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Revealing Photos Lead to Lawsuits

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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 invasion of privacy resulting from photographs, a growing area of legal liability. Claims may arise from public disclosure of private "facts," even if the photo is taken "in public."

A recent New Jersey state court case highlights a growing area of legal liability from photographs. The suit was brought by a former New Jersey high school student who alleged he had suffered emotional distress from the publication of a photograph in the high school yearbook showing him in a basketball game in which his genitals were partially visible. The suit was filed against the school board, the school district and students on the yearbook staff. The claim includes contentions that all school defendants were slow to act in rectifying the situation and that the student suffered emotional distress and missed school as a result. The student claims he was teased after school began the following year by a teacher and by fellow students. The book publisher was also sued.

The various defendants indicated they had no recollection of the picture's background or of recognizing its potentially embarrassing consequences before it was published. There is no evidence that the publication was intentional.

After discovery of the problem and the resultant uproar at the school, students were asked to bring in their yearbooks (several days later), and the offending picture was removed.

At trial, the case was dismissed on the basis that the student had no evidence of any psychological harm. That dismissal was affirmed by the New Jersey Court of Appeals. Undeterred, the plaintiff's lawyer is taking the case to the New Jersey State Supreme Court.

Similar publications of revealing or embarrassing pictures in student yearbooks or newspapers across the country have resulted in the subsequent removal of such photos. Such incidents have led prudent school boards to be more vigilant in their supervision and editing process of action and candid photographs.

Technology has increased the possibility of the widespread publication of embarrassing photos through mobile picture phones and the internet. Taking pictures of celebrity "wardrobe malfunctions" or of persons in locker rooms or tanning salons and the making of insensitive or offensive remarks by celebrities or political figures is both easy and fast, and widely distributed quickly over the entire world when the internet is utilized.

Another source of potential problems involving students is Facebook.com, a social networking website for college students. Users create an online identity and then upload a picture.

The site has been criticized as a haven for stalking and harassment. Objectionable photographs may be posted by third parties. The subjects must then complain to Facebook.com which then takes down photos as necessary. But even a brief time on the site might result in the offending photo being republished widely elsewhere.

Under most states' laws, publication of a negative or embarrassing photos, may give rise to a claim of invasion of privacy if it results from public disclosure of private "facts" about the person. Examples may include a revealing picture of a person's body or of a woman nursing a child, medical operations, injuries, etc. The photographer and press may claim the photograph was taken in public or otherwise was a newsworthy matter of public concern. However, pictures of persons or facts of a private nature that are not necessary to a news story cannot be published without consequences. Courts generally look into the context of the case, the nature of the photograph and the public's interest in its disclosure. The public has no general interest in highly private facts or photographs of private individuals, even if a photograph was taken "in public".

Individuals and organizations – even those not associated with the traditional media – need to utilize care and good judgment in reviewing photographs and any other information for publication which might embarrass the subject of the photo or information. Fast, widespread dissemination by others can lead

individuals to file lawsuits today in instances when such action would not historically have even been contemplated.

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