

U.S. Supreme Court Denies Cert in Fair Report Case

Digital Media and Data Privacy Law Blog

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Posted in Fair Report Privilege

Among the cases for which the United States Supreme Court denied certiorari Monday was the case of Salzano v. North Jersey Media Group. The Court's decision not to accept the case for review allows an important fair report decision issued earlier this year by the New Jersey Supreme Court to stand.

As we previously reported, the opinion of New Jersey's highest appellate court overturned a lower court ruling that imposed a troubling limitation on the fair report privilege. The privilege is a critical component of the battery of defenses reporters and news organizations have to fend off defamation and privacy claims. Pursuant to the privilege, if a reporter provides a fair and substantially accurate account of information appearing in an official government record or matters discussed in a government proceeding, the reporter will not face liability even if the official information proves to be incorrect. Without it, reporters would be forced to go behind official records and official statements, which would chill reporting on the business of government.

The Salzano case involved a media report upon a filing made in a bankruptcy matter. Despite the fact that the filing -- which instituted a legal claim against the debtor -- was newsworthy, as were the allegations made by the bankruptcy trustee in that filing, the intermediate appellate court in New Jersey held that the fair report privilege had no application. It reasoned that the privilege should protect only reports made of final decisions in civil proceedings, not initial allegations.

The New Jersey Supreme Court rejected that reasoning with strong language affirming the importance of the fair report privilege:

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.

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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 U.S. Supreme Court's decision yesterday means that the Salzano decision will continue to stand as an important bulwark against efforts to undermine the scope and application of the fair report privilege.