

**IN THE UNITED STATES COURT
WESTERN DISTRICT OF ARKANSAS**

CURTIS J NEELEY JR, MFA

VS

CASE NO. 5:09-cv-05151-JLH

NameMedia Inc.

Network Solutions Inc.

Google Inc.

AMENDED

**BRIEF SUPPORTING NOTICE OF APPEAL OF ORDERS OF DOCKET #97
AND DOCKET #126 AS COLLATERAL ORDERS WARRANTING APPEAL**

1. The collateral order doctrine is a narrow exception to the final-judgment rule, which normally forces parties to wait for final judgment before appealing any rulings and it was established by the Supreme Court in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949) where the Court ruled appeal is available for orders that, "finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.", and therein established precisely the standards warranting interlocutory appeal. These criteria are presented concisely as follows.

Rights Separable From Defamation

2. The Docket #97 dismissal of Lanham Act and Title 17 claims due to limitations was simply one Judge exercising jurisprudence. Much of Docket #97 has since become contrary to the ruling of the Supreme Court of March 24, 2010 where the Supreme Court Justice[s] ruled that the defense of limitations does not accrue from the first of a series of acts, but the last act. Lewis v. Chicago, (08-974) The violations of the photography business website of <eartheye.com> and the violations of <sleepspot.com> reservation software website was repeated annually by two defendants and still exist if defamation was never pled.

Rights Collateral to Defamation

3. The Docket #97 dismissal of Lanham Act and Title 17 claims due to limitations are separate but collateral in that the defamation would not have been discovered had the Lanham Act violations not occurred.

Rights too important to be denied a review

4. The Docket #97 dismissal of the Lanham Act and Title 17 claims due to limitations was used in the ruling of Docket #126 where Network Solutions was dismissed entirely. This dismissal, although violating the Lanham Act continually, is too important to await the appeals process and thereby increasing the damages done. This order had the effect of a Summary Judgment against the Plaintiff based on less than required by the Sixth Amendment.

Rights too independent of defamation to be denied a review

5. The reconsidered Docket #97 dismissal of Lanham Act and Title 17 claims due to limitations was used in the ruling of Docket #126 and the allowed defamation action is entirely separate. The domain names issue and the rights to be attributed to art or defamed by it are completely independent.

Equitable tolling is an issue too important to be decided by one person

6. The limitations defenses allowed after being reconsidered denies the Plaintiff's a right to be heard by a jury. While the ruling Judge stated one asserted rational for allowing limitations to excuse the 2003 Lanham Act violations, allowing the ruling to excuse multiple Lanham Act and Title 17 violations in the amended complaint violates the rights of the Plaintiff granted by the Sixth Amendment to be tried by a jury. The Sixth Circuit has agreed. Ott v. Midland Ross Corp., 600 F.2d 24, 31 (6th Cir. 1979), an ADEA action, the court held that the jury should decide whether the plaintiff is entitled to equitable tolling. Underlining added for emphasis. The interpretation of statute Hon Judge Hendren did was Summary Judgment and was not supported by evidence, testimony, or treated as a Summary Judgment. The interpretation of the statute of limitations was contrary to logic and would not be supported by a jury and Plaintiff does not believe the Eighth Circuit will either.

7. ACA 16-56-116 was revised to remove several offensive names for mental disabilities but was left stating as follows for the relevant part.

(c) When two (2) or more disabilities are existing at the time the right of action or entry accrued, the limitation prescribed shall not attach until all the disabilities are removed

Hon Judge Hendren alleged that the condition of incarceration outside the state was the other condition besides minority or insanity that once could apply and that the removal of the out-of-State prisoner disability was the cause of the inconsistency. This may have been reason satisfactory to Hon Judge Hendren but this is not close to satisfactory to the Plaintiff and would not be to jurors. Legislators removed the impolite terminology of “DIMWIT” and “IDIOT” and revised them to the single offensive term “INSANE”. The legislators then left “(2) or more disabilities” for the express purpose of covering any term that may later become “politically correct” for a person with a mental disability to be called so that any disability that satisfied Waggoner v. Atkins, 204 Ark. 264, 271, 162 S.W.2d 55, 58 (1942) would toll limitations in addition to the once polite term of “INSANE”. They never believed somewhere there was ever a minor who was an insane out-of-State prisoner. Plaintiff alleges there has never been a minor who was an out-of-State prisoner history needing equitable tolling described in ACA 16-56-116.

8. Plaintiff believes the legislature meant “all disabilities” to mean all disabilities regardless of their currently accepted polite title whereby “the activities of normal life” were prevented. The Plaintiff believes it “insane” to think that when amending the statute and removing “dimwit” and “idiot” they did not leave “all disabilities” to describe all disabilities that prevented the normal activities of life as described in Waggoner v. Atkins, *Id.* This proceeding portion of ¶ eight was in Docket 99 but the Court chose to consider minor out-of-state prisoners who were also insane to once be the three covered disabilities. There is no way to politely describe the logical error that was reviewed and then repeated but it would be simple to convince a jury it was a demonstration of a logical disability while interpreting a statute about disability. The Sixth Circuit has ruled equitable tolling to be an issue for a JURY. Ott v. Midland Ross Corp., 600 F.2d 24, 31 (6th Cir. 1979)

9. It is now for the Eighth Circuit judges to decide if juries or a judge should decide equitable tolling for an Arkansas statutory limitations defense of a party who repeated the act and will again in April 2011 as well as two parties who repeated them annually and also after litigation began. The ruling of the Supreme Court on March 24, 2010, or after each appealed order, ruled that the defense of limitations does not accrue from the first of a series of acts, but the last act. Lewis v. Chicago, (08-974).

Whereas, the factual issues in obvious error are precisely described in this motion and all the Supreme Court requirements for allowing interlocutory appeal of orders have been met, The Plaintiff, Curtis J Neeley Jr MFA, hereby asks the Eighth Circuit Court of Appeals to remand this decision or overrule it and allow the action to be amended as attached and served on each added defendant. The Plaintiff was once an idiot and a dimwit as well as clinically incompetent due to his severe traumatic brain injury but is now only an idiot who offends too often and herein apologizes as well as states no bad attitude whatsoever is desired to be shown. It is nearly “certifiable” to offend the ruling Judge and Curtis J Neeley Jr hopes this appeal does not offend ruling Judges or the Honorable Judge Hendren. There is no polite or pleasant way to describe the logical disability on display while asserting that a minor who was also insane in prison out-of-State had ever been the statutory intention for more than two disabilities. The Plaintiff is obviously no longer an idiot or “insane” and felt a duty to file this appeal because it is the “right” thing to do. The Plaintiff is preceding pro se as a pauper and greatly appreciates the graciousness of the Court thus far, yet did not ask permission. There is no way to avoid offending to question about the potential logical disability demonstrated by the ruling Judge whereby an absurd interpretation of statute was used, reconsidered, and then repeated. Plaintiff asserts that application of law and of interpretations of statute is either logical or incorrect and was illogical and incorrect in this case. The limitation defense for continuing offenses was overruled by the Supreme Court ruling of March 24th, 2010. That Supreme Court ruling had not yet been made when either of the appealed orders was made and the Supreme Court, therefore, already supports the Plaintiff.

Respectfully and humbly submitted,

Curtis J Neeley Jr, MFA