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Indiana Court of Appeals Upholds \$14.5 Million Defamation Verdict

This past week, the Indiana Court of Appeals released a sixty-one-page opinion upholding a jury verdict of \$14.5 million against State Farm Fire & Casualty Company for defamation. In the case *State Farm Fire & Casualty Co. v. Radcliff*, the court was asked to review a verdict that resulted from “a nearly six-week-long jury trial before the Honorable Steven Nation in which over forty witnesses testified, a jury returned a \$14.5 million verdict in favor of Radcliff and his company on their defamation counterclaim.” To quote the Court of Appeals, “[t]his is one of the largest defamation verdicts in United States history.”

An important note for our readers from outside of central Indiana is that a Hamilton County, Indiana jury pronounced this verdict. Hamilton County is well known as one of the more conservative counties in the state with a peculiar composition including great wealth in towns/cities such as Fishers and Carmel along with rural farmers in places such as Boxley and Sheridan. An additional note is that Indiana, unlike most jurisdictions, has an additional hurdle in defamation suits – though not applicable to this case – is an important footnote to Hoosier law. Indiana’s Constitution secures truth as an absolute defense to libel. Though this would appear to be a common sense defense, its application acts beyond what you may perceive on first blush. Many jurisdictions recognize a tort action based in

defamation for public disclosure of private facts. Because truth is an absolute defense, such a claim does not exist in Indiana.

I. Facts of the Case

Now let us turn to *Radcliff* to see how one of the most conservative counties in an otherwise conservative state awarded one of the largest defamation verdicts in our nation's history. The saga began on Good Friday, April 14, 2006 when a destructive hailstorm devastated central Indiana resulting in the filing of more than fifty thousand property damage claims with State Farm. In the following months, the Indiana Department of Insurance (IDOI) received several hundred complaints. The IDOI launched a Market Conduct Examination to determine whether State Farm was complying with the terms of its contracts with their insured persons as well as state law. The Examination "revealed 'areas of concern.'" Around the same time, a class action seeking to represent in excess of seven thousand persons who had been denied coverage was filed.

In the same time period following the storm, Mr. Radcliff created Coastal Property Management (CPM) to repair storm-damaged homes. Through CPM's interactions with persons denied coverage by State Farm, Mr. Radcliff voiced his customer's concerns to the IDOI. At this point Mr. Radcliff learned of the ongoing Examination and was asked to help provide evidence. Mr. Radcliff also conducted an interview with a local TV personality for the Indianapolis based ABC affiliate rtv6.

State Farm launched an insurance fraud investigation into the actions of Mr. Radcliff. Certain employees of State Farm forwarded their investigation to the National Insurance Crime Bureau (NICB). The NICB "is a not-for-profit organization that acts as a liaison between insurers and law enforcement. The NICB turned over its investigation to the Indianapolis Metropolitan Police Department (IMPD), and a probable-cause affidavit was prepared, which [was] reviewed for accuracy" by the certain State Farm employees.

The State Farm investigation began after State Farm adjusters failed to determine hail damage to the roof of Mr. and Mrs. Moll in May of 2006. This, despite "three of the Molls' immediate neighbors receiv[ing] new roofs[.]" The following year, CPM, acting on behalf of the Molls, beseeched State Farm to reopen the claim. On June 21, 2007, two State Farm adjusters joined Mr. Radcliff in conducting an inspection of the Molls' roof. The adjusters reported back to State Farm personnel "that Radcliff became agitated when they did not find hail damage and intentionally creased roof shingles in the adjusters' presence, claiming he would have State Farm pay for the roof as wind damage." The claim file contained an

image of a hand creasing shingles, though Radcliff denied the hand as his own. Speaking in defense of Mr. Radcliff, “Mrs. Moll testified at trial that State Farm’s engineer bent back ten to fifteen of her shingles.”

During State Farm’s investigation of CPM, they secured the cooperation of a former CPM employee who – though peculiarly not testifying at trial – is said to have informed State Farm that he was uncomfortable with CPM practices, including intentionally inflicting damage to soft-metal surfaces to secure replacement of the roof. Additionally, the former employee allegedly showed the insurance investigators “a text message that Radcliff had allegedly sent to all Indiana CPM employees in which Radcliff said that he had spoken with State Farm, and State Farm was looking for ‘dime spin[n]ing.” While the text message was produced at trial, it did not originate from Mr. Radcliff’s phone. Two other persons were said to have informed State Farm of receiving the text message with only one testifying at trial via video deposition.

The Molls did not believe that their roof had been vandalized by CPM and thus hired a certified home inspector to investigate. The certified inspector’s report found storm damage. State Farm was made aware of the report but never took steps to obtain a copy. Thus, the report was never transmitted to the NICB. Mr. Radcliff also retained an engineer to investigate the roof, who, like the Molls’ investigator, found storm damage. State Farm claimed to have never received Mr. Radcliff’s report, though he claimed to have given it to State Farm.

State Farm expanded its investigation to nine other claims and then transmitted its investigation report to NICB who forwarded it on to the IMPD. The Marion County Prosecutor’s Office prepared an affidavit with the assistance of certain State Farm employees. Mr. Radcliff was arrested and charged with fourteen felony counts. Mr. Radcliff entered into a diversion program whereby prosecution was deferred so long as he committed no further criminal offense for two years and paid fees of \$650. The arrest and fallout devastated CPM.

Quite shockingly,

The day after Radcliff’s arrest, [a State Farm employee] spent part of his day forwarding news reports about the arrest. Three days after Radcliff’s arrest, [the employee] visited Radcliff’s wife’s MySpace page and found a picture that someone had posted depicting a stick-figure Radcliff behind bars being raped. [The employee] forwarded the link to [] the NICB special agent who had worked on the case, and told him to ‘enjoy.’”

The same State Farm employee was later awarded “the Investigator of the Year by the International Association of Special Investigation Units for his work on this case.” For which, “[h]e received \$1000 and a trophy.”

One month after the arrest, State Farm filed suit against Mr. Radcliff. Mr. Radcliff filed counterclaims, including defamation. After a jury trial, the verdict was in favor of Mr. Radcliff for \$14.5 million along with 8% and costs. State Farm appealed.

II. On Appeal

On appeal, State Farm raised three issues.

First, State Farm contends that it is entitled to judgment on Radcliff and CPM’s defamation counterclaim pursuant to two defenses: the public-interest privilege for crime reporting and statutory immunity. Second, State Farm contends that Radcliff and CPM failed to prove actual malice by clear and convincing evidence. Last, State Farm contends that it is entitled to a new trial on damages, because the trial court erred in admitting Radcliff’s expert’s testimony, Radcliff and CPM failed to prove proximate cause, and the damages are excessive. But first, we explore defamation law.

a. Defenses to Defamation

The first attempted defense was qualified public-interest privilege for crime reporting. As the court explained, a qualified privilege is a defense that does not deny the act itself but prohibits liability from attaching for the act under the specific circumstances. This privilege is based upon the presumption that “the public interest is served by the prompt reporting of suspected criminal activity, even when uncertain.” Thus, “in Indiana [] ‘communications made to law enforcement to report criminal activity are qualifiedly privileged.’”

Even though this is a well established privilege, it “is not without limits.”

A statement may lose its privileged character upon a showing of abuse wherein (1) the communicator was primarily motivated by ill will in making the statement; (2) there was excessive publication of the defamatory statements; or (3) the statement was made without belief or grounds for belief in its truth.

Unless the only conclusion that can be drawn from the evidence is contrary to the jury decision, the determination of the application of this privilege is one to be made

by the jury alone and not disturbed on appeal.

Based on the actions of State Farm's employees in not turning over its entire file to the NICB coupled with other evidence indicating a desire to compel the arrest of Mr. Radcliff, the court found no basis to overturn the verdict on qualified privilege grounds.

The second defense – statutory immunity – is provided by Indiana Code section 27-2-19-7. This section states:

(a) As used in this section, "representative" includes:

- (1) a representative investigative agency; and
- (2) an attorney;

of a law enforcement agency, insurer, or governmental agency. (b)

Any:

- (1) law enforcement agency, insurer, or governmental agency; or
 - (2) agent, employee, or representative of a law enforcement agency, insurer, or governmental agency;
- that receives or provides information referred to in this chapter in good faith is immune from liability arising from the act of receiving or the act of providing the information.

This immunity certainly would apply to communications directly between State Farm and IMPD. However, its application to communications between the not-for-profit NICB and State Farm turned on whether NICB was an agent of an insurer. If the statute applied to the communications between State Farm and NICB, then the question of immunity progressed to whether the statements were made “in good faith.”

The court found that it did not have to determine whether the statute applied to NICB, as there was sufficient evidence upon which to deny application based upon the good faith requirement of the statement.

b. Actual Malice

Under defamation law, where a person is considered to be a public figure, the defamatory statement must be made with actual malice or with reckless disregard to the truth of the statement. After reviewing the public nature of the controversy surrounding the Good Friday hail storm, the court determined that Mr. Radcliff was a public figure for this limited purpose. Thus, the issue was whether Mr. Radcliff had educed sufficient evidence to prove actual malice at trial.

After reviewing the evidence from the trial, the court concluded “that Radcliff and CPM proved by clear and convincing evidence that . . . the defamatory statements [were made] with knowledge that they were false or with reckless disregard of whether they were false.”

c. Damages Award

Lastly, State Farm contended that the damages award was excessive. Under Indiana law, a jury’s verdict is given great deference and only under the most extreme circumstances should be disturbed on appeal. That is, the court “will vacate an award of damages only when it is not rationally related and ‘so great as to clearly indicate that the jury was motivated by prejudice, passion, partiality, corruption, or that it considered an improper element.’”

After noting that the defamatory statements were defamation *per se* in that the related to allegations of criminal behavior, the court noted that in defamation *per se* cases damages can be presumed without showing actual harm. Further, the person is aloud to produce evidence of financial and special damages. In this case, there was a man who had his entire reputation and financial world destroyed by the actions of State Farm’s employees.

Despite this reality, State Farm sought a reduction of the verdict as excessive by arguing that it far exceeded any prior Indiana defamation verdict. Based upon the totality of the evidence, the court opted to not sink into the realm of comparing verdicts in determining whether this one was the product of passion and emotion by the jurors. Thus, the court upheld the verdict.

III. Conclusion

The court’s decision is a monumental one because it upheld the findings of a jury who was in the proper place to determine the harm and malice of the defamation perpetrated upon Mr. Radcliff. The entirety of the case paints an unbelievably disturbing image of an insurance investigation team and a business run amok with no concern for the harm perpetrated in the name of profit. The verdict is one of the largest in American history due to the heinousness of the actions at issue. Thankfully, the Indiana Court of Appeals saw fit to properly apply the law and to protect this great victory for justice.

Join us again next time for further discussion of developments in the law.

Sources

- *State Farm Fire & Cas. Co. v. Radcliff*, ___ N.E.2d ___, No. 29A04-1111-CT-571 (Ind. Ct. App. Apr. 11, 2013).
- Ind. Const. art. I, § 10 (“In all prosecutions for libel, the truth of the matters alleged to be libellous, may be given in justification.”).
- *Doe v. Methodist Hosp.*, 690 N.E.2d 681 (Ind. 1997) (holding that tort claim for invasion of privacy based on public disclosure of private facts is not recognized under Indiana law).
- Indiana Code section 27-2-19-7.

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