No. 12-315

IN THE

Supreme Court of the United States

AIR WISCONSIN AIRLINES CORPORATION,

Petitioner,

v.

WILLIAM L. HOEPER,

Respondent.

On Petition for a Writ of Certiorari
to the Colorado Supreme Court

BRIEF IN OPPOSITION

Scott A. McGath
Counsel of Record
Jason P. Rietz
OVERTURF MCGATH
HULL & DOHERTY, P.C.
625 E. 16th Ave.
Suite 100
Denver, CO 80203
(303) 860-2848
sam@omhdlaw.com

QUESTION PRESENTED

Whether the judgment in this case should be reversed on the ground the courts below failed to conduct an independent review of the evidence that respondent's defamatory statements were false when (1) petitioner did not ask the lower courts to conduct that review; (2) petitioner does not contest that the central defamatory statement in the case – the implication that respondent posed a genuine risk to airline security – was false; (3) the courts affirmed that substantial evidence supported the jury's finding of falsity; and (4) the courts decided de novo that petitioner made the statements knowing they were false or recklessly disregarding the truth.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Other Authorities

STATEMENT OF THE CASE

In December 2004, an employee of petitioner Air Wisconsin Airlines Corporation ("AWAC"), Patrick Doyle, escalated a personal dispute with respondent Bill Hoeper into a national security emergency. After Hoeper complained that AWAC was conducting a simulator test unfairly, and threatened to call his union, Doyle booked Hoeper on a United Airlines flight, then called the Transportation Security Agency ("TSA") to report that a mentally unstable, potentially armed former employee was about to board a plane for Denver. As the Colorado Supreme Court explained, the "overall implication of Doyle's statements is that he believed that Hoeper was so unstable that he might pose a threat to the crew and passengers of the airplane." Pet. App. 19a. That, in fact, is how the TSA understandably reacted to Doyle's call, treating the situation as a potential hijacking in progress. The plane was surrounded by emergency vehicles and backed in by a snowplow. Hoeper was then removed by armed law enforcement officers and arrested.

The problem was, Doyle's statements to the TSA, including his assertion of a genuine security threat, were false, and Doyle knew it. After an extended delay, substantial disruption to air traffic, and significant expenditure of law enforcement resources, the TSA figured out the truth as well and released Hoeper. But by that point the damage was already done.

Had Doyle told the truth, none of this would have happened. The truth was that Doyle and other AWAC officials did not believe that Hoeper was

mentally unstable, had no reason to think that Hoeper was actually armed, and lacked any basis for implying to the TSA that Hoeper posed any real threat. That was the finding of the jury in this case, which was affirmed by *three* courts, each of which conducted an independent review of the record and determined that Doyle made the defamatory statements with actual malice.

AWAC does not contest that if those factual findings are correct, it was not entitled to immunity under the Aviation and Transportation Security Act ("ATSA") or the First Amendment. For that reason, AWAC spends a substantial portion of its petition contesting the jury's and the lower courts' factual findings. Aware, however, that this Court does not sit as a reviewer of fact, petitioner attempts to dress up its request for fact-bound error correction in the trappings of broader legal questions. But none of those legal questions warrants review. The ATSA issue the petition presents has never arisen in any other court and this Court has repeatedly denied certiorari on the First Amendment question.

Nor would the answer to either question matter in this case given the thrice affirmed factual findings below. Indeed, AWAC's argument that it would prevail if this Court accepted its legal arguments is entirely fanciful – it claims that although the jury found that Doyle's report was false, although the courts below found that finding supported by substantial evidence, and although the courts below independently found that those statements were made with actual malice, those same courts would have found that the malicious statements were *true* – *i.e.*, that Hoeper actually *was* mentally unstable and

a threat to passenger safety – if they had only deferred less to the jury's fact finding. There being no genuine prospect of such an outcome, the petition should be denied.

I. Factual Background

The facts of this case were hotly disputed below and resolved by a jury in respondent's favor after a three-week trial. AWAC's defense, like its petition here, depended largely on the credibility of its witnesses, including Doyle, who changed his story throughout the trial and was shown to have fabricated evidence in the aftermath of Hoeper's arrest. Fairly viewed, the facts are these.

1. **Hoeper's Background At AWAC.** Hoeper was a 20-year commercial pilot and a captain of the AWAC CL65 jet airliner. Tr. Ex. 1. He held six FAA licenses and, at various points in his career, had been AWAC's lead ground school instructor, taught self-defense to AWAC's flight attendants, and served as a Jefferson County Sheriff's Deputy. *Id.*

In the aftermath of September 11, 2001, AWAC asked Hoeper to become a Federal Flight Deck Officer ("FFDO"). Pet. App. 3a; Tr. 1354:14-16. The FFDO program allowed selected pilots who passed psychological screening to carry a handgun aboard an aircraft. Pet. App. 3a; Tr. 1353:13-1358:13. Pursuant to FFDO protocols, there were only certain limited circumstances in which an FFDO could carry his handgun while traveling onboard an aircraft. In his years as an FFDO, Hoeper never violated those protocols. Tr. 1357:7-1361:10.

As an AWAC employee, Hoeper received "satisfactory" and "superior" ratings on his

employment reviews, and several commendation letters. Tr. Exs. 3-4, 6; Tr. Ex. 5 at 11, 13-14, 22; Tr. Ex. 1108, 67:20-70:24, 82:13-18. Hoeper's personnel file contains no negative notations. Tr. Ex. 2.

2. **Hoeper's Conflict With AWAC Management.** Despite his exemplary performance, Hoeper came into conflict with certain AWAC management officials who, testimony at trial established, determined to "get rid of" him as a pilot. Tr. 2457:1-9. The opportunity to effectuate that plan arose in 2004, when AWAC stopped using the CL65 plane that Hoeper was then piloting at his home base in Denver. In order to transition to a different aircraft, Hoeper was required to pass a series of examinations, culminating in tests on flight simulators under the control of AWAC's BAe-146 training department. Pet. App. 3a-4a.

In November, 2004, Hoeper was tested by the FAA on a BAe-146 flight simulator, passed, and was given a license to pilot the BAe-146, demonstrating complete mastery of the aircraft. Tr. 1338:14-25. However, despite the FAA issuing this license, AWAC refused to give Hoeper his proficiency check paper work. *Id.* 1339:2-25.

Therefore, AWAC claimed that Hoeper still had to pass a flight simulator test administered by AWAC employees. According to expert testimony at trial, AWAC's training of Hoeper throughout this process was "biased and unfair," Tr. 1931:8-20, and therefore was not proper training of a pilot, *id.* 1961:12-19. This pattern of conduct furthered management's desire to wash Hoeper out of the organization. After unfairly failing Hoeper three times, AWAC agreed to allow Hoeper to return to a simulator in Virginia for

another training and testing session to take place in early December 2004, but only after requiring Hoeper to sign a "last chance" letter. Pet. App. 4a, 46a.[1]

3. **The December 8 Simulator Incident.** The training for this simulator test was administered by Mark Schuerman. When Hoeper arrived for the test, the simulator was not working properly – the co-pilot navigation instrumentation was not operating and, during the test, both the Captain's and the Co-pilots Flight Management computers locked up. Tr. 1365:5-1366:24. Schuerman nonetheless insisted on continuing the test. Then, during the midst of a maneuver involving the already unusual circumstance of two of the four engines being inoperable, Schuerman caused the simulator to unrealistically report the sudden loss of thousands of pounds of fuel, leading all of the remaining engines to "flame out." Tr. 1376:11-1377:23. An aviation expert later testified at trial that Scheurman's conduct was entirely unfair. Tr. 1954:7-17, 1960:20-23, 1961:12-19.

Understandably angry that Scheurman was unfairly manipulating the test, Hoeper slid back in his seat and complained. Schuerman yelled at him and became very upset. Tr. 1375:21-1376:21. Hoeper cursed and told Shuerman in a raised voice, matching the level of Shuerman's voice, "You win. That's it. I'm calling ALPA legal," a reference to the legal

---

[1] AWAC's intent in having Hoeper sign the "last chance" letter was to remove Hoeper from his union's collective bargaining agreement. Pet. App. 46a; Tr. Ex. 1101, 120:14-17, 139:7-14.

department of the pilot's union. Tr. 1600:18-21; 1601:18-25; *see also* Pet. App. 5a, 47a. Hoeper then walked out of the simulator area. The entire incident lasted a matter of seconds. Tr. 1451:24-25, 1708:15-18.

AWAC's Chief Pilot and Doyle's immediate supervisor, Scott Orozco, confirmed that Hoeper was within his rights to stop the training session to contact ALPA legal, and that in doing so, Hoeper did nothing wrong. Tr. Ex. 1101, 205:11-206:1. Moreover, while Hoeper was upset, he was neither "irrational," nor "mentally unstable." *Contra* Pet. 28. Rather, Hoeper quite reasonably stopped the simulator because he was being treated unfairly and decided to call his union. While both he and Schuerman had used elevated voices, Hoeper made no threatening comments to Schuerman or anyone else. Tr. 1378:8-17, 1451:12-15.

Thus, when Schuerman called Doyle to report the incident, the only thing he said was that Hoeper had stopped the session to call his ALPA attorney and that Hoeper "blew up at him and was 'very angry with [him].'" Pet. App. 5a. While Schuerman stated that the confrontation left him "uncomfortable," *id*. 47a, he never told Doyle that Hoeper was unstable or threatening, *id.* 5a. In fact, Schuerman testified that he considered Hoeper to be no threat and perfectly safe to get on an airplane; he was shocked to learn that AWAC had contacted security officials and that Hoeper had been removed from the United flight. Pet. App. 50a; Tr. 432:21-434:13, 784:4-19, 443:5-15, 444:4-9.

Schuerman called Doyle around noon Eastern Standard Time. Pet. App. 47a. Although Doyle

would later claim that he feared that Hoeper might commandeer an aircraft and fly it into Air Wisconsin's headquarters, or use his FFDO weapon to shoot innocent people,[2] for the next two and a half hours Doyle did nothing about it. Pet. App. 47a-48a. He did not call the police or the TSA, or even his supervisor. He made no inquiries into the whereabouts of Hoeper's weapon. *Id*. 5a. Indeed, he did not even inquire further of Schuerman regarding Hoeper's mental state or ask to speak to any of the other employees who had witnessed the incident. *Id*. Nor did he attempt to contact Hoeper to hear his side of the story or evaluate his mental state. *Id*. 47a. And although he saw his supervisor, Scott Orozco, shortly after receiving the call, he did not report the incident to Orozco, claiming at trial that Orozco was either leaving to go to lunch or "in a rush" to get to a meeting. Tr. 778:9-21; *see also* Pet. App. 48a.[3]

What Doyle did do is book Hoeper on a plane back to Denver. Pet. App. 5a. He then called and asked another AWAC employee, Daniel Scharf, to give Hoeper a ride to the airport. *Id*. Although Scharf had been in the simulator with Hoeper and Schuerman, Doyle did not ask him what had

---

[2] Tr. 771:20-772:4, Tr. 791:21-24, 792:20-793:10.

[3] The jury later questioned this testimony, submitting to the court these questions for Doyle: "Considering passenger safety – why was call late, and not paramount"; "why did your supervisor decide to take lunch first?"; and "Were there any other emergency situations that would require national security to be involved going on on the date of Dec. 8, 2004 at AWAC?" Juror Questions 10, 15.

happened or whether he thought Hoeper was a threat. And while he would later claim he believed Hoeper was dangerously upset, Doyle never warned Scharf of that alleged potential danger. Pet. App. 47a; Tr. 773:9-25.

When Hoeper called AWAC to say that he was not going to make that flight, Doyle re-booked him on a later flight on United Airlines. Pet. App. 48a. Although he easily could have done so, Doyle never expressed any concerns to United about Hoeper's boarding their flight or asked United to check to see if Hoeper was carrying his weapon. *Id.*; Tr. 777:17-21. And again, although focused specifically on the fact that Hoeper would soon board an airplane, Doyle did not report any concerns to the TSA.

Nonetheless, at some point later in the afternoon Doyle met with AWAC management officials, including Orozco, to discuss Hoeper's failed test.[4] Orozco testified that the meeting lasted only 15 to 20 minutes because they had other business to deal with. Pet. App. 49a; Ex. 1101, 171:8-13. One of the participants, Bob Frisch, later testified that he could not "recall anything specific being said during those meetings" regarding why Hoeper would pose "a security threat." Tr. Ex. 1107, 125:5-24; *see also* Pet. App. 49a, 50a-51a. Indeed, none of the management officials in the meeting believed that Hoeper was

---

[4] Before the meeting, Orozco had "taken a very brief telephone call from Hoeoper and [a union] attorney," telling Hoeper that "the training was over and Hoeper was to fly back to Denver." Pet. App. 48a. However, Orozco "made no other inquiries." *Id*.

unstable. Pet. App. 81a; Tr. 2611:11-15; Tr. Ex. 1101, 179:23-180:2; Tr. Ex. 1107, 143:20-144:1. And although AWAC claims the participants discussed the whereabouts of Hoeper's weapon, Orozco later testified that this was "more of a question than a concern." Pet. App. 49a. After a few minutes of discussion, however, AWAC decided not to conduct any further investigation but instead to call the TSA. Doyle placed the call around 3 p.m., approximately three hours after he spoke to Schuerman. Pet. App. 51a; Tr. 844:17-19.

4. **The Call To The TSA.** The decision to call the TSA without having any real basis to suspect that Hoeper was a threat was bad enough. At trial, Quentin Johnson, former head of Federal Aviation Administration security and former TSA Federal Security Director, who was involved in founding the TSA, testified that AWAC never should have made the call to the TSA because Hoeper was not in any way "suspicious." Tr. 3437:5-9, 3440:12-3443:10, 3447:3-15. Former director of security for United and Continental Airlines, Glen Winn, shared this opinion. Tr. 871:8-877:11.

But far more damaging was what Doyle actually said when he made the call. Doyle might have truthfully reported that he had received a call from another employee who said that Hoeper, an FFDO with a spotless security record, was "angry with him" over the results of a simulator test that could lead to Hoeper's termination. Instead, Doyle reported that Hoeper "was an FFDO who may be armed. He was traveling from [Dulles to Denver] later that day and we are concerned about his mental stability and the whereabouts of his firearm." Pet. App. 6a. He

further stated that an "[u]nstable pilot in [the] FFDO program was terminated today." *Id*. As the Colorado Supreme Court explained, the "overall implication of Doyle's statements is that he believed that Hoeper was so unstable that he might pose a threat to the crew and passengers of the airplane." Pet. App. 19a.

But as the jury subsequently found, Doyle's statements and this implication were manifestly false and maliciously asserted. Pet. App. 8a. Indeed, Doyle initially denied telling the TSA that he had concerns about Hoeper's mental stability, acknowledging that any such allegation would have been false. *Id*. 51a. He testified that "he can't be the judge of [Hoeper's] mental stability" and had "no ability whatsoever to assess" Hoeper's mental stability. Tr. 817:21-25, 1028:4-14; Pet. App. 6a, 18a, 51a. In fact, none of the participants at the AWAC meeting had concerns about Hoeper's mental stability. Pet. App. 51a, 81a.

Doyle also admitted he knew that if he alleged that Hoeper was mentally unstable, there was potential to cause Mr. Hoeper "undue harm." Tr. 816:5-10. Orozco likewise testified that he had not authorized Doyle to report any concerns about Hoeper's mental stability to the TSA, recognizing that such an allegation gave the impression of a "very bad situation," Tr. Ex. 1101, 180:7-14, and would likely provoke a "raised" or "more dramatic" response from the TSA, *id*., 192:10-193:10. This was not what Orozco wanted Doyle to convey to the TSA. *Id*., 178:11-19.

But the evidence at trial proved that even though no one at AWAC believed Hoeper to be mentally unstable, that is exactly what Doyle reported to the

TSA. Pet. App. 18a. To start, the TSA records reflected that AWAC reported that Hoeper was "unstable." Tr. Ex. 25, WH 51. And the TSA's dramatic response to the report was consistent with that characterization of the threat.

Moreover, Doyle was confronted at trial with his own notes of the call, taken at Orozco's direction, which stated:

> William Hoeper, a disgruntled company employee (an FFDO who may be armed) was traveling from IAD-DEN later that day, and we were concerned about the whereabouts of his firearm, and his mental stability at that time.

Tr. Ex. 11.

Likewise, Doyle's implication that there was a real prospect that Doyle might be armed was false. As the Colorado Supreme Court noted, "Doyle's statement that Hoeper may have been armed implies the assertion of some fact which led him to conclude that Hoeper was armed." Pet. App. 19a. But, again, Doyle possessed no such facts and had no basis to believe that there was any real chance that Hoeper actually had brought his weapon with him from Denver. *Id.* 18a-19a.[5] "None of the four men" in the AWAC meeting "knew of Hoeper having brought his weapon to the earlier trainings." *Id.* 49a-50a. Moreover, Doyle "knew that Hoeper would have

---

[5] It is uncontested that, in fact, Hoeper had not brought his weapon with him. The TSA retrieved the gun from a locked box in Hoeper's Denver home. Tr. 1405:5-1407:5.

violated FFDO rules by carrying the firearm as a passenger" when he flew to Virginia in the first place. *Id*. 5a. And AWAC admitted it had no reason to believe that Hoeper had ever violated these protocols, or was "sneaking" his weapon on board the United flight on the day of the incident. Tr. Ex. 1107, 81:22-82:4, 116:18-22; *see also* Pet. App. 19a. Accordingly, Orozco testified that "he would not have wanted Doyle to tell TSA that Hoeper 'may be armed.'" *Id*. 49a.[6]

5. **The Aftermath And Coverup.**

After making his call to the TSA, Doyle spent the entire evening on the phone talking with the TSA, the FBI, and the CIA discussing how to keep what happened to Hoeper from ever happening again.[7]

Then, in order to justify his call, Doyle began creating notes. In addition to documenting what had happened that day, Doyle fabricated an incident in which he alleged Hoeper had engaged in similar threatening conduct two months earlier. *See* Pet. App. 6a-7a. Specifically, Doyle wrote that Hoeper

---

[6] Doyle's statement that Hoeper was "terminated today," Pet. App. 111a, was not true either. Pet. App. 18a, 77a. While failing the simulator test could have led to his termination, and eventually did, as of the time Doyle made the call to TSA, AWAC had not yet decided whether Hoeper would be terminated. Tr. Ex. 1101, 157:10-22. Hoeper did not realize he would be terminated until after his arrest, when he was told by a TSA agent that AWAC had reported (falsely) that he had been terminated. Tr. 1630:21-1631:6.

[7] At trial, Doyle initially denied that this occurred, but eventually conceded it was true. Tr. 1016:6-1017:16.

had lost his temper during his second failed simulator test on October 14, and that Doyle "ended the meeting 'for fear of [his] own physical harm.'" *Id.* 7a; *see also* Tr. Ex. 11, AWAC 0128-0129. At some later time, Doyle altered his notes to add that he also feared for "the safety of others at the [testing facility]." Pet. App. 7a; *see also id.* 20a; Tr. Ex. 12, AWAC 0211.

On cross examination at trial, however, Doyle admitted that despite this purported fear for his own safety and the safety of others, he never documented the incident in official paperwork or took any other appropriate action. *See* Pet. App. 7a, 20a, 52a, 83a-84a. Rather, Doyle continued Hoeper's training, *id.* 83a, even though Doyle's supervisor, AWAC Chief Pilot Scott Orozco, admitted that under AWAC policies, such an incident should be documented and would have disqualified Hoeper from further training as a pilot, Tr. Ex. 1101, 102:7-9, 100:25-101:10, 142:6-144:7.[8] Moreover, contrary to his alleged fears and Hoeper's purported "threats," Doyle admitted that after the October 14 session he gave Hoeper a ride from the training session and later joined him for drinks at a restaurant near the airport. Pet. App. 4a, 83a-84a.

---

[8] In addition, although Doyle claimed that he reported the incident to Orozco, Orozco denied ever being told that "that Hoeper had left Doyle fearful for his safety or that of others." Pet. App. 52a; *see also* Tr. Ex. 1101, 219:25-220:7. Orozco testified that if Doyle had told him about these events, he would have taken action, including possibly calling law enforcement. *Id.*, 113:11-114:10.

Doyle also admitted that he testified falsely about this event at an earlier arbitration over Hoeper's termination. Pet. App. 53a; Tr. 829:21-837:2.

II. Procedural History

A. Trial Court Proceedings

Hoeper sued AWAC and Doyle for defamation in Colorado state court.[9]

AWAC raised a defense under Section 44941 of the Air Traffic Security Act (ATSA), 49 U.S.C. § 44941, which provides that an air carrier and its employees "shall not be civilly liable" for making a "voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft of passenger safety, or terrorism." *Id*. § 44941(a). The defense does not apply, however, with respect to "any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading" or "any disclosure made with reckless disregard as to the truth or falsity of that disclosure." *Id*. § 44941(b).

As the courts below recognized, the exceptions to ATSA protection closely mirror the standard for

---

[9] Doyle's supervisor, Scott Orozco, and the simulator operator, Mark Schuerman, were also initially named as defendants. However, Orozco died while the case was pending and the remaining individual defendants were dismissed when AWAC accepted liability for any misconduct by Doyle and Schuerman. Tr. Supp. Vol. I, 47:10-48:10. The suit also involved claims for false arrest and outrageous conduct, but only the defamation claim is at issue here.

defamation liability, a question ordinarily determined by a jury in the first instance. Pet. App. 16a-17a. The trial court accordingly submitted both the defamation liability and ATSA defense questions to the jury. Pet. App. 7a.

The jury returned a verdict in Hoeper's favor, finding in a special verdict form that AWAC, through Doyle, made two defamatory statements:

- [Hoeper] was an FFDO who may be armed. He was traveling from IAD-DEN later that day and we were concerned about his mental stability and the whereabouts of his firearm.
- Unstable pilot in FFDO program was terminated today.

Pet. App. 6a. The jury further found one or more of these statements was made with actual malice. *Id*. 8a.

AWAC moved for judgment NOV. As relevant here, AWAC argued that "the Court must conduct an independent review of the record in which [the Court would] find there was no 'actual malice.'" Pet. App. 106a. "Having now presided over an entire trial in this case," the court found that Hoeper "satisfied his burden" of showing "by clear and convincing evidence that the defendant realized his statement was false or that he subjectively entertained serious doubt as to the truth of his statement." *Id.* 108a. AWAC did not separately challenge the sufficiency of the evidence to prove that Doyle's statements were false or ask the trial court to conduct an independent review of the record on that question. *Id*. 106a-109a; AWAC Motion for Judgment NOV § II. Nonetheless,

the court said nothing to suggest that it would have found, if asked, that the statements were malicious, but true.

B. Appeal To The Colorado Court Of Appeals

The Colorado Court of Appeals affirmed. Pet. App. 46a.

1. As relevant here, AWAC made three arguments on appeal, none of which asserted that the central defamatory statements – *i.e.*, that Doyle was mentally unstable and a risk to airline security – were actually true.

First, AWAC argued that the trial court should have entered judgment in AWAC's favor on its ATSA defense as a matter of law, not because Hoeper actually was mentally unstable and a threat, but because at the time of Doyle's call "there was no evidence demonstrative that AWAC knew that the statements to the TSA were false" or "recklessly disregarded the truth." AWAC Colo. Ct. App. Br. 23. *See also id*. (acknowledging that AWAC "could not confirm whether Hoeper was a threat").

Second, AWAC argued that Doyle's statements were not defamatory. With respect to the statements regarding Hoeper's mental stability, AWAC did not contest that the statements were false. Instead, it argued that they were protected statements of opinion. *Id*. 27-29. Regarding the statements implying that Hoeper was a genuine threat and might well be armed, AWAC likewise argued that the statements were protected opinion, *id*. 32-33, or were "at least partly true because, at trial, it was undisputed that Hoeper was an FFDO and was

therefore authorized to carry a gun." *Id.* 29. But AWAC did not dispute that the implication of the statement – that Doyle had some additional reason to believe that Hoeper actually was armed, Pet. App. 19a – was false.

The only other statement that AWAC argued was substantially true was the assertion that Hoeper was "terminated today," which AWAC acknowledged was not actually true, but insisted was true enough because "his termination was a foregone conclusion." AWAC Colo. Ct. App. Br. 31.

Third, AWAC contested the jury's finding of actual malice, not on the grounds that the statements were true, but rather on the ground that "there was no clear and convincing evidence that AWAC had a high degree of subjective awareness of the probable falsity of its statements to TSA." *Id.* 39; *see also id*. 36-37 (distinguishing between "a jury's finding that a statement is false" and the requirement of actual malice).

2. The court of appeals rejected all of these assertions.

The court first determined that the ATSA defense was properly submitted to the jury given "the fact-dependent nature of the statutory criteria – 'suspicious transaction' and 'reckless disregard,'" Pet. App. 53a, and Colorado courts' treatments of other qualified immunity defenses under state law, *id*. 57a.

But the question was ultimately academic, because the court of appeals then proceeded to conduct a de novo review of the factual basis for the jury's denial of immunity. The court explained that the "reckless disregard" exception to ATSA immunity

"tracks the definition of 'actual malice' required for defamation actions to pass constitutional muster." Pet. App. 61a. And, the court concluded, whether actual malice was proven is a question the court "must review . . . de novo." *Id*. 63a.

Turning to that question, the court of appeals rejected AWAC's assertion that most of the defamatory statements were protected opinions, explaining that Doyle's assertions "conveyed the factual connotation that Hoeper was a threat to aircraft or passenger safety, which was provably false." Pet. App. 70a. It likewise rejected AWAC's claim that the statement that Hoeper "may be armed" was partially true, explaining that "partial truth does not defeat liability for" the overall "negative factual connotation" that Hoeper "was so unstable as to threaten the safety of the aircraft he was boarding." *Id*. 78a.

Finally, "on de novo review," the court "conclude[d] that clear and convincing evidence shows Doyle acted with actual malice in communicating to TSA." Pet. App. 85a. The central "provable negative connotation" in Doyle's statement to the TSA was that "Hoeper posed a threat to airline passenger safety." *Id*. 81a. Importantly, AWAC did not claim that this connotation was actually true. As it had before the trial court, AWAC simply argued that Doyle did not act with knowledge of falsity or reckless disregard for the truth. AWAC Colo. Ct. App. Br. § IV(C). But the court of appeals found "clear and convincing evidence" that "Doyle entertained significant doubt as to the accuracy of his statement about Hoeper's mental stability." *Id*. 81a-82a. In fact, Doyle himself admitted that "he was

incapable of judging Hoeper's mental stability." *Id*. 81a. "And whether Hoeper posed . . . a threat hinged on his mental stability." *Id*. In addition, the court found, any such allegation was "inherently improbable," given Hoeper's long and unblemished service record. *Id*. at 82a. Moreover, the allegation was inconsistent with Doyle's failure to immediately act on the alleged threat. *Id*. at 83a. And Doyle's testimony was suspect, given his "attempt[s] to bolster the ground for the threat connotation of the TSA call by exaggerating the events" of the October 14 training incident, and his false testimony denying that he told the TSA that he was concerned about Hoper's mental stability. *Id*. 84a.

C. Review In The Colorado Supreme Court

AWAC petitioned for review in the Colorado Supreme Court on three questions: (1) "Whether the court of appeals erred in finding that the trial court properly submitted the issue of AWAC's qualified immunity under the [ATSA] to the jury based on Colorado law where federal courts generally require resolution of qualified immunity as a matter of law early in the proceedings"; (2) "Whether the court of appeals properly found that a *de novo* review of the record demonstrated clear and convincing evidence of actual malice . . . ."; and (3) "Whether the court of appeals properly concluded that AWAC's statements to TSA concerning Hoeper connoted that 'Hoeper was a threat to aircraft or passenger safety. . . .'" AWAC Colo. S. Ct. Pet. 1. The Colorado Supreme Court granted the petition but recast the third question, consistent with the actual arguments in AWAC's petition, as "Whether the court of appeals erred in finding that Air Wisconsin's statements were

not substantially true and not non-actionable statements of opinion." Pet. App. 8a-9a n.4.

1. As to the first question, the court agreed with AWAC that as a matter of federal law, "the trial court must decide immunity under the ATSA as a matter of law before trial." Pet. App. 15a. But the court held that the trial court's contrary ruling was harmless because a de novo review of the evidence revealed that AWAC was "not entitled to immunity under the ATSA." *Id*.; *see also id*. 16a n.5 (noting that in "making this determination, we give no weight to the jury's finding of any fact").

2. Like the court of appeals, the Colorado Supreme Court observed that the exceptions to ATSA's defense mirror the First Amendment actual malice standard for defamation cases. Pet. App. 17a. It therefore rejected both AWAC's ATSA defense and its challenge to the jury's actual malice finding "[f]or the same reasons." Pet. App. 23a. Specifically, the court concluded that the record demonstrated that Doyle made his statements regarding Hoeper's mental instability "with a high degree of awareness of its probable falsity," that Doyle "knew it to be false" when he told the TSA Hoeper had been terminated that day, and that Doyle acted with "reckless disregard" for the truth when he said that "Hoeper may have been armed." *Id*. 18a.

More importantly, the Court recognized that the specific components of the statement were less important than their "overall implication" that Doyle "believed that Hoeper was so unstable that he might pose a threat to the crew and passengers of the airplane on which we was scheduled to fly back to Denver." *Id*. 19a. And on its independent review of

the record, the Colorado Supreme Court determined that this assertion was *false*. *Id*. 20a ("[O]ur review of the record evidence leads us to conclude that Doyle did not believe Hoeper to be so unstable that he *might* pose such a threat.") (emphasis in original); *id*. 19a ("We find, based on our review of the record evidence, that Doyle's actions belie the claim that he believed Hoeper to be mentally unstable."). The court reached that conclusion in part because it determined that Doyle's testimony simply was not credible. *Id*. 20a.

3. Finally, the Colorado Supreme Court rejected AWAC's arguments that its statements were protected opinions, Pet. App. 24a-26a, and that certain statements were "substantially true," *id*. at 26a-27a.

As it had in the court of appeals, the only statements AWAC argued were substantially true were the assertions that Hoeper had been terminated, AWAC Colo. S. Ct. Br. 50-51, and that he "may be armed," *id*. at 51-52. But the Colorado Supreme Court recognized that these narrow objections overlooked the "crux of the defamatory statements," which "was that Hoeper was so mentally unstable that he might constitute a threat to aircraft and passenger safety." Pet. App. 26a-27a. And while AWAC may have disagreed with this interpretation of the connotation of Doyle's statement, it did not contest the connotation was untrue. Furthermore, the court held, there was substantial evidence to support the jury's conclusion that Doyle's statements were false. *Id*.

REASONS FOR DENYING THE WRIT

Petitioner's sole contention in this Court is that the lower courts should have decided de novo whether Doyle's statements were true, instead of confining their independent review of the record to determining whether the statements were made with actual malice. But AWAC does not even *argue* that the central defamatory statement in this case – Doyle's implication that AWAC "believed that Hoeper was so unstable that he might pose a threat to the crew and passengers of the airplane," Pet. App. 19a – is true. AWAC's real quarrel with the courts below is not the standard of review they applied, but with the courts' understanding of the connotation of Doyle's statements. But they do not ask this Court to review that fact-bound question, which is obviously unworthy of this Court's attention. And in the absence of that review, the legal questions posed by the petition are entirely academic.

Nor would those legal questions warrant review in any event. AWAC argues that both the ATSA and the First Amendment require a court to decide for itself whether a defamatory statement is false. But it alleges no circuit conflict regarding the standards under the ATSA. And this Court has repeatedly denied petitions seeking review of the First Amendment question. *See, e.g.*, *Santa Barbara News-Press v. Ross*, No. 03-1338; *Levan v. Capital Cities/ABC, Inc.*, No. 99-1085; *Peeler v. Spartan Radiocasting, Inc.*, No. 96-1629; *Coody v. Thomson Newspaper Publishing, Inc.*, No. 95-364.

There is no reason for a different disposition here. Accepting AWAC's rule would make no practical difference in the real world. While it may

be theoretically possible that a court could find that a statement was made with reckless disregard for the truth, but nonetheless was true, AWAC makes no showing that this situation ever actually arises. And it certainly did not arise in this case. The petition should be denied.

I. AWAC's ATSA Defense Argument Does Not Warrant Review.

AWAC first asks the Court to decide whether "a court can deny ATSA immunity without deciding whether the airline's report was true." Pet. i.

1. Petitioner does not assert a circuit conflict on this question, and there is none. In fact, AWAC does not identify any other case in which the question has arisen in the history of the statute. *See also* Pet. App. 55a-56a ("The parties have not cited any case, nor have we found one, reaching the merits of immunity under section 44941."). Respondent has found only five other cases (all trial courts) in which the provision has even been cited.

Indeed, even the Colorado Supreme Court's decision in this case did not directly address the question presented, undoubtedly because AWAC did not clearly raise it. The only ATSA question AWAC presented in its petition for certiorari to the Colorado Supreme Court was whether the overall question of ATSA immunity was for the judge as a matter of federal law, or for the jury as a matter of Colorado law. *See* Pet. App. 8a-9a n.4. It did not ask the court to decide what the standard for immunity was, much less whether immunity would apply to a reckless, but true, report. To the contrary, AWAC argued only that "the trial court should have determined, as a

matter of law, whether Hoeper presented clear and convincing evidence that AWAC made its disclosure with reckless disregard to its truth or falsity." AWAC Colo. S. Ct. Br. 24.

Accordingly, although the Colorado Supreme Court stated in a footnote that "we need not, and therefore do not, decide whether the statements were true or false," Pet. App. 17a n.6, there is little reason to read that statement as foreclosing future consideration of whether immunity would apply to a reckless but truthful statement in a case in which the issue is actually raised and mattered to the outcome.

2. Whether such a case will ever arise is uncertain. AWAC itself suggests that its ATSA immunity question has no real significance because, it argues, the First Amendment itself requires independent judicial review of falsity in any case subject to the ATSA provision. Pet. 22-25.

Moreover, the question would only arise and make a difference in the most peculiar of circumstances, in which: (1) a jury finds a statement false and made with actual malice; (2) a court, conducting independent review, agrees that the statement was made with reckless disregard for the truth; (3) the court finds substantial evidence to support the jury's finding of falsity, *but* (4) the court would have found the reckless statement actually true on an independent review of the evidence. If there has ever been such a case, petitioner has not identified it.

3. Certainly, this case does not fall into that gap. The Colorado Supreme Court effectively undertook independent review of falsity. Although the Court

had stated, in the ATSA portion of the opinion, that it was not required to decide whether the statements were true, Pet. App. 17a n.6, it conducted an independent review of the evidence of actual malice, *id*. 21a. And the reasons it gave for affirming the finding of actual malice preclude any possibility that the court viewed Doyle's statements as reckless but true.

Most significantly, the court found that the "overall implication of Doyle's statements is that he believed that Hoeper was so unstable that he might pose a threat to the crew and passengers of the airplane. . . ." Pet. App. 19a. That implication, the court found, was manifestly false. "[O]ur review of the record evidence" the court explained, "leads us to conclude that Doyle did not believe Hoeper to be so unstable that he *might* pose such a threat." *Id*. 20a; *see also id*. 19a (concluding, "based on our review of the record evidence, that Doyle's actions belie the claim that he believed Hoeper to be mentally unstable"). There is nothing in the opinion to suggest that the court reached that conclusion on the basis of anything other than its independent review of the evidence.[10]

---

[10] AWAC's lack of any reason to believe that Hoeper posed a threat to air security independently precluded its ATSA defense. *See* 49 U.S.C. § 44941(a) (providing defense only for disclosure of a "suspicious transaction relevant to a possible violation of law"); *cf.* Pet. App. 16a (Colorado Supreme Court "[a]ssuming, without deciding that Air Wisconsin's statements related to a 'suspicious transaction'").

Indeed, AWAC does not even argue that the implication that Hoeper posed a genuine threat was true. It complains, instead, that the lower courts got the implication wrong. But it does not ask this Court to review that factbound question, which is entirely unrelated to the legal questions it presents. As a result, even if this Court granted certiorari and adopted AWAC's interpretation of the ATSA defense, that would not remotely change the outcome in this case.

Moreover, even if it were appropriate to disregard the overall connotation of Doyle's accusation and dissect his statement phrase-by-phrase, that would not change the result either. In conducting its independent actual malice review, the Colorado Supreme Court found without hesitation that Doyle's statement that AWAC was concerned about Hoeper's mental stability was simply false. Pet. App. 19a, 20a. And, again, AWAC does not contend otherwise – Doyle himself admitted that he had no basis to conclude that Hoeper was unstable, and in fact tried to deny he ever made the allegation. Pet. App. 18a, 51a. Moreover, the other AWAC officials involved in the decision to call the TSA all testified that they did not believe Hoeper was unstable either. Pet. App. 81a.[11]

---

[11] The Colorado Supreme Court suggested that it might have been permissible for Doyle to state that Hoeper had been acting "irrationally." Pet. App. 21a. Petitioner says that the differences between that assertion and Doyle's actual statements that Hoeper was "[u]nstable" and that AWAC was "concerned about his mental stability," *id*. 6a, are "distinctions without a difference," Pet. 28. That argument fails for two

The court likewise independently found that the implications of Doyle's statement that Hoeper "may be armed," were false. The court explained that the "may be armed" statement, while literally true (as it could be of anyone who owns a gun), "implies the assertion of some fact which led him to conclude that Hoeper was armed." Pet. App. 19a. Again, AWAC does not argue that this implication was true, and the court below found that it was not. "[T]he only fact in Doyle's possession was Hoeper's status as an FFDO pilot and there is no indication in the record that Doyle believed an FFDO pilot would be more likely than any other passenger to sneak a firearm through security." Pet. App. 19a.

In fact, the only parts of Doyle's statement that AWAC even argued below were "substantially true" were the assertions that Hoeper "may be armed" (which, as shown above, was false in its implications) and that Hoeper had been terminated that day (which it admitted was not actually true, and which played only a minor role in the case). *See* AWAC Colo. S. Ct. Br. 50-52.

---

independent reasons. First, fairly viewed, the evidence does not show that Hoeper was acting irrationally. *See supra* 5-9. Second, even Scott Orozco – the source of the assertion that Hoeper was acting "irrationally," *see* Pet. App. 51a – thought there was a critical difference between the two assertions. He insisted that despite calling Hoeper's conduct in the simulator "irrational," he "did not consider Hoeper mentally unstable" and therefore "did not intend for Doyle to tell TSA anything about Hoeper's mental stability." *Id*.

Accordingly, this case presents no vehicle to decide whether ATSA protects reckless but true statements, or whether falsity should be decided by a judge or a jury.[12]

II. The First Amendment Question Does Not Warrant Review.

For largely the same reasons, AWAC's second question presented – seeking the same independent judicial review of falsity under the First Amendment, rather than ATSA – also does not warrant review in this case. Indeed, as noted, this Court has repeatedly denied certiorari on that question and there is no reason for a different result here.

---

[12] The premise of the first question presented – that all factual questions underlying ATSA immunity should be decided de novo by a court – is also incorrect. The Colorado Supreme Court's statement to that effect, Pet. App. 15a, is premised on the belief that because that qualified immunity constitutes an "immunity from suit," factual questions underlying qualified immunity are for the court, rather than a jury, *id.* 13a-15a. That assumption, however, is mistaken. In qualified immunity cases, courts decide de novo only the "purely legal" question of "whether the facts alleged . . . support a claim of violation of clearly established law." *Mitchell v. Forsyth*, 472 U.S. 511, 528 n.9 (1985). When the facts are in dispute, the court does not resolve them, but asks only whether the defendant is entitled to immunity under the facts as viewed in the light most favorable to the plaintiff. *Scott v. Harris*, 550 U.S. 372, 378 (2007). If there are material disputes of fact, they must be resolved at trial. *See Johnson v. Jones*, 515 U.S. 304, 315 (1995) (trial court's determination that factual disputes preclude summary judgment on qualified immunity not appealable prior to trial); *see also Ortiz v. Jordan*, 131 S. Ct. 884, 889 (2011) (denial of qualified immunity summary judgment motion not reviewable after trial).

Again, AWAC did not adequately present this question below. It never asked the trial court to decide independently whether Doyle's statements were false. And its principal First Amendment complaint on appeal to the Colorado Supreme Court was that "the court of appeals did not properly conduct a de novo review because the record lacks clear and convincing evidence of *actual malice*," AWAC Colo. S. Ct. Br. 25 (capitalization altered, emphasis added), not that the court of appeals failed to conduct a de novo review of the evidence of falsity. Moreover, petitioner has never argued that the crux of Doyle's statements – implying that Hoeper posed a genuine threat to security – was true. Indeed, the only thing AWAC argued on appeal was "substantially true," were the parts of Doyle's statements asserting that Hoeper "may be armed" and was "terminated today." *Id*. 50-52.

Likewise, the answer to the First Amendment question again would make no difference to the outcome in this case. The courts below effectively engaged in independent review of the truth of Doyle's statements and made clear that they viewed the statements as false. The only substantial basis for AWAC's disagreement with those conclusions is its dispute with the courts' interpretation of the connotations of Doyle's words, which the courts arrived at without any deference to the jury verdict.

And, again, there is no reason to believe that the question has any practical significance. The standard of review of falsity would affect the outcome of a case only in the unlikely event that a court affirmed a jury's finding of falsity, independently found that the defendant acted with reckless

disregard for the truth, but nonetheless would have found the statement true if deciding that questioned de novo. The fact that courts have occasionally opined on the proper standard of review over the past several decades, Pet. 30-32, does not show that the standard actually mattered to the outcome of any particular case. Indeed, AWAC does not identify a single case in which it claims the standard of review for falsity was outcome determinative.

AWAC's claim of a circuit conflict is also substantially overblown. Many of the cases petitioner cites are simply not on point. *See Prozeralik v. Capital Cities Commc'ns, Inc.*, 626 N.E. 2d 34, 37-38 (N.Y. 1993) (holding only that judge may not instruct jury that statement is false as a matter of law, but taking no position on standard of review of jury finding of falsity); *Locricchio v. Evening News Ass'n*, 476 N.W.2d 112, 122-25 (Mich. 1991), *cert. denied*, 503 U.S. 907 (1992) (holding that court of appeals erred in applying law-of-the-case to decline to review defamation verdict for sufficient evidence); *McAvoy v. Shufrin*, 518 N.E. 2d 513, 517 & n.4 (Mass. 1988) (holding only that First Amendment independent review does not permit court to disregard jury's credibility determinations); *Mahoney v. Adirondack Publ'g Co.*, 517 N.E. 2d 1365, 1368 (N.Y. 1987) (upholding jury finding of falsity in light of "strong evidence" that defamatory statements were false, but not discussing standard of review).[13]

---

[13] AWAC is also wrong in stating that the Seventh and Ninth Circuits have recognized a conflict on the standard of review for falsity. Pet. 32. In *Brown & Williamson Tobacco*

Many of the remaining cases state or suggest a standard of review, but contain no significant analysis and appear to be cases in which the standard of review was not contested and likely made no difference to the outcome. *See Celle v. Filipino Reporter Enters.*, 209 F.3d 163, 182 (2d Cir. 2000); *Veilleux v. Nat'l Broad. Co.*, 206 F.3d 92, 108 (1st Cir. 2000); *Lyons v. R.I. Pub. Employees Council 94*, 559 A.2d 130, 135 (R.I. 1989), *cert. denied*, 493 U.S. 892 (1989); *Liberty Lobby, Inc. v. Dow Jones & Co., Inc.*, 838 F.2d 1287, 1293 (D.C. Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Deaver v. Hinel*, 391 N.W. 2d 128, 132 (Neb. 1986).

Of the cases that are on point and contain any meaningful analysis, all conclude that falsity is a jury question. *See Kentucky Kingdom Amusement Co. v. Belo Kentucky, Inc.*, 179 S.W.3d 785, 789-90 (Ky. 2005); *Peeler v. Spartan Radiocasting, Inc.*, 478 S.E. 2d 282, 284 (S.C. 1997), *cert. denied*, 520 U.S. 1275 (1997); *Lundell Mfg. Co. v. Am. Broad. Cos.,* 98 F.3d 351, 355-59 (8th Cir. 1996), *cert. denied*, 520 U.S.

Corp. v. Jacobson, 827 F.2d 1119, 1128 (7th Cir. 1987), the court recognized some disagreement "about what independent appellate review means," not over whether that standard of review applies to findings of falsity. The footnote to which AWAC cites in *Newton v. National Broadcasting Co., Inc.*, 930 F.2d 662, 669 n.7 (9th Cir. 1990), says that that "standard of review for the falsity element is unresolved," but then mistakenly treats *Tavoulares v. Piro*, 817 F.2d 762 (D.C. Cir. 1987) (en banc), as making up one side of the alleged circuit split. But even AWAC does not claim that *Tavoulares* is on point, and it is not – the court there only discussed the standard for reviewing the jury's distinct determination that a false statement is *defamatory*. *Id*. at 779-80.

1186 (1997); *Connaughton v. Harte Hanks Commc'ns, Inc.*, 842 F.2d 825, 841-42 (6th Cir. 1988), *aff'd on other grounds*, 491 U.S. 657 (1989); *Holbrook v. Casazza*, 528 A.2d 774, 778-79 (Conn. 1987), *cert. denied*, 484 U.S. 1006 (1988). These courts point out that this Court in *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485 (1984), expressly noted that while the First Amendment requires independent review of a finding of actual malice, there are other "findings of fact" that are "irrelevant to the constitutional standard" and therefore subject to ordinary rules for appellate review of factfinding. *Id.* at 514 n.31. Moreover, these decisions observe, in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991), the Court reviewed the sufficiency of the evidence to support a finding of falsity not by deciding that question itself de novo, but rather by asking whether "a trier of fact in this case could find" the statements false, 501 U.S. at 513, and whether the evidence "would support a jury determination under a clear and convincing standard that [the defendant] deliberately or recklessly" created a false impression, *id.* at 521; *see also id.* (finding that evidence "creat[ed] an issue of fact for a jury as to falsity").

Finally, when the standard of review of falsity has arisen, it has almost always been in the context of defamation litigation involving media defendants. If the question required this Court's intervention, the Court should grant certiorari in a case arising in that more typical setting.

III. The Decision Below Does Not Pose A Risk To National Security.

AWAC's assertion that the "decision below has profound implications for the Nation's aviation security and national defense," Pet. 35, is baseless. As the United States explained in its amicus brief below, in ATSA Congress "balance[d] the need for TSA to receive legitimate threat information against the interest in not being sidetracked by false information and in protecting individuals from defamatory reports." U.S. Br. 3. Subjecting defendants to liability for knowingly false or reckless reports thus *implements* rather than interferes with national security policy. As the Government explained, the TSA "need[s] to receive prompt and *accurate* reporting of threats," and "plainly has no desire to receive knowingly false information." *Id.* 2-3 (emphasis added). The facts of this case illustrate the harm to aviation security when law enforcement resources are needlessly diverted by knowingly or recklessly false claims of security threats.

AWAC points out that the United States stated below that "Air Wisconsin might very well have been subject to regulatory action for failing to report any sincerely-held concerns regarding plaintiff." Pet. 17 n.6 (quoting U.S. Br. 11-12). But AWAC neglects to disclose that in the next sentence, the Government made clear that "the carrier was obligated to report its concerns to TSA" only if it "received information suggesting that plaintiff . . . was likely to engage in violent behavior during his flight," and should *not* submit a report "'with actual knowledge that the disclosure was false, inaccurate, or misleading'" or made with "'reckless disregard as to the truth or

falsity of that disclosure.'" U.S. Br. 12 (quoting 49 U.S.C. § 44941(b)). Given the jury's and courts' findings that AWAC had no basis to believe that Hoeper posed any risk of violent behavior, and that Doyle made his statements with at least reckless disregard for their truth, the Government's brief makes clear that AWAC had no regulatory obligation to submit its false report. *See also* Tr. 3447: 3-21 (expert testimony of Quentin Johnson, former TSA Federal Security Director, to same effect).

Indeed, it is conspicuous that although the United States took the time to file a brief in this case, it expressly declined to support AWAC's bid for ATSA immunity. *See* U.S. Br. 8 (stating that "the United States takes no position on this Court's ultimate resolution of the" immunity question). It asked only that if the Colorado Supreme Court upheld the judgment of liability "it should – as the court of appeals did – make clear that immunity has been denied to defendant Air Wisconsin because the evidence in the record establishes that the carrier made defamatory statements knowing they were false, or so recklessly as to amount to a willful disregard for the truth of the statements." U.S. Br. 3-4 (citation omitted). That is exactly what the court did. *See* Pet. App. 21a.

In the end, providing unrestricted immunity for even bogus reports to the TSA intended to inflict harm on innocent parties to settle personal vendettas does nothing to further national security. If AWAC disagrees, its recourse lies with Congress, not this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Scott A. McGath
Counsel of Record
Jason P. Rietz
OVERTURF MCGATH
HULL & DOHERTY, P.C.
625 E. 16th Ave.
Suite 100
Denver, CO 80203
(303) 860-2848
sam@omhdlaw.com

November 14, 2012