

CLIENT ALERT

Sluggers Hit News Network with Defamation Suit Over Reports of Performance-Enhancing Drugs

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In early January, Washington Nationals first baseman Ryan Zimmerman and Philadelphia Phillies first baseman Ryan Howard filed complaints against Al Jazeera America in federal court in Washington, D.C. for defamation and false light invasion of privacy. The (largely identical) complaints attack the veracity of Al Jazeera's December 26, 2015 report implicating Zimmerman and Howard, among others, in the use of performance-enhancing drugs. Importantly, shortly before the report aired and was published on Al Jazeera's website, the report's main source recanted his story.

The defamation case against Al Jazeera may be difficult for the first basemen, for at least three reasons:

- Truth is a complete defense to defamation – if Al Jazeera's allegations in the report are true, the sluggers will strike out. Al Jazeera's truth defense is also a risk for Zimmerman and Howard: it subjects their respective training and supplement usage programs to discovery.
- Because Zimmerman and Howard are public figures under defamation law, they must prove that Al Jazeera had actual malice in making the allegations against them – either by proving that Al Jazeera knew that its statements were false, or by proving that Al Jazeera acted with reckless disregard for the allegation's truth or falsity. While the recantation from Al Jazeera's main source may be a helpful fact, the ballplayers will need more to show actual malice.
- Neither Al Jazeera nor its employees made the accusations contained in the investigative report – the report merely gathered news in the form of its source's statements. Defamation law grants journalists substantial leeway to gather and disseminate news, even if the news later proves untrue.

But the first basemen need not swing for the fences in this case. The more important win may not come from the district court, but from the court of public (and sponsor) opinion. Zimmerman and Howard's complaints may be a tactical move in a larger brand protection strategy. Regardless of the cases' outcomes, so long as the players maintain their wholesome reputations with fans and, relatedly, valuable sponsors, the players may be satisfied.

The recent announcement that the news network is shutting down its U.S. operations on April 30th adds an interesting wrinkle to the case. For now the lawsuits are active, but don't be surprised if the suits were to settle quietly – likely before any discovery would begin.

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