



March 2, 2006

COURT LIMITS LIBEL SUITS BASED ON PERFORMANCE EVALUATIONS (Raytheon Technical Services Co. v. Hyland)

The Virginia Supreme Court today struck a blow for First Amendment rights by imposing strict limits on the ability of disgruntled employees to file defamation actions against their employers based on unhappiness over statements made in annual performance evaluations.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Raytheon Technical Services Co. v. Hyland*, urging the court to overturn a massive judgment awarded to a former employee. The Court agreed with WLF that most of the statements of which the plaintiff complained were statements of opinion, which (under the First Amendment) are not actionable.

WLF's brief argued that allowing employees to sue every time they disagree with a performance evaluation will cause corporations -- wary of the prospect of large jury verdicts -- to cease providing candid evaluations. WLF argued that by its very nature, a performance evaluation constitutes a supervisor's subjective judgment regarding how well an employee is performing and as such constitutes a non-actionable statement of opinion.

"All too often, sympathetic juries award multi-million dollar verdicts to employees who receive negative performance evaluations," said WLF Chief Counsel Richard Samp after reviewing the court's decision. "But the chilling effect of such verdicts helps no one -- least of all employees, who need honest feedback to assist them in improving job performance and thereby to advance in their careers," Samp said.

The case involves a former executive of a government contracting firm. After the company lost several major government contracts that she was responsible for negotiating, the executive received a somewhat negative performance evaluation from the president of the company. The evaluation stated, among other things, that the executive was "frequently verbose and vocal in her opinions" and that she was unwilling to "accept and work on" criticism from others. Some months later, the executive was discharged from her job.

The executive thereafter filed several lawsuits against the company, alleging among other things that the company had breached her employment contract and that she had been discriminated against on account of her sex. All of her claims were eventually rejected other than her defamation claim, in which she alleged that the company president had knowingly made false charges against her. A jury awarded her \$1.5 million in compensatory damages and \$2 million in punitive damages (later reduced to the statutory maximum of \$350,000).

In support of the defendants' appeal to the Virginia Supreme Court, WLF argued that the First Amendment prohibits defamation actions based on statements of opinion. WLF argued that such claims are non-actionable because there is no such thing as a false idea; if one disagrees with another's opinion, one's only recourse is to speak in opposition to the idea, WLF argued. WLF argued that statements in a performance evaluation are virtually never provably true or false (*e.g.*, whether an employee is "competent," is "unable to accept criticism," or is "frequently verbose and vocal in her opinions") and thus must be deemed non-actionable statements of opinion. WLF argued that unless a performance evaluation makes serious charges that can be proven false (*e.g.*, that the employee committed a crime), employees should not be permitted to file defamation actions against their employers based on subjective comments contained in the evaluation.

The court agreed with WLF that most of the statements over which the plaintiff filed suit were non-actionable statements of opinion. The court said that two of the contested statements were statements of fact which could be proven true or false. But because the jury had not specified which of the contested statements it found libelous, the Virginia Supreme Court overturned the judgment; it said that a new trial -- focusing on the two statements that included statements of fact -- would have to be conducted.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States, including many in Virginia. It devotes a significant portion of its resources to protecting the speech rights of the business community.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.