

NYSTLA**Memorandum in SUPPORT****ON AGENDA**

February 12, 2008

A.9652-A (Lanckman)

AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments in cases involving defamation.

The New York State Trial Lawyers Association (NYSTLA) supports this legislation, which would amend Civil Practice Law and Rules (CPLR) §5304 to protect journalists and authors from overseas defamation judgments by declaring them unenforceable in New York unless a New York court determines the foreign defamation law provides the same free speech and press protections guaranteed by the New York and United States constitutions, and by giving New York residents and publishers the opportunity to have the case heard by a New York court.

Under current New York law, American authors and journalists are liable for decisions made by overseas courts that enforce libel and defamation laws that discourage and inhibit free expression. The recent New York Court of Appeals December 2007 decision in *Ehrenfeld v. Mahfouz* held that it would not protect Dr. Ehrenfeld, a New York based researcher and author, from a defamation lawsuit filed in Britain by a Saudi businessman, Khalid Salim Bin Mahfouz. Dr. Ehrenfeld identified Mahfouz in her book "Funding Evil - How Terrorism is Financed and How to Stop It" as a financial supporter of terrorist organizations. The British court ordered Dr. Ehrenfeld pay over \$225,000 in damages and legal fees.

The American protection of free speech is severely weakened by this New York Court of Appeals decision. There is a dangerous restraint on authors and journalists when they are liable for foreign laws that do not sufficiently protect free speech. They will be intimidated and silenced from reporting on critically important issues because they are not protected from punishment under these foreign laws. In *N.Y. Times Co. v. Sullivan*, the Supreme Court held that the first amendment protects the press' freedom to publish criticisms of public officials. In light of "the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," the first amendment should protect authors and journalists so they may freely publish and expose truths about international individuals. If the United States government protects the press' freedom to publish criticism of its own officials, then the government should protect the press' freedom to publish information about terrorists.

Because this bill will strengthen the free speech protections of the New York and United States constitutions by protecting New Yorkers from oversea defamation and libel lawsuits, NYSTLA supports this legislation and urges its passage.

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NEW YORK STATE TRIAL LAWYERS ASSOCIATION, INC.

132 Nassau Street, New York, NY 10038 Phone 212.349.5890 Fax 212.608.2310 www.nystla.org