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IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

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RICHARD R. ROOKER, CLERK

 R.C.

GLENN R. FUNK,

Plaintiff,

v.

SCRIPPS MEDIA, INC., and
PHIL WILLIAMS,

Defendants.

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Case No. 16C-333

**MEMORANDUM IN SUPPORT OF DEFENDANTS'
APPLICATION FOR INTERLOCUTORY APPEAL**

Defendants Scripps Media, Inc. and Phil Williams have filed an Application for Interlocutory Appeal of the Court's January 13, 2017 ruling. This Memorandum is submitted as part of, and in support of, that Application.

I. INTRODUCTION

Defendants seek an immediate appeal of this Court's January 13, 2017 ruling that granted Plaintiff's Motion to Compel the Defendants to answer interrogatories and produce documents regarding Defendants' investigation of the two news stories at issue in this lawsuit. Defendants are asking permission to appeal the Court's ruling that actual malice is relevant to Defendants' assertion of the fair report privilege. An interlocutory appeal of this issue is important and necessary because that ruling will affect every stage of this case as it goes forward and because such a ruling would cause harm to Defendants and to the news media's constitutional rights and duties to investigate and report on newsworthy events, including court cases and other official proceedings.

II. PROCEDURAL HISTORY

Defendants rely upon the “fair report privilege” in their Motion to Dismiss Plaintiff’s defamation and false light-invasion of privacy claims.¹ Plaintiff sought discovery from Defendants which asks the Defendants to produce the entire contents of the reporter’s investigative file and to identify every person Defendant Williams talked to in his investigation of the news stories at issue. Defendants objected to those discovery requests and opposed Plaintiff’s subsequent Motion to Compel on the grounds that (1) such information is not relevant to resolving their pending Motion to Dismiss and (2) such information is protected from disclosure under the news-gathering privilege set forth in Tennessee Code Annotated § 24-1-208.

On January 13, 2017, this Court granted Plaintiff’s Motion to Compel and ordered Defendants to tell Plaintiff what investigation the Defendants had made on the two news stories at issue and produce all the documents obtained in that investigation. Transcript of Judge’s Ruling at 12-13 (attached to Defendants’ Application for Interlocutory Appeal). The Court ruled that the discovery was relevant to the issue of actual malice. Tr. Ruling at 6-7, 11. The Court also ruled that the news-gathering privilege found in Tennessee Code Annotated § 24-1-208 did not apply because it found the Defendants were asserting a defense based upon the source of the information gathered, an exception contained in subsection (b) of the statute. Tr. Ruling at 9-10.

By their Application for Interlocutory Appeal, Defendants are seeking permission to appeal the Court’s ruling that actual malice is an element of, or relevant to, a fair report privilege claim. Defendants are simultaneously appealing the Court’s rejection of the news-gathering privilege pursuant to the direct appeal provision contained in that statute. Defendants seek to combine the

¹ Defendants filed their Motion to Dismiss pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure. The parties agree that it is to be “treated as one for summary judgment and disposed of as provided in Rule 56.” Tenn. R. Civ. P. 12.02(6).

appeal of the statutory privilege issue and the appeal of the fair report/actual malice issue for a hearing at the Court of Appeals before this case goes forward.

III. AUTHORITY & ARGUMENT

Defendants seek an interlocutory appeal in this case because of the importance of the legal issue of the applicability of actual malice to a fair report privilege claim. This issue is crucially important in this current lawsuit. It is also of great importance to have this issue of law made clear so that the news media's constitutional rights to investigate and report newsworthy events and, particularly, report on court cases and other official proceedings are not limited or threatened.

Rule 9 of the Tennessee Rules of Appellate procedure lists the following "non-exclusive" factors for the trial court to consider in determining whether to grant its permission for an interlocutory appeal:

- (1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence and the probability that review upon entry of final judgment will be ineffective;
- (2) the need to prevent needless, expensive and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment; the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed;
- (3) the need to develop a uniform body of law giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of the final judgment.

Rule 9(a) Tenn. R. App. P. In this case, on this application, each of these factors supports an immediate appeal and granting of the application for permission to appeal.

A. AN IMMEDIATE APPEAL IS NECESSARY TO DEVELOP A UNIFORM BODY OF LAW ON THIS IMPORTANT ISSUE.

Because of the history of the of the fair report privilege in Tennessee and because of the subsequent announcement of the constitutional requirement of “actual malice” in defamation cases brought by public officials in the landmark *New York Times v. Sullivan* case in 1964, there now appears to be some confusion about the application of the actual malice requirement in a fair report privilege defense. That possible confusion arises because there are Tennessee appellate court decisions that have simply listed “actual malice” or malice as an element of the fair report privilege without actually applying those separate principles to the facts of the case. The inconsistent statements from these opinions and the potential for confusion are important reasons to grant an interlocutory appeal on this issue in this case.

The fair report privilege for reporting on court proceedings has been recognized in Tennessee for a long time. In *Lewis v. NewsChannel Network, L.P.*, 238 S.W.3d 270 (Tenn. App. 2007), the Court of Appeals stated that “The Tennessee Supreme Court recognized the fair report privilege in 1871,” citing *Saunders v. Baxter*, 53 Tenn. (6 Heisk) 369, 381 (1871). The quote from that case cited by the *Lewis* opinion (and partially quoted in Plaintiff’s Supplemental Memorandum herein) is “A bona fide report of the proceedings in a court of justice, in the absence of express malice, is not libel, though the publication may be injurious to the character of an individual.” *Lewis* at 284 (emphasis in original). The term used by this early decision was “express malice” and not “actual malice.”

The term “actual malice” as regards defamation action was first announced in *New York Times v. Sullivan*, 276 U.S. 254 (1964). In that case, the United States Supreme Court held that the First Amendment to the United States Constitution required that a public official bringing a defamation action must prove that the false and defamatory statements were made by the defendant

with “actual malice.” 376 U.S. at 279-280. The Supreme Court defined “actual malice” in a very specific way, it requires that the statement at issue be made “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.*

The Court in this case, in its January 13 ruling, stated that actual malice applies because Plaintiff General Funk is a public official and that standard applies to his defamation and false light-invasion of privacy claims. Tr. Ruling at 6-7. Certainly and without question, if Mr. Funk’s case progresses past either the motion to dismiss or the summary judgment stage, he will have to prove that required element of his claims and have to do so by clear and convincing evidence. *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Press, Inc. v. Verran*, 569 S.W.2d 435, 442 (Tenn. 1978).

At this time, at this stage of this case, however, that particular application of the “actual malice” requirement as regards Mr. Funk’s case in chief is not at issue. It was not put at issue in Defendants’ current Motion to Dismiss. Rather, because of Plaintiff’s arguments, the focus at this stage of this case and now on this appeal, is whether “actual malice” has any application to the fair report privilege which Defendants have raised as a defense and a reason to grant their Motion to Dismiss.² “Actual malice” applies to Plaintiff’s claims for defamation and false light-invasion of privacy; it does not apply to the assertion of a defense based upon the fair report privilege.

Defendants’ position on the Plaintiff’s Motion to Compel discovery was that “actual malice” or lack thereof is not an element of Defendants’ fair report privilege. It is not applicable and not relevant to what is actually at issue in Defendants’ Motion to Dismiss, and should not be used as a reason to allow full discovery into the extent of Defendants’ investigation of these news

² Actual malice is also not at issue on Defendants’ other ground for dismissal in their Motion to Dismiss, the lack of any false or defamatory statement.

stories. Once again, the context for this inquiry at this time is Defendants' assertion of a fair report privilege and it is not yet whether Plaintiff can prove actual malice as part of his affirmative claims.

The Tennessee Court of Appeals had an extensive discussion on the fair report privilege, its history and scope, in *Lewis v. NewsChannel 5 Network*, *supra*. That opinion discussed the requirements for a fair report privilege claim and did not include actual malice or lack thereof as a requirement for the privilege to apply. 238 S.W.3d 270, 284-285.³

The Court of Appeals in *Lewis* stated that Tennessee's version of the fair report privilege "in its current form closely, though not exactly, mirrors the scope of the privilege found in the RESTATEMENT (SECOND) OF TORTS, § 611 at 297 (1977)." *Id.* at 285. The *Lewis* case cited with approval that section of the RESTATEMENT (SECOND) OF TORTS which provides that: "The publication of defamatory matter concerning another in a report of an official action or proceeding or of a meeting open to the public that deals with a matter of public concern is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported." That statement of the privilege contains no mention of actual malice.

Subsequent to the *Lewis* case, the Court of Appeals in *Eisenstein v. NewsChannel 5 Network, LLC*, 389 S.W.3d 313 (Tenn. App. 2012) correctly stated the current Tennessee law on the fair report privilege. "It appears that at one time the fair report privilege required an absence of malice . . . Although this requirement seems to exist in some states [citation omitted], subsequent Tennessee cases do not require it." 389 S.W.3d at 323 n.8 (emphasis added).

That statement is a correct statement of the current state of law in Tennessee that actual malice or lack thereof is not required for the assertion of a fair report privilege. While that

³ The only discussion of "actual malice" in that case related to the requirements for the plaintiff public figure's cause of action, not the defense of the fair report privilege.

statement of the law should be well-settled, particularly after the *Lewis* and *Eisenstein* cases, there have been inconsistent statements made by a few Tennessee cases that simply list “actual malice” in their list of requirements for the fair report privilege, but do not actually apply that element to the case. One example is the unreported case of *Grant v. Commercial Appeal*, 2015 W.L. 5772524 (Tenn. App. 2015), which was specifically relied upon by this Court in its January 13, 2017 ruling. Tr. Ruling at 5-6. In *Grant*, the Court of Appeals did list “actual malice” as a requirement, but did not apply it to the facts of the case. *Id.* at *7 (“Because we have determined that the first prong of the privilege, official action, has not been met, we need not consider whether it was a fair and accurate report or whether Appellees acted with actual malice”).

Plaintiff’s briefs in this case have not cited, and Defendants are not aware of, any Tennessee case that analyzed and applied actual malice to the fair report privilege as the Plaintiff asked the Court to do in this case. Defendants respectfully submit that it would be improper and contrary to a correct interpretation of the law to apply an actual malice element to a fair report privilege claim. The requirement of “actual malice” as defined by *New York Times v. Sullivan* simply does not fit with the fair report privilege or the reasons behind such a privilege. See discussion, *infra* at 12-13.

Defendants submit that one possible source for inconsistent statements in court decisions is the fact that historically, earlier cases on the fair report privilege did use the term “malice” in discussions about this privilege. See e.g. *Saunders v. Baxter*, *supra*. The type of common law malice used in earlier cases does not equate with “actual malice,” which has a very specialized meaning in defamation and false light cases. As stated in *Lewis v. NewsChannel 5*, actual malice “should not be confused with the concept of ‘malice’ that connotes ill will, hatred or spite.” 238 S.W.3d at 300.

The potential confusion has also arisen through discussions of “qualified privileges.” Plaintiff’s Supplemental Brief quoted from a case that dealt with the absolute privilege for comments made in the course of litigation. Plaintiff’s Supp. Brief at 1, citing *Simpson Strong-Tie Co. v. Stewart Estes & Donnell*, 232 S.W.3d 18 (Tenn. 2007). The context of the quoted language from that case was the general discussion contrasting an absolute privilege with a qualified privilege that could be defeated by a showing of “malice, ill-will or for an improper purpose.” (That case did not deal with the fair report privilege or actual malice.)

Defendants have not argued that the fair report privilege is an absolute privilege and understand that it can be lost or overcome. The way to defeat this particular privilege, however, is different from other qualified privileges that may be defeated by a showing of common law malice or other means specific to those other privileges.

On this point, the discussion by Justice Koch in the *Lewis* case is most instructive. In that opinion, it was specifically stated the fair report privilege was a “qualified privilege” with the Court then specifically setting forth how the privilege could be lost or overcome. *Lewis*, 238 S.W.3d at 284. The Court stated that for the privilege to apply, the report must be “a fair and accurate summation of the proceeding” and must display balance and neutrality.” *Id.* There followed a discussion of when the privilege would and would not apply, but no mention of actual malice or even common law malice was made in that discussion.

As previously stated, the *Grant* case that this Court relied upon listed “actual malice” as one of the “factors” applicable to a fair report privilege claim, but did so by citing the *Lewis* case as support for that statement. At *6. A review of the *Lewis* case shows it made no statement about actual malice as any part of the fair report privilege, 238 S.W.3d at 284-285. That citation in the *Grant* case to *Lewis* is incorrect and that opinion’s inclusion of actual malice as an element or

factor on a fair report privilege claim is inconsistent with the current state of Tennessee law. The *Grant* case's incorrect statement of the law may have affected the Court's ruling in this case and it must be corrected by the Court of Appeals as soon as possible to develop a uniform body of law on this important issue.

B. AN IMMEDIATE APPEAL IS NECESSARY TO PREVENT IRREPARABLE INJURY.

In considering an application for an interlocutory appeal, one of the factors to be considered is "the need to prevent irreparable injury, giving consideration to the severity of the potential injury and the probability of its occurrence and the probability that review upon entry of final judgment will be ineffective." Rule 9 Tenn. R. App. P. In this case there is potential of irreparable harm that will result from (1) a continuing application of an incorrect ruling on the application of actual malice to the fair report privilege for the remainder of these proceedings and (2) the effects of requiring Defendants to answer the broad and intrusive discovery sought by Plaintiff in his lawsuit.

As discussed in the next section of this Memorandum, this Court's ruling on actual malice will continue to affect every stage of this case as it goes forward and could negatively impact Defendants' right to obtain an early resolution of this case or a full and fair trial on the merits. See discussion *infra* at 11-12.

An immediate impact of the Court's January 13, 2017 ruling will be felt because this ruling is the basis for the Court allowing discovery of Defendants' contacts and confidential investigative material. In the Court's ruling, the Court described the discovery ordered as requiring Defendants "to produce all documents obtained in that investigation" and to tell "the Plaintiff what investigation that the Defendants made when they wrote the stories." Tr. Ruling at 12-13. Plaintiff's Interrogatory No. 7 to Defendant Phil Williams (which was discussed by the Court in

its ruling) broadly asks him to "Describe all investigation you conducted regarding the First Story, including all individuals with whom you communicated prior to publication of the First Story."

Interrogatory No. 8 (also mentioned by the Court) asks the exact same broad question as to the Second Story. Answering such interrogatories and producing "all documents obtained in that investigation" is an extremely broad and unnecessary intrusion into the news-gathering function.

Attorney Brian Manookian has been identified as a source of the documents from the Williamson County case that the news stories at issue were based upon. That fact and the fact that he had been deposed influenced the Court to believe that no harm would result from disclosure of other information. Tr. Ruling at 9.

Plaintiff's discovery requests are broad enough however that there will in fact be harm from further disclosure. The discovery requests are not limited to individuals that might be considered "sources" but rather ask for all individuals the Defendant reporter communicated with prior to publication of the news stories. Interrogs. 7 and 8 to Williams. If disclosure is allowed at this time before an appeal, the damage from disclosure will have occurred and any review of that issue after the entry of a final judgment would be ineffective to remedy any harm caused by such disclosure.

The potential harm is to the individuals that have to be identified in this case and to Mr. Williams' ability to obtain information from his contacts and confidential sources in future investigations. These injuries will occur from such disclosure in this case, before any further review or before it becomes clear as to whether such information is actually relevant.

Defendants' concerns about this substantial and unwarranted intrusion into their news-gathering process are not hypothetical or theoretical, but are crucially important to protect their ability to investigate and report on newsworthy events, including the conduct of public officials.

The United States Third Circuit Court of Appeals recognized this important interest by stating as follows:

The interrelationship between newsgathering, news dissemination and the need for a journalist to protect his or her source is too apparent to require belaboring. A journalist's inability to protect the confidentiality of sources s/he must use will jeopardize the journalist's ability to obtain information on a confidential basis. [Citation omitted]. This in turn will seriously erode the essential role played by the press in the dissemination of information and matters of interest and concern to the public.

Riley v. Chester, 612 F.2d 708, 714 (3rd Cir. 1979) (citations omitted).

A news reporter who discloses the identity of confidential sources or even individuals interviewed in the course of his investigation will no doubt soon be unable to obtain information from such individuals in the future. Affidavit of Phil Williams dated August 8, 2016, and previously filed herein, at ¶ 6. The damage done by the Court's ruling will seriously and negatively impact Defendants' ability to do their job and should not be allowed to incur simply because Plaintiff's counsel in this case is looking for "some kind of smoking gun" or speculating about a possible "anonymous envelope." Transcript of Proceedings at 41, 52 (excerpt attached hereto). Such speculation is not a proper basis for compelling such disclosures.

As discussed in a subsequent section, the Court's ruling and rationale, if not corrected, could lead to harm to other journalists and result in the substantial erosion of all journalists' ability to investigate and report on official proceedings and court cases *See* discussion at 12-13, *infra*.

C. AN IMMEDIATE APPEAL IS NECESSARY TO PREVENT NEEDLESS, EXPENSIVE, AND PROTRACTED LITIGATION.

Another factor for the Court to consider in granting permission for an interlocutory appeal is "the need to prevent needless, expensive, and protracted litigation, giving consideration to

whether the challenged order would be a basis for reversal, the probability of reversal . . .” Rule 9 Tenn. R. App. P.

Defendants respectfully request the opportunity to obtain a ruling from the appellate courts that “actual malice” is not a requirement for a fair report privilege claim as a defense in a defamation/false light case. *See* discussion herein at 4-8. Based upon prior Court of Appeal opinions in *Lewis* and *Eisenstein*, *supra*, and the fact that such a requirement does not fit with the fair report privilege and the reasons for such privilege, Defendants believe there is a substantial probability for reversal on this portion of the Court’s ruling.

An immediate appeal is important to get this issue decided definitely and correctly. An appeal will promote judicial economy and efficiency because this issue will affect every aspect of the case as it goes forward. If the Court’s January 13, 2017 ruling is allowed to stand, it will result in greatly expanded discovery. Instead of a more limited focus on the issue of whether the news reports are a fair and accurate report of the proceedings in Williamson County, Plaintiff intends to use this lawsuit to discover all of Defendants’ sources, everyone he may have he talked to prior to publication, and all of his investigative materials. Depositions of additional individuals may occur because of this issue’s inclusion on the fair report privilege claim.

Plaintiff will seek to use the current “actual malice” ruling to seek to expand the case to discuss issues of intent, motive and other theories that are not properly relevant to the current Motion to Dismiss. The depositions of Mr. Williams, Mr. Funk, and others will be expanded into topics that might otherwise not have any relevance. The briefing and hearing on Defendants’ Motion to Dismiss will have to be expanded if the Court applies its current ruling that actual malice or lack thereof is relevant to a fair report privilege claim. Finally, if the Motion to Dismiss is not granted and the January 13, 2017 ruling applying actual malice to the fair report privilege is

allowed to stand, it will expand the proof adduced at trial and will affect the way the jury is charged. If review of this issue is not granted at this time, there is a substantial threat that a subsequent review, done after the completion of the proceedings, could result in a reversal, remand or additional proceedings. This important issue should be reviewed now by the appellate courts and decided definitely and correctly.

D. THIS IS AN ISSUE OF GREAT IMPORTANCE FOR DEFENDANTS AND OTHER NEWS MEDIA AS TO FUTURE REPORTING.

The “fair report privilege” is vitally important to the news media’s ability to report on what has happened in court proceedings and other official actions. The Court’s January 13, 2017 ruling improperly makes “actual malice” an element for application of this privilege. *See* discussion, *supra* at 4-8.

“Actual malice” as defined in defamation and false light-invasion of privacy claims relates to the level of knowledge of falsity of a person making defamatory comments about public officials. *See* discussion at 4-5, *infra*. It simply does not fit with the recognized privilege for reporting what goes on in a judicial proceeding. Reporters are allowed to report on testimony or allegations made in judicial proceedings without concern about potential liability if allegations or testimony made in such proceedings (and accurately reported) turned out not to be true.⁴

The Court’s ruling on actual malice in the context of a fair report privilege claim undermines the important protection afforded by that long-recognized principle. As shown in this

⁴ Although there will not be any proof in this case that Defendants knew of any falsity in anything they reported, the RESTATEMENT (SECOND) OF TORTS, § 611 comment b recognizes that the fair report privilege exists even if the publisher knows the statements in the official proceeding are false.

case, it can divert discovery from the issue of whether the news story fairly and accurately reported on an official proceeding into discovery about who the reporter talked to and what is contained in his investigative files. The application of actual malice to the fair report privilege will result in the injection of issues about the reporter's knowledge and extent of his investigation which are not legally relevant to a fair report privilege claim.

If this ruling stands, it increases the very real danger that subjects of news stories may file lawsuits against the media just to find out the reporters' sources and what they have investigated. If not reversed, this ruling would certainly have a chilling and limiting effect on future reporting by Defendants and other members of the media on important issues of public concern.⁵ This is an important issue for the Defendants, the news media, and the public that must be immediately reviewed and decided correctly.

E. DEFENDANTS ARE ALSO APPEALING THE COURT'S REJECTION OF THE NEWS GATHERING PRIVILEGE.

The Court's ruling on January 13, 2017 also rejected Defendants' claim that the information that Plaintiff sought in discovery was privileged under Tennessee Code Annotated § 24-1-208. That statute provides for a direct and expedited appeal to the Court of Appeals. Defendants are simultaneously filing herewith a Notice of Appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure.

⁵ An investigative reporter for WSMV Channel 4 in Nashville tweeted that "every reporter in town needs to worry about this case" in response to a Tennessean reporter's tweet that the Court had ordered Defendants to produce these additional documents. See JeremyFinley@WSMVJeremyITEAM, TWITTER (Jan 13, 2017, 1:28 P.M.) <http://twitter.com/WSMVJeremyITEAM/status/820019773719408640>.

While the appeal of part of the Court's ruling is a matter of right, the factors of Rule 9 would apply with equal weight to support an interlocutory appeal on that privilege issue. The Court rejected Defendants' reliance on the statutory news gathering privilege based upon its ruling that Defendants were "asserting a defense relying upon the source of the information" claimed as privileged. Tr. Ruling at 10. Counsel for both parties have acknowledged that there is no reported Tennessee case law directly on this point. This is an important issue that will arise again. The trial courts need guidance on the proper application of this statute to defamation cases.

Plaintiff's counsel argued that the word "source" in the statute did not just mean a person, but rather whatever was the basis for Defendants' claim that the news story was a fair report. Transcript of Proceedings at 27-28 (excerpt attached hereto). He argued that the depositions and court filings should be considered a "source" for purposes of the statute's exception.⁶ Defendants submit that Plaintiff's interpretation of the word "source" is contrary to the plain meaning of the statutory language and would result in the loss of the statute's important protection any time a news media defendant asserted any defense in a defamation action. The Court's acceptance of Plaintiff's argument needs to be reviewed by the Court of Appeals to help develop a uniform body of law on that issue. It also needs immediate review to prevent irreparable harm that will occur by the disclosure of this reporter's sources, contacts, and investigative file materials.

Defendants have noticed an appeal as a matter of right on the news gathering privilege issue. This Court should grant an interlocutory appeal on the application of actual malice to the fair report privilege issue so that both of these important issues could be brought before the Court of Appeals at the same time.

⁶ Unlike to the hypothetical offered by Plaintiff's counsel as analogy at the hearing, Defendants did furnish Plaintiff the depositions, text messaging, and court filings they relied upon for the fair report privilege. *Id.* at 26-27.

**F. THIS COURT SHOULD STAY FURTHER PROCEEDINGS PENDING
RESOLUTION OF THESE ISSUES ON APPEAL.**

The news-gathering privilege statute provides that any proceeding to enforce a judgment denying the protection of the statute “shall be stayed pending appeal upon the timely filing of a notice of appeal in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure.” Tenn. Code Ann. § 24-1-208(c)(3)(B). Defendants have filed simultaneously herewith that Notice of Appeal and believe that stays enforcement of the Court’s order on that appeal.

In addition, as regards this interlocutory appeal, Defendants request a stay pursuant to Rule 9(f) of the Tennessee Rules of Appellate Procedure which allows for stay of the proceedings in the trial court by order of trial court, appellate court, or a judge thereof.

It is important that this Court stay these proceedings while this application for permission to appeal is pending. As previously stated, the Court’s ruling on the application of actual malice to the fair report privilege will affect every aspect of this case. It is important to stay the proceedings so that Defendants’ Motion to Dismiss and any subsequent proceedings in this case be judged according to correct legal standards. Additionally, once Defendants have to disclose additional documents received in their investigation and identify all individuals spoken with, that material is out and there is no subsequent order that can remedy any harm caused by such disclosure. Therefore, this Court should enter an order staying its January 13, 2017 ruling pending resolution of Defendants’ Application for Interlocutory Appeal and, if the application is granted, for the remainder of the proceedings in the Court of Appeals.

CONCLUSION

The resolution of the legal issues from the Court's January 13, 2017 ruling are important to this case and to future cases involving the fair report privilege and the newsgatherer's privilege. For the reasons set forth herein, Defendants respectfully ask this Court to grant permission for an interlocutory appeal of that ruling and to stay further enforcement of such ruling pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 3rd day of January, 2017.

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