



Insurance Specialties Services, Inc.

"Service is Our Specialty."

Media Liability Tips

Keep abreast of recent First Amendment decisions and evaluate how they might impact your job.

Take care with investigative stories

- Since most pieces of this kind take much time to develop, make sure to take care that the facts are thoroughly investigated and correct to the best of your knowledge. The use of public records and public officials is extremely beneficial, especially if you are also relying on confidential sources. Document all of your work and beware of sloppy editing. Too often, defamation suits are filed over just one paragraph, one sentence or even one word in a lengthy newspiece that is otherwise well-written and factually correct. Such a snippet of information can be the basis of a multi-million dollar lawsuit (and verdict).

Take caution in assessing confidential and anonymous sources

- Watch out for those with an ax to grind or a hidden agenda. Always look to other sources to corroborate their allegations.

Make sure to distinguish the difference between a “factual” assertion and “opinion”

- The United States Supreme Court has held that there is no separate constitutional privilege for “opinion” speech. If an assertion can be proven as true or false, don’t couch it in an “opinion” context – it will be actionable.

Take care with criminal terminology

- Know the difference between such terms as “arrested”, “charged” and “convicted”. Take caution in knowing the difference between a crime a person is “charged” with versus the charge he/she “pleads” to. Jailhouse plaintiffs are all too frequent and will sue over any discrepancy in their journey through the criminal justice system.

Beware of ex-spouses – name-calling

- With such terms as “dead-beat dad”, “wife-beater”, “adulterer”, etc. May make for a juicy reporting but simply may not be true. Make sure to back up the statements with another source such as police records, divorce decrees, judgment entries, etc. To make sure the allegations are more than a chance at public revenge.

Watch out for wealthy and/or high-profile claimants

- Media targets such as celebrities, public officials, lawyers, doctors, sports figures, financial moguls, etc. are very sensitive about their public persona and have the money to initiate and fight (and fight) a libel suit. They are very well-versed in how the legal system works and hire top-flight lawyers. Although it would seem that many of these types of claims would be dismissed based on the claimant’s public figure status, they often survive and can result in extremely high verdicts.

Take care when reporting on a financially troubled individual, business or corporation

- Many claims have been submitted where the story is almost correct but not quite. Make sure that if you report that someone is “bankrupt”, that they really have filed for bankruptcy and are not just having money problems. Individuals and institutions jump at the opportunity to use these stories as the cause of their ultimate demise in an attempt to remedy their difficulties.

Look out for nosy neighbors.

- Take care in taking what neighbors say regarding a story as fact. Too many times they are overly-excited as the result of an event or have an ax to grind with the subject of the story.



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Take caution when interviewing law enforcement officials

- Make sure police officer's statement to you in an interview is consistent with the official report. Many times, a law enforcement official will deny making a verbal statement if it is later found to be inconsistent with what is in the written record.

Beware of republication

- Do not assume that you can not be sued for someone else's defamatory statements – you can and are legally responsible for the statement as much as the originator.

Closely monitor classified ads

- Many claims are submitted because someone has placed an ad in the classifieds as a prank or revenge on another. Be careful of classifieds that are of a sexual nature, particularly if a name or phone number is to be used.

Take caution in photographing and speaking with children

- Kids will say anything, especially if prompted. Children should never be spoken to or photographed without the consent of a parent or guardian. Many parents sue on behalf of their children – for being photographed at a school for kids with "learning disabilities", shown as victims of poverty or child abuse, or being interviewed without the parent's knowledge or consent. Parents are very protective of their children and some certainly see the jury appeal of such cases.

Make sure file footage matches the context of the story

- There are many instances of broadcasts that mislead viewers with gratuitous file footage or footage not taken at the event which is being reported. Examples of using old footage incorrectly include showing an individual and their automobile at a road stop (implying they have been stopped for drunk driving), and an ambulance parked curbside (with the company's name clearly visible on the side) for a story about allegations of another ambulance company's problems with vehicle maintenance.

Properly identify photos

- Many claims are received as a result of photo mix-ups, usually of the "good-guy/bad-guy" variety. Examples include putting the sheriff's name in the caption under the photo of the fugitive, using the attorney's picture instead of the criminal defendant, and mixing up the photo of the civilian "hero" in the place of the arrested convenience store robber.

Invasion of Privacy issues have become more commonplace

- They and are often alleged in conjunction with claims of defamation. As with libel claims, invasion of privacy claims are increasingly being accompanied by claims of emotional distress. Common sense and good journalistic instinct and judgment can prevent many of these claims.

The publication of private facts

- Ask: "Does the release of this information outweigh the plaintiff's privacy interest?" What makes the information "newsworthy"? What is it that the public needs to know?– Balance the issues – what are the facts of the story from the neutral point of view? What will be the likely impact of the decision to publish? Can your decision to publish be justified?



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Beware of stories involving the victim of a sex crime, a juvenile proceeding or that involves minors in general

- Although many courts have recently sided with the media regarding the publication of true facts which have been legally obtained, judges treat these cases with extreme sensitivity and still apply the balancing test regarding whether the individual's right to privacy outweighs the public's "right to know". State statutes also play a major role in what the media can and can not publish.

Use caution with any person who has and illness or disease

- Particularly sensitive plaintiffs are those with AIDS, sexually-transmitted diseases or any other ailment that might cause the identity of the plaintiff to be the subject of discrimination, humiliation or social alienation.

Videotaping/undercover surveillance

- This really makes people angry and leads to numerous lawsuits. Always ask: "Does the person have a 'reasonable expectation of privacy' in this situation?" If the person can be photographed from or in a public place, the answer is usually "no". If the person is in a non-public place yet other people are freely milling about, the answer is "maybe".

Do not trespass on private property

- Do not enter private property unless you have the consent of the property owner. Police officers, neighbors, relatives nor minors can give valid consent of entry. Courts have recently come down hard on journalists that accompany law enforcement officers on "raids" and photograph the members and contents of private residences. Courts say this is beyond the scope of a search warrant and that even with the invitation of police, journalists have absolutely no right to be on private property and to remove the photographic record. Courts have held that consent is valid if from the property owner, even if the consent is obtained by fraudulent means, but this is risky and certainly no guarantee of not being sued.

False light invasion of privacy

- Be careful when using stock photos or old footage to portray an unrelated story. The "model" may not appreciate the reference even if proper releases were obtained.

Misappropriation

- There have been many recent successful claims brought by high-profile plaintiffs against the media for using their name or likeness (including sound-alike vocals) to promote or advertise publications or products. Celebrities (and their lawyers) are extremely protective about their commercialability and will fight hard to keep it from being diluted. Ask: "Is the use of the celebrity's name or likeness to sell other products or to publish them for their own merits?" If it is to sell or endorse a product, including the insured's own publication, don't do it.

When in doubt about any publishing issue, always get a second opinion.

- from colleagues, your boss or a lawyer. Attentive, responsible pre-publication review prevents more claims and lawsuits for the Insured than anything else.

If someone does complain to the paper, station, etc., handle the claim promptly and courteously

- Many plaintiff's state in their complaints, in their depositions and during mediation that if the Insured had been more sensitive to their concerns and not so arrogant that they might not have filed suit. Whose to know if this is true, but nothing will light the fire under a potential plaintiff quicker than to brush them off or not reply at all.
- If a retraction, clarification or apology is truly justified, do it