Loss Scenarios for Radio/TV Broadcasters

Defamation

Factual background

As part of a discussion about the reported abuse of detainees in U.S. military custody, the host of a radio talk show states that the government paid a particular military contractor to “torture and rape” prisoners, including children, and that the same people who are employed by the contractor had fought as mercenaries in support of oppressive African regimes.

Litigation proceedings

The contractor sues the host and the broadcaster for defamation in a federal court that is known for its high-intensity ‘Rocket Docket’. The defendants file a series of motions seeking to gain dismissal on jurisdictional grounds and requesting transfer to a different venue, all of which are unsuccessful. Following an accelerated four month discovery period - which includes several intense disputes over testimony and document production and the filing of an amended complaint - the defendants move for summary judgment on the grounds that the statements cannot be reasonably interpreted as stating actual facts and there is insufficient evidence of actual malice on the part of defendants.

Outcome

The court grants the motion, and the ruling is affirmed by the court of appeals.

Costs

The total cost of litigating this case for the talk-show host and broadcaster would be expected to be approximately $930,000. [This loss scenario is based on CACI Premier Technology Inc. v. Rhodes, No. 1:05-1111 (E.D. Va.).]

False light

Factual background

The news department of a large metropolitan television station receives an anonymous tip that a high-ranking city official had been using taxpayer money to finance lavish personal vacations under the guise of attending work-related conventions. Producers decide to follow the official to an upcoming conference of public administrators, which is being held in Las Vegas. Camera crews shadow the official and secretly videotape her shopping and gambling. The resulting story, which includes footage of the official’s recreational activities, reports that the official attended less than four hours of workshops at the three day conference, at a substantial cost to taxpayers, and connects the story to recent criticism of overspending and mismanagement within the official’s department.

Litigation proceedings

The official sues the station (along with the city itself and various municipal employees and officials) for, among other things, placing her in a false light. Following 13 months of discovery, the station moves for summary judgment and prevails.

Outcome

On appeal, the judgment is affirmed on the grounds that the proof of fault presented by plaintiff - including testimony by the reporter that he wanted to “shock the public” by reporting that a public official was misusing taxpayer money - was insufficient to establish actual malice with convincing clarity.

Costs

The total cost of litigating this case for the television station would be expected to be approximately $515,000. [This loss scenario is based on Harris v. City of Seattle, 152 Fed. Appx. 565 (9th Cir. 2005).]

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Loss Scenarios for Radio/TV Broadcasters

Copyright infringement

Factual background

A cable television network produces and broadcasts an hour-long biographical documentary about a veteran Hollywood actor, during which brief clips from several of the actor's motion pictures are shown. Among them was a 20 second clip of footage edited from the promotional trailer of a 40 year-old film in which the actor starred.

Litigation proceedings

The owner of the copyright in the film sues the network for infringement. The parties conduct discovery for six months, after which the network moves for summary judgment, contending that the limited use of the clip from the movie trailer in the documentary was a 'fair use' of a copyrighted work and thus non-actionable under the Copyright Act.

Outcome

The court agrees, finding that the 20 seconds of footage was shown in the documentary "for the transformative purpose of enabling the viewer to understand the actor's modest beginnings in the film business," that it constituted "less than 1% of the film," and that it had no effect at all on whatever limited market exists for the original film. The plaintiff appeals, and, following briefing, the court of appeals summarily affirms the judgment.

Costs

The total cost of litigating this case for the network would be expected to be approximately $315,000. [This loss scenario is based on Hofheinz v. A&E Television Networks, 146 F. Supp. 2d 442 (S.D.N.Y. 2001).]

Intrusion/trespass/newsgathering torts

Factual background

A magazine sales company whose agents travel the country selling subscriptions on a door-to-door basis brings suit against the producers of a syndicated television news program that broadcasted an investigative report on the company's business practices using an undercover reporter. The news report which includes video footage and audio recordings obtained through the use of hidden cameras and microphones - recounts abusive treatment of sales agents, deceptive sales practices, and other unsavory behavior by company employees.

Litigation proceedings

The lawsuit alleges claims for violations of the federal Wiretap Act, civil RICO, trespass, intentional interference with contract, and fraud on the part of the show's producers. After the defendants move to dismiss, the plaintiff voluntarily withdraws its civil RICO and tortious interference claims. Following six months of discovery, including motions practice, the court grants partial summary judgment, dismissing the plaintiff's wiretap and fraud claims. The court denies the parties' cross-motions for summary judgment on the trespass claim and sets the matter for trial.

Outcome

Prior to trial, the court enters a bench verdict on agreed facts, finding in the defendants' favor and dismissing the trespass claim. The plaintiff notices an appeal, but does not pursue it.

Costs

The total cost of litigating this case for the show's producers would be expected to be approximately $450,000. [This loss scenario is based on Pitts Sales v. King World Prods., 383 F. Supp. 2d 1354 (S.D. Fla. 2005).]

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Loss Scenarios for Radio/TV Broadcasters

Breach of scope of license

Factual background

A major U.S. television network enters into an agreement with the producers of a popular British television program to broadcast episodes of the show in the United States. The agreement permits the network to edit the programs only “for insertion of commercials, applicable censorship or governmental . . . rules and regulations, . . . and time segment requirements.” After one program airs with substantial editing by the network, the owners of the copyright (who had granted the producers a limited rebroadcast license) bring an infringement suit, charging that the network exceeded the scope of its license when it altered the content of the broadcast.

Litigation proceedings

The plaintiffs obtain a temporary restraining order in federal court prohibiting further broadcast of the programs and then seek a preliminary injunction, which involves extensive briefing about copyright ownership and related legal matters. The district court denies the preliminary injunction, and the plaintiffs take an immediate appeal. Upon review, the court of appeals reverses, finding that the plaintiffs had established a likelihood of success on the merits of their claim, and orders that further broadcasts be enjoined pending resolution of the suit.

Outcome

Subsequently, the parties reach a settlement under which the network agrees to broadcast the program with limited modifications.

Costs

The total cost of litigating this case for the network would be expected to exceed $750,000. [This loss scenario is based on Gilliam v. ABC, 538 F.2d 14 (2d Cir. 1976).]

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