



Protecting Your Business' Reputation On The Internet

As businesses and executives accelerate their transition to a primarily online environment, a greater need has arisen to monitor one's online reputation. A recent opinion by the Massachusetts Appeals Court warns that one must act quickly when that reputation is wrongfully maligned.

In *Wolsfelt v. Gloucester Times*, 98 Mass. App. Ct. 321 (2020), the Appeals Court adapted the "single publication rule" to online statements. The court held that, in a defamation action based on allegedly false and harmful statements published on a website, a claimant may only bring one defamation claim per statement, regardless of the number of times that it is subsequently repeated, and, more importantly, the clock to bring a lawsuit starts ticking when the alleged defamatory statement is first posted on the website. In *Wolsfelt*, the plaintiff sued the Gloucester Daily Times for its coverage of two reported incidents of domestic violence in which the plaintiff was arrested. After the first incident in November 2011, the newspaper published a story online that largely tracked the police report; in February 2012 the story was updated to

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report that the criminal court had continued the assault and battery charges without a finding. After the second incident in June 2012, the newspaper again published a story online that largely tracked the police report, and in February 2013 updated the second story to report that a charge of assault and battery

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Firm News



Jessica Conklin

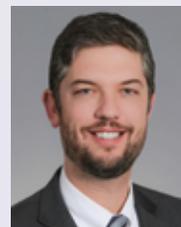
Congratulations to Jessica Conklin on her recent elevation to Senior Counsel with the firm.



Marc Laredo



Mark Smith



Matthew Kane

Marc Laredo, Mark Smith & Matt Kane are selected by their peers for inclusion in the 2021 edition of *The Best Lawyers in America*®



Payal Salsburg

Payal Salsburg moderated and Matt Kane presented on a recent Boston Bar Association program on Zoom Litigation.

Payal Salsburg was a panelist for a program focused on Access to Justice, Pro Bono, Public Service and LAR which was jointly sponsored by the Boston Bar, Massachusetts Bar and the Lynn Bar Associations.



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was continued without a finding for 18 months. Both cases were ultimately dismissed in 2012 and 2014, respectively.

In February 2015, the plaintiff filed a defamation claim against the newspaper, seeking money damages and asking the court to require that the newspaper delete the articles from its website. Wolsfelt claimed that he learned about the articles in February 2013 when he was applying for employment, and therefore the discovery rule tolled the limitations period. Relying on the established three-year statute of limitations, the trial court dismissed Wolsfelt's claims based on the first three publications, and rejected the discovery rule argument because the articles were not "inherently unknowable" having been posted on the internet. The Appeals Court agreed on both points. "Permitting a separate cause of action for each 'hit' or viewing of a defamatory statement ... would implicate an even greater potential for endless retriggering of the statute of limitations, multiplicity of suits, and harassment of defendants." Of course, the court recognized exceptions to the single publication rule when content is republished to a substantially different audience or is substantially altered and then republished. But the fact that a publisher may technically "republish" content every time a new reader views the content, does not provide the plaintiff a separate claim for each separate download.

As for the February 2013 updated publication, the court found that it was protected by the fair reporting privilege – a defense that protects reporting even if the public records themselves might contain defamatory falsehoods.

While the single publication rule has been the law across Massachusetts for a long time, this was the first case in which the rule was applied to the internet in a way that the first web posting is the trigger point for the statute of limitations. Laredo & Smith strongly recommends that businesses and executives set up daily Google alerts on their individual and business names to keep track of what is being published online. If an alert leads to a publication containing false statements, businesses and executives should take immediate steps to contact counsel to determine if a cease-and-desist letter is recommended, and if a libel suit is warranted based on the circumstances.

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