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Books

RELATIVES SUE 'HIT MAN' PUBLISHER, SAY MANUALS WERE USED IN CONTRACT MURDERS

Survivors of a woman killed in an alleged murder-for-hire scheme are suing the publisher of two "how-to-be-a-hit-man" manuals in federal court in Maryland, claiming the books are unreasonably dangerous products that the publisher knew would be used by murderers (*Rice v. Paladin Enterprises Inc.*, DC SMD, No. AW-95-3811, complaint filed 12/13/95).

The books are *Hit Man: A Technical Manual for Independent Contractors*, and *How to Make a Disposable Silencer, Volume 2*, published by defendants Paladin Enterprises Inc. of Boulder, Colo., and company president Peder C. Lund.

The suit, filed Dec. 13, 1995, in the U.S. District Court for the Southern District of Maryland, arises out of the March 1993 murder of Mildred Horn; her 8-year-old quadriplegic son, Trevor; and the child's nurse, Janice Saunders. James Perry was convicted and sentenced to death for the murders. Lawrence Horn, Trevor's father and Mildred's ex-husband, is accused of hiring Perry to commit the crimes so he could inherit Trevor's settlement of a medical malpractice case against a Washington, D.C., hospital, according to the complaint. He is awaiting trial.

The complaint alleged that Perry followed the steps outlined in the books on choosing a weapon and making a silencer, removing the gun's serial number, and the "preferred" method for achieving "the desired result" of murder by shooting victims at close range in the eyes. The books "were specifically intended to encourage, facilitate, instruct, counsel and advise murderers as to proven methods to effectuate their criminal acts," the complaint said.

Claims Include Strict Liability, Negligence

The strict liability count alleged the books were unreasonably dangerous products "with no socially redeeming value, the principle purpose of which was to facilitate murder."

The plaintiffs will rely on a Maryland Court of Appeals decision to support the strict liability claim, according to plaintiffs' attorney Howard L. Siegel. In *Kelley v. R.G. Industries*, the state's highest court held that the manufacturer of a "Saturday Night Special" could be held strictly liable to a shooting victim for the reasonably foreseeable criminal misuse of the weapon (13 PSLR 779). Although the state Legislature later superseded the decision by banning such guns, Siegel said the ruling remains as an important precedent for this case. The Court of Appeals emphasized that the product at issue had no legitimate, non-criminal use. That ruling is the "launching pad" for this case, Siegel said.

The complaint also alleged that the defendants negligently breached a duty to the decedent and others to use

reasonable care and refrain from distributing the books to persons they knew or should have known would use them to commit murder.

A civil conspiracy count alleged the defendants conspired with the book authors and Perry to enter the murder-for-hire business, culminating in Mildred Horn's death.

The complaint alleged the defendants "aided and abetted criminals," and were "willing and active participants" in tortious and criminal acts leading to the murders.

First Amendment Question

The case will test the extent of First Amendment protection, according to Lawrence Savell, an attorney who specializes in media law and product liability.

He said that courts normally give a lot of leeway to the media. Although the complaint quoted some "egregious" language from the manuals, a court would probably look at whether the books included a direct statement that a person should be killed, he said. For example, a book with the title *Kill the President* that included specific instructions might not be protected, he said. [Ed.'s Note: See Savell's Analysis and Perspective article, "Products Liability Claims Against Publishers: Can Information be a Defective Product?," 21 PSLR 1166. Savell is with Chadbourne & Parke LLP in New York.]

Paladin attorney Daniel C. Hale said the First Amendment protects the books because they do not contain any incitement to immediate illegal action.

Hale said the books are not products for the purposes of product liability law because the information in them is not tangible. He also said that proximate cause is missing, given that Perry allegedly ordered the books after he entered into the alleged conspiracy.

The plaintiffs are represented by Siegel of Galt, Siegel & Doyle; and John Marshall of Moldawer and Marshall. Both attorneys practice in Rockville, Md.

Hale is with Miller, Hale & Harrison in Boulder, Colo.

Restatement (Third) Of Torts

ALI TO CONSIDER RULES FOR USED PRODUCTS AND SUCCESSOR LIABILITY AT ANNUAL MEETING

Revisions to the product liability provisions of the *Restatement (Third) of Torts* will be considered at the American Law Institute's annual meeting in May. Proposed changes involving used products, successor liability, and post-sale conduct are on the agenda.

The ALI is ahead of schedule and may finish the multi-year project—which will shape product liability law throughout the United States for decades—by 1997, according to Deputy Director Michael Greenwald.

Greenwald told BNA Jan. 29 that Reporters James A. Henderson Jr. of Cornell Law School and Aaron D. Twerski of Brooklyn Law School have been busy making changes to black-letter law, the reporters' notes, and various comments in anticipation of presenting Tentative Draft No. 3 for membership approval in May.