

Part I

Recent Libel Law Developments

How do they impact editorial policy at your magazine?

By Lawrence Savell

Libel law is both challenging and evolving.

Recognizing that laws and court rulings vary around the country, this article highlights some recent significant developments of interest to magazine editors.

Defamatory Statements

Traditionally, words falsely imputing current disease or incompetence in one's occupation or profession have been regarded among the classic examples of defamatory statements.

However, on May 13, in *Sam v. Enquirer/Star Group, Inc.*, the New York Court of Appeals ruled that a statement a person had cancer was not defamatory. New York's highest court unanimously rejected arguments by the estate of Chen Sam, Elizabeth Taylor's publicist, that Ms. Sam was defamed in her profession by a report that she had cancer which was published in the supermarket tabloid, the *Star*. The court affirmed the dismissal of the complaint, which had alleged that "the nature of cancer is so inextricably intertwined with the thought of impending death that clients would have lost confidence in the ability of plaintiffs' decedent to

supply public relations services, thereby injuring her in her business." It concluded that "the statement that plaintiffs' decedent had cancer did not defame her in her trade, business or profession. To be actionable as words that tend to injure another in his or her profession, the challenged statement must be more than a general reflection upon decedent's character or qualities. Rather, the statement must reflect on her performance or be incompatible with the proper conduct of her business Here, however, the statement did not impugn, or even relate to, any particular talent or ability needed

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to perform in decedent's profession as a publicist." The court further observed that "[p]ersons afflicted with cancer or other serious diseases, whether debilitating only or ultimately fatal, frequently carry on their personal or professional activities in today's

enlightened world in normal fashion and without any deprecatory reflection whatsoever" It rejected the plaintiffs' argument that "cancer is, or has become associated with, a condition odious enough to drive away decedent's clients in disgust or fear," noting that cancer does not fall into the category of a loathsome disease since it is neither contagious nor attributed in any way to socially repugnant conduct.

Identification

A libel plaintiff must show that the statement at issue referred to him or her — i.e., that it was "of and concerning" the plaintiff. In a very troubling decision issued late last year, the Illinois Supreme Court in *Bryson v. News America Publications Inc.* reversed the dismissal of a libel and invasion of privacy suit based on a short story titled "Bryson," published in the March 1991 edition of *Seventeen* magazine as part of a group of stories entitled "New Voices in Fiction." The story referred to the subject (identified only by last name) as a "slut," and identified the author as a "native of southern Illinois" — where the plaintiff Kimberly Bryson lived. The court rejected the defendants' claim that the article could reasonably be construed as referring to someone other than the plaintiff: "The name 'Bryson' is not so common that we must find as a matter of law that no reasonable person would believe that the article was about the plaintiff." It also rejected the defendants' argument that the article could be construed as not referring to the plaintiff because the story was labeled "fiction" and, therefore, did not purport to describe any real person: "The fact that the author used the plaintiff's actual name makes it reasonable

that third persons would interpret the story as referring to the plaintiff, despite the fictional label.

In addition, the setting of the story, the events described therein, and the identification of the writer

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as a native of southern Illinois all lead to a reasonable conclusion that third persons familiar with both the plaintiff and the defendant would understand the story as referring to the plaintiff." Thus, "[u]nder the circumstances, we conclude that the plaintiff should be allowed the opportunity to prove that, despite the fictional label, the character 'Bryson' bears such a close resemblance to the plaintiff that reasonable persons would understand that the character was actually intended to portray the plaintiff." This disturbing decision illustrates the importance of making sure that fictitious identities do not accidentally identify a real person, and of incorporating explicit disclaimers that an article does not relate to any actual person.

Group Libel Doctrine

Another frequently litigated libel identification issue involves the situation where a group to which an individual belongs, as opposed to the specific individual, is named.

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Two recent cases have upheld the latitude of publishers. In *Rahn v. The Detroit News Inc.*, the Michigan Circuit Court ruled that an article about the lawn care industry did not defame the unmentioned plaintiff lawn care company.

Similarly, in *Brown v. New World Communications of Tampa Inc.*, a libel action brought by four commercial net fishermen, the Florida Circuit Court ruled that paid political advertisements concerning commercial net fishing in that state, broadcast by the defendant television station, were not actionable under the group libel doctrine. The court granted the defendants' motion for summary judgment, noting that "plaintiffs here must demonstrate that the political advertisements were of and concerning them as individuals and not as unidentified members of a group. This they cannot do because the statements

at issue relate not to any identified individual but to an extremely large group: all commercial net fishermen in Florida." It noted the general rule: "One who publishes defamatory matter concerning a group or class of persons is subject to liability to an individual member of it if, but only if, the group or class is so small that the matter can reasonably be understood to refer to the member, or the circumstances of publication reasonably give rise to the conclusion that there is particular reference to the member." This criteria "almost always precludes liability when the group allegedly defamed exceeds 25."

Lawrence Savell is Counsel in the New York City office of the law firm Chadbourne & Parke LLP, where he concentrates on products liability and media law litigation and counseling. He can be reached at 212-408-5343, by fax at 212-541-5369, or online at lawrence.e.savell@chadbourne.com. ♦
