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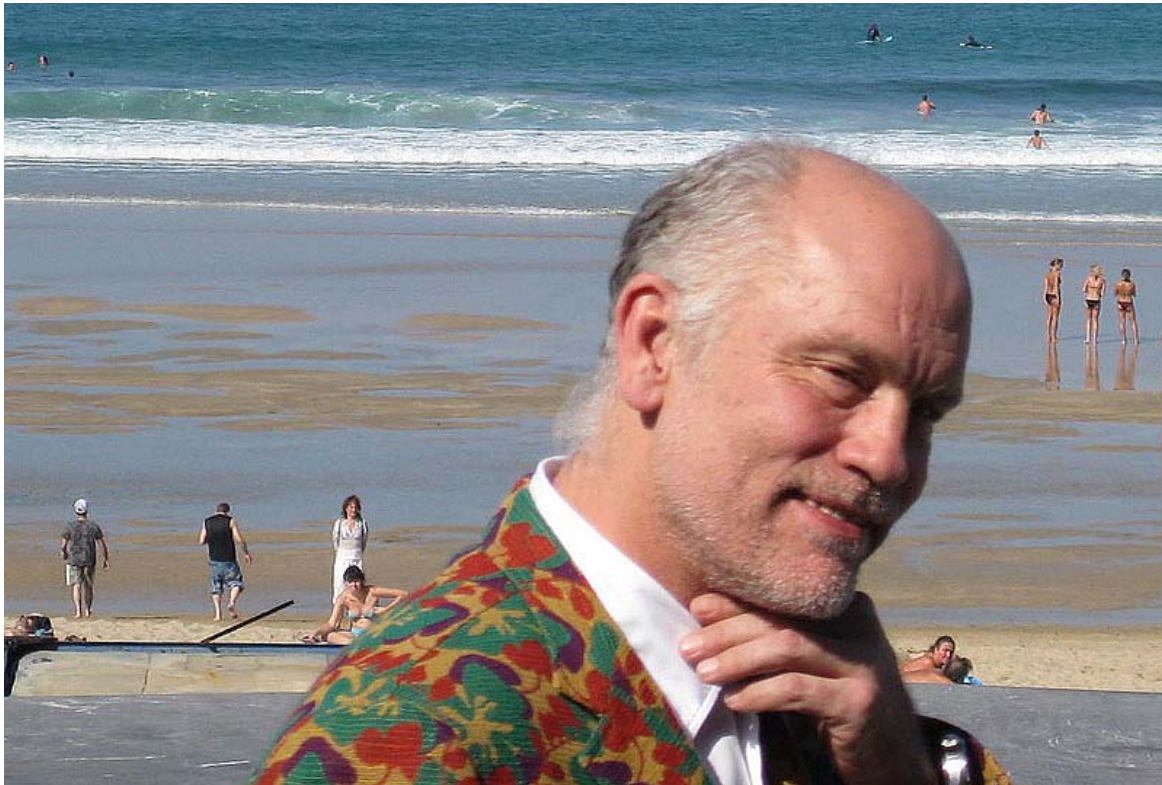
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John Malkovich Sues Over Swiss Account Allegations

Actor [John Malkovich](#) has sued the French daily paper Le Monde over false reports saying he had a secret Swiss account. The defamation suit is the latest proof that having an undisclosed account in Switzerland—or perhaps anywhere—is an embarrassment for anyone. Whether politician, public figure, or anyone else, no one wants to be linked to undisclosed offshore accounts.

The details of [Malkovich's suit over the Swiss Leaks story](#) include statements from his Paris attorney Herve Temime, noting that his client blamed Le Monde for “the considerable damage inflicted on his honor” in linking him to an alleged HSBC tax evasion scheme. The actor is “profoundly shocked that his name could be denounced this way.” According to Mr. Temime, Malkovich only had a securities portfolio between 1994 and 1999, and even that was fully declared to U.S. authorities.



Being linked to an undisclosed Swiss account is viewed as anathema. That seemingly undisputed fact also suggests that suing a Swiss bank for handing over your name is not likely to turn out well. Think of it as a kind of flip side of the Malkovich suit. Surprisingly, though, more than a few Americans have tried such legal claims in the face of the embarrassing and expensive consequences of being outed to U.S. tax authorities.

Perhaps the best example of a lawsuit of this sort that turned out badly was [*Thomas v. UBS*](#). This lawsuit was against UBS for ratting out the plaintiffs to the IRS. Predictably, it was dismissed by the trial court. Undaunted, the plaintiffs appealed to the Seventh Circuit Court of Appeals. There, Judge Posner affirmed and had some fun, too.

Let's set the stage. The offshore banking industry was roiled by the IRS investigation of UBS. In 2009, UBS admitted that it had helped tens of thousands of Americans evade U.S. taxes. UBS paid a \$780 million fine and named names. Then, many thousands Americans stepped forward to the IRS to pay taxes, penalties and interest on previously undisclosed accounts. This was a sea change in how offshore banking worldwide was done for generations.

Of course, it was also expensive and not what Swiss account holders expected. In [*Thomas v. UBS*](#), thousands of Americans with UBS accounts sued for the penalties, interest, and costs they incurred

from their scrape with the IRS. They also sued for hundreds of millions in profits they claim UBS reaped by inducing them to maintain UBS accounts. Not mincing words, Judge Posner said the plaintiffs were tax cheats.

However, Posner noted that the plaintiffs did not argue they received tax advice from UBS. Instead, they argued UBS should have *prevented* them from violating the law. As Judge Posner put it: “This is like suing one’s parents to recover tax penalties one has paid, on the ground that the parents had failed to bring one up to be an honest person who would not evade taxes and so would not subject himself to penalties.”

Judge Posner went on to describe other claims in the suit for negligence and malpractice as “frivolous squared.” The lawsuit, he wrote, was “a travesty.” In fact, he noted that the court was surprised that UBS did not request sanctions on the plaintiffs and class counsel. Suing UBS also didn’t go well for Russian billionaire Igor Olenicoff, whose similar lawsuit failed last year.

UBS may have survived its criminal probe, but other banks remain in the crosshairs. And with FATCA, the entire world of banking is an open book for the IRS.

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