

NJ Supreme Court Rules "Single Publication Rule" Applies to Internet Articles and Defines Parameters of Republication to Restart the Statute of Limitations for a Defamation Cause of Action

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CJ Griffin of Pashman Stein Walder Hayden Submitted Amicus Curiae Brief on behalf of ACLU-NJ in Petro-Lubricant Testing Laboratories, Inc. v. Asher Adelman

The Supreme Court of New Jersey has issued its decision today in *Petro-Lubricant Testing Labs, Inc. v. Asher Adelman*, in which Pashman Stein Walder Hayden partner CJ Griffin submitted an Amicus Curiae brief on behalf of the American Civil Liberties Union of New Jersey (ACLU-NJ). The decision resolves the issue of whether an edited online article constitutes a republication, and therefore a new statute of limitations, or whether an edited post is protected under the single publication rule and therefore time-barred.

“The decision states that the single publication rule applies to an Internet article, which has a positive impact on media and individuals who publish online content. Today’s decision will give online publishers leeway to fix typos and grammatical errors, rephrase sentences, and make minor factual changes, without worrying that a new period of liability will result,” said Griffin. “It is only where the changes to an article go so far as to convey a new defamatory meaning that new liability will occur.”

“This ruling has important implications for free speech in the digital age,” said ACLU-NJ Legal Director Ed Barocas. “Making small edits to an online post does not amount to publishing an article anew, and muddying those concepts doesn’t give anyone license to circumvent the First Amendment.”

The facts of the case are that in August 2010, Defendant Asher Adelman published a post on the eBossWatch.com blog, which summarized a hostile work environment lawsuit that had been filed against Plaintiffs Petro-Lubricant Testing Laboratories, Inc. In 2011, after Adelman received a threatening letter from Plaintiffs' attorney contending that the article was false and defamatory, Adelman edited the 2010 post about the lawsuit to soften the tone of the content, but Adelman stood by the post stating that it was a fair reporting of the original harassment complaint filed against the Plaintiff.

In New Jersey, libel or slander actions must be commenced within one year after the alleged libel or slander. Separately, New Jersey follows the single publication rule, which means that a single cause of action arises at the first publication of defamatory content regardless of how many copies of the publication are subsequently distributed or sold. An exception to the single publication rule is "republication" which triggers the start of a new statute of limitations and occurs when a separate publication from the original, on a different occasion, is published.

"While this concept is somewhat straightforward when it comes to republication of 'hard copy' printed material such as the new edition of a book, it is far more complex when it comes to internet publications, which are in 'soft copy' form and can be easily modified as many times as an author wishes," explains Griffin.

The Supreme Court did not need to decide on the substance of the post's changes because the trial court had properly dismissed the case under the fair report privilege. The fair report privilege extends to a full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding, including a civil complaint, regardless of the truth or falsity of the initial allegations and defenses because citizens have a right to know what has been filed in court and how the judicial system responds to it. Notably, the Court ruled that the fair report privileged applied even though Adelman's revised article did not report that the lawsuit had been settled.

The Court's decision suggests that minor alterations or the mere rewording of an online article would not constitute material and substantial changes. "The Supreme Court is supporting the right of individuals to speak freely on issues of public concern in our democracy," said Griffin. "By ruling that the single publication rule applies to Internet articles, the Supreme Court has clarified that factual corrections to online articles can be made without risking the triggering of a new statute of limitations."