

# MARC

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November 25, 2009

## VIA FEDERAL EXPRESS

Superior Court of New Jersey  
Appellate Division  
Hughes Justice Complex  
25 West Market Street  
Trenton, N.J. 08625-0006  
Attn: Stacy Cortez

**Re: Too Much Media Inc. v. Shellee Hale  
Docket No. A-000964-09T3**

Dear Ms. Cortez:

This firm represents North Jersey Media Group Inc., The New Jersey Press Association, NBC Universal Inc. and The New York Times Company, proposed *amici curiae*. Enclosed for filing are an original and five (5) copies of their Amended Notice of Motion, Brief In Support Of Motion For Leave To Appear As Amici Curiae And Proposed Brief As Amici Curiae, Certification of George H. White, Certification of Steve Chung, Certification of Jennifer A. Borg, Certification of David E. McCraw and a Certificate of Service. This motion amends the motion originally submitted on November 16, 2009 by North Jersey Media Group Inc. without a copy of the proposed brief.

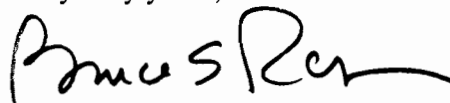
Please stamp one copy "Filed" and return it to our office in the enclosed, self-addressed stamped envelope. You may also charge our Superior Court Account No. 140590 for any applicable filing fee.

Superior Court of New Jersey, Appellate Division  
Attn: Stacy Cortez  
Page 2

November 25, 2009

If you have any questions or need additional information, please do not hesitate to contact our office.

Very truly yours,

A handwritten signature in black ink that reads "Bruce S. Rosen". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Bruce S. Rosen

BSR/ckc

Enclosures

Cc: Joel Kreizman, Esq. (w/encl.)

Jeffrey Pollock, Esq. (w/encl.)

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that I today caused an original and five (5) copies of Proposed Amici Curiae the North Jersey Media Group Inc., The New Jersey Press Association, NBC Universal, Inc. and The New York Times Company's Amended Notice of Motion, Brief In Support Of Motion For Leave To Appear As Amici Curiae And Proposed Brief As Amici Curiae, Certification of George H. White, Certification of Steve Chung, Certification of Jennifer A. Borg and Certification of David E. McCraw to be served by via Federal Express to the Superior Court of New Jersey – Appellate Division, Hughes Justice Complex, 25 West Market Street, Trenton, New Jersey 08625, Attn: Stacy Cortez.


I **FURTHER CERTIFY** that I today caused two copies of same to be served via federal express to:

**Joel Kreizman, Esq.  
Evans, Osborne & Kreizman, LLC  
802 W. Park Avenue  
Oakhurst, NJ 07755**

**Jeffrey Pollock, Esq.  
Fox Rothschild LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648**

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CARVELLI, P.C.  
210 Park Avenue, Suite 301  
P.O. Box 240  
Florham Park, New Jersey 07932  
973-635-6300  
Attorneys for Proposed Amici Curiae the  
North Jersey Media Group Inc., The New  
Jersey Press Association, NBC Universal,  
Inc. and The New York Times Company

By: \_\_\_\_\_

  
Bruce S. Rosen

Dated: November 25, 2009

McCUSKER, ANSELM, ROSEN & CARVELLI, P.C.  
210 Park Avenue, Suite 301  
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Attorneys for Proposed Amici Curiae  
North Jersey Media Group Inc.,  
New Jersey Press Association,  
NBC Universal and  
The New York Times Company

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

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TOO MUCH MEDIA INC.,	:	
	:	Docket No. A-964-09T3
Plaintiffs	:	
	:	
	:	
<b>Vs.</b>	:	
	:	AMENDED NOTICE OF MOTION OF
	:	NORTH JERSEY MEDIA GROUP INC.,
	:	NEW JERSEY PRESS ASSOCIATION
SHELLEE HALE	:	NBC UNIVERSAL &
	:	THE NEW YORK TIMES COMPANY
	:	TO APPEAR AS AMICI CURIAE
	:	
Defendants	:	
	:	
	:	

---

To: **Joel Kreizman, Esquire**  
EVANS, OSBORNE & KREIZMAN, LLC  
802 W. Park Avenue  
P.O. Box 520  
Oakhurst NJ 07755

**Jeffrey Pollock, Esquire**  
FOX ROTHSCHILD LLP  
Princeton Pike Corporate Center  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648-2311

PURSUANT to R. 1:13-9, North Jersey Media Group Inc., New Jersey Press Association, NBC Universal and The New York Times Company ("Proposed Amici") hereby apply to this Court for an Order granting leave to appear in this action as Amici Curiae and file the within brief.

Proposed Amici shall rely upon the attached Certifications of Jennifer A. Borg, George White, Steve Chung and David E. McCraw and the proposed Brief of Amici Curiae in support of this Motion. North Jersey Media Group originally submitted this Motion without the proposed Brief on November 16, 2009.

Participation in oral argument is respectfully requested.

Respectfully submitted,

**MCCUSKER, ANSELM, ROSEN,  
& CARVELLI**  
**A PROFESSIONAL CORPORATION**  
Attorneys for Amici Curiae North  
Jersey Media Group Inc.,  
New Jersey Press Association,  
NBC Universal and  
The New York Times Company

By:   
\_\_\_\_\_  
**BRUCE S. ROSEN**

Dated: November 25, 2009

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

---

TOO MUCH MEDIA INC.,	:	
	:	Docket No. A-964-09T3
Plaintiffs	:	
	:	
	:	
<b>Vs.</b>	:	
	:	
	:	
SHELLEE HALE	:	
	:	
Defendants	:	
	:	
	:	

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS AMICI  
CURIAE AND PROPOSED BRIEF AS AMICI CURIAE

---

MCCUSKER, ANSELM, ROSEN, &  
CARVELLI  
A Professional Corporation  
210 Park Avenue, Suite 301  
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(973) 635-6300  
Counsel for Amici Curiae  
North Jersey Media Group  
Inc., The New Jersey Press  
Association, NBC Universal,  
Inc. and The New York Times  
Company

ON THE BRIEF:  
Bruce S Rosen, Esq.

OF COUNSEL:  
Jennifer A. Borg, Esq.  
Thomas Cafferty, Esq.

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**STATUTE**

N.J.S.A. 2A:84A-21 ..... 1



## INTRODUCTORY STATEMENT

In its decision below, the Law Division makes three findings: (1) that the New Jersey Newspersons Shield Law, N.J.S.A. 2A:84A-21, does not protect defendant and entitle her to a protective order because she does not fit within the definition of a professional newsperson under the statute; (2) that because defendant is "is neither a journalist nor member of the media," she is not entitled to the protections of New Jersey's "fair comment" privilege, which requires that libel plaintiffs prove actual malice where the publication involves a matter of public concern, and (3), that plaintiff is entitled to presumed damages because (a) plaintiff is not a public figure and the publication does not involve a matter of public concern, (b) presumed damages are permitted in libel cases involving private plaintiffs, and (c) Internet publications should be considered slander, rather than libel so that presumed damages in the four "slander per se" categories can be applied.

*Amici Curiae* New Jersey Press Association, North Jersey Media Group Inc., NBC Universal, Inc. and The New York Times Company believe that the decision of the Court below was erroneous so far as it considered the matter of damages in a defamation claim. To the extent that

plaintiff has limited itself to presumed damages, the case is not actionable under New Jersey Law because the presumed damages doctrine is disfavored and applies only in matters of slander *per se*, and the Court below clearly erred in determining that the slander *per se* doctrine applies to written Internet postings.

If this Court finds that the matter cannot proceed because there are no damages, plaintiff's claims would not be actionable and should then be dismissed. If that is the case, this Court does not have to reach the finding below that defendant is a journalist entitled to the protection of the Newsperson's Shield. *Amici* does not have enough knowledge of the complex factual scenario in this matter to make an informed decision as to whether plaintiff is protected by the Newsperson's Shield or whether the fair comment privilege is applicable to plaintiff.

## ARGUMENT

THE CONCEPT OF SLANDER PER SE IS  
INAPPLICABLE TO WRITTEN LIBEL, WHICH  
REQUIRES THAT A PLAINTIFF MUST  
DEMONSTRATE "CONCRETE DAMAGES" TO  
SURVIVE SUMMARY JUDGMENT

To the extent that plaintiff has represented to the Court below that it is relying on presumed damages in its remaining count, this action should be dismissed. The Court below misunderstood and misstated the law regarding damages in libel cases, which require demonstration of "concrete damages." The Court's contention that written Internet defamation should be treated as slander, more specifically, slander *per se*, with presumed damages, is utterly unsupported by any case law, including the unpublished and reversed decision that it cited.

Most, if not all newspapers and magazines have websites that includes identical or nearly identical materials. It would be ludicrous - and problematic - to have Courts utilize a different standard of damages for the same publication in different mediums.

Nevertheless, the Court below found:

(2) because defendant's message board postings allege that plaintiffs have engaged in criminal conduct are incompetent with respect to their business practices, the complaint is actionable without proof of pecuniary damages and therefore defendant's motion to dismiss the complaint is denied.

Slip op. at 19.

The First Amendment precludes an award of presumed damages for a defamatory statement involving an "issue of public concern," without a showing of malice. Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 757-61, 105 S.Ct 2939, 2944-46 (1985); Gertz v. Robert Welch, Inc., 418 U.S. 323, 348-50, 94 S. Ct. 2997, 3011-12 (1974); Rocci v. Ecole Seconaire MacDonald-Cartier, 165 N.J. 149, 156 (2000). Appellant maintains that such a showing has been made.

However, this State's Courts have gone further, refusing to accept the ancient notion that damages can be presumed at all except in within the four categories of cases of slander per se: statements that impute commission of a crime, contraction of a loathsome disease, occupational incompetence or misconduct, and unchastity of a woman.<sup>1</sup> Ward v. Zelikovsky, 136 N.J. 516, 540 (1994); Sisler v. Gannett Co., 104 N.J. 256, 281 (1986); McLaughlin v. Rosanio, Bailets & Talamo 331 N.J. Super. 303, 319-320 (App. Div. 2000). The Ward and McLaughlin Courts railed against permitting presumed damages, even in cases of slander, but stopped short of eliminating slander *per se*.

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<sup>1</sup> Gnapinsky v. Goldyn, 23 N.J. 243, 250-51 (1957)

In cases of written libel and in cases of slander that do not fall within the four categories, a plaintiff must demonstrate "concrete proof" of the alleged damage to their reputation, either pecuniary or non-pecuniary. Ward, supra, 136 N.J. at 540; Sisler, supra, 104 N.J. at 281; McLaughlin, supra, 331 N.J. Super. at 319-320.<sup>2</sup> The McLaughlin panel urged the demise of the "presumed damages" doctrine, so that a plaintiff "must adduce concrete proof that he or she was harmed either by way of pecuniary losses or injury to his reputation." McLaughlin, supra, 331 N.J. Super. at 319-320. "[T]he time has come to adopt a uniform rule for both libel and slander actions: a plaintiff must prove actual reputational injury, either pecuniary or non-pecuniary." Id.

The reasons for the "concrete damages" requirement are well explained; in Sisler, supra, the Supreme Court described the difficulties encountered when courts attempt to measure damages for injury to reputation:

Injury to reputation, even more so than personal injury or mental anguish, which are both amenable to expert testimony, defies exact measurement. The type of direct testimony lacking here has traditionally

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<sup>2</sup> The acceptable forms of concrete showings of reputational injury discussed in the Sisler block quote below include "proof [ ] that an existing relationship has been seriously disrupted" or "[t]estimony of third parties as to diminished reputation[.]" Sisler, supra, 104 N.J. at 281.

been hard to produce; in fact, it was this difficulty that engendered the "presumed damages" doctrine. (citation omitted). However, the inherently amorphous quantification of libel damages potentially enables juries to vary damages awards in accordance with the popularity or unpopularity of the speaker or the view expressed. (citation omitted). Accordingly, a plaintiff should offer some concrete proof that his reputation has been injured. One form of proof is that an existing relationship has been seriously disrupted, reflecting the idea that a reputation may be valued in terms of relationships with others. (citation omitted) Testimony of third parties as to a diminished reputation will also suffice to prove "actual injury." Awards based on a plaintiff's testimony alone or on "inferred" damages are unacceptable.

Because of the elusive nature of such evidence, courts must . . . weigh carefully the type and substance of reputation-injury evidence presented.

104 N.J. at 281. (emphasis added). Subsequently, the Appellate Division made clear that in entertaining a summary judgment motion, a plaintiff is required to show that sufficient evidence of this specific type of damages exists. "Similar to an ordinary negligence matter, to resist a motion for summary judgment, a plaintiff must present proof of a material question of fact as to both liability and damages." Rocci v. Ecole Secondaire MacDonald-Cartier, 323 N.J. Super. 18, 25 (App. Div. 1999), aff'd, supra, 165 N.J. 149.

In this case, the trial judge cited the unpublished decision Klehr Harrison Harvey Branzburg & Ellers, LLP v. JPA Development Inc., No. 0425, 2006 Phila. Ct. Com. Pl. LEXIS 1 (Jan. 4, 2006), rev'd without opinion, 898 A.2d 1141 (Pa Super. Ct. 2006), a case involving a subpoena for the identity of an anonymous poster. While the Pennsylvania court in *dicta* discussed the need to examine Internet defamation with its broad impact on society "so as to require new visions," the Court below here extrapolated that to mean that because of the instantaneity of Internet postings, Internet defamation is "also somewhat comparable to spontaneous oral statements." Slip Op at 16. In so doing, the Court below appeared to apply a slander *per se* standard to Internet postings, but then confused the matter further by adopting the Pennsylvania judge's use of the term "defamatory *per se*."

The Court below is not the first to confuse the two distinct defamation concepts, which have little to do with each other except for the use of the term "*per se*." . Slander *per se* refers specifically to the four categories of slander considered so clearly damaging to reputation that a plaintiff may establish a cause of action without presenting any evidence of actual damage to reputation; defamation *per se* refers to a statement whose defamatory

meaning is so clear on its face that the court is not required to submit that issue to the jury. McLaughlin, supra, 331 N.J. Super. At 319.

The Court below's finding that the complaint is actionable without proof of damages because it has alleged "plaintiffs have engaged in criminal conduct are incompetent with respect to their business practices" refers specifically to two categories of slander *per se* and thus applies incorrectly applies the slander *per se* standard - as disfavored as it is -- to a libel claim in place of the requirement that "concrete damages" be proven.

If this Court determines that this issue is dispositive, it should dismiss this action without the need to deal with the thorny issue of whether a "blogger" is entitled to the protections sought under the Shield Law within the difficult factual scenario presented by this case.



CONCLUSION

For the reasons set forth above, amici New Jersey Press Association, North Jersey Media Group Inc., NBC Universal, Inc. and The New York Times Company respectfully requests that this Court reject the findings and conclusions of the court below on the issue of libel damages.

Respectfully Submitted,

MCCUSKER, ANSELM, ROSEN, &  
CARVELLI  
A Professional Corporation  
210 Park Avenue, Suite 301  
Florham Park, New Jersey 07932  
(973) 635-6300  
Counsel for North Jersey Media  
Group Inc., The New Jersey  
Press Association, NBC  
Universal, Inc. and The New  
York Times Company

By: \_\_\_\_\_



Bruce S. Rosen

Of counsel:

Jennifer A. Borg, Esq.  
Thomas Cafferty, Esq.

November 25, 2009

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
Docket No.

Civil Action

TOO MUCH MEDIA, LLC, JOHN  
ALBRIGHT, and CHARLES  
BERREBBI,

Plaintiffs,

v.

SHELLEE HALE and 'JOHN DOES 1  
THROUGH 13,

Defendants.

On Appeal from

Superior Court of New Jersey,  
Law Division-Monmouth County,  
Docket No. MON-L-2376-08

Sat Below:

Hon. Louis F. Locasio, Jr.  
J.S.C. (now ret'd)

Hon. Daniel M. Waldman,  
J.S.C. (on reconsideration)

**CERTIFICATION OF  
GEORGE H. WHITE**

GEORGE WHITE hereby certifies as follows:

1. I am the Director of Government Affairs of the New Jersey Press Association (hereinafter "NJPA").
2. NJPA is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. The NJPA membership includes approximately 17 daily newspapers, over 160 weekly newspapers, as well as corporate and individual associate members.
3. NJPA submits this Certification in support of its motion to appear as Amicus Curiae together with North Jersey Media Group in this matter.

4. NJPA considers the issues presented in this case to be significant not only to it, but also to the public, which its members serve. The media has a direct and immediate interest in the outcome of the litigation herein presented to this Court. This case presents significant questions concerning whether alleged defamatory statements made on the internet are to be treated as libel or slander and, if slander, whether damages may be presumed. The Trial Court Decision in this case, holding that defamatory statements made on the internet are to be treated as slander and that damages may be presumed has a significant effect on the members of NJPA, many of whom publish an internet version of their print newspaper. This Association has been granted leave to appear in a number of other cases where important issues relative to freedom of the press issues have been litigated. Among those matters are the following:

STATE v. ALLEN, 73 N.J. 132 (1977);

STATE v. BOIARDO, 82 N.J. 446 (1980);

LAWRENCE v. BAUER, 89 N.J. 451 (1982);

MARESSA v. NEW JERSEY MONTHLY, 89 N.J. 176 (1982);

STATE v. WILLIAMS/KOEDATICH, 93 N.J. 39 (1983);

FAIRLAWN SHOPPER, INC. v. DIRECTOR, DIV. OF TAXATION,  
98 N.J. 64 (1984);

SISLER v. GANNETT CO., INC., 104 N.J. 256 (1986);

IN RE: SCHUMAN, 114 N.J. 14 (1989);

APPLICATION OF VV PUB. CORP., 120 N.J. 508 (1990);

SOUTH JERSEY PUBLISHING CO., INC. v. NEW JERSEY EXPRESSWAY AUTH., 124 N.J. 478 (1991);

TURF LAWNMOWER REPAIR, INC. v. BERGEN RECORD CORP., 139 N.J. 392 (1994);

LYNCH v. NEW JERSEY EDUCATION ASSN., 161 N.J. 152 (1999);

ROCCI v. ECOLE SECONDAIRE, 165 N.J. 149 (2000);

ASBURY PARK PRESS v. LAKEWOOD TP. POLICE DEPT., 354 N.J. Super. 146 (2002);

DAILY JOURNAL v. POLICE DEPT. OF CITY OF VINELAND, 351 N.J. Super. 110 (2002);

STATE v. NEULANDER, 173 N.J. 193 (2002);

COURIER NEWS v. HUNTERDON COUNTY PROSECUTOR'S OFFICE, 358 N.J. Super. 373 (2003);

KINSELLA v. WELCH, 362 N.J. Super. 143 (2003);

ESTATE OF FRANKL v. GOODYEAR TIRE & RUBBER CO., 181 N.J. (2004);

COURIER NEWS v. HUNTERDON COUNTY PROSECUTOR'S OFFICE, 378 N.J. Super. 539 (App. Div. 2005);

GANNETT NEW JERSEY PARTNERS, LP v. COUNTY OF MIDDLESEX 379 N.J. Super. 205, 877 A.2d 330, (App. Div. 2005);

NEW JERSEYANS FOR A DEATH PENALTY MORATORIUM v. NEW JERSEY DEP'T OF CORRECTIONS, 185 N.J. 137 (2005); and

KOMUVES v. TOWNSHIP OF EDISON, 2006 WL 2389633 (App. Div. 2006).

SENNA v. FLORIMONT, 196 N.J. 469 (2008).

SALZANO v. NORTH JERSEY MEDIA GROUP, Supreme Court of New Jersey, Docket No. 63,529 (2009).

5. Due to the significant impact that this Court's determination herein will have, NJPA respectfully requests that this Court grant its motion herein for leave to appear as Amici Curiae with North Jersey Media Group.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*George H. White*

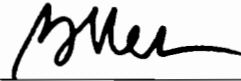
---

GEORGE H. WHITE

Dated: November 25, 2009

R. 1:4-4(c) Certification of Genuine Facsimile Signature

I certify that the attached signature of George H. White on his Certification is genuine and was transmitted via PDF file and that this document or a copy with an original signature affixed will be filed if requested by the Court or a party.



---

BRUCE S. ROSEN

Dated: November 25, 2009

MCCUSKER, ANSELMI, ROSEN & CARVELLI, P.C.  
210 Park Avenue, Suite 301  
P.O. Box 240  
Florham Park, New Jersey 07932  
(973) 635-6300  
Attorneys for Proposed Amici Curiae  
North Jersey Media Group Inc.,  
New Jersey Press Association and  
NBC Universal

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

---

TOC MUCH MEDIA INC.,	:	
	:	Docket No. A-964-09T3
Plaintiffs	:	
	:	
	:	
vs.	:	
	:	CERTIFICATION OF STEVE CHUNG
	:	
	:	
SHELLEE HALE	:	
Defendants	:	
	:	
	:	

---

STEVE CHUNG, of full age, certifies and states as follows:

1. I am Senior Media Counsel of NBC Universal.
2. I make this certification in support of NBC Universal's motion to appear along with North Jersey Media Group Inc. and the New Jersey Press Association in the within matter as amici curiae and to participate in oral argument.
3. NBC Universal has no connection with either party.
4. NBC Universal is one of the world's leading media and entertainment companies in the development, production, and marketing of news, entertainment and information to a global audience. Among other businesses, NBC Universal owns and operates

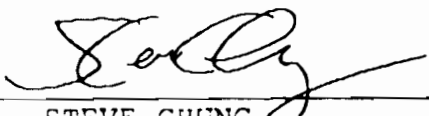
the NBC television network, the Spanish-language television network Telemundo, NBC News, several news and entertainment networks including MSNBC and CNBC, and a television stations group consisting of 10 owned-and-operated television broadcast stations that produce substantial amounts of local news, sports and public affairs programming. NBC News produces the "Today" show, "NBC Nightly News with Brian Williams," "Dateline" and "Meet the Press." NBC Universal is 80%-owned by General Electric Company, with 20% controlled by Vivendi Universal S.A.

5. NBC Universal considers the issues presented by this case to be significant and is concerned that the viewpoint of the news media be presented to the Court, for the media - and the public it serves - have a direct and immediate interest in the outcome of the litigation herein, which involves significant questions as to standards for damages in defamation claims as well as the fair comment privilege.

6. Due to the substantial effect that this Court's determination herein will have, NBC Universal respectfully requests that this Court grant the Motion herein for leave to appear as Amici Curiae and to participate in oral argument.



I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By:   
STEVE CHUNG

Dated: November 25, 2009

R. 1:4-4(c) Certification of Genuine Facsimile Signature

I certify that the attached signature of Steve Chung on his Certification is genuine and was transmitted via PDF file and that this document or a copy with an original signature affixed will be filed if requested by the Court or a party.

A handwritten signature in black ink, appearing to read "B. Rosen", written over a horizontal line.

BRUCE S. ROSEN

Dated: November 25, 2009

McCUSKER, ANSELM, ROSEN & CARVELLI, P.C.  
210 Park Avenue, Suite 301  
P.O. Box 240  
Florham Park, New Jersey 07932  
(973) 635-6300  
Attorneys for Proposed Amicus Curiae North Jersey Media Group Inc.

---

TOO MUCH MEDIA INC., : SUPERIOR COURT OF NEW JERSEY  
Plaintiff : APPELLATE DIVISION  
 :  
 : Docket No. A-964-09T3  
 :  
v. :  
 : CERTIFICATION OF JENNIFER A.  
 : BORG, ESQ. IN SUPPORT OF  
 : NORTH JERSEY MEDIA GROUP INC.'S  
SHELLEE HALE : MOTION TO APPEAR AS  
 : AMICUS CURIAE  
 :  
Defendant :  
 :

---

JENNIFER A. BORG, of full age, certifies and states as follows:

1. I am Vice President and General Counsel of North Jersey Media Group, Inc. ("NJMG") and as such, I am fully aware of the facts and circumstances discussed herein.

2. I make this certification in support of the NJMG's motion to appear in the within matter as *amicus curiae*.

3. NJMG has no connection with either party.

4. NJMG publishes numerous newspapers and owns websites covering news of New Jersey; its flagship newspapers are *The Record* and the *Herald News* and its primary website is *northjersey.com*. NJMG has appeared in numerous cases as *amicus*

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curiae in state and federal courts on issues related to the news media and First Amendment issues related to the press and free expression.

5. In addition, NJMG and its counsel have wide experience in defamation cases and can assist the Court in dealing with these issues in this case, which have wide public importance.

6. NJMG believes the findings of the Court below in this matter misconstrue relevant New Jersey appellate decisions establishing standards for damages in defamation claims as well as the fair comment privilege.

7. NJMG is concerned that the point of view of the news media be presented to the Court in considering this matter in order that the news media's mission to present news of public concern not be made more difficult by a higher standard of liability.

8. NJMG has contacted numerous other media entities and organizations who have similar interests in the hopes that they would review the proposed amicus brief and seek to join its proposed brief. NJMG anticipates that some of these media entities and organization will agree to appear as amici.

9. NJMG therefore respectfully requests that this Court grant NJMG amicus status and provide that additional parties may join in the NJMG brief by submitting to the Court a statement of interest without formal motion.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By:   
JENNIFER A. BORG

Dated: November 13<sup>th</sup>, 2009

R. 1:4-4(c) Certification of Genuine Facsimile Signature

I certify that the attached signature of Jennifer A. Borg on her Certification is genuine and was transmitted via PDF file and that this document or a copy with an original signature affixed will be filed if requested by the Court or a party.

  
\_\_\_\_\_  
BRUCE S. ROSEN

Dated: November 25, 2009

MCCUSKER, ANSELM, ROSEN & CARVELLI, P.C.  
210 Park Avenue, Suite 301  
P.O. Box 240  
Florham Park, New Jersey 07932  
(973) 635-6300  
Attorneys for Proposed Amici Curiae  
North Jersey Media Group Inc.,  
New Jersey Press Association,  
NBC Universal and  
The New York Times Company

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

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TOO MUCH MEDIA INC.,	:	
	:	Docket No. A-964-09T3
Plaintiffs	:	
	:	
	:	
vs.	:	
	:	CERTIFICATION OF DAVID E. McCRAW
	:	
	:	
SHELLEE HALE	:	
Defendants	:	
	:	
	:	

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DAVID E. McCRAW, of full age, certifies and states as follows:

1. I am Vice President and Assistant General Counsel of The New York Times Company.

2. I make this certification in support of The New York Times Company's motion to appear along with North Jersey Media Group Inc., the New Jersey Press Association and NBC Universal in the within matter as *amici curiae* and to participate in oral argument.

3. The New York Times Company has no connection with either party.

4. The New York Times company owns *The New York Times*, the largest circulation seven-day-a-week newspaper in the nation. The Company also owns *The International Herald Tribune*, *The Boston Globe*, 15 other newspapers around the country, and more than 50 websites, including *NYTimes.com*, *Boston.com*, and *About.com*.

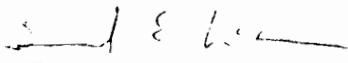
5. The Times covers the courts, government, politics, and public affairs in New Jersey, and has been granted leave to appear in a number of other cases, in New Jersey and throughout the nation, where important issues relative to freedom of the press have been litigated.

6. The issues presented by this case are significant and The New York Times Company is concerned that the viewpoint of the news media be presented to the Court, for the media – and the public it serves – have a direct and immediate interest in the outcome of the litigation herein.

7. Due to the substantial effect that this Court's determination herein will have, The New York Times Company respectfully requests that this Court grant the Motion herein for leave to appear as *amici curiae* and to participate in oral argument.



I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

By:   
-----  
DAVID E. McCRAW

Dated: November 25, 2009

R. 1:4-4(c) Certification of Genuine Facsimile Signature

I certify that the attached signature of David E. McCraw on his Certification is genuine and was transmitted via PDF file and that this document or a copy with an original signature affixed will be filed if requested by the Court or a party.

A handwritten signature in black ink, appearing to read 'BRUCE S. ROSEN', written over a horizontal line.

BRUCE S. ROSEN

Dated: November 25, 2009