LOWENSTEIN SANDLER PC
Attorneys at Law

PETER L. SKOLNIK
Member of the Firm

Tel 973.597.2508 Fax 973.597.2509
pskolnik@lowenstein.com

April 28, 2005

VIA FEDEX

Honorable Mark Falk, U.S.M.J.
United States District Court
United States Post Office & Courthouse
Room 457
1 Federal Square
Newark, NJ 07102

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

Dear Judge Falk:

As the Court will recall, when the parties were last before you on April 6, 2005, Your Honor confirmed Defendants' entitlement to additional discovery to support their position that both monetary and non-monetary conditions should be placed upon Landmark's anticipated Rule 41(a)(2) motion to dismiss its complaint with prejudice. In response, Plaintiffs' counsel proposed that Landmark's motion might obviate the need for certain of that discovery.

However, since more than three weeks have now passed since the April 6 status conference, and plaintiffs have failed to file their motion -- perhaps concluding that inactivity and delay now best serve their ultimate objective of seeking to terminate a lawsuit that has begun to backfire -- pursuant to the Court's instructions during the April 6 conference, Defendants now write to request that the Court compel production of the relevant discovery. It was our understanding that the Court will not require a formal motion in this regard, but we will file such a motion promptly in the event that understanding was mistaken.

As discussed during the conference, Defendants' position that monetary and non-monetary conditions must be imposed upon plaintiffs' requested dismissal is based upon two serious charges:

- *First*, that this suit perpetuates a pattern pursuant to which Landmark has repeatedly commenced frivolous litigation for the improper purpose of intimidating and silencing its most vocal public critics; and

- *Second*, that Plaintiffs brought the current lawsuit for "product disparagement" with no basis in law or fact, because Plaintiffs have actual knowledge that those of the statements attributed to Mr. Ross about which it complains -- if not constitutionally protected matters of opinion -- are unquestionably true.

For these reasons, Defendants are entitled to discovery that will establish the validity of these charges, justify an award of attorneys' fees with respect to the substantial expense incurred by Defendants' *pro bono* counsel, and establish a sound basis for this Court to impose other conditions on Landmark's proposed dismissal of this lawsuit.

For the reasons discussed below, Defendants are entitled to discover documents and information in the following categories, most of which are already subject to pending, but as yet unanswered, document requests and interrogatories addressed to Landmark:

1. Documents and information related to Plaintiffs' litigation against other public critics of Landmark (See Document Request 6; Interrogatory 8).

2. Documents and information related to lawsuits and arbitrations brought against Plaintiffs by persons claiming injury arising out of attendance at the Landmark Forum or arising out of the misconduct of Landmark leaders or employees. (See Document Request 7; Interrogatory 9).

3. Documents related to complaints made about Landmark that are relevant to establishing the truth of statements alleged to be false and disparaging in the Complaint. (See Document Request 10).

4. Documents and information related to complaints about psychiatric problems arising from attendance at the Landmark Forum (See Document Request 36; Interrogatory 12).

5. Documents related to Landmark's warnings to and screening of applicants (See Document Requests 47, 48 & 62).

6. Documents related to complaints by Landmark's own employees and staff regarding its policies and methods used in conducting the Landmark Forum.[1]

7. Documents related to Landmark's training manuals (Document Requests 1, 2, and 3).[2]

For the Court's convenience, copies of relevant excerpts from Defendants' document requests and Plaintiffs' responses are attached hereto as Exhibit A. Copies of relevant excerpts from Defendants' interrogatories and Plaintiffs' responses are attached hereto as Exhibit B.

As we have previously demonstrated to the Court, Landmark has engaged in a pattern of bringing defamation and disparagement lawsuits against vocal critics, raising the same complaints about the same allegations that have been lodged against Plaintiffs for years. See Letter to the Court from Peter L. Skolnik, dated April 4, 2004 ("Skolnik Letter") at 5-7 (and its exhibits A-D).

---

[1] Following Plaintiffs' over-breadth objection, Defendants modified their Second Set of Document Requests, #7, to seek the following:

> All communications from any Landmark officer, director, employee or volunteer questioning, challenging or disagreeing with any Landmark policy, practice, method, technique or procedure that relates to Landmark's (i) use of inappropriately aggressive recruiting techniques, (ii) harassment of participants, (iii) use of bullying and humiliation techniques, (iv) intimidation of participants about attempting to leave the program, using the bathroom, eating or taking medication, (v) causing psychological problems, or (vi) engaging in any other behavior or employing any other business practice or conduct the allegation of which Plaintiffs allege to be false and disparaging in its Complaint in this matter.

[2] In its responses to both sets of Defendants' document requests and answers to Defendants' interrogatories Landmark has, without any basis, refused to produce documents or information that pre-dates January 1, 1996 -- apparently on the ground that such materials were created before Defendants established their web sites. This, however, has no bearing on the relevance of the pre-1996 discovery Defendants seek, which is intended to demonstrate that the allegedly defamatory statements attributed to Mr. Ross are true, and known to be true by Landmark and its attorneys.

As a starting point, we refer the Court to excerpts (attached hereto as Exhibit C) from a Memorandum of Law in Support of Defendant's Motion for Summary Judgment, filed in Landmark's litigation against *Self Magazine* (*Landmark Education Corporation v. Conde Nast Publications, et al.* (NY Sup. Ct. Index No. 114814/93)), which we obtained directly from the New York Supreme Court. That Memorandum ("*Self* Mem.") refers to the affidavit of *Self's* attorney, Robert M. Callagy (the "Callagy Affidavit") -- an affidavit attaching various exhibits, including excerpts from Landmark's training manuals, Landmark's application materials, and complaint letters that Landmark had received.[3] Notably, the Callagy Affidavit was not among the papers on file in the New York court; upon information and belief, pursuant to a protective order, it was either filed under seal or not filed with the clerk at all. However, the excerpts from documents produced by Landmark in the *Self* litigation and quoted in the *Self* Memorandum are not only disturbing in their own right, but raise serious questions about whether Landmark purposefully brought this lawsuit against Defendants with extensive knowledge that allegedly defamatory statements attributed to Mr. Ross here are in fact true.

For example, in their Complaint against Defendants, Landmark alleges that:

> "Defendants made false charges that Landmark participants endured days of 'bullying' and 'humiliation.'" Complaint ¶ 18 (c).

Yet, Landmark's own training manuals state:

> "An FS [Landmark 'Forum Supervisor'] needs to be an S.O.B. for impeccability. You need to give up a concern for being liked. . . . Be a destroyer. . . . " *Self* Mem. at 29 (Ex. C) (quoting Forum Supervisors Manual, A 092-93 (Callagy Aff., Exh. P)).

Indeed, Landmark's own training manual gives express directions for Landmark supervisors to exercise authoritarian control:

> "Don't ever let people move or stand up or talk before you have declared the start of the break. Don't ever let stuff like that go by. Ever, ever, ever." *Self* Mem. at 29 (Ex. C) (quoting Forum Supervisors Manual, A 096 (Callagy Aff., Exh. P)); and
>
> "Set up rules for observers (e.g. in and out at breaks, no talking). The content of the rule isn't important; what matters is that the observer gets the sacredness of the space from the conversation."

---

[3] Notably, all of these materials pre-date 1996, underscoring the relevance of materials generated prior to January 1, 1996. *See* footnote 2, *supra*.

> *Self* Mem, at 32 (Ex. C) (quoting Forum Supervisors Manual, A 091 (Callagy Aff., Exh. P)).

Yet, Landmark's Complaint brazenly characterizes as "false and disparaging" the statement on Defendants' website that:

> "Participants are 'subject to total "control . . . from the moment [they] are in that room."'" Complaint ¶ 22 (2).

Remarkably, Landmark accuses Defendants of disparaging Landmark by asserting:

> "Landmark representative exhibited a 'reluctance to allow toilet breaks;'" Complaint ¶ 18 (j).

Landmark's own training manual states:

> "Intervene when people head out to the bathroom without checking in with you." *Self* Mem. at 29 (Ex. C) (quoting Forum Supervisors Manual, A 096 (Callagy Aff., Exh. P)).

Landmark also has the temerity to complain about the allegedly actionable statement attributed to Defendants that:

> "Landmark's programs are 'verbally or emotionally abusive,' and their 'controversial' methods may cause participants to 'unravel;'" Complaint ¶ 39 (1).

Yet, a complaint letter Landmark received from one former participant reported:

> "Many of the participants felt that profanity, shouting, confrontation, and aggression vented by the Forum leader were excessive . . ." *Self* Mem. at 12 (Ex. C) (quoting the letter of Gary G. Schnell, dated February 25, 1992 (Callagy Aff., Ex. N)).

More seriously, Landmark is keenly aware of allegations linking participation in its programs to several psychotic breaks and/or suicides -- and indeed to a few murders.

Nevertheless, in striking counterpoint to allegedly "defamatory" (though, in fact innocuous) comments attributed to Mr. Ross in Landmark's Complaint, such as:

> "the Landmark Forum is 'a very stressful process that is not for everyone;'" (Complaint ¶ 41(a));

Landmark's own warnings and disclaimers in its application materials state:

> "As with any serious undertaking in life, you should take the time to determine whether or not you are physically, mentally and emotionally prepared to engage in these kinds of questions. . . . We will assume your presence at the Program to indicate that you have considered the nature of the Program and have chosen to attend it on your own responsibility and risk. . . .
>
> . . . people will from time to time cry or experience headaches, tiredness, nausea, confusion, disappointment, feelings of anxiety, uncertainty, and hopelessness. ***Some participants may find the Program physically, mentally, and emotionally stressful."*** *Self* Mem at 34 (emphasis added) (quoting Forum Application Materials, A 008-9 (Callagy Aff., Ex. R)).

Tellingly, Landmark has refused to provide Defendants with copies of these application materials in response to Defendants' discovery demands. Nevertheless, not only were excerpts from these documents available in the *Self* docket, but a copy of a completed application form was publicly available as part of the record in opposition to Landmark's motion for summary judgment in *Neff v. Landmark Education Corp.*, 97-00933-I (162nd Dist, Dallas County, Texas), a lawsuit brought by a woman who had been raped by Landmark's Dallas-area Center Manager."[4]

In the *Neff* case, Landmark's General Counsel, Arthur Schreiber, conceded at his deposition (at pp. 122-23) that the above-referenced warnings were inserted into the Landmark Forum application form after consultation with a mental health professional. Relevant excerpts from the Schreiber deposition (which excerpts were part of the summary judgment record in the *Neff* case) are attached hereto as Exhibit E. It is perhaps for this reason that Landmark, at least as of 1994, had required all applicants to waive "all risk of physical injury and emotional upset which may

---

[4] Evidence was produced in the *Neff* case that demonstrated that Landmark was unquestionably aware of the danger posed by the assailant, and the vulnerability of the victim. The senior Landmark employee named in that case, having reviewed the victim's written statements on her application form -- which indicated that she had been previously gang raped as a teenager and had "used drugs and alcohol to escape the reality of what happened" -- preyed on the young woman, exploited her vulnerabilities by using the very "Landmark jargon" that had been drilled into her during the Forum, and ultimately, raped her. A detailed account of Landmark's culpability in that disturbing case is described in Plaintiff's Response to Landmark's Motion for Summary Judgment, dated October 30, 1998 (attached hereto as Exhibit D).

occur during or after the Program, and . . . hold Landmark Education Corporation, its officers, directors, shareholders, employees, and agents, harmless from any and all liability arising out of [their] participation in the Program." Exhibit F. Landmark, apparently recognizing the improbability of a court enforcing this unconscionable waiver, eliminated the waiver in favor of a clause requiring Landmark's personal injury victims to seek redress solely through arbitration (*see* Schreiber Dep. p.121), a forum in which documents and evidence will generally not become matters of public record.

The warnings and disclaimers contained in the Landmark Forum application form produced in the *Neff* case (attached hereto as Exhibit F) are particularly relevant to this matter. Page 4 of the application, at paragraph 7, states:

> Please be advised that numerous kinds of physical and mental disorders and ailments may reduce your tolerance even to "normal" levels of stress. Examples of such disorders include, but are not limited to, heart and blood-vessel disease, nerve and muscular disorders, glandular and metabolic disorders, some respiratory illnesses and high blood pressure. *Your participation in the Program is not recommended if you fall into one of these categories and such participation may jeopardize your well-being. If you are presently under the care of a physician for any such disorder,* ***or if you are not or have not been feeling well or have been meaning to see a physician for some complaint or symptom****, we recommend that you consult your physician and obtain verbal approval for participating in the Program.*

Exhibit F, p.4, ¶7 (emphasis added). It certainly remains unclear what gamut of particulars about the Forum an applicant who had merely "been meaning to see a physician for some complaint or symptom," might be expected to provide to a doctor in order to receive meaningful medical advice regarding the health risks posed by the Forum; nevertheless, Plaintiffs and their attorneys sued Mr. Ross for product disparagement for offering his ***informed*** opinion that:

> "Landmark's programs 'are potentially very dangerous and can result in serious mental problems.'"

Complaint ¶ 39 (3). We emphasize that Mr. Ross's opinion was "informed" because he served as an expert witness in the *Neff* case. After having interviewed numerous witnesses and having reviewed a variety of evidence, Mr. Ross concluded in a sworn statement that the manipulation of the victim in the *Neff* case by Landmark's Center Manager "was facilitated and continually strengthened by his position within Landmark Education Corporation" and was the proximate cause of the sexual assault against the victim. A copy of Rick Ross's affidavit in the *Neff* case is attached hereto as Exhibit G. Knowing what Mr. Ross had learned from his review of documents

and testimony in the *Neff* case, Landmark purposefully brought this frivolous lawsuit, which attacks Mr. Ross for coming to the reasoned conclusion that:

> "Landmark's programs require participants to 'put an almost childlike trust into the group's facilitator, which makes someone very vulnerable.'"

Complaint ¶39 (iv).

The evidence cited above only begins to scratch the surface of the facts that may lead this Court to conclude that Plaintiffs and their attorneys failed to conduct "an inquiry reasonable under the circumstances . . . [regarding] the allegations and other factual contentions" in Landmark's Complaint (F.R.C.P. 11 (b)); indeed, those facts might well invite inquiry into whether the allegations against Defendants were brought entirely in bad faith.

For these reasons, the following documents, among others, could not be more relevant to Defendants' application for attorneys' fees and other relief in connection with Landmark's current attempt to walk away from this suit, indifferent to the expense it has imposed on Defendants' *pro bono* counsel, and the severe emotional stress, inconvenience and aggravation its perpetual campaign of harassing conduct -- intended only to silence its critics -- has imposed on yet another in Landmark's long string of blameless litigation targets.

- All papers filed in connection with dispositive motions in *each* of Landmark's other litigations against public critics of Landmark (including but not limited to the Affidavit of Robert M. Callagy and all exhibits attached thereto, submitted by the defendants in the *Self Magazine* lawsuit), *all* transcripts of depositions of Landmark witnesses taken in connection with such litigation (including but not limited to Arthur Schreiber, Harry Rosenberg, Joan Rosenberg, and all Landmark Forum Leaders and Forum Supervisors and any experts), and all documents reflecting the terms of settlement or other disposition of each such lawsuit.

    - [Defendants' intended analysis of the pleadings, transcripts and papers submitted in support of and in opposition to dispositive motions will establish whether those prior suits were similarly brought without merit, and whether this suit against Rick Ross is part of a pattern of frivolous litigation. Documents reflecting the outcome of each suit will assist the Court and counsel in determining whether -- and in what manner -- Landmark has ever been successful in its litigation against its critics. Finally, the documents requested will demonstrate what Landmark and its attorneys knew about Landmark's practices before filing this litigation against Mr. Ross].

- Landmark's training manuals and videos (including the entirety of the training manuals identified in the defendants' papers in the *Self Magazine* lawsuit), including but not limited to the Forum Supervisors Manual, Forum Production Supervisors Manual and the Forum Registration Manual.

    - [As explained above, these documents go to the very truth of allegedly defamatory statements attributed to Defendants, and whether Plaintiffs knew the statements attributed to Mr. Ross were true (or certainly incapable of being proven false) before bringing this lawsuit].

- The entirety of the Landmark Forum participant application materials identified in the defendants' papers in the *Self Magazine* lawsuit, all versions of Landmark's application materials in use at any time since its founding, and all documents relating to changes in such application materials.

    - [Such materials go to the questions of whether Plaintiffs knew that the Landmark Forum was potentially dangerous (and whether Landmark made changes to its application materials based upon its awareness of such danger), yet proceeded with a lawsuit claiming to be disparaged by comments saying the program is dangerous].

- Documents related to all of the complaints Landmark has received that allege conduct that is specifically denied by Plaintiffs in their Complaint in this lawsuit.

    - [These documents will show that Plaintiffs have been aware of the same complaints, alleged here to be disparaging, for years].

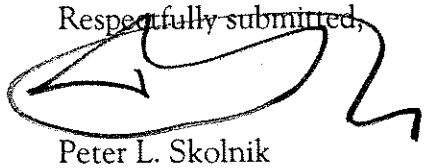
- Documents related to psychological damage claimed to have been the result of attending the Landmark Forum, and all documents (including *all* transcripts of depositions of Landmark witnesses taken in connection with such litigation (including but not limited to Arthur Schreiber, Harry Rosenberg, Joan Rosenberg, and all Landmark Forum Leaders and Forum Supervisors and any experts)) related to lawsuits and arbitrations brought against Landmark based upon injuries arising from or to persons attending the Landmark Forum and injuries arising from the misconduct of the Landmark Forum's leaders and employees.

    - [These documents are directly relevant to whether Plaintiffs knew that the Landmark Forum has caused psychological problems in the past, yet commenced a lawsuit premised upon Mr. Ross's purportedly actionable statements to this effect].

As previously noted, most of these documents are already encompassed within existing document requests and interrogatories that Landmark has either claimed to be irrelevant, or has refused to produce absent the entry of a confidentiality order. Moreover, Landmark's complaint declares that many of Defendants' allegedly actionable statements "*simply could not be made by any person who had attended The Landmark Forum.*" (Complaint ¶ 19; emphasis added). It is therefore highly relevant to Defendants' attorneys' fees application whether Plaintiffs and their counsel were aware of individuals who *could* and *have* made such statements in the past after attending the Forum, including prior litigants. All of these items should be produced -- and as a matter of public policy, health and safety -- without the unwarranted imposition of a protective order.[5]

For all of the reasons stated above, we respectfully request that the Court compel Plaintiffs to respond promptly to Defendants' discovery demands, as specified in the accompanying proposed form of order, attached hereto as Exhibit H.

Respectfully submitted,



Peter L. Skolnik

17316/2
04/28/05 1704723.05

cc: Deborah Lans, Esq. (via facsimile w/o attachments and electronic mail and Fedex w/ attachments)
Paul J. Dillon, Esq. (via facsimile w/o attachments and electronic mail w/ attachments)

---

[5] However, if the Court believes that a legitimate basis for confidentiality has been asserted with respect to documents designated by Landmark, Defendants are prepared to accept such documents on an attorneys' eyes only basis until such time as the Court has had an opportunity to determine whether confidentiality is appropriate, pursuant to an *in camera* review. Further, with respect to all documents that this Court concludes are not entitled to confidential treatment, but which remain protected by confidentiality agreements in other Landmark litigations, Landmark should be required to waive such protection in the event that waivers can be obtained from all other parties to such agreements.