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FROM BARBARA WARTELLE WALL: LEGAL WATCH

FAIR REPORT PRIVILEGE MAY NOT APPLY TO LAWYERS' PRESS RELEASE

The privilege for fair and accurate reports of judicial proceedings may not apply to a report based on a press release issued by the litigant's lawyers, at least where the press release overstates the allegations of the lawsuit, a Pennsylvania court's ruling suggests. (Computer Aid, Inc. v. Hewlett-Packard Co., June 15 and July 14, 1999).

This non-media case illustrates the importance of accurately characterizing the contents of filed pleadings.

Computer Aid sued Hewlett-Packard for breach of a contract to jointly develop certain products. Computer Aid's attorneys issued a press release to reporters the night before the complaint was filed. Hewlett-Packard responded by suing Computer Aid and its lawyers for defamation, alleging that statements in the press release were false and defamatory. Computer Aid and the law firm that issued the press release moved for summary judgment on the defamation claims, asserting the fair report privilege.

Available by statute or common law in many states, the "official proceedings" privilege typically exempts from liability for defamation statements that fairly and accurately report on courtroom proceedings or on the contents of pleadings filed in court. The protection usually applies even if the underlying pleading or testimony contains false and defamatory information. The theory behind the privilege is that the public has a right to know what is being done in the courts, even if the parties to the litigation make false statements in the course of the litigation.

In this case, the court ruled that the fair report privilege may not apply. A statement is not a fair report of a judicial proceeding, the court said, "if it creates a false impression as to the nature and severity of the claims." Put differently, the court added, a statement is not a fair report "where a reading of the published statement would have a different effect on the reader than reading the [pleading]." The court ruled that a jury could find that statements in Computer Aid's press release "grossly overstate" the nature of its claims against Hewlett-Packard.

In addition, the court noted that the press release was issued before the complaint was filed, so there was no judicial proceeding under way when the attorneys distributed the press release to the media. Finally, the court observed that if Computer Aid or its lawyers had deliberately filed false claims against Hewlett-Packard, they would not be entitled to the protection afforded by the privilege for statements about those claims.

For all of these reasons, the court denied the motion by Computer Aid and its lawyers for summary judgment.

While this case did not involve a media defendant, it is a useful reminder that, at least in some states, the fair report privilege protects only the description of actual pleadings on file in court. Reliance on nothing more than a press release -- even one issued by a party to the case or its attorneys -- may not provide sufficient grounds for a reporter to invoke the privilege.