CARNEGIE INTERNATIONAL CORPORATION, *et al.*,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	BALTIMORE CITY
GRANT THORNTON, LLP, *et al.*	*	Case No.: 24-C-00-002639
Defendants		

* * * * * * * * * * *

MEMORANDUM OF DECISION

This matter comes before the Court on Grant Thornton, LLP's Motion for Summary Judgment on Count Eight of the Complaint, Plaintiffs E. David Gable ("Gable") and Lowell Farkas' ("Farkas") Response to Grant Thornton's Motion for Summary Judgment, Grant Thornton's Reply thereto, and the Supplemental Briefs filed by both parties on the issue of absolute immunity. As no party has requested a hearing on this matter, and upon consideration of the aforesaid motion and briefs, and upon finding that the statements made by Grant Thornton in the Form 8-K Response are entitled to absolute immunity, this Court grants Grant Thornton's Motion for Summary Judgment as to Count Eight of the Complaint.

Background

Plaintiff Gable was the former Chairman of Carnegie International Corporation, Inc. ("Carnegie") and Plaintiff Farkas was its President and Chief Executive Officer. In May, 2000 Carnegie and Plaintiffs Gable and Farkas, in their individual capacities, filed a Complaint against Grant Thornton among others.

On October 2, 2001 the Court dismissed all claims brought by Gable and Farkas against Grant Thornton, except for Count Eight for defamation. On October 18, 2001 the Court bifurcated Gable's and Farkas' defamation claim from Carnegie's claims. Carnegie's claims proceeded to trial and on April 6, 2005 judgment was entered in favor of Defendant Grant Thornton on all of Carnegie's claims. The Court also entered judgment in favor of Grant Thornton on Plaintiffs Gable and Farkas' defamation claim upon finding that they failed to pursue the claim. Plaintiffs Gable and Farkas moved to amend or alter the judgment which motion was granted on August 10, 2005. Plaintiffs Gable and Farkas' defamation claim against Grant Thornton was thereby restored. Even before this Court altered the judgment, Grant Thornton filed a Motion for Summary Judgment as to Count Eight for defamation.

Plaintiffs Gable and Farkas premise their defamation claim upon statements made by Grant Thornton in a Form 8-K response filed with the United States Securities Exchange Commission ("SEC"). Grant Thornton is an accounting firm that Carnegie had engaged as its certifying accountant in January, 1998. On or about September 23, 1999 Carnegie informed Grant Thornton that it was terminating Grant Thornton's engagement as the company's certifying accountants. Section 229.304 of 17 C.F.R., as discussed in greater detail below, requires a publicly traded company to file a Form 8-K with the SEC informing it of a change in the registrant's certifying accountants and the reason therefore. On September 24, 1999 Grant Thornton received a draft

version of Carnegie's Form 8-K which stated as the reason for the change that Carnegie "has general business disagreements with Grant Thornton...." Carnegie filed its Form 8-K on September 28, 1999.

Section 229.304 of 17 C.F.R. also requires the accountant to file a response letter which is appended to the registrant's Form 8-K stating "whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree." On October 11, 1999 Grant Thornton filed its Form 8-K response letter. In its Form 8-K response, Grant Thornton stated that there indeed had been disagreements. In support thereof, it wrote that "information had come to its attention suggesting that Carnegie's upper management has been indifferent to its financial reporting responsibilities under the federal securities laws" and, thus, it could "no longer rely upon the representations of the management of Carnegie" including its Chairman, Gable, and CEO, Farkas. It is these two statements that Plaintiffs Gable and Farkas claim were defamatory.

On October 13, 1999 Carnegie, with Gable as the signatory, filed an amended Form 8-K. The amended version retorts the accusations of Grant Thornton and presents in greater detail Carnegie's rendition of the events leading to its termination of Grant Thornton.

In its Motion for Summary for Summary Judgment, in addition to attacking certain elements of the claim for defamation, Grant Thornton asserts that either its Form 8-K response statements were absolutely privileged, or in the alternative

they were subject to a qualified privilege. Because this Court holds, as a matter of law, that Grant Thornton's Form 8-K response statements were entitled to an absolute privilege for the reasons set forth below, it need not address whether the statements were entitled to a qualified privilege.

Analysis

In deciding a motion for summary judgment, the Court must first decide whether there is a genuine dispute as to any material fact, and if not, then decide whether either party is entitled to judgment as a matter of law. Maryland Rule §5-201; *Vogel v. Touhey*, 151 Md. App. 682, 704 (2003) (citations omitted); *Okwa v. Harper*, 360 Md. 161 (2000). A material fact is one the resolution of which will somehow affect the outcome of the case. *Vogel*, 151 Md. App. at 704 (citing *King v. Bankerd*, 303 Md. 98, 111 (1985); *Miller v. Fairchild Indus., Inc.*, 97 Md. App. 324 (1993), *cert denied*, 333 Md. 172 (1993). The Court must determine issues of law, but resolve no disputed issues of fact. *Beatty v. Trailmaster Products*, 330 Md. 726, 737 (1993).

In the instant matter there are no genuine issues of material fact. The only material fact relevant to the issue of absolute immunity is whether the Grant Thornton made the alleged defamatory statements in an 8-K response. Grant Thornton does not argue that it did not make the statements and Plaintiffs Gable and Farkas do not argue that the statements were not contained in an 8-K

response. Therefore, because there are no disputed issues of material fact, this Court will resolve this case as a matter of law.

Absolute Privilege

"Maryland has long recognized the existence of an absolute privilege for defamatory utterances made during the course of judicial proceedings or contained in documents directly related to such proceedings." *Caldor, Inc. v. Bowden*, 350 Md. 632, 648 (1993) (citations omitted). This privilege protects those "persons publishing the defamatory statement from liability even where their motives are malicious and made with the knowledge of the statement's falsity." *Id.* Whether such a privilege should attach is a matter of public policy and requires balancing "the public interest in free disclosure against the harm to individuals who may be defamed." *Id.* at 649. The underlying rationale for the absolute privilege is to encourage participants involved in the judicial search for truth "to do so without being hampered by the fear of private suits for defamation." *Id.*

Having adopted a "broad view" of the privilege, Maryland has also extended this "'important privilege'[ ] to administrative and other quasi-judicial proceedings" when "there are sufficient judicial safeguards so as to minimize the likelihood of harm to potentially defamed (or otherwise injured) individuals who would have no legal remedy." *Imperial v. Drapeau*, 351 Md. 38, 45 (1998); *Gersh v. Ambrose*, 291 Md. 188, 192 (1981). Thus, the decision whether to afford absolute immunity to statements in an administrative proceeding is to be made

"on a case-by-case basis and in large part turns on two factors: (1) the nature of the public function of the proceeding and (2) the adequacy of procedural safeguards which will minimize the occurrence of defamatory statements." *Imperial*, 351 Md. at 46 (citations and internal quotation marks omitted). Based on the analysis of these two factors below, this Court holds that Grant Thornton's statement in the 8-K response implicating Gable and Farkas is entitled to an absolute privilege.

A. Nature of the Public Function

In determining whether to afford the statements contained in Grant Thornton's 8-K response absolute immunity, this Court must weigh the public function served by the SEC and the purpose(s) served by the 8-K Form against the harm suffered by the Plaintiffs resulting from any defamatory statements. *See Caldor, Inc.*, 350 Md. at 649.

"The Mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation." *See* http://www.sec.gov/about/whatwedo.shtl (January 5, 2006). The SEC is a federal administrative agency vested with the responsibility to enforce both the Securities Act of 1933, 15 U.S.C. §77a *et seq*., and the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq*. The laws and rules promulgated by the SEC

> derive from a simple and straightforward concept: all investors... should have access to certain basic facts about an investment prior to buying it. To achieve this, the SEC requires public companies to disclose

> meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, accurate information can people make sound investment decisions. http://www.sec.gov/about/whatwedo.shtl (January 5, 2006).

To this end, the reporting requirements are a key component of the securities laws. "The SEC's reporting requirement is designed to provide investors with the information necessary to make informed decisions, and provides the SEC with a basis to police the actions of companies subject to the requirement." *Abella v. Barringer Resources, Inc.*, 615 A.2d 288, (N.J. Super. 1992).

For instance, publicly-traded companies must report quarterly financial statements in Forms 10-Q and yearly financial results in Forms 10-K. See 15 U.S.C. § 78m; 17 C.F.R. §§ 240.13a-1 & 13a-13. Form 10-K includes financial statements independently audited by a certified public accountant, such as Grant Thornton, as well as the accountant's opinion as to whether the company has complied with Generally Accepted Accounting Principles.

Public companies must also report extraordinary events as they occur on a Form 8-K. See 15 U.S.C. § 78m; 17 C.F.R. § 240.13a-11. One of the events they must report is a change in, or a disagreement with, accountants on accounting and financial disclosure. *See* 17 C.F.R. § 229.304. As part of the disclosure the registrant must "state whether the former accountant resigned, declined to

stand for re-election or was dismissed," whether "there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure," and if something has caused the accountant "to be unwilling to rely on management's representations...." *Id.* at § 229.304(a)(1)(i), (iv) & (v)(C)(1)(ii). Reporting of these events is mandatory and include a situation in which the "accountant were to resign or be dismissed after informing the [company] that he had discovered facts which led him to no longer be able to rely on management representations or which made him unwilling to be associated with statements made by management." Securities Exchange Act Release No. 11147, Accounting Series Release No. 165, 1974 SEC Lexis 2100, *9 (Dec. 20, 1974), "Notice of Amendments to Require Increased Disclosure of Relationships Between Registrants and Their Independent Public Accountants."

The SEC promulgated these reporting rules to discourage "the practice of changing accountants in order to obtain more favorable accounting treatment." *Id.* at *2. It is essential that investors receive this information in a timely manner because such information is material to investment decisions. Reporting of disagreements provides investors with "an 'early warning' of potentially troublesome areas" and the prompt "disclosure of the former accountant's concerns would be in the public interest and aid in the protections of investors." SEC Final Rules, 53 F.R. 12924 (April 20, 1988); SEC Proposed Rules, 53 F.R. 12948 (April 20, 1988).

Because the reporting of such events, including whether the auditors have informed the company that it can "no longer... rely on management's representations," is crucial to the protection of the investing public, the accountant is required to respond to the registrant's 8-K disclosure. 17 C.F.R. § 229.304(a)(1)(v)(B) & (a)(3). "The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree." 17 C.F.R. § 229.304(a)(3). The registrant must then append the accountant's response to its 8-K report. *Id.*

The statements Grant Thornton expressed in its 8-K response letter were precisely those illicited by Item 304. Grant Thornton disagreed with the statements Carnegie made in the 8-K Form regarding the dissolution of their relationship and provided its reasons therefore: It "could not rely upon the representations of management" and that "Upper Management has been indifferent to its financial reporting responsibilities under the federal securities laws." Because, as set forth *supra*, the SEC functions in great part to ensure that investors can make informed investment decisions and has determined that a change in accountants is material to those decisions, this Court holds that an accountant's 8-K response letter plays an integral and essential role in the SEC's public function in protecting the investing public.

B. Adequacy of Procedural Safeguards

The Court's inquiry, however, does not end there. It must also examine "the adequacy of procedural safeguards which will minimize the occurrence of defamatory statements." *Imperial*, 351 Md. at 46 (citations and internal quotation marks omitted). Traditionally, the absolute privilege applied to testimony during, and documents prepared for use in, a *pending* judicial or quasi-judicial proceeding. *See DiBlasio v. Kolodner*, 233 Md. 512, 522 (1964); *Adams v. Peck*, 288 Md. 1, 8-9 (1980); *Caldor, Inc. v. Bowen*, 330 Md. 632, 650-653 (1993). This privilege has subsequently been extended to statements made prior to the commencement of any formal proceeding and which tend to initiate the investigative process. See *Imperial v. Drapeau*, 351 Md. 38 (1997); *Miner v. Novotny*, 304 Md. 164 (1985); *Reichart v. Flynn*, 374 Md. 361 (2003). When reviewed these cases appear to turn on two factors: (1) whether strong incentives exist that minimize the likelihood that the statement would be defamatory such as the statement having been made under oath, and (2) whether the subject of the statement would be entitled to the same rights he or she would receive in a judicial proceeding such as an administrative proceeding under the Maryland Administrative Procedure Act, Md. Code, State Government §§ 10-101 *et seq. See Id.*

As a threshold matter, Plaintiffs first contend that the statements made by Grant Thornton on the Form 8-K response were neither part of an official proceeding or the formal mechanism for initiating such a proceeding. Plaintiffs

argue that the statements were more akin to the "ordinary public meeting" analysis employed by the Court of Appeals in *Gersh* to reject an application of absolute privilege. This Court disagrees.

In *Gersh*, the Court of Appeals refused to extend an absolute privilege to "voluntary"[1] statements made by a witness testifying at a public hearing before the Baltimore City Community Relations Commission. *Gersh*, 291 Md. at 196. As part of his testimony, and in response to questioning from the Commission, the witness accused another of criminal offenses. *Id.* at 189. The Court reasoned, however, that the hearing itself lacked any adequate procedural safeguards, and, thus, more closely resembled an "ordinary public meeting" rather than a quasi-judicial proceeding. *Id.* The Court of Appeals, citing the U.S. Supreme Court's decision in *Butz v. Econonmou*, 438 U.S. 478 (1978), explained that an absolute privilege could attach to statements made in administrative hearings when those proceedings contain procedural safeguards similar to those present in judicial proceedings. *Id.* at 193. The Court of Appeals cited several of the safeguards it considered important: (1) whether the proceedings are adversarial, (2) whether the trier of fact is independent and insulated from political influence, (3) whether the parties may present evidence, (4) whether the administrative judge makes rulings on the admission of such evidence, and

[1] While the *Gersh* opinion itself is devoid of many of the underlying facts, the Court of Appeals has subsequently described the witness' statements as "voluntary." *See* Imperial, 351 Md. at 45. *See also* the Court of Special Appeals' decision in *Gersh*, 46 Md. App. 71, 75-76 (1980), adopting the position that the witness was not subpoened to testify at the public hearing and appeared in his personal, rather than official, position.

(5) whether the administrative judge may issue subpoenas. *Id.* Finding that those safeguards were not present in the hearing before the Commission, it refused to extend the privilege to that hearing

Gersh, however, dealt exclusively with application of the privilege to testimony during an actual hearing, not with statements that could initiate an investigation and/or a subsequent hearing. The Court of Appeals has held that statements in a complaint that trigger an administrative investigation with the potential of subsequent proceedings similar to those under the Maryland Administrative Procedure Act, can be entitled to an absolute privilege, at least to the extent that the declarant was subject to penalties for false statements in the complaint. See *Imperial v. Drapeau*, 351 Md. 38 (1997); *Reichart v. Flynn*, 374 Md. 361 (2003); *Miner v. Novotny*, 304 Md. 164 (1985) (partially premised on the fact that the declarant was subject to criminal penalties for knowingly false statements in the sworn complaint).

In *Miner*, a sheriff brought a defamation suit against a citizen who filed a sworn brutality complaint against him with the sheriff's office. *Miner*, 304 Md. at 166. After conducting an internal investigation, the sherriff's office concluded that the sheriff had committed no misconduct, and, therefore, no subsequent proceeding ensued. *Id.* The Court determined that the filing of the sworn complaint initiated an administrative disciplinary proceeding governed by Maryland Code, Art. 27, §§ 727-734D, generally known as the "Law-Enforcement Officers' Bill of Rights" ("LEOBR"). *Id.* at 172-73. In finding that the LEOBR

provided adequate procedural safeguards the Court of Appeals noted: (1) that the Complaint was made under oath, (2) one who knowingly filed a false complaint was subject to criminal liability, (3) the subject was informed of the investigation, and (4) the subject was entitled to legal representation even during the investigative phase. *Id.* at 174. It also observed that should the internal investigation have recommended disciplinary action against the officer the LEOBR provided the following safeguards: (1) the officer would be entitled to a hearing, (2) that hearing would be adversarial, (3) the officer would be entitled to legal representation, (4) summonses compelling the testimony of witnesses could issue, (5) an official record would be maintained, and (5) the rules of evidence were similar to those followed by a court of law. *Id.* at 175. Based on these factors, the Court of Appeals held that adequate procedural safeguards were in place to minimize the possibility of a defamatory complaint. *Id.* at 176.

In a similar case, a high school female student complained that a coach made improper sexual comments to her and discriminated against female athletes. *Reichert v. Flynn*, 374 Md. 361 (2003). She and her parents expressed their concerns orally to the principal and in letters directly to other school officials in accordance with the school system's regulation entitled "Sexual Harassment," § III.B.3.a. That regulation provided "Any... student who believes that she or he has been subjected to sexual harassment should report such conduct promptly." *Id.* at 363 n. 1. Even though "the alleged defamation [in

the initial complaint] occurred before a hearing or trial could take place," an absolute privilege attached to these statements because of the procedural safeguards afforded the subject. *Id.* at 377. Should any disciplinary action have been taken, the subject had at least two levels of appeal, one of which was governed by the Maryland Administrative Procedure Act, and the right to judicial review. *Id. See also Imperial*, 351 Md. at 50-54 (holding that an informal complaint in the form of a letter sent to a Congresswoman and the Governor was entitled to absolute immunity because the letter initiated an internal investigation and process under the Maryland Administrative Procedure Act).

The instant case is unlike *Gersh* in several significant regards and more closely resembles the factual scenarios of *Miner*, *Reichert*, and *Imperial* in that the alleged defamatory statements were precursors to any potential hearing. First, the statements made by Grant Thornton, unlike those in *Gersh*, were far from voluntary: Grant Thornton was *required* to issue these statements in accordance with 17 C.F.R. §229.304. Section 229.304(a)(1)(v)(A) of 17 C.F.R. required Carnegie to declare in the 8-K whether Grant Thornton had "advised [Carnegie] that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations."

When Carnegie failed to so state[2] in the 8-K form, Section 229.304(a)(3) then required Grant Thornton to state in a response letter to the 8-K "whether it agrees with the statements made by [Carnegie] in response to this Item 304(a)

[2] Carnegie has not disputed Grant Thornton's contention that it had so informed Carnegie.

and, if not, stating the respects in which it does not agree." In the response letter, Grant Thornton reported what Carnegie had failed to report, *i.e.* that it could no longer rely on Carnegie's management's representations, as a basis for the change in auditors. Grant Thornton essentially disagreed with the reasons Carnegie set forth in its 8-K and provided further explanation that Carnegie had been under a duty to report. Thus, the statements made by Grant Thornton in the 8-K response were relevant to the circumstances underlying the change in auditors, and therefore, were required by Section 229.304(a)(3).

The Court of Appeals has stated in dicta that "publications required by law" are entitled to absolute privilege. *Gohari v. Darvish*, 363 Md. 42, 55 n. 13 (2001) citing, Dan B. Dobbs, The Law of Torts §§ 413-14 (2001); *See also First State Bank of Floodwood v. Jubie*, 847 F. Supp. 695, 709 (D. Minn. 1993) (holding that absolute privilege attached to bank reports filed with the Federal Bureau of Investigation alleging apparent violations of banking laws as required by federal regulation); *See generally* Restatement (Second) of Torts, § 592A ("One who is required by law to publish defamatory matter is absolutely privileged to publish it."). There is sound reasoning for such an application of the privilege: it eliminates the conundrum of whether to report at one's own financial peril, or not to report or falsely report and risk enforcement proceedings by the appropriate enforcement agency. Considering the importance of the 8-K's role in providing investors with an early warning, auditors such as Grant Thornton

should be encouraged to timely file what they believe is an accurate response. Therefore, that Grant Thornton's statements were required by law, not just encouraged as in *Reichert*, makes the statements qualitatively different from the voluntary ones in *Gersh.*

Second, Grant Thornton's 8-K response could have triggered an SEC investigation with a subsequent proceeding should the SEC have determined that disciplinary action was warranted. Grant Thornton reported in its 8-K response, as it was required to do, that it could no longer rely on management's representations and that this was the cause for the change in auditors. As in *Miner* and *Reichart*, the 8-K was reported to the agency in charge of enforcing the securities laws, the SEC. This response functions as an "early warning device" not only to investors, but also to the SEC. The SEC is empowered to bring enforcement actions in federal court and before administrative law judges. *See* Securities Exchange Act of 1934 § 21(d)(1), 15 U.S.C. § 78u (SEC may bring action in federal court for injunctive relief); § 21C, 15 U.S.C. § 78u-3 (SEC may seek cease and desist orders "after notice and opportunity for hearing"). Included in the laws that the SEC is empowered to enforce are those that prohibit the making of a false or misleading statement to the SEC. *See, e.g.*, Rule 12b-20, 17 C.F.R. § 240.12b-20 ("In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required

statements, in light of the circumstances under which they are made, not misleading.").

Clearly the SEC has deemed whether an accountant has informed a registrant that it can no longer rely on management's representations to be material by requiring its disclosure in an 8-K. Failure to provide such information would constitute an omission of material information, the absence of which would cause the 8-K to be misleading. The omission of such information would subject the registrant to investigation by the SEC with the potential for further proceedings. *See* 15 U.S.C. § 78u. Moreover, an obvious purpose of the accountant's 8-K response is to provide a check on the declarations of the registrant. Thus, like the complaints in *Miner*, *Reichert* and *Imperial*, Grant Thornton's 8-K response could certainly trigger an investigation by the SEC and, if warranted, further proceedings.

Third, just as in *Miner*, adequate procedural safeguards exist at two (2) separate levels. The first level minimizes the likelihood of an accountant making a false statement in the 8-K response itself. Accountants are subject to sanctions under the securities laws. Pursuant to 17 C.F.R. § 201.102(e), the SEC may discipline accountants who practice before it for "unethical and improper" conduct or for "lacking character or integrity." Indeed, the SEC has instituted administrative proceedings against, and imposed sanctions on, accountants for falsely stating in an 8-K response that it had no disagreements

with the company. *See In the Matter of Langford*, Securities Exchange Act Release No. 38249, 1997 SEC Lexis 286 ¶ 25 (Feb. 6, 1997).

Moreover, the Maryland State Board of Public Accountancy may reprimand an accountant or revoke his or her license if the accountant "is guilty of fraud or dishonesty in the practice of accountancy," "has had the right to practice... before any unit of the federal government revoked or suspended," "has been sanctioned by any unit of [the] federal government for an act or omission that directly relates to the fitness of the... licensee to practice public accountancy," or "violates a rule of professional conduct" which provides that "a licensee may not in the performance of professional services knowingly misrepresent facts." MD Code, Business Occupations & Professions, § 2-315; COMAR 09.21.06. Thus, similar to the sworn complaint in *Miner*, Grant Thornton would have been subject to sanctions and penalties for any false statements in the 8-K response. This Court is convinced that this first level of procedural safeguards would significantly deter accountants, such as Grant Thornton, from making false and defamatory statements in an 8-K response.

Even more importantly, the second level affords the subject of the alleged defamatory statements safeguards similar to those in a judicial proceeding or proceeding under the Maryland Administrative Procedure Act. If the SEC had decided to institute enforcement or disciplinary proceedings against Carnegie, or Plaintiffs Gable and Farkas as Carnegie's management, based on Grant Thornton's 8-K response, the resultant administrative proceeding

would have contained many of the judicial proceeding characteristics the Court of Appeals found important in *Gersh* and *Miner*. The proceedings would have been adversarial. The parties would have been entitled to counsel and to present evidence. 17 C.F.R. §§ 201.102, 320. Witnesses must testify under oath and are subject to cross examination. *Id.* at §§ 201.325, 326. Subpoenas compelling witnesses to testify could have been issued. *Id.* at § 201.232. The hearing office could have stricken certain evidence as impertinent or scandalous or excluded it as irrelevant or immaterial. *Id.* at §§ 201.320, 152(f), 111. The hearings are public and recorded. *Id.* at §§ 201.301, 302. Hearing officers have all the powers identified in the federal Administrative Procedure Act. *Id.* at § 201.111. They can be excluded for bias and are thus independent. *Id.* at § 210.112. Finally, just as in *Reichert*, Plaintiffs Gables and Farkas could have appealed an adverse decision directly to the SEC whose review would have been subject to judicial review. 17 C.F.R. §201.410, 411.

Should the SEC have decided to institute administrative proceedings, these procedural safeguards would have served to minimize the likelihood of a defamatory statement in an 8-K response and any harm Plaintiffs would have suffered from any potentially defamatory marks.

Lastly, this Court must address the potential harm Plaintiffs may have suffered from the simple filing of Grant Thornton's 8-K response. The complaint filed in *Miner*, and to a lesser extent the complaints in *Reichert* and *Imperial*, were confidential. These complaints, therefore, were less likely to result in

immediate harm to the subject's reputation outside the investigation. Unlike these complaints, Grant Thornton's 8-K response did not just expose the subject to investigation and possible subsequent proceedings: it was available to the general public.

However, this Court is still convinced that adequate procedures minimized the likelihood of harm. First, as discussed *supra*, Grant Thornton was subject to penalties for any false statements it made in the 8-K response. Equally important, though, Carnegie and its upper management were not only entitled to, but were required to, offer their own rendition of why its relationship with Grant Thornton was terminated. It even amended its Form 8-K to retort the allegedly defamatory statements Grant Thornton expressed in its 8-K response. The amended Form 8-K was quite detailed and Plaintiff Gable was the signatory. Carnegie and its upper management, including Plaintiffs Gable and Farkas, had a chance to provide the last word and availed themselves of the opportunity.

Grant Thornton's response was also appended to Carnegie's Form 8-K. Thus, management's position regarding the change in auditors was presented simultaneously with Grant Thornton's. Investors had the opportunity to review both explanations and make informed decisions. Therefore, this Court concludes that the presentation of both explanations simultaneously functions as an adequate safeguard to minimize any potential harm to the Plaintiffs.

Conclusion

Considering the great importance the SEC plays in protecting the investing public and the material information the Form 8-K provides to the investing public, public policy dictates that an accountant who divulges information *required by the security laws* should not have to do so under the threat of defending a defamation suit. Moreover, significant procedural safeguards exist that minimize the likelihood that the subject of such a statement would suffer any harm without redress. First, an accountant, such as Grant Thornton, faces significant penalties for any knowingly false statements it would provide in an 8-K response letter. Second, should any statements made in an 8-K response trigger administrative proceedings, the subject of the statement is afforded many of the protections he or she would receive in a judicial proceeding. As a result this Court holds, as a matter of law, that the statements made by Grant Thornton in its Form 8-K response letter are entitled to an absolute privilege. Accordingly, this Court will grant Grant Thornton's Motion for Summary Judgment.

An Order reflecting this decision is attached.

_____ _____

Date Kaye A. Allison
Judge

CARNEGIE INTERNATIONAL CORPORATION, *et al.*,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	BALTIMORE CITY
GRANT THORNTON, LLP, *et al.*	*	Case No.: 24-C-00-002639
Defendants		

* * * * * * * * * * *

ORDER

Upon consideration of Grant Thornton, LLP's Motion for Summary Judgment on Count Eight of the Complaint, Plaintiffs E. David Gable ("Gable") and Lowell Farkas' ("Farkas") Response to Grant Thornton's Motion for Summary Judgment, Grant Thornton's Reply thereto, and the Supplemental Briefs filed by both parties on the issue of absolute immunity, and as no party has requested a hearing on this matter, it is this _____ day of March, 2006 by the Circuit Court for Baltimore City hereby

ORDERED that Grant Thornton's Motion for Summary Judgment on Count Eight of the Complaint is **GRANTED** for the reasons set forth in the accompanying Memorandum of Decision.

_____
Kaye A. Allison
Judge

CARNEGIE INTERNATIONAL CORPORATION, *et al.*,	*	IN THE
	*	CIRCUIT COURT
Plaintiffs	*	FOR
v.	*	BALTIMORE CITY
GRANT THORNTON, LLP, *et al.*	*	Case No.: 24-C-00-002639
Defendants		

* * * * * * * * * * *

JUDGMENT

For the reasons stated in the Memorandum of Decision filed contemporaneous herewith and this Court's April 6, 2005 Memorandum, judgment is entered for the Defendants and against the Plaintiffs with costs to be paid by the Plaintiffs.

_____ _____

Date Kaye A. Allison
Judge