

Billy Quin

From: Billy Quin
Sent: Thursday, February 22, 2024 9:44 PM
To: 'Henry F. Laird'
Cc: Tad McCraney
Subject: Notice of Suit Under the Broadcaster's Right to Correct Statute, Miss. Code Ann. § 95-1-5(1)

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Dear Henry:

Pursuant to Miss. Code Ann. § 95-1-5(1), former-Governor Phil Bryant sends this correspondence to notify Anna Wolfe and Mississippi Today that Wolfe defamed Bryant in a May 4, 2023, article titled "Gov. Bryant promised to release 'all' his welfare scandal-related texts. But some key ones are missing." Mississippi Today is liable for Wolfe's libel because it published it and because she was acting in the course-and-scope of her employment when she made her defamatory comments.

I am sending this correspondence to you as the authorized agent of Wolfe and Mississippi Today. Please notify me immediately if you are not authorized to accept this notice on their behalf. I will personally serve either or both upon such notice.

Bryant demands that Wolfe and Mississippi Today publish full-and-fair corrections of their false and defamatory statements that are prominently displayed on Mississippi Today's webpage and promoted in its social media accounts; that Wolfe and Mississippi Today publicly apologize for having made false, misleading, and defamatory statements concerning Bryant; that Wolfe and Mississippi Today issue public retractions within 10 days of receiving this notice; and that Wolfe and Mississippi Today ensure that the false and defamatory remarks are removed from its website, social media accounts, and elsewhere.

This demand is intended to comply with Miss. Code Ann. § 95-1-5(2). Should Wolfe and Mississippi Today fail to comply with this demand, Bryant will include these claims in his upcoming amended complaint.

I. Wolfe's false and defamatory statements

On May 4, 2023, Mississippi Today published an article by Wolfe titled "Gov. Bryant promised to release 'all' his welfare scandal-related texts. But some key ones are missing." Wolfe wrote that "[f]ormer Gov. Phil Bryant opted Thursday to release hundreds of pages of text messages with figures in the Mississippi welfare scandal after initially fighting a subpoena against him. But several key messages between the state's chief executive and his appointed welfare director are missing from the batch, according to a separate trove of leaked text messages obtained and possessed by Mississippi Today."

Wolfe explained that "[a]fter an agency employee brought forward a small tip of fraud against Davis in June 2019, Bryant turned over the information to State Auditor Shad White, whom Bryant appointed to his position, and forced Davis to retire. At this time, investigators from the auditor's office retrieved Davis' phone, which held messages with Bryant dating back only to March of 2019." According to Wolfe, the auditor's office retrieved "14 pages of text messages" exchanged between Davis and Bryant in "the four months leading up to Davis' ousting."

Wolfe's "confidential" governmental source provided her with these text messages. According to Wolfe, Bryant did not produce the following the messages that were previously provided to her by her governmental source:

- "An exchange in which Bryant asked Davis to fund a specific vendor, to which Davis responded, 'Yes sir we can definitely help. You can go ahead and tell them I will be reaching out to fund them. I will do today.'" (emphasis in original).

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- “A text Bryant sent asking Davis for help with his troubled nephew, whom top welfare officials had apparently taken under their wing.” (emphasis in original).
- “A text Davis sent Bryant explain that he “FOUND A WAY TO FUND” a vendor Bryant supported after initially learning it would violate federal welfare grant regulations. Bryant responded: ‘Your (sic) the best...’”
- “A text in which Bryant asked Davis about a Mississippi Today report on federal welfare expenditures. Davis responds that the state is spending money in ‘areas that encourage getting [and] keeping a job.’ Bryant responded: ‘Keep up the good work.’”

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Implying Bryant deleted three years of texts between he and Davis, Wolfe noted that “the public has yet to see any messages sent during the pertinent months of the scandal between Bryant and his subordinate who ran the agency, John Davis.” Wolfe used her longtime friend Jim Waide to deliver her message. “‘Everybody in modern America knows you can delete a text,’” said Jim Waide, the attorney for Davis’ nephew Austin Smith, a defendant in the civil suit. ‘And we know they exist because Mississippi Today) published them, several of them, between him and John Davis. So we know they exist, or somewhere at one time they existed,’ Waide said.”

Bryant did not delete texts between he and Davis. As his public relations representative explained in a statement released to news media, “To the extent any additional messages exist, Gov. Bryant does not have them. Gov. Bryant is aware of a message between he and John Davis relating to his nephew, Noah McRae, that he does not currently possess. Gov. Bryant did not delete this or any other messages. He is unclear why this message is not on his mobile phone. Gov. Bryant has searched older devices in an effort to recover this and any other additional messages. Gov. Bryant even requested Apple’s assistance in recovering additional messages. These efforts were unsuccessful.”

While not directly relevant to Bryant’s text message production, Wolfe used the article to remind her readership of her patchwork case against Bryant. Wolfe wrote:

Within the welfare scandal, much of the focus has been on three projects that received more than \$8 million in federal funding because of the alleged involvement of both Bryant and former NFL legend Brett Favre. These include a volleyball stadium at University of Southern Mississippi, a pharmaceutical startup company called Prevacus and a \$1.1 million promotional contract with Favre himself.

Mississippi Today published its 2022 investigation about Bryant’s role in the scandal after receiving and reviewing hundreds of pages of text messages obtained by investigators in the case, including those between Bryant, Favre, and Prevacus founder Jake Vanlandingham.

The texts showed that after Bryant met with former NFL legend Brett Favre about supporting his startup pharmaceutical venture in late 2018, the then-governor promised to “open a hole” for Favre and less than a week later, welfare officials including Davis struck a deal at the athlete’s home to funnel \$1.7 million of federal grant funds into the project.

When the public funds started flowing to the drug company, Favre texted Bryant, “We couldn’t be more happy about the funding from the State of MS,” though Bryant denies knowing the company received any public funds. Two days after leaving office, Bryant then agreed by text to accept “a company package for all your help,” Vanlandingham wrote, but arrests occurred before they were able to meet.

As Wolfe is well aware, Bryant’s “open a hole” text had nothing to do with directing TANF funds to Prevacus; Bryant had no advance knowledge of or involvement with the agreement that John Davis, Nancy New, and Zach New reached to “funnel \$1.7 million of federal grant funds” into Prevacus in exchange for the News receiving personal stakes in the company; and Bryant did not agree by text or otherwise to accept “a company package” in Prevacus. Wolfe’s misrepresentation of these facts and her implication that Bryant agreed to accept a payoff from Prevacus for directing TANF funds to the company is defamatory and malicious.

II. Bryant’s defamation cause of action

The four elements of Bryant's defamation claim against Mississippi Today and John Doe 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. Wolfe's statement is false.

Bryant did not have advance knowledge of or involvement with the agreement that John Davis, Nancy New, and Zach New reached to pay \$1.7 million of TANF funds to Prevacus in exchange for the News receiving personal stakes in the company. Additionally, Bryant did not agree by text or otherwise to accept a "company package" in Prevacus. Wolfe's claim that Bryant agreed to accept a payoff from Prevacus in exchange for help he provided the company in office is absolutely false.

B. Wolfe's statements are defamatory in nature.

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)). Additionally, words imputing guilt or commission of a criminal offense involving moral turpitude and infamous punishment and words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade, or business are slanderous per se as a matter of law. *Speed v. Scott*, 787 So. 2d 626, 632 (Miss. 2001).

Wolfe accused Bryant of criminality and corruption while serving as governor. Her accusation is slanderous per se.

C. 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). Wolfe's statement obviously satisfies the publication element.

D. 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 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.

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

Wolfe's false and defamatory statement is part of a years-long scheme to harm Bryant. Acts in furtherance of the scheme have been committed by Wolfe, Mary Margaret White, Adam Ganuchau, and a John Doe defendant. Wolfe made her statement with knowledge that it was false or in reckless disregard of its falsity and the harm it would cause Bryant.

E. Special harm is presumed.

Statements that are slanderous 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).

III. 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 Wolfe placed Bryant would be highly offensive to a reasonable person, and (2) Wolfe had knowledge of or acted in reckless disregard as to the falsity of her accusations and the false light in which Bryant would be placed. 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 Wolfe 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 in which Wolfe and Mississippi Today placed Bryant would be highly offensive to a reasonable person. Wolfe and Mississippi Today had knowledge of or acted in reckless disregard of the falsity of their accusations and the light in which they placed Bryant. Accordingly, Wolfe and Mississippi Today are liable for false light invasion of privacy.

IV. Bryant's respondeat superior cause of action

Wolfe made her false and defamatory accusations while acting within the course and scope of her employment with Mississippi Today. Wolfe had actual or apparent authority to make her false and libelous accusations. Mississippi Today is vicariously liable for the damage caused by Wolfe's false and defamatory accusations under the common law doctrine of respondeat superior. The doctrine of respondeat superior also renders Wolfe and Mississippi Today jointly and severally liable for any judgment returned in Bryant's favor on his defamation and false light claims against Wolfe.

V. 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.

(quoting *Newson v. Henry*, 443 So. 2d 817, 824 (Miss. 1983), which quoted 50 Am. Jur. 2d, *Libel and Slander* § 352 (1970)).

Considering the malicious nature of Wolfe's statement and that it is a component of a years-long campaign to destroy Bryant's reputation with false and defamatory claims, Bryant will likely recover punitive damages in a civil action against Mississippi Today, White, Ganuchean, Wolfe, and John Doe (assuming the fictitious defendant is not one of the aforementioned individuals). 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)).

VI. Insurance coverage

Bryant has discovered that Mississippi Today only carries \$1 million of liability insurance coverage for defamation and false light invasion of privacy claims. \$1 million of insurance coverage is woefully inadequate to pay for the compensatory and punitive damages, attorneys' fees, costs, and pre- and post-judgment interest that Bryant seeks against the defendants in the Madison County action. The attorneys' fees and costs of bringing this suit alone should exceed that amount.

Wolfe should strongly consider demanding that Mississippi Today's insurance carrier immediately settle this case within policy limits. Wolfe should also consider obtaining independent counsel to defend her interest in avoiding an excess verdict that places her at risk of financial disaster. An adverse verdict in the Madison County litigation will not be dischargeable in bankruptcy. *Matter of Scarbrough*, 836 F.3d 447, 455 (5th Cir. 2016).

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). Wolfe’s continued defamatory statements misstate the facts, misconstrue the truth, and are integral to a Mississippi Today’s ongoing malicious scheme to destroy Bryant’s reputation.

Bryant showed Mississippi Today, Wolfe, White, and Ganucheau grace for too long. No more. Every actionable false and defamatory statement published by Mississippi Today and its employees about Bryant that we discover will be included in this suit. As Bryant has already explained, it is time for Mississippi Today, White, Ganucheau, and Wolfe to put up admissible evidence to support their defamation or admit their claims are baseless. This case is not going away.

Sincerely,

William M. Quin II



802 Steed Rd., Ste. 200
Ridgeland, MS 39157
601.707.5725 (reception)
601.863.0603 (direct)
769.226.1000 (mobile)
www.mmqnlaw.com

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