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April 1, 2005

VIA FACSIMILE AND FEDERAL EXPRESS

Honorable Mark Falk, U.S.M.J.
United States District Court
United States Post Office & Courthouse
1 Federal Square, Room 457
Newark, New Jersey 07101

**Re: Landmark Education LLC, et al. v. The Rick A. Ross
Institute of New Jersey, et al., Civil Action No. 04-3022 (JCL)**

Dear Magistrate Judge Falk:

On behalf of plaintiffs ("Landmark") we write to request permission to move for an order permitting Landmark voluntarily to dismiss this action pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. The reason for this request is that there has been a significant post-complaint change in the law. The proposed order that Landmark would attach to its motion accompanies this letter.

The motion is necessary because counsel for defendants has refused to consent to dismissal and has stated orally and in writing that "defendants will vigorously oppose any attempt by Landmark to withdraw the complaint prior to adjudication of defendants' anticipated motion for summary judgment." (Emphasis added.)¹ Because of defense counsel's falsely messianic attitude in this matter, we will not only explain the reason for the application but will also discuss the factual merits of the action, in anticipation of more predictable, formulaic and false charges of bad faith by defendants.

¹ See correspondence attached as Exhibit A. (All exhibits are annexed to the couriered copy of this letter.)

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I. Background

Landmark Education LLC ("Landmark Education") is an employee-owned company that delivers educational programs to the public in the United States. Landmark Education International, Inc. ("Landmark International") delivers the same educational programs to individual consumers in twenty-three other countries. Both companies commenced operations in 1991. Landmark Education offers a four-part Curriculum For Living. The basic program is The Landmark Forum, a three-day program (plus one follow-up evening session). The curriculum is directed to enhancing communication, creativity and productivity. Landmark Education's courses are sold to individuals seeking to improve the quality of their lives. Landmark Education's programs are attended by individuals. In addition, many businesses seeking to improve performance, creativity and organizational effectiveness, including Fortune 500 companies, such as IBM, and public sector entities, such as the United States Postal Service, encourage their employees to attend The Landmark Forum by reimbursing them for the cost of tuition. Landmark Education is an accredited member of the International Association for Continuing Education and Training, and people who participate in Landmark Education courses receive continuing education units. To date, more than 820,000 people have participated in Landmark Education and Landmark International programs.

Landmark Education Business Development, Inc. ("LEBD") which commenced operations in 1993, is a global consulting firm providing services directly to corporate customers and public sector entities. LEBD's engagements encompass a full range of consulting services from strategic planning sessions, to building and coaching high-performance executive and management teams, to implementing large-scale initiatives in workforce mobilization. Private corporations which have used LEBD's services include athletic and fitness giant Reebok International and UNUM, the leading provider of group disability insurance. LEBD also counts among its clients a United Steel Workers of America local, various public utilities and numerous small, high growth companies in sectors such as health care.

Defendant Rick Ross, an ex-convict, is a self-styled expert on cults. Defendant Ross earns a livelihood as an expert witness and by conducting "de-programmings" for the families of cult members. Defendant Ross was adjudicated in 1995 to have violated the rights of one such individual, and a judgment for \$3,375,000 was entered against him. Defendant The Ross Institute is a so-called not-for-profit entity. Defendants operate Internet websites promoting Mr. Ross's alleged expertise and offering a "database" of information about cults.

II. The Bases of Landmark's Complaint

Landmark's complaint stems from defendants' posting of disparaging materials on their websites about Landmark's educational programs, defendants' refusal to post positive materials about Landmark's programs and defendants' false statements about Landmark's programs published in the media. The false charges include likening Landmark's programs to "cults,"

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representing that participants in the programs are subject to "hypnosis," "brainwashing" or "mind control" and stating that the programs are "destructive" and "dangerous."

Landmark's complaint alleges seven causes of action, sounding in, inter alia, product disparagement and tortious interference. The common elements of Landmark's claims are that the comments, stories and discussion threads posted by defendants on the websites concerning Landmark are false and derogatory statements of fact that have damaged Landmark. At the time it filed this action, and now, Landmark has strong factual support for its position.

A. Defendants' Postings Are False

Defendants' website postings state that Landmark's programs are cult-like and present risks of physical and/or mental/emotional harm to participants. The posts accuse Landmark of "hypnotizing" and "brainwashing" participants, attempting "cult recruitment" and "mind control" and of constituting "cultish-ness." Examples of specific statements include:

- a. "A clear unmistakable warning sounded in my head near the end [of The Landmark Forum] 'Get out of here now it's a cult!';"
- b. Landmark's participants are subjected to "an elaborate mind control system;"
- c. The Landmark Forum "was literally mind control at work;"
- d. Landmark's programs make "a deliberate assault on your mind;"
- e. Landmark's programs encourage participants "to cut themselves off" from people who are not associated with the program;
- f. participants in The Landmark Forum who want to leave are met with "guilt, manipulation and implied threats" and those who do leave are thereafter continuously "harassed" by Landmark representatives seeking to convince them to return to the program;
- g. participants in The Landmark Forum are not "allowed to be by themselves for long periods of time or deviate from the Forum rules in any manner;" and
- h. Landmark's programs are "downright dangerous" and "destructive."

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Landmark has considerable proof that defendants' statements are untrue and that, to the contrary, Landmark's programs, far from being dangerous brainwashing, are extraordinarily beneficial. For example, as to The Landmark Forum and Landmark Education:

- Raymond Fowler, Ph.D., then the Chief Executive Officer of the American Psychological Association, after participating in The Landmark Forum: "The Landmark Forum is not a cult or anything like a cult, and I do not see how any reasonable, responsible person could say that it is" and "[t]he relatively brief encounters in a pleasant environment that take place at a Landmark Forum program could never effect such extreme and unwanted changes in personality and behavior as those attributed to the various forms of 'mind control.'" (Exhibit B.)
- Lowell Streiker, Ph.D., a recognized expert on cults:² The Landmark Forum "is not a cult in any sense of the word, religious or otherwise."³
- Numerous other psychiatrists and psychologists concur: (i) Landmark does not "engage in any sort of brainwashing, thought reform, hypnosis, or thought modification whatsoever," "[n]ot one [of the elements of a cult] exists in Landmark or any of its programs," "Landmark has none of the characteristics of cult-like organizations" and "Landmark and The Landmark Forum are not a cult or cult-like and . . . people who participate in Landmark's programs are not damaged" (Dr. Edward Lowell); (ii) Landmark is "not a cult, but a transformational education corporation, which is what they claim to be" (Dr. Richard Bralliar); (iii) Landmark is

² Dr. Streiker, the author of several books on cults, including The Cults Are Coming, has for years worked as a counselor to cult victims and their families. He was the founder and Executive Director of the Freedom Counseling Center in Burlingame, California. Dr. Streiker has been qualified to provide expert testimony concerning cults in various jurisdictions in the United States and Canada.

³ Dr. Steven Callahan, clinical psychologist: "[I]ndividuals in Landmark classes are encouraged to think for themselves and not to automatically believe what everyone else believes. These individuals are encouraged to pursue their own personal goals, even when these goals are in no way related to Landmark Education. These individuals are also encouraged to become independent, to feel that they have control over their own lives, and to understand that they are not being "victimized" or controlled by anyone or anything. Finally, these individuals are strongly encouraged to improve their relationships with their families, actively pursuing the mending of any damaged relationships that exist. It absolutely would be counter-productive for any cult [or brainwashing group] to encourage its members to pursue any of the above goals." [Emphasis in original.]

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not "coercive, cult-like, or otherwise negative" (Dr. Jim Miller); (iv) Landmark "has NEVER displayed ANY" characteristics of a cult (Dr. Bruce Borkosky, emphasis in original); (v) Landmark is not "a cult or any other kind of distorted, antisocial entity," and there is "no evidence of any inherent danger or harm arising from Landmark's programs [which] are high-quality programs solidly grounded in well-established principle and method that have the potential to offer participants substantial value" (Dr. Gregory Lester).

- Noted social scientist Daniel Yankelovich studied more than 1,300 participants in the Landmark Forum. Seven out of ten people surveyed deemed the Landmark Forum to be one of their life's most rewarding experiences.
- The Talent Foundation, a global non-profit research organization, found that more than two-thirds of the one hundred Landmark Forum participants included in its study said their levels of motivation, self-esteem and confidence at work improved as a result of participating in The Landmark Forum. (The Talent Foundation study is attached as Exhibit C.)
- Judge Schlomo Shoham, the Legal Advisor on cult matters to the Israeli Knesset, after participating in The Landmark Forum: The Landmark Forum has "none of the characteristics found in the definition of a cult."
- Bishop Otis Charles of the Episcopal Church (Anglican) and the former Dean of the Episcopal Divinity School in Boston: "By no definition that I know of can The Landmark Forum or Landmark Education's programs be considered part of a cult. In fact, quite the opposite, the organization and courses are conducted in a way that is entirely consistent with any accredited educational institution."⁴

As to LEBD, for example:

- A case study published by the University of Southern California noted that LEBD's program was instrumental in major corporation "realizing major accomplishments in key areas, including boosting productivity by 86%, cutting production costs by 40%, and appreciating stock by more than

⁴ Numerous other clergy from major religious denominations concur, e.g.,: (i) "[t]o regard the Landmark Forum as a 'cult' is ridiculous" (Rev. Dean Simpson); (ii) Landmark is not "cultish, devious or anti-religious. Rather, the work and programs developed by Landmark Education are truly educational in the best sense" (Rev. Gerard O'Rourke).

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400%" and that LEBD's program helped another corporation produce a 50% increase in safety performance, a reduction by 15-20% in key benchmark costs, a 50% increase in return on capital and a 20% rise in production. (The study is attached as Exhibit D.)

- Paul Fireman, Chairman and Executive Officer of Reebok International: "Landmark has done outstanding consulting work and programs on long-range planning and cultural transformation with our employees at all levels, and the work they have done has been enjoyed and well received in assisting us in preparing our employees for a future that stems from a common and shared goal." (Exhibit E.)

C. Defendants' Postings Are Derogatory

The test to determine whether a statement is derogatory is the fair and natural meaning that will be given to the statement by reasonable persons of ordinary intelligence taking into consideration the context in which the statement is made. DeAngelis v. Hill, 180 N.J. 1, 14-15 (2004).

As set forth in paragraph 22 of Landmark's complaint, the postings on defendants' websites assert, inter alia, that Landmark: (a) is emotionally unhealthy; (b) destroys lives; (c) assaults the mind; (d) is "fake and unscrupulous;" and (e) is a dangerous cult and "destructive."

Such statements, included in an alleged database of cults, are derogatory as a matter of law.

D. Defendants' Postings Are Misstatements of Fact, Not Opinion

The allegation that an organization is a "cult" and "brainwashes" participants is a statement of fact that is capable of being proven either true or false. Experts agree that to be a "cult," an entity must possess certain characteristics and that "brainwashing" involves definable activities. Landmark has been prepared, as its Rule 26(a)(1) disclosure states, to offer expert testimony as to: (a) the characteristics of cults; (b) the fact that Landmark is not a cult; and (c) that its programs do not use brainwashing techniques. For example: (1) Dr. Raymond Fowler, in an opinion given when he was the Chief Executive Officer of the American Psychological Association, concluded after participation in The Landmark Forum that "The Landmark Forum is not a cult or anything like a cult, and I do not see how any reasonable, responsible person could say that it is" and "[t]he relatively brief encounters in a pleasant environment that take place at a Landmark Forum program could never effect such extreme and unwanted changes in personality and behavior as those attributed to the various forms of 'mind control'" (2) Dr.

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Edward Lowell, an expert on cults and a psychiatrist with specialized government training in the technology and techniques of brainwashing, mind control and thought reform.⁵

[a cult] is a religion or religion-like sect generally considered to be extremist or false, with its followers believing or living in an unconventional manner under the guidance of an authoritarian or charismatic leader. There is a special reverence or devotion to such person. There is often a non-scientific method or regimen claimed by its originator or proponent to have exclusive or exceptional power. In a cult, there is an inculcation or indoctrination of a new idea to displace participants' usual, familiar and conventional ideas by subjecting them to repetitive instruction, indoctrination, sense of duty, etc. Similarly, brainwashing involves (1) intensive, forcible indoctrination aimed at destroying a person's basic convictions and attitudes and replacing them with an alternative set of fixed beliefs; and (2) the application of a concentrated means of persuasion, such as repeated suggestion, in order to develop a specific belief or motivation. Necessarily involved are a kind of physical entrapment, power to inflict harm or detrimental effects, and secluding one from contact with friends and family.

Not one of these exists in Landmark or any of its programs. Nowhere, ever, is there any granting or seeking of obedience, authority or the acceptance of any harshness. . . . Nowhere does the participant experience a disenchantment with his previous affiliations, loyalties, support groups and principles. . . . There is no joining an organization. . . . There is no element of geographic or family dislocation whatsoever. There is no thought reform. . . . There is no element of coercive persuasion. There is no damage to family. . . . There is no charismatic leader. . . . Those who take The Landmark Forum continue on in their jobs, neighborhoods, communities, charities of interest. . . . There is no Forum idea to inculcate. . . . Landmark and The Landmark Forum are not a cult or cult-like and . . . people who participate in Landmark's programs are not damaged.

Landmark's Rule 26(a)(1) disclosure (the "Rule 26 Disclosure") is attached as Exhibit F. Section B identifies Landmark's witnesses. Other witnesses listed thereon, are members of the clergy, law enforcement and health care professionals. (See the Rule 26 Disclosure, Section B, identifying witnesses.)

⁵ Among other things, Dr. Lowell was trained by the United States Army during the Korean war to treat American prisoners of war who had been subjected to brainwashing and other "thought reform" techniques by their captors.

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E. Landmark Has Suffered Damages

Landmark has produced to defendants information concerning a number of individuals who cancelled their registration in Landmark's programs as a result of defendants' actions. Additionally, numerous postings on defendants' websites contain statements to the effect that the author or someone known to the author opted not to participate in The Landmark Forum after reviewing information found on defendants' websites.

F. The Authorship of The Posts on Defendants' Websites

Landmark has long suspected that Mr. Ross, for his own self-serving purposes, has himself authored certain of the more damning comments, stories and discussion threads posted on defendants' websites.

Prior to filing the complaint, Landmark, through counsel, consulted a noted forensic linguist who has qualified as an expert in numerous federal and state courts to opine on issues concerning questioned authorship. This expert was presented with: (1) a sampling of the known writings of Mr. Ross; and (2) a sampling of the "visitor comments," and "personal stories" from defendants' websites concerning Landmark. The expert concluded that these materials, though posted under a variety of names on defendants' websites, were all authored by Mr. Ross.

Landmark's claims were based, thus, on statements made by Mr. Ross himself (whether or not deceitfully posted as authored by others or not) and on defendants' selective editing of materials to post, eliminating Landmark-favorable materials.

III. The State of The Law When This Action Was Commenced

Landmark commenced this action in June 2004. At that time, there was no case from any court within the Third Circuit or the New Jersey state court system addressing the applicability to website hosts of the immunity granted by the Communications Decency Act of 1996, 47 U.S.C. § 230(c)(1) (the "CDA") from state-law tort liability arising from statements authored by persons other than the defendant but republished on the Internet by the defendant.⁶ Specifically, the relevant unsettled legal questions concerned whether (1) Internet websites such as those operated by the defendants are entitled to the same immunity granted to Internet service providers ("ISPs") such as America Online; and (2) if so, whether that immunity is negated where website

⁶ The CDA creates special legal rules and preempts state tort laws concerning statements published on the Internet. There is no doubt that these defendants could be held liable for republishing derogatory information concerning Landmark's programs offered by others if they had done so in a magazine or newspaper, or on television or radio.

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hosts such as the defendants edit the content provided to the website or take an active role in the selection of the third-party content that is included thereupon.⁷

Notably, defendants' answer, filed in September 2004, did not assert the CDA as a defense to Landmark's claims.

Landmark was prepared to urge this Court to hold that defendants are not providers of an "interactive computer service" because, unlike ISPs, by operating websites they do not "enable computer access by multiple users to a computer server" and because, unlike ISPs, they have full control over the third-party content that they permit to be posted and therefore are not entitled to claim the same limited protection that Congress intended to provide to ISPs who do no more than act as mere conduits for information. Landmark was also prepared to urge this Court to hold, if it found that the CDA applies to website operators, that the immunity is lost if the defendants edited or engaged in active selection of the third-party content appearing on their websites because those actions cause them to become "information content providers" under the definition set forth in the CDA.

IV. The January 2005 Change In The Law -- Donato v. Moldow

On January 31, 2005, the Appellate Division of the Superior Court of the State of New Jersey handed down a decision that forecloses the arguments sought to be made by Landmark concerning the non-applicability of the CDA to its claims against the defendants. See Donato v. Moldow, 2005 WL 201128 (N.J. App. Div. Jan. 31, 2005).

Donato considered the potential liability of a website based upon allegedly actionable messages posted anonymously by others, id. at *1, and is thus exactly on point. The Appellate Division affirmed the trial court's grant of a dismissal in favor of the website operator defendant. Id. Noting the lack of any controlling authority in New Jersey, the court looked to decisions from other jurisdictions. Id. at *6. The court held that website operators are providers or users of "interactive computer services" such that the CDA's grant of immunity for publications by third parties applies to them, id. at 6-8, and that a website operator does not become an "information content provider" such as to negate that immunity by actively participating "in

⁷ The CDA states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." The CDA defines "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." The CDA defines "information content provider" as any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service. 47 U.S.C. § 230.

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selective editing, deletion and re-writing of anonymously posted messages," or by controlling the "content of the discussion" by posting messages of his own, commenting favorably or unfavorably on messages posted by others, selectively deleting some messages while allowing others to remain, and selectively banning users whose messages he deems disruptive to the forum." *Id.* at 14-16. Moreover, the court held that immunity was not negated by the fact that the website operator actually harbored ill-will toward the plaintiff because, irrespective of defendant's motive, plaintiff had not alleged any acts outside of the traditional publisher's editorial functions. *Id.* at 17.

Notably, in February 2005, after Donato was published, counsel for defendants requested that Landmark stipulate to permit defendants to amend their answer to assert the CDA as an affirmative defense.

Although Landmark may still be able to pursue claims based upon certain of the website postings whose "anonymous" author is in fact Mr. Ross, Donato leaves Landmark without any viable cause of action as to the remainder of the derogatory posts. Further, for Landmark to prove that its damages flowed from a third-party's receipt of a Ross-authored post rather than a post actually authored by a third-party as to which defendants' have immunity -- a distinction not previously important but now a likely prerequisite to recovery of damages -- would be extraordinarily difficult if not impossible.

Landmark has, since the Donato decision, considered its options in this matter. While Landmark believes that Donato is incorrectly decided and the relevant courts may eventually reject its holdings, at the same time, Landmark, an educational institution, does not perceive its mission to be well served by a protracted and costly legal fight on this issue.

V. The Law Concerning Motions to Dismiss Voluntarily

Once an answer has been filed, a party must obtain an order for voluntary dismissal from the court if the adversary will not stipulate to dismissal, and the court may place appropriate terms and conditions upon such a dismissal. Fed. R. Civ. P. 41(a)(2).

Although the decision to permit a dismissal without prejudice is within the sound discretion of the Court, where the plaintiff seeks a dismissal with prejudice, such that the dismissal is a bar to a further action on point between the parties, the Court should not refuse to order such a dismissal and thereby force an unwilling plaintiff to go to trial. 9 Fed. Prac. & Proc. Civ. 2d § 2364. Accord, Public Interest Research Group of N.J. v. Stone, 1992 WL 281122, *2 (D. N.J. Sept. 21, 1992) ("[v]oluntary dismissal without prejudice is not a matter of right [but] addressed to the sound discretion of district courts") (emphasis added).

Defendants have refused to stipulate to dismissal unless Landmark pays them legal fees. Although it is not uncommon for courts to award attorneys' fees to the defendant when a

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voluntary dismissal is without prejudice, such an award is not proper where the plaintiff seeks a dismissal with prejudice. 9 Fed. Prac. & Proc. Civ. 2d § 2366. Accord, Sokoloff v. General Nutrition Cos., 2001 WL 536072, *3 n.2 (D. N.J. May 21, 2001) (“the award of attorney’s fees is not appropriate under [Rule 41] when an action is voluntarily dismissed with prejudice”). The reason for this rule is explained by the Tenth Circuit:

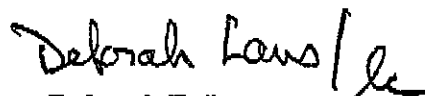
When a plaintiff dismisses an action without prejudice, a district court may seek to reimburse the defendant for his attorneys’ fees because he faces a risk that the plaintiff will refile the suit and impose duplicative expenses upon him. . . . In contrast, when a plaintiff dismisses an action with prejudice, attorneys’ fees are usually not a proper condition of dismissal because the defendant cannot be made to defend again.

Aerotech, Inc. v. Estes, 110 F.3d 1523, 1528 (10th Cir. 1997). See also, Cauley v. Wilson, 754 F.2d 769 (7th Cir. 1985) (same); Colombrito v. Kelly, 764 F.2d 122 (2d Cir. 1985) (same); Sovereign Partners Ltd. Partnership v. Restaurant Teams Int’l, Inc., 2001 WL 30665 (S.D.N.Y. Jan. 12, 2001) (same); York v. Ferris State Univ., 36 F. Supp. 2d 976 (W.D. Mich. 1998) (same); Horton v. Trans World Airlines Corp., 169 F.R.D. 11 (E.D.N.Y. 1996) (same); Murdock v. Prudential Ins. Co., 154 F.R.D. 271 (M.D. Fla. 1994) (same).

VI. Conclusion

Landmark does not wish to burden this Court with motion practice, but the effects on Landmark’s claims of Donato and defendants’ refusal to consent to Landmark’s voluntary dismissal leave no alternative. Thank you in advance for your attention to this matter.

Respectfully,


Deborah E. Lans

cc: Peter L. Skolnik, Esq.
Paul J. Dillon, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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 LANDMARK EDUCATION LLC, :
 LANDMARK EDUCATION INTERNATIONAL, :
 INC. and LANDMARK EDUCATION :
 BUSINESS DEVELOPMENT, INC., :
 :
 Plaintiffs, :
 :
 vs. :
 THE RICK A. ROSS INSTITUTE OF NEW :
 JERSEY a/k/a/ THE ROSS INSTITUTE a/k/a/ :
 THE ROSS INSTITUTE FOR THE STUDY OF :
 DESTRUCTIVE CULTS, CONTROVERSIAL :
 GROUPS AND MOVEMENTS and RICK ROSS :
 a/k/a/ "RICKY ROSS," :
 :
 Defendants. :
 -----X

Civil Action No. 04-3022 (JCL)
 Honorable John C. Lifland
 Honorable Mark Falk

ORDER

Upon consideration of Plaintiffs' Motion For a Voluntary Dismissal, and the Court having found that Plaintiffs have a legitimate reason to discontinue this action and that Defendants will not be prejudiced thereby, it is by the Court, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, hereby ordered that this action shall be dismissed with prejudice and without any further terms or conditions.

It is SO ORDERED.

Signed this the _____ day of _____, 2005.

UNITED STATES DISTRICT JUDGE