



**LITCHFORD &
CHRISTOPHER**
PROFESSIONAL ASSOCIATION

Attorneys and Counselors at Law

Legal News for Clients

Summer 2010 Edition

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Effective July 5, 2010,

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PUT YOUR MONEY WHERE YOUR MOUTH IS

Sometimes hurtful words are more than just hurtful words. Your hurtful words could end up rebounding even harder to strike your wallet if a jury awards punitive damages against you. The law affords powerful remedies to those harmed by others' hurtful words.

Defamation recently provided the basis for a large punitive damages award in *Lawnwood Medical Center Inc. v. Sadow*, 35 Fla. L. Weekly D655 (Fla. 4th DCA March 24, 2010). Dr. Sadow, a physician specializing in cardiovascular surgery, had originally brought suit against the hospital where he worked, Lawnwood Medical Center, seeking damages for breach of contract. Not content to defend Dr. Sadow's suit in court, the hospital's CFO took it upon himself to make defamatory remarks about Dr. Sadow while the suit was pending. That led to Dr. Sadow adding defamation claims to his lawsuit.

The CFO suggested to a physician who had been newly hired by the hospital that Dr. Sadow was a "problem doctor." A few days later, the CFO met again with the new physician and named those, including Dr. Sadow, whom he characterized as the hospital's "problem doctors." Not only did the CFO suggest Dr. Sadow was a bad doctor and a bad person, the CFO also claimed Dr. Sadow had multiple lawsuits filed against him. The CFO remarked to the new physician that he should not send patients to Dr. Sadow if he cared about

them. The CFO added, "I would not send my dog to him for surgery." The new physician relayed these statements to other doctors in the community, including some of the doctors who the CFO had disparaged.

Once the CFO's remarks eventually reached Dr. Sadow's ears, Dr. Sadow quickly amended his lawsuit to add a claim against the hospital for "slander per se." This is a type of defamation claim. At trial, the jury found that the hospital was responsible for the CFO's slander. The jury also found the hospital's CFO had the intent to injure Dr. Sadow by the slander and that Dr. Sadow suffered actual injury due to the slander. The jury awarded Dr. Sadow no compensatory damages. It did, however, award him \$5 million in punitive damages. The hospital appealed the verdict, arguing the amount of punitive damages awarded was excessive under the United States Constitution.

Constitutional limits have been placed on the amount of punitive damage awards. In *State Farm Mutual Automobile Company v. Campbell*, 538 U.S. 408 (2003), the U.S. Supreme Court, citing the Due Process Clause, established three criteria for determining whether a punitive damages award is excessive. Those are: (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of punitive damages to compensatory damages, and (3) the civil and criminal penalties applicable for comparable conduct.

In applying these criteria, the U.S. Supreme Court has emphasized that a review of punitive damages should take into account state law and policy. Florida statutes do restrict the amount of punitive damages recoverable, unless a jury determines that the defendant specifically intended to harm the plaintiff and that the defendant's conduct did in fact harm the plaintiff. See Fla. Stat. § 768.73(1)(c). Under Florida law, "a finding of liability for slander per se, coupled with an express finding that the slander was intended to injure the plaintiff and did in fact cause injury, authorizes the jury to consider and assess punitive damages without any finding of an amount of compensatory damages." This is precisely what occurred in *Lawnwood*, thus Dr. Sadow's \$5 million punitive damages award was upheld on appeal.

As the *Lawnwood* court summed up:

"Thou shall not bear false witness against thy neighbor.' The personal interest in one's own good name and reputation surpasses economics, business practices or money. It is a fundamental part of personhood, of individual standing and one's sense of worth. In short, the wrongdoing underlying the punitive damages in this case has Florida law's most severe condemnation, its highest blameworthiness, its most deserving culpability. For slander per se, reprehensibility is at its highest."

In short, be careful what you say - to the extent you intend to cause someone else anguish, you could more than pay for it.



GENEVA GROUP INTERNATIONAL
Independent Member

TWITTER, FACEBOOK, AND BLOGS, OH MY! THE POTENTIAL LEGAL PITFALLS OF USING SOCIAL MEDIA IN BUSINESS - PART ONE OF TWO

These days, businesses of all sizes in every type of industry are attempting to harness the power of social media in hopes of enhancing their bottom line. The two general types of social media are: (1) online social networks/communities (e.g., Facebook®, MySpace®, Twitter®, LinkedIn®), and (2) web logs ("blogs") or videos (e.g., YouTube®). Social networking sites and online forums, such as blogs, can facilitate an open exchange of ideas among individuals and businesses. Businesses are using social networking sites and online forums to market themselves, to increase feedback from their customers, and to respond quickly to complaints. Blogs and the posting of online videos can help business persons to build a reputation for expertise in their field, better define themselves or their brand, network with others, and enhance their visibility on search engines like Google.

Yet, as powerful and popular as social media are becoming, an array of legal risks is inherent in using social networking sites and online forums. Improper or careless use of social media can result in serious legal consequences for businesses. The use of social media is accompanied by the same types of legal risks that are inherent in using traditional media. A heightened legal risk associated with social media, however, arises from the fact that the Internet is far more fluid, unstructured, and less regulated than traditional media. Whether your business has already begun to use social media or is currently thinking about it, you are wise to first consider the potential legal pitfalls. Any business should take care to only use social media with its eyes wide

open. The consequences for failure to do so can be harsh.

In this edition of our newsletter, we will discuss some of the legal issues that you should be aware of before using social media, particularly intellectual property concerns. Our discussion of these and other legal concerns will continue in the next edition of our newsletter. Some of the intellectual property concerns you should consider are:

1. **Trademark Issues:** A trademark is a distinctive brand identifier which may or may not be registered with a state or the U.S. Patent and Trademark Office. Use, imitation, disparagement, or dilution of another's trademark may subject a business or its owners to legal liability. Similarly, improper use by you or using a variation of your own trademark or desired trademark may limit your ability to prosecute a third party for infringing that mark.

2. **Disparagement:** The law precludes anyone from falsely suggesting that someone else's trademark has a connection with particular persons, living or dead, with institutions, with particular beliefs, or with national symbols. If you do so, and thereby bring someone else's trademark into contempt or disrepute, it may subject you or your company to legal claims.

3. **Risks to Trade Secrets:** A trade secret is a formula, practice, process, or compilation of information by a business which is not generally known to or reasonably ascertainable by third parties. A trade secret enables a business to obtain an economic advantage over competitors or customers who do not have

it. A trade secret is protected as an asset of a business. That protection lasts, however, only so long as the trade secret remains confidential and is not something shared openly with others. A business must thus be wary and vigilant not to inadvertently reveal valuable confidential information about its business through indiscriminate use of social media.

4. **Infringement Concerns:** The Internet makes it is easy to find and replicate just about anything. This includes not only written information but also photographs, videos, and other graphics. This ease of use must be exercised with caution. Copying and using others' materials in your social media, without permission or without giving proper attribution to the appropriate author or creator, can expose you and your business to infringement claims.

In the next edition of our newsletter, we will continue our discussion of the legal issues that should be considered whenever using social media. These include defamation, confidentiality concerns, and the effect of consumer protection laws. If you are unsure about the potential legal ramifications of your social media activities, consult your attorney. Indiscriminate use of social media can have serious consequences. Best practices you should consider adopting include promulgating written company policies for social media use and monitoring your employees' usage. Make sure appropriate disclaimers and user agreements are included in all Internet postings. Wise business owners are diligent to address potential legal issues before they arise.

"Improper or careless use of social media can result in serious legal consequences for businesses."

IF YOU WANT YOUR PARKING SPACE BACK, YOU DON'T HAVE TO SUE ALL OF YOUR NEIGHBORS

A condominium's "common areas" are those portions of the property that are used or enjoyed by all the condominium's residents. Common areas include recreational facilities, such as pools, tennis courts, playgrounds, and exercise rooms, as well as more mundane items like sidewalks, roads, parking lots, roofs, shared utilities, and landscaping. Common areas are available to all and used by multiple residents and are therefore administered and maintained by the condominium's homeowners' association on behalf of everyone. They are considered to be jointly "owned" by all the residents.

If a resident has a problem with something that might be considered part of a common area, does the resident have to bring a lawsuit against all the other owners of the common area? In other words, must you sue all your fellow condominium residents and friends? A Florida trial judge thought so, but the Second District Court of Appeal corrected him.

In *Tedeschi v. Surf Side*

Tower Condominium Association, Inc., 35 Fla. L. Weekly D640 (Fla. 2d DCA March 24, 2010), the plaintiffs had owned a unit in their condominium tower for over 25 years. They brought an action to declare that they still had the right to use their original assigned space in the parking lot and could exclude others from it. The plaintiffs had been assigned a parking space when they bought their condominium in 1979. Five years later, they purchased the right to have a second space in the condominium's parking garage. In 1993, the condominium association informed them that their original assigned space was being converted into guest parking. The plaintiffs requested their original space be given back to them. The president of the condominium board re-assigned it to them. The next year, however, the board took the space back. The plaintiffs then filed suit.

The defendants in the case – including the condominium association – sought to quickly end the lawsuit by moving for judgment on the pleadings. The defendants

argued that the plaintiffs had failed to join indispensable parties. Essentially, the board claimed that because the parking space was part of the common areas, affecting all the residents, the plaintiffs were required to join each one of the other residents as a defendant in the suit. Because the plaintiffs had failed to do so, the suit should be dismissed. The lower court agreed and granted the motion. The trial court found that to continue the lawsuit, plaintiffs were required to amend their complaint to add more than 80 of their fellow residents to the suit. Instead, the plaintiffs appealed.

The Second District Court of Appeal reversed the trial court. The appellate court held that where common areas are concerned, the condominium association can adequately protect the residents' interests. The court found that an individual parking space in the common areas did not implicate the particular property rights of any other residents. All those other residents therefore did not have to be joined as parties in the lawsuit.

"The appellate court held that where common areas are concerned, the condominium association can adequately protect the residents' interests."

PLEASE NOTE:

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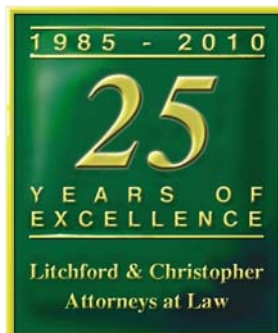
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Litchford & Christopher Professional Association is pleased to provide *Legal News for Clients*. If you have a topic for consideration, please contact Christine M. Ho at cho@litchris.com.

As always, we welcome you to contact any of our attorneys to discuss how the topics covered in this newsletter may affect your business or personal legal affairs.

Legal News for Clients is published periodically by Litchford & Christopher Professional Association. It contains summaries of court decisions and other materials in an effort to keep you abreast of recent developments in areas of the law in which the firm represents clients. Each edition, however, does not necessarily cover cases and information relevant to all of the firm’s practice areas. The substantive areas covered in each edition are selected by the firm’s lawyers at their discretion based on their views of the significance of the cases and other information available at the time of publication. The material covered in *Legal News for Clients* is condensed and is not intended to provide legal advice. While the information set forth in each article is accurate, every situation presents unique factual and legal considerations. Accordingly, we encourage you to consult an attorney for proper legal advice before taking any action based on the information summarized in *Legal News for Clients*. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. You may write to us at the address listed above, call us at (407) 422-6600, fax us at (407) 841-0325, or contact us through our website at www.litchris.com.

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Litchford & Christopher is a Florida law firm representing clients involved in difficult business disputes. We litigate disputes. The firm, established in 1985, is an “AV-rated” firm with clients of varying sizes – from small local businesses to national Fortune 500 corporations – and in diverse industries.