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Comment decision in high court's hands

Author(s): ASHLEY SMITH

Staff Writer **Date:** November 5, 2009 **Section:** State/New England

CONCORD - The New Hampshire Supreme Court heard arguments Wednesday in a free-speech case that calls into question whether media outlets can protect the identities of anonymous online commenters. The case also has potentially broad implications in determining who constitutes the media in an Internet age that has blurred the line between traditional news outlets and bloggers or citizen journalists.

No decision was made Wednesday, but the state's highest court has several options, including upholding a lower court's decision to force the Web site in question to reveal its anonymous source or reversing that decision and extending the protections designed for traditional media to a different breed of Internet journalists.

The complex case centers around a mortgage-industry watchdog Web site Mortgage Lender Implode-O-Meter that posts news from other sources about the housing finance crisis. Last fall, the site posted a story about a New Hampshire company, The Mortgage Specialists Inc., that was being investigated by banking officials for a number of alleged violations, including forging signatures, destroying documents and unfair or deceptive business practices.

Along with the story, Implode-O-Meter staff posted a confidential financial document MSI had prepared for the New Hampshire Banking Department, which was provided to them by an unnamed source. Some time later, a writer using the pseudonym "Brianbattersby" posted a comment on the site accusing MSI President Michael Gill of fraud.

MSI asked the site's publisher, Implode-Explode Heavy Industries, to take down the document and comment, which it did. But the publisher refused to identify the person who leaked the chart or the commenter. It also refused to promise that it wouldn't repost the chart in the future.

MSI eventually sued, and won.

A Rockingham County Superior Court judge ordered the publisher to reveal its anonymous sources to the company and not to post confidential documents in the future. The Web site appealed that decision to the state's Supreme Court, which agreed to take on the case.

While both parties agree this is a First Amendment case, they disagree on whether it will have any significant impact on the right of the media to protect its sources.

Lawyer Jeremy Eggleton, of Orr & Reno in Concord, who represents Implode-Explode, said the case has potential broad, negative implications for the New Hampshire media. It threatens not only the media's right to keep online commenters anonymous, but, more importantly, the right to protect the identity of anonymous sources and to publish confidential documents, he said.

"It wouldn't just undermine, it would completely undo the protections of the press in this state," Eggleton said.

Eggleton contends the Implode-O-Meter Web site was doing journalism when it published the story and information about MSI and should be protected under the state's qualified reporter's privilege, which protects confidential sources used by traditional media.

Alex Walker, president of the Manchester-based firm Divine Millimet, who is representing MSI, sees things a different way. He argues that Implode-O-Meter is not a protected member of the media because it does not do original reporting. Even if it were, sometimes a court orders a traditional media outlet to reveal its source when it's proven to be essential to a case and there's no other way to get the information, he said.

"Anytime anyone invokes the First Amendment, they talk about the broader implications, but what we're asking the court to do is something that courts in New Hampshire have been doing for many, many years," **Walker** said. "We're not asking the court to plow any new ground."

Also at issue in the case is whether the Impode-O-Meter Web comment was libelous, meaning harmful and untrue. No entity can win a libel case based on harmful statements that are true.

The Supreme Court justices heard 15 minutes of arguments from each side, firing questions throughout. Senior Associate Justice Linda S. Dalianis asked Eggleton whether the court would be setting any kind of major precedent by agreeing with him because the reporter's protection in this case involves the Internet, not just print media.

Associate Justice Gary E. Hicks called the lower court's ruling confusing, and a couple justices hinted at sending the case back to that court for clarification.

Eggleton wants the Supreme Court to throw out the case and establish

a legal standard on which similar cases can be decided in the future.

Walker wants the court to uphold the original decision requiring Implode-O-Meter to reveal its anonymous sources.

“The primary goal is to make sure that something like this doesn't happen again,” he said. “The company is extremely concerned that the document it provided to regulators somehow found its way onto the Web site.”

Ashley Smith can be reached at 594-6446 or asmith@nashuatelegraph.com.

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