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The role of public relations in corporate libel cases since 1990

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**THE ROLE OF PUBLIC RELATIONS
IN CORPORATE LIBEL CASES SINCE 1990**

A Thesis

Presented to

The Faculty of the School of Journalism and Mass Communications

San Jose State University

In Partial Fulfillment

of the Requirement for the Degree of

Master of Arts

By

Tara Komar

December 1999

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A handwritten signature in cursive script, reading "Diana Stover", written over a horizontal line.

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ABSTRACT

THE ROLE OF PUBLIC RELATIONS IN CORPORATE LIBEL CASES SINCE 1990

By Tara Komar

This thesis analyzes corporate libel cases since 1990 in which the company's public relations, advertising, and corporate activism have played a key role in deciding its public figure status, to determine why these cases had different outcomes, and what they reveal about the future of corporate libel.

In-depth analysis of the cases, as well as personal interviews with members of the legal profession, resulted in three major findings. First, courts now define what constitutes a public controversy, as well as what makes a corporation a public figure, a development that necessarily complicates corporate libel cases. Second, because the courts appear to be biased toward defining most issues as public controversies, more corporations may have to prove actual malice. Finally, corporations' advertising and public relations will continue to contribute to their limited purpose public figure status, with the potential for large and well-known companies to be found general purpose public figures.

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DEDICATION

To my husband, Matt, whose unflagging support throughout this long seven-year process helped me earn my masters degree before I had to start collecting Social Security. Thank you for not allowing me to give up. It's always easier to reach for the stars when you can stand on someone's shoulders. You have always allowed me to stand on yours, and for that I love you. And I promise not to make you call me "master" more than once a day.

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CHAPTER I INTRODUCTION

This thesis examines and analyzes corporate libel cases in which the corporation's public figure status was determined, at least in part, by its media access, public relations and advertising activities, and corporate activism. In libel cases, public figures have to prove actual malice on the part of the publisher to recover for special, compensatory, and punitive damages. Actual malice, defined as publishing a statement with knowledge that it was false or with reckless disregard of whether it was false, is a much tougher standard of proof than negligence, which is what private citizens in almost all states are generally required to prove to recover actual and special damages; private figures still must prove actual malice to recover punitive damages. The courts have frequently examined the areas of media access, public relations and advertising activities, and corporate activism to make the public figure determination, yet this examination has resulted in divergent outcomes—some corporations have been ruled public figures and others private citizens. Obviously, then, understanding the factors that determine public figure status is important to corporations.

Research in this specific area of corporate libel is less than prolific and most of it was completed more than a decade ago. Some researchers (Dreschel & Moon, 1983; Straughan, Chamberlin, and Reuss, 1984) have compiled a list of these cases in an effort to inform public relations practitioners that their activities may affect their company in a libel case, but none have offered an adequate analysis of why some corporations were judged public figures and others private citizens. One particular area that remains

unexplored is how, since 1990, the courts have weighed the relative importance of media access, public relations and advertising activities, and corporate activism in determining public figure status. Analyzing the reasoning behind these cases—particularly in relation to the controversy at hand—could be the key to these divergent decisions. This thesis presents such an analysis.

It is hoped that, by examining these types of corporate libel cases and analyzing the reasoning behind their outcomes, a clearer picture will emerge of what the courts look for in determining a corporation's public figure status.

Method - Overview

The research method was a primary source analysis of the cases meant to answer the following research question: Since 1990, how have media access, public relations and advertising activities, and corporate activism (i.e., active involvement in issues of public controversy) been defined and considered by the courts in determining a corporation's status as a public figure?

The eight cases analyzed—all decided since 1990—included at least one of the three criteria—media access, public relations and advertising activities, and active involvement in issues of public concern or controversy. Each case was examined to determine how the court defined the above terms, as well as whether and how any of these factors played a part in determining the corporation's public figure status.

In addition to a primary source analysis of the cases, the method also included interviews with 10 members of the legal profession who have been professionally involved in at least one corporate libel case. Questions were asked to explore their views

of the contributing role of public relations and advertising in de facto public figure status, the definition of public controversy as opposed to public interest, and the standards of proof required of corporations vs. private individuals.

CHAPTER II CASE REVIEW

Good name in man and woman, dear my lord,
Is the immediate jewel of their souls:
Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands:
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed. (Shakespeare, *Othello*, Act 3, Scene 3, 1604)

Even the villainous Iago in Shakespeare's *Othello* knew that slanderous words can hurt reputations, cast aspersions on one's character and sometimes wreak havoc on a person's life. But what about a corporate reputation?

Although corporations, unlike people, do not have feelings that can be hurt or dignity that can be insulted, they do have a corporate reputation to uphold that consists of good will, business standing, and consumer faith. According to Keeton (1984), "a corporation has prestige and standing in the business in which it is engaged, and language which casts an aspersion on its honesty, credit, efficiency, or other business character may be actionable" (p. 779).

Despite the differences between corporate and individual reputations, corporate libel law is grounded in individual libel law; therefore, any discussion of corporate libel law must take into account the many landmark individual libel cases that shaped it. The following section provides a brief overview of individual libel cases decided by the U.S. Supreme Court.

Review of Landmark Individual Libel Cases

Any review of modern libel law must begin with *New York Times v. Sullivan* (376 U.S. 254, 1964). Sullivan, an elected commissioner in charge of the police department in Montgomery, Alabama, sued the New York Times for running an ad that criticized the police department for mishandling a university student protest. In this groundbreaking libel case, the U.S. Supreme Court ruled that, in the interest of fostering public comment and debate, a public official should not be allowed to recover damages for “a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not” (*New York Times v. Sullivan* at 280). In essence, public officials such as Sullivan had to expect a certain amount of criticism as part of their jobs; consequently, they had to meet a much tougher standard of proof than private citizens.

Three years later, the Supreme Court in *Curtis Publishing v. Butts* (388 U.S. 130, 1967) extended the *New York Times* actual malice rule to public figures. The *Saturday Evening Post*, owned by Curtis Publishing, printed a story which accused Butts, the athletic director of the University of Georgia, of fixing a football game in 1972 between the University of Georgia and the University of Alabama. The original jury found for Butts, but after *New York Times* was decided, Curtis Publishing brought a motion for a new trial. The trial court rejected the motion on the basis that Butts was not a public official. On appeal, the U.S. Supreme Court ruled that “a public figure who is not a public official may also recover damages for defamatory falsehoods whose substance

makes substantial danger to reputation apparent” (*Curtis v. Butts* at 142). Butts was ruled a public figure but was able to prove actual malice, and won the case.

In 1971, the Supreme Court extended First Amendment protection of the media even further in *Rosenbloom v. Metromedia* (403 U.S. 29), holding that no one should receive special protection if the matter was one of public concern. Rosenbloom was arrested in 1963 for distributing nudist magazines. Police sent news of his arrest to a local radio station, where it was released on the air. After acquittal on obscenity charges, Rosenbloom sued the radio station. With six separate dissenting opinions, a mere plurality of three Supreme Court justices ruled that it did not matter whether Rosenbloom was a public figure or a private citizen. Instead, they said, what mattered was that the broadcasts were of public interest:

If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. (*Rosenbloom v. Metromedia* at 1,819)

Two years later, the Supreme Court essentially overturned *Rosenbloom* and reaffirmed that private citizens should receive more protection than public figures. *Gertz v. Robert Welch, Inc.* (418 U.S. 323, 1974) became the definitive precedent for courts at all levels in determining public figure status. Gertz, an attorney, was retained by a family whose son had been shot by a police officer. The case received much media attention, including an article published by the defendant that alleged that Gertz was a Communist involved in a conspiracy against the police department. Gertz filed a libel suit against Robert Welch, Inc., saying the article had damaged his reputation.

The district court applied the *Rosenbloom* standard, ruling that the actual malice standard from the *New York Times* case applied to any issue of public interest, regardless of the status of the people involved. The Supreme Court rejected the district court's reasoning, finding that private citizens require a different standard of liability. Public officials and public figures, they said, voluntarily expose themselves to increased risk of injury from defamatory falsehood concerning them. In addition, the court reasoned that private citizens do not have the same access to the media as public figures and public officials, so their opportunities for defending themselves are fewer.

The *Gertz* court not only distinguished public figures from private citizens, but further defined the concept of a public figure. The court established three types of public figures:

1. Involuntary, where the person becomes a public figure completely against his or her will. The court called this type of public figure hypothetically possible, but in reality rare.
2. General, or all purpose, public figures, who include people of pervasive power and/or fame, such as politicians and celebrities.
3. Limited purpose public figures, who include people who voluntarily thrust themselves into the limelight to influence the outcome of a certain issue.

Despite reestablishing additional protection for private figures, the court further ruled that in private figure defamation cases, the states could decide the appropriate standard of liability for publishers, as long as they did not impose liability without fault (placing the burden of proving damages, rather than presuming them, on the plaintiff). In addition, the court ruled that private defamation plaintiffs had to prove actual malice to recover punitive damages; otherwise, they could only recover for actual loss.

Two years after *Gertz*, the U.S. Supreme Court affirmed its reasoning from that case in *Time v. Firestone* (424 U.S. 448, 1976). Firestone, a socialite, sued *Time* magazine for libel because it allegedly contained false information about her divorce. The circuit court jury found for Firestone, the District Court of Appeals reversed, and the Florida Supreme Court affirmed.

The U.S. Supreme Court, however, reversed the state supreme court, finding that Firestone was neither an all-purpose public figure nor a limited purpose public figure:

Although the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public, dissolution of such a marriage through judicial proceedings is not the sort of "public controversy" thrusting the litigants into the status of "public figures . . ." (*Time v. Firestone* at 958-959)

Even the fact that Mrs. Firestone was a well-known socialite and had held a few press conferences during her divorce proceedings in an attempt to satisfy inquiring reporters did not make her a limited purpose public figure. The court said that allowing any matter of public interest to make the petitioner a public figure would cause a return to the reasoning in *Rosenbloom* for libel cases, which would put an undue burden on the states to determine what constituted a public controversy.

A pair of Supreme Court cases in 1979 also served to clarify the concept of public figures by introducing the concept of preexisting controversy. In *Hutchinson v. Proxmire* (443 U.S. 116), Hutchinson, a scientist, filed suit against Proxmire, a U.S. Senator, after Proxmire publicized examples of wasteful federal spending by awarding the "Golden Fleece of the Month Award" to individuals and agencies he felt were particularly deserving. Hutchinson was one of the dubious winners, and filed for defamation.

Proxmire argued that Hutchinson was a public figure because Hutchinson gained access to the media after he filed suit. The court found, however, that even though Hutchinson had access to the media, it was only *after* the award, so that he was not a preexisting public figure—only the case itself had earned him notoriety.

The court ruled similarly in *Wolston v. Reader's Digest Association* (443 U.S. 166, 1979). In this case, *Reader's Digest* named Wolston as a Russian spy, and he sued for defamation. Wolston had refused to respond to a grand jury subpoena in a 1957 investigation of Soviet intelligence agents in the United States (he was called because he admitted to being the nephew of Russian spies). Although his refusal caused publicity at the time, it was only temporary and Wolston soon returned to private life.

The U.S. Supreme Court found him to be a private citizen because he had not thrust himself to the forefront of any controversy to influence its outcome. The court further explained that a private individual is not automatically transformed into a public figure by being drawn into or associated with a matter that attracts public attention. There must be a preexisting controversy that involves the plaintiff and that plaintiff must have been actively involved in the controversy. The court did not address the concept of the involuntary public figure they had defined earlier in *Gertz* and whether it could have applied here.

The issue of “public controversy” was again addressed by the U.S. Supreme Court in 1985 in *Dun & Bradstreet v. Greenmoss Builders* (472 U.S. 749), where financial analyst Dun & Bradstreet issued a false report to five investors about the financial stability of a construction company, Greenmoss Builders. In three separate opinions by

five justices, the Supreme Court indicated that any contested statement must be a matter of public concern for the *Gertz* actual malice rule to apply. If the matter was not one of public concern, as was the case in *Greenmoss*, *Gertz* would not apply and the plaintiff—whether public or private—would not have to prove actual malice to recover punitive damages. The case is important for its similarity to *Rosenbloom*, in the sense that it forced the court to decide what constituted a matter of public concern.

Corporate Free Speech/Commercial Speech

In discussing corporate libel, it is also important to understand how the courts have ruled in cases dealing with corporations and free speech. The issue of corporate speech, of what corporations are allowed to say through advertising, public relations, political support and financial support, is fundamental to the issue of corporate libel, particularly in the determination of public figure status. The following section discusses some of the landmark decisions in this area of the law.

In *Stanson v. Mott* (551 P. 2d 1, Cal. 1976), the California Supreme Court found that governments are not afforded the same privileges as corporations. In 1974, plaintiff Stanson filed suit against William Mott, the director of the California Department of Parks and Recreation. Stanson argued that Mott had illegally used public funds to promote the passage of a \$250 million bond issue that would have provided funds for the future acquisition of park land and recreational facilities. The court, relying on past cases, found that a public agency may not expend public funds to promote a partisan position in an election campaign. They may disseminate information, but it must be neutral in tone.

First National Bank of Boston v. Belotti (435 U.S. 765, 1978) addressed the issue of corporate speech directly. The First National Bank of Boston, along with a number of other banking associations and corporations, wished to spend money to publicize its opposition to Section 8, a Massachusetts referendum that would soon come before the voters. The referendum proposed that the legislature authorize the enactment of a graduated personal income tax, which the appellants felt would be detrimental to the state's economy. The appellants brought suit, claiming that Section 8 was unconstitutional because it deprived them of their First Amendment rights to free speech.

Section 8 prohibited business corporations from making contributions or expenditures "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation" (*First National Bank v. Belotti* at 765). The U.S. Supreme Court found that speech that would normally be protected by the First Amendment does not lose that privilege simply because the speaker is a corporation. Because the issue regarded a referendum and not a candidate, the court said there was no threat of corruption, and that Section 8 was, therefore, unconstitutional.

In the area of commercial speech (advertising), corporations have certain First Amendment protections. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* (425 U.S. 748, 1976) established that:

Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what products, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a

matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. (*Virginia State Board* at 765)

Despite the court's defense of advertising for consumer goods and services, other forms of advertising, when weighed against the interest of the state to protect its citizens, did not earn the same privilege. In *Bates v. State Bar of Arizona* (433 U.S. 350, 1977), the Supreme Court held that truthful advertising of routine legal services was protected by the First and Fourteenth Amendments; however, the court left the question of direct, personal solicitation of clients unanswered. It addressed that aspect of the case a year later, however, in *Ohralik v. Ohio State Bar Association* (436 U.S. 447, 1978). In this case, an attorney heard about an auto accident and solicited the teenage victim while she was in the hospital. He later did the same to her passenger, and received verbal agreements from both to allow him to represent them. The teenagers later broke the contract, but the attorney succeeded in obtaining a share of the insurance settlement, at which point the two women filed a complaint with the State Bar Association. The State Bar filed suit against Ohralik. On appeal before the Supreme Court, Ohralik argued that he had the First Amendment right to advertise his services. The court however, found that the state can indeed discipline a lawyer for "soliciting clients in person, for pecuniary gain, under circumstances likely to pose danger that the state has a right to prevent" (*Ohralik v. Ohio State Bar Association* at 449). They further stated that the State's responsibility for maintaining standards among members of licensed professionals outweighs First and Fourteenth Amendment rights, finding that "protection of the public from those aspects of solicitation that involve fraud, undue influence,

intimidation, overreaching, and other forms of ‘vexatious conduct’ is a legitimate and important state interest” (*Ohralik* at 448).

The Supreme Court dealt with another commercial speech case in 1979 having to do with inserts included in monthly utility bills. In *Consolidated Edison Co. v. Public Service Commission of New York* (447 U.S. 530, 1979), the Commission ordered the public utility to stop including inserts in its monthly bills to customers regarding controversial issues of public policy, such as nuclear energy. The court looked at the following three factors that are often used in commercial speech cases to determine that the Commission’s order directly violated the First and Fourteenth Amendments:

1. Time/place/manner restrictions. Time, place, and manner restrictions may not be based on the content of the speech. The court found that the Commission did indeed intend to stop the utility from publishing controversial ideas.
2. Permissible subject matter regulation. The Commission asserted that the order was acceptable because it applied to all views (pro and con), not just one particular viewpoint. The court said, however, “To allow a government the choice of permissible subjects for public debate would be to allow that government control over the search for political truth.” (*Consolidated Edison v. Public Service Commission* at 538)
3. Serving a compelling state interest. In *Ohralik*, the court stated that the state’s interest outweighed the First and Fourteenth Amendment rights of the individual, but in this case, the Commission’s attempt to protect the public by arguing that the utility company shouldn’t force its views on a captive audience was a moot point because the customers could simply throw the material away.

The Supreme Court defined the restrictions on free speech more thoroughly a year later in another public utility case, *Central Hudson Gas & Electric v. Public Service Commission of New York* (447 U.S. 557, 1980). In this case, Central Hudson filed suit

against the Commission because of the Commission's ban on all promotional advertising by public utilities. The ban did allow for informational advertising. The court found that, although the Constitution accords a lesser protection to commercial speech than to other constitutionally guaranteed expression, the protection for commercial speech depends on the nature of the expression and the governmental interests served by its regulation.

The *Central Hudson* court created a four-part test to determine the extent of protection of commercial speech. First, the court must determine whether the expression is protected by the First Amendment. In the case of commercial speech, this means that it must not be misleading and must concern lawful activity. Second, the asserted governmental interest must be substantial. Then, the court has to determine whether the regulation directly advances the governmental interest asserted, and finally, whether the regulation is not more extensive than necessary to serve that interest.

The court found that the Public Service Commission did not meet all requirements of the test and ordered that the ban on promotional commercial speech be lifted.

The issue of corporations or organizations backing a political candidate also falls under the purview of corporate free speech. *Austin v. Michigan Chamber of Commerce* (494 U.S. 652, 1989) dealt with such an issue. The Chamber of Commerce wanted to use its general treasury funds to place local newspaper ads in favor of a candidate for state office. Section 54(1) of the Michigan Campaign Finance Act prohibited corporations from using general treasury funds for independent expenditures in connection with state candidate elections. The section did allow corporations to make

expenditures used solely for political purposes. The Chamber brought suit for injunctive relief against Section 54(1), saying it violated its First Amendment right.

The court upheld 54(1), saying that there was a compelling state interest “preventing corruption in the political arena by reducing the threat that huge corporate treasuries will be used to influence unfairly election outcomes” (*Austin v. Michigan Chamber of Commerce* at 652).

In short, the U.S. Supreme Court has consistently granted First Amendment protection of speech to corporations. Although the court has ruled that commercial speech should receive less protection than noncommercial speech, its consistent rulings dictate a clear precedent for the importance of corporate speech.

Corporate Libel Cases Since Gertz

By defining the concept of the limited purpose public figure, Gertz established a precedent on which all subsequent libel cases have been based. This is particularly true in corporate libel cases where a company’s advertising and public relations activities, media access, and corporate activism contribute to its status as a limited purpose public figure. The cases that follow provide a brief history of corporate libel cases since *Gertz*, revealing the courts’ reasoning in determining public figure status for corporations, with particular attention paid to those cases in which the courts examined the company’s media access and public relations or advertising activities to make that determination. Cases in which the chief executive of a company is involved in his or her corporation’s libel case are also included, because executives are often considered to be an extension of the corporation itself.

Corporations Found to be Private Figures. According to Straughan, et al. (1984), in the three years after the *Gertz* decision, only one published court opinion regarded a corporation as a private figure. In *Lake Havasu Estates, Inc. v. Reader's Digest* (441 F.Supp. 489, S.D.N.Y. 1977), Lake Havasu filed suit against the magazine for an article it published about Arizona land fraud. The plaintiff claimed that the story did not clearly distinguish between a company mentioned in the article, Lake Havasu Estates, and the plaintiff, Lake Havasu Estates, Inc.

The district court in New York ruled that Lake Havasu Estates, Inc. was not a public figure because the company had not thrust itself into the forefront of the land controversy, nor had it invited public comment. However, even as a private citizen the company was unable to prove negligence on the part of the magazine, and the court granted summary judgment to the defendant.

As more corporate libel cases came before the courts after *Gertz*, however, rulings of private figure status became more common. Among the first corporate libel cases to use the *Gertz* public figure test was *Vegod v. ABC* (603 P.2d 14, Cal. 1980). In San Francisco, the City of Paris department store was forced to close in 1972. Bargains were widely advertised in various media. Vegod was a corporation that assisted in the closing of failing stores. A Better Business Bureau spokesperson told a KGO-TV reporter that Vegod was selling inferior merchandise at inflated prices. KGO's story reported that Vegod had "deceived the public that trusts the name City of Paris and promises bargains that are not really bargains at all" (*Vegod* at 18). Vegod sued for damages.

ABC argued that Vegod's type of business and accompanying advertising were the same as "thrusting" itself into a public controversy. The California Supreme Court disagreed, ruling that closing out the store and advertising such activities were matters of public *interest*, but not public *controversy*, requirements found in both *Gertz* and *Time, Inc. v. Firestone*, [emphasis added]. Furthermore, the court ruled that merely doing business with parties to a public controversy does not elevate one to public figure status. In addition, "a person in the world advertising his wares does not necessarily become part of an existing controversy" (*Vegod* at 21).

A similar ruling occurred in the California Court of Appeals in *Rancho La Costa, Inc. v. Superior Court of California* (165 Cal.Rptr. 347, Cal.App.2d 1980). A *Penthouse* article accused the owners of Rancho La Costa of being members of organized crime and La Costa their headquarters. Using *Vegod* as a precedent, the Court of Appeals ruled that advertising one's wares does not constitute thrusting oneself in the vortex of a controversy. Also, simply having access to the media, as the plaintiff did, is not the same as using the media to influence the outcome of controversial issues. The court also commented on the amount of publicity that would determine public figure status:

In proving that the plaintiff in a libel action is a public figure, it is not enough simply to present evidence of much publicity. The quantity of such evidence might be a shoeboxful or a trunkful of newspaper and magazine clippings . . . We here reject the proposition that public figure status can be established by evidence of much publicity . . . (*Rancho v. Superior Court* at 357-358)

Three years later, a court in Texas ruled similarly regarding *Golden Bear Distribution Systems of Texas, Inc. v. Chase Revel, Inc.* (708 F.2d 944, 5th Cir. 1983). An article in *Entrepreneur Magazine* discussed the dishonest business practices of Golden

Bear Distribution Systems of California, not mentioning that Golden Bear of Texas had no connection to Golden Bear of California besides sharing the same name under a franchise agreement. After the article appeared, Golden Bear of Texas had to file for bankruptcy, and the company filed a defamation suit against the magazine. The court noted:

Golden Bear of Texas did not "thrust itself" into a public controversy by merely advertising its services. Were we to agree with [this] hypothesis, the mere fact of advertising would render all businesses public figures. (*Golden Bear v. Chase Revel* at 952)

A number of other cases decided in the 1980s considered, but ultimately rejected, the idea that a company's general public relations activities should make it a public figure. In *Bruno & Stillman v. Globe Newspaper* (633 F.2d 583, 1st Cir. 1980), the court found that corporations as a class cannot automatically be found public figures, nor can a business' successful reputation be used as a measure of a public figure. As far as media access was concerned, the court said, "to the extent that access to the channels of communications is a meaningful factor, we suspect that many, if not most, corporations have no particular advantage over private individuals" (*Bruno & Stillman v. Globe Newspaper* at 589).

Bank of Oregon v. Independent News (693 P.2d 35, Or. 1983) took a similar approach to the issue of media access. The court ruled that the bank, even though subject to state and local regulation and publicly held, had no greater access to the media than individuals, and was therefore found to be a private citizen.

Long v. Cooper (848 F.2d 1202, 11th Cir. 1988) addressed the issue of attempting to influence the outcome of a controversy through advertising. Long was the president of a corporation that sold satellite TV equipment wholesale to qualified dealers. He brought suit against Cooper, the author of an editorial about the fierce competition between discount wholesalers and specialty retailers that contained numerous defamatory statements about Long and his company. The district court ruled that Long and his corporation were limited purpose public figures, but the Court of Appeals reversed, based on the fact that, although the company did a lot of advertising, none of the ads addressed the controversy of discount wholesalers vs. specialty retailers, nor did they compare prices between the two. Because the advertising did not attempt to change the outcome of the controversy, Long and his corporation were judged private citizens.

Despite the cases discussed in this section, the majority of courts at the state and federal level have found corporations to be public figures and, of those, most were deemed limited purpose public figures, originally defined in *Gertz*. Many courts have expanded on *Gertz*, creating their own tests to determine a corporation's public figure status, as will be discussed in the next section.

Corporations Found to be Public Figures. Martin Marietta Corporation v. The Evening Star Newspaper (417 F.Supp 947, D.D.C. 1976) stands as the first corporate libel case decided after *Gertz*. Martin Marietta, a major defense contractor, filed suit against the defendant over an article that alleged that Marietta held a weekend party for military officials, and that a Marietta official paid two prostitutes more than \$3,000 for

their services. By the time the story appeared, entertainment of military officials by defense contractors had been a topic of public debate for several years.

The district court ruled that *Gertz* did not apply to corporations because they have no personal reputation to lose. Judge Flannery did not go so far as to say that all corporations are public figures; instead, he relied on the overturned *Rosenbloom* case to rule:

It is, therefore, the holding of this court that actual malice must be proven with convincing clarity in any libel action brought by a corporation against a mass media defendant, if the defendant establishes that the publication in issue concerned matters of legitimate public interest. (*Martin Marietta v. Evening Star* at 956)

Because the issue of defense contractors entertaining military officials was a matter of public controversy before the article was published, Marietta became a limited purpose public figure and had to prove actual malice.

As is often the case when state courts interpret a U.S. Supreme Court ruling, that state's own laws and the prior rulings of that state's courts will result in an outcome that is different than that in other states. Such was the case in *Transworld Accounts v. Associated Press* (425 F.Supp. 814, N.D.Cal. 1977), which was decided only six months after *Marietta*. In this case, the Federal Trade Commission had issued a press release announcing that it intended to issue formal complaints against Transworld Accounts and seven other debt collecting companies, charging a number of unfair and deceptive practices. The press release did note that Transworld would not be investigated for two of the four charges; however, when the Associated Press picked up the release and sent it

out, it neglected to mention that portion of the release. Transworld sued after AP did not print a retraction that was timely, according to the California statute.

Judge Schwarzer of the U.S. District Court in California rejected the reasoning in *Marietta*, both because the U.S. Supreme Court in *Gertz* overturned *Rosenbloom* without qualification, and because California law does not distinguish between individuals and corporations for purposes of applying the First Amendment to defamation claims.

However, the court did find Transworld to be a limited purpose public figure. According to the court:

Transworld may not have been a “public figure” until the proposed complaint was issued but when it did it was clearly drawn into a particular controversy having its origin in Transworld’s own conduct and activities and thereby became a public figure for the limited range of issues relating to the FTC’s complaint. (*Transworld v. AP* at 821)

Decided immediately after *Marietta* (1976) and having the same outcome was *Steaks Unlimited v. Deaner* (623 F.2d 264, 3rd Cir. 1980). Steaks Unlimited, a meat producer, held a major four-day sale of meat at several department stores in Pennsylvania. The corporation spent \$16,000 to advertise its sale, using radio, newspaper, signs at all of the sales locations, and distribution of handbills. Deaner, a consumer reporter, decided to investigate when she noticed that one of the advertisements did not disclose the USDA grade or the price per pound, both normal sales practices. Deaner also claimed to have received numerous complaints about the quality of the beef. Her story called Steaks Unlimited's business practices “deceptive” and their advertising “a total misrepresentation” (*Steaks v. Deaner* at 273).

The Court of Appeals found Steaks Unlimited to be a limited purpose public figure because of its extensive advertising. The court found that, “through its advertising blitz, Steaks invited public attention, comment and criticism” (*Steaks* at 274). The court also mentioned Steaks' easy access to the media as a factor in its public figure status. It is important to note here, however, that the advertising the court referred to was not Steaks' advertising in general, but specifically the advertising that promoted the four-day sale. Because of the preexisting controversy of consumer complaints about the meat, the advertising, which promoted the quality of the meat, became an issue in the case.

Another corporate libel case in the same year as *Steaks v. Deaner* had similar results. In *Waldbaum v. Fairchild Publications, Inc.* (627 F2d 1,287. D.C. Cir. 1980), the former president of a large grocery cooperative was found to be a limited purpose public figure because of his activism in the industry and consequent media coverage. Waldbaum's case resulted from an article in a trade publication that said that Greenbelt, the cooperative of which Waldbaum had been president, was losing money under Waldbaum's tenure. In an attempt to flesh out the skeletal guidelines regarding the public figure status as set forth in *Gertz*, the *Waldbaum* court created a three-step test to help the courts in their inquiry of the plaintiff's limited public figure status. This test became another crucial precedent for courts in the evolving definition of public figure status.

The first step of the three-step inquiry was to examine the public controversy and determine whether it was merely a matter of interest to the public or whether it was a real dispute whose outcome would affect the general public in an appreciable way.

Newsworthiness alone was not enough to create a public controversy. In short, “If the

issue was being debated publicly and if it had foreseeable and substantial ramifications for nonparticipants, it was a public controversy” (*Waldbaum* at 1,297).

The second of the three-step test was to analyze the plaintiff's role in the public controversy. Plaintiffs could not be incidental or accidental participants; they must have thrust themselves into the forefront of the controversy in an attempt to influence its outcome. In attempting to analyze the plaintiff's role in the controversy, the court could look to the plaintiff's past conduct, the extent of press coverage, and the public reaction to his conduct and statements. Again, no mention was made of the involuntary public figure, as set forth in *Gertz*.

Finally, the libel must be germane to the plaintiff's participation in the controversy. A corporation could be very outspoken on an issue that concerned the community and could also receive media coverage for its activities, but if it was defamed about a subject that had nothing to do with its activism, the activism could not become a criterion in determining its public figure status.

Using this three-part test, the court found *Waldbaum* to be a limited purpose public figure. As a prominent activist in the controversial arena of co-op pricing and open dating and one who had consistently received media coverage, *Waldbaum* met all three criteria to be named a public figure. However, the *Waldbaum* court did note that merely being an executive within a prominent and influential company did not by itself make one a limited purpose public figure.

Other courts have used *Waldbaum* as a precedent. The court in *Fremont Energy v. Seattle Post-Intelligencer* (688 F.2d 1,285, CACal. 1982) used the *Waldbaum* test and

found Fremont Energy to be a public figure because it had entangled itself in controversial issues that affected the public and because of its public relations activities. These public relations activities were equivalent to having media access, according to the court, which noted, "Indeed, Fremont retained two public relations firms. An example of its access to the press was its ability to bring this legal action" (*Fremont Energy* at 1,296).

Tavoulaareas v. Piro (817 F.2d 762, D.C. Cir. 1987) also utilized the *Waldbaum* three-part test to determine that Tavoulaareas, the president of Mobil Oil, was a limited purpose public figure. As president of Mobil, Tavoulaareas took an active role in the public debate during the 1970s about the U.S. - OPEC situation. When *The Washington Post*, with the help of Tavoulaareas' estranged son-in-law Piro, accused Tavoulaareas of nepotism (he had appointed his son to head a number of important subsidiaries), Tavoulaareas sued. The court found that he met all three requirements in the *Waldbaum* test: Through his speeches and testimony before Congress he had regularly thrust himself into the controversial issues of the oil industry in order to affect their outcome. In addition, the controversy over oil policies was definitely one that would affect the public, and the story of Tavoulaareas' nepotism was germane because the integrity of oil representatives was a very controversial issue at the time. Furthermore, the court said that through Mobil's publicity apparatus, Tavoulaareas enjoyed continuous access to the media. Thus, Tavoulaareas, like *Waldbaum*, had to prove actual malice on the part of the publication to recover libel damages.

Using the three-step test from *Waldbaum* and the reasoning from *Tavoulaareas*, the 5th Circuit Appellate Court also ruled Jim Trotter, a Houston attorney and president of

Embotelladora Guatemalteca, a Coca-Cola bottling company in Guatemala, to be a public figure (*Trotter v. Jack Anderson Enterprises, Inc.*, 818 F.2d 431, 1987). In 1979, nationally syndicated columnist Jack Anderson wrote two articles about the prolonged and violent labor conflict at the plant. The second article directly implicated Trotter with the deaths of labor union officials.

The district court said that Trotter was a limited purpose public figure and that he had failed to prove actual malice. On appeal, the Court of Appeals affirmed the district court and used the Waldbaum test as a "sensible" measure of public figure status (*Trotter* at 434). Trotter argued that he was not a public figure because he did not actively engage the public's attention and his name did not appear frequently in the press. To this argument the court, hearkening back to *Gertz's* involuntary public figure, replied:

While an individual can achieve public figure status by aggressively seeking public attention or by exercising his access to the media, an individual cannot erase his public figure status by limiting public comment and maintaining a low public profile. (*Trotter* at 435, 436)

This same reasoning was confirmed a year later in the Texas case of *Bruggenmeyer v. ABC* (684 F.Supp 452, N.D.Tex. 1988), which affirmed *Trotter* in its ruling that consumer complaints, government legal actions, investigations and regulatory bodies and media attention, while not sought out by a libel plaintiff, still qualify him for limited purpose public figure status. Again, while no mention was made of the *Gertz* involuntary public figure, the effect was the same.

The courts have also taken into consideration whether a corporation did business in a traditionally controversial industry in determining public figure status. *Silvester v.*

ABC (839 F.2d 1,491. 11th Cir. 1988), which involved the jai alai industry, and *Brown & Williamson v. Jacobson* (713 F.2d 262, 7th Cir. 1983, affirmed 827 F.2d 1,119, 7th Cir. 1987), which involved one of the largest tobacco companies in the United States, both resulted in limited purpose public figure determinations. It is interesting to note, however, that *Brown & Williamson* was originally considered a private figure in the 1983 case, a position with which the Court of Appeals disagreed:

The defendants do not argue that as a large corporation *Brown & Williamson* is a “public figure.” Whether they have waived any such argument by their silence is not a question we need decide here, but we observe in passing that if the purpose of the public figure-private person dichotomy is to protect the privacy of individuals who do not seek publicity or engage in activities that place them in the public eye, there seems no reason to classify a large corporation as a private person. (*Brown & Williamson v. Jacobson*, 1983, at 273)

Although the cases just reviewed provide only a brief history of individual and corporate libel, they do reflect the changes in the judiciary’s approach to determining public figure status, especially as corporations have become more aggressive in their use of the media, their advertising and public relations activities, and their involvement in issues of public concern. Yet the fact that so many courts have examined and weighed the importance of these corporate activities and still delivered divergent opinions about the corporations’ public figure status tells us that corporate libel is an evolving—and often confusing—area of the law that requires further examination. Since being determined a public figure requires corporations to prove actual malice, which is a very difficult process, understanding the impetus behind these judicial decisions is important to corporations as they move into the 21st century. Accordingly, the following research question is posed: Since 1990, how have media access, public relations and advertising

activities, and active involvement in issues of public controversy been defined and considered by the courts in determining a corporation's status as a public figure?

CHAPTER III METHOD

The method used was twofold: a qualitative case analysis and in-depth interviews. The first part included an original primary source review and analysis of eight corporate libel law cases since 1990, in which the corporation's advertising and public relations activities, media access, and corporate activism (used interchangeably with the term "active involvement in issues of public controversy") were the primary criteria considered by the courts to determine the corporation's public figure status.

Only cases with these specific criteria were chosen. Several factors may contribute to a court's decision to impose public figure status upon a corporation, such as the company's stock trading on the market, or being regulated by the government. These cases were not considered. The focus of this inquiry was on media, public relations and advertising, and involvement in public controversy, and their effect on a corporation's legal status in a libel case; therefore, cases without this criteria were not considered.

In addition, only cases after 1990 were selected. Several articles (Fetzer, 1982; Dreschel & Moon, 1983; Straughan, et al, 1984; Lee, 1987) have been written on cases preceding 1990, but none have looked at these cases in the last decade. Moreover, despite the fact that dozens of corporate libel cases have been decided since 1990, relatively few address the issues of public relations, media access, and corporate activism as determinants of public figure status. Therefore, eight cases that specifically address these issues were chosen.

Finally, cases were selected where the outcomes differed. The cases chosen included plaintiffs who were classified as private figures, limited purpose public figures, general purpose public figures, and even an involuntary public figure. The public controversies ranged from public health issues to consumer fraud to name-calling. This diversity reflects the broad scope of corporate libel law; including as many different cases as possible allowed for a more thorough analysis of the law as a whole.

The cases selected for detailed review and analysis were as follows:

1. Michigan Microtech v. Federated Publications
2. National Life Insurance v. Phillips
3. Parker v. Evening Post
4. Quantum v. Consumers Union
5. Bay View Packing v. WISN-TV
6. Q-Tone Broadcasting v. Music Radio
7. Turf Lawnmower v. Bergen Record
8. Levinsky's v. Wal-Mart

Cases were reviewed and analyzed chronologically, allowing a logical presentation of cases, where more recent courts may have relied on the precedents set by earlier courts. Each case was analyzed by addressing the following questions:

1. Media access:

Did the court say the corporation had media access?

Did the court discuss whether corporations had greater media access than individuals?

How was media access defined?

2. Public relations and advertising activities:

Did the court consider the company's practice of public relations and advertising activities in determining public figure status?

3. If so, how did the court rule on these activities? Did they look at amount, type, and/or whether the public relations and advertising related to the issue of public concern?

Did these activities constitute active involvement in a public controversy?

4. Involvement in a public controversy:

How did the court define a public controversy?

Was the nature of the controversy more important than the status of the plaintiff in triggering the actual malice rule?

Certainly, no case answered all the questions listed above, but each addressed enough questions to allow a solid analysis of the court's reasoning behind an affirmation of public figure status.

The second part of the method included personal, in-depth interviews with 10 members of the legal profession who have been professionally involved in issues of corporate libel. The group consisted of two Santa Clara County Superior Court judges who have both presided over numerous cases involving libel, seven attorneys who have represented either a corporation or an individual in at least one libel case, and a media law professor from Stanford University.

Eight of the interviews were taped, and two were conducted over the phone. The interviews took an average of 30 minutes, although some went as long as an hour. It was hoped that these legal professionals would provide a "real world" perspective to the issue, and provide some guidance regarding the direction of corporate libel.

Interview Questions

The following list of questions was developed by the author and was intended to elicit opinions on corporate libel in general, and on the eight cases specifically, by bringing up the areas of the law that remain unclear or open for interpretation. Based on the analysis of the cases in the literature review, as well as the focus on companies' public relations and advertising activities, the questions inquired about a range of subjects, from legal interpretations of the public figure test to the examination of public relations as an essential ingredient of corporate success. The question about the de facto public figure, for example, was intended to prompt comment on whether a corporation's public relations and advertising activities almost make the public figure classification a foregone conclusion, and if so, should they? Other questions were asked along similar lines, attempting to provoke thought about specific areas of the cases that came up during the case review, such as whether the amount of public relations played into the public figure status, and if it did, how much was enough? The questions were also intended to be open-ended enough so that the interviewed subjects would feel free to expand on the topic and perhaps delve into areas that were not necessarily covered by the questions. This ended up being the case in several of the interviews, and provided many new perspectives for further investigation.

1. Should corporations automatically be classified as public figures, either general purpose or limited purpose?
2. It could be argued that public relations, advertising, and media access are as essential to corporate success as a cutting edge product, a strong sales force, a solid strategy, or any number of other factors that lend to a company's success. They are also frequently viewed by the courts as major contributors to a corporate

plaintiff's public figure status. If this is the case, aren't the majority of corporations almost de facto public figures?

3. What factors do you feel should be considered in determining a corporation's public figure status?
4. In cases where the defamation regards an issue of great public controversy, should the public figure distinction still be necessary? In other words, should a private citizen plaintiff still receive greater First Amendment protection if he is involved, voluntarily, in an issue of public concern?
5. As a follow-up to the previous question, how should the courts view the plaintiff involuntarily drawn into a public controversy? Some courts have relied upon the *Gertz* court's classification of the involuntary public figure (which was called hypothetically possible, but in reality, rare), but other courts have found that private citizens, even when pulled into issues of public controversy against their will, require greater protection. What are your thoughts?
6. If a company is in a controversial industry (e.g., tobacco, gambling), should it automatically be classified as a public figure?
7. Should an active or highly visible CEO contribute to a company's public figure status?
8. Should the amount of public relations and advertising activities make a difference in determining public figure status?

A list of interviewees is as follows; see also Appendix A:

1. Hon. Joseph Biafore, Santa Clara County Superior Court Judge, who was selected on the basis of a libel case he tried in the 1980s involving two Vietnamese community groups in San Jose. Judge Biafore has also heard several cases in which libel was an incidental charge.
2. Mr. Arthur J. Casey, an attorney with the law firm Robinson & Wood, was interviewed for his general expertise in corporate law.
3. Mr. James Chadwick, attorney with the law firm Gray Cary Ware & Freidenrich who specializes in First Amendment law, has tried numerous individual and corporate libel cases.
4. Mr. Ed Davis, attorney with the law firm Gray Cary Ware & Freidenrich who specializes in First Amendment law, has represented the *San Jose Mercury News* for a number of years.

5. Mr. Terry Francke, General Counsel for the California First Amendment Coalition, represented one of the largest nonprofit legal organizations specializing in protection of the First Amendment.
6. Mr. Mark Franklin, Professor at Stanford Law School, was interviewed because of his in-depth knowledge of First Amendment law.
7. Mr. Robert D. Hansen, an independent attorney and government relations consultant, had specific knowledge of individual libel law, particularly in relation to the political arena in which he consults on a regular basis.
8. Hon. Jack Komar, Presiding Judge of the Santa Clara County Superior Court, was chosen to speak about the many cases he has heard during the past 15 years that involved libel, both corporate and individual.
9. Mr. Jim McManis, partner at the private law firm McManis, Faulkner & Morgan, was interviewed regarding his general knowledge of corporate law.
10. Mr. Michael Reedy, senior attorney for the private law firm McManis, Faulkner & Morgan, was asked to share his extensive experience in First Amendment law.

Research Question

The court in *Rosanova v. Playboy Enterprises* (580 F.2d 859, 5th Cir. 1978) likened defining a public figure to trying to nail a jellyfish to the wall. The divergent decisions from the court cases just reviewed attest to this sentiment. Despite the fact that the courts examined similar issues of media access, public relations and advertising activities, and thrusting oneself to the forefront of a public controversy from *Gertz* and later *Waldbaum*, they still came to different conclusions about public figure status.

Obviously, the different circumstances of each case had some bearing on the different outcomes, as did the state in which the case was heard. Kaufman (1993) noted that there is no national ruling as to whether corporations are public figures. But even in cases where, for example, the courts ruled that the company had media access, they

interpreted its importance differently or defined the term, access, differently. By examining these cases—particularly those decided in the last nine years—it may be possible to understand how and why the courts decided public figure status the way they did, and how they will treat this important issue in the future. As discussed in Chapter II, the research question is as follows: Since 1990, how have media access, public relations and advertising activities, and active involvement in issues of public controversy been defined and considered by the courts in determining a corporation's status as a public figure?

CHAPTER IV FINDINGS

Perhaps the most compelling finding from the analysis of the eight cases in the following pages is that the reasoning in *Rosenbloom v. Metromedia*, in which the nature of the controversy superceded the status of the plaintiff in triggering the actual malice rule, is having something of a renaissance in corporate libel law today.

First, of the three cases in which the corporate plaintiff was found to be a private figure, two were still compelled to prove actual malice because the courts found that the issues at hand were of such public concern that they overrode the status of the plaintiff. The potential for this type of ruling was not overlooked in *Gertz*; in fact, the involuntary public figure is proof that the U.S. Supreme Court understood that there would be times when the public controversy took precedence. Moreover, the late 1980s cases of *Trotter* and *Brueggemeyer* found that avoiding participation in issues of public controversy, especially issues such as consumer complaints and legal actions, did not disqualify a plaintiff from limited purpose public figure status. And, a finding of limited purpose public figure must necessarily consider whether a public controversy existed to determine if the plaintiff thrust himself into it.

But it is clear from examining these cases that the courts are placing greater importance on the controversy, and that the status of the plaintiff is almost tangential to the case. This is true not only in the two cases where the private figure plaintiff was compelled to prove actual malice, but in the cases where the plaintiffs were ruled public figures as well. While it can't be claimed that *Rosenbloom* has been resurrected in favor

of *Gertz*, it is interesting to see that cases from the past decade are relying on a hybrid of the reasoning from the two cases to finalize their rulings.

Another interesting trend that can be seen in the cases below is the courts' broadening definition of "public controversy." As the U.S. Supreme Court noted in *Greenmoss*, if the issue relating to the libel is found to be of a private nature, the plaintiff is not subject to the actual malice rule. Therefore, a finding of "public controversy" or "public concern," as opposed to a finding of mere "public interest" that would not fall under the actual malice rule is very damaging to corporate plaintiffs.

Even in the cases where the controversy is a legitimate public concern, the courts must take the step of determining whether the plaintiff thrust itself into the forefront of that controversy. As can be seen in the cases below, the courts at every level are pointing to a corporation's advertising, public relations, and media access as proof of its intent to get involved in the controversy. The result is rather chilling for corporations, but good news for the media that cover corporations more frequently and more thoroughly as they become entrenched in the daily lives of society. It also brings up another legal issue: Is commercial speech, which the U.S. Supreme Court has found to be constitutionally protected (though to a lesser degree than non-commercial speech), losing that protection in the realm of the public figure test?

Michigan Microtech v. Federated Publications, Inc.

In this 1991 case (466 N.W.2d 717, Mich.App. 1991), Michigan Microtech, a provider of satellite equipment and service, sued Federated Publications, then publishers of *The Lansing State Journal*, for an article which stated that Michigan Microtech

intended to discontinue the sale of satellite dishes because of problems associated with the scrambling of signals. This assumption was based on a phone call from the reporter to an employee of Michigan Microtech, who stated that the company was discontinuing sales of the satellite dishes because of the “headaches and poor profits due to scrambling” (*Michigan* at 719).

At the jury trial, Michigan Microtech representatives testified that they had had no intention of discontinuing sales of satellite dishes, and in fact had “recently obtained a supply of descramblers and had developed an advertising campaign to market them” (*Michigan* at 720).

Despite *The Lansing State Journal’s* retraction six days after the article was published, the jury awarded the plaintiff \$52,258 in damages for lost profits as a result of the defamatory article (*Michigan* at 720).

On appeal, the defendant argued several motions, among them that 1) a corporation cannot be defamed as a matter of law because it lacks a reputation which can only be damaged by “aspersions about its honesty, credit, efficiency, or other business character” (*Michigan* at 720); 2) Michigan Microtech was a limited purpose public figure; 3) Michigan malpractice statute did not apply to a journalist; and 4) instructions regarding both expert testimony and damages were improper.

For the purpose of this study, only the defendant’s second motion is at issue, although it should be noted that most of the legal professionals interviewed for this thesis agreed with the *Michigan* court that corporations certainly can be defamed and should be subject to the same libel laws as individuals. On the second motion regarding limited

purpose public figure status, the *Michigan* court addressed two of the three research questions—public relations and advertising activities and active involvement in a public controversy. The court did not grapple with the issue of media access for the plaintiff.

The defendant contended that Michigan Microtech had assumed limited purpose public figure status in the scrambling issue through its marketing strategy and advertising of descramblers. The court acknowledged that Michigan Microtech did advertise, but ruled that the *amount* [emphasis added] was insufficient to confer public figure status. The court stated, “This level of activity is minimal when compared with the activity involved in the cases cited by defendant” (*Michigan* at 721). Among the cases cited was *Steaks Unlimited v. Deaner* (1980), listed in the case review of this paper, in which the court found that the plaintiff’s extensive advertising campaign directly contributed to its public figure status. The court in *Michigan*, however, did not elaborate on how much advertising would have justified the public figure classification.

As many of the professionals interviewed noted, there is no definitive rule of law regarding how much advertising would tip the scales toward public figure status. Several say that smaller companies with little publicity, such as Michigan Microtech, should receive greater protection,. According to Santa Clara County Superior Court Judge Jack Komar, “If a business is so private that it doesn’t advertise, its product is sold by word of mouth only, then it seems that it should be entitled to greater privilege against defamation than a company that puts itself out there with lots of marketing efforts” (Komar, 1998).

On the issue of active involvement in an issue of public controversy, the Michigan Court of Appeals referred to one of its earlier cases, *Hodgins v. Times Herald Co.*, 169 Mich.App. 245 (1988), in its assertion that:

A private person becomes a limited purpose public figure when he voluntarily injects himself or is drawn into a particular public controversy and assumes a special prominence in its resolution. However, a private individual is not automatically transformed into a limited purpose public figure merely by becoming involved in or associated with a matter that attracts public attention. (*Hodgins v. Times* at 256-257, quoted in *Michigan* at 721)

Without considering the *Gertz* classification of an involuntary limited purpose public figure, the court added, "Microtech did not thrust itself into the issue. It was contacted at random by defendant. The evidence does not support a finding that it was a limited purpose public figure. Therefore, proof of actual malice was not required" (*Michigan* at 721).

Regarding the third research question, the court did not specifically state whether the issue of scrambling and satellite dishes was a public controversy, or simply one that attracted public attention. However, because the company was contacted by a reporter, rather than the other way around, it did not "thrust" itself into the issue at hand, and avoided having to prove actual malice.

Clearly, in *Michigan Microtech v. Federated Publications*, the primary factors considered by the court were the amount of public relations and advertising and whether the company had thrust itself into the forefront of the controversy. Neither of these criteria were met by the defendant, so actual malice was not required.

National Life Insurance Company v. Phillips Publishing, Inc. et al.

National Life Insurance Company v. Phillips Publishing, 793 F.Supp. 627, D.C.Md. (1992) featured a five-part test for public figure status, in which all three of the research questions are discussed.

Plaintiff National Life was a Vermont-based mutual life insurance company with 250,000 policy holders, more than \$4 billion in assets and more than \$25 billion in insurance policy coverage. It was one of the 25 largest insurance companies in the country (*National Life* at 629). Defendant Richard Band, a financial news analyst and editor, made the alleged defamatory statements in a newsletter called *Profitable Investing*, published by Phillips Publishing. The article was later reprinted in *Wall Street Digest*, a republisher of financial and investment articles (*National Life* at 629).

In preparing to launch *Profitable Investing* in the fall of 1989, Band decided to offer his personal assessment of the insurance industry, which included his opinion of how insurance companies should be rated, as opposed to how they really were rated. He stated that he would not recommend any company receiving less than a AA Standard & Poor rating. Band then noted that National Life was one of 10 companies to fall below this AA rating, and that with an A+ grade, National Life and any other companies with this substandard rating were too dangerous to invest in (*National Life* at 630). National Life sued for damages.

The Maryland court first considered whether the plaintiff was a general purpose public figure defined by *Gertz* as one who “occupies a position of general fame or notoriety in the community through pervasive involvement in the affairs of society”

(*Gertz v. Welch* at 351-352, cited by *National Life* at 633). The defendants pointed to National Life's influence in the public arena, supported mostly by articles in the Vermont media in which National Life was mentioned. The plaintiffs, on the other hand, argued that the defendants could not prove any notoriety beyond Vermont's borders. The court sided with the plaintiff on this first issue, finding that the defendants failed to meet their burden of "demonstrating that National Life is a public figure on all issues . . . National Life is not a general purpose public figure that risked the spotlight of public comment on all aspects of its corporate life" (*National Life* at 633, 634).

San Jose attorney Mike Reedy disagreed, and posits that, going forward, more and more corporations will be classified as general purpose public figures:

Individual general purpose public figures are broadly construed as being those celebrities, athletes, and politicians who do want to be in the spotlight and put themselves out there. In doing so they risk being attacked and they lose some protections. You can say the same thing with some corporations like Microsoft, Brown & Williamson, and others who do extensive advertising. They want a certain amount of notoriety, and they want to be in front of the public. They want people to talk about them in the same fashion that individuals seeking the spotlight want it. (Reedy, 1999)

The court turned next to the issue of the limited purpose public figure thrusting itself into a public controversy, noting the necessity to determine both the public figure/private citizen distinction found in *Gertz*, as well as the distinction, defined in *Dun & Bradstreet v. Greenmoss* (1985), between issues of public concern and speech that is purely private in nature. The court decided to use a five-part test from *Fitzgerald v. Penthouse Intern*, 691 F.2d 666 (4th Cir. 1982) to determine public figure status, consisting of the following steps:

1. Determine if the plaintiff has access to channels of effective communications
2. Determine if the plaintiff voluntarily assumed a role of special prominence in a public controversy
3. Determine if the plaintiff sought to influence the resolution or outcome of the controversy
4. Determine whether the controversy existed prior to the publication of the defamatory statements
5. Determine whether the plaintiff retained public figure status at the time of the alleged defamation.

In the area of media access, the court found that:

By any traditional measure of access, National Life has effective means of communication. National Life's corporate executives command leadership positions in national trade organizations that represent insurance industry interests. National Life's views on issues have been extensively reported in the media. This coverage includes articles authored by and written about Plaintiff's executives for trade publications and journals, as well as television coverage . . . Finally, National Life sends out a multitude of press releases, including press releases to major newspapers in each state proclaiming the dollar amount in yearly distributed in life insurance benefits in that state and touting its high AM Best rating. (*National Life* at 635)

It is interesting to note that the court also referred specifically to the amount of the company's advertising budget, which was more than half a million dollars during 1988 and 1989, stating that "this type of budget expenditure demonstrates corporate access to effective means of communication" (*National Life* at 635). The court also mentioned National Life's two public relations magazines as effective means of communications.

Clearly, the Maryland District Court found media access, but also the corporate activism of the company's executives and its public relations and advertising activities and budget, to be clear indicators of the company's limited purpose public figure status.

In examining the second prong of the *Fitzgerald* test, where it examined whether the plaintiff had voluntarily assumed a role of special prominence in a public controversy, the court stated it was necessary to define both the public controversy as well as the community where the plaintiff was prominent (*National Life* at 628). The plaintiff, National Life, argued that the controversy was purely a private matter between the litigants, and that beyond Vermont's borders, there was no press activity concerning its financial position, but the court rejected this reasoning:

... Even if Plaintiff's statement of the controversy could be considered accurate, National Life would likely be held a public figure. Plaintiff touted its financial strength in press releases across the country. Plaintiff raised the issue that its financial strength should be judged, in part at least on its A.M Best rating. . . Plaintiff took advantage of an existing controversy by casting these statements about its financial condition into the vortex of an existing controversy. Plaintiff voluntarily injected itself into a public debate. (*National Life* at 632)

As far as National being a member of the community, the court found that "when the bald facts of Plaintiff's corporate size are coupled with its *press coverage*, its leadership in national insurance organizations, and its *extensive national advertising*, National Life's prominence in this community is undisputed [emphasis added]" (*National Life* at 635). On this second prong, then, National Life was most assuredly found to have injected itself into a public controversy, particularly through its advertising and public relations activities.

But did National Life attempt to influence the outcome of that controversy? In examining this third prong of the five-prong test, the court found that “Evaluating Plaintiff’s voluntary efforts is *the most important factor in considering public figure status*” [emphasis added] (*National Life* at 637). The court based this reasoning on *Wolston v. Readers Digest* (443 U.S. 166, 1979), where the private figure plaintiff was found to be more deserving of protection than public figures who voluntarily expose themselves to increased risk of injury by actively and voluntarily getting involved in issues of public concern.

Again, the court noted National Life’s advertising campaign, mentioning that the ads were sent to “major newspapers and insurance industry publications in at least thirty-four states” (*National Life* at 639). The court made a distinction, however, about the targeted nature of the advertising, noting that:

At a time when much doubt was cast on the ability of insurance companies to meet financial commitments, National Life touted its asset strength, age, financial size and extolled its high A.M. Best rating, all in an effort to show that it was not encumbered by the difficulties exhibited in other companies. Such claims, and their direct relationship to plaintiff’s participation in this controversy, have been important in establishing public figure status. (*National Life* at 639)

In other words, because the advertising directly addressed the controversy at hand, it stood as proof of the plaintiff’s injection into the controversy. Had the advertising been focused on another area, such as the company’s charity work in the community, it may not have been considered a factor.

On the fourth and fifth prongs of the limited purpose public figure test, the court found that the controversy did exist prior to the defamatory statements, and the plaintiff

did retain public figure status at the time of the defamation. On this fifth test, the court noted that “plaintiff’s access to the media did not change . . . neither did their prominence in the community . . . finally, plaintiff continued to engage in many voluntary efforts in order to influence the outcome of the controversy” (*National Life* at 643).

Therefore, using the five-prong test as a determinant of public figure status, the plaintiff was clearly a limited purpose public figure. However, the plaintiff raised two other issues for the court to consider. First, the plaintiff argued that corporations should not be held to the same standard as individuals. Second, the plaintiff claimed that the statements made by them should be considered commercial speech and treated accordingly. For the purposes of this paper, only the first argument will be discussed.

National Life claimed that its marketing and advertising efforts were essential to maintaining its corporate health and to competing in the marketplace. The court noted that it had never before determined whether the *Gertz* public figure/private citizen distinction applied to corporations, but argued that, in this case, it should. The court stated:

Acceptance of plaintiff’s argument that corporations should be judged by different rules leads to chaos. Using National Life’s rationalizations, there is no principled way to separate corporate from individual plaintiffs. Every plaintiff would require a different standard for defining its public or private figure status . . . (A)llowing corporations to play by different rules in a defamation case is simply not fair. Maintaining balance between the “breathing space” necessary for robust debate in the marketplace of speech and protecting individual and corporate reputation is admittedly difficult. . . . but there is absolutely no reason to elevate the protection of corporate reputation interests over those of the individual. While corporate reputation interests are indeed important, it is difficult to see how the damage to the corporate bottom line is more sacrosanct than the harm defamation can cause to an individual’s human dignity, a quality a corporation is unlikely to have

acquired even given its stature as a “person” under the Constitution. (*National Life* at 650-651)

Attorney Art Casey agreed that corporations should not be held to a different standard, stating that because the defamatory statements or conduct that gives rise to the libel exposure are made by individuals, corporations should be subject to the same standard (Casey, 1998). Judge Jack Komar concurred, saying, “I fail to see any reason why [corporations] should be given greater privileges for immunity” (Komar, 1998).

Attorney Ed Davis, who represents the daily newspaper, the *San Jose Mercury News*, disagreed, however, saying that corporations should be held to a different test for public figure status, one that was harsher than for individuals:

I think it is problematic to use the test that is applied to determine public figure status for individuals for corporations also. I think corporations occupy a much different role than individuals . . . by their nature they have played a more significant role, have a greater impact, have access to the media and, as a result, I think it should be easier for corporations to be considered public figures. (Davis, 1999)

In this case, then, the court considered all three of the research questions, and found that 1) the plaintiff did have media access, and that it did contribute to public figure status, 2) the company’s extensive public relations and advertising, which were specifically related to the public controversy at hand, also contributed to its public figure status, and 3) the plaintiff had thrust itself into the controversy, and tried to influence its outcome, through the use of the above mentioned media access, public relations and advertising activities.

Parker v. Evening Post Publishing

In this complex 1994 case (452 S.E. 2d 640, S.C. App.), the issue at hand was an article published by the *South Carolina Evening Post*, which named Mr. John Parker as the new owner of a car dealership (Classic Lincoln Mercury) which had a lawsuit pending against it, filed before Mr. Parker gained ownership. Mr. Parker had been indemnified against any outstanding lawsuits or debts incurred by the dealership's previous owner, but his failure to notify the plaintiff of this pending lawsuit of the change in ownership violated the state's Bulk Sales Act, making Parker partially liable in that lawsuit. Parker sued the *Evening Post*, claiming that the stories unfairly implicated him as being involved in the lawsuit, when in fact, the lawsuit was filed before he gained ownership. He argued that, as a private figure, the trial court unfairly placed on him the burden of proving falsity of the *Evening Post's* statements.

The court in this case did not consider the first research question regarding media access, but did touch on the dealership's advertising and its active involvement in a public controversy. The court found that "by extensively advertising his return to the car business, Parker became a public figure, at least in the limited area of his business dealings" (*Parker* at 644). The court also found that a lawsuit alleging fraud and unfair trade practices was of valid interest to the public: "The public has a legitimate interest in being informed of potential methods for collecting a judgment, particularly when the judgment resulted from unfair credit practices" (*Parker* at 645).

The court concluded on these two issues with the following statement:

Here, it is undisputed that the judgment against Classic Lincoln-Mercury was a matter of public interest and that Parker's purchase of the dealership was not private information. It is likewise undisputed that, prior to publication of the article, Parker voluntarily conducted an intensive newspaper and radio advertising campaign announcing his connection with the former dealership and inviting the public to conduct business with him. Parker invited the public's attention to his purchase of the dealership; he cannot now say that the public has no legitimate interest in his potential liability for a judgment obtained against that dealership. (*Parker* at 646)

It is important to note here that, unlike the *Michigan Microtech* case where the small size of the plaintiff and its limited advertising weren't sufficient grounds to make it a public figure, here the small size of the dealership was not taken into account. This is most likely because, as the court noted, the dealership's advertising directly addressed his desire to deal with the public, therefore inviting public comment on that particular aspect of his business. Therefore, a company's small size and low profile will not always protect it, particularly when a company directly invites customers to do business with it.

Attorney Robert Hansen drew a parallel that, although there would certainly be a difference in magnitude of advertising and media exposure between, for example, IBM and the corner barbershop, both entities are in the public realm for the same purpose of earning a profit. If they choose to do business, he says, they have to expect to receive public comment on how they conduct themselves (Hansen, 1998).

Therefore, the court did not address the first of the three research questions—media access—but did express the opinion that targeted advertising and public relations activities and active involvement in a public controversy are primary factors in the determination of public figure status.

Quantum Electronics v. Consumers Union of the United States

In this 1995 product disparagement case, (881 F.Supp 753, U.S. Dist. 1995), Quantum Electronics filed suit against Consumers Union, publisher of the national magazine *Consumer Reports*, for an article which criticized Quantum's ozone generating air purification device, the Panda Plus. The article also contained extensive information about the potential dangers of a product that emitted ozone at rates higher than those recommended by the FDA and OSHA. Both Quantum's product and its competitors' product, the Alpine, were found to emit ozone at anywhere from two to 27 times the recommended amount of 100 parts per billion (ppb), and were rated "Not Acceptable" by the magazine (*Quantum* at 754). Quantum filed suit.

The district court used the three-part test from *Bruno & Stillman v. Boston* (633 F.2d 583, 1st Cir. 1980) to determine Quantum's public figure status. The test's three criteria included: 1) Whether the controversy was public or private, 2) whether the controversy pre-existed the defamatory statements, and 3) the nature and extent of the plaintiff's participation in the controversy. The district court decided to add to the above test and include media access as an additional criterion:

Although not formally incorporated into the *Bruno & Stillman* test, an additional factor identified by the Supreme Court in *Gertz* is helpful when considering the public figure status of a defamation plaintiff. Because the public figure doctrine is based in part on the greater media access enjoyed by public figures, it is helpful to examine the media access enjoyed by a particular plaintiff (*Quantum* at 765).

In using the above test to determine limited purpose public figure status, the court noted that its reasoning was akin to that of *Rosenbloom*, long since overturned by *Gertz*:

Although the Supreme Court in *Gertz* held that the focus of a court's inquiry should be on the status of the plaintiff, and expressly rejected the approach taken in *Rosenbloom v. Metromedia*, where the central inquiry was whether the statements pertained to matters of general or public concern, the determination of the plaintiff's status necessarily requires a court to examine the public or private nature of the controversy underlying the alleged defamation. (*Quantum* at 765)

Although it is clear that the other cases analyzed thus far, all of which were decided before this 1995 case, relied partially upon the nature of the controversy to determine public figure status, this admission by the district court is the first that publicly acknowledges a return to *Rosenbloom's* reasoning. Attorney Jim McManis stressed his belief that this is the right direction for the courts to move:

I personally think that a lot more focus should be placed on the issue that is the subject of the libel and how important is that to the public at large. If it is, people in this country have a right to say what they want to on that subject. (McManis, 1999)

Stanford University law professor Mark Franklin agreed, noting,

The question is not so much public figure status but when should a corporation have to prove actual malice? If a company quietly builds boats, as in *Bruno & Stillman*, they should be considered private. Now, if a newspaper claims these boats will sink, is that enough to make the company a public figure? No. But should they be forced to prove actual malice? Maybe. Because it's important for the public to know about safety threats. (Personal communication, July 2, 1999)

In acknowledging that the nature of the controversy did indeed matter in a corporate libel case, the court also noted that the controversy had to pre-exist the publication of the defamatory statement, a requirement first found in both *Wolston v. Reader's Digest* (443 U.S. 166) and *Hutchinson v. Proxmire* (443 U.S. 116) in 1979. For this case, the issue of ozone purifiers had been debated publicly for at least 15 years.

The court also found that, in determining the extent of the plaintiff's participation in the controversy, two important factors to consider were the nature and extent of the advertising and publicity campaigns, as well as the plaintiff's pursuit of a marketing strategy that emphasized the controversy:

Quantum took advantage of the free advertising opportunities made available by a number of publications to promote the efficacy of its ozonators. By Quantum's own admission, reprints of many of the product reviews that appeared in these publications were later used by Quantum in the promotional materials it supplied to prospective customers. (*Quantum* at 765)

Finally, on the issue of media access, which this court specifically added to the three-part test taken from *Bruno v. Stillman*, the court stated:

Quantum has repeatedly taken advantage of the opportunities for publicity offered by various magazine publishers. It has also commanded attention in the local Rhode Island press, and on more than one occasion has issued press releases that resulted in media coverage. (*Quantum* at 766)

This case addresses all three research questions. First, the court found that Quantum had *repeatedly* pursued media coverage, leading again to the issue of whether the amount of a company's public relations efforts can tilt the balance against it. Instead, however, Quantum not only pursued media coverage, but used reprints of that coverage as part of its own publicity materials and marketing strategy. More importantly, in considering the second research question on advertising and public relations, the court noted that the company's public relations directly addressed the public controversy, which pre-existed the defamation. Finally, it was these very activities that constituted "thrusting" the corporation into a public controversy.

Bay View Packing v. WISN-TV

A public health issue also lies at the center of this 1995 case (543 N.W. 2d 522, Wisc. App.), the only one in which the plaintiff was found to be an *involuntary* public figure (one the *Gertz* court called hypothetical, but extremely rare). In 1993, Milwaukee's water supply became contaminated with a parasite called cryptosporidium protozoane, causing hundreds of residents to be stricken with severe digestive illness.

Bay View Packing was a local food processing company that normally used city water in its pickled food line. After the parasitic outbreak, the mayor of Milwaukee issued a boil advisory to all residents to avoid illness; however, Bay View Packing did not comply as it was waiting to hear from the USDA, which had jurisdiction over the majority of its products. Several weeks later, after receiving a similar recall notice from the FDA, Bay View continued to stall, claiming that the FDA only had jurisdiction over a small portion of its products, and therefore Bay View wanted a consensus between the FDA and the USDA. An inspector from the FDA then called WISN-TV to report that Bay View was not complying with the recall notice, and a report to that effect hit the airwaves that evening, saying, among other things, that Bay View was acting in bad faith. Bay View filed suit the following month.

As in the other cases examined so far, the Wisconsin appellate court here had to decide 1) whether there was a public controversy and 2) the extent of the plaintiff's involvement in it. The court noted that contamination of the public water supply was clearly a public issue that reached beyond the confines of the defamation, so the next issue to consider was Bay View's participation in the controversy. For this, the court

considered Bay View's argument that it did not seek out publicity nor thrust itself into the controversy in any way. The court agreed, but turned to *Gertz* for the reasoning that "Injection is not the only means by which public figure status is achieved . . . Indeed, as the Supreme Court recognized in *Gertz*, 'it may be possible for someone to become a public figure through no purposeful action of his own'" (*Bay View* at 529, citing *Gertz* at 345).

Therefore, regarding the first two research questions on media access and public relations and advertising activities, Bay View utilized neither, preferring to keep a low profile in the face of public outcry. The court's resuscitation of *Gertz's* rare "involuntary" public figure demonstrates the difficulty of navigating public figure status in the corporate libel arena. Even the legal experts have differing opinions. Mark Franklin of Stanford Law School believes that the *Gertz* involuntary public figure is valid, noting, "The fact that a corporation is involuntarily dragged into a controversy doesn't mean it can't be public. Is it automatically public? No. But I am less uneasy about making a corporation an involuntary public figure, especially if it advertises, than I would be if it were an individual" (personal communication, July 2, 1999).

Attorney Jim McManis agreed, noting that in a case like *Bay View Packing*, people should be encouraged to speak out. As for whether the company is a public figure, involuntary or not, McManis said, "Who cares? The consequences of speaking out shouldn't depend on whether the company is or isn't a public figure" (McManis, 1999). Reedy, an associate at the McManis law firm, agreed that in the *Bay View* case, where the issue was a public health concern, the court made the right decision, but disagreed that the

issue should outweigh public figure status in all cases: "I'm a little uncomfortable when a corporation gets treated as a public figure because of its involvement in a matter that is of public interest. I think that's the hardest issue to figure out" (Reedy, 1999).

Clearly, in an issue where the public drinking supply is at stake, allowing public commentary on the subject is critical. In a larger context, however, placing more weight on the issue rather than the status of the plaintiff has its own set of pitfalls. It brings up the observation from the U.S. Supreme Court in *Time v. Firestone* that allowing any matter of public interest to make the petitioner a public figure puts undue burden on the states to determine what constitutes a public controversy. Although the controversy in *Bay View* was quite clear cut, the next case examined illustrates how difficult this burden can be.

Q-Tone Broadcasting v. MusicRadio of Maryland

This 1995 Delaware case is the only one where a media outlet sued another media outlet, and where the plaintiff corporation was found to be a general purpose public figure, and its owner a limited purpose public figure.

Plaintiff Anthony Quartarone was general manager of WRKE, a radio station that broadcasted in the Delaware area, as well as parts of Maryland and Virginia. In 1993, a Maryland Youth Center announced that it would host a rock concert, and that the "official" radio station for the concert would be WOCQ, a rival station to WRKE, also operating in the same general area and with the same musical format. Although the Youth Center had WOCQ's call letters printed on all the tickets, provided several dozen tickets to WOCQ to give away to listeners, and allowed the station to advertise itself as

the official radio station for the concert, the Center also gave free tickets to WRKE, in exchange for on-air advertising. When a WOCQ personality named Duckman heard that WRKE was also giving away free tickets, he blasted WRKE on air, calling the station managers, among other things, “liars” and “wusses” (*Q-Tone Broadcasting v. MusicRadio of Maryland* at 6). His off-air statements, made to a manager of RCA Records, referred to Quartarone as a “homosexual and a sissy,” and indicated that he was “not playing the RCA records which he was required” to do (*Q-Tone* at 7). These are the statements over which Quartarone and WRKE filed suit.

The court in this case relied heavily on *Gertz*, particularly on the Supreme Court’s definition of a general purpose public figure vs. a limited purpose public figure:

Evidence of general fame and notoriety in the community and pervasive involvement in community affairs of society is necessary to deem an individual a general purpose public figure. (*Q-Tone* at 15, quoting *Gertz* at 352)

The court here also relied on a similar California case (*Stolz v. KSFM 102 FM*, Cal. App., 35 Cal. Rptr. 2d 740, 1994) in which one radio station sued another and the California Court of Appeals found the defendant to be a general purpose public figure. In examining that case, the *Q-Tone* court reported:

KWOD’s control of the airways allowed it to reach a wide audience and thrust itself into the public eye on a daily basis seeking public attention. Moreover, KWOD was less vulnerable to injury from defamation because of its ability to resort to effective self-help through access to the media. (*Q-Tone* at 6, quoting *Stolz* at 745-746)

Professor Franklin agreed, noting,

Media corporations are special. They are not all public figures, but presumptively so. For example, if a radio station is accused of being unfair to its female employees, then its media status shouldn’t matter as much. But in most areas, a

media plaintiff, if attacked, perhaps over what it told reporters to feature, what it said over the air, is much closer to a public figure than any other corporation would be. (personal communication, July 2, 1999)

Relying on the reasoning of the California Appellate Court, the *Q-Tone* court similarly found WRKE to be a general purpose public figure, claiming that WRKE had achieved general fame and notoriety in the community, noting, "Because the definition of 'community' is limited to the area in which the defamatory remarks are published, 'community' in the case at bar is interpreted as the area in which WRKE broadcasts" (*Q-Tone* at 17). The court also noted that WRKE, in an attempt to increase its audience size, thrust itself into the public eye on a daily basis seeking public attention, noting specifically that "Quartarone promoted WRKE on visible billboards and signs . . . WRKE is less vulnerable to injury from defamation because of its ability to resort to effective self-help" (*Q-Tone* at 18).

The court went on to classify Quartarone as a limited purpose public figure, despite the defendants' arguments that he should be a general purpose public figure as well. The court found, "The record is devoid of evidence establishing that Quartarone's role on the air has earned him general fame and notoriety in the community that a typical broadcaster enjoys" (*Q-Tone* at 19). However, because of Quartarone's role as the general manager, principal salesman, program director, account executive, co-owner, vice president and treasurer, he was significantly involved enough in WRKE's business transactions to qualify as a limited purpose public figure where the radio station was involved in a matter of public controversy.

The Q-Tone case illustrates how intertwined companies and their leaders can become, fairly or not. Judges Komar (Komar, 1998) and Biafore (Biafore, 1999) both said that a CEO will inevitably act as the spokesperson for his or her company, and that any statements made in the public arena are open to comment. Professor Franklin of Stanford added that, as with advertising, the actions of the CEO must be germane to the libel:

With Bill Gates and Microsoft, for example, what kind of visibility are we talking about? His charitable donations? His multimillion dollar house? Should those things make his company more public than it would normally be? Now, if Gates were to spend significant time pumping for Microsoft, that would be an issue. (Personal communication, July 2, 1999)

Therefore, in this case, the court appears to rely on all three research criteria. Although the court mentions the station's advertising only in passing, it was considered a factor in the radio station's prominent role in the community. The court also noted that, as a media outlet, WRKE had the ultimate media access available to it, which was the primary reasoning behind its classification as a general purpose public figure.

On the issue of thrusting itself into the forefront of a controversy, however, this court appears to have reasoned differently than previous courts. In the other cases examined so far, the presence of a public controversy was essential, and the courts all emphasized that the controversy had to pre-exist the defamation. In this case, however, the defamation over the concert tickets, and the subsequent name-calling, *were* the controversy, and WRKE was involuntarily drawn into it. Neither Quartarone nor any of the other on-air personalities took advantage of their immediate media access to respond

to the defamation during the controversy, other than to continue giving away the concert tickets, which they were entitled to do. Nevertheless, the court found that:

While a dispute concerning a concert may not be a great moment in world history, it was not an insignificant public event in this radio listening community, and, as the dispute developed, it had significance relating to the continuing existence of two radio stations in the same listening community and qualified as a real dispute affecting the general public. (*Q-Tone* at 21)

By this statement, it appears as if the court looked to the radio station's competition in the business world as the continuing, or pre-existing, controversy, and the concert as a mere extension of that controversy. That the community's interest in the health of two radio stations was classified as a public controversy (though the court referred to it as merely a "dispute") is provocative, for nearly every U.S. corporation has competition. By classifying as a "public controversy" the community's ongoing interest in which corporation would be the "winner," this court ignored the precedent set in *Time v. Firestone* (424 U.S. 448, 1976), in which the U. S. Supreme Court ruled that allowing any matter of public *interest* (in that case, a socialite's divorce) to make the petitioner a public figure would cause a return to the reasoning in *Rosenbloom* for libel cases. Moreover, the court from *Waldbaum* specifically stated that newsworthiness alone is not enough to create a public controversy. The progressive return of the *Rosenbloom* reasoning has already been noted, and the difficulty of having to define a public controversy generated interest from attorney Mike Reedy:

Having to define a public controversy is a gray area. Anything that newspapers, magazines, and TV stations publish or broadcast is in the public interest—otherwise, they wouldn't broadcast it. The courts have tried to define what constitutes a public issue or public interest or public concern, and you can look

through case law and see how they all kind of meld together. There's no clear test. (Reedy, 1999)

Attorney McManis added:

I think the reason the courts are looking more at the issues now than in the past is that there are a lot more issues now, especially due to the mass media, and people are much more conscious of the environment we live in. And because it's publicized a lot more, there's a lot more discussion on issues. As long as we live in a country that encourages free speech and unbridled debate, I think the protection has to be there. (McManis, 1999)

Clearly, this issue is one that courts will have to grapple with for many years to come, particularly as the *Rosenbloom* precedent takes on more importance.

Turf Lawnmower Repair v. Bergen Record Corp.

In this 1995 consumer fraud case (655 A.2d 417), the New Jersey Supreme Court grappled with the issue of whether a small "mom and pop" business should be considered a public figure simply because it was a corporation, and, regardless of the public figure status of the plaintiff, whether the public controversy alone would be sufficient to trigger the actual malice rule.

The facts of the case are as follows: *The Record*, a newspaper published in the state of New Jersey, published two articles alleging that a local lawnmower repair shop, Turf Lawnmower, "ripped off" its customers on a regular basis (*Turf Lawnmower* at 419). Its allegations were based on interviews with former Turf employees and one of Turf's competitors, and a series of tests, wherein a reporter would bring in a damaged lawnmower for repair, and then compare the results of the repair with the opinion of the paper's lawnmower expert on what work should have been performed.

The Record found what it considered to be sufficient evidence to back its claims that Turf Lawnmower was engaging in deceptive practices, and published the articles. Turf Lawnmower's president and primary stockholder, John Gloria, sued for libel, slander and intentional interference with prospective business advantage (*Turf Lawnmower* at 421).

The court first addressed the issue of whether a corporation should automatically be considered a public figure, noting that the Appellate court in this case found that "any person or business which opens itself to the general public hereby subjects itself to the scrutiny that naturally comes with the attention it seeks, and thus creates a subject of legitimate public interest" (*Turf Lawnmower* at 422). The New Jersey Supreme Court, disagreed, however, saying,

Many businesses are sole proprietorships or small individually owned stores, like a local "mom and pop" stationery store, shoemaker, tailor, cleaner or barber. Although those stores are important in the daily life of their communities, their owners are not "public figures." Nor do their activities involve "matters of public concern" that the United States Supreme Court and the vast majority of federal and state courts have made subject to the heightened actual malice standard of proof . . . Nor does our opinion change because those businesses do limited advertising. Most businesses do advertise if only in a local shopping flyer, to attract customers and to succeed. Such advertising is insufficient to thrust the business or its owner into the public spotlight. (*Turf Lawnmower* at 428)

In addition to concluding that advertising should not affect a company's corporate figure status, the New Jersey Supreme Court also said that most small businesses (and their owners) don't have access to the channels of effective communication to counteract false statements to protect their business from defamatory statements. After examining these criteria, the court concluded that Turf Lawnmower and other small businesses

should be classified as private figures and that negligence was the most appropriate standard:

Therefore, in respect of such prosaic and innocuous everyday businesses, we conclude that the negligence standard best balances the interests of the public in preserving an uninhibited, robust, and free press and the interests of a private individual and a business in preserving their reputation and good name. (*Turf Lawnmower* at 428)

Attorney Bob Hansen disagreed with the court's assessment, believing that all companies, small or large, "are in the marketplace, they're advertising their products for consumption to the public, and they're holding themselves out. I don't think they have any degree of privacy such as an individual would expect" (Hansen, 1998).

The court noted, however, that although a lawnmower repair business was one that would normally fall into the private citizen category, incurring a consumer fraud charge was certainly a matter of public concern, and one that would trigger the actual malice standard. *Turf Lawnmower* was forced to prove actual malice as a private citizen, and failed to do so. According to Judge Komar, reporting on consumer fraud should always receive First Amendment protection, in respect of the greater good:

If an auto manufacturer makes certain safety claims about its product, and somebody believes in good faith that those claims are false, they ought to be able to critique that because it goes to the public good. I wouldn't have any trouble limiting the immunity that [such a plaintiff] would have. (Komar, 1998)

Therefore, in examining the research questions, one can see that the court found that the plaintiff's small size was a key to its private figure status. The lack of media access, combined with the normal advertising activities of a "mom and pop" store, contributed to a private figure ruling. (The court did not expand on what was considered

“normal” advertising, other than to note that most businesses did it to succeed.) Yet despite the private figure status, the court found that an issue such as consumer fraud caused enough public concern to force the company—even though it remained a private figure—to prove actual malice. Again, the reasoning of *Rosenbloom* applies here, as the court looked more at the public controversy rather than the status of the corporation to trigger the actual malice standard.

Levinsky's Inc. v. Wal-Mart

In this case (127 F.3d 122, 1st Cir. 1997; remanded 999 F.Supp 137, D.Me 1998), the courts did not question that the plaintiff was a private figure; however, the *Levinsky's* justices at both the District and Appellate level noted that, according to *Gertz* and *Greenmoss*, even private figures who file libel suits over matters of public concern must prove actual malice to recover punitive damages. *Levinsky's* is another case worth examining in an attempt to define what a “public controversy” entails.

Levinsky's was a family-owned clothing store in Maine that competed head to head with Wal-Mart, the nation's largest retailer. In 1994, *Levinsky's* ran a “tongue-in-cheek” ad campaign on the radio comparing *Levinsky's* better stock and lower prices to Wal-Mart's lack thereof (*Levinsky's* (1997) at 125).

A local journalist, Michael Boardman, found the ad campaign intriguing, and decided to write a “David vs. Goliath” type of story chronicling the competition between the two stores. As part of his research, Boardman called the local Wal-Mart for a comment. Among the store manager's comments were two that were later found to be actionable: his description of *Levinsky's* as “trashy” and his assertion that “you are

sometimes put on hold for 20 minutes—or the phone is never picked up at all”

(*Levinsky's* (1997) at 126). Levinsky's sued.

The district court found both terms actionable and the jury awarded Levinsky's \$600,000 in presumed damages. More importantly, the district court did not require a finding of actual malice, as Wal-Mart's manager thought he was speaking to a college student and not a reporter; therefore, his comments did not relate to a matter of public concern.

On appeal, the Appellate Court disagreed with the district court on several counts. First, the Appellate Court found that the “trashy” statement was too subjective—and therefore protected—to be actionable. They let stand, however, the actionability of the “20 minutes” statement. The Appellate Court also noted that the awarding of presumed or punitive damages without a finding of actual malice is forbidden, per *Gertz*, and that actual malice is indeed quite different than the common law malice the jury had used to award Levinsky's damages.

The Appellate Court went on to say that a finding of actual malice—not common law malice—would require that, per *Greenmoss*, the defamatory statements were ones of public concern, but refused to rule on whether they were or not. Instead, the Appellate Court remanded the case to the district court for further review and for judgment on whether the statements were of public concern.

On remand, the defendant argued that the issue of the giant retailer and its economic impact on small, local stores had been an issue of public concern for years, and admitted as evidence some 46 articles backing its claim. The plaintiffs countered that the

comments made were by and about two competing stores, not about giant retailers vs. small retailers as a whole, and were therefore not a matter of public concern. Levinsky's asserted that "competition between businesses is an every day matter that does not implicate the need for First Amendment protection" (*Levinsky's* (1998) at 142).

The court disagreed, saying that, by airing ads that specifically targeted Wal-Mart, Levinsky's turned their competition into a public concern. In this context of competitiveness, the defamatory statement about waiting 20 minutes for Levinsky's to answer the phone "speaks directly to customer service: a consideration of primary importance to consumers in a competitive marketplace" (*Levinsky's* (1998) at 150). A new trial was ordered that would take this newly defined public controversy into consideration.

At the time of this writing, the new trial has not been heard, but it is still possible to analyze the case as it stands now. The district court did not specifically mention media access. On the second research question regarding advertising and public relations, the court found that *the plaintiff's targeted advertising created an environment of competitiveness* [author's emphasis added] between the stores, where the defendant's comments about Levinsky's lack of customer service were now an issue of public concern. It's a slight distinction from other cases examined, but an important one.

In *Quantum* and *Parker*, the plaintiffs' advertising addressed unquestionable *pre-existing* public concerns—public health in the former, and consumer fraud in the latter, which opened them up to comment on those limited issues. With the *Levinsky's* case, it could be argued that competition between the two businesses was also a pre-existing

public concern, and that the advertising invited public commentary on the issue of the two stores' relative merits. This argument brings up two questions. First, is everyday competition between businesses an issue of public concern or just public interest? Second, if it is just public interest, did the advertising serve to raise that everyday competition into a public concern, or is advertising to be considered part and parcel of the competition?

As the U.S. Supreme Court noted in *Greenmoss*, a showing of actual malice is only necessary when the issue is one of public concern. It is unclear whether the issue of competition between businesses meets that criteria. Defining public interest as opposed to public concern or public controversy is a difficult, but extremely important, task for the courts, for as Professor Franklin noted, "With the actual malice test, irresponsible defendants win" (Personal communication, July 2, 1999).

CHAPTER V SUMMARY AND CONCLUSIONS

In examining the eight cases just analyzed as well as the direction of corporate libel law into the next century, it is important to do so with the understanding that it can be difficult to compare a district court decision in Maine with an appellate court decision in Michigan. While courts are generally aware of other state courts' decisions, each court will rely on the precedents set in its own state; therefore, a firm chronology of progress is not always possible. Nevertheless, it is worthwhile to examine the overall trend of these cases, particularly in comparison to the corporate libel cases of 10 and 20 years ago.

The most striking conclusion that can be drawn from such a comparison is that the courts have resuscitated the reasoning behind the overturned 1971 *Rosenbloom* case, where the public nature of the defamation took precedence over the status of the plaintiff. As the courts in both the *National* and *Quantum* cases noted, it is impossible to determine public figure status, where it is necessary to examine whether the plaintiff injected himself into an issue of public controversy, without also examining the nature of that controversy.

In some cases, such as consumer fraud or contamination of the public water supply, framing the defamatory issue as a public controversy is simple. In other cases, though, where the issue at hand is the ongoing controversy between two community businesses, the line between public controversy and public interest blurs. The U.S. Supreme Court warned in *Time v. Firestone* that having to define public controversy vs. public interest would put an undue burden on the courts. The apparent bias of recent

courts toward framing most issues as public controversies also puts an undue burden on corporate plaintiffs forced to prove actual malice.

As attorneys Mike Reedy and Jim McManis noted, defining a public controversy falls into a gray area. The *Waldbaum* court noted that newsworthiness alone does not make a public issue a controversy, but in today's media environment of manufactured news and 24-hour-a-day information overload, even the most mundane of public issues can become controversial. Because the *Gertz* actual malice rule applies only to speech pertaining to a public controversy, as more and more issues are deemed controversial, corporations will increasingly find themselves less able to win punitive damages.

This trend can be found in the cases analyzed. Of the eight, seven were found to include issues of public controversy. As the court in *Dun & Bradstreet v. Greenmoss* ruled, if the matter at hand is not deemed to be of a public nature, a plaintiff—whether private or public—does not have to prove actual malice to be awarded punitive damages. Clearly, a trend toward findings of public controversies hurts all plaintiffs.

Even when the speech is of a public nature, however, a *private figure* plaintiff can still recover actual and special damages, while a *public figure* plaintiff has to prove actual malice to recover any damages. Clearly, defining the status of the plaintiff is still a critical step in corporate libel cases. Although the *Rosenbloom* court stipulated that the status of the plaintiff did not matter at all, courts today appear to rely on a combination of *Rosenbloom* and *Gertz*, defining both the nature of the controversy as well as the status of the plaintiff. The total discounting of the plaintiff's status seen in *Rosenbloom* has not yet

occurred. But it appears to be creeping closer, a development that would be greeted favorably by some:

I wrote a law article that says that the public figure test should be abandoned and we should go back to *Rosenbloom*. If the media are doing their job, then they're going to create controversy. If the controversy pertains to a matter of intense public concern, should the media be held to a higher standard because no one has yet caught the person about whom they're writing? That's why I have trouble with the public figure test. But, of course, a corporation, just like an individual, should not be found a public figure for the purposes of a controversy that is created out of a supposedly defamatory publication. (Chadwick, 1999)

As noted in the case review, several cases from the early 1980s found that a company's advertising should not be used as a factor in determining public figure status. The courts from *Bruno & Stillman v. Boston*, *Vegod v. ABC*, *Golden Bear v. Chase Revel*, and *Rancho La Costa v. Superior Court of California* all stated that a company's advertising activities do not in and of themselves constitute thrusting the company into a public controversy. As the court in *Golden Bear* noted, this theory would render all businesses public figures.

Fast forward 20 years, though, and the theory appears much closer to becoming law. A corporation's advertising, public relations, and media activities are routinely found to be the primary criteria in naming it a public figure. Of the eight cases examined, *National Life*, *Parker*, *Quantum*, and *Q-Tone* were all judged public figures based on their media access, advertising, and public relations activities. Only in *Bay View Packing* was the plaintiff's advertising not a factor in determining public figure status—in that case, it was the plaintiff's involvement, albeit involuntary, in a matter of public health that earned it public figure status. Of the three cases resulting in private plaintiffs, the

Levinsky's court found that the plaintiff's advertising itself caused the public controversy, which in turn triggered the actual malice rule.

Clearly, a company's advertising, public relations and media activities contribute enormously to public figure status, but a *de facto* finding of public figure because of advertising activities has not occurred yet, nor should it, according to Judge Joseph Biafore:

Economically, corporations must advertise, but once you've stepped into that realm, you've opened yourself up. I think it's a strong argument that a company that has to advertise to survive becomes an almost *de facto* public figure in libel cases. But you shouldn't jettison the analysis—it's still critical because there are always exceptions. (Biafore, 1999)

The other issue for corporations to consider is one brought up by attorneys Jim McManis and Mike Reedy of San Jose, regarding corporations as general purpose public figures. In most cases, if a company is found to be a public figure, it is as a limited purpose public figure, where its advertising and public relations related specifically to the public controversy. Only in one of the cases examined, *Q-Tone*, was the plaintiff, a media corporation, found to be a general purpose public figure. But, as mentioned earlier, Americans now live in a world where advertisements and corporate information come at them from TV, newspapers, radio, direct mail, billboards, stadiums, "spam" e-mail, Internet Websites, and even the floors of grocery stores. Certainly it would be fair to compare these ad-prolific corporations to a celebrity or other public figure, whose ubiquitous presence in our lives makes him a general purpose public figure.

For corporations, whether they are found to be limited purpose or general purpose, the result is the same—having to prove actual malice to recover damages. But a future

finding of general purpose public figure for a corporation could make the step toward *de facto* public figure for corporations that much closer.

The future will, indeed, be complicated for courts grappling with corporate libel. Defining an issue as a public controversy or merely one of public interest will continue to evolve, though it is impossible to say whether a future decision will provide a concrete differentiation between the two. Then, if the courts persist in findings of public controversy, the outcome will be more corporations having to prove actual malice. Finally, corporations' advertising and public relations will continue to contribute to their limited purpose public figure status, with the potential for large and well-known companies to be found general purpose public figures. The overall trend toward making corporations prove actual malice—either as a result of their public figure status or because the issue was a public controversy—corporations will need to be aware of the risks that await them in the corporate libel arena. And media outlets should pay attention as well. Clearly, the courts are more inclined toward protecting controversial speech, especially when it involves issues that could have serious ramifications for the public. But this state of affairs will also require extra vigilance on the part of the media to be fair and accurate in their reporting, for as Professor Franklin noted, the actual malice rule allows irresponsible media defendants to win.

Of course, complicated legal issues are nothing new to the legal community. As Judge Biazore noted,

This is a fascinating area, and it's complicated. It's so complicated that the courts are all over the place—the justices, when they rule, are split 5-4. And in a lot of

cases, they can't come out with a consensus on their opinions. So for us in the trial courts, who get the first look at it—that's what makes our job fun.

We get the first look at a case like this, and we're left with all this analysis at the threshold of the legal experience—we deal with all the motions, we wrestle with the attorneys, make all the analyses, make a decision, give it to a jury, and the jury makes a decision.

Five, six years later, other people who are much brighter than we are get another good look at it and have a whole history to work with, using all their research help, and all the people they have working with them, and *they* can't decide. That's what makes this so fascinating. And in the meantime, there are a lot of individuals caught up in the process. It's just not an exact science. (Biafore, 1999)

A summary of the results of the eight cases analyzed and the reasoning behind them can be found in the tables on the following pages.

Table 1

Plaintiffs Found To Be Private Figures

Case/Year/State	Access to Media	Advertising/PR	Public Controversy	Plaintiff's Role in Controversy
Michigan Microtech v. Federated Publications 1991 Michigan	Not addressed.	Amount of advertising insufficient to confer limited purpose public figure status.	Scrambling of satellite dishes.	Plaintiff was contacted by media, not the reverse, so did not thrust itself into controversy. Court did not address possibility of involuntary public figure.
Turf Lawnmower v. Bergen Record 1995 New Jersey	Most small businesses and their owners don't have access to effective channels of communications.	The limited advertising of a "mom and pop" type of business is not sufficient to confer public figure status on it.	Consumer fraud.	Fraud charges such an important public issue that, although found a private figure, plaintiff still had to prove actual malice.
Levinsky's v. Wal-Mart 1997, 1998 Maine	Not addressed.	Plaintiff's advertising created public controversy about competition between two stores.	Competition between two local retailers.	Public awareness of competition between stores was caused by plaintiff's pointed advertising; controversy became public, making private plaintiff prove actual malice.

Table 2
Plaintiffs Found To Be Public Figures

Case/Year/State	Access to Media	Advertising/PR	Public Controversy	Plaintiff's Role in Controversy
National Life Insurance v. Phillips 1992 Maryland	Plaintiff's views extensively reported in media. Plaintiff regularly sent out multitude of press releases to major newspapers.	Large budget examined as well as extent of advertising (34 states). Executives held leadership positions in trade organizations. Two corporate magazines published regularly.	Financial strength of insurance companies; use of AM Best rating.	Company thrust itself to forefront of controversy through press coverage, advertising, and PR activities specifically related to AM Best rating.
Parker v. Evening Post 1994 South Carolina	Not addressed.	Court noted "extensive" newspaper and radio adverting on plaintiff's return to business, making him a public figure in area of his business dealings.	Fraud and unfair trade practices.	Pending lawsuit for fraud against dealership was of "public interest"; ads inviting public to do business with him made him limited purpose public figure.
Quantum Electronics v. Consumer's Union 1995 Rhode Island	Issued regular press releases.	Frequently took advantage of free publicity from magazines by placing articles on products. Company used product reviews from media as part of its own advertising materials.	Potential danger of ozonators to respiratory health.	Ozonator issue one of public health; plaintiff's advertising and promotional materials clearly thrust it into controversy, making company limited purpose public figure.

Table 2
(Continued)

Case/Year/State	Access to Media	Advertising/PR	Public Controversy	Plaintiff's Role in Controversy
Bay View Packing v. WISN-TV 1995 Wisconsin	Plaintiff did not attempt to use media.	Plaintiff did not advertise or seek out publicity.	Contamination of public water supply.	Court found water contamination was enough of a public health issue that even plaintiff's voluntary inaction did not protect it from public figure status—plaintiff was ruled an involuntary public figure.
Q-Tone Broadcasting v. MusicRadio of Maryland 1995 Maryland	As a radio station, plaintiff had total media access. Radio station is less vulnerable to injury because of its ability to resort to effective self-help.	Plaintiff advertised daily on billboards and signs.	Dispute over concert tickets, in larger context of ongoing competition between two community radio stations.	Plaintiff's "control of the airways" and thrusting itself into public eye on daily basis made it a general purpose public figure; as general manager, Quartarone was found to be a limited purpose public figure on the issue of competition between two radio stations.

Contributions of Study to Media Law

Analyses of the role of a corporation's public relations and advertising activities in libel cases have been done in the past, but none have covered cases decided since 1990. This study provides a current examination of such cases, but also delves beyond merely reporting the outcome of each case to include an in-depth analysis of the reasoning behind each outcome in an attempt to determine future trends in this area of the law. In addition, the personal interviews with members of the legal profession bring a real-world perspective about current thinking in First Amendment law, something that is frequently missing from similar academic reviews of corporate libel.

Limitation of the Study

Perhaps the primary limitation of a study such as this is that different states and different court levels rely on different precedents to base their decisions. This can make it difficult to discern overall national trends in libel law, or any facet of the law for that matter. However, because libel lawsuits are not as common as, for example, family law, many courts reach out beyond the boundaries of their own state to see what other courts have had to say on the subject. This makes a nationwide analysis of corporate libel law, while not perfect, certainly more accurate than other types of analyses might be.

Directions for Future Research

Future research can take a number of different directions. The most obvious is to simply replicate this study in 10 years to re-examine how corporate libel law has evolved and where it appears to be headed. A second interesting research angle could examine corporate libel cases with a focus on commercial speech; for example, if advertising and

public relations are almost automatic indicators of public figure status, how are corporations supposed to communicate to their audiences without the chilling effect of the "de facto public figure"?

A third area of research related to corporate libel and public figure status would include an examination of recent media mergers, and how these corporate media conglomerates affect the reporting of corporate news. Does Disney's ownership of ABC News seem to have an effect on how ABC covers Disney and its various subsidiaries. Would Disney ever even sue ABC for libel? Will ABC have to define what determines a public controversy before deciding if it will report on whether its parent company is involved in that controversy? These types of issues may become a reality in the next millennium, as ownership continues to consolidate and media outlets lose more independence.

Finally, although it's impossible to say what the next big libel case will involve, the Internet seems to be ripe with possibilities. What constitutes a public controversy on the Internet? Can a corporation be a public figure if it only exists on-line? Attorney Mike Reedy predicted:

I think the Internet is going to be the basis for a lot of litigation. It's so easy to spread rumors on the Internet. But if you have the money and the resources, you can find out who started it. There will be some corporation that's the subject of a rumor, true or not, and they're going to try to clamp down on that person who started it. It will be very interesting to see how that's dealt with as a public issue because the Internet is a marketplace, but it's a limited marketplace. What percentage of the world has access to the Internet, what percentage of the Internet may have seen it, what is the Internet community? It will be very complicated. (Reedy, 1999)

The difficulty that the courts have in keeping up with the Internet is not a new phenomenon, and sooner or later, Reedy's prediction will become a reality. As corporate libel expands to include the Internet as a major medium, along with newspapers, radio, and television, the issues of what constitutes a public controversy, what kind of advertising and marketing the company has invested in on-line, and the definition of "community" will make for a fascinating study.

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**APPENDIX A
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