

Ohio House of Representatives
Civil Justice Committee
Proponent Testimony SB 237
Ken Douthit
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Chair Hillyer, Vice Chair Matthews, Ranking Member Isaacsohn, and members of the House Civil Justice Committee, my name is Ken Douthit. I am the Owner/Publisher of the Chagrin Valley Times and a member of the Ohio News Media Association. Thank you for the opportunity to provide testimony in support of Senate Bill 237.

In January 2003, the Chagrin Valley Times was sued for libel and false light by Robert Murray and The Murray Energy Corporation. The crux of the lawsuit centered on an editorial and a cartoon that ran in our January 3, 2013 edition of The Times, following our coverage two weeks earlier of a community protest in front of the headquarters of Murray Energy which is located within our circulation area.

Defense of this case presented some challenges from the beginning as my insurance carrier and I had difficulty finding an attorney who was not conflicted because of their firm's work for Mr. Murray. The original suit was filed in Belmont County, a county where we have no subscribers. Another challenge we had in defending this case was the lack of case law for precedent. Although newspapers get sued all of the time, there was almost a complete lack of case law from all over the country.

It seems that most of the litigation involving newspapers, ended in settlements, and that was particularly the case with Murray Energy. Lack-of-case law may have presented one reason for our insurance company, Chubb Insurance, to not put too much pressure on me to settle the case. Perhaps Chubb recognized that precedent was needed and we had a rather good case in a friendly jurisdiction. Of interest was that every time there was a pretrial hearing, Murray Energy would send an army of lawyers from all over the country...while Chagrin Valley Times was represented by one, very competent lawyer.

Ultimately the case was dismissed on Summary Judgment, by the Honorable David Matia of the Cuyahoga County Court of Common Pleas. It was then taken up on appeal to the Eighth District Court of Appeals by Murray Energy.

Again, for oral arguments in the Court of Appeals, Murray Energy was represented by his army of lawyers, and we were represented by one, J. Michael Murray from Cleveland. The unanimous opinion out of the Eighth District upheld the trial court's dismissal on Summary Judgment. In a very interesting opinion, one where Judge Sean Gallagher wrote that this case exemplified the need for Anti-SLAPP legislation.

Mr. Murray then appealed to the Ohio Supreme Court. And after being denied, he asked for reconsideration and was denied again. All told the process took almost three years to complete.

Because of this lawsuit, there have been adverse consequences for my business.

1) Because of the time involved and the number of briefs that to be filed, my insurance carrier, Chubb, paid over \$300,000 for my defense. Recently, I questioned my insurance agent about the cost of my libel

insurance, which is now double what I paid prior to the suit. He told me that because of the cost to defend me, I would NEVER see a decrease in my libel insurance.

2) Of the five individuals named in the lawsuit, only two remain with our company...our cartoonist, Ron Hill and me. Because of this lawsuit, I believe that the editor left to pursue non-journalistic work out of state, and the writer of the editorial, our editor emeritus, retired earlier than anticipated.

And the reporter, who wrote the original, very benign story I might add, left within a year after reporting for the paper for over twenty years. It was an unfortunate consequence as reporters with seniority and much institutional knowledge are very hard to replace and replicate.

3) This lawsuit has forever changed the way that we prepare our stories. Despite only being sued three times in the past 20 years (over 9,000 different editions of 9 different papers), we have now added an extra layer to our editing process for stories that we believe may cause individuals to bring a lawsuit. If there is anything, we are unsure about, we now run it by our corporate counsel.

4) The lawsuit has also changed how we view potential stories. Although I can't name any specific stories, we have delayed stories, rewritten stories, and passed on stories if we believe that there may be future litigation. So, although we prevailed in the courts, on some level, Murray Energy won as our future reporting has been effectively chilled.

5) Not to mention, my mental health. It is unnerving to be sued by a company that has more cash in the bank than the revenue generated by my companies in 60 years of publishing newspapers.

Until and unless there is legislation to give us a measure of protection from individuals who use the courts and their resources to intimidate and or cause us financial distress for the exercising of our 1st Amendment rights, we have no other choice but to change how we cover the news, who we write about without always considering the unintended consequences of telling the truth to the public.