

Florida Court Dismisses Insurance Company's Defamation Action Against The Associated Press

By **Judith M. Mercier**

A Florida circuit court has dismissed a defamation action against The Associated Press, two attorneys and their law firm, over a statement in an article reporting on the jury's verdict in the wrongful death claim arising out of the death of a Miami judge. *United Automobile Insurance Company v. Freidin*, Case No. 06-25595-CA-08, (Fla. 11th Judicial Cir. Ct. December 3, 2007).

Plaintiff in the defamation action, United Automobile Insurance Co., had provided insurance coverage to the drunk driver who caused the fatal accident with the judge. The Associated Press reported after the jury returned its verdict that the lawyers for the judge's family, who were the wrongful death plaintiffs, said they would file a bad faith lawsuit against the insurance company for refusing to make any offer of settlement.

In dismissing the defamation claim against AP, the court found that the statement was not capable of defamatory meaning. The court issued a separate decision dismissing the claims against the other defendants on a variety of grounds.

Background

The insurance company initially sued the attorneys and their law firm over the single sentence in AP's report but did not sue AP. The article reported on the jury verdict in the civil wrongful death action brought by the survivors of the Honorable Steven D. Levine against a drunk driver, Jose Hernandez. The article recounted the jury's award of \$2.125 million to each of Judge Levine's children, that the judge in the wrongful death case had dismissed claims against the bar Hernandez had visited on the evening he collided with Judge Levine's car, and that the lawyers for the children would sue Hernandez's automobile insurance company, United Automobile Insurance Co., to try to collect the money.

The insurance company alleged that the following one sentence in the article is defamatory: "Attorneys Phillip Freidin and Robert Brown said after they will file a bad faith lawsuit against the insurance company for refusing to make any offer of settlement. Freidin and Brown, in the defamation action, denied making the statement. The children, however, did file a bad

faith lawsuit against the insurance company in the months following the jury verdict in their favor."

In pursuing the defamation claim against the lawyers, United Auto subpoenaed for deposition the reporter who wrote the story, and AP moved to quash the subpoena based on Florida's reporter's privilege. Before the court ruled on the motion to quash, the plaintiff filed an amended defamation complaint and added AP as a defendant. AP and Brown filed motions to dismiss, and defendants Freidin and the law firm filed an answer and then filed a motion for judgment on the pleadings.

In response to the motions, United Auto argued that the statement was defamatory per se because it accused the insurance company of conduct that it argued was illegal – failure to make a settlement offer. The court rejected plaintiff's argument at the threshold. Considering the entire article, the language used, and evaluating the statement as the common mind would naturally understand it – which is the test in Florida for defamatory meaning – the court found that the statement is not capable of defamatory meaning. The court also found that the statement is substantially accurate because if the allegation that the insurance company refused to make any offer of settlement were eliminated from the article, the remainder would produce no different effect as the common mind would naturally understand it.

As additional grounds for dismissal, the court found that the statement was an opinion and was covered by the litigation privilege as it was made in the context of a judicial proceeding. Further, the court held, the statements were offered to give the defendant attorneys' opinion on the collectibility of the judgment that had just been entered, and their intent to file an action against the insurance company.

United Auto has filed an appeal.

Judith M. Mercier, a partner in the Orlando office of Holland & Knight LLP, represented The Associated Press. Helen Miranda, Josephs, Jack & Miranda, represented Robert Brown. Robert M. Klein, Stephens Lynn Klein, represented Freidin and Freidin & Brown, P.A. Michael Olin, Kozyak, Tropin & Throckmorton, also represented Freidin and Freidin & Brown, P.A. Jeffrey D. Feldman, Feldman & Gale, P.A., represented plaintiff.