



ANNOUNCEMENT OF THE POLISH AMERICAN CONGRESS, ILLINOIS DIVISION

Several weeks ago, we received a letter from Peraica and Associates Law firm. The letter describes the finale of the lawsuit filed by several members of the Board of the Polish American Congress, Illinois division. Over a year ago, the President of the Polish American Congress of Illinois, Mr. Michael Niedzinski; First Vice President, Mr. Walter Bochenek; and Board Member, Mr. George Otto filed a defamation lawsuit against the Sun Times and journalist Neil Steinberg. The lawsuit was private and did not involve the Polish American Congress, Illinois Division, so as not to cause any unforeseen financial loss to the Polish American Congress, Illinois Division.

In addition to the three above-mentioned persons, the following joined in financing the costs of the lawsuit: Mr. Jacek Graca, Dr. Marek Rudnicki and Mr. Wojciech Niedzinski. The reason for the lawsuit is provided in the attached letter from the A. J. Peraica law firm attorney, Mr. Stephen F. Bolton, who handled the case. When we started the case, we were aware of how difficult it is to win a defamation case against a powerful company like Chicago Public Media Inc., especially in Illinois. In addition, this company, compared to private individuals, has very large financial resources.

Despite this, we determined that ignoring a defamatory article that at the same time presents Poles in a false light would send a very bad signal to people of ill will who are set against Poland and Poles. There is a proliferation of such people sticking their heads out from under every rock.

Our cost was minimal compared to the legal costs of Chicago Public Media Inc., which, eleven months after the publication of Mr. Steinberg's article purchased the Sun Times newspaper. The case was a very unpleasant surprise that Chicago Public Media spent money at in order to win.

We agree with Mr. Bolton's opinion that the Sun Times will start to respect Poles. Maybe they will even pay attention to which articles are allowed to be printed.

Mirosław Michael Niedzinski
Ms MBA, FASM CAE
President
Polish American Congress, Illinois Division

ANTHONY J. PERAICA & ASSOCIATES, LTD.
LAW OFFICE
5130 SOUTH ARCHER AVENUE
CHICAGO, ILLINOIS 60632
(773) 735-1700
FAX: (773) 585-3035

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Mr. Michael Niedzinski
President
Polish American Congress, Illinois Division
6021 W. Belmont Ave.
Chicago, IL 60634.

Re: *George Otto, et al. v. Chicago Public Media, Inc. and Neil Stenberg*

In response to your request for a review of the recent legal proceedings, I submit the following:

The retention was over the publication of an article in the Chicago Sun-Times on February 8, 2021, titled "True Greatness Comes from Facing History". In the article, columnist Neil Steinberg described Poles as notorious anti-Semites, and asserted that during and after the Second World War Poles murdered Jews out of habit.

The retention was to (1) obtain publication of positive information on Poland in WWII in general and the treatment of Poland's Jewish population in particular, emphasizing the large and heroic actions of Poles not only to save Jews, but the stop the Nazi Holocaust by, for example, obtaining and transmitting information on the existence of death camps on Polish soil; and, (2) obtain monetary recovery for defamation.

Our initial proposal for a series on "Poland in the War" that highlighted the heroic conduct of Poles both in defeating Nazi Germany and in saving Jews was rejected out of hand by the Sun-Times, we suspected at the demand of Neil Steinberg, who holds considerable sway there. The only course was to litigate in hope of a change of mind at the paper or victory in court.

As I warned from the start, however, defamation claims against a newspaper face some of the highest legal barriers in American civil law. We well understood, however, that the very honor of the Polish people had been grievously attacked, in particular that of Polish decent living in the Chicago area where the Sun-Times is widely distributed, though we asserted in court that the column was published online, and therefore available to the world. The column by Neil Stenberg was personally gratuitous, as he had lost relatives in Poland during the war, and sought to punish all Poles for that loss of his family and the murder of other Jews. Steinberg ignored the many acts of Poles to save Jews from the Nazis, often at the cost of their own lives; or the fact that Polish military officers risked death to enter, then escape from Nazi death camps in Poland to warn the Allies of the existence of the Holocaust; or the fact that the "Righteous Among the

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Nations” portion of the Israeli memorial at Yad Vashem, which honors gentiles who took great risks to save Jews during the Holocaust, lists by far more Poles than any other nationality. Thus, to do nothing and simply accept the smear of Steinberg’s column was not an option.

Upon filing of the Complaint in the Circuit Court of Cook County, the law firm for the defense responded with a Motion to Dismiss that made substantial arguments under Illinois law, relying on the vary high legal barriers imposed on claims of defamation against a media outlet like the Sun-Times. The defense made three main arguments:

1. Under Illinois law, a statement must be “of and concerning” the named plaintiff. That is not present when the plaintiff is not mentioned anywhere by name in the statement. Obviously, the column mentioned no specific person as killing Jews.
2. Under Illinois law, a statement is not defamatory if it may reasonably be innocently interpreted as referring to someone other than a named plaintiff. The defense argued that it was quite easy to assume that the statement referred to someone else as killing Jews, not the then teenaged George Otto or other Plaintiffs.
3. Under Illinois law, a statement is not defamatory if the actual facts stated are true. The defense argued that the Plaintiffs were not contending that no Jews were killed by Poles or that no Pole collaborated with the Nazi extermination, or that Neil Steinberg’s Jewish relatives had been murdered in Poland.

In the Response, we argued that under Illinois Supreme Court precedents the issue of satisfactory identification of the plaintiff is a question of fact for the jury. Further, under court precedent the innocent construction rule does not require that the court employ any possible innocent interpretation, but instead adopt the construction that gave the words their natural and obvious meaning. We argued that the words naturally and obviously applied to all Poles in Poland during the war. Finally, we asserted a “group libel” argument, which is recognized in Illinois law but only when the group at issue is small and discrete enough to allow the inference that each member was specifically implicated by the statement. We argued that the group was sufficiently identified.

Judge Daniel Trevino of the Circuit Court granted dismissal, primarily on the ground that no Plaintiff was specifically referenced in the Complaint. The Court reasoned that the innocent construction principle did not allow it to assume the Plaintiffs were being referenced, as he was required to seek an innocent interpretation even giving the words their natural meaning.

An appeal was taken to the Illinois Appellate Court. In an order affirming the trial court dismissal, entered on the briefs without granting oral argument, the Appellate Court first noted

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that no Plaintiff was specifically referenced by Steinberg, then took up our assertion of “group libel” of Poles in Poland at the time. However, the Appellate Court held that the principle could not be applied to so large a group as the population of an entire nation over a period of years. The gist of the ruling is in a single paragraph:

Here, the plaintiffs take issue with the statement’s generalized notion of Polish people. In this case, just as in *Rivera* and *Schaffer*, we cannot construe Steinberg’s generalizations to specifically the three named plaintiffs. The article does not mention them anywhere. Unlike the cited cases dealing with publications referring to a very small discrete group of persons, the article refers in general terms to an entire nation of millions of people. Therefore, plaintiffs did not state a valid defamation *per se* claim under Illinois law.

With affirmance of the trial court judgment by the Appellate Court, the only remaining route was to request leave to appeal to the Illinois Supreme Court. Such an appeal is not granted as of right, so the Supreme Court must grant leave to appeal. The court grants leave in well less than ten percent of the cases in which leave is requested. To review the possibility of the case being accepted for appeal, we undertook a survey of American courts that have addressed the “group libel” concept. We could not find a single case where the courts applied the principle to an entire population of a country, or even an expansive number of persons, as the concept has been applied only to words referring to a limited number of individuals that had some immediate association with the language at issue. We therefore recommended that the substantial expenditure of Petition for Leave to Appeal not be made, as there was no reasonable prospect of success.

However, the pursuit was not in vain, as the owner of the *Sun-Times* no doubt paid a hefty amount of legal fees to litigate the case, and now has warning that any offense against the Polish people will result in a new suit and further expenditure.

Yours very truly,



Stephen F. Boulton