURT: Okay. All right. So again, how many --
23 how many people are sign -- how many non-lawyers do you have
24 signing filings in our court?

25 MR. SIMON: I, I would say in the litigation

1 department, a handful that are either filing the pleadings or
2 providing us with the pleadings before we approve them to be
3 filed. So a handful, Your Honor, are signing these, these
4 pleadings that we've authorized them.

5 THE COURT: You can't authorize someone who's not a
6 lawyer to sign anything.

7 MR. SIMON: I understand that, Your Honor. And going
8 forward, we have stopped that practice and will not continue
9 that practice. And we're going to obviously do our best to
10 correct not only that, but the other things that have been
11 brought to our attention by Judge McHugh and obviously Your
12 Honor here today. And anything --

13 THE COURT: And others.

14 MR. SIMON: And others, certainly. And also to get
15 that guidance from, from our outside counsel to correct the
16 structure and the way that we practice law, not only in this
17 court, but certainly across all the courts.

18 THE COURT: Mr. Alfano, are you aware of -- are you
19 aware of anything which allows a lawyer to have -- so you can
20 -- Gaetan, you don't have to get up yet, if you don't want to,
21 if you're wherever you want to be.

22 MR. ALFANO: Your Honor, the last time I was at this
23 podium, it was in a completely different capacity.

24 THE COURT: I remember.

25 MR. ALFANO: So, Your Honor, I welcome the

1 opportunity to be here as a lawyer.

2 THE COURT: That's all good. Am I missing something?
3 Is this allowed in any way?

4 MR. ALFANO: No, Your Honor. I mean apart from, you
5 know, what's allowed electronically, where sometimes we permit
6 other counsel to represent our signatures. And I -- and I
7 completely, you know, understand, Your Honor. And it's I can't
8 tell you I've spent as much time, and I've only -- I've been
9 retained since early March, as much time discussing with my
10 clients how to move things forward as, as I have. And perhaps
11 more time than what happened here. Because I've laid out in
12 our response what, what happened in this specific case.

13 But, obviously, Your Honor's concerns are broader
14 than this case. And I think Judge McHugh's concerns are
15 broader, as well as the other judges that have ruled on matters
16 involving this firm over the last several years. And what they
17 are committing to, and again this was at my suggestion, is to
18 have someone outside of the firm involved in a significant way
19 to make sure that the pleadings are supported, that there is a
20 legal basis for claims, there's a factual basis, that things
21 are being done procedurally correctly, that they are compliant.

22 I mean I understand what happened in Shelton. It was
23 a case where there was an argument that venue should have been
24 in, you know, in the Eastern District when it was properly in
25 the Western District. And given one opportunity to fix it, the

1 firm regrettably failed to do so. We're trying to make sure
2 that those situations don't happen again. And that's the
3 result of --

4 THE COURT: Did you gain any insight that you can
5 share without violating your attorney/client privilege as to
6 how things got this far? I mean this isn't someone who began
7 practicing law last year.

8 MR. ALFANO: I think that it's -- I think it's
9 important for Mr. Simon to be in a position to represent that
10 he is, in fact, the lead attorney on, if not every -- if not
11 all cases, at least most cases, right, as the head of the firm.
12 And I -- and I understand that. But the better practice is
13 that the attorney who was involved in the case understands the
14 case, the one who was truly the responsible attorney for that
15 case should sign the pleadings.

16 Not every pleading should be signed or every
17 complaint signed by Mr. Simon. We've had that discussion.
18 That, that shouldn't happen, because it's, it's virtually
19 impossible in a large practice to be in a position where you're
20 reviewing every case with the -- with the same level of detail
21 that someone who's actually written the complaint, developed
22 the case, is in a position to do.

23 So that should end immediately. The attorney who's
24 going to handle the case should sign the complaint and that
25 would be true of all -- of all pleadings in the case. The

1 responsible attorney should be the one who's in the position,
2 who knows the case to, to sign whatever the relevant pleadings
3 are. So what the firm embarked upon was --

4 THE COURT: Can I ask one question?

5 MR. ALFANO: Of course.

6 THE COURT: And then you can -- I had a follow-up. I
7 didn't realize you were going to get up. And you can stay
8 there. I don't want you to have to sit down. But, you know,
9 Mr. Simon, you make much of the fact that while you may not
10 have signed the complaint, you reviewed it, correct?

11 MR. SIMON: Yes, Your Honor.

12 THE COURT: And you approved it?

13 MR. SIMON: I did.

14 THE COURT: Did you read it?

15 MR. SIMON: I did, Your Honor.

16 THE COURT: Did you read every word?

17 MR. SIMON: I believe so, yes.

18 THE COURT: Okay. In paragraph 3, you read,
19 reviewed, and approved the allegation that Mr. Sinabria (ph.)
20 was a business entity registered to do business in the
21 Commonwealth of Pennsylvania.

22 MR. SIMON: That's correct.

23 THE COURT: That's a -- he's a human being.

24 MR. SIMON: I understand, Your Honor.

25 THE COURT: Okay. So tell me why you signed off on

1 that after having read it thoroughly, reviewed it, and
2 approved it?

3 MR. SIMON: That, that wasn't correct.

4 THE COURT: Well, I know that. I'm saying why would
5 you have signed -- why, how can you sit there and tell me you
6 reviewed it, and approved it, and all that? How closely did
7 you read this? I said did you read every word. You said,
8 yeah, I believe so.

9 MR. SIMON: I believe I did, Your Honor.

10 THE COURT: Well, explain that to me.

11 MR. SIMON: I, I don't know how to explain that I
12 didn't catch that and I didn't correct that. I didn't approve
13 it --

14 THE COURT: I know how to explain it. You didn't
15 read it. That's how you explain it. Either you don't know the
16 difference between a human being and a business entity, or you
17 didn't read it. Pick one. Thank you. You didn't read this at
18 all. I doubt you even approved it. And if you approved it,
19 you approved it based on a phone call from a paralegal, sorry,
20 litigation coordinator.

21 And you're coming in here under oath and telling me
22 you read this thoroughly and you approved it. No, you didn't.
23 And you didn't because all you care about is churning these out
24 in as high a volume as you can and getting whatever settlement
25 you can get. And going onto the next one. That's why. And

1 maybe you ought to start telling me the truth, and you ought
2 to start telling courts the truth when you file stuff. And you
3 shouldn't need a law firm to teach you that 19 years in. Do
4 you understand?

5 MR. SIMON: I do, Your Honor.

6 THE COURT: Very good. You also -- turn, turn to the
7 verification page there. I, Marc Simon. This is your personal
8 verification where you're swearing under the penalties of 18
9 Pa.CS Section 4904 relating to unsworn falsification to
10 authorities, you are swearing that the facts set forth in this
11 complaint are true and correct to the best of my knowledge,
12 information, and belief. And you didn't sign that.

13 There is a signature over your name that was signed
14 by the same paralegal, sorry, litigation coordinator, that
15 signed the complaint and signed everything your colleague here
16 has filed in front of me, too. Isn't that in and of itself
17 sanctionable conduct? I thought we were just in here to talk
18 about a lousy complaint and fraudulent joinder. But there's a
19 lot more going on, isn't there? I can't hear you.

20 MR. SIMON: I'm not sure how you'd like me to
21 respond, Your Honor. It's the same response when you asked me
22 about signing the complaint that I approved the complaint
23 and --

24 THE COURT: Sir, how do you let a paralegal sign your
25 name to a verification made under the penalties of perjury? AT

1 what -- where -- what law school class did you learn that?

2 Help me out here.

3 MR. SIMON: Your Honor, there's no response that I
4 believe is going to make this Court satisfied other than we --
5 me, I am doing everything that I know what to do going forward
6 to implement changes, protocol changes, and peer reviews, and
7 having outside counsel thoroughly involved in our practice and
8 process. I, I cannot say anything about March of 2024 or what
9 we've recently filed. But --

10 THE COURT: How about the 19 years before March of
11 2024? Here's the other thing. I see a lot of young lawyers
12 come before me, as do my colleagues. They're inexperienced.
13 They don't really know what they're doing. Makes our jobs a
14 little harder, but we understand inexperience. We try to help
15 young lawyers. We try to get trial opportunities for young
16 lawyers who otherwise wouldn't get them. Right?

17 These young lawyers are coming out of law school
18 needing to be taught how to be ethical, honorable, intelligent,
19 compassionate, thorough, thoughtful practitioners of the law.
20 You're the name partner in a 30-lawyer firm. That means that
21 30 lawyers at Simon & Simon think this is okay.

22 What about your responsibility to teach lawyers to be
23 honorable and ethical? Has that ever once crossed your mind?

24 MR. SIMON: Yes, Your Honor.

25 THE COURT: Okay. Then why would you set in place

1 practices and protocols like this? And Mr. Gosnear, with
2 absolutely no shame, just tells me, oh, yeah, that's his
3 litigation coordination so it could get filed electronically.
4 Did he learn how to practice law this way or did he come to you
5 this way?

6 MR. SIMON: I don't know.

7 THE COURT: And he's not even who I would describe
8 just out of law school. How long you been at it, Mr. Gosnear?

9 MR. GOSNEAR: 20 years.

10 THE COURT: That's just pathetic. Pathetic. Both of
11 you guys. Mr. Alfano, you have some legal arguments to make
12 and I want to hear them. Your brief, as expected, was very
13 good.

14 MR. ALFANO: Thank you, Your Honor.

15 THE COURT: Thank you for being patient with my
16 questioning.

17 MR. ALFANO: No, of course. Thank you, Your Honor.
18 And again, I just -- and I just wanted to start with, you know,
19 the primary argument on the law that we make in our brief, and
20 that is that at least the allegations in this case, as far as
21 an inaction, you know, a failure to take certain steps, it's
22 not as, as clear as courts may otherwise perceive when they
23 talk about the difference between misfeasance or malfeasance
24 and nonfeasance.

25 And, you know, I cited a number of cases, the Ahern

1 case with Judge Goldberg, where he allowed allegations of
2 failure to train employees to be sustained. The Camilla case,
3 which with judge -- I believe it was Judge Surrick, where he
4 accepted those allegations as well. Judge Padova in Gator
5 (ph.) did. And those were the allegations that were put in
6 this case, as far as failure to take certain steps.

7 THE COURT: And I -- and in my experience, you know,
8 you have -- I agree with you to a large degree. And this
9 obviously wasn't the first time I've seen the participation
10 theory pled. It's typically against a purported store manager
11 of a Walmart or a, you know, Best Buy, or whatever it might be.
12 It's typically a case like this, a personal injury case in the
13 store.

14 And there are times when counsel just doesn't plead
15 it correctly. We give counsel another opportunity for a lot of
16 the reasons you state in your brief. But, and the exhibits do
17 show that counsel did some investigation to identify the
18 manager of the store, that's clear. But they don't show that
19 counsel did anything to see whether the manager of the store
20 knowingly looked the other way.

21 You know, you can't just allege they're the store
22 manager, and the store was wet, and it's on them. So how much
23 of the investigation really resolved this, in your view?

24 MR. ALFANO: So, Your Honor, and I think the answer
25 there is, again, it's counsel's experience with these cases

1 because, you know, as Mr. Gosnear said, he's been practicing
2 for almost 20 years. He was an insurance adjuster before that.
3 He worked in an insurance defense firm before he came to the
4 Simon firm.

5 In these cases, and he has dozens of, you know,
6 premises liability cases, he's very familiar with store
7 policies, including the Walmart store policies. And
8 invariably, if there is a defective condition, then invariably
9 it's because of some inability to have followed one of those
10 policies, whether it's to remediate it immediately, to alert
11 someone, you know. And those are protocols that are within
12 Walmart's store policy manuals, as I understand them.

13 So what, what tends to happen in these cases is an
14 understanding or a belief, based upon his experience, that if a
15 particular condition exists, if there is negligence, it's
16 because of a failure to follow one of those policies. And
17 again, this isn't a situation where there's an auto accident
18 case, you can go to the police station and you can get the
19 police report, and have a sense of what actually happened.
20 Invariably, they're not going to get an incident report or the
21 videotape of the accident until after suit is filed.

22 So there is a tendency, you know, particularly in
23 state court, which is where this case originated, to try to
24 plead all of the possible causes so that they're not precluded
25 if it turns out that it's for a reason that's not stated in the

1 complaint. And it's very similar, as I'm sure Your Honor is
2 aware, to accident cases where, you know, a counsel may plead
3 failure to maintain, you know, proper speed, failure to obey
4 signals, those sorts of things, until there's discovery and one
5 can find out what the actual actionable conduct was.

6 It's not perfect. It's not a commercial case where,
7 you know, there was a contract and it was breached because
8 there was a failure to honor a condition or commitment. It's,
9 it's not that clean. It's not that direct.

10 THE COURT: Yeah, it doesn't obviously have to be
11 perfect, but it can't be negligent, right, at least for Rule 11
12 purposes. And here we have, you know, Mr. Sinabria was, was
13 alleged to be the store manager based on some documents that
14 just described him as an associate. I think he might have been
15 called department manager in one place.

16 And then Ms. Henry was alleged to be the store
17 manager based on a document that listed her as the manager of
18 an entirely different store. Now I know we have 5103 versus
19 5130. But where is the line there between not perfect and
20 negligent in your view?

21 MR. ALFANO: So again, I think in the Sinabria
22 instance, there were, you know, the documents described him as
23 department manager and he signed above for management's
24 signature, right? So there was some basis -- and that was two
25 months before this incident, so there was some basis to believe

1 that he was the store manager. And with respect to Henry,
2 again, that was just -- that was just an unfortunate mistake in
3 terms of transposing those store numbers.

4 You know, I think that the challenge, you know, as
5 well is that, again, you know, these are facilities, they're
6 omnipresent. People move around in terms of positions, you
7 know, at times. So it's, you know, there's a -- certainly it's
8 disfavored, if not impermissible to name a doe defendant until
9 you can sort that out, you know, through discovery.

10 So I think that even though these were mistakes, they
11 were innocent mistakes. I mean, and I think on that basis, in
12 this particular case, they're not -- it's not sanctionable
13 conduct for those, for those reasons. You know, could it --

14 THE COURT: What about the drafting of the complaint?
15 And I, you know, I know it was filed in state court, but Rule
16 11 can apply to matters that are removed --

17 MR. ALFANO: Of Course.

18 THE COURT: -- to this court. But what about a
19 pleading that the purported lawyer didn't sign and that the
20 court can conclude he didn't read?

21 MR. ALFANO: It can't happen, right? I mean, we're
22 -- I'm not going to stand here today and tell you that we can
23 file pleadings under our signature and have somebody else sign
24 it for us. I mean that's -- I understand that. I think my
25 client understands that. I mean it just, it can't happen.

1 And, and part of what we're trying to accomplish is that it
2 won't happen again. I mean if a lawyer is going to sign a
3 pleading, then the lawyer has to take responsibility for that
4 pleading. I mean that's, that's fundamental.

5 THE COURT: And how about just the allegation that
6 the man's a business entity.

7 MR. ALFANO: I noted that, you know, as well, Your
8 Honor, when I read the complaint. And I think it's just a,
9 again, just perhaps a mistake of haste, a mistake of, you know,
10 pleading these complaints in a particular way and not
11 appreciating that when we got to the individual defendant, we
12 were no longer making allegations against the corporate entity.

13 Your Honor, I, I can't go back and, and -- I can't go
14 back and fix what happened, right? I just, I can't do it. I,
15 I, I wish I could. I wish I had been involved, you know, at an
16 earlier stage. You know, I think Your Honor knows --

17 THE COURT: I think that would have been better for
18 all of us, the court included.

19 MR. ALFANO: Yeah, I think Your Honor knows me and,
20 and my, my work. And I do a lot of work representing law firms
21 and, and trying to get, you know, help firms to resolve
22 whatever issues they might be facing; whether it's compliance;
23 whether it's, it's making sure that they're doing things in a
24 proper and ethical way; whether it's dealing with, you know,
25 disputes within the firm or when there's a separation.

1 And, you know, the, the first thing that we talked
2 about after I understood the basic facts of this case is that
3 while Your Honor certainly has concerns about this case, is
4 that there's a concern that this is a -- could be a broader
5 problem that could affect more cases and judges before this
6 court. And, you know, the last thing that I would imagine you
7 would want to walk away from today is something that doesn't
8 provide a solution. Because we could certainly deal with
9 whatever happened previously in this case.

10 And, and again, I would, you know, I would ask you to
11 consider the fact that the firm, going forward, is trying to
12 avoid problems like this in the future.

13 THE COURT: Well, there are two points. One, to the
14 extent you didn't make this point specifically, I did. I
15 constructed a timeline. This was all done before Judge
16 McHugh's opinion.

17 MR. ALFANO: It was.

18 THE COURT: Okay. So I can, you know, I can look at
19 this and say, we'll let what's being done as a result of Judge
20 McHugh's opinion cover this stuff, too. Right? And I think
21 that in addition to making the arguments you've made as to why
22 the underlying conduct was not sanctionable, that that that
23 would be your preferred outcome. That I write this off in a
24 way, you know, not your words, but I write this off as
25 something that happened before they learned their lesson from

1 Judge McHugh. Okay.

2 On the other hand, one of the factors I have to
3 consider is whether, in fact, it's a part of a pattern. And it
4 clearly is. How do I -- how do I resolve that tension? I
5 mean, you know, and I guess, you know, do I or my colleagues
6 give, you know, these guys a blank check for stuff that
7 happened before, you know, Judge McHugh forced them to retain
8 help. And what do I do if it happens in the next case which is
9 filed after this self-imposed moratorium?

10 MR. ALFANO: So, Your Honor, what I would ask is that
11 the court consider that, first of all, there is a moratorium,
12 that the processes, and I didn't spend a lot of time in my
13 brief talking about those processes, but that the processes
14 will improve. I mean I think what you're looking at here is
15 basically, you know, a complete system overhaul in terms of how
16 things are done.

17 That, you know, here there's going to be regular
18 meetings with the Pennsylvania-based attorney, the Pennsylvania
19 managing attorney. There's going to be a review of every
20 pleading before it's filed in federal court, even a, you know,
21 Rule 26, you know, conference notice. I mean it's, it's not
22 just complaints, but every pleading that is filed in federal
23 court is going to be reviewed. It's going to be peer reviewed.
24 And then it's going to be reviewed again by Fox-Rothschild.

25 THE COURT: And it has to be signed by the lawyer.

1 MR. ALFANO: Absolutely, Your Honor. And what I
2 would ask --

3 THE COURT: No more paralegal signatures on anything,
4 electronic, parchment, whatever.

5 MR. ALFANO: And what I would ask without, you know,
6 burdening the court further is the ability, if the court so
7 desires, to receive reports over regular intervals of that
8 work, how that's progressing, to give us a period of time to
9 come back to you, to explain, you know, how that's, that
10 overhaul is actually working. And, you know, to allow us an
11 opportunity to fix what has happened and resolve these issues
12 so that this does not reoccur before Your Honor or any other --
13 any other judge of this court.

14 THE COURT: I think that could only be constructive.
15 How long is there an anticipated end date to the moratorium of
16 -- which I understand to be a moratorium of filing anything in
17 our court?

18 MR. ALFANO: Initially, in this court, they --
19 obviously, they can't control cases that may be removed that
20 have been filed elsewhere. May I have a moment?

21 THE COURT: Absolutely.

22 MR. ALFANO: Thank you.

23 (Counsels confer)

24 MR. ALFANO: Your Honor, I -- Mr. Simon has explained
25 it would really be a function of once this process plays out

1 and Fox has approved, you know, a particular filing. I think
2 we're looking realistically at a minimum of at least 60 days,
3 if not longer before this process could be --

4 THE COURT: And then will there be something of
5 official notice sent to our court to know that the moratorium
6 has been lifted, or because any one of our 30 judges could get
7 a complaint and not know. I, I think I'm going to share what
8 I've learned here.

9 MR. ALFANO: Sure.

10 THE COURT: But will there --

11 MR. ALFANO: Your Honor --

12 THE COURT: -- be some form of notice to the court?

13 MR. ALFANO: What I -- what I would propose to do
14 would be that we would send, you know, I would stay involved
15 and we would send the court an update, a progress report, a
16 notice on where things stand. And then once filings are about
17 to commence or continue, that the court be put on notice of
18 that fact.

19 THE COURT: How about for matters like mine, cases
20 that were either removed to this court or filed in this court
21 before Judge McHugh's opinion that may have issues of concern
22 like those we've identified in this case. Is part of what's
23 being done a review of everything that's pending in our court,
24 as well?

25 MR. ALFANO: It will be on those -- on those removed

1 cases, Your Honor. Where are we? Where does it stand? Is
2 this a remand motion that's worth filing? Is this a removal
3 that's worth contesting?

4 THE COURT: And how about cases that were previously,
5 because there are some cases filed directly in this court,
6 right?

7 MR. ALFANO: That's correct.

8 THE COURT: So, you know, and this moratorium is on
9 cases that were filed in this court, but obviously there's been
10 no moratorium put in place on cases filed in state court.
11 Correct?

12 MR. ALFANO: That's correct.

13 THE COURT: So, but the new practices that are in
14 place for this court have to be in place for state court
15 because we're going to get these removed here.

16 MR. ALFANO: And, Your Honor, certainly, you know,
17 making sure that there's adequate and appropriate attorney
18 review and signature, whether there's a basis to --

19 THE COURT: So this process that you outlined earlier
20 goes to any -- it involves any complaint filed in any court?

21 MR. ALFANO: The moratorium we've talked about in
22 this specific process just deals with the federal court cases
23 as far as this peer review process. The other processes of
24 making sure that lawyers are reviewing the document, signing
25 them, making certain that there's both legal and factual basis,

1 you know, for the complaints, that's, that's ongoing at this
2 point.

3 THE COURT: Okay. So every complaint that's filed in
4 state court will similarly have been peer reviewed, will have
5 gone through that entire process that you've just outlined?

6 MR. ALFANO: Every complaint will be -- will be peer
7 reviewed and reviewed for its accuracy.

8 THE COURT: And signed by the lawyers, okay. This is
9 a question more for Mr. Gosnear, though if you know, Gaetan,
10 I'm happy to have your answer. But why, why wasn't a motion to
11 remand filed in my case? Mr. Gosnear, why don't you take that?
12 Why did you wait until after the time for remand had expired to
13 then seek leave to file an amended complaint? If you had
14 confidence in your joinder of this defendant, that would have
15 been the basis for a remand. That's where I typically engage
16 this issue. Can you tell me why you did what you did?

17 MR. GOSNEAR: Yeah. What happened is in
18 conversations and paperwork from the defense counsel, they
19 indicated that Sinabria was in the -- in the back room, right,
20 back room person, which is quite likely, like counsel said,
21 these Walmart people move around in the store in different
22 jobs.

23 Sinabria, I'm convinced, is a management level
24 person. They have salary managers. They have hourly managers.
25 You know, in the earlier case, he may have been a manager out

1 on the sales floor. And in this case, he's now a manager.
2 He could be overnight in the back room. He could be in the
3 back room. You know, I'm taking the defense counsel at their
4 word that he knows nothing.

5 So my goal was to bring in the store manager, which I
6 mistakenly, as we know, got the wrong store and boulevard
7 manager. But I wanted to bring the manager in, the store
8 manager, and then cure the deficiencies in the drafting of the
9 complaint, to amend the complaint. And in the order, I
10 believe, to grant the motion to amend, there was I believe a
11 second or third paragraph asking for a remand based on the
12 amended complaint. And both managers are Pennsylvania
13 residents. It didn't really change the, the joinder.

14 THE COURT: Could I have done that? Or was the time
15 for remand, would that have triggered a new -- how could I have
16 remanded even an amended complaint if your time for remanding
17 had already run?

18 (Counsels confer)

19 MR. ALFANO: And I'm not certain that we understand
20 when it had run.

21 THE COURT: Well, the amended complaint was filed
22 shortly after the 30-day period that you would have had to
23 remand the case, expired by my timeline. Maybe I'm wrong, but
24 I, I think that's -- I think that's accurate.

25 MR. GOSNEAR: Okay. And --

1 THE COURT: Did you just miss -- did you just blow
2 the date to remand and then try to amend as a result of that,
3 or was there something more strategic to it?

4 MR. GOSNEAR: No, it wasn't -- it was in preparation
5 for your Rule 16 conference. I've been before you before. And
6 I know your first question is about diversity, about
7 jurisdiction. So I went through the complaint, again,
8 corrected the, the identification of the manager and the
9 description of the manager as an individual. Corrected the,
10 the negligence paragraph to read more misfeasance. And then
11 once that was completed and then filed the motion to amend with
12 the, the request to remanded at that point.

13 THE COURT: But my question stands. The case was
14 removed on the 30th of September and you filed your motion for
15 leave to amend on November 4. And I mean in the scheme of
16 everything else I've learned about what you guys do, this isn't
17 life or death. But I'm trying to understand A) why you didn't
18 file a motion to remand to begin with. I think you've
19 explained that. But then you said you wanted to amend and have
20 me remand based on the amended complaint naming Ms. Henry,
21 right?

22 MR. GOSNEAR: Right.

23 THE COURT: And my question would be how could I do
24 that if the time for a remand motion had expired? What would
25 have been the legal -- am I -- can I do that?

1 (Counsels confer)

2 MR. GOSNEAR: I guess the short answer is I missed
3 the deadline with Sinabria as a defendant.

4 THE COURT: You just -- you blew the remand deadline.

5 MR. GOSNEAR: With Sinabria as a defendant, yes.

6 THE COURT: Yeah, okay. So you tried -- you wanted
7 to amend because now you couldn't move to remand, okay. And
8 then but you then wanted me to remand with Henry as the right
9 defendant. And my question stands, could I have even done
10 that?

11 MR. GOSNEAR: Well, I think the court can sua sponte
12 at any point in the case if there's non-diversity and there's
13 no jurisdiction. You can dismiss it, dismiss it or remand it.

14 THE COURT: Okay. That could be the answer.

15 (Counsels confer)

16 THE COURT: You done? You quitting?

17 MR. ALFANO: I'm not a quitter.

18 THE COURT: I know. And I forget where we were. You
19 had mentioned --

20 MR. ALFANO: We were talking about the moratorium,
21 right, and the process.

22 THE COURT: Yeah. And then you had -- you had
23 mentioned something about amendment or remand and that's what
24 made me want to clarify.

25 MR. ALFANO: Sure. So --

1 THE COURT: So I forget. If I -- please pick up
2 where you were, if you had any other thoughts.

3 MR. ALFANO: No, Your Honor. I just want to talk
4 about Fox Rothschild's role specifically with the federal court
5 filings and the firm's commitment. And I have Fox's retainer
6 letter if, if Your Honor would like to see it.

7 THE COURT: I'd like -- you're an officer of the
8 court.

9 MR. ALFANO: Thank you, Your Honor. And, you know,
10 Mr. Tintner (ph.) is a well-respected, experienced litigator.
11 He's going to be involved in all of these decisions. Nothing
12 will get filed without his review during this -- during this
13 period.

14 THE COURT: Getting back, though, to the merits of
15 this one. So, you know, I know you point out, particularly the
16 B&R case that you rely on very heavily with respect to
17 misfeasance, malfeasance. But that case held that deliberate
18 inaction --

19 MR. ALFANO: Right.

20 THE COURT: -- can be misfeasance. Deliberate
21 inaction. But --

22 MR. ALFANO: And I appreciate that it was a statutory
23 violation and not a common claim.

24 THE COURT: That, too.

25 MR. ALFANO: Right. But I think it was Judge

1 Pratter, I believe, in the Gardler (ph.) case that said that
2 may be so, but Pennsylvania still recognizes deliberate
3 inaction as, as grounds -- potential grounds for negligence
4 claim.

5 THE COURT: But even in -- even here, though, the
6 allegations against Sinabria alleged peer inaction. They
7 didn't allege anything that Sinabria or later Henry knowingly
8 turn the other cheek if you will. It was still -- it didn't
9 really add much why, you know, why would that be -- not be
10 objectively unreasonable for me to assess.

11 MR. ALFANO: So, Your Honor, I mean I'm just trying
12 to think about this, you know, practically speaking as far as
13 these premises cases are concerned. So if we have a store and
14 a store manager, and he or she becomes aware of say a defect in
15 the floor, right? And they repair it, try to repair it and
16 they do a they do a poor job, and someone is injured.

17 Under those circumstances, given this kind of strict
18 distinction with respect to misfeasance versus nonfeasance
19 under the participation theory, and that act of improperly
20 trying to fix it would, would lead to a cause of action for
21 personal liability. Or in some of the terrible cases I've seen
22 somebody puts a rug or something over it and there's a, you
23 know, serious, you know, incident.

24 But if the same store manager just walks past the
25 defect and does nothing about it, I mean if you're strictly

1 evaluating inaction as nonfeasance, even though Walmart
2 made --

3 THE COURT: That's at least turning the other cheek,
4 right? That's deliberate conduct. I know there's a dangerous
5 condition. I see it. I'm affirmatively deciding not to fix.

6 MR. ALFANO: Or alternatively a fail -- but even a
7 situation where they're not doing anything to assess if those
8 situations arise, right, if there's an incident. If they're
9 not checking, if they haven't put procedures in place to make
10 sure that if there is a spill that it's properly remediated.

11 And, and there are cases, and, you know, we cite
12 them, you know, in our brief where, you know, courts have said
13 that even pleading a failure to do things and even in the
14 absence of knowing there's a specific duty that needs to be
15 addressed, they have still held that those failure allegations
16 are sufficient to --

17 THE COURT: Including failure to train? You know,
18 you talk a lot about some of the failure to train cases.

19 MR. ALFANO: Yeah.

20 THE COURT: But we couldn't find any cases that
21 recognize that a failure to train constitutes active
22 participation in a tort that happens, you know, subsequently.
23 And there are other cases from our court --

24 MR. ALFANO: Yeah.

25 THE COURT: -- that says that that's, that's not a

1 viable claim.

2 MR. ALFANO: I think in Ahern (ph.), Judge, Chief
3 Judge Goldberg cited failure to train employees and institute
4 safety policies. And I think in Camilla (ph.), I thought it
5 was Judge Seller (ph.) in Camilla also found that failure to
6 adequately train employees was sufficient.

7 THE COURT: Are you aware of the -- and I haven't
8 read those cases yet, but and if, if they're analogous in your
9 view, then I'll accept that and then obviously we'll look at
10 them, too.

11 MR. ALFANO: Your Honor, if I may, Your Honor, let me
12 just -- I have them here. Just bear with me. So in Ahern,
13 which was a case against BJ's Wholesalers. It was a Pancini
14 (ph.) firm case against BJ's. Judge Goldberg, Chief Judge
15 Goldberg now, cites the Camilla case for the allegation that
16 finding a case against a manager of Walmart, that allegations
17 of failure to adequately train, monitor, and supervise could
18 culpably rise to the level of misfeasance and declining to
19 find, you know, fraudulent joinder.

20 And Camilla was Judge Surrick's case. And in that
21 case he held that the failure to adequately train was
22 sufficient under the participation theory. And he also noted
23 that, in Footnote 1 to that case, that the courts in this
24 district have split. They've, they've interpreted the failure
25 to train and failure to take certain act allegations as

1 non-feasance and, therefore, not actionable. But he declined
2 to do so, he said, in the absence of a Pennsylvania Appellate
3 decision that addressed allegations like this.

4 THE COURT: Are you familiar, I wasn't with the term
5 before your brief, and you're -- the exhibit most specifically,
6 with Accurint?

7 MR. ALFANO: I would have to defer to Mr. Gosnear on
8 that.

9 THE COURT: What is Accurint, Mr. Gosnear?

10 MR. GOSNEAR: I believe Accurint is a, a search
11 engine through I think Lexis Nexus. You can put an
12 individual's name or social security number in, and it'll give
13 you, you know, a criminal record, civil record, if they have a
14 gun license or a fishing license, addresses, associates. So
15 it's basically a background check tool.

16 THE COURT: Is that something that is you have to pay
17 for?

18 MR. GOSNEAR: I believe it's a subscription.

19 THE COURT: Subscription service that you have to pay
20 for?

21 MR. GOSNEAR: Correct.

22 THE COURT: Okay.

23 MR. GOSNEAR: Pay for it, yes.

24 THE COURT: Is Accurint the firm's primary way of
25 learning about people in this context?

1 MR. GOSNEAR: I can't speak for the whole firm,
2 but, you know, I -- when I want to get someone's address or get
3 some background information, I will direct the paralegal or
4 litigation coordinator, or another paralegal to run the search
5 of the person to make sure we have the right person. We can
6 tell by the address. We can tell by associates.

7 THE COURT: Does Accurint produce a report on the
8 person? How do -- how is -- how do you learn of that
9 information? Does it spit out something that you then print
10 out or can save, or how does it work?

11 MR. GOSNEAR: I mean, it comes up -- yeah, I mean you
12 can print it out. It comes -- it's a, you know, on the
13 computer, it comes up on the screen. You can, you know, page
14 through it. But I believe it's -- I think it's Nexus or Lexus,
15 one of those. It's their product. I think Accurint is just
16 the name of the, of the search.

17 THE COURT: So there was an email from Mr. Murkowski
18 (ph.) to other paralegals with respect to running an Accurint
19 search on Mr. Sinabria. What did that search turn up?

20 MR. GOSNEAR: Off the top of my head, I forget, other
21 than probably checking his residency for diversity purposes.

22 THE COURT: Would that have given his occupation,
23 typically?

24 MR. GOSNEAR: You know what, I don't know. Sometimes
25 there's a ton of information on these reports, Your Honor. And

1 I'd be -- yeah, I'm not sure there was the employment
2 information on there. It's, you know, pages and pages and
3 pages of information.

4 THE COURT: In your view, given their aspects of
5 Accurint, and the reports, and the information that they, they
6 put together for you, you're not really sure about some of it.
7 In your view, is directing a paralegal to do an Accurint search
8 on someone a reasonable investigation, as those terms are
9 defined under Rule 11?

10 MR. GOSNEAR: Well, that wasn't the whole
11 investigation, Your Honor. I mean I knew --

12 THE COURT: What else was done?

13 MR. GOSNEAR: From Sinabria, in a past case, was
14 listed as a manager at the store. So I was like
15 double-checking on Sinabria. And then same with Henry. Once I
16 realized, you know, based on information from defense counsel
17 that Sinabria may be the wrong person, then we looked up Chanel
18 Henry, who we knew was a manager at one of the stores on the
19 Boulevard, just like, you know --

20 THE COURT: If you don't have another case to refer
21 to, is Accurint -- an Accurint search ever the only source of
22 information that you will seek on someone? Here you -- here
23 you were able, in your words, to kind of do a double-check or
24 cross-check because you had information from another case.
25 What about, you know, if you don't have information from

1 another case, what in addition to an Accurint search would be
2 done to see, for example, if someone was a manager or a
3 responsible party in a premises liability case?

4 MR. GOSNEAR: For me personally, I'll do a Google
5 search. I'll do a LinkedIn search. And LinkedIn is a great
6 tool for your current employment and your current position. So
7 I try my best to make sure we have the right person in the
8 right position. You know, LinkedIn is a fabulous tool.

9 Ms. Henry is not the on LinkedIn. You know, I can
10 tell you that from my search. You know, that's, you know, the
11 public searching on Google, and then the Accurint search is
12 more, more detailed. You just paid for it.

13 THE COURT: To either of you, and Mr. Alfano, you can
14 defer to your client if you need to. But, you know, your
15 position obviously is that you did a reason -- your clients did
16 a reasonable inquiry into the claims against Ms. Henry. And,
17 you know, one of the exhibits is a complaint listing her as the
18 manager of a different Walmart store.

19 MR. ALFANO: That's correct.

20 THE COURT: Your Exhibit C is a list of Walmart
21 stores in Philadelphia, or at least some of them. And that
22 screenshot was time stamped after my show cause order. And I
23 guess the question to you or your client would be doesn't that
24 screenshot show how easy a reasonable investigation into where
25 Ms. Henry worked would have been?

1 MR. ALFANO: It certainly would have shown the
2 difference between the two stores, which one was 5103 and which
3 one was 1530.

4 THE COURT: Because if they match -- they match up
5 the numbers with the addresses.

6 MR. ALFANO: Correct.

7 THE COURT: So --

8 MR. ALFANO: And the reason we attached it,
9 obviously, was to show the similarity in the numbers between
10 the two stores on the boulevard.

11 THE COURT: Right. But also printing that out, you
12 could just look at the address and you would know which the
13 correct store was, right? So doesn't -- my, my question is,
14 isn't that all you would have had to do to confirm her place of
15 employment? And if so, shouldn't that have been done?

16 MR. ALFANO: Your Honor, I think in retrospect
17 that's, that's accurate. That's what could have been done to
18 make sure it was the right store. I think that what happened
19 is Mr. Gosnear, you know, perhaps in haste, just confused the
20 store numbers and thought that it was the same store.

21 THE COURT: A lot of haste.

22 MR. ALFANO: It's the boulevard. They're a few miles
23 apart. And I think just confused the, the store number. And,
24 Your Honor, I can tell you in preparing my remarks today going
25 through the store numbers, I transposed them in my own remarks.

1 And one of my colleagues caught me on that, because they're
2 just so similar.

3 THE COURT: Well, when you sue the wrong Walmart,
4 that will be a problem. Was there anything else you wished to
5 say?

6 MR. ALFANO: No, Your Honor. I mean we've cited all
7 the cases that -- in our, in our brief. I'm not going to,
8 unless the court desires, I'm not going to I mean just sit here
9 and continue to, you know, to summarize them. There is a case
10 from Judge DuBois, who's looking over my shoulder as we speak,
11 where he held these failure to warn allegations, or failure to
12 take action allegations were sufficient against a store manager
13 involving an accident in a parking lot, when the store manager
14 was not even working that day.

15 So I don't believe that the misfeasance versus
16 nonfeasance distinction is as clear as, as one would think
17 given these Pennsylvania cases. And I just would ask the court
18 to, you know, to consider that. And maybe someday the
19 Pennsylvania Supreme Court will help us and decide it in this
20 context. But there are a number of cases in this court where
21 your fellow judges have held these failure to act cases.
22 Again, a case where the manager wasn't even physically present
23 were sufficient under the participation theory, under
24 Pennsylvania law.

25 And just in closing, Your Honor, I would just ask

1 that, you know, it's obviously the court's concern. I can't
2 say it's not well-founded. It certainly is well-founded. And,
3 you know, Your Honor has every right to be concerned about what
4 has happened in Shelton. I don't think what happened here is
5 as egregious, but it's still significant to just give the firm
6 an opportunity to remediate these issues so that they don't
7 occur, and you and your colleagues don't have to address these
8 issues going forward.

9 And I would just -- I would just ask you for, for
10 time and the ability to do that, whether it's through regular
11 reporting, you know, whatever Your Honor may deem appropriate
12 to be confident that there are -- that these are legitimate
13 representations that they're going to follow these policies and
14 procedures and protocols. And that the Fox firm will be
15 actively engaged and making certain that the Simon firm is
16 compliant in all of its responsibilities to the courts.

17 THE COURT: I appreciate your remarks. Thank you.

18 MR. ALFANO: Thank you, Your Honor.

19 THE COURT: Mr. Yom, you've been very patient. Is
20 there anything that you would like to say?

21 MR. YOM: No, Your Honor. I have nothing to
22 contribute at this time.

23 THE COURT: All right. Thank you. Okay. As I, I
24 need to think about this. I need to think about, more about
25 what was done in this case and some of the other practices, you

1 know, that we learned about here today with respect to the
2 signing and filing of pleadings. I haven't had facts like
3 these where someone who was engaged in arguably sanctionable
4 conduct is in the process of trying to fix the problems which
5 led to the conduct, and whether I credit that and allow that to
6 take priority over what I would otherwise do.

7 And I just need to think more about, you know, what's
8 appropriate under these unique facts. I guess I'll kind of end
9 where I started, which is that all of this needs to change.
10 All of it needs to change, because this just can't continue to
11 happen here.

12 And you're setting a high bar, because if it does
13 happen again after this moratorium and review, you're going to
14 realistically be looking at a situation where, Mr. Simon, you
15 will lose the privilege of practicing in this court entirely.
16 I sit on our disciplinary committee. I would not be involved
17 in any discipline if any that is recommended out of this case,
18 obviously.

19 I only tell you that because I know how the committee
20 evaluates conduct and how our colleagues evaluate conduct. And
21 not being able to practice in federal court, and it may not
22 just be limited to you in your firm, is something that would be
23 a very, very significant professional hit. None of us look to
24 do that.

25 MR. SIMON: Your Honor, I appreciate that. And

1 certainly we want to get it right. I want to get it right
2 across all of our cases. This case in particular, if we would
3 have done it better, we would have had at least a chance to
4 have the court send it back to state court where we wanted it
5 to be. And that would have been a success.

6 So in not handling ourselves in the way that we want
7 to now move towards, we are not in a better position than we
8 wanted to be. And it is not beneficial to our client and our
9 firm to not do these things properly and correctly. So I
10 understand the seriousness of this. And I understand that this
11 is not a one-off change or a small pivot. This is a paradigm
12 shift. And we have to change. I have to change, as the leader
13 of the firm, the way that we practice law as a whole.

14 And I have already started to undertake those
15 changes. And I need some time to right the ship. I believe
16 I've done everything I can to aggressively stop the concerns of
17 this court, and to get ourselves in a place where we can start
18 to establish and crawl out of the hole where we have no
19 credibility here.

20 I want to have credibility here. I tried a case here
21 back in 2011 in front of Judge Surrick. And we had credibility
22 then. I had credibility then. I've lost that here. And
23 readily so. And I want to gain that back. And I have thrown a
24 significant amount of our time and my resources into this
25 problem, and in an attempt to end this problem and solve this.

1 Because we want to be in a place where this court is ruling
2 on the merits of properly filed, properly researched, well
3 briefed claims. And sometimes we will -- we will be
4 victorious, and sometimes we will not. But the rulings will be
5 on solid legal and factual foundations. And we'll get -- we'll
6 start to get some credibility back, whether we win or lose on
7 motions or trials.

8 And that's what I want. I want to run my practice.
9 I want to set an example for my lawyers, and to your point,
10 both experienced and newer lawyers. And I think this is a big
11 step towards, towards doing that, and a significant one. And
12 something that I would have anticipated Your Honor or your
13 colleagues to potentially order should we not take this serious
14 action to try to fix this.

15 So I would ask, you know, in echoing counsel, for
16 some time. We cannot go back and, and change what we've done.
17 We cannot go back and ask you for credibility where we have
18 proven to not earn that. But all I can do is start from when I
19 leave here today and continue to put protocols in place above
20 the ones we've already put in to make sure that this is no
21 longer a problem as I go forward. Because I'd like to continue
22 to practice law, especially in this court, for the rest of my
23 career. And I'm, you know, 44 years old. I've got a long time
24 to go, I hope so, I hope.

25 And I want to be present in this court, both me and

1 my firm. And I want to be in a place where we start to get
2 some iota of credibility back. And it's not going to be for
3 some time, but all I can do is get started on that.

4 THE COURT: Well, I appreciate that. And you touched
5 on setting an example for lawyers. And think about, you know,
6 continue to think about, you know, others at your firm. The
7 law schools don't often do a great job of preparing new lawyers
8 to be good lawyers. And I don't just mean everybody's got to
9 kind of learn how to do it as opposed to how to read about it.
10 That just -- that's inevitable.

11 But young lawyers out of law school learn how to do
12 this from the people they do it with and for. And I would
13 respectfully ask you to take very seriously your position as a
14 leader in your firm with respect to the lawyers you are
15 bringing in. And I know some come from other practices. I
16 don't know how many, if any, come out of law school and join
17 you.

18 But look, there are people who want to be plaintiffs'
19 lawyers, who believe that this is the right side of the V for
20 them to spend their career in, and who need to learn how to do
21 this the right way. And you're really shaping these people.
22 And the better they are, the better it is for everybody. The
23 better it is for the defense attorneys, just as having a good
24 defense attorney on the other side of your case, this is good.
25 It's better for you. And I can tell you, it's a lot better for

1 judges to have good lawyers who are doing the right thing.

2 Now that doesn't mean agreeing. Doesn't even mean
3 settling. But who are doing the right thing in advocating
4 their respective positions. And then you let us decide. But
5 that's a really important responsibility that someone at your
6 level has. And lawyers in your firm are going to say, hey, if
7 Marc says this is okay, if Marc says this is the way we can do
8 it, they're just going to do it. You're the boss.

9 MR. SIMON: I 100% agree. And I think back to the
10 people that I learned from, you know, when I started at
11 Obermeyer doing commercial litigation, and the thoroughness and
12 the level of scrutiny that they required of me in preparing
13 much more commercial-based, robust legal documents that go well
14 beyond a complaint that required a higher level of scrutiny.

15 And I certainly have strayed from that. And this is
16 an opportunity, albeit not in the most happy and welcoming
17 context, to claw my way back there. You know, I, I think we
18 certainly need to improve on the practice of law. And I don't
19 want my lawyers, whether it's Harry, my managing attorney, or,
20 you know, a first-year associate to go forward anywhere and
21 think this is okay. I think this is what they went to law
22 school for.

23 I think this is how we best help people. And so I
24 certainly -- I hear deeply what you're saying. Especially as a
25 newer dad, I understand the responsibility I have to, to my

1 kids to teach them the right ways of the world, and it
2 extends to my legal family, too. And extends to the people
3 that work with me. I put my name on the door. And up until
4 recently on all the pleadings, I have withdrawn my name from
5 the majority of the cases in this court. And following advice
6 of counsel that the attorney that's actually day-to-day
7 litigating this matter is signing the pleadings, and is the
8 primary attorney. But I did that to stand up and say I'm --

9 THE COURT: But they're not signing the pleadings.

10 MR. SIMON: Moving forward, Your Honor.

11 THE COURT: Yeah. All right, all right. Thank you
12 everyone for coming in. And I want to just think about how to
13 proceed.

14 MR. GOSNEAR: Thank you, Your Honor.

15 MR. SIMON: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. ALFANO: Thank you thank you for your time.

18 (Whereupon, at 12:39 p.m. the hearing was recessed.)

19 CERTIFICATION

20 I, **Kim McCaslin**, court approved transcriber, certify
21 that the forgoing is a correct transcript from the official
22 electronic sound recording of the proceedings in the
23 above-entitled matter.

24 */s/ Kim McCaslin*

04/11/2025

25