

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAIMLERCHRYSLER CORP.	:	
Plaintiff	:	
	:	
v.	:	
	:	
WILLIAM ASKINAZI, BRIAN LIPSCOMB,	:	
and GREITZER & LOCKS	:	
Defendants	:	CIVIL ACTION
	:	
GREITZER & LOCKS	:	NO. 99-5581
Counterclaim Plaintiff	:	
	:	
v.	:	
	:	
DAIMLERCHRYSLER CORP. and	:	
LEWIS GOLDFARB	:	
Counterclaim Defendants	:	

MEMORANDUM AND ORDER

YOHN, J. July , 2000

Plaintiff DaimlerChrysler Corp. ["DaimlerChrysler"] filed a claim for wrongful use of civil proceedings under 42 Pa. Cons. Stat. § 8351 against defendants William Askinazi and Greitzer & Locks ["lawyers"], as well as defendant Brian Lipscomb ["class representative"]. DaimlerChrysler's suit stems from a class action in which DaimlerChrysler, Ford Motor Co., General Motors Corp., and Saturn Corp. ["class defendants"] were named as defendants. This class action ["*Lipscomb*"] was filed by the lawyers on behalf of the class representative and all others similarly situated. When it filed the wrongful use of civil proceedings complaint, DaimlerChrysler and its Associate General Counsel, Lewis Goldfarb, made certain statements to the press. In its answer to DaimlerChrysler's wrongful use of civil proceedings complaint,

Greitzer & Locks asserts counterclaims against DaimlerChrysler and Goldfarb [“counterclaim defendants”] for defamation and for tortious interference with prospective contractual relations. Pending before the court are the counterclaim defendants’ motions to dismiss for failure to state a claim on which relief can be granted (Doc. Nos. 23, 24). Because the counterclaim defendants have not made it “clear that no relief could be granted under any set of facts that could be proved consistent with the allegations” of Greitzer & Locks’s counterclaims, the court will deny the motions to dismiss. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

I. Background¹

DaimlerChrysler filed its wrongful use of civil proceedings complaint on November 10, 1999. *See* Compl. (Doc. No. 1). On the same day, DaimlerChrysler issued a press release titled “DaimlerChrysler Corporation Turns the Tables on Class Action Lawyers,” which dealt with its filing of the wrongful use complaint. *See* Answer & Am. Countercls. of Def. & Countercl. Pl. Greitzer & Locks (Doc. No. 20) [“Countercls.”] ¶ 41, Ex. A. The press release quoted numerous statements made by Goldfarb. *See id.* Ex. A. Several newspapers republished the contents of the press release or used it as a source for articles on DaimlerChrysler’s actions. *See id.* ¶ 43, Ex. B. Additionally, Goldfarb made statements concerning DaimlerChrysler’s filing of the wrongful use complaint that were reported in a November 11, 1999, article in the *Wall Street Journal* and an article in the January 2000 issue of the *American Lawyer*. *See id.* ¶¶ 44-46, Exs. C, D.

¹This discussion assumes familiarity with the allegations contained in DaimlerChrysler’s wrongful use of civil proceedings complaint (Doc. No. 1).

The press release stated that the wrongful use suit “was needed to recover the costs of defending this frivolous class action [*Lipscomb*] and to deter abuses by law firms that file unwarranted and baseless cases.” *Id.* Ex. A; *see id.* ¶¶ 42, 64, 88. Additionally, the following statements by Goldfarb were printed in the press release:

“For too long, trial lawyers have been exploiting class actions, turning these lawsuits into a form of legalized blackmail They launch frivolous cases because they believe that just the threat of massive class actions filed in many states can coerce a company into settlement.”

Id. Ex. A; *see id.* ¶¶ 42, 64, 88, Ex. C.

“Class action lawsuits should be used to resolve legitimate claims and not serve as a rigged lottery for trial lawyers.”

Id. Ex. A; *see id.* ¶¶ 42, 64, 88.

“The irony of frivolous class actions is that they dupe the very people they are supposed to serve—consumers. Not only do consumers rarely see a benefit, but in the end they also pay higher product costs from the millions companies spend in defense or settlement.”

Id. Ex. A; *see id.* ¶¶ 42, 64, 88. The counterclaims allege that the purpose of these statements, the press release, and the publicity surrounding the wrongful use suit was to prevent a class representative with standing from agreeing to participate with Greitzer & Locks in a future suit against DaimlerChrysler. *See id.* ¶¶ 45, 48, Ex. C. They further state that the counterclaim defendants succeeded. *See id.* ¶¶ 56-57, 82-84.

II. Legal Standard

The counterclaim defendants have filed motions to dismiss for failure to state a claim upon which relief can be granted. *See Fed. R. Civ. P. 12(b)(6)*. The purpose of a Rule 12(b)(6)

motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, the court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant.” *Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). At this stage of the litigation, “[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon*, 467 U.S. at 73. In deciding a motion to dismiss, a court also may consider exhibits attached to the complaint and matters of public record. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

The Federal Rules of Civil Procedure do not, however, require detailed pleading of the facts on which a claim is based. Instead, all that is required is “a short and plain statement of the claim showing that the pleader is entitled to relief,” enough to ““give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”” Fed. R. Civ. P. 8(a)(2); *Rannels v. S.E. Nichols, Inc.*, 591 F.2d 242, 245 (3d Cir. 1979) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). For example, the Appendix of Forms to the Federal Rules of Civil Procedure contains a sample negligence complaint that satisfies Rule 8(a)(2) that includes only a statement of jurisdiction, a description of injuries, and an allegation that “defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.” App. of Forms to Fed. R. Civ. P., Form 9.

III. Discussion

Greitzer & Locks asserts counterclaims against DaimlerChrysler and against Goldfarb. In its amended second counterclaim against DaimlerChrysler, Greitzer & Locks alleges that DaimlerChrysler defamed it. *See* Countercls. ¶¶ 62-69. In its amended first counterclaim against DaimlerChrysler, Greitzer & Locks claims that DaimlerChrysler tortiously interfered with its prospective contractual relations. *See* Countercls. ¶¶ 50-61. Greitzer & Locks asserts the same counterclaims against Goldfarb. *See* Countercls. ¶¶ 86-93 (defamation), 75-85 (tortious interference). Because the tortious interference claims are based in part on the allegedly defamatory statements made by the counterclaim defendants, I will first address the defamation claims.

A. Defamation

In the amended second counterclaims,² Greitzer & Locks alleges that it was defamed by certain statements made by the counterclaim defendants. The Supreme Court of Pennsylvania has defined “defamatory” in the following manner: “[a] communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *MacElree v. Philadelphia Newspapers, Inc.*, 674 A.2d 1050, 1055 (Pa. 1996) (quoting *Thomas Merton Ctr. v. Rockwell*

²In its brief in opposition to the counterclaim defendants’ motions to dismiss, Greitzer & Locks claims as defamatory many statements that are not mentioned in the amended second counterclaims. *Compare* Mem. of Law of Greitzer & Locks in Opp’n to DaimlerChrysler Corp.’s and Lewis Goldfarb’s Mots. to Dismiss the Am. Countercls. pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 25) [“Greitzer & Locks Mem.”] at 4-6, 21-23 *with* Countercls. ¶¶ 62-69, 86-93. The court has not examined any statement not complained of in the amended second counterclaims.

Int'l Corp., 442 A.2d 213, 215 (Pa. 1981)). Not every statement that has the potential to damage a reputation, however, is defamatory because “the law of defamation does not extend to mere insult.” *Beverly Enters., Inc. v. Trump*, 182 F.3d 183, 187 (3d Cir. 1999). Indeed, a statement is not defamatory if it is “merely annoying or embarrassing or no more than rhetorical hyperbole or a vigorous epithet.” *Id.* (quoting *Kryeski v. Schott Glass Tech., Inc.*, 626 A.2d 595, 601 (Pa. Super. Ct. 1993)).

Even if a statement is defamatory, it may not be actionable. For example, a defamatory opinion is not actionable if the factual basis for the opinion is disclosed because “a listener may choose to accept or reject [the opinion] on the basis of an independent evaluation of the facts.” *Redco Corp. v. CBS, Inc.*, 758 F.2d 970, 972 (3d Cir. 1985). A defamatory opinion is actionable, however, “if [the] opinion is stated in a manner that implies that it draws upon unstated facts for its basis [because] the listener is unable to make an evaluation of the soundness of the opinion.” *Id.*

Greitzer & Locks claims that the counterclaim defendants defamed it by describing its attorneys in the following ways: (1) as “lawyers who abuse the legal system by filing ‘unwarranted and baseless cases’”; (2) as lawyers “who engage in ‘legalized blackmail’ by launching frivolous suits to ‘coerce’ Chrysler and others into settling claims”; (3) as lawyers who “seek to transform the legal system into a ‘rigged lottery’”; and (4) as lawyers “who dupe their clients for their own financial benefit.” Countercls. ¶¶ 64, 88.

In their brief in support of their motions, the counterclaim defendants argue that because all of the statements at issue involve matters of public concern and debate, the statements are privileged. *See* DaimlerChrysler Corp.’s and Lewis Goldfarb’s Br. in Supp. of Their Mots. to

Dismiss Countercls. pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 23) [“DaimlerChrysler Mem.”] at 14-16. In their reply brief, the counterclaim defendants clarify that they did not intend to claim a privilege but to assert that the statements involve private figures and matters of public concern. *See* DaimlerChrysler Corp.’s and Lewis Goldfarb’s Reply Br. in Supp of Their Mots. to Dismiss Countercls. pursuant to Fed. R. Civ. P. 12(b)(6) (Doc. No. 29) [“DaimlerChrysler Reply”] at 7-8. Due to First Amendment considerations, a plaintiff must show such statements to have been “made with some level of fault.” *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). The counterclaim defendants contend that Greitzer & Locks has failed to show their fault. *See* DaimlerChrysler Reply at 8 n.8. Taking the allegations in the counterclaims and the reasonable inferences drawn therefrom to be true, *see Jordan*, 20 F.3d at 1261, the court disagrees with the counterclaim defendants and concludes that Greitzer & Locks has sufficiently alleged fault on the part of the counterclaim defendants. *See, e.g.,* Countercls. ¶¶ 65-66, 89-90.

Because the counterclaim defendants do not demonstrate that “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations” of defamation in Greitzer & Locks’s counterclaims, the court will deny the counterclaim defendants’ motions to dismiss with respect to the defamation claims. *Hishon*, 467 U.S. at 73.

1. “Lawyers Who Abuse the Legal System by Filing ‘Unwarranted and Baseless Cases’”

Greitzer & Locks complains of being defamed by the counterclaim defendants’ description of it as a group of “lawyers who abuse the legal system by filing ‘unwarranted and baseless cases.’” Countercls. ¶¶ 64, 88. Presumably, Greitzer & Locks is referring to the

following statement in DaimlerChrysler's press release: "The company stated that this step [filing the wrongful use suit] was needed to recover the costs of defending this frivolous class action and to deter abuses by law firms that file unwarranted and baseless cases." *Id.* Ex. A. The court concludes that a reasonable person would understand the statement in question to express the opinion that *Lipscomb* was a frivolous case and that filing a frivolous case is an abuse.³ *See Beverly Enters.*, 182 F.3d at 191 (acknowledging that a court may consider only the reasonable meaning of an allegedly defamatory statement). Understood in this manner, this statement tends so to damage the reputation of Greitzer & Locks as to be defamatory. *See MacElree*, 674 A.2d at 1055.

The counterclaim defendants contend that the factual bases for this opinion are clearly revealed.⁴ *See* DaimlerChrysler Mem. at 17-18. The court agrees. From the press release, it is clear that DaimlerChrysler believed *Lipscomb* to be frivolous because it was filed "even though the [allegedly defective] seats had the stamp of approval of the National Highway Traffic Safety Administration, and the plaintiff had never owned a DaimlerChrysler vehicle." Countercls. Ex. A. Because the factual bases for DaimlerChrysler's opinion are clear, a reader is able to evaluate

³The word "frivolous" is functionally synonymous with "unwarranted and baseless." *Compare Webster's Third New Int'l Dictionary* 913 (1981) (defining "frivolous" as "having no basis in law or fact") *with id.* at 181, 1003 (defining "baseless" as "groundless," which means "lacking cause or reason for adequate support"); *id.* at 2514 (defining "unwarranted" as "lacking adequate official support").

⁴Because I agree with this contention, I do not reach the counterclaim defendants' other arguments about the non-actionable nature of this statement, such as the argument that this statement benefits from the fair and accurate report privilege. *See* DaimlerChrysler Mem. at 18-19. Interestingly, in their brief in support of their motions, the counterclaim defendants do not argue that any other statement at issue herein benefits from this privilege. *See* DaimlerChrysler Mem. at 19-23.

them and accept or reject the opinion based on that evaluation. Thus, the opinion is not actionable despite its defamatory nature. *See Redco*, 758 F.2d at 972.

2. Lawyers “Who Engage in ‘Legalized Blackmail’ by Launching Frivolous Suits to ‘Coerce’ Chrysler and Others into Settling Claims”

Greitzer & Locks complains of being defamed by the counterclaim defendants’ description of it as a group of lawyers “who engage in ‘legalized blackmail’ by launching frivolous suits to ‘coerce’ Chrysler and others into settling claims.” Countercls. ¶¶ 64, 88. Presumably, Greitzer & Locks is referring to the following statement made by Goldfarb in DaimlerChrysler’s press release:

“For too long, trial lawyers have been exploiting class actions, turning these lawsuits into a form of legalized blackmail,” said DaimlerChrysler Vice President and Associate General Counsel Lew Goldfarb. “They launch frivolous cases because they believe that just the threat of massive class actions filed in many states can coerce a company into settlement. It’s time they started paying for some of the costs of abusing our legal system.”

Id. Ex. A. The court concludes that a reasonable person would interpret this statement as an assertion that Greitzer & Locks filed *Lipscomb* not because it was attempting to adjudicate a legitimate claim but because it believed that, regardless of the merits of *Lipscomb*, it could frighten DaimlerChrysler into settling the case.⁵ *See Beverly Enters.*, 182 F.3d at 191.

⁵The counterclaim defendants argue that this statement cannot reasonably be interpreted to refer to Greitzer & Locks or to *Lipscomb*. *See* DaimlerChrysler Mem. at 19. I disagree. *See Redco*, 758 F.2d at 972 (stating that “a party defamed need not be specifically named, if [it is] pointed to by description or circumstances tending to identify it”).

The counterclaim defendants also argue that this statement is simple hyperbole. *See* DaimlerChrysler Mem. at 19-20. Based on my conclusion as to the meaning a reasonable person would ascribe to this statement, I cannot agree. This statement is more than just a “mere obscenit[y], insult[,], [or] other verbal abuse.” *Beverly Enters.*, 182 F.3d at 187. This statement is an assertion of objective fact and not an exaggeration. Therefore, I conclude that this

Understood in this manner, the statement accuses Greitzer & Locks, and other unnamed others, of improper professional conduct. Despite the counterclaim defendants' argument to the contrary and reliance on *Chrysler Corp. v. Carey*, No. 96-591 (E.D. Mo. Mar. 13, 1997), see DaimlerChrysler Mem. at 12-14, such a statement is defamatory and actionable under Pennsylvania law. See *Pelagatti v. Cohen*, 536 A.2d 1337, 1345 (Pa. Super Ct. 1987); see also *MacElree*, 674 A.2d at 1055 (defining "defamatory").

The counterclaim defendants argue that this statement is an opinion. See DaimlerChrysler Mem. at 19-20. The court disagrees. A reasonable person reading this statement would not understand the counterclaim defendants to be expressing an opinion. A reasonable person would understand the counterclaim defendants to be stating an objective fact about Greitzer & Locks's motivation for filing *Lipscomb*. Moreover, even if this statement were an opinion, the basis for the opinion is not disclosed. For these reasons, the court concludes that this defamatory statement is actionable.

3. Lawyers Who "Seek to Transform the Legal System into a 'Rigged Lottery'"

Greitzer & Locks complains of being defamed by the counterclaim defendants' description of it as a group of lawyers who "seek to transform the legal system into a 'rigged lottery.'" Countercls. ¶¶ 64, 88. Presumably, Greitzer & Locks is referring the following statement made by Goldfarb in DaimlerChrysler's press release: "[c]lass action lawsuits should be used to resolve legitimate claims and not serve as a rigged lottery for trial lawyers." *Id.* Ex. A.

statement is not hyperbole.

The counterclaim defendants argue that “the statement cannot be understood to literally mean that the legal system is a game of chance somehow ‘rigged’ by ‘trial lawyers.’”⁶ DaimlerChrysler Mem. at 22. The court agrees and concludes that a reasonable person would understand this statement to imply that Greitzer & Locks expected to force DaimlerChrysler into a settlement in *Lipscomb* that would be unrelated to the merits of the case. See *Beverly Enters.*, 182 F.3d at 191; see also *Webster’s Third New Int’l Dictionary* at 1954 (defining “rig” as “to fix in advance to secure or show a desired result”). Considering this implication, the meaning of this statement is equivalent to the meaning of the second statement. See *supra* Part III.A.2. Because this statement tends to damage the reputation of Greitzer & Locks in the eyes of the community, it is defamatory. See *Pelagatti*, 536 A.2d at 1345.

4. Lawyers “Who Dupe Their Clients for Their Own Financial Benefit”

Greitzer & Locks complains of being defamed by the counterclaim defendants’ description of it as a group of lawyers “who dupe their clients for their own financial benefit.” Countercls. ¶¶ 64, 88. Presumably, Greitzer & Locks is referring the following statement made by Goldfarb in DaimlerChrysler’s press release:

“The irony of frivolous class actions is that they dupe the very people they are supposed to serve—consumers. Not only do consumers rarely see a benefit, but in the end they also pay higher product costs from the millions companies spend in defense or settlement.”

⁶Again, the counterclaim defendants contend that the statement at issue is merely an opinion and cannot be understood to refer to Greitzer & Locks. See DaimlerChrysler Mem. at 22. For the same reasons I rejected these contentions with respect to the second statement, I reject them with respect to this statement. See *supra* Part III.A.2.

Id. Ex. A. The court concludes that a reasonable person would understand this statement to express the opinion that the filing of *Lipscomb* was not beneficial to consumers. *See Beverly Enters.*, 182 F.3d at 191. For the purposes of this discussion, I will assume this opinion to be defamatory.

The counterclaim defendants argue that the basis for this opinion is apparent.⁷ *See DaimlerChrysler Mem.* at 23. The court agrees. From this statement, it is clear that the opinion is based on the perception that any benefit consumers received from *Lipscomb*, or any similar class action, is outweighed by the increase in product costs that results from the class defendants passing along to consumers the costs of defending *Lipscomb*. Because the basis for this opinion is clear, a reader is able to evaluate that basis and accept or reject the opinion based on that evaluation. Thus, the opinion is not actionable despite its assumed defamatory nature. *See Redco*, 758 F.2d at 972.

B. Tortious Interference with Prospective Contractual Relationships

In the amended first counterclaims, Greitzer & Locks alleges that the counterclaim defendants publicized the wrongful use suit in an effort to interfere with Greitzer & Locks's attempts to enter into future contractual relationships. In order to recover on a claim for tortious interference with prospective contractual relationships, a plaintiff must establish the following elements:

⁷Because I agree with this argument, I do not reach the counterclaim defendants' other arguments concerning this statement.

- “(1) a prospective contractual relation;
- (2) the purpose or intent to harm the plaintiff by preventing the relation from occurring;
- (3) the absence of privilege or justification on the part of the defendant; and
- (4) the occasioning of actual damage resulting from the defendant’s conduct.”

Nathanson v. Medical College of Pa., 926 F.2d 1368, 1392 (3d Cir. 1991) (quoting *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466, 471 (Pa. 1979)). The counterclaim defendants argue that Greitzer & Locks cannot establish the first or third elements of its tortious interference claims.⁸ See *DaimlerChrysler Mem.* at 5-10. Because the counterclaim defendants do not demonstrate that “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations” of tortious interference in Greitzer & Locks’s counterclaims, the court will deny the counterclaim defendants’ motions to dismiss with respect to the tortious interference claims. *Hishon*, 467 U.S. at 73.

1. Prospective Contractual Relation

The counterclaim defendants argue that Greitzer & Locks has not adequately alleged a reasonable likelihood that it would have entered into a contractual relationship if they had not made the statements at issue herein. See *DaimlerChrysler Mem.* at 5-7. The Supreme Court of Pennsylvania addressed the tension between demonstrating that a contractual relationship would have occurred in the absence of interference and the doubtfulness of anything prospective:

“[A]nything that is prospective in nature is necessarily uncertain. We are not here dealing with

⁸The counterclaim defendants also argue that Greitzer & Locks has not established actual damages because it has not demonstrated a reasonable likelihood of a contractual relationship. See *DaimlerChrysler Mem.* at 9-10. Because I conclude that Greitzer & Locks has demonstrated a reasonable likelihood of a contractual relationship, see *infra* Part III.B.1, this argument is inapposite.

certainties, but with reasonable likelihood or probability. This must be something more than a mere hope or the innate optimism of the salesman.” *Glenn v. Point Park College*, 272 A.2d 895, 898-99 (Pa. 1971).

Greitzer & Locks claims that the statements of the counterclaim defendants interfered with its prospective contractual relations with future clients, with other plaintiff’s lawyers, and with class representatives. *See* Countercls. ¶¶ 56-57, 82-84. Greitzer & Locks also alleges that the counterclaim defendants intended the statements to prevent Greitzer & Locks from finding both a class representative with standing to sue DaimlerChrysler and other class representatives for similar cases. *See id.* ¶¶ 53, 76. Moreover, Greitzer & Locks quotes the following statement by Goldfarb that is printed in the *Wall Street Journal* article:

“They can always find somebody else to sue us. But I don’t think anybody is going to want to do it They would have to tell someone: ‘We are being sued in Philadelphia. Do you still want to be a plaintiff?’ . . . It is a way of heading off further frivolous litigation.”

Id. Ex. C; *see id.* ¶ 45.B.

Taking these allegations and the reasonable inferences that can be drawn therefrom as true and construing them in the light most favorable to Greitzer & Locks, *see Jordan*, 20 F.3d at 1261, I conclude that Greitzer & Locks has demonstrated a “reasonable likelihood” of a prospective contractual relation with a class representative who has standing to sue DaimlerChrysler. *Glenn*, 272 A.2d at 898; *see American Health Sys., Inc. v. Visiting Nurse Ass’n of Greater Philadelphia*, No. Civ. A. 93-542, 1994 WL 314313, at *14 (E.D. Pa. June 29, 1994) (reaching a similar conclusion).

2. Absence of Privilege or Justification

The counterclaim defendants argue that Greitzer & Locks has not demonstrated that the counterclaim defendants made the statements at issue herein in the absence of privilege or justification. *See* DaimlerChrysler Mem. at 7-9. Although the Supreme Court of Pennsylvania has recognized that privileged or justified interference “is not susceptible of precise definition,” it has used as a general definition “interferences which are sanctioned by the rules of the game which society has adopted [or those in] the area of socially acceptable conduct which the law regards as privileged.” *Glenn*, 272 A.2d at 899 (internal quotation marks omitted). Additionally, the evaluation of the presence or absence of privilege or justification must be made in light of “the factual scenario as a whole.” *Kachmar v. SunGard Data Sys., Inc.*, 109 F.3d 173, 185 (3d Cir. 1997) (quoting *Ruffing v. 84 Lumber Co.*, 600 A.2d 545, 549 (Pa. Super. Ct. 1991)).

Actionable defamatory statements are not “sanctioned by the rules of the game” and are not in “the area of socially acceptable conduct which the law regards as privileged.” *Glenn*, 272 A.2d at 899 (internal quotation marks omitted). Because the defamation claims of Greitzer & Locks have survived, *see supra* Part III.A, I conclude that Greitzer & Locks has sufficiently alleged the absence of privilege or justification.

IV. Conclusion

The counterclaim defendants have failed to show “that no relief could be granted under any set of facts that could be proved consistent with the allegations” of defamation and tortious interference with prospective contractual relations in Greitzer & Locks’s counterclaims. *Hishon*,

467 U.S. at 73. Consequently, the court will deny the counterclaim defendants' motions to dismiss for failure to state a claim on which relief can be granted. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAIMLERCHRYSLER CORP.	:	
Plaintiff	:	
	:	
v.	:	
	:	
WILLIAM ASKINAZI, BRIAN LIPSCOMB, and GREITZER & LOCKS	:	
Defendants	:	CIVIL ACTION
	:	
GREITZER & LOCKS	:	NO. 99-5581
Counterclaim Plaintiff	:	
	:	
v.	:	
	:	
DAIMLERCHRYSLER CORP. and LEWIS GOLDFARB	:	
Counterclaim Defendants	:	

ORDER

YOHN, J.

AND NOW, this day of July, 2000, upon consideration of the counterclaim defendants' motions to dismiss for failure to state a claim on which relief can be granted (Doc. Nos. 23, 24), the counterclaim plaintiff's response thereto (Doc. No. 25), and the counterclaim defendants' reply thereto (Doc. No. 29), IT IS HEREBY ORDERED that the motions to dismiss for failure to state a claim on which relief can be granted are DENIED.

William H. Yohn, Jr.