

JOHN C. DEPP, II
V.
AMBER LAURA HEARD

CL-2019-0002911

DEFENDANT AMBER
LAURA HEARD'S
SUPPLEMENTAL PLEA
IN BAR

JULY 22, 2021

Introduction:

- Mr. Depp's Complaint should be dismissed because the following principles bar his defamation claim:
 - Comity
 - Uniform Foreign-Country Money Judgments Recognition Act
 - Collateral Estoppel/Defensive Collateral Estoppel (Issue Preclusion)
 - Res Judicata (Claim Preclusion)
- The UK Court has adjudicated, on the merits, that statements published by a newspaper referring to Mr. Depp as a wife beater and domestic abuser of Ms. Heard are **TRUE**.
- The UK Court found that Mr. Depp committed acts of domestic violence against Ms. Heard on 12 occasions, causing her on several occasions to fear for her life.
- This decision on the facts creates a bar to Depp's recovery because the statements by Amber Heard in the Washington Post Op-Ed involve the identical issue and have already been fully and fairly adjudicated by Mr. Depp in his chosen forum in the UK.

Procedural Chronology

- On June 13, 2018, Plaintiff Depp sued The Sun newspaper, and Dan Wootton, the Editor, for libel based on statements that Depp “beat his wife Amber Heard causing her to suffer significant injury and on occasion leading to her fearing for her life.”
- Depp strategically selected the United Kingdom as the forum for his libel suit, where the UK is known for its plaintiff-friendly venue in part because the burden of proof is on Defendants to prove the statements are true.
- On March 1, 2019, Depp sued Amber Heard for defamation claiming the statements published as an Op-Ed in the *Washington Post* imply he committed domestic violence against Ms. Heard—the exact same domestic violence claimed in The Sun publication.

Procedural Chronology (cont'd)

- On November 2, 2020, the UK High Court issued its Approved Judgment.
- The UK High Court in a 129-page, 585-paragraph decision found that the statements published in The Sun were **true**.
- The UK High Court found the defendants proved Mr. Depp committed acts of domestic violence against Ms. Heard at least **12** times, causing her to suffer significant injury and on several occasions fear for her life.

Discovery in the UK and US – No Lack of Procedural Tools

- Depp had the advantage of full discovery in the UK and the US—two full years in the UK and 16 months in the US. See **Def. Ex. 1**, Witness Statements, Declarations and Exhibits in Core Trial Bundle Index.
- Depp conducted extensive discovery in the U.S. before the UK Trial:
 - Two sets of Requests for Production on July 9, 2019 and November 4, 2019 (**Def. Ex. 2-3**),
 - Two sets of Interrogatories on July 9, 2019 and November 4, 2019 (**Def. Ex. 4-5**),
 - One set of Requests for Admissions on November 25, 2019 (**Def. Ex. 6**),
 - Multiple depositions, which were exhibits in the UK Trial. Depp chose not to depose Ms. Heard.
 - Depp served Expert Disclosures on November 4, 2019. **Def. Ex. 7**.
- Trial in the U.S. was scheduled *before* the U.K. Trial on February 3, 2020.

Discovery in the UK and US – No Lack of Procedural Tools (cont'd)

- Depp claims there was no expert discovery in the UK, but when Depp challenged the metadata of photos at the last minute in the UK, Defendants obtained an expert on the metadata of the photos and sought leave to introduce the expert testimony. Depp then engaged in an about-face and said he did not challenge the authenticity of the photos, so the Court denied Defendants' request. JN Att. A ¶ 561-72.
- Depp told the Court days before the start of the UK trial that he wanted to go to trial in the UK, because the decision of the UK Court would result in vindication of the winning party, and was preferred to "JUST A [JURY] VERDICT."
- It was Depp who engaged in significant discovery abuses in the UK, repeatedly resisting producing damaging evidence. Depp's attempts to withhold relevant discovery in the UK only became apparent after an accidental disclosure by Depp's Counsel—the same counsel as in this case—of 70,000 text messages. The texts contained significant incriminating text messages relating to Depp's extensive drug and alcohol consumption leading up to, during, and after Depp's violent assaults of Ms. Heard. Reply Att. A, Witness Statement of Louis Charalambous ¶ 25-41.

Procedural Chronology (cont'd)

- On November 16, 2020, the UK High Court denied Mr. Depp permission to appeal.
- On March 25, 2021, the UK Court of Appeal issued its decision upholding the UK High Court's ruling against Mr. Depp, denying his application for permission to appeal, and dismissing his application to adduce further evidence.
- After exhausting his appeals, the judgment against Mr. Depp became final with no further appellate options on April 6, 2021.
- Defendant the filed her Amended Answer and Grounds of Defense and Supplemental Plea in Bar.

Burdens of Proof

- In the UK, the burden of proof was on Defendants to prove the statements were true.
- In the US, the burden of proof is on Depp to prove he did not commit **ANY** act of domestic violence.
- If Mr. Depp could make a *prima facie* case (which he cannot as a matter of law), Ms. Heard would only need to prove **ONE** act, and she does not have the burden of proof.
- The UK Court found **12** instances of domestic violence by Depp against Ms. Heard.

Factual Findings of the UK High Court: First Time Depp Physically Abused Ms. Heard, Los Angeles, early 2013 (The Tattoo Incident)

- During a conversation about a tattoo, Ms. Heard laughed at something Mr. Depp said as she thought he had made a joke.
- In response, Mr. Depp
 - repeatedly slapped Ms. Heard across the face,
 - The third hit knocked her to the floor, and
 - Depp later explained to Ms. Heard that he snaps sometimes into something he calls “the monster.” (JN Att. A ¶¶ 47-48, 206-210.)

Factual Findings of the UK High Court: The Painting Incident (March 2013)

- Mr. Depp hit Ms. Heard so hard blood from her lip ended up on the wall,
- Depp grabbed Ms. Heard, shook her, and shoved her into a wall.
- The abuse lasted through the evening into the following day.
- Depp later sent Ms. Heard a text message referring to the evening as a “disco bloodbath” and a “hideous moment.” (JN Att. A ¶¶ 49-50, 211-25.)



Def. Ex. 12

Factual Findings of the UK High Court: Hicksville, June 2013

- Mr. Depp assaulted Ms. Heard, including throwing drinking glasses at her and ripping her dress in a jealous rage,
- Depp admitted to breaking a wall sconce, and
- A witness testified that she heard screaming and shouting, and the morning after there was broken glass and pieces of fabric strewn everywhere. (JN Att. A ¶¶ 51-52, 226-38.)

Intentionally withheld and inadvertently disclosed texts in same timeframe:

- **Depp to Paul Bettany:**
- Lets burn Amber!!! 6/11/2013 5:04:53 PM(UTC+0)
- Let's drown her before we burn her!!! I will fuck her her [sic] burnt corpse afterwards to make sure she is dead... 6/11/2013 6:23:46 PM(UTC+0). (Reply Att. 1 ¶ 29; JN Att. A ¶ 229(v)).

Factual Findings of the UK High Court: The Boston Plane Incident, May 2014 (flight from Boston to L.A.)

Mr. Depp kicked Ms. Heard in her back and threw a boot at her

Later passed out in the bathroom and was ill as a result of consuming alcohol and cocaine. (JN. Att. A ¶¶ 53-54, 239-265.)

Depp's Second Witness Statement stated that he had had alcohol before and during the flight but was merely drawing in his sketchbook ignoring Ms. Heard who was haranguing him. **Def. Ex. 8 ¶¶ 36-38.** He changed his testimony after being confronted with the texts his counsel had withheld. **Def. Ex. 9, Depp UK Tr. 329:15-336:9.**

The Court made its findings on this incident based on the communication of Depp and Depp's bodyguards:

Intentionally withheld and inadvertently disclosed texts:

From Depp to Paul Bettany 5/30/2014 5:45:08 PM(UTC+0) (Reply Att. 1 ¶ 29):

I'm gonna properly stop the booze thing, darling.. Drank all night before I picked Amber up to fly to LA, this past Sunday.. Ugly, mate... No food for days... Powders... Half a bottle of Whiskey, a thousand red bull and vodkas, pills, 2 bottles of Champers on plane and what do you get...???

An angry, aggro Injun in a fuckin' blackout, screaming obscenities and insulting any fuck who got near... I'm done. I am admittedly too fucked in the head to spray my rage at the one I love... For little reason, as well I'm too old to be that guy But, pills are fine!!!

From Stephen Deuters to Amber Heard (Reply Att. 1 ¶ 29):

Stephen Dueters <+1 310-729-2814>

Hey. He's up. He's much better. Clearer. He doesn't remember much, but we took him thru all that happened. He's sorry. Very sorry. And just wants to get better. Which allows us to make him follow up on that promise.

5/25/2014 8:45:04 AM -07:00

Stephen Dueters <+1 310-729-2814>

He's teary. He doesn't want to be a fuck-up anymore - his words. He's got bad indigestion this morning but otherwise alright. He's gone back to sleep for a bit.

Spoken to C. We're going to set him up with Dr Kipper on weds hopefully. He won't be skipping it this time.

5/25/2014 9:06:24 AM -07:00

Factual Findings of the UK High Court: Bahamas, August 2014

- Mr. Depp visited the island he owned in the Bahamas in order to try and rid himself of his addiction to Roxies. Ms. Heard went with him. So, too, did a Registered Nurse, Debbie Lloyd, though Ms. Lloyd stayed on a separate part of the island with the rest of the staff. There came a point where Dr Kipper flew out to the Bahamas to assist Nurse Lloyd in helping Mr. Depp cope with the withdrawal symptoms.
- Mr. Depp assaulted Ms. Heard by pushing her on at least one occasion. The Court also held,
 - “His feelings towards Ms. Heard vacillated wildly. At times he was extremely fond of her and grateful to her. At other times he imagined that she was the cause of his pain and that her actions increased his torment. I say ‘imagined’ because there is no evidence that Ms. Heard was anything other than solicitous and following strictly the regime prescribed by Nurse Lloyd and/or Dr Kipper.” (JN Att. A ¶¶ 55-56, 266-274)

Factual findings of the UK Court: Tokyo, January 2015

- Ms. Heard and Mr. Depp were in a hotel room in Tokyo
- Mr. Depp shoved Ms. Heard, slapped her, grabbed her hair, and when Ms. Heard tried to stand up, Mr. Depp muscled her to the floor while standing over her and yelling, and she cried on the floor. JN Att. A ¶¶ 59-60, 280-86.

Factual Findings of the UK High Court: Australia, March 2015

- Over a period of three days, Mr. Depp pushed Ms. Heard, slapped her, shoved her to the ground and continued to slap her;
- Grabbed her by the neck and shoved her against the refrigerator and slapped her face;
- Later hit her multiple times, shoving and pushing her to the ground, choked her, and spit in her face;
- Threw unopened bottles at her; shoved her into a ping pong table, threw more glass bottles through window panels in a glass door, and grabbed her and tore her nightgown;

Factual Findings of the UK High Court: Australia, March 2015 (cont'd)

- Grabbed Ms. Heard by her neck and again choked her against the refrigerator;
- Slammed her against the countertop while strangling and choking her and banging her head against the countertop. JN Att. A ¶¶ 61-62, 287-370.
- Ignored Ms. Heard saying “you are hurting and cutting me” and instead continued to hit her, and slammed a plastic telephone repeatedly against the wall with his hand.
- These assaults left Ms. Heard with a broken lip, swollen nose, and cuts all over her body.
- See also*, UK High Court Confidential Annexe, 2d JN Att. 1; and Court of Appeals Confidential Annexe, 2d JN Att. 2.

Factual Findings of the UK High Court: Australia, March 2015 (cont'd)



“STARRING BILLY BOB AND EASY AMBER”

•The Court rejected that Ms. Heard caused Mr. Depp’s finger injury or injury to his face, and found that it was Mr. Depp who scrawled graffiti in his own blood from his injured finger and then dipped his injured finger in paint and continued to write messages. JN Att. A ¶¶ 61-62, 287-370.

•“I accept her evidence of the nature of the assaults he committed against her. **They must have been terrifying. I accept that Mr. Depp put her in fear of her life.**” JN Att. A. ¶ 370 (iv)-(v), (xxii).

Def. Ex. 13

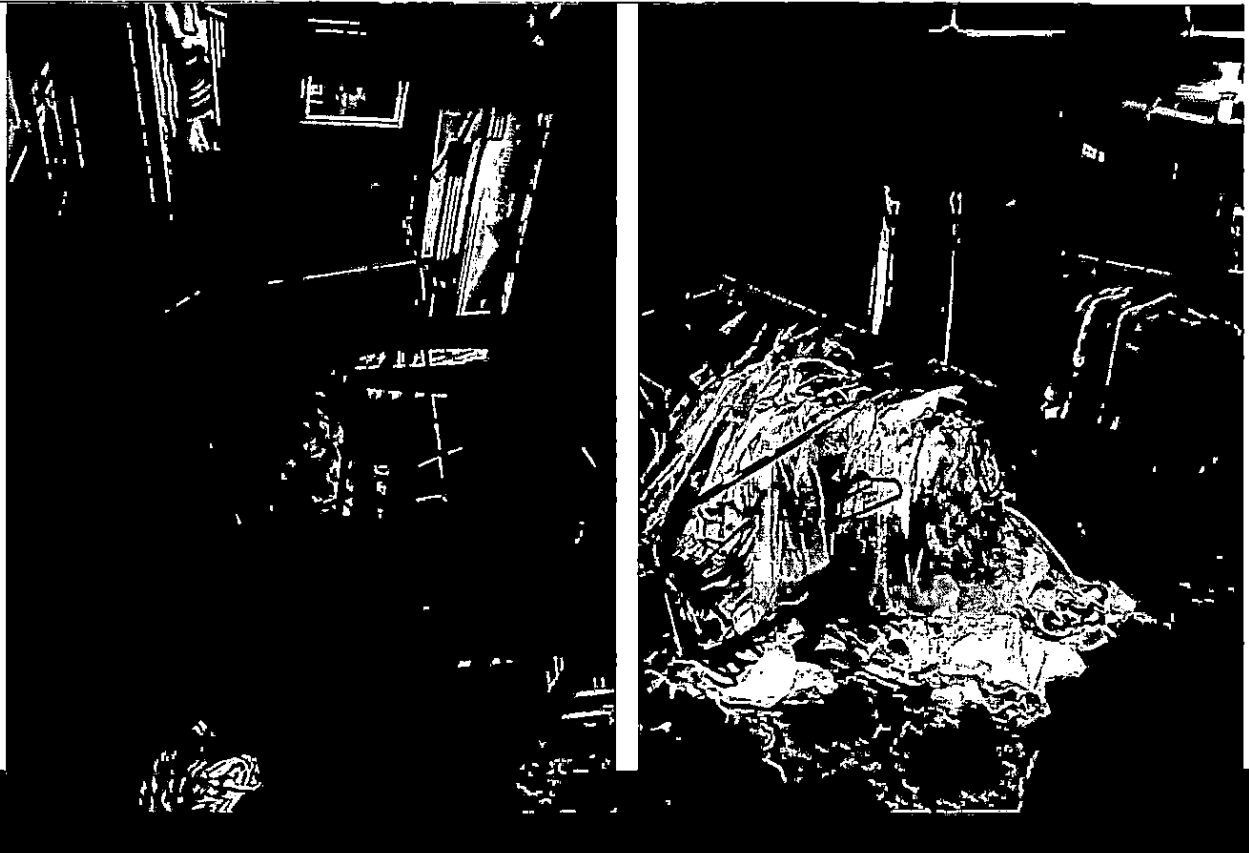


“GOOD LUCK AND BE CAREFUL AT TOP”

Factual Findings of the UK High Court: Los Angeles, March 2015 (Staircase incident)

- Mr. Depp hit Ms. Heard hard and repeatedly,
 - lunged at Ms. Heard to hit her again,
 - shoved Ms. Heard's sister when she tried to stop him,
 - grabbed Ms. Heard by the hair with one hand and hit her repeatedly in the head with the other hand,
 - and destroyed personal property.
- JN Att. A ¶¶ 63-64, 371-86.

Def. Ex. 14



Factual Findings of UK High Court: Southeast Asia, August 2015 (Train Incident)

Mr. Depp:

- “picked a fight with Ms. Heard, hit her, and pushed her against a wall by grasping her throat and holding her there, causing her to fear for her life.” JN Att. A ¶ 65
- The Court accepted Defendants’ account as true, relying on Ms. Heard’s contemporaneous diary entry, which stated, “J [Mr. Depp] finally at one point found himself with his shirt wrapped around my neck (amazing to think about the precision/coordination that required considering the circumstances). He hit me several times. I don’t even know how I wound up with this huge rather annoying knot on the back of my head?” JN Att. A ¶ 390.

-



Def. Ex. 15

Factual Findings of the UK High Court: Los Angeles, December 2015

- Mr. Depp put Ms. Heard “in fear of her life,” by:
- slapping her, grabbing her by her hair and dragging her through the apartment, pulling out chunks of Ms. Heard’s hair;
- following Ms. Heard upstairs and hitting her in the back of the head, grabbing her hair again, and dragging her by her hair up the last few steps, then shoving her at the top of the stairs;
- repeatedly hitting Ms. Heard and knocking her to the floor, then head-butting her in her face when she stood up and bashed her nose (Depp conceded on cross-examination that this was true and the Court rejected this was “accidental” as claimed by Mr. Depp);

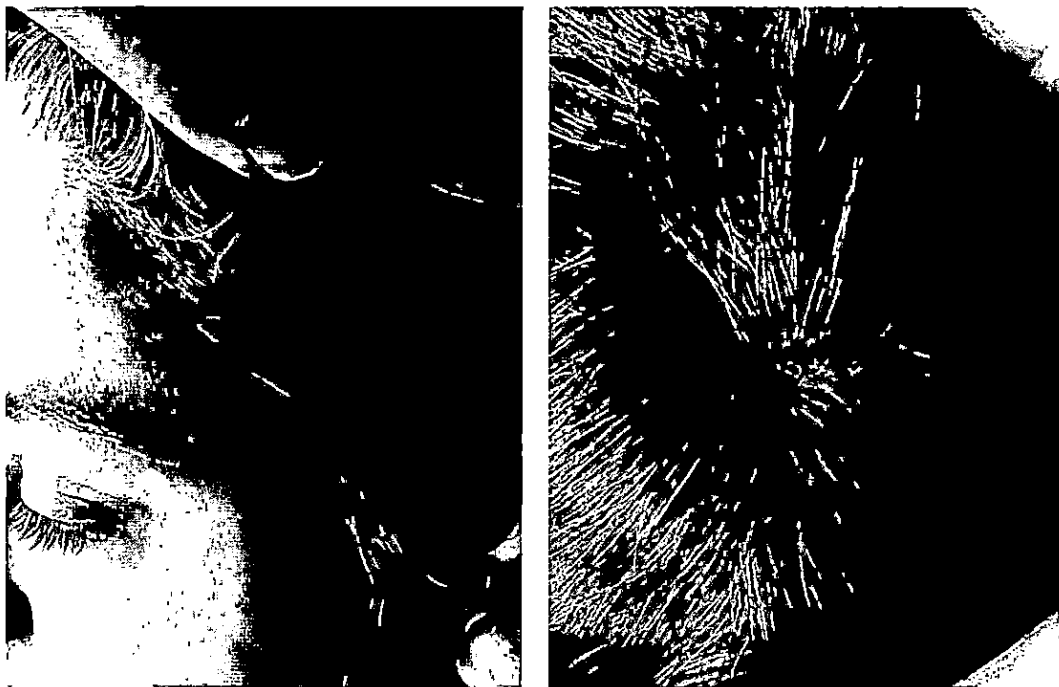
Factual Findings of the UK High Court: Los Angeles, December 2015 (cont'd)

- dragging Ms. Heard into an upstairs office, grabbing her by her throat, pushing her down to the ground, and punching her in the back of her head;
- grabbing her by her hair, slapping her face, and screaming at her “I’ll fucking kill you”;
- and continuing to hit Ms. Heard with closed fists, pushing her face into the mattress, and pulling out chunks of her hair. (JN Att. A ¶¶ 69-70, 407-455)



Def. Ex. 15

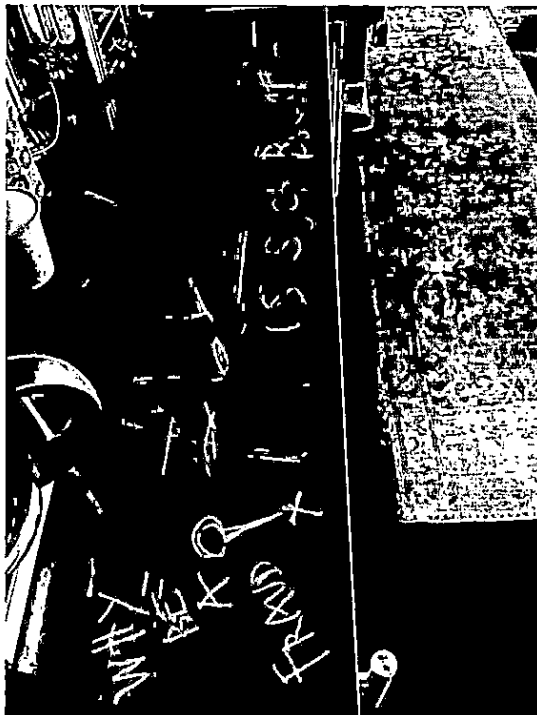
Factual Findings of the UK High Court: Los Angeles, December 2015 (cont'd)



- Mr. Depp pushed Ms. Heard and grabbed her by her hair and dragged her from room to room by her hair.
- Mr. Depp hit Ms. Heard with his closed fists, pushed her face into the mattress, and pulled out chunks of her hair.

Def. Ex. 15

Factual Findings of the UK High Court: Los Angeles, December 2015 (cont'd)



Def. Ex. 15



Def. Ex. 15

Factual Findings of the UK High Court: Los Angeles, December 2015 (cont'd)

- “The Claimant got on top of Ms Heard and placed his knee on her back and the other foot on the bedframe while repeatedly punching her in her head. The Claimant screamed, ‘I fucking hate you’ over and over again. The bedframe splintered under the weight of the pressure of the Claimant’s boot.” JN Att. A ¶ 69.

Factual Findings of the UK High Court: Depp Abuses Ms. Heard at her 30th Birthday Celebration Los Angeles, April 21, 2016

- Mr. Depp threw a magnum-sized bottle of champagne at Ms. Heard;
- Grabbed her by her hair,
- Pushed her to the ground scraping her knees on broken glass while further pushing and shoving her;
- Pushed her onto a bed and bumped his chest with hers causing her to fall back down to the bed; and
- Physically prohibited Ms. Heard from leaving the room while he assaulted her.
(JN Att. A ¶¶ 71-72, 459-76)

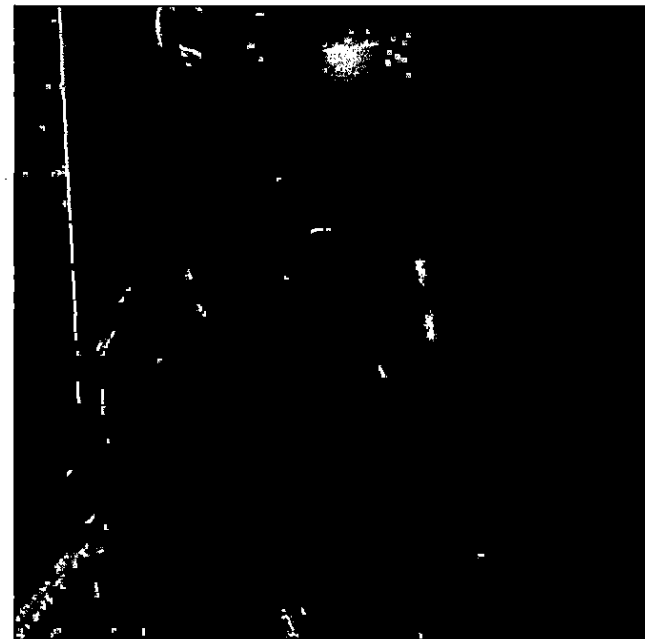
Factual Findings of the UK High Court: Los Angeles, May 21, 2016



- Mr. Depp ripped a phone from Ms. Heard's hands and threw it at her striking her cheek and eye;
- Charged at her, pulling back her hair, striking her, and violently grabbing her face;
- Slapping, shaking, and yanking her around the room while she screamed. (JN Att. A ¶¶ 73-74, 481-573).

Def. Ex. 16

Factual Findings of the UK High Court: Los Angeles, May 21, 2016



Def. Ex. 16

Depp repeatedly argued that The Sun's published statements were "career-ending"

- "The very likely intended effect of the Articles was to finish the Claimant's career." Plea in Bar Att. 3, Particulars of Claim.
- At the UK trial Counsel for Depp argued "As for the defendants, they could have just ignored Ms. Heard's claims, but they chose not to. They could have just reported them alongside Mr. Depp's position, but they deliberately decided not to do so. They chose instead, as I say, to convict Mr. Depp and that is what they seek to do in this court, to prove that this reputation-destroying career-ending allegation is true. That is what your Lordship is concerned about, true or not." **Def. Ex. 10**, UK Trial Tr. 2503:15-22.
- Because Depp cannot prove damages in this case after arguing that his career was destroyed by The Sun's allegation, Depp is grasping at yet another shot at "vindication."

But Depp already chose the UK as his forum of choice to provide “vindication” for the winning party

- Depp told the UK Court the UK decision, and not a jury, would achieve vindication for all parties:
 - **[T]he US proceedings will not produce a clear and reasoned judgment**, which is exactly what Eady J [a Judge in a case Depp’s counsel was citing] said is so important. Trial in the proceedings in Virginia will be a jury trial with just a verdict. Here, your Lordship will deliver a clear and reasoned judgment taking into account a mass of evidence, hearing from the parties and giving your judgment in relation to the 14 different incidents. As I say, Eady J made clear that **it is a reasoned judgment that provides the vindication**, not just for the claimant but also for the defendant. **Reply Att. 2, at 15.**
- The UK High Court, in granting Depp’s request for relief, specifically found:
 - I also see force in Mr. Sherborne’s [Depp’s counsel] points that a reasoned decision (which I shall have to give after the trial) will be a vindication for whatever party is successful of a different order than a bald verdict of a jury. Of course, I mean no disrespect to the procedure adopted in Virginia. **Reply Att. 3, ¶130(v).**

Each time Depp loses, he will just keep litigating

- Mr. Depp, now characterizes his entire two-year, multimillion dollar UK litigation as culminating in “one man’s opinion,” (Plea in Bar Att. 2, Depp Tr. 407:17-20), and seeks a second try at “vindication,” and if this Court does not put a stop to this and end the litigation, the crusade for “vindication” will continue, and Ms. Heard will continue to be forced into courts across the U.S. and abroad to defend herself, and whomever Depp chooses to sue next, under the theory that the news organizations are not in privity with Ms. Heard, and therefore he has endless shots to try to prove he did not beat Amber Heard.

Q: If you view the decision in the U.K. as an opinion of one man and we go to trial by the jury and the jury decides in favor of Amber Heard, is your decision -- is your position going to be that's the opinion of seven people?

...
A: . . . I can only hope that people will hear the truth and understand it to be the truth, but I don't think that the -- the young soldiers who were storming the beaches at Normandy -- I don't think they were saying hey, let's have pizza tonight. I think that they knew what they'd gone into. So what I'm saying is if -- if this does come out, the decision in this particular case comes out in Mrs. -- Ms. Heard's favor, then that is what will happen, but that's not going to make me go oh, my God, I must have done it. Do you understand? Def. Ex. 11, Depp Tr. 695:22-696:20

Depp's quest for "vindication" will not be achieved with a jury verdict in this case

"Whether Justice Nicol saw things in favor of my case against The Sun or not, whether this case, wherever this may land us, let's say, if -- if I won every case, if I won every little trinket or whatever, I still will lose -- I've still lost, and that started April 22nd and then the last time I saw her in May or whatever it was or . . . I've still lost, you understand, because I will carry this with me, baggage, the baggage of it, the accusations. Whether I win or whether I'm deemed some kind of horrible creature that should be locked in a jail cell or in a tomb or whether I'm king of the universe, I've lost. **I've already lost by the damage done.** So my continuing my search for the truth, my continuing to demand the truth is not for me to win, but it's for the people out there, the women, the victims of this type of thing who are not believed, who are being lied to by your client pretending to be some new messiah of the women's movement. She is a fraud. Anything else? **So if I can help other people by continuing, I certainly will now.**" Def. Ex. 11, Depp Tr. 419:2-

420:4.

Comity should be afforded to the UK Judgment

- Restatement 4th of the Foreign Relations Law of the U.S. 481: “A party to a U.S. proceeding may rely on a foreign judgment to preclude relitigation of a claim governed by the foreign judgment (claim preclusion), or to resolve an issue of law or fact addressed in the foreign proceeding (issue preclusion).”
- The seminal U.S. Supreme Court case of *Hilton v. Guyot* articulated that Comity is the recognition in one country of a foreign country’s legislative, executive, or judicial acts. The rationale behind comity is **reciprocity**. *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895).
- If this Court refuses to recognize the UK Judgment, the ramifications not only for residents of Fairfax County, but potentially across the US and abroad, would contravene international reciprocity. The consequences will impact the enforcement of U.S. judgments in the UK too by sending the message UK judgments will not be honored.
- There are no Virginia cases refusing to grant comity to a UK judgment.

Virginia Supreme Court Affords Comity to UK Judgments

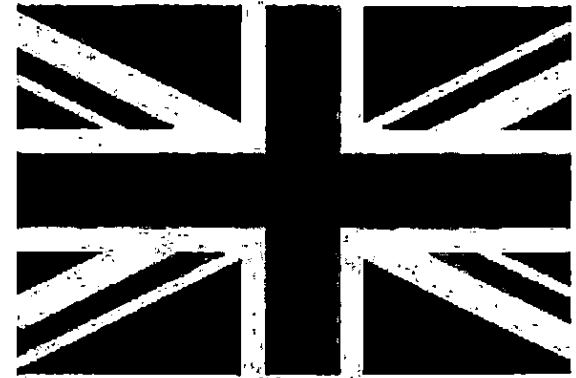
The Virginia Supreme Court affords comity to UK Judgments and has held that **UK Courts satisfy the factors in *Hilton*** for purposes of applying comity.

***Oehl v. Oehl*, 221 Va. 618 (1980)** (applying comity to English visitation Order):

“Virginia’s jurisprudence is deeply rooted in the ancient precedents, procedures, and practices of the English system of justice. A substantial portion of the common law of England and the writs, remedial and judicial, given by any statute or act of Parliament, made in aid of the common law have been legislatively incorporated in the law of this Commonwealth.”

A refusal to recognize the UK Judgment would defy this prior Virginia Supreme Court decision.

Depp dismisses *Oehl* because the parties were in privity, but Depp misses the entire concept as articulated in *Hilton* and the Restatement—comity encompasses claim and issue preclusion. Privity is not even raised in *Oehl*. The key is that Virginia law and jurisprudence are based on English law and the Virginia Supreme Court has already determined to accept and recognize UK judgments.



Comity: Factors to be considered

The factors as announced in *Hilton*:

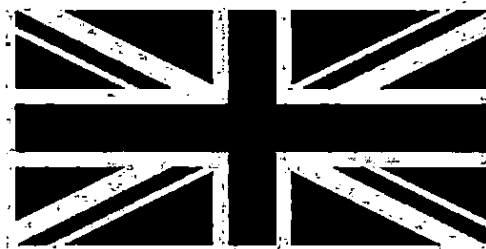
- Full and fair trial abroad before a court of competent jurisdiction,
- Conducting the trial upon regular proceedings,
- Having jurisdiction over the defendant [party],
- Under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and
- Nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect

In those cases “ . . . the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh . . . ” *Hilton v. Guyot*, 159 U.S. at 203.

Comity: In addition to Virginia, other jurisdictions afford comity to UK judgments

Pony Express Records v. Springsteen, 163 F. Supp. 2d 465 (D.N.J. 2001)

Bruce Springsteen had previously sued Masquerade Music, Ltd. for copyright infringement of his compositions and sound recordings in the **UK** and prevailed. Plaintiffs were not parties to the prior litigation and filed an action in the U.S. for multiple claims including copyright infringement against Springsteen. Plaintiffs argued that they were prohibited from engaging fully in the UK litigation by Masquerade and had only directly participated in the litigation by sending the court two letters detailing plaintiffs' positions on the copyright issues at stake.



Comity: Springsteen (cont'd)

The Court applied the factors of the *Hilton* case and found:

- (1) the UK Court had personal jurisdiction over the parties,
- (2) the parties to the UK action received adequate notice,
- (3) the UK Court was a fair and just tribunal that “carefully and thoroughly considered their respective allegations and proofs, provided Masquerade with ample opportunity to defend itself, and recorded the court’s final decision clearly within that opinion,”
- (4) the issue pending litigation was **identical to the issue in the previous litigation**,
- (5) There was no privity between plaintiffs and prior parties, and
- (6) **even though there was no privity and plaintiffs had not fully and fairly participated in the litigation**, they were still estopped from asserting their claims because “they had the **opportunity to participate, but forwent that opportunity.**” *Id.* at 474-75.



Depp argues that this case is distinguishable because the parties were in privity (Opp. 19), but the Court expressly held that **THERE WAS NO PRIVACY.**

See also Apostolou v. Merrill Lynch*, 2007 WL 2908074 (E.D.N.Y. 2007) (applying comity to London Employment Tribunal decision and noting, “the circumstances under which federal courts will disregard foreign proceedings ‘are construed especially narrowly when the alien jurisdiction is ... a sister common law jurisdiction with procedures akin to our own.’”) Once again, **THERE WAS NO PRIVACY.*

Comity (like full faith and credit) bars defamation claims contradicted by prior adjudicated facts

- *Schuler v. Rainforest Alliance, Inc.*, the Second Circuit upheld the granting of comity to a Mexican judgment and ruled plaintiffs' claim of **defamation** pertaining to their ownership of property was precluded by the court in Mexico's prior holding on the **same issue** in a case where plaintiffs failed to prove their ownership of the property. 684 F. App'x 77 (2d Cir. 2017).
 - **THERE WAS NO PRIVACY BETWEEN DEFENDANTS.**
- *Stevens v. Redwing*, 146 F.3d 538, 545 (8th Cir. 1998): The court afforded full faith and credit to a Georgia juvenile court decision finding the father sexually abused his daughter and holding that because the foreign jurisdiction **found the statements to be true** there was no tort of **defamation**.
 - Public policy similar to here: victim of domestic violence.



Cases cited by Depp are inapplicable to this case

- *Gordon & Breach Science Publishers S.A. v. Am. Institute of Physics*, 905 F. Supp. 169 (S.D.N.Y. 1995).
- The court examined six factors before declining to grant preclusive effect to German and Swiss judgments.
- The factors here are in sharp contrast to those in *Gordon*:
 - (1) there is reciprocity with the UK Court, which recognizes collateral estoppel (referred to as “issue estoppel” in the UK),
 - (2) Depp was a party to the previous litigation and litigated his case on the merits;
 - (3) the UK is a common law jurisdiction from which our legal system is derived;
 - (4) the foreign law is ascertainable and undisputed;
 - (5) the UK applies collateral estoppel consistently; and
 - (6) there are no conflicting foreign judgments.

Cases cited by Depp are inapplicable to this case (cont'd)

- In *Amica Life Ins. Co. v. Barbor*, cited by Depp (Opp. 19), the court refused to bind a non-party to a prior judgment—here Depp should be bound because he was a party.
- Furthermore, the Court did not view this as a comity case, and instead a collateral estoppel case and it was not clear that the issue before the Court had been actually litigated.
- Notably the four factors for preclusion of factual findings by foreign litigation articulated in *Amica* are met in this case:
 - 1. identical issues
 - 2. actual litigation of the issues
 - 3. the finding of the relevant fact was necessary to the foreign court's final decision; and
 - 4. The foreign tribunal's proceedings were fundamentally fair(Note, no mention of mutuality!)

Comity should be afforded in this case

- It is undisputed that the UK High Court had subject matter jurisdiction and personal jurisdiction over the UK Action to make such a ruling.
- It is undisputed that the UK High Court is a fair and just tribunal
 - Depp expressed his preference for the UK over the U.S. as a better venue for vindication for both parties.
 - Depp selected the UK for its plaintiff-friendly defamation law and more favorable burden of proof
 - Depp failed to provide any evidence that the UK High Court is not a fair and just tribunal.
- As Mr. Depp admitted, he was not precluded from calling any witness or submitting any evidence that he wanted to submit in the UK proceeding. Plea in Bar Att. 1, Depp Tr. 398:8-399:5.
- No party claimed fraud on the UK Court.

Depp had a “full and fair opportunity . . . **evidentially** to litigate Ms. Heard’s claims of abuse” Contrary to Depp’s assertion (Opp. 14),

- There was no evidence/judicial finding that any recordings or other material was modified. JN Att. A ¶¶ 561-72
- Defendants prepared an expert report verifying the metadata of the photographs. Depp’s counsel opposed. The Court ruled expert evidence was unnecessary to determine whether the photos were manipulated because **Depp’s counsel admitted they did not challenge the authenticity of the photos.**
 - The Court noted “Those photographs have always been in the trial bundles,”
 - The photographs “were disclosed *by* him [Depp], *to* the Defendants, not *by* the Defendants *to* Mr Depp.” JN Att. A ¶ 571
 - “Any difficulty created by the late notice of the Defendants’ application to was therefore **due to the Claimant’s delay in giving the Defendants notice that they were intending to allege that Ms Heard’s photos had been manipulated.**” JN Att. A ¶ 568.
- The Court relied on the photos to reach its factual findings:
 - “In re-examination, Ms Heard denied that she had photoshopped the pictures taken of her on 16th December or had asked anyone else to do so. She had worn heavy make-up for the James Corden show only to hide her injuries. She had not pulled out her own hair for the photos.” JN Att. A ¶ 422.
 - “Mr Depp also tore out clumps of hair from Ms Heard’s head. These were photographed later.” JN Att. A ¶ 455(iv).
 - “There is a copy of a photograph of the right side of Ms Heard’s in the documents (file 6/148(e) / F894.155A) which the metadata shows as I have said, was taken at 20.23 (and so before the police arrived) . . . “Further photographs were taken of Ms Heard’s face timed, according to the metadata . . .” JN Att. A ¶¶ 511, 513.

The UK Judgment Should be Recognized under the Uniform Foreign-Country Judgments Recognition Act

Virginia Code § 8.01-465.13:2.
Applicability.

A. Except as otherwise provided in subsection B, this chapter applies to a foreign-country judgment to the extent that the judgment:

- 1. Grants or **denies recovery of a sum of money**; and
- 2. Under the law of the foreign country where rendered, **is final, conclusive, and enforceable.**

The UFCMJRA does not require mutuality.

In *Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co.*, 470 F. Supp. 610 (S.D.N.Y. 1979), permitting application of the Uniform Foreign-Country Money Judgments Act to a non-party and noting:

“Defendant [non-party] may avail himself of the preclusive effect of the prior judgment even though he was not a party to the proceedings in Britain.”

Id. at 617 n.9.



The UK Judgment Should be Recognized under the Uniform Foreign-Country Judgments Recognition Act

Virginia Code § 8.01-465.13:3. Standards for recognition of foreign-country judgment.

A. Except as otherwise provided in subsections B and C, a court of the Commonwealth shall recognize a foreign-country judgment to which this chapter applies.

B. A court of the Commonwealth shall not recognize a foreign-country judgment if:

- 1. The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- 2. The foreign court did not have personal jurisdiction over the defendant; or
- 3. The foreign court did not have jurisdiction over the subject matter.

C. A court of the Commonwealth need not recognize a foreign-country judgment if:

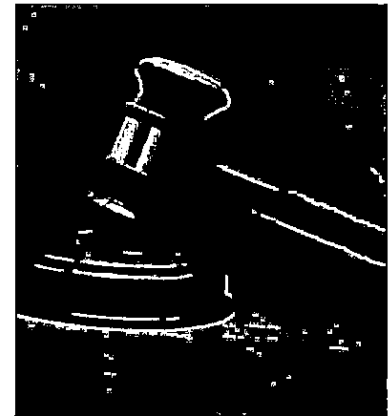
- 1. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
- 2. The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- 3. The judgment or the cause of action on which the judgment is based is repugnant to the public policy of the Commonwealth or of the United States;
- 4. The judgment conflicts with another final and conclusive judgment;
- 5. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
- 6. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- 7. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- 8. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The UK Judgment Should be Recognized under the Uniform Foreign-Country Judgments Recognition Act

- Virginia Code § 8.01-465.13:3(D): **A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection B or C exists.**
- Depp has not even articulated, much less established, a ground for nonrecognition under subsections B or C.

Defensive Collateral Estoppel Defined

- Black's Law Dictionary defines "defensive collateral estoppel" as estoppel "which prevents relitigation by plaintiff of issues previously lost against another defendant." *Lohr v. McCurdy*, 52 Va. Cir. 352, 354 (Rockingham Cty. 2000).



Eagle Star permits defensive collateral estoppel and non-mutuality and is still good law



- The Virginia Supreme Court in *Eagle, Star & British Dominions Ins. Co. v. Heller*, held that the trial court erred in denying defendant's pleas of res judicata and estoppel and prohibiting evidence of Plaintiff's prior conviction of willfully burning goods in a civil case against the insurer of the same goods. 149 Va. 82 (1927).
- “This is a case in which a rigid adherence to a general rule [of mutuality] and to some judicial expressions would be a reproach to the administration of justice.”
- The Court held mutuality does not apply to a party “who has once litigated the identical question and had it adversely decided, **under conditions most favorable to himself.**”
- THE SAME IS TRUE HERE. DEPP LITIGATED THE IDENTICAL QUESTION OF WHETHER HE ABUSED AMBER HEARD UNDER CONDITIONS MORE FAVORABLE TO DEPP—IT WAS PRESUMED FALSE AND DEFENDANTS HAD THE BURDEN OF PROOF.
- Eagle Star* has been cited in numerous Virginia Supreme Court cases, 4th Circuit decisions, the U.S. Supreme Court and foreign jurisdictions for the principle that mutuality is not required where a party has fully and fairly litigated an issue. It has never been overturned and nearly a century later, it is still good law.

Defensive collateral estoppel and non-mutuality is recognized by the U.S. Supreme Court and the majority of U.S. jurisdictions

- The U.S. Supreme Court and the majority of jurisdictions in the United States recognize defensive use of nonmutual estoppel.
 - The U.S. Supreme Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 325 (1971) (citing *Eagle Star*) applied defensive collateral estoppel, ruling “the achievement of substantial justice **rather than symmetry** is the measure of the fairness of the rules of res judicata.”
 - *Bernhard v. Bank of America Nat. Trust & Savings Assn.*, 19 Cal. 2d 807, 122 P. 2d 892 (1942) (also citing *Eagle Star*) recognized the move away from mutuality by the majority of Courts. “Many courts have abandoned the requirement of mutuality and confined the requirement of privity to the party against whom the plea of res judicata is asserted.”
- Applying defensive collateral estoppel here—where the identical issue has been decided against Depp—would achieve substantial justice.

Bates v. Devers carved out an exception for collateral estoppel mutuality—that exception is met here.

- The Virginia Supreme Court intentionally embedded flexibility in its decisions on collateral estoppel for cases like this one.

“Collateral estoppel is the preclusive effect impacting in a subsequent action based upon a collateral and different cause of action. In the subsequent action, the parties to the first action and their privies are precluded from litigating any issue of fact actually litigated and essential to a valid and final personal judgment in the first action.” *Bates v. Devers*, 214 Va. 667, 671 (1974).

The “mutuality doctrine should not be mechanistically applied when it is **compellingly clear from the prior record that the party in the subsequent civil action against whom collateral estoppel is asserted has fully and fairly litigated and lost an issue of fact** which was essential to the prior judgment.” 214 Va. at 672 n.7 (emphasis added).

This is exactly the situation here—whether Depp abused Heard was essential to the prior UK judgment as Depp’s counsel conceded.



The Fourth Circuit interpreted Virginia law as holding that no mutuality or privity required for collateral estoppel

In *Graves v. Associated Transport, Inc.*, 344 F.2d 894, 897 (4th Cir. 1965), the Fourth Circuit in reviewing a number of Virginia cases held:

- “The mutuality rule was probably **never a solid wall**; exceptions were created under the pressure of the public interest in an end to litigation. The thought was that under certain circumstances once the party against whom the former judgment was asserted has been afforded a full and fair day in court and a reasonable opportunity to be heard on all relevant issues, even though against a different adversary, a plea of estoppel by judgment ought to be recognized. The rule of mutuality is itself based upon policy and practical necessity and justice, as is the whole doctrine of res judicata, and on the same grounds of policy and justice there would seem to be no objection to departing from it where the party affected has been given one adequate opportunity to be heard either personally or by representation.”

Graves, applying Virginia law, barred plaintiff Graves’ tort claims where the defendant—a non-party to a prior lawsuit—asserted collateral estoppel to bar claims of plaintiff, a prior party. After extensive review of Virginia cases on collateral estoppel, the Court reasoned that Graves had “**already had his day in court**” and held the District Court erred in rejecting the plea of res judicata tendered by defendant. *Id.* at 902.

The Court found, “**there is no compelling reason . . . for requiring that the party asserting the plea of res judicata must have been a party, or in privity with a party, to the earlier litigation.**” *Id.*

The Eastern District of Virginia and Virginia Circuit Courts have interpreted *Bates v. Devers* as recognizing collateral estoppel with no mutuality

- *Moore v. Allied Chemical Corp.*, 480 F. Supp. 377, 382 (E.D. Va. 1979). Permitting the use of defensive collateral estoppel in *Moore*, the Eastern District, citing *Bates v. Devers*, 214 Va. at 671 n.7, observed, “the Supreme Court of Virginia has recognized the doctrine of collateral estoppel, even though the previous determination may have involved a different cause of action **and different parties.**” *Id.* The Court held that defendant was not precluded from asserting collateral estoppel although it was not a party to the prior administrative proceedings.
- Virginia Circuit Courts have also held that mutuality is not required for collateral estoppel to bar defamation claims. *Leach v. Virginia State Bar*, 73 Va. Cir. 362 (Richmond 2007).

Depp's rigid requirement of mutuality invites, rather than ends, litigation

- Under Depp's reasoning—that mutuality of parties is dispositive—Depp can keep filing suits against every news organization who prints or broadcasts he is a wife-beater or has committed domestic violence and bring them anywhere in the US and the world, because it would be a non-mutual party.
 - Each time he loses, he can shrug it off and file another one, and Ms. Heard will be forced into court to come to their defense (and her own) every time.
 - If Ms. Heard does not come to the defense of a publisher and Depp wins, the outcome will be inconsistency across jurisdictions, enabling Depp to continue his crusade, and
 - News organizations' speech will be chilled as they would not be able to rely on fully adjudicated decisions in the UK or even the U.S.

Res Judicata (claim preclusion): This action and the UK action arise from the same conduct, transaction, or occurrence

- Like collateral estoppel, res judicata protects parties from the “cost and vexation of multiple lawsuits, conserve[s] judicial resources, and, by preventing inconsistent decisions, encourage[s] reliance on adjudication.” *Funny Guy, LLC v. Lecego*, 293 Va. 135, 142 n.7 (2017).
- Rule 1:6 addresses *claim* and *cause of action* preclusion—not *issue* preclusion.
- The rule mandates application of res judicata where mutuality exists, but permits application of res judicata where there is no mutuality;
- **Rule 1:6(d) expressly preserves the common law governing privity** as it relates to Rule stating, “The law of privity as heretofore articulated in case law in the Commonwealth of Virginia is unaffected by this Rule and remains intact. For purposes of this Rule, party or parties include all named parties and those in privity.”

Res Judicata (claim preclusion): This action and the UK action arise from the same conduct, transaction, or occurrence (cont'd)

- Applying the factors from *Funny Guy*, the facts underlying the two actions are related in origin and motivation.
- The origin of both actions is Mr. Depp's domestic abuse of Ms. Heard, preceding a 2016 Domestic Violence Restraining Order and filing the divorce proceedings. Mr. Depp's motivation is to prove the allegations of abuse false.
- The facts underlying the two actions are also related in time and space. Both actions center around the same events of Mr. Depp's abuse of Ms. Heard.
- Finally, the facts underlying the two actions form a convenient trial unit and their treatment as such conforms to reasonable parties' expectations.
 - Evidence presented here will be the same as the evidence presented in the UK action, only likely more (we are not restricted to 14 events—and Ms. Heard only needs to prove one).
 - Reasonable "parties would not expect, much less want," a dispute over the veracity of a statement "to disintegrate into multiple lawsuits." *Funny Guy*, 293 Va. at 155. Instead, reasonable "parties would expect there to be one court case to resolve it," which has already taken place, by Depp's choice, in the UK. *Id.* at 156.
- Ms. Heard is not required to establish all the factors of the same-subject-matter test to prevail on her plea of res judicata, but she has clearly done so.

Ms. Heard and the UK defendants were in privity

- The Virginia Supreme Court in *Lane v. Bayview Loan Serv.*, 297 Va. 645 (2019) held that:

“Privity as used in the context of res judicata or collateral estoppel, does not embrace relationships between persons or entities, but rather it deals with a person’s relationship to the subject matter of the litigation. . . . Whether privity exists is determined on a case by case examination of the relationship and interests if the parties.”

- The U.K. case was about whether Mr. Depp abused Ms. Heard. Ms. Heard could not have a closer relationship to the subject matter—she was the person being abused. The Defendants in the UK could not prevail without Ms. Heard’s testimony.

Ms. Heard and the UK defendants were in privity (cont'd)

- Depp argued throughout the UK proceedings that the “*effective opponent was Ms. Heard.*” JN Att. A ¶ 576.
- The UK Court also recognized that Heard was integral to the UK proceedings by:
 - (1) noting the importance of Heard being in the courtroom for the trial,
 - (2) refusing Depp’s request to exclude her,
 - (3) conditioning Depp being able to go to trial in the UK if he did not retaliate against Ms. Heard for providing the Australian drug texts, in its Order dated July 2, 2020. Reply Att. 3.
- The UK Case and the US Case are about Ms. Heard being the victim of domestic abuse at the hands of Mr. Depp. Ms. Heard **IS** the subject matter.

Ms. Heard and the UK defendants were in privity (cont'd)

Ms. Heard had no choice but to be involved in the UK proceedings even though it was painful and humiliating. (Def. Ex. 10, UK Trial Tr. 2105:20-2106:6):

| | | | |
|----|--|---|--|
| 15 | MR. JUSTICE NICOL: Save him the embarrassment and what was --- | 2 | I did not want to talk about everything that we, that happened |
| 16 | MS. WASS: "And this". tell us what were you referring to? | 3 | in our marriage and in our relationship. I did not want to |
| 17 | THE WITNESS: I gestured to the courtroom. I meant no offence to | 4 | put Johnny in a situation where the world or his kids would |
| 18 | this proceeding, I just meant --- | 5 | know fully what he was or what he could do. It is |
| 19 | Q. Can you explain what you meant by that? | 6 | embarrassing. |
| 20 | A. <u>Every day more and more attacks were coming out against me and</u> | | |
| 21 | <u>accusing me of being a liar and was forcing me in a position</u> | | |
| 22 | <u>where I would be increasingly aware I would have to at some</u> | | |
| 23 | <u>point speak to prove it or speak out against it. I did not</u> | | |
| 24 | <u>want to do this. I did not want to expose this. I did not</u> | | |
| 25 | <u>want to expose the totality of what really happened to me.</u> | | |

Conclusion

- The subject matter – whether it was true or false that Mr. Depp abused Amber Heard – is exactly the same issue litigated in the UK and which would be litigated in the US in this case.
- This is a case about domestic violence between intimate partners. As Amber Heard expressed, it is embarrassing and humiliating to testify about abuse by one’s mate. Amber Heard was essential to proving the allegations of abuse were true in the UK. The UK High Court found the Defendants, with Amber Heard as their primary witness, had proven 12 instances of domestic violence against Amber Heard by Mr. Depp, where the conditions were more favorable to Mr. Depp, based on the burden of proof resting on the Defendants.
- Mr. Depp fully and fairly litigated the truth or falsity of these allegations in his choice of forum – the UK, where he expressed a preference for the reasoned decision of a Judge over a jury trial in the U.S., admitted there was no evidence or witness he was unable to call and confirmed that the decision of the UK High Court would result in “vindication” for whichever party prevailed. Then he lost.

Conclusion (cont'd)

- Under all the principles espoused - including the guidance on comity, the uniform judgments act, defensive collateral estoppel, res judicata, and privity from the Virginia Supreme Court dating back a century to *Eagle Star*, through *Bates v. Devers*, *Oehl v. Oehl*, *Funny Guy* and the more recent Lane case, all of which carve out exactly the circumstances under which litigation must end, even when not the same parties, or in privity. This is that case. There will never be a case fitting all the exceptions and guidance better than this one.
- Public policy dictates the end of this litigation and dismissal of Mr. Depp's Complaint. There is no reason to put all the witnesses through a repeat of the evidence of domestic violence, tax this Court's valuable resources, especially in light of COVID-19, and continue in aggressive, expensive litigation of issues that have already been fully and fairly litigated.
- We ask that this Court grant the Supplemental Plea in Bar, and dismiss Mr. Depp's Complaint, with prejudice.