

VERDICTS & SETTLEMENTS

FRIDAY, OCTOBER 23, 1998

\$3M Verdict Extinguishes Marijuana-Smoking Libel

TYPE: Tort, defamation, libel.

VERDICT: \$3,040,000

CASE/NUMBER: *Capt. Russell A. Smith v. Orange Blossom Lines Inc.; Dennis Ardecki and Roland Ramos /YC029244.*

COURT/DATE: L.A. Superior Torrance / September 25, 1998.

JUDGE: Jean E. Matusinka, Dept. B.

DISBURSEMENT: \$1,824,512 (economic); \$975,000 (non-economic); \$250,200 (punitive against Orange Blossom Lines); plus costs of \$11,111.37.

ATTORNEYS: Plaintiff — Seth M. Goldberg (of counsel to Bleau, Fox & Associates, LA); Kurt A. Schlichter (Manhattan Beach). Defendant — Jack Daniels (Daniels, Baratta & Fine, LA).

TECHNICAL EXPERTS: Plaintiff — Raymond G. Schultz, Ph.D., economist, San Marino; William Wenger, military, El Segundo. Defendant — John R. Haluck, Esq., military expert, Sacramento; John C. Bahnsen, Jr., military, New Cumberland, WV; Kip E. Jones, CPA economist. L.A.

FACTS: The plaintiff in this case was Capt. Russell A. Smith, a 35-year-old U.S. Army officer assigned to the California Army National Guard as the Commander of Company C, 3-160 Infantry. Defendant Orange Blossom Lines Inc. was hired to transport persons to and from Camp Roberts for their training weekend. On June 21, 1996, defendant Roland Ramos, a driver employed by Orange Blossom, picked up Company C, 3-160 Infantry for transport to Camp Roberts. Also on the bus were officers whose full time jobs are police officers in the Los Angeles Police Department. On June 22, all soldiers of the battalion were administered an unannounced urinalysis test for drug use. None of the members of Company C tested positive for any illegal substances.

On June 23, Company C departed Camp Roberts at 11:50 a.m. and stopped at 1:15 p.m. for lunch. At that time, the plaintiff was informed by one of his men that defendant Ramos had locked the bathroom door on the bus and would not give him the key because Ramos thought soldiers were smoking marijuana in the bathroom.

The plaintiff then approached Ramos, and said "No one is smoking pot on your bus. I have three LAPD officers on that bus." The plaintiff requested that Ramos unlock the door. When the plaintiff boarded the bus again, he noticed that Ramos had not unlocked the bathroom door and required soldiers to get the key from him and return it when finished. The bus arrived in Inglewood at 4:30 p.m., was inspected, cleaned by

soldiers and reinspected before it left the Inglewood Armory. No marijuana, vomit, empty alcohol bottles or anything unusual was found. Sunflower seeds were found, and the bus was swept clean. The plaintiff then dismissed the entire incident as inconsequential. On June 28, 1996, defendant Dennis Ardecki, vice president of Orange Blossom, wrote a letter accusing plaintiff of allowing his soldiers to smoke marijuana on the bus with his full knowledge and consent. Essentially, the letter accused the plaintiff of four felony charges under the Uniform Code of Military Justice, specifically: Article 112(b) (1) (failing to report drug use by his soldiers); Article 133 (conduct unbecoming an officer); Article 92 (violating an order or regulation and Article 134 (general rule regarding good order and discipline). Each charge could have resulted in a prison sentence and/or dismissal from the service. Ardecki addressed the letter and sent it to three separate locations. The address on the letter heading is to the Department of the Army, Transportation Operations, U.S. Army Finance & Accounting Center in Indianapolis. Ind. This unit or arm of the government has no legal or command authority over Smith or California Army National Guard units. All that occurs in Indianapolis is the processing of payments to civilian vendors, among other accounting operations. They cannot impose discipline. The letter was copied to "United States Property and Fiscal Officer (USPFO) of California Helen Starling" and "Inglewood Armory." USPFO controls the funds used to support the National Guard units in California. Helen Starling is a clerk at USPFO that coordinates when, where, who and how commercial buses and bus companies are used by the government. Neither USPFO or Helen Starling have legal or command authority over Smith or California Army National Guard units. They cannot impose discipline. The letter was also sent to "Inglewood Armory," not to the Commander of 3-160 Infantry. Anybody at the armory could have opened the letter, and, in fact, it was opened by an individual who had no interest in the communications contained therein. Two official investigations conducted by the Army concluded that the allegations of misconduct were unsubstantiated, that the claim for \$200 be denied and that all military refrain from doing business with defendant Orange Blossom Lines. In December 1995, the plaintiff had been selected for a promotion to major. Upon publication of the letter, plaintiff's personnel file was "flagged" (no favorable actions permitted) for almost 11 months while the investigations were conducted. The plaintiff brought this action against the defendants based on libel, libel per se, slander, slander per se, and intentional infliction of emotional distress.

CONTENTIONS: The plaintiff contended that defendants were responsible for the initial publication of the letter that caused plaintiff to be denied a

timely promotion to major; lose a prestigious career enhancing position with the Inspector General; lose a prestigious career enhancing position as a congressional fellow because he was not a major; lose a career enhancing position as a student in residence at the U.S. Army Command and General Staff College; and a second "pass-over" as a congressional fellow; lose the 11 months time in grade, and, assuming that his life expectancy is 70 years of age, the loss of those monies from the time of July 1996. The plaintiff also contended that the letter and the events described therein was a fabrication by defendants; that the bus, upon arrival at Camp Roberts, was clean and was clean when it left the Inglewood Armory at the end of the weekend; and that the \$200 cleaning fee was fraudulently charged to the government because defendant Orange Blossom Lines does not reimburse its drivers for any time incurred in cleaning buses that are left dirty by customers. The plaintiff further contended that the qualified privilege did not apply because the letter was sent with malice as evidenced by the fact that Ardecki effected the widest possible dissemination of the allegations; did not conduct an investigation into the allegations; did not interview Ramos or question him in detail; did not call or speak to any of the soldiers or officers of 3-160 Infantry about what allegedly occurred on the bus; did not speak to any of his other bus drivers about what allegedly occurred and testified under oath that he expressed doubt as to the veracity of Ramos when he questioned Ramos on three occasions. The defendants contended that the incident occurred, but that the qualified privilege of Civil Code 47(c) applied. The defendants also contended that plaintiff had not suffered any damages; and that the claimed damages were speculative.

DAMAGES: The plaintiff claimed loss of several prestigious positions in the military and promotion delayed with a resulting loss in future pension benefits.

JURY TRIAL: Length, eight days; Poll, 12-0; Deliberation, five hours.

SETTLEMENT DISCUSSIONS: The plaintiff initially demanded \$600,000, raised to \$1.5 million. The defendants offered nothing.

MEDIATION: A four-hour mediation held before retired judge Eric Younger did not result in settlement.

POST-TRIAL MOTIONS: Motions for a new trial and judgment notwithstanding the verdict are set for Nov. 17, 1998.

OTHER INFORMATION: The verdict was reached approximately one year and five months after the case was filed. The defendants made a motion for summary judgment in June 1998 which was denied. The defendants' petition for a writ was also denied.