

Hayman Private Equity, LLC, Announces \$5 Million Judgment for Defamation Based on Frivolous Lawsuit

Wed Jun 4, 2014 6:20pm EDT

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Hayman Private Equity, LLC, Announces \$5 Million Judgment for Defamation Based on Frivolous Lawsuit

Hayman Private Equity, LLC (“Hayman”), a global private equity investment firm, announced that on January 23, 2014, it obtained a \$5 million judgment on its defamation claims against Environmental Service Professionals, Inc. (ESP), in the Circuit Court of Cook County, Illinois. Hayman’s claims were based on the publication by ESP and republication over the Internet in April 2011 of a draft complaint from a lawsuit that ESP and two other plaintiffs had filed against Hayman and others entitled *DGRP Management, LLC, et al. v. Roland Husner, et al.*, Case No. 11 L 2740.

The three plaintiffs claimed in the lawsuit that Hayman, its officers Andrew Bacik and Christopher Dieterich, Hayman’s outside counsel, Robert Masud, and the Chairman of Hayman’s Finance Committee, Roland F. Bleyer, breached certain loan agreements and engaged in a scheme to defraud the plaintiffs in connection with certain failed financing transactions from which the plaintiffs had hoped to secure loans totaling \$1.5 billion. The complaint falsely accused Hayman, Bacik, Dieterich, Masud, and Bleyer of making certain




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because of the borrowers’ failure to obtain the necessary collateral rather than any alleged malfeasance by the defendants as alleged by the plaintiffs. Plaintiff ESP (a public company at the time) published a copy of the draft complaint containing the false and defamatory statements about Hayman and the other defendants as part of a Current Report on Form 8-K filed with the Securities and Exchange Commission (SEC) through its online EDGAR system on April 28, 2011. The defamatory complaint was quickly picked up and republished by others over the Internet, including on the “Offshore Alert” website run by David Marchant.

Hayman and Messrs. Bacik, Dieterich, and Masud subsequently moved to dismiss the

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plaintiffs' lawsuit, filed in March 2011, and on April 10, 2012, the court dismissed all but one count of the complaint against Hayman and granted Messrs. Bacik, Dieterich and Masud's individual motions to dismiss. Mr. Bleyer, who acted as Chairman of Hayman's Finance Committee, had never been served in the lawsuit and therefore never made an actual party. Hayman then advised the plaintiffs of its intent to file suit for defamation based on the Internet publication of the false and defamatory statements in their complaint unless they dismissed their lawsuit with prejudice, and on April 23, 2012, plaintiff DGRP Management, LLC, agreed to the dismissal of all of its claims asserted in the action against all defendants, barring it from ever re-filing its lawsuit.





Hayman filed its Counterclaim for Defamation and Conspiracy against the remaining two plaintiffs in May 2012 and on June 29, 2012, plaintiff Riverside Premier Development, LLC, agreed to the entry of an order dismissing with prejudice all of its claims asserted in the action. ESP subsequently moved to dismiss Hayman's defamation claim, arguing that it was privileged in filing the alleged defamatory complaint with the SEC as part of its Current Report on Form 8-K announcing the lawsuit and that the statements were protected under Illinois' "Anti-SLAPP" statute. The court, however, agreed with Hayman's attorney, Daniel J. Becka, that the publication of the defamatory material over the Internet was not privileged and that the defamation counterclaim was not a prohibited SLAPP lawsuit. "Many people, including attorneys, believe that just because you file something or say something in judicial proceedings you are free to make the same statements or publish the same court documents outside the courthouse with impunity," explained Mr. Becka. "The judicial privilege, however, is not so broad."

After the close of discovery in the case, Hayman moved for and obtained summary judgment in its favor in September 2013 on ESP's remaining claim against it. Apparently unable or unwilling to retain new counsel after its attorneys had requested and were granted leave to withdraw from the case, according to Hayman, an order of default was entered against ESP on November 14, 2013. The matter was then scheduled for a prove-up of damages, at which time Hayman presented to the court evidence of its damages caused by the publication by ESP and republication by others of the defamatory complaint over the Internet. The court held that the evidence was sufficient to warrant a judgment against ESP in the amount of \$2 million in compensatory damages and \$3 million in punitive damages, for a total judgment entered on January 23, 2014, in the amount of \$5 million.





"We knew that the claims made against Hayman, myself, and the other defendants in the lawsuit were entirely frivolous, and that if we refused to pay the plaintiffs' unreasonable pre-suit demands for money and instead defended ourselves against the false and defamatory allegations we would ultimately prevail," said Roland Bleyer. "ESP's admission through its own default in the case that its claims were frivolous and that its publication of the defamatory complaint over the Internet in an SEC filing was just part of its plan to pressure us into paying money that we simply did not owe proves the point. It also shows the reckless irresponsibility of those, like David Marchant, who allow to be published on their own websites defamatory statements made by others without any reasonable investigation regarding the truth of the statements made," Bleyer added. "Our prosecution of the defamation lawsuit against ESP and our ultimate \$5 million judgment should provide fair warning to others that we will not stand idly by when false and damaging statements are made about us."

Law Offices of Daniel J. Becka, LLC

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