

DO YOU REALLY HAVE THE RIGHT TO SAY WHATEVER YOU WANT – OR CAN THE IMPROPER USE OF SOCIAL MEDIA AND “YOUR RIGHT TO FREE SPEECH” HAVE DISASTROUS CONSEQUENCES?

How many of you subscribe to various e-newsletters? There is a wealth of free, trustworthy insurance information that can come to your inbox on a daily or weekly basis. The more you know, the more you can advise your clients as to potential important coverage options as well as exposures to avoid.

I’ve written articles on hazing and cyber bullying with the focus on our youth, but many older, but not wiser, adults have found social media is NOT their friend.

A disgruntled newlywed couple and their “revenge” on their wedding photographer

Newlywed clients of a photographer “trashed” the reputation of their wedding photographer over a small fee. The recently married couple complained to an NBC affiliate TV crew, emailed reporters across Texas, texted various friends, and maligned the photographer on Twitter, Instagram, and their own “Neely Moldovan’s beauty blog”. The story went “viral”.

Andrea Polito’s, the photographer, business was ruined so she sued. She had emails that discussed the original details and what the \$125/150 bone of contention fee was about. Polito sent the TV station her information and a follow-up story was aired but the proverbial damage was already done. Her reputation as a photographer was maligned and no one in the area wanted to hire her.

Polito sued and the jury found on her behalf and awarded \$1 million for her damages.

Hmmmmand then I took to the Internet to see what else was out there.

Florida Attorney wins judgement against former client’s online defamation

The attorney, Ann-Marie Giustibelli, won again in appellate court when former client, Copia Blake, wrote scathing reviews on numerous websites including allegations that the attorney had charged her 4 times what was quoted in the original contract. The appellate court upheld the \$350,000 punitive damages award. The appellate judge found that the statements made by the client were “factually false” and NOT protected by free speech.

Defamation of character on Facebook

John Beckett wanted Stephen Laughland’s former girlfriend and thought defaming Laughland’s reputation would win the girl. Beckett created a Facebook account using the name and photo of his victim, Stephen Laughland. Beckett made statements that “he” Stephen Laughland had defrauded banks and credit card companies and engaged in “underhanded” business practices. The Wisconsin court awarded Laughland \$15,000 in damages and \$10,000 in punitive damages

Facebook defamation leads to \$500,000 settlement in Ashville

Jacquelyn Hammond posted that Davyne Dial had gotten drunk and caused the death of her child. The North Carolina Superior court signed off on the judgement awarding Dial \$250,000 in actual damages and \$250,000 in punitive damages.

Massachusetts Internet Harassment case results in conviction under state’s criminal harassment statute MGL 265 43A

And ...one can even suffer criminal conviction in Internet harassment cases.

The Johnsons wanted to subdivide land and the area neighbors disagreed. The Johnsons started harassing their neighbor, the Lyons family. The Lyons name, address and phone number were posted on craigslist offering "free" golf carts on a first come first served basis. Come one come all as soon as you can to get your free golf cart.

Another craigslist advertisement was posted selling a fictitious motorcycle and asking for calls to the Lyons household be made after 10pm. A false call to Department of Children and Family services was made against the Lyons family. Anonymous emails sent to Lyons email account accusing Mr. Lyons of sexually molesting a young man. The Johnsons were convicted and the conviction was upheld by the MA SJC.

When sued for defaming others, is the homeowner client covered?

It depends.

We all know that the homeowner's policy only provides coverage for bodily injury and property damage under the Section II liability. "Bodily injury" is defined as:

"Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

And "property damage" is defined as:

"Property damage" means physical injury to, destruction of, or loss of use of tangible property.

If there is no "bodily injury" or "property damage" there is no defense, either. The ISO HO-2000 Section II Personal Liability insuring agreement states:

SECTION II – LIABILITY COVERAGES

A. Coverage E – Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

The ISO HO-91 and HO-2011 Coverage E Personal Injury insuring agreements are similar

I strongly urge that Personal Injury HO 24 82 be added to every homeowner's policy if the carrier doesn't do it automatically. There are varying editions of this endorsement. The good news is that the 2000 and 2011 versions state that the following would be covered:

4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or dispa ages a person's or organization's goods, products or services; or

The bad news is the endorsement contains exclusions also, such as "personal injury":

- d. Arising out of a criminal act committed by or at the direction of an "insured";

The Massachusetts couple would have a problem with this exclusion. Massachusetts has a law, MGL 265 43A stating:

Section 43A: Criminal harassment; punishment

Section 43A. (a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a

period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 1/2 years or by a fine of not more than \$1,000, or by both such fine and imprisonment. The conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

(b) Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years.

The 2000/2011 versions of the Personal Injury Endorsement also exclude "personal injury":

- a. Caused by or at the direction of an "insured" with the knowledge that the act would violate the rights of another and would inflict "personal injury";
- b. Arising out of oral or written publication of material, if done by or at the direction of an "insured" with knowledge of its falsity;

The original 04/91 edition of the Personal Injury endorsement doesn't contain these specific exclusions but the wording isn't really designed to address the Internet exposure. There was an edition date update for the HO-91 personal injury endorsement modifying the language to align better with the HO-2000/2011 language.

Wouldn't a "reasonably prudent" individual know that inflammatory and derogatory remarks could inflict personal injury on the victim when placed on the Internet for thousands – millions to see? Isn't this also violating the personal rights of the victim especially when remarks are false or grossly overstated and inflated?

In many Internet defamation cases, the perpetrator "published" information that they KNEW was false. They outright lied which would give them a problem with the second exclusion.

Depending on the circumstances of the situation, having the endorsement might provide defense and ultimate payout of damages. Without the endorsement, there is absolutely NO potential coverage for Internet defamation under the ISO HO policy.

Do people think they can get away with anonymous defamation of others on the Internet?

Interesting. I looked at a few websites of law firms that specialize in Internet Defamation. At least one mentioned that people who think they can create phony gmail accounts to access various Internet sites to post their defamatory comments had better think twice. Internet defamation lawyers can and will find you.

Generally, the "poster" left a digital trail. The platform on which the "defamer" posted can be subpoenaed. The defamer's IP address can be determined, and the Internet service provider will be subpoenaed and/or the computer used will be identified. "We have ways to find you!"

Many of the cases, people just felt that they had the "right to say" what they wanted, how they wanted and as often as they wanted and didn't try to hide who they were. Wrong and foolish.

As usual, if I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs at 1-800-742-6363 or ... BETTER YET email me at imorrill@massagent.com.

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- [C/C/C and You ... Just What DOES Property Damage Liability Cover \(or Not\)?](#)
- [Do You Know...Whether Insuring the Building to Replacement Cost is Enough - Personal and Commercial Lines](#)
- [Current Gripes and Conundrums with Banks and Certificates](#)

Saturday, October 28th

- [BAP v. MAP - If you have the choice, which is better?](#)
- [Q&A Personal Lines Potpourri](#)
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