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British Ruling May Help Media Abroad

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media•insights is published periodically by OneBeacon Professional Partners to address the broad scope of exposures faced by our agents' and brokers' clients, as media-related companies are scrambling to meet the public's appetite for information, news and entertainment in an increasingly litigious society. This issue of media•insights looks at how legislative rulings on free speech in Great Britain are changing the landscape for global media companies with operations in British Commonwealth nations where this freedom has not been traditionally recognized and protected.

Britain's highest court recently handed down a landmark libel law decision which should encourage and protect serious investigative journalism in a country which heretofore has been known for chronicles of celebrity scandal and for libel laws that are among the most favorable in the world for plaintiffs. Until now the British courts have been a frequent forum for foreign celebrities when they sue U.S. publications due to the more protected speech under American libel law. Historically in Britain, publications were required to prove their articles were true and if not, were required to meet a detailed checklist demonstrating a reporting standard of care.

The decision was unanimously handed down by the Law Lords, a body within the House of Lords which is substantially equivalent to the U.S. Supreme Court. The ruling in *Jameel v. The Wall Street Journal Europe* allows the British press

to defend defamation actions by arguing that an article was in the public interest and was the product of serious and responsible journalism. Henceforth, the British law will be much closer to the constitutionally protected speech of the American media where all statements are protected, even false ones, so long as made about public officials or public figures, unless the statements are made with actual malice.

The story in question was published in the *Wall Street Journal Europe* in 2002 and indicated that Saudi authorities, upon request of U.S. law enforcement, had been monitoring bank accounts of prominent Saudi businesses and individuals to ensure the accounts were not being used knowingly – or without knowledge of the account owner – to finance terrorism. Mohammed Jameel, a prominent Saudi businessman and President of the Abdul Latif Jameel Group, was named as being among the scrutinized account owners, and he sued for defamation.

At trial, Dow Jones defended itself not on the basis that the article was true, but rather that the article was written in the public interest since it demonstrated the cooperation of Saudi Arabia in combating terrorism. Dow Jones said the story was fairly and responsibly reported. A jury awarded \$75,000 to Mr. Jameel and his business, and the trial court's ruling that Dow Jones should have made more inquiry before publishing the article was upheld by the intermediate appellate court. The Law

Lords' ruling reversed this decision, indicating that Dow Jones had done nothing wrong and that the article was in the public's interest.

The Law Lords indicated that even if a judge acting in leisure and hindsight might have made different editorial decisions than were made under deadline in the newsroom, the question remains "whether the defendant behaved fairly and responsibly in gathering and publishing information." This means, determining whether a particular article is in the public's interest and whether the media defendant acted seriously, responsibly and fairly is left open to future courts. The defamatory statement must be a justifiable part of the story.

The ruling is especially meaningful to Dow Jones which has had to defend articles in its *Far East Economic Review* monthly magazine on Asia throughout that region, including cases where its reporters have been jailed, as happened in Singapore in recent years.

The British Empire rose and fell, but the English language continues to spread across the world and is spoken by one-fifth of the world's population. British Commonwealth nations such as Australia, Canada and Hong Kong, among others, have their own laws and courts of final appeal, but these countries continue to look to the British Law Lords for guidance in the interpretation of common law. In that sense, this decision will help underscore the

importance of free speech in countries where such freedom has not been traditionally recognized and protected.

Given the exposure to defamation in other countries – especially arising from international editions and the global reach of the Internet – it is crucial that your clients' media liability policies provide coverage for claims arising anywhere in the world.

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