

Defamation

Factual background

Two authors write a 700-page book entitled “A Guide to Cults and Fringe Religions,” which is published and distributed by a mid-sized publisher of religious-oriented texts. The book contains a 16-page introduction and 57 chapters, each devoted to a different religious group.

Litigation proceedings

One of the groups - which is the subject of a two-page chapter and is mentioned in three other places in the book (once in a chart along with 15 other groups, once in a footnote, and once in an appendix list of 50 religious groups) - sues the authors and the publishers for defamation, contending that the book labels it as a “cult” and that this description has damaged its reputation in the community. Following a ten-month discovery period, the authors and the publishing house move for summary judgment on the grounds that the statements in the book and any resulting implications are incapable of defamatory meaning, that the church is a public figure and cannot prove actual malice, and that the statements are protected by the First Amendment.

Outcome

The trial court denies the motion, but permits an immediate appeal. The appellate court reverses and orders that summary judgment be entered for the publisher and authors because determining the truth or falsity of the church’s status as a “cult” would run afoul of constitutional proscriptions on state involvement in religious affairs and because statements in the book’s introduction describing criminal characteristics of cults are not “of and concerning” the plaintiff group.

Costs

The total cost of litigating this case for the book authors and publisher would be expected to be in the range of \$650,000. [This loss scenario is based on *Harvest House Publishers v. The Local Church*, 190 S.W. 3d 204 (Tex. Ct. App. 2006).]

Copyright infringement

Factual background

A large reference-book publisher produces and distributes an illustrated biography of a famous American counterculture band that includes, according to the book’s jacket, “rare and unseen photography” as well as “seminal posters, memorabilia, and ephemera,” along with personal essays and a comprehensive timeline of the band’s history. Included within the book’s historical timeline are seven reduced-sized images of concert posters for which the publisher did not obtain reprint permission.

Litigation proceedings

The copyright holder sues the publisher for infringement, seeking an injunction against further distribution of the book, the destruction of all unsold books, and actual and statutory damages. Following nine months of discovery, the publisher files a motion for summary judgment conceding both that plaintiff owns the copyright in the posters and that the publisher copied the works without authorization but contending that the use of the images in the book constitutes non-actionable “fair use” of the works.

Outcome

The trial court agrees and grants the publisher’s motion, concluding that the book’s use of the copyrighted works was protected because it was sufficiently transformative, made only minimal use of the posters, and did not affect the market for the posters themselves. On appeal, the judgment of the trial court is affirmed.

Costs

The total cost of litigating this case for the publisher would be expected to be approximately \$525,000. [This loss scenario is based on *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006).]

These scenarios each are based on a real case or claim and, although not all of them involved Hiscox insureds, they are illustrative of the losses media companies routinely experience. Stated loss and defense costs are either actual, based on public sources or authorized disclosures, or closely estimated. The types of claims illustrated generally fall within the initial scope of coverage afforded by the typical Hiscox media liability policy form, but whether and to what extent a particular claim would ultimately be covered depends on the specific policy wording and the actual facts relevant to the claim.

Error and omission

Factual background

A reader of a “how to” book called The Making of Bicycles is injured while allegedly following the book’s instructions for constructing a homemade bike.

Litigation proceedings

In the resulting lawsuit, the reader alleges that the book’s publisher breached a “duty to provide adequate and safe instructions and warnings to intended purchasers of its publication.” The plaintiff contends that he was justified in relying on the book and that the book provided faulty instructions and insufficient guidance about the danger associated with making the bicycle, thus constituting negligent misrepresentation.

Outcome

Prior to the commencement of discovery, the publisher successfully moves to dismiss the complaint. The plaintiff challenges the dismissal in the appellate court, which affirms the ruling on the grounds that - just as a magazine publisher cannot be held to vouch for the safety of every product that is advertised in its pages and a cookbook publisher will not be held liable if one of its recipes leads to illness - the publisher of a “how to” book has no duty to scrutinize or test procedures that it does not itself author.

Costs

The total cost of litigating this case for the publisher would be expected to be approximately \$70,000. [This loss scenario is based on *Alm v. Van Nostrand Reinhold Co.*, 480 N.E. 2d 1263 (Ill. Ct. App. 1985).]

Misappropriation of name/likeness

Factual background

A former professional hockey player, whose nickname while playing was “Gary Goon” (based on his reputation as an enforcer on the ice), files a lawsuit for misappropriation of his identity against the publisher of a comic book series that features a mobster character of the same name. The comic includes several other characters named after hockey players and is heavily marketed to hockey fans, including through game-night giveaways of hockey pucks emblazoned with the comic’s logo.

Litigation proceedings

The parties engage in extensive discovery over the course of more than a year, and the case proceeds to trial. After the jury returns a \$24.5 million verdict for the plaintiff, the court sets aside the judgment, finding that the evidence presented was legally insufficient. On appeal, the state’s Supreme Court determines that, to succeed on such a misappropriation claim, a plaintiff must establish that the product “predominantly exploits the commercial value of an individual’s identity,” and it remands the case for a new trial. The jury in the second trial also returns a verdict for the plaintiff and awards \$15 million in damages.

Outcome

The publisher appeals again, and the state’s intermediate appeals court affirms, finding that, despite the fact that the book’s character bore little physical resemblance to the plaintiff, there was evidence to support a conclusion that the publisher intended to create the impression that the plaintiff was associated with the comic.

Costs

The total cost of litigating this case for the publisher would be expected to exceed \$2.1 million. Defense Cost Payment: \$2,100,000; Indemnity Payment: \$15,000,000; Total Loss: \$17,100,000. [This loss scenario is based on *Doe v. McFarlane*, 207 S.W. 3d 52 (Mo. Ct. App. 2006).]

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