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X II. Torts

XII. TORTS

The Corporate Libel Plaintiff

Defamation, which includes the torts of libel and slander, is an invasion of the interest in reputation and good name.[1] The status of a plaintiff in a defamation action determines the plaintiff's burden of proof and often the results of the trial.[2] The Supreme Court requires public officials[3] and public figures[4] to prove "actual malice" in order to recover damages for defamation.[5] Actual malice is the defendant's knowing or reckless disregard of the falsity of the statement.[6] If the plaintiff is a

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[1] *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 111, at 737 (4th ed. 1971) [hereinafter cited as PROSSER]. Libel is written defamation and slander is oral defamation. *Id.* The defamation must be communicated to a third person and must be of such a character to be capable of affecting the opinion which others in the community may have of the plaintiff. *Id.* Defamation affects the plaintiff's reputation, and, therefore, the plaintiff's own humiliation or anger cannot establish the existence of defamation. *Id.*

[2] *See* Reliance Ins. Co. v. Barron's, 442 F. Supp. 1341, 1344 (S.D.N.Y. 1977); note 5 *infra.*

[3] The Supreme Court has defined a "public official" as a government employee who has, or appears to the public to have, "substantial responsibility" over government affairs. Rosenblatt v. Baer, 383 U.S. 75, 85 (1966) (supervisor of community-owned recreation area held public official); *see* Garrison v. Louisiana, 379 U.S. 64, 67 (1964) (elected District Attorney); New York Times Co. v. Sullivan, 376 U.S. 254, 280 (1964) (elected Commissioner of Public Affairs); text accompanying notes 25-29 *infra.*

[4] A public figure is someone who is prominent in society and who invites attention and comment. *See* Hutchinson v. Proxmire, 443 U.S. 111, 134 (1979) (research scientist not public figure); Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 164 (1979) (private citizen indicted by grand jury sixteen years before alleged libel not public figure); Gertz v. Robert Welch, Inc., 418 U.S. 323, 350 (1974) (defense attorney not public figure); Curtis Publishing Co. v. Butts, 388 U.S. 130, 134 (1967) (college athletic director public figure); text accompanying notes 30-44 *infra.*

[5] *See* New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). The actual malice standard is an "almost insuperable" burden on a plaintiff. *See* Reliance Ins. Co. v. Barron's, 442 F. Supp. 1341, 1344 (S.D.N.Y. 1977).

[6] New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). The Supreme Court's actual malice standard is different from the defendant's ill will, spite, or hostility. In common law actions, the plaintiff has to prove the ill will type of malice to receive punitive damages. *See* PROSSER, *supra* note 1, § 115, at 794-95. The term "actual malice" has caused much confusion in the lower courts. *See, e.g.*, Greenbelt Coop. Publishing Ass'n v. Bresler, 398 U.S. 6, 10 (1970) (actual malice is not "spite, hostility or deliberate intention to harm"); Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 82 (1967) (*per curiam*) ("bad or corrupt motive" is erroneous interpretation of actual malice); Henry v. Collins, 380 U.S. 356, 357 (1965) (*per curiam*) (actual malice is intent to inflict harm through falsehood, not merely an attempt to inflict harm); Rosen, *Media Lament—The Rise and Fall of Involuntary Public Figures*, 54 ST. JOHN'S L. REV. 487, 490 n.19 (1980) [hereinafter cited as Rosen]. To prove actual malice, the public figure plaintiff must prove that the defendant in fact "entertained serious doubts as to the truth of his publication." St. Amant v. Thompson, 390 U.S. 727, 731 (1968). The plaintiff must prove actual malice with "convincing clarity." New York Times Co. v. Sullivan, 376 U.S. at 285-86.

private figure, however, he has only the common law burden of proving that libelous words were actually published.[7] The actual malice burden of proof for public officials and public figures is greater than the common law burden because the Supreme Court intended to protect the freedom of the press to engage in uninhibited discussion of public issues.[8] The public official and public figure are given less protection because they have thrust themselves into the public eye.[9] In balancing individual privacy with freedom of the press, the Supreme Court's opinions have focused on the status of natural persons as plaintiffs. Neither the Supreme Court nor any circuit court of appeals has determined to what degree the public official and public figure standards that have evolved for natural persons are applicable to corporate plaintiffs.[10] The Fourth Circuit recently had the opportunity to confront the issue in *Artic Co. v. Loudoun Times Mirror*.[11] The *Artic Co.* court, however, failed to consider the unique characteristics of corporate libel plaintiffs.[12] Directly applying both the public official and public figure tests, the *Artic Co.* court determined that the plaintiff corporation was a "private business enterprise" subject to the same standard of proof as a natural private person at common law.[13]

The plaintiff Artic Company, trading as Iroquois Research Institute

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[7] *See* PROSSER, *supra* note 1, § 111, at 744. At common law, the plaintiff's prima facie case is made out in a defamation action when he has established that the defendant is responsible for a publication of an actionable defamation to a third person who understood the defamatory meaning. *Id.* § 114 at 776. In Virginia, for example, "[a]ll words shall be actionable which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace." VA CODE § 8.01-45 (1977). Publishers of false and defamatory statements are liable at common law for damages incurred by the plaintiff. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 346 (1974). Due to a legal presumption that injury normally flows from the fact of publication, the plaintiff automatically receives damages. *See* 418 U.S. at 350. The defendant has only the narrow defenses of truth of the publication or privilege. *See id.* at 372 (White, J., dissenting); PROSSER, *supra* note 1, § 114, at 766; Note, *Defamation: Conflict in the Definition of "Public Figure,"* 10 SETON HALL L. REV. 822, 827 (1980) [hereinafter cited as *Defamation*]. The defense of privilege is available to those involved in judicial or legislative proceedings, certain executive officers of the government, and husband and wife. *See* PROSSER, *supra* note 1, § 114 at 776-85.

[8] New York Times Co. v. Sullivan, 376 U.S. 269, 279-80. In *New York Times*, the Supreme Court found that the common law defense of truth was insufficient to protect the freedom of expression. *Id.* at 279. Self-censorship was often the result under the common law because the publisher had to guarantee the truth of the printed assertions to escape liability. *See id.* The *New York Times* Court held that the constitutional guarantees of the first amendment generally outweighed the privacy of a public official. *Id.* at 279-80; *see* Eaton, *The American Law of Defamation Through* Gertz v. Robert Welch, Inc. *and Beyond: An Analytical Primer*, 61 VA. L. REV. 1349, 1366 (1975).

[9] *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 345 (1974).

[10] *See* 46 FORDHAM L. REV. 1287 (1978).

[11] 624 F.2d 518 (4th Cir. 1980), *cert. denied*, 49 U.S.L.W. 3487 (Jan. 13, 1981) (No. 80-521).

[12] *See* text accompanying notes 45-55 *infra*.

[13] 624 F.2d at 521.

(Iroquois), is a corporation engaged in historical and archeological research.[14] The Fairfax County (Virginia) Water Authority hired Iroquois to evaluate and devise a plan to preserve the historical resources in the area of proposed water intake facilities.[15] Since the area of the project was already the subject of a considerable rezoning controversy,[16] the *Loudoun Times Mirror* (Mirror) assigned a reporter to write a story on the archeological explorations in the area. Although Iroquois had conducted numerous similar research projects, the Mirror reporter first learned of Iroquois only after he had begun to investigate.[17] Mirror published an article which Iroquois claimed contained libelous statements.[18] Iroquois brought suit in federal district court against Mirror for damage to its professional reputation.[19] The trial court found that, although Iroquois was not a public figure, it was a public official and therefore required to prove the defendant's actual malice.[20] The trial court then granted summary judgment because the court found no genu-

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[14] *Id.* at 519.

[15] *Id.* The Water Authority sought a permit from the Army Corps of Engineers to construct water intake facilities on the Potomac River. *Id.* The permit required an inventory for all archeological, historical, and architectural resources and a plan to preserve those resources. *Id.*

[16] *Id.* The Fourth Circuit observed that the area of the water intake facilities, Lowes Island, is an area of historical and archeological value. *Id.* The zoning conflict arose due to the impending acquisition of a large part of the island by a developer and his attempts to rezone the land for commercial use. *Id.* Other developers, citizens of the area, and history enthusiasts were involved in the continuing rezoning controversy. *Id.* The Fourth Circuit found that the rezoning controversy was the principal issue in the area and was unrelated to Iroquois' activities. *Id.* at 522.

[17] *Id.* at 519. Iroquois worked for the Water Authority for only six months. *Id.* The Fourth Circuit found that this fact indicated that Iroquois played a minor role in the government project. *Id.* at 521-22. During the six month period, Iroquois was working on twenty similar projects in seven states. *Id.* at 519. Although Iroquois may have been unknown in Fairfax County, its corporate activities in the county could have affected the other projects. Public scrutiny of a corporation may be warranted regardless of the size of the corporation or of the interested public. *See* Note, *In Search of the Corporate Private Figure: Defamation of the Corporation*, 6 HOFSTRA L. REV. 339, 355 (1978) [hereinafter cited as *Corporate Private Figures*]; text accompanying notes 46-49 *infra*.

[18] 624 F.2d at 519. The *Mirror* published an article containing statements allegedly made by R. E. McDaniel, an amateur archeologist. *Id.* McDaniel had experience in archeological exploration on Lowes Island and was known in the community as an authority on the history of the island. *Id.* The *Mirror* article quoted McDaniel as criticizing Iroquois' settlement plan and claiming that Iroquois did not have a good reputation in archeological circles because Iroquois "cut[s] corners." *Id.* at 520.

[19] 624 F.2d at 519. Iroquois brought the suit against the *Loudoun Times Mirror* (Mirror), a newspaper published in Loudoun County, Virginia; Carl Parks, a Mirror reporter; and R.E. McDaniel, an amateur archeologist. *Id.* Parks wrote the article that contained the allegedly libelous statement made by McDaniel, and Mirror published the article. *Id.* Iroquois sued in the United States District Court for the Eastern District of Virginia. *Id.* at 518.

[20] *Id.* at 520. The trial court found that Iroquois was not generally known in the community and did not inject itself into the Lowes Island controversy. *Id.* at 521.

ine issue of material fact concerning actual malice on the part of the defendant.[21]

On appeal, Iroquois contended that summary judgment was inappropriate because Iroquois was neither a public official nor a public figure and could not be required to prove actual malice.[22] The Fourth Circuit agreed with the trial court that Iroquois was not a public figure, but further determined that Iroquois was not a public official.[23] Instead, the *Artic Co.* court held Iroquois to the same burden of proof in a libel action as a natural private person.[24]

To decide whether Iroquois was a public official, the Fourth Circuit applied the standards enunciated by the Supreme Court in *Rosenblatt v. Baer*.[25] *Rosenblatt* defined public officials as those government employees who have, or appear to the public to have, substantial responsibility for government affairs.[26] The Fourth Circuit found that Iroquois had been employed by the Water Authority for only six months and had no control over governmental affairs. The *Artic Co.* court determined that Iroquois made no recommendations, participated in no policy determinations, and exercised no discretionary power over public business.[27] The fact that the reporter had never heard of Iroquois before he began

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[21] *Id.* at 520. A court may grant summary judgment upon a showing by the moving party that there is not genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). Courts often grant summary judgments in political libel cases. *See, e.g.*, Schuster v. U.S. News & World Report, Inc., 602 F.2d 850, 855 (8th Cir. 1979); Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 954 (D.D.C. 1976) (summary judgment prevents all but strongest libel cases from proceeding to trial); Note, *The Role of Summary Judgment in Political Libel Cases*, 52 S. CAL. L. REV. 1783, 1794-95 (1979).

[22] 624 F.2d at 520. Iroquois contended that summary judgment was inappropriate because there were material issues of fact concerning the reporter's doubts of the truthfulness of the story. *Id.* Proof that the defendant entertained doubts about the veracity of facts is evidence of actual malice. *See* St. Amant v. Thompson, 390 U.S. 727, 731-32 (1968). The Fourth Circuit did not reach the issue of malice in *Artic Co.* because the court held that Iroquois was a private person for purposes of libel litigation and, therefore, was not required to prove malice. 624 F.2d at 521.

[23] *Id.* at 522.

[24] *Id.* at 521. On remand, Iroquois must establish its libel case under Virginia law. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 347 (1974). The Virginia Supreme Court has refused to consider what standard should establish liability for actual damages in private individual libel cases. Newspaper Publishing Corp. v. Burke, 216 Va. 800, 804-05, 224 S.E.2d 132, 135-36 (1976). The United States District Court for the Western District of Virginia found that the proper standard for private figure plaintiffs in Virginia is negligence, rather than actual malice. Mills v. Kingsport Times-News, 475 F. Supp. 1005, 1011-12 (W.D. Va. 1979).

[25] 624 F.2d at 521 (citing Rosenblatt v. Baer, 383 U.S. 75 (1966)).

[26] 383 U.S. 75, 85 (1966). The plaintiff in *Rosenblatt* was the supervisor of a recreation area which was owned and operated by a county. *Id.* at 77. The Court remanded the decision to determine whether the plaintiff's management role was so prominent that the public regarded the plaintiff as chargeable with the failures and as credited with the successes of the recreation area. *Id.* at 87-88.

[27] 624 F.2d at 521-22.

investigating indicated to the Fourth Circuit that Iroquois did not appear to the public to have governing power.[28] The Fourth Circuit correctly found that Iroquois was not a public official. Iroquois clearly did not have either the substantial or apparent control over public policy mandated by *Rosenblatt*. *Rosenblatt* requires that the public official hold a position "in government," a term which has been applied only to those persons holding public office.[29]

Even though not classified as a public official, Iroquois still would be held to the actual malice standard if it were found to be a public figure.[30] Public figures are "intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large."[31] A public figure may be one of two types. An

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[28] *Id. Rosenblatt* balanced the values of individual privacy with those of open debate by requiring proof that the official's position in government provokes an independent public interest in the plaintiff's official position beyond the general public interest in governmental affairs. 383 U.S. at 86. The employee's position must be so important as to invite public scrutiny and discussion of the person holding that position even without the particular charges currently in controversy. *Id.* at 86-87, 87 n.13.

[29] 383 U.S. at 86. Cases concerning the status of a plaintiff as a public official involve either persons holding elected offices or candidates for public office. *See* St. Amant v. Thompson, 390 U.S. 727, 728 (1968) (candidate for public office); Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 81 (1967) (elected clerk of court); Garrison v. Louisiana, 379 U.S. 64, 64-65 (1964) (elected District Attorney); New York Times Co. v. Sullivan, 376 U.S. 254, 256 (1964) (elected Commissioner of Public Affairs); Note, *A Constitutional Revolution in the Law of Libel:* New York Times *and* Gertz *Applied*, 11 TEX. TECH. U.L. REV. 611, 618 (1980). The plaintiff in *Rosenblatt* was an employee of the county government. Rosenblatt v. Baer, 383 U.S. 75, 77 (1966). The plaintiff had held the position of supervisor of a recreation area for several years. *See* 383 U.S. at 77-78. All the Supreme Court public official cases have concerned full-time governmental positions held for over one year. *See, e.g.*, Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 81 (1967) (plaintiff running for reelection as Clerk of Court); Rosenblatt v. Baer, 383 U.S. 75, 77 (1966). Iroquois, however, contracted to work for the Water Authority for only six months and was working on twenty other projects for private business during the period. 624 F.2d at 519.

[30] The Supreme Court broadened the first amendment protections of *New York Times* by requiring public figures as well as public officials to prove actual malice. Curtis Publishing Co. v. Butts, 388 U.S. 130, 155 (1967); *see* notes 2-4 *supra*.

[31] Curtis Publishing Co. v. Butts, 388 U.S. 130, 163-64 (1967). Whether or not the burden of proving actual malice will be placed on the plaintiff depends upon the status of the plaintiff. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 351-52 (1974). The determination whether to apply the actual malice standard had been based on the nature of the controversy that led to the libel. The Supreme Court extended the *New York Times* rule to any statement concerning an issue of "public or general interest," whether the statement involved a public or private person. *See* Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 43 (1971). *Gertz* overruled *Rosenbloom*'s focus on the subject matter of the alleged defamation and returned the focus to the status of the plaintiff. 418 U.S. at 351; 418 U.S. 353 (Blackmun, J., concurring). *Gertz*, however, did not entirely eliminate the issue-based inquiry of *Rosenbloom*. *See* Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 956 (D.D.C. 1976); *Defamation, supra* note 7, at 842-43. *Gertz* established that in order for the plaintiff to be a public figure, a public controversy must exist. 418 U.S. at 345. The individual may become involved either voluntarily or involuntarily, but must attempt to

"all-purpose" public figure has achieved such fame or notoriety that he has influence on a broad range of issues.[32] The more common of the two types is a "limited" public figure, who voluntarily injects himself or is drawn into a particular controversy.[33] Since either figure assumes special prominence in the resolution of public questions, both receive less first amendment protection because of their widespread fame or intentional pursuit of public attention.[34] A public figure needs less protection than a private person because a public figure has greater access to the media and is in a better position to present his side of an issue.[35]

The Supreme Court recently considered a public-figure case which, like *Artic Co.*, involved technical services provided to the government. In *Hutchinson v. Proxmire*,[36] the Court found that a research scientist was not a public figure, although he had voluntarily applied for government funds and had published numerous articles in scholarly journals.[37] The *Hutchinson* Court stated that the test of a plaintiff's access to the media could only be satisfied by proof of media access prior to the defamation.[38] Moreover, the Court noted that persons charged with defamation cannot create their own defense by making a public figure out of a previously private individual.[39] Mere concern about general public expenditures, although shared by most of the public, does not make every recipient of public grants a public figure.[40]

Iroquois' relationship to public controversy was similar to that of the research scientist in *Hutchinson*. The Fourth Circuit found that Iroquois did not thrust itself into the public rezoning controversy.[41] Both Iroquois

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assume special prominence in the resolution of the issues within the controversy. *Id.* The trial court must first determine whether or not a public controversy exists, and then whether the controversy is sufficiently newsworthy to merit protection of the press. *See Defamation, supra* note 7, at 843.

[32] *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 351 (1974).

[33] *Id.*

[34] *Id.* at 342; *see* Time, Inc. v. Firestone, 424 U.S. 448, 453 (1976). In *Firestone*, a Palm Beach socialite was held not to be a public figure although her divorce, from which the alleged libel arose was a "*cause celebre*." 424 U.S. at 454-55. A "public controversy" for purposes of determining the actual malice burden is not merely any controversy of interest to the public. *Id.* at 545. The Firestone divorce proceeding was not a public question, and Mrs. Firestone did not thrust herself into the public limelight. Instead, she was compelled to go to court. *Id.* at 454.

[35] *See* Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 (1974).

[36] 443 U.S. 111 (1979). In *Hutchinson*, a research scientist funded by the federal government received a "Golden Fleece Award" and sued the donor, United States Senator William Proxmire, for libel. *Id.* at 114. The Senator initiated the award to publicize what he thought to be the most flagrant examples of wasteful government spending. *Id.*

[37] *Id.* at 135-36.

[38] *Id.* at 136. The Supreme Court found that the scientist's published writings reached a relatively small category of professionals and were of no interest to the general public before Proxmire's award. *Id.* at 135.

[39] *Id.*

[40] *Id. See also* Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 166-67 (1979).

[41] 624 F.2d at 521.

and Hutchinson performed limited professional services in highly technical fields,[42] and both were generally unknown before the libel.[43] Neither Iroquois nor Hutchinson had any control over government policy.[44] The two cases differ, however, because Iroquois is a corporation.

Corporations, like natural persons, have reputations to protect.[45] Unlike natural persons, however, corporations have no reputations in the personal sense.[46] To ensure their economic survival, corporations consciously thrust themselves into the public view and directly compete for public attention.[47] Moreover, corporations are creations of the state, and the state provides corporations with legal benefits unavailable to a natural person.[48] Since a corporation receives special benefits and voluntarily enters the business world, the public has a legitimate interest in all corporate activities.[49] If corporate libel plaintiffs are not required to prove actual malice, the public's right to information may be hampered

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[42] *Id.*

[43] *See* Hutchinson v. Proxmire, 443 U.S. 111, 135-36 (1979); Artic Co. v. Loudoun Times Mirror, 624 F.2d 518, 521-22 (4th Cir. 1980). Neither Hutchinson nor Iroquois deliberately planned to attract public attention to influence a public issue or to sway public sentiment in its favor. 443 U.S. at 135-36; 624 F.2d at 521-22; *see* Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 168 (1979).

[44] *See* Hutchinson v. Proxmire, 443 U.S. at 135; Artic Co., 624 F.2d at 521-22.

[45] *See* PROSSER, *supra* note 1, § 111 at 745.

[46] A person is protected from libel because of "the essential dignity and worth of every human being." Gertz v. Robert Welch, Inc., 418 U.S. 323, 341 (1974) (quoting Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring)). Corporations, as creations of the state, do not possess this essential human quality. *See* Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 955 (D.D.C. 1976). Corporations, however, are considered persons for certain legal purposes. *See* Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 561 (1819). A corporation has no private life to protect and cannot experience pain and suffering. *See* Copley v. Northwestern Mut. Life Ins. Co., 295 F. Supp. 93, 95 (S.D. W. Va. 1968). Although a corporation can develop trade secrets, these secrets are protected by the law of unfair competition and do not need further safeguards of a relaxed libel standard. *See* 46 FORDHAM L. REV. 1287, 1299 (1978). Under varying state laws, a corporation can bring an action for libel based only on words which negatively reflect upon its trade, business ethics, or financial soundness. *See* Golden Palace, Inc. v. NBC, Inc., 386 F. Supp. 107, 109 (D.D.C. 1974); Interstate Optical Co. v. Illinois State Soc'y of Optometrists, 244 Ill. App. 158, 162 (1927); Finnish Temperance Soc'y Sovittaja v. Finnish Socialistic Publishing Co., 238 Mass. 345, ____, 130 N.E. 845, 847 (1921); Bee Publishing Co. v. World Publishing Co., 59 Neb. 713, ____, 82 N.W. 28, 29 (1900); Reporters' Ass'n of America v. Sun Printing and Publishing Ass'n, 186 N.Y. 437, 439, 79 N.E. 710, 711 (1906).

[47] *See* Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 955 (D.D.C. 1976); *Corporate Private Figure*, *supra* note 17, at 354.

[48] *See* J. PHELAN & R. POZEN, THE COMPANY STATE 5 (1973). A corporation enjoys privileges such as special tax rates, the ability to raise capital by issuing stock, centralized management, limited liability of the owners, and perpetual life. *Id.*

[49] *See Corporate Private Figure*, *supra* note 17, at 354. A free press should investigate corporate affairs to alert the public to potential harm and to identify persons who abuse the public trust. *Id.* at 355. The right of the press to investigate applies to all corporations, even closely held "mom and pop" businesses. The activities of a small corporation affect the public, although only a small portion of the public. *Id.*

because the lesser common law burden of proof may chill the exercise of public discussion.[50] Small, unknown corporations, however, may have little media access because of their limited resources and size, and may be vulnerable to false statements. Therefore, some corporations, like Iroquois, can be private status plaintiffs.[51]

Since the Supreme Court had not yet determined the burden of proof required of corporate libel plaintiffs, the lower federal courts have attempted to balance first amendment guarantees against the interest of the states in protecting corporate reputation. Federal district courts are in conflict over the appropriate weight to be given to the competing interests.[52] Corporations that are large, well-known and influential clearly qualify as public figures.[53] Conversely, small corporations could be considered private figures if they are involved in areas not generally of public concern and if they are not influential in public policy.[54] The difficulty of applying the public figure tests is greatest in cases of corporations which are not generally known by the public and are involved in limited-issue controversies. To determine whether a corporation is a public figure, courts should consider the size of the corporation, the corporation's share of the industry in which it competes, the extent of

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[50] *Id.* If a corporate plaintiff is designated a private figure, the press is exposed to liability for negligent misstatements. *Id.* at 355-56; *see* note 24 *supra.* The threat of liability may result in the self-censorship of the press that *New York Times* sought to avoid. *See* Gertz v. Robert Welch, Inc., 418 U.S. 341 (1974); *Corporate Private Figure, supra* note 17, at 356.

[51] *See Corporate Private Figure, supra* note 17, at 352-53.

[52] *Compare* Reliance Ins. Co. v. Barron's, 442 F. Supp. 1341, 1347-48 (S.D.N.Y. 1977) *and* Trans World Accounts, Inc. v. Associated Press, 425 F. Supp. 814, 819-20 (N.D. Cal. 1977) *with* Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 956 (D.D.C. 1976). The district court in *Martin Marietta* ruled that the *Gertz* safeguards of privacy apply only to natural persons since corporations do not possess private lives. 417 F. Supp. at 954-55. *Martin Marietta*, therefore, denies corporations full protection from libel. *Id.* at 955. By its terms, *Gertz* protects only "human beings" from libel under *New York Times*. 418 U.S. at 341. The district court in *Trans World*, however, applied the public figure test to a corporate plaintiff without distinction from a natural person. 425 F. Supp. at 819. The *Trans World* court found that the distinctions between corporations and natural persons are unimportant and disagreed with *Martin Marietta's* proposal to return to the overruled *Rosenbloom* subject matter test in cases involving corporate plaintiffs. *Id.*; *see* 417 F. Supp. at 956. The public interest in an issue, not the size of a corporation, would determine whether the corporation should bear the burden of actual malice. *See Corporate Private Figure, supra* note 17, at 359-60; 46 FORDHAM L. REV. 1287, 1300 (1978). The *Trans World* court, however, found that the Supreme Court in *Gertz* had rejected *Rosenbloom* without qualification. 425 F. Supp. at 819; *see* Gertz v. Robert Welch, Inc., 418 U.S. at 346. *Reliance Insurance* followed the reasoning of *Trans World* and found no difference between corporate and natural person libel plaintiffs. 442 F. Supp. at 1347-48.

[53] *See* Martin Marietta Corp. v. Evening Star Newspaper Co., 417 F. Supp. 947, 957 (D.D.C. 1976). The district court found the Martin Marietta Corp. to be a public figure because the corporation had attempted to expand its position of influence as the nation's twentieth largest defense contractor by hosting private outings for Pentagon officials. *Id.*

[54] *See* text accompanying notes 41-44 *supra.*

governmental regulation in the industry, and the extent to which the corporation's shares are traded on public exchanges.[55]

In *Artic Co.*, the Fourth Circuit directly applied the public official and public figure standards to Iroquois. The *Artic Co.* court formulated no special analysis of the standards even though Iroquois was a corporation. The case was decided correctly on the facts, however, because Iroquois did not hold a position of public authority and should not be required to prove actual malice. Since the court did not consider special standards to be applied to corporate plaintiffs to determine when a corporation is a public figure, *Artic Co.* should be limited to its facts and should not be read as holding that corporations and natural persons are subject to the same status tests in defamation actions.

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[55] *See* Reliance Ins. Co. v. Barron's, 442 F. Supp. 1341, 1348 (S.D.N.Y. 1977). Corporations are regulated not only in product areas, but also in the trading of their securities. *Id.* Either the corporation's production and services or its investment activities may thrust the corporate plaintiff into positions of influence and public discussion in an area which is not the subject of the corporation's instant libel litigation. *Id.*