

3-3-2010

Taylor v. McNichols Clerk's Record v. 1 Dckt. 36130

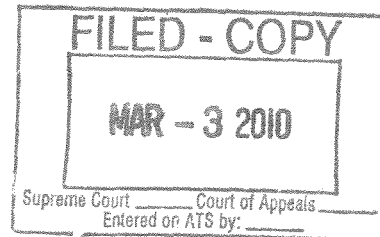
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IN THE SUPREME COURT OF THE STATE OF IDAHO

REED J. TAYLOR, an individual,)	
)	Consolidated Docket No. 36130-2009
Plaintiff-Appellant,)	(36131-2009)
)	
v.)	<i>Consolidated Nez Perce County Docket</i>
)	<i>Nos.: 2008-1763 and 2008-1765</i>
MICHAEL E. McNICHOLS, an)	
individual; CLEMENTS, BROWN &)	
McNICHOLS, P.A., an Idaho)	
professional corporation; JANE DOES)	
I-V, unknown individuals,)	
)	
Defendants-Respondents,)	
<hr/>)	
REED J. TAYLOR,)	APPELLANT REED J. TAYLOR'S
)	NOTICE OF AUGMENTATION OF
Plaintiff-Appellant,)	AUTHORITIES FOR ISSUES IN
)	APPELLANT REED J. TAYLOR'S
v.)	APPEAL BRIEF AND REPLY BRIEF
)	
GARY D. BABBITT, an individual; D.)	
JOHN ASHBY, an individual;)	[I.A.R. 36(f)(1)]
PATRICK V. COLLINS, an individual;)	
RICHARD A. RILEY, an individual;)	
HAWLEY, TROXELL, ENNIS &)	
HAWLEY, LLP, an Idaho limited)	
liability partnership; JANE DOES I-X,)	
unknown individuals,)	
)	
Defendants-Respondents.)	
<hr/>)	

Plaintiff-Appellant Reed J. Taylor, by and through his attorneys Michael S. Bissell and Roderick C. Bond of Campbell, Bissell & Kirby, PLLC, submits this Augmentation of Authorities in support of the issues raised in his Brief and Reply Brief:

LEGAL AUTHORITY

Under I.A.R. 36(f), a party may augment authority cited in his brief at any time before an opinion is issued:

At any time before the issuance of an opinion, any party may supplement his brief by the citation of additional authority, identifying the issue on appeal to which it pertains, without written comment thereon, and identifying the headnote or relevant pages of the authority cited. This augmentation may be done by written notice to the court and all parties without first obtaining leave of the court.

I.A.R. 36(f)(1). Reed Taylor augments the authorities for the issues addressed in his Brief and Reply Brief as set forth below:

I. APPELLANT'S BRIEF.

A. Standard of review (Appellant's Brief, pp. 18-19).

No augmented authority.

B. The district court erred when it failed to apply the required I.R.C.P. 12(b)(6) standards (Appellant's Brief, pp. 20-21).

1. *Hellickson v. Jenkins*, 118 Idaho 273, 276-77, 796 P.2d 150, 153-54 (Ct. App. 1990) (Westlaw Head Notes 2-6).
2. *In re Application by Harvey Block and Gary McDuffee*, 727 N.W.2d 166, 176-77 (Minn. Ct. App. 2007) (Westlaw Head Notes 8-14).
3. *Keller v. Columbus*, 797 N.E.2d 964, 970 (Ohio 2003) (Westlaw Head Notes 4-5).

4. *Wietschner v. Monterey Pasta Co.*, 294 F.Supp.2d 1102, 1109 (N.D. Cal. 2003). (Westlaw Head Note 3).
 5. *Cosom v. Marcotte*, 760 A.2d 886, 893 (Pa. 2000) (overruled on other grounds) (Westlaw Head Note 9).
 6. *Matthews v. State*, 122 Idaho 801, 807-08, 839 P.2d 1215, 1221-22 (1992) (Westlaw Head Note 10).
 7. *Estate of Becker v. Callahan*, 140 Idaho 522, 528, 96 P.3d 623, 629 (2004) (Westlaw Head Note 13).
 8. *Seiniger Law Office, P.A. v. North Pacific Insurance Company*, 145 Idaho 241, 246-48, 178 P.3d 606, 611-13 (2008) (Westlaw Head Notes 6-10).
 9. *U.S. ex rel. Lee v. Smithcline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001) (Westlaw Head Note 10).
 10. *Summer v. Land & Leisure, Inc.*, 664 F.2d 965, 971 (5th Cir. 1981) (Westlaw Head Note 4).
 11. *Qarbon.com Incorporated v. Ehel Corporation*, 315 F.Supp.2d 1046, 1048-53 (N.D. Cal. 2004) (Westlaw Head Notes 2-7).
 12. *Davin, L.L.C. v. Daham*, 746 A.2d 1034, 1045-46 (N.J. 2000) (Westlaw Head Notes 28-35).
- C. **The district court erred when it determined Reed Taylor did not have standing to pursue direct and derivative causes of action against Hawley Troxell and Clements Brown (Appellant's Brief, pp. 21-26).**
- i. **Reed Taylor has standing to assert claims against the attorneys (pp. 21-22).**
 1. *Tensfeldt v. Haberman*, 768 N.W.2d 641, 656-58 (Wis. 2009) (Westlaw Head Notes 13-16).
 2. *Bonanza Motors, Inc. v. Webb*, 104 Idaho 234, 236-37, 657 P.2d 1102, 1104-05 (1983) (Westlaw Head Notes 4-9).
 3. *Kimmel v. Goland*, 793 P.2d 524, 527-31 (Cal. 1990) (Westlaw Head Notes 1-4).

4. *Strid v. Converse*, 331 N.W.2d 350, 356-57 (Wis. 1983) (Westlaw Head Note 9).
 5. *Chapman Lumber, Inc. v. Tager*, 952 A.2d 1 (Conn. 2008) (Westlaw Head Notes 1-2, 11, 24-26, 29-30, 34-38 and 48).
 6. Restatement (Third) of The Law Governing Lawyers § 56 (2009).
 7. Restatement (Third) of The Law Governing Lawyers § 56 cmt. e (2009).
 8. Restatement (Third) of The Law Governing Lawyers § 44 cmt. g (2009).
 9. Restatement (Third) of The Law Governing Lawyers § 94(1)(a) (2009).
 10. Restatement (Third) of The Law Governing Lawyers § 30(1) and (3) (2009).
 11. *Marshall v. Fenstermacher*, 388 F.Supp.2d 536, 552-54 (E.D. Pa. 2005) (Westlaw Head Notes 12-17).
 12. *See also* legal authorities cited in Sections D and E below.
- ii. Reed Taylor has standing to pursue *direct* and *derivative* causes of action as the pledgee of all of AIA Insurance's shares (pp. 22-24).**
1. *Schupack v. Covelli*, 498 F.Supp. 704, 705-07 (W.D. Pa. 1980) (Westlaw Head Notes 2-5).
 2. *Schulman v. Wolf & Samson, PC*, 951 A.2d 1051, 1058-60 (N.J. 2008) (Westlaw Head Notes 4-5).
 3. *In re Oppegard Agency, Inc.*, 152 B.R. 581, 591-93 (D. Minn. 1993) (Westlaw Head Notes 2-5).
 4. *Wenzel v. Mathies*, 542 N.W.2d 634, 640-41 (Minn. 1996) (Westlaw Head Notes 1-6).
 5. *Mallis v. Federal Deposit Insurance Corporation*, 568 F.2d 824, 828-29 (2nd Cir. 1978) (Westlaw Head Note 4).
 6. *Design Pallets, Inc. v. Gray Robinson, P.A.*, 515 F.Supp.2d 1246, 1250-58 (D. Florida 2007) (Westlaw Head Notes 1-18).

7. 12A Fletcher Cyc. Corp. § 5651 (2009).
 8. I.C. § 28-9-207(b).
 9. I.C. § 28-8-303.
 10. I.C. § 30-1-722.
 11. 19 Am. Jur. 2d Corporations § 2030 (2009).
 12. *Steelman v. Mallory*, 110 Idaho 510, 512-13, 716 P.2d 1282, 1284-85 (1986) (Westlaw Head Note 1).
 13. *Gibson v. Adams*, 946 S.W.2d 796, 801 (Mo. 1997) (Westlaw Head Notes 4 and 5).
 14. *See also* legal authorities cited in Sections D and E below.
- iii. Reed Taylor has standing to assert *direct and derivative* claims as a secured creditor of AIA Services and AIA Insurance (pp. 24-25).**
1. Restatement (Third) of The Law Governing Lawyers § 44 (2009).
 2. Restatement (Third) of The Law Governing Lawyers § 44 cmt. g (2009).
 3. Restatement (Third) of The Law Governing Lawyers § 56 cmt. e (2009).
 4. *Skierkewicz v. Gonzalez*, 711 F.Supp. 931, 934-36 (N.D. Ill. 1989) (Westlaw Head Notes 1-11).
 5. I.C. § 28-9-207(b).
 6. I.C. § 28-8-303.
 7. 79 C.J.S. Secured Transactions § 149 (2009).
 8. *Miller v. Rau*, 30 Cal.Rptr. 612, 615-18 (Cal. 1963) (Westlaw Head Notes 1-10).
 9. *Bonanza Motors, Inc. v. Webb*, 104 Idaho 234, 236-37, 657 P.2d 1102, 1104-05 (1983) (Westlaw Head Notes 4-9).

10. *Kahn v. Crames*, 92 A.2d 634, 635 (N.Y. 1983) (Westlaw Head Notes 1-3).
 11. *See also* legal authorities cited in Sections D and E below.
- iv. Reed Taylor has standing to assert *direct and derivative* causes of action as a creditor of the insolvent AIA Services (p. 25).**
1. *Willner's Fuel Distributors, Inc. v. Noreen*, 882 P.2d 399, 403-07 (Alaska 1994) (Westlaw Head Notes 3-11).
 2. *Smith v. Great Basin Grain Co.*, 98 Idaho 266, 278-80, 561 P.2d 1299, 1312-13 (1977) (Westlaw Head Notes 21-26).
 3. 13 Fletcher Cyc. Corp. § 5972.20 (2009).
 4. 15A Fletcher Cyc. Corp. § 7468 (2000).
 5. *Unerti v. Bezanson*, 414 N.W.2d 321, 325 (Iowa 1987) (Westlaw Head Note 1).
 6. Restatement (Third) of The Law Governing Lawyers § 51(4) (2009).
 7. *In re EES Lambert Associates*, 62 B.R. 328, 344 (N.D. Ill. 1986) (Westlaw Head Notes 18-20).
 8. 1 Legal Malpractice § 6:7 (2010).
 9. *In re Porter McLeod, Inc.*, 231 B.R. 786, 793 (D. Colo. 1999) (Westlaw Head Notes 8-12).
 10. *See also* legal authorities cited in Sections D and E below.
- v. Reed Taylor as standing to assert *direct and derivative* causes of action as a shareholder and director of AIA Insurance and required director of AIA Services (p. 26).**
1. *Steelman v. Mallory*, 110 Idaho 510, 512-13, 716 P.2d 1282, 1284-85 (1986) (Westlaw Head Note 1).
 2. *Schulman v. Wolf & Samson, PC*, 951 A.2d 1051, 1058-60 (N.J. 2008) (Westlaw Head Notes 4-5).

3. *Gibson v. Adams*, 946 S.W.2d 796, 801 (Mo. 1997) (Westlaw Head Notes 4 and 5).
4. *See also* legal authorities cited in Sections D and E below.

D. The district court erred in dismissing Reed Taylor's Complaints and proposed Amended Complaints against Hawley Troxell and Clements Brown pursuant to I.R.C.P. 12(b)(6) (Appellant's Brief, pp. 26-36).

i. Reed Taylor sufficiently pled conversion (pp. 27-28).

1. Restatement (Third) of The Law Governing Lawyers § 44 cmt. g (2009).
2. Restatement (Third) of The Law Governing Lawyers § 56 cmt. e (2009).
3. *Kahn v. Cramers*, 92 A.2d 634, 635 (N.Y. 1983) (Westlaw Head Notes 1-3).
4. *Miller v. Rau*, 30 Cal.Rptr. 612, 615-18 (Cal. 1963) (Westlaw Head Notes 1-10).
5. *Skierkewiecz v. Gonzalez*, 711 F.Supp. 931, 934-36 (N.D. Ill. 1989) (Westlaw Head Notes 1-11).
6. 79 C.J.S. Secured Transactions § 149 (2009).
7. 1 Legal Malpractice § 6:30 (2009).
8. *Trail Clinic, PC v. Bloch*, 319 N.W.2d 638, 641-43 (Mich. 1982) (Westlaw Head Notes 1-8).
9. I.C. § 28-9-609(c).
10. I.C. § 28-9-609(a)(1).
11. I.C. § 28-9-601.
12. I.C. § 28-9-315(a)(2).
13. I.C. § 28-9-315(b)(2).
14. I.C. § 28-9-315(c).

15. I.C. § 28-8-303.
 16. *U.S. Small Business Admin. v. Smith Stratton, Wise, Heher & Brennan LLP*, 2009 WL 323211 *7 (E.D. Pa. 2009).
- ii. **Reed Taylor sufficiently pled fraud and constructive fraud (pp. 28-29).**
1. *Reiner v. Kelley*, 457 N.E.2d 946, 950-51 (Ohio 1983) (Westlaw Head Notes 1-2).
 2. *Adelphia Recovery Trust v. Bank of America, N.A.*, 624 F.Supp.2d 292, 313-17 (S.D. N.Y. 2009) (Westlaw Head Notes 4-9).
 3. *Fassihi v. Sommers, Schwartz, Silver, Schwartz & Tyler, P.C.*, 309 N.W.2d 645, 649-50 (Mich. 1981) (Westlaw Head Note 10).
 4. *Landy v. F.D.I.C. Corp.*, 486 F.2d 139, 162-63 (3rd Cir. 1973) Westlaw Head Note 24).
 5. *Aetna Cas. and Sur. Co. v. Leahay Const. Co.*, 219 F.3d 519, 532-37 (6th Cir. 2000) (Westlaw Head Notes 5-19).
 6. *U.S. ex rel. Lee v. Smithcline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001) (Westlaw Head Note 10).
 7. *Summer v. Land & Leisure, Inc.*, 664 F.2d 965, 971 (5th Cir. 1981) (Westlaw Head Note 4).
 8. *Banco Popular North America v. Gandi*, 876 A.2d 253, 263-64 (N.J. 2005) (Westlaw Head Notes 8-13).
 9. *Contractors Cas. and Sur. Co. v. I.E.A. Elec. Group, Inc.*, 693 N.Y.S.2d 915, 917-18 (N.Y. 1999) (Westlaw Head Notes 1-8).
 10. *Faison v. Nationwide Mortgage Corp.*, 839 F.2d 680, 689-90 (D.C. Cir. 1987) cert. denied, 488 U.S. 823, 109 S.Ct. 70 (1988) (Westlaw Head Notes 7-8).
 11. *McElehanon v. Hing*, 728 P.2d 256, 263-65 (Ariz. 1985) aff'd in part & rev'd in part on other grounds, 728 P.2d 273 (1986) (Westlaw Head Notes 4-9).
 12. *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158, 1172 (2nd Cir. 1992) cert. denied, 510 U.S. 945, 114 S.Ct. 385 (1993) (Westlaw Head Note 15).

iii. Reed Taylor sufficiently pled breaches of fiduciary duties (pp. 29-30).

1. *In re Porter McLeod, Inc.*, 231 B.R. 786, 793 (D. Colo. 1999) (Westlaw Head Notes 8-12).
2. *Schulman v. Wolf & Samson, PC*, 951 A.2d 1051, 1058-60 (N.J. 2008) (Westlaw Head Notes 4-5).
3. *Trousdale v. Henry*, 261 S.W.3d 221, 228-33 (Tex. 2008) (Westlaw Head Notes 4-11).
4. *In re Skyway Communications Holding Corp. v. Island Capital Management, LLC.*, 415 B.R. 859, 868-69 (M.D. Florida 2009) (Westlaw Head Notes 7-9).
5. *Sullivan County Regional Refuse Disposal District v. Town of Acworth*, 686 A.2d 755, 757-58 (N.H. 1996) (Westlaw Head Notes 1-6).
6. *Adelman v. Christy*, 90 F.Supp.2d 1034, 146-48 (D. Arizona 2000) (Westlaw Head Note 8).
7. *Gibson v. Adams*, 946 S.W.2d 796, 801 (Mo. 1997) (Westlaw Head Note 4.)
8. Restatement (Third) of The Law Governing Lawyers § 49 (2009).
9. Restatement (Third) of The Law Governing Lawyers § 49 cmt. b (2009).
10. Restatement (Third) of The Law Governing Lawyers § 56 (2009).
11. Restatement (Third) of The Law Governing Lawyers § 56 cmt. h (2009).
12. RPC 1.13.
13. *Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 989 (Del. 2000) (Westlaw Head Notes 40-42).

iv. Reed Taylor sufficiently pled tortious interference (p. 30).

1. *Chapman Lumber, Inc. v. Tager*, 952 A.2d 1, 14 (Conn. 2008) (Westlaw Head Notes 1-2).

2. *Duggin v. Adams*, 360 S.E.2d 832, 835-38 (Va. 1987) (Westlaw Head Notes 1-2 and 7-12).
 3. *Safeway Ins. Co., Inc. v. Guerrero*, 106 P.3d 1020, 1025-26 (Ariz. 2005) (Westlaw Head Notes 7-10).
 4. *Toste Farm Corp. v. Hadbury, Inc.*, 798 A.2d 901, 906-07 (R.I. 2002) (Westlaw Head Notes 9, 10 and 12).
 5. *Cavicchi v. Koski*, 855 N.E.2d 1137, 1139-43 (Mass. 2006) (Westlaw Head Notes 1-7).
 6. Restatement (Second) of Torts § 766 (2009).
 7. *DuretteBradshaw, P.C. v. MRC Consulting, L.C.*, 670 S.E.2d 704, 706 (Va. 2009) (Westlaw Head Notes 4 and 5).
 8. *Cooper Tire and Rubber Co. v. Farese*, 2008 WL 5188233 *3-4 (N.D. Miss 2008).
- v. Reed Taylor sufficiently pled malpractice (pp. 30-32).**
1. *J-U-B Engineers, Inc. v. Security Insurance Company of Hartford*, 146 Idaho 311, 317, 193 P.3d 858 (2008) (Westlaw Head Note 12).
 2. *Schulman v. Wolf & Samson, PC*, 951 A.2d 1051, 1058-60 (N.J. 2008) (Westlaw Head Notes 4-5).
 3. Restatement (Third) of The Law Governing Lawyers § 52(4) (2009).
 4. *Steelman v. Mallory*, 110 Idaho 510, 512-13, 716 P.2d 1282, 1284-85 (1986) (Westlaw Head Note 1).
 5. *Wick v. Eisman*, 122 Idaho 698, 700-01, 838 P.2d 301, 303-04 (1992) (Westlaw Head Notes 1-2).
 6. *Macnish-Lenox, LLC v. Simpson*, 851 N.Y.S.2d 64, *1-16 (N.Y. 2007).
 7. *U.S. Small Business Admin. v. Smith Stratton, Wise, Heher & Brennan LLP*, 2009 WL 323211 *1-7 (E.D. Pa. 2009).

8. *In re Porter McLeod, Inc.*, 231 B.R. 786, 793 (D. Colo. 1999) (Westlaw Head Notes 8-12).
 9. Restatement (Third) of The Law Governing Lawyers § 48 (2009).
- vi. Reed Taylor sufficiently pled violations of I.C. § 48-601, et seq. (pp. 32-34).**
1. Restatement (Third) of The Law Governing Lawyers § 56 cmt. j (2009).
 2. *Campos v. Brooksbank*, 120 F. Supp. 2d 1271, 1274-78 (D.Ct. N.M. 2000) (Westlaw Head Notes 1-2).
 3. *Burnap v. Linnartz*, 38 S.W.3d 612, 619-21 (Tex. 2000) (Westlaw Head Notes 4-9).
 4. I.C. § 48-603C
 5. I.C. § 48-603(2), (3), (5), (7), (8), (17) and (18).
 6. I.C. § 48-608(2).
 7. *Dutton v. Wolpoff & Abramson*, 5 F.3d 649 (3rd Cir. 1993) (Westlaw Head Note 12).
- vii. Reed Taylor sufficiently pled excessive compensation/waste (p. 34).**
1. *U.S. Small Business Admin. v. Smith Stratton, Wise, Heher & Brennan LLP*, 2009 WL 323211 *7 (E.D. Pa. 2009).
 2. *In re The Brown Schools*, 386 B.R. 37, 45-46 (D. Del. 2008) (Westlaw Head Note 5).
 3. *Macnish-Lenox, LLC v. Simpson*, 851 N.Y.S.2d 64, *1-16 (N.Y. 2007).
 4. *Hanna v. ARE Acquisitions, LLC*, 929 A.2d 892, 894 (Md. 2007).
- viii. Reed Taylor sufficiently pled aiding and abetting in the commission of torts (pp. 34-35).**
1. *Tensfeldt v. Haberman*, 768 N.W.2d 641, 656-58 (Wis. 2009) (Westlaw Head Notes 13-16).

2. Restatement (Second) Torts § 876(b) (1979).
3. Restatement (Third) of The Law Governing Lawyers § 56 (2009).
4. Restatement (Third) of The Law Governing Lawyers § 56 cmt. b (2009).
5. Restatement (Third) of The Law Governing Lawyers § 56 cmt. c (2009).
6. *In re Porter McLeod, Inc.*, 231 B.R. 786, 793 (D. Colo. 1999) (Westlaw Head Notes 8-12).
7. *Joel v. Weber*, 197 A.D.2d 396, 396-97 (N.Y. 1993).
8. *Cantor Fitzgerald, L.P. v. Cantor*, 724 A.2d 571, 584-85 (Del. 1998) (Westlaw Head Notes 13-14).
9. *Contractors Cas. and Sur. Co. v. I.E.A. Elec. Group, Inc.*, 693 N.Y.S.2d 915, 917-18 (N.Y. 1999) (Westlaw Head Notes 1-8).
10. *Adelphia Recovery Trust v. Bank of America, N.A.*, 624 F.Supp.2d 292, 313-17 (S.D. N.Y. 2009) (Westlaw Head Notes 4-9).
11. *Landy v. F.D.I.C. Corp.*, 486 F.2d 139, 162-63 (3rd Cir. 1973) Westlaw Head Note 24).
12. *Aetna Cas. and Sur. Co. v. Leahay Const. Co.*, 219 F.3d 519, 532-37 (6th Cir. 2000) (Westlaw Head Notes 5-19).
13. *Kimmel v. Goland*, 793 P.2d 524, 527-31 (Cal. 1990) (Westlaw Head Notes 1-4)
14. *Design Pallets, Inc. v. Gray Robinson, P.A.*, 515 F.Supp.2d 1246, 1258 (D. Florida 2007) (Westlaw Head Note 18).
15. 18 Am. Jur. 2d Conversion § 59 (2009).
16. *See also* legal authorities cited in Sections D(i)-(vii) above and E below.

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ix. **Reed Taylor sufficiently pled conspiracy in the commission of torts (pp. 35-37).**

1. *Marshall v. Fenstermacher*, 388 F.Supp.2d 536, 552-54 (E.D. Pa. 2005) (Westlaw Head Notes 12-17).
2. *Chapman Lumber, Inc. v. Tager*, 952 A.2d 1, 23 (Conn. 2008) (Westlaw Head Notes 34-38).
3. *Banco Popular North America v. Gandi*, 876 A.2d 253, 263-64 (N.J. 2005) (Westlaw Head Notes 8-13).
4. *McElehanon v. Hing*, 728 P.2d 256, 263-65 (Ariz. 1985) aff'd in part & rev'd in part on other grounds, 728 P.2d 273 (1986) (Westlaw Head Notes 4-9).
5. *Hartford Accident & Indem. Co. v. Sullivan*, 846 F.2d 377, 384-85 (7th Cir. 1988) cert. denied, 490 U.S. 1089, 109 S.Ct. 2428 (1989) (Westlaw Head Notes 5-6).
6. *Durant Software v. Herman*, 220 Cal.App.3d 460, 469-72, 257 Cal.Rptr. 200, 206-08 (Cal. 1989).
7. *Cooper Tire and Rubber Co. v. Farese*, 2008 WL 5188233 *3-4 (N.D. Miss 2008).
8. *See also* legal authorities cited in Sections D(i)-(vii) above and E below.

E. **Assuming Idaho adopts the "litigation privilege" as a defense for attorneys, it does not provide complete immunity for tort claims and claims pertaining to exceeding the scope of representation (Appellant's Brief, pp. 37-38).**

1. *Tensfeldt v. Haberman*, 768 N.W.2d 641, 656-58 (Wis. 2009) (Westlaw Head Notes 13-16).
2. Restatement (Third) of The Law Governing Lawyers § 44 (2009).
3. Restatement (Third) of The Law Governing Lawyers § 44 cmt. g (2009).
4. Restatement (Third) of The Law Governing Lawyers § 45 cmt. f (2009).
5. Restatement (Third) of The Law Governing Lawyers § 30(1) and (3) (2009).

6. Restatement (Third) of The Law Governing Lawyers § 94(1)(a) and (b) (2009).
7. Restatement (Third) of The Law Governing Lawyers § 131 cmt. g (2009).
8. Restatement (Third) of The Law Governing Lawyers § 131 cmt. h (2009).
9. *Strid v. Converse*, 331 N.W.2d 350, 356-57 (Wis. 1983) (Westlaw Head Note 9).
10. *Willner's Fuel Distributors, Inc. v. Noreen*, 882 P.2d 399, 403-07 (Alaska 1994) (Westlaw Head Notes 3-11).
11. *Davin, L.L.C. v. Daham*, 746 A.2d 1034, 1045-46 (N.J. 2000) (Westlaw Head Notes 28-35).
12. *Duggin v. Adams*, 360 S.E.2d 832, 838 (Va. 1987) (Westlaw Head Note 8).
13. *Joel v. Weber*, 197 A.D.2d 396, 396-97 (N.Y. 1993).
14. *Stochastic Decisions, Inc. v. DiDomenico*, 995 F.2d 1158 (2nd Cir. 1992) cert. denied, 510 U.S. 945, 114 S.Ct. 385 (1993) (Westlaw Head Note 15).
15. *Kimmel v. Goland*, 793 P.2d 524, 527-31 (Cal. 1990) (Westlaw Head Notes 1-4).
16. *Skierkewiecz v. Gonzalez*, 711 F.Supp. 931, 934-36 (N.D. Ill. 1989) (Westlaw Head Notes 1-11).
17. *Marshall v. Fenstermacher*, 388 F.Supp.2d 536, 552-54 (E.D. Pa. 2005) (Westlaw Head Notes 12-17).
18. *Safeway Ins. Co., Inc. v. Guerrero*, 106 P.3d 1020, 1025-26 (Ariz. 2005) (Westlaw Head Notes 7-10).
19. *Campos v. Brooksbank*, 120 F. Supp. 2d 1271, 1274-78 (D.Ct. N.M. 2000) (Westlaw Head Notes 1-2).
20. *Master v. Gilmore*, 663 F.Supp.2d 1027, 1041-42 (D. Colo. 2009) (Westlaw Head Notes 13-15).
21. *Newburger, Loeb & Co., Inc. v. Gross*, 563 F.2d 1057, 1080 (2nd Cir. 1977) (Westlaw Head Notes 22-23).

22. *Bonanza Motors, Inc. v. Webb*, 104 Idaho 234, 236-37, 657 P.2d 1102, 1104-05 (1983) (Westlaw Head Notes 4-9).
23. *Chapman Lumber, Inc. v. Tager*, 952 A.2d 1 (Conn. 2008) (Westlaw Head Notes 1-2, 11, 24-26, 29-30, 34-38 and 48).
24. *McElehanon v. Hing*, 728 P.2d 256, 263-65 (Ariz. 1985) aff'd in part & rev'd in part on other grounds, 728 P.2d 273 (1986) (Westlaw Head Notes 4-9).
25. *Adelman, v. Christy*, 90 F.Supp.2d 1034, 146-48 (D. Arizona 2000) (Westlaw Head Note 8).
26. *In re Skyway Communications Holding Corp. v. Island Capital Management, LLC.*, 415 B.R. 859, 868-69 (M.D. Florida 2009) (Westlaw Head Notes 7-9).
27. *Case Corp. v. Gehrke*, 91 P.3d 362, 365-68 (Ariz. App. 2004) (Westlaw Head Notes 1-5).
28. *Contractors Cas. and Sur. Co. v. I.E.A. Elec. Group, Inc.*, 693 N.Y.S.2d 915, 917-18 (N.Y. 1999) (Westlaw Head Notes 1-8).
29. *Montego v. Martin Memorial Medical Center, Inc.*, 935 So.2d 1266, 1268-71 (Fla. 2006) (Westlaw Head Notes 1-3).
30. *Durant Software v. Herman*, 220 Cal.App.3d 460, 469-72, 257 Cal.Rptr. 200, 206-08 (Cal. 1989).
31. *U.S. v. McCleskey Mills, Inc.*, 409 F.2d 1216, 1217-19 (Ga. 1969).
32. 86 C.J.S. Torts § 105 (2009).
33. Restatement (Third) of The Law Governing Lawyers § 94(1) (2009).
34. *Robinson v. Volkswagenwerk Ag*, 940 F.2d 1369 (10th Cir. 1991) cert. denied, 502 U.S. 1091, 112 S.Ct. 1160 (1992) (Westlaw Head Notes 2 and 5).
35. *Houser v. City of Redmond*, 586 P.2d 482 (Wa. 1978) (Westlaw Head Notes 3-4).
36. Restatement (Third) of The Law Governing Lawyers § 27 cmt. c (2009).
37. Restatement (Third) of The Law Governing Lawyers § 27 cmt. f (2009).

38. Restatement (Third) of The Law Governing Lawyers § 56(2) and (3) (2009).
39. Restatement (Third) of The Law Governing Lawyers § 56 cmts. b (2009).
40. Restatement (Third) of The Law Governing Lawyers § 56 cmt. c (2009).
41. Restatement (Third) of The Law Governing Lawyers § 56 cmt. d (2009).
42. Restatement (Third) of The Law Governing Lawyers § 56 cmt. e (2009).
43. Restatement (Third) of The Law Governing Lawyers § 56 cmt. h (2009).
44. *U.S. v. Wolf*, 352 F.Supp.2d 1195 (W.D. Okla. 2004) (Westlaw Head Note 4).
45. Restatement (Third) of The Law Governing Lawyers § 26(1) (2009).
46. Restatement (Third) of The Law Governing Lawyers § 26 cmt. d (2009).
47. *Dutton v. Wolpoff & Abramson*, 5 F.3d 649 (3rd Cir. 1993) (Westlaw Head Note 12).
48. *Cooper Tire and Rubber Co. v. Farese*, 2008 WL 5188233 *3-4 (N.D. Miss 2008).
49. *Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 A.D.3d 1 (N.Y. 2008) (Westlaw Head Notes 1-6, 9-13 and 16-20).
50. *See also* legal authorities cited in Section D above.

F. The district court erred by not permitting Reed Taylor to file amended complaints (Appellant's Brief, p. 38).

1. *Clark v. Olsen*, 110 Idaho 323, 326-27, 715 P.2d 993 (1986) (Westlaw Head Note 3).
2. *Drennon v. Fisher*, 141 Idaho 942, 945-46, 120 P.3d 1146, 1149-50 (Ct. App. 2005) (Westlaw Head Note 5).
3. *Gardner v. Hollifield*, 96 Idaho 609, 610-11, 533 P.2d 730 (1975).

4. *Estate of Becker v. Callahan*, 140 Idaho 522, 528, 96 P.3d 623, 629 (2004) (Westlaw Head Note 13).
5. *U.S. ex rel. Lee v. Smithline Beecham, Inc.*, 245 F.3d 1048, 1052 (9th Cir. 2001) (Westlaw Head Note 10).
6. *Summer v. Land & Leisure, Inc.*, 664 F.2d 965, 971 (5th Cir. 1981) (Westlaw Head Note 4).
7. *Qarbon.com Incorporated v. Ehelp Corporation*, 315 F.Supp.2d 1046, 1048-53 (N.D. Cal. 2004) (Westlaw Head Notes 2-7).

G. The district court erred in awarding fees to Hawley Troxell and Clements Brown (Appellant's Brief, pp. 39-42.).

No augmented authority.

II. REPLY BRIEF

C. The district court erred when it failed to comply with Rule 12(b)(6) standards (Appellant's Reply Brief, pp. 17-18).

1. *Wolk v. Westport Ins. Corp.*, 276 Fed.Appx. 129, 132-33 (Pa. 2008) (Westlaw Head Notes 1-2).
2. *Appriva Shareholder Litigation Co., LLC. v. EV3, Inc.*, 937 A.2d 1275 (Del. 2007) (Westlaw Head Notes 6 and 13).
3. *Miller v. Glanz*, 948 F.2d 1562, 1565 (Okl. 1991) (Westlaw Head Notes 5-6).

H. Hawley Troxell and Clements Brown are not entitled to attorneys fees on appeal (Appellant's Reply Brief, p. 53).

1. **Reed Taylor did not pursue these appeals frivolously, unreasonably, without foundation or for harassment purposes. (p. 53.)**
 1. *Farr West Investments v. Topaz Marketing L.P.*, 148 Idaho 272, 220 P.3d 1091, 1096 (2009) (Westlaw Head Notes 11-12).
 2. *Urban Renewal Agency of City of Rexburg v. Hart*, 222 P.3d 467, 471 (2009) (Westlaw Head Notes 8-9).

3. *Craig v. Gellings*, 148 Idaho 192, 219 P.3d 1208, 1211 (2009) (Westlaw Head Note 5).
 4. *Christian v. Mason*, 148 Idaho 149, 219 P.3d 473, 480 (2009) (Westlaw Head Note 9).
 5. *City of Boise v. Ada County*, 147 Idaho 794, 812-13, 215 P.3d 514, 5332-33 (2009) (Westlaw Head Notes 27-28).
- 3. Fees should not be awarded on appeal pursuant to I.C. § 48-608(5) (p. 55).**
1. *Isreal v. Leachman*, 139 Idaho 24, 25-28, 72 P.3d 864, 865-68 (2003) (Westlaw Head Notes 1-9).

RESPECTFULLY SUBMITTED this 15th day March, 2010.

CAMPBELL, BISSELL & KIRBY, PLLC

By: _____

RODERICK C. BOND

MICHAEL S. BISSELL

Attorneys for Plaintiff-Appellant

CERTIFICATE OF SERVICE

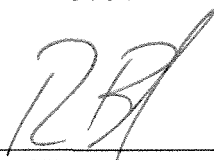
I HEREBY CERTIFY that on the 1st day of March, 2010, I caused to be served a true and correct copy of the foregoing, postage prepaid, to the following parties:

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