



M^cCRANEY | MONTAGNET | QUIN | NOBLE
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April 22, 2024

**VIA EMAIL, TEXT MESSAGE AND
CERTIFIED MAIL TO:**

rosenbmicumich.edu

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Michael Rosenberg

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Re: Notice of Suit Under Miss. Code Ann. § 95-1-5(1) Relating to False and Defamatory Statements made in the article titled “‘The Driving Force’: How Brett Favre’s Demands for Cash Fueled a Scandal” that was written by Senior Writer Michael Rosenberg and published by Sports Illustrated on May 18, 2023

Dear Mr. Rosenberg:

Pursuant to Miss. Code Ann. § 95-1-5(1), former Mississippi Governor Phil Bryant sends this correspondence to notify you that Michael Rosenberg and Sports Illustrated defamed him in a May 18, 2023, article titled “‘The Driving Force’: How Brett Favre’s Demands for Cash Fueled a Scandal” (the “Article”). Because of Sports Illustrated's recent upheaval and the lack of clarity regarding which entity carries its liabilities, I have provided written notification to numerous parties at several different addresses. Enclosed is a copy of my April 11, 2024, correspondence for your review.

Bryant demands that Rosenberg and Sports Illustrated publish full-and-fair corrections of their false and defamatory statements that are prominently displayed on Sports Illustrated’s webpage and print editions and promoted in its social media accounts; that Rosenberg and Sports Illustrated publicly apologize for having made false, misleading, and defamatory statements concerning Bryant; and that Rosenberg and Sports Illustrated issue public retractions within ten days of receiving this notice.

This demand is intended to comply with Miss. Code Ann. § 95-1-5(2). Should Rosenberg and Sports Illustrated fail to comply with this demand, Bryant will file a civil action against them that includes the claims outlined in this notice.

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I. Defamation Cause of Action

The four elements of Bryant's defamation claims against Rosenberg and Sports Illustrated are (1) a false and defamatory statement concerning Bryant; (2) an unprivileged publication of the false and defamatory statement to a third party or third parties; (3) fault amounting to actual malice; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Hudson v. WLOX, Inc.*, 108 So. 3d 429, 434 (Miss. Ct. App. 2012).

A. False and Defamatory Statements

"To be actionable as defamation, the statements made must be false and must be clearly directed toward and be 'of and concerning [the] plaintiff.'" *Gales v. CBS Broadcasting, Inc.*, 269 F. Supp. 2d 772, 777 (S.D. Miss. 2003) (quoting *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 1255 (S.D. Miss. 1988), *aff'd*, 865 F.2d 664 (5th Cir. 1989)). A defamatory statement "tends to injure one's reputation, and thereby expose him to public hatred, contempt or ridicule, degrade him in society, lessen him in public esteem or lower him in the confidence of the community." *Weems & Weems, Miss. Law of Torts*, § 11-1(b) (citing, *Lawrence v. Evans*, 573 So. 2d 695 (Miss. 1990); *Fulton v. Mississippi Publishers Corp.*, 498 So. 2d 1215, 1217 (Miss. 1986) (citing, *Ferguson v. Watkins*, 448 So. 2d 271, 275 (Miss. 1984)).

The Article is replete with false and defamatory statements. On page one, Rosenberg wrote, and Sports Illustrated published:

"Only a few weeks later – after investigators stumbled upon more information, more was leaked publicly and the story exploded – did a more full picture come into focus:

New was mostly following orders from Davis, the welfare chief.

Davis largely operated on behalf of Mississippi's then-governor, Republican Phil Bryant.

And Bryant worked relentlessly to please the state's most famous athlete, NFL legend Brett Favre."

The Article addresses two subjects: the USM volleyball facility and Prevacus. Bryant did not control or direct Davis regarding these matters and did not work relentlessly to please Favre. The quoted statement is false and defamatory.

On page two, the Article states, "When it unraveled—starting with an accidental, seemingly innocuous discovery—the most powerful players started outmaneuvering the others. Eventually, people who plotted with one another plotted against one another—a theme that continues to play out in both ongoing civil and criminal cases." The "discovery" was neither

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accidental nor innocuous; Bryant did not attempt to and did not outmaneuver Davis, Nancy New, Favre, or anyone else; Bryant did not plot with Davis, New, Favre, or anyone else; Bryant did not plot against Davis, New, Favre, or anyone else; and, the “theme” of Bryant plotting with or against Davis, New, Favre, or anyone else is not playing out in ongoing civil and criminal cases. The quoted statement is false and defamatory.

On page three, after quoting Favre’s initial text to Bryant regarding volleyball and Bryant’s response, the Article states, “Bryant finished with the thumbs-up emoji. He said he was going on a turkey-hunting trip soon but would meet Favre for lunch when he returned. *From there, the scheme developed with startling efficiency.*” Bryant did not participate in the scheme and was unaware of a scheme to mispend public funds. The statement is false and defamatory.

On page four, regarding the USM meeting in which Davis offered \$4 million of TANF funds for the construction of the volleyball facility, the Article states, “Bryant’s lawyers would later say he had ‘no knowledge of or involvement in’ the meeting or the \$4 million commitment. But Mississippi Low-Income Child Care Initiative founder Carol Burnett, who worked in MDHS in the early 2000s, tells SI, “The head of DHS doesn’t make those decisions without the governor’s knowledge and approval. That is just unfathomable to me.” Bryant did not have advance or contemporaneous knowledge of and did not approve Davis’s commitment of \$4 million toward the volleyball facility project. Carol Burnett’s speculation is false and defamatory.

On page ten, regarding Jacob Black reporting information to the governor’s office, the Article states, “The volleyball scheme was almost complete. But there was about to be a break in the Bryant-to-Davis-to-New-to-Favre chain. During a routine internal MDHS audit, an auditor noticed that one of Brett DiBiase’s MDHS paychecks went to a post office box belonging to John Davis, people familiar with the case said. That was not normal, and Davis’s relationship with the DiBiases had already raised suspicions. The internal auditor reported it. Then DHS deputy director Jacob Black turned Davis into the man who was best positioned to end the corruption: Governor Phil Bryant. Bryant had no choice. Ignoring this would be an obvious crime – with witnesses. Bryant alerted the state auditor, Shad White – who was Bryant’s former campaign manager and a Bryant appointee. But the governor appears not to have told White about the volleyball facility or Prevacus – which, of course, would have implicated himself.” Bryant did not participate in a volleyball scheme; there was no Bryant-to-Davis-to-New-to-Favre chain; Bryant did not engage in any criminal activity; and Bryant would not have implicated himself in criminal activity or actions giving rise to civil liability had he told White about the volleyball facility or Prevacus. The quoted statements are false and defamatory.

On page 11, regarding the lay of the land after Davis’s arrest, the Article states, “With Davis out, the scheme was down to three principals: Phil Bryant, the veteran pol. Brett Favre, the relentless competitor. Nancy New, the naïve pleaser.” Bryant did not participate in a scheme. The statement at hand is false and defamatory.

Also on page 11, regarding Favre contacting Bryant by text after Davis’s arrest and using language lifted straight out of Brokeback Mountain, the Article states, “Bryant should have seen it was time to end this. But the governor just wouldn’t quit Brett Favre.” There was nothing to end

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and nothing for Bryant to quit. The statement suggests, as previously stated explicitly, that Bryant participated in a conspiracy to defraud the state of public funds. The statement is false and defamatory.

On page 12, regarding a text that Bryant sent to attorney Whitney Lipscomb, the Article states, “Bryant tapped his old friend Chris Freeze, a retired FBI agent, to replace Davis. Almost immediately, Bryant sent a staff attorney a text that made him seem only vaguely aware of the volleyball project...” Freeze and Bryant were not old friends. Bryant did not send a text to his attorney that “made him seem only vaguely aware of the volleyball project” – he was only vaguely aware of the volleyball project. Bryant had no knowledge of or involvement in the \$5 million payment that the IHL later approved upon the recommendation of Special Assistant Attorney General Stephanie Ganucheau (mother of Mississippi Today editor-in-chief Adam Ganucheau). Months later, Favre requested Bryant’s assistance in directing public funds toward programs New would conduct in the facility. Bryant declined. The statement is false and defamatory.

On page 13, regarding a text in which Bryant wrote that he was “not sure who made the deal for a million dollars,” the Article states, “Favre and New finally took note of Bryant’s sudden change from openly enthusiastic to detached and cautious.” Bryant did not suddenly change from openly enthusiastic to detached and cautious. The statement is false and defamatory.

On page 14, regarding the drafts of New’s proposal that Favre sent to Bryant, the Article states, “Bryant, who was in Ghana, was still cautious with his texts. But on the phone with Favre, Bryant was more candid – and Favre then texted New what Bryant had said, inadvertently creating a record of it. So Bryant told Favre via text that he hadn’t seen the proposal: ‘Nancy has to provide the proper documentation to MDHS.’ Then Bryant talked to Favre on the phone. And then Favre texted New: ‘He said to me just a second ago that he has seen it but hint hint that you need to reword it to get it accepted.’” Bryant was not more candid with Favre on the phone; he did not speak with Favre. The statement is false and defamatory.

On page 15, regarding texts between GPB and Freeze addressing the volleyball center, the Article states, “Bryant apparently wanted Freeze – or whoever might be reading his texts – to believe he had fired Davis, at least in part, for promising to fund the volleyball facilities. But Bryant had repeatedly made the same assurance to Favre for years – and he kept doing it.” Bryant never assured Favre that he would direct MDHS or TANF funds toward the construction of the volleyball facility. The statement is false and defamatory.

On page 16, the Article states, “The trap had been set. If the volleyball scheme were to blow up – which it would, a few months later – Bryant had made it look like New was the perpetrator, Favre the accomplice and Bryant the honest occasional advisor. But first Bryant kept telling Favre he would try to get him his money.” Bryant did not set a trap; he did not make it look like New was the perpetrator; he did not make it look like Favre was an accomplice; and he did not make it look like he was the honest occasional advisor. The statement is false and defamatory.

On page 17, the Article states, “On Feb. 2, Favre stood on the field before the Super Bowl wearing a maroon sport coat, enjoying another compliment in a life overflowing with them. The

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NFL had named him one of the 100 best players of its first century. As he waved to fans alongside other legends in South Florida, Favre apparently did not realize that back in Mississippi, Phil Bryant was selling him out.” Bryant did not sell Favre out. The statement is false and defamatory.

On page 18, the Article states, “Shad White would say publicly he was alerted to the fraud by a whistleblower: Former Mississippi Governor Phil Bryant. After all, Bryant had told White that John Davis was funneling government money to the DiBiases, triggering the inquiry. White almost certainly did not know the trail would lead to Bryant. But during the course of the investigation, law enforcement found explosive texts implicating Bryant and Favre that eventually became public.” Bryant did not tell White that Davis was funneling government money to the DiBiases, and no trail leads to Bryant. There is a reason why Bryant is not a party to any criminal or civil case arising out of the MDHS fraud. He did nothing illegal. Your statement is false and defamatory.

On page 20, the Article states, “Bryant’s lawyers have argued in a court filing that New and Davis embezzled MDHS funds ‘unbeknownst to Bryant.’ They have said Bryant didn’t know the money Favre wanted came from TANF because Favre never mentioned it.” The undersigned did not state in any court filing that “Bryant didn’t know the money Favre wanted came from TANF because Favre never mentioned it.” This statement is false and contributes to the Article’s overall message, namely that Bryant was part of a criminal scheme to divert TANF funds to construct the USM volleyball facility and investments in Prevacus. This message is defamatory.

B. The statements at issue were published to third parties.

“Publication requires a communication of the statement to another person or persons.” *Miss. Law of Torts* at § 11-1(d). Rosenberg wrote the Article for publication in Sports Illustrated, which published the Article in print and online versions. The online version can still be found at the following link:

<https://www.si.com/nfl/2023/05/18/brett-favre-mississippi-welfare-scandal-driving-force-daily-cover>.

The publication element is satisfied for the claims against Rosenberg and Sports Illustrated.

C. The statements were made with actual malice.

The Mississippi Law of Torts explains the actual malice requirement as follows:

In order to recover for defamation, public officials and public figures must prove by clear and convincing evidence that the defendant acted with “actual malice.” “Actual malice,” sometimes also referred to as “*Times* malice,” is a term of art with a very precise meaning. Ill will or personal spite does not constitute actual malice. Actual malice is present when a statement is made “with knowledge that it was false or with reckless disregard of whether it was false or not.” “Knowledge of falsity” needs no elaborate definition. “Reckless disregard” means that the defendant made the false publication with a high degree of

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awareness of probable falsity, or that he “entertained serious doubts as to the truth of his publication.” Negligence, either with regard to knowledge of the falsity or reckless disregard, is not sufficient to establish actual malice.

Id. at § 11-2(a) (internal citations omitted).

Rosenberg made his false and defamatory statements with the knowledge that they were false or in reckless disregard of their falsity and the harm they would cause Bryant. Sports Illustrated published the Article with the knowledge that the statements were false or in reckless disregard of their falsity and the harm they would cause Bryant. Accordingly, the actual malice standard is satisfied.

D. Special harm is presumed.

Under Mississippi law, all libel is actionable per se. *Brewer v. Memphis Pub. Co., Inc.*, 626 F.2d 1238, 1245 (5th Cir. 1980). Statements that are defamatory per se do not require proof of special harm. *McFadden v. U.S. Fidelity and Guaranty Co.*, 766 So. 2d 20, 23-24 (Miss. Ct. App. 2000). The statements at issue are libelous, and therefore, special harm is presumed.

II. Bryant’s false light invasion of privacy cause of action

The elements of a false light invasion of privacy claim are (1) the false light in which Rosenberg placed Bryant would be highly offensive to a reasonable person, and (2) Rosenberg had knowledge of or acted in reckless disregard as to the falsity of his statements and the false light in which they placed Bryant. Weems & Weems, Mississippi Law of Torts § 13:5, *False Light Invasion of Privacy* (2nd ed., Dec. 2022 Update) (citing *Cook v. Mardi Gras Casino Corp.*, 697 So. 2d 378, 382 (Miss. 1997); *Prescott v. Bay St. Louis Newspapers, Inc.*, 497 So. 2d 77, 79 (Miss. 1986)). As with his defamation claims, Bryant must prove Rosenberg acted with actual malice to establish the fault element of his false light claim. *Time, Inc. v. Hill*, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed.2d 456 (1967).

The false light that Rosenberg and Sports Illustrated placed Bryant in would be highly offensive to a reasonable person. Rosenberg and Sports Illustrated knew of or acted in reckless disregard of the falsity of their accusations and the light in which they placed Bryant. Accordingly, Rosenberg and Sports Illustrated are liable for false light invasion of privacy.

III. Bryant’s respondeat superior cause of action

Rosenberg made false and defamatory statements while acting within the course and scope of his employment with Sports Illustrated.¹ Rosenberg had actual or apparent authority to make

¹ While Bryant is uncertain of the corporate mechanics, it appears ABG-SI LLC licensed the right to publish Sports Illustrated, in both print and digital media, to The Arena Group Holdings, Inc. (f/k/a TheMaven, Inc.) on June 14, 2019. In January 2024, Arena failed to pay a \$3.75 million quarterly payment due to ABG-SI under the licensing agreement. In March 2024, ABC-SI reached a new licensing agreement with Minute

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his false and defamatory statements. Under the common law doctrine of respondeat superior, Sports Illustrated is vicariously liable for the damage caused by Rosenberg's false and defamatory accusations. The doctrine of respondeat superior also renders Rosenberg and Sports Illustrated jointly and severally liable for any judgment returned in Bryant's favor on his defamation and false light claims against Rosenberg.

IV. Bryant's entitlement to punitive damages, attorneys' fees, and costs

"The Supreme Court has stated that '[i]t is rarely the case that the compensatory damages to which the plaintiff is entitled . . . can be adequately measured by the extent of his pecuniary loss and when malice is shown . . . exemplary damages may be awarded.'" *Miss. Law of Torts* at § 11-18 (quoting *Henry v. Pearson*, 253 Miss. 62, 158 So. 2d 695, 703 (Miss. 1963), *judgment rev'd on other grounds*, 380 U.S. 356, 85 S. Ct. 992, 13 L. Ed. 2d 892 (1965)).

"The Mississippi Supreme Court has, in at least one decision, endorsed the awarding of punitive damages for defamation even in the absence of an award of actual damages." *Id.* The Court explained:

Where the defamation complained of is actionable per se, it is generally held that punitive damages may be awarded even though the amount of actual damages is neither found nor shown, for in such a case the requirement of showing actual damages as the basis of an award of exemplary damages is satisfied by the presumption of injury which arises from a showing of libel or slander that is actionable per se.

Id. (quoting *Newson v. Henry*, 443 So. 2d 817, 824 (Miss. 1983), which quoted 50 Am. Jur. 2d, *Libel and Slander* § 352 (1970)). Bryant will likely recover punitive damages in a civil action against Rosenberg and Sports Illustrated. Bryant will also likely recover attorneys' fees and costs in a civil action against these defendants. *Cronier v. ALR Partners, L.P.*, 309 So. 3d 556, 559 (Miss. Ct. App. 2020). As the Mississippi Court of Appeals observed, "an actual award of punitive damages is not a prerequisite for an award of attorney's fees; rather, attorney's fees are warranted where 'the awarding of punitive damages would have been justified,' even if punitive damages are not awarded." *Id.* (quoting *Tunica County v. Town of Tunica*, 227 So. 3d 1007, 1029 (Miss. 2017)).

CONCLUSION

The Mississippi Supreme Court has explained that "[w]hile a newspaper publishing company is granted some leeway in its reporting, they may not misstate the facts or otherwise misconstrue the truth." *Whitten v. Commercial Dispatch Pub. Co., Inc.*, 487 So. 2d 843, 846 (Miss. 1986). Rosenberg's false and defamatory statements misstate the facts and misconstrue the truth. Accordingly, Bryant has actionable defamation, false light, and respondeat superior claims against

Media LLC. Bryant does not know which entity carries the tort liabilities associated with publishing the Article at the present date. He has placed all entities on notice in an abundance of caution. "Sports Illustrated" is intended to include all the article's publishers.

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Rosenberg and Sports Illustrated. If his claims are not immediately resolved, he will prosecute them in a court of competent jurisdiction.

Sincerely,

A handwritten signature in blue ink that reads "William M. Quin II". The signature is written in a cursive style with a prominent "W" and "Q".

William M. Quin II