

N.J. Supreme Court Applies Fair Report Privilege to Digital Media and Data Privacy Law Blog

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Posted in Defamation

New Jersey's highest court has overturned an intermediate appellate decision that had refused to apply the "fair report" privilege to accounts of initial pleadings filed in civil lawsuits. The Supreme Court's decision, issued in the case of Salzano v. North Jersey Media Group, Inc., represents an important victory for the press and the public.

We previously reported on the decision of the New Jersey Court of Appeals, which took a narrow view of the application of the fair report privilege. The privilege is critical to reporting on official statements and actions by government actors. It shields a media organization from liability if an official document, statement, or proceeding is given a fair and accurate account, even if the official source contains some factual error that someone contends is defamatory. Without the privilege, journalists would expose themselves and their organizations to defamation claims merely by reporting what a criminal indictment or arrest report contained, for example, or by reporting what a judge said on the bench. That risk of liability would force journalists to go behind their official sources and confirm the accuracy of the facts they provided, which would severely hamper reporting on government activities.

The intermediate appellate decision in the Salzano case was troubling because it refused to extend the fair report privilege to initial filings in civil cases. This would have had the effect of chilling reporting on civil complaints, since reporters would face some risk of liability from defendants or third parties who claimed allegations contained in the complaint were defamatory. The threat of such litigation could be used to deter reporting on important civil lawsuits, especially those in which the filing of the complaint itself was newsworthy.

In a sweeping decision, the New Jersey Supreme Court reversed, holding that a fair and accurate account of a civil complaint is indeed covered by the fair report privilege. According to the Court, "there is a clear trend away from recognizing the initial pleadings exception" to the fair report privilege.

The Court went on to explain the strong rationale for rejecting such an exception as follows:

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Indeed, the initial pleadings exception is at odds with the reality that the complaint is open to public view. . . . If the initial pleadings exception is retained, an anomalous result obtains: Public documents to which the citizens of our state have free access cannot be disseminated or reported on without risk of a lawsuit.

Because it is impossible for the citizenry to monitor all of the operations of our system of justice, we rely upon the press for vital information about such matters. Members of the public simply cannot attend every single court case and cannot oversee every single paper filing, although clearly entitled to do so. Thus, it is critical for the press to be able to report fairly and accurately on every aspect of the administration of justice, including the complaint and answer, without fear of having to defend a defamation case and without the inhibitory effect of such fear.

That interpretation of the privilege more fully advances the principles informing it than any other view. Indeed, if a citizen presents himself at the local courthouse, there is no question but that he can see filed pleadings for himself. They are not sanitized nor are they filtered through a veracity lens. A full, fair, and accurate report of the contents of the pleadings, that is, what plaintiff claims and how defendant defends, places the citizen in the exact same position as if he were present on the scene. From that perspective, interposing an artificial barrier between the citizen and a truthful and accurate report of what is actually occurring makes no sense.

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In short, we are convinced that the public policy underpinning of the fair-report privilege -- advancement of the public's interest in the free flow of information about official actions -- would be thwarted by the recognition of the initial pleadings exception. A full, fair, and accurate report regarding a public document that marks the commencement of a judicial proceeding deserves the protection of the privilege.

The Court then expressly adopted the majority view the fair report privilege is absolute -- once the reporter establishes that the report was fair and accurate, then the privilege attaches and cannot be overcome with a showing of malice.

In sum, the Salzano decision marks an important victory against efforts to limit the scope of the fair report privilege, a critical defense for reporters who report on government activity.