



Courthouse News Service

Friday, May 09, 2014 Last Update: 12:22 PM PT



Corporate Defamation Verdict Survives Appeal

By DAVID LEE

AUSTIN (CN) - Corporations - not just individuals - can sue for damage to reputation in Texas, the state's high court ruled Friday.

The lawsuit by Texas Disposal Systems Landfill Inc. against Waste Management of Texas Inc. for defamation and other claims dates back to 1997 - two years after the companies competed for trash and landfill contracts for the cities of Austin and San Antonio.

Texas Disposal took issue with an anonymous memorandum Waste Management had published that claimed Texas Disposal's landfill was exempt from federal environmental rules, was operating without a fully synthetic liner and did not have a leachate collection system to prevent groundwater contamination.

The memorandum was distributed to environmental and community leaders in Austin, including several city council members.

Though a jury found Waste Management's statements were false, it was a take-nothing judgment because jurors also found that Texas Disposal suffered no actual damages. The 3rd District Court of Appeals later reversed the ruling, concluding the trial court erred by refusing to include a question about defamation per se in the jury charge. That ruling noted the possibility that the meaning and effect of the published words might have injured Texas Disposal's business.

On remand, a second jury ruled for Texas Disposal and awarded over \$450,000 in remediation costs, \$5 million for injury to reputation and \$20 million in punitive damages. The trial court treated the \$5 million award for injury to reputation as noneconomic damages, which led to reduction of punitive damages to \$1.65 million. A panel of the 3rd Court affirmed, leading both companies to cross-petition the Texas Supreme Court.

In a partial reversal Friday, the high court concluded that Texas Disposal is entitled to punitive damages because the jury found actual malice and because it provided sufficient evidence of actual damages.

Waste Management failed to show that corporations cannot suffer reputation damages because corporations are not people, according to the ruling.

"But WMT's position has not been entirely consistent," Justice Don Willett wrote for the court. "At oral argument WMT urged that corporations can never suffer reputation damages, but its response brief concedes that corporations may suffer some types of reputation damages: 'lost profits, rehabilitative expenses, and diminished value of the corporation-are the only damages a corporate entity's reputation can sustain,'" the 34-page complaint stated. "In any event, we discern WMT's contention to be that defamation per se is an inherently personal tort, and that it was designed to address harm that only natural persons may suffer, such as mental anguish, sleeplessness, or embarrassment. We have never adopted such an interpretation. On the contrary, it is well settled that corporations, like people, have reputations and may recover for harm inflicted on them."

The justices agreed with the trial court's calculation of a statutory cap on punitive damages by classifying Texas Disposal's reputation damages as noneconomic.

"We see no sound basis to depart from our settled precedent treating reputation damages as non-economic damages," Willett wrote.

"Thus, in line with our prior decisions, and the consensus of the Restatement and other commentators on the nature of reputation damages, we hold that ... damages for injury to reputation are non-economic damages."

The high court reversed the \$5 million award for reputation damages, however, because it said the evidence is "legally insufficient" and "without evidence of actual damage" to Texas Disposal's reputation.

On this issue, Texas Disposal's CEO testified that the company's reputation was "priceless" and provided three exhibits that supported the valuation of its reputation at \$10 million.

"We can find no relationship between the exhibits and the \$10 million estimation," Willett wrote. "We cannot agree with TDS's position that these exhibits quantify any amount of reputation damages. The evidence must support the amount awarded by the jury; it must not be an 'indicator' that supports the estimates offered by the corporate executive. Without any supporting evidence of actual damages for injury to its reputation, TDS is entitled only to nominal damages in accordance with our decisions on presumed damages in defamation per se cases."

The high court did nevertheless affirm the award of more than \$450,000 in remediation costs, citing at least 271 pages of invoices regarding money Texas Disposal spent as a result of the memorandum.

"This type of evidence does not support the award for reputation damages, as we discussed above, but it does provide some evidence of the remediation costs TDS incurred as a result of the alert," the opinion states. "TDS's witnesses, including its chief executive officer, Bob Gregory, testified that TDS's staff devoted more than \$700,000-worth of time and \$450,592.03 in out-of-pocket expenses to remedy the alert's effects."

The 3rd must yet reconsider how much to award in punitive damages, the court added.

Texas Disposal is entitled to punitive damages because of the second jury's finding of actual malice and because Texas Disposal established actual damages for the remediation costs, but the present calculation cannot stand amid the insufficient evidence supporting the reputation-damages component of the actual damages awarded, Willett wrote.

Representatives with Waste Management and Texas Disposal did not respond to requests for comment Friday afternoon. 