

# New York State Court of Claims



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## PARTRIDGE v. THE STATE OF NEW YORK, # 2017-032-006, Claim No. 116987

### Synopsis

Following a trial on damages, the Court awards claimant \$300,000 for the exacerbation of a preexisting brain injury, as well as past and future mental anguish suffered as a result of defamation by defendant.

### Case information

<b>UID:</b>	2017-032-006
<b>Claimant(s):</b>	ROBERT PARTRIDGE
<b>Claimant short name:</b>	PARTRIDGE
<b>Footnote (claimant name) :</b>	
<b>Defendant(s):</b>	THE STATE OF NEW YORK
<b>Footnote (defendant name) :</b>	
<b>Third-party claimant(s):</b>	
<b>Third-party defendant(s):</b>	
<b>Claim number(s):</b>	116987
<b>Motion number(s):</b>	
<b>Cross-motion number(s):</b>	
<b>Judge:</b>	JUDITH A. HARD
<b>Claimant's attorney:</b>	LaFave, Wein & Frament, PLLC By: Paul Wein, Esq.
<b>Defendant's attorney:</b>	Hon. Eric T. Schneiderman, NYS Attorney General By: Douglas R. Kemp, Assistant Attorney General, Of Counsel
<b>Third-party defendant's attorney:</b>	
<b>Signature date:</b>	June 9, 2017
<b>City:</b>	Albany
<b>Comments:</b>	
<b>Official citation:</b>	
<b>Appellate results:</b>	
<b>See also (multicaptioned case)</b>	

### Decision

By Decision dated October 4, 2013, this Court found defendant fully liable for the defamation of claimant arising from the New York State Police's portrayal and dissemination of his photograph during a press conference about online sexual predators. The Court thereafter held a bench trial regarding the

issue of damages and, as set forth below, now awards claimant \$300,000.00 for the exacerbation of a preexisting brain injury, as well as the past and future mental anguish that he suffered as a result of defendant's actions.<sup>(1)</sup>

## FACTS

The essential facts underlying the instant claim are more fully set forth in the Court's October 4, 2013 decision on liability, but are briefly summarized as follows. In 2008, after receiving a tip that claimant's mother had attempted to engage a child in sexual activity, State Police officers executed a search warrant for evidence related to child pornography at claimant's home. During the execution of the warrant, claimant was arrested on drug-related charges for the criminal possession of steroids. Said charges were dismissed in November 2008. Although claimant was never suspected of or charged with any sexual crime against a child, on June 17, 2008, his photograph was portrayed and disseminated during a press conference conducted by the State Police educating parents and children about online sexual predators. The conference was covered by five local television stations and was also made available for online streaming on various State and privately owned websites.

Claimant's deposition testimony was introduced into evidence at the trial on damages.<sup>(2)</sup> Claimant testified that he obtained his General Educational Development (GED) degree at the age of 16 and received an Associates Degree in Applied Sciences from Hudson Valley Community College. In July 2001, claimant, then 17 years old, was involved in a serious automobile accident in which his girlfriend was killed, and which left him with a traumatic brain injury. After spending two years in prison on charges relating to the accident, claimant maintained several jobs, which included working in the maintenance operations at a local arena, at a local grocery store, as a wilderness field instructor, and in an after-school program at the YMCA. As of June 2008, claimant was training to be a personal trainer at a gym (Exhibit 10, p. 28). Claimant testified that, shortly after the June 17, 2008 press conference, his supervisor discharged him, stating that he did not meet the gym's standards for employment. Claimant noted, however, that prior to his discharge, gym members and other employees began giving him "funny looks," although he conceded that no one ever said anything to him about the press conference (Exhibit 10, p. 32). About six months later, claimant obtained a job as a custodian at another gym, but he could not recall how long he worked there or if he voluntarily resigned or was terminated. Claimant has not worked or sought employment since then and receives social security disability payments for his traumatic brain injury.

Claimant testified that he was informed that his photo was shown during the press conference by his then girlfriend, who had received the news from mutual friends. He testified that friends and acquaintances stopped talking to him after the press conference, and that his girlfriend left him soon after. Claimant testified that his house was egged and the air was let out of his vehicle's tires. He was afraid to go to the convenience store across the street from his apartment and use the local laundromat for fear of being harassed or approached with questions about the press conference.

Claimant testified that he has been treated by a number of doctors and social workers for his traumatic brain injury since the 2001 accident. According to his medical records, on November 28, 2007, claimant began treatment, post status a traumatic brain injury, for severe anger, anxiety and paranoia at the Center for Disability Services (CDS) in Albany, New York. At that time, his chief complaints were that he could not function at work, had trouble following and remembering instructions, and was overwhelmed by anxiety. Claimant was treated by Nurse Practitioner Mary Anne Martin, Elizabeth Casscles, Ph.D., Debra Lovejoy, LCSW-R, and Michael Priest, M.D., among others. Martin treated claimant for anxiety and rage with medication post status the traumatic brain injury, from November 28, 2007 until September 21, 2009. During that time, claimant only mentioned the press conference once to Martin on July 15, 2008, the first time he saw her after the event occurred (Exhibit 2). From January 28, 2008 through March 30, 2009, claimant was primarily counseled by Casscles, a licensed psychologist, who diagnosed him with mood disorder secondary to the traumatic brain injury, anxiety disorder, and cognitive disorder. On May 12, 2008, claimant disclosed that he was distressed and anxious because his mother was arrested and would be serving time in prison, and that he had been arrested on charges of possession of an illegal substance. The press conference occurred on June 17, 2008 and, although Casscles wrote "Progress Notes" on June 26, 2008, July 28, 2008, and

August 7, 2008, the press conference is not mentioned in her notes until August 21, 2008. In that note, Casscles details significant stressors in claimant's life, including his mother possibly receiving a 20-year prison sentence, his photograph being shown with a list of people involved with child pornography, and his loss of employment.

Priest testified at an examination before trial, which was accepted by the Court as trial testimony, (3) that he first met claimant at the Center for Disability Services in October 2009 for treatment regarding his traumatic brain injury. At that time, claimant did not mention the June 2008 press conference or the instant legal proceeding. According to Priest, neuropsychological testing completed in 2010 indicates that claimant has some difficulty processing information. In Priest's opinion, claimant tends to withdraw, becomes easily suspicious, and does not always accurately assess a situation. Although he has some elements of post traumatic stress disorder (PTSD), Priest stated that he has not fully diagnosed claimant with said disorder. Upon cross-examination, Priest stated that his primary diagnosis of claimant is major depression recurrent with psychotic features in partial remission.<sup>(4)</sup>

According to Priest's treatment notes, claimant first mentioned the June 2008 press conference and the instant legal proceeding in a session on December 19, 2013, during which Priest noted the following:

"[Claimant] states he is currently in the middle of a lawsuit. He is suing the state police who put his name before the public and in the paper for a crime he was not involved with and not charged with and felt it was a defamation, it all occurred before I met him and he says it was very troubling at the time he has not mentioned the specifics of that since I have known him. It does not appear to have an ongoing effect from a psychiatric point of view from what I can tell" (Exhibit 2, 12/19/13 Progress Note).

Priest testified that claimant was fearful of having to confront the emotions he experienced during and after the press conference. Despite his initial notes during the December 2013 session, Priest testified that, in his opinion, the wrongful portrayal of claimant as a pedophile is partially causally related to his current mental condition. Priest explained that claimant worries that others will Google him and obtain information that will preclude an employment or dating opportunity, and that he believes that these fears will permanently affect claimant and require ongoing treatment. Priest also stated that, in 2015, claimant became increasingly depressed, withdrew socially, missed his appointments, and became paranoid. During a July 2, 2015 session, claimant mentioned another encounter with the police wherein he was arrested and questioned at the police station regarding charges of resisting arrest. On July 16, 2015, claimant exhibited concern about the instant legal proceeding, prompting Priest to record the following notes:

"[Claimant] had been doing relatively well for a number of years that I've followed him. He had not mentioned much of anything about the previous incident with police many years ago that's a legal issue at this point, which is highly stressful for him. . . . He cites that the upcoming trial regarding his previous incident with the police that he describes, has been stressful for him, making it harder for him to put out of his mind, which he was able to do . . . for many of the last several years, and lately has been a major preoccupation for him" (Exhibit 2, 7/16/15 Progress Note).

A nursing note dated July 27, 2015 indicates that claimant's mother called Priest's office stating that she had found a suicide note and that claimant was missing. Several days later, claimant returned to a family member's home and called his mother. At that time, Priest referred claimant to Four Winds Hospital in Saratoga, New York for in-patient psychiatric treatment and counseling. Upon his release, claimant continued his sessions with Priest, who noted on August 13, 2015 and September 17, 2015 that the instant proceeding is an ongoing stressor in his life. Priest stated that he believes that claimant will need psychiatric treatment in the future for the traumatic brain injury and his depressive episodes, but conceded that, when claimant is compliant with his medications, he shows improvement.

Deborah Lovejoy, a licensed social worker, also testified on behalf of claimant.<sup>(5)</sup> At the time of her examination before trial in January 2016, Lovejoy had been treating patients with traumatic brain injuries for 28 years. Lovejoy first met claimant in April 2009 and remembered him due to the extreme trauma that he had experienced. She noted that he appeared paranoid and thought that people believed him to

be a pedophile because his face had been shown on television. Lovejoy stated that she met with claimant again in June 2009, and that he was still anxious about the incident at that time. Lovejoy opined that the June 2008 events traumatized claimant and that the effects of such trauma are permanent. She further stated that his traumatic brain injury makes it more difficult for claimant to process what happened to him. Upon cross-examination, Lovejoy conceded that claimant has experienced other stressors in his life, including the death of his father and his mother's incarceration, and that he suffered from anxiety prior to the June 2008 incident. She also testified that claimant has other psychological and emotional deficits that are solely attributable to the traumatic brain injury.

Claimant's friends, Lance Ellers, Shawn Billetts, and Ashley Beeler-Billetts, also testified on his behalf. Ellers stated that he met claimant at the local community college and, prior to the June 2008 press conference, they would play basketball and go out to restaurants and other social events. Ellers' recollection of the news conference was that claimant was portrayed as a sexual predator. When Ellers confronted claimant about it, claimant denied the allegations. Ellers stated that, although the allegations were always in the back of his mind, he remained friends with claimant. He testified that claimant is quieter now and still fears that people will see him as a pedophile, particularly when he meets new friends or is dating. Claimant expressed to Ellers his fear that the press conference may still be available on the internet. According to Ellers, claimant spends most of his time at home and has few friends. Billetts testified that, prior to the press conference, claimant was a frequent guest at his home. Since June 2008, he has tried contacting claimant but rarely gets a response from him. Beeler-Billetts testified that claimant "fell off the grid" after the press conference and does not return phone calls, and described claimant as generally "off the wall" (T: 116-117).

## LAW AND ANALYSIS

"Generally, a plaintiff asserting a cause of action sounding in slander must allege special damages contemplating 'the loss of something having economic or pecuniary value' " (Yonaty v Mincolla, 97 AD3d 141, 143 [3d Dept 2012], lv denied 20 NY3d 855 [2013], quoting Lieberman v Gelstein, 80 NY2d 429, 434-435 [1992]; see Yamine v DeVita, 43 AD3d 520, 521 [3d Dept 2007]). "However, where, as here, the statements charge another with a serious crime or have the ability to injure another in his or her trade, business or profession, the statements become slander per se and 'the law presumes that damages will result, . . . they need not be alleged or proven' " (Yamine v DeVita, 43 AD3d at 521, quoting Lieberman v Gelstein, 80 NY2d at 435; see Camaj v Plassmann, 150 AD3d 660 [2d Dept 2017]; Sharratt v Hickey, 20 AD3d 734, 735 [3d Dept 2005]; Gatz v Otis Ford, 274 AD2d 449, 450 [2d Dept 2000]). In determining a damages award arising from a defamation action, "[f]actors appropriately considered . . . include the seriousness of the criminal conduct alleged, the psychological/physical effects to the target from addressing, defending and dealing with these accusations, and the size and demographics of the target's community to determine if the stigma would be difficult to evade" (Yamine v DeVita, 43 AD3d at 521; see PJI 3:29; Xiaokang Xu v Xiaoling Shirley He, 147 AD3d 1223, 1224 [3d Dept 2017]; Dobies v Brefka, 45 AD3d 999, 1000 [3d Dept 2007]; Rossignol v Silvernail, 185 AD2d 497, 499-500 [3d Dept 1992], lv denied 80 NY2d 760 [1992]; see also Cantu v Flanigan, 705 F Supp 2d 220, 227-228 [EDNY 2010]).

Moreover, as relevant here, "[t]he law is well-established that the defendant must take a plaintiff as he or she finds [him or] her and hence may be liable for damages for aggravation of a pre-existing illness [patent condition] or for precipitation of a latent condition" (Salas v United States, 974 F Supp 202, 209 [WDNY 1997]; see Matter of Tobin v Steisel, 64 NY2d 254, 259 [1985]; Matter of Makowski v New York State & Local Employees' Retirement Sys., 206 AD2d 657, 658 [3d Dept 1994]; Ashquabe v McConnell, 14 Misc 3d 211, 214-215 [Sup Ct, Erie County 2006], affd 46 AD3d 1419 [4th Dept 2007]). In New York, this axiom has been recognized in cases involving the exacerbation of psychological and emotional defects, as well as physical injuries (see e.g. Matter of Tobin v Steisel, 64 NY2d at 259; Matter of Makowski v New York State & Local Employees' Retirement Sys., 206 AD2d at 658; Bartolone v Jeckovich, 103 AD2d 632, 634-635 [4th Dept 1984]; Bialik v Dupont De Mours & Co., 142 Misc 2d 926, 929 [Sup Ct, Niagara County 1988]; AA v State of New York, 43 Misc 2d 1004, 1011-1014 [Ct Cl 1964]; see also Steinhauser v Hertz Corporation, 421 F2d 1169, 1172-1173 [2d Circ 1970]). A patent condition exists before the alleged tortious act of a claim, and is exacerbated by the alleged act. A latent condition exists prior to the alleged tortious act also, but it is quiescent or unknown at the time of the alleged tortious act (see Ashquabe v McConnell, 14 Misc 3d 211, 214-215 [Sup Ct, Erie County 2006],

affd 46 AD3d 1419 [4th Dept 2007]). Here, it is undisputed that, at the time of the alleged incident, claimant suffered from patent psychological and emotional defects arising from the traumatic brain injury that he suffered in 2001. Thus, the primary inquiry for this Court in assessing claimant's damages is the extent to which his condition was aggravated and/or exacerbated by the State Police's portrayal and dissemination of his photograph at the June 17, 2008 press conference regarding sexual predators and the ensuing defamation of his character that arose therefrom (see Bartolone v Jeckovich, 103 AD2d at 634-635; AA v State of New York, 43 Misc 2d at 1011; see also Bialik v Dupont De Mours & Co., 142 Misc 2d at 929-930).

The standard for determining whether an award for damages is excessive or inadequate is whether the award deviates materially from what would be considered reasonable compensation (see CPLR 5501 [c]). As damages awards are highly subjective, courts often look to cases with comparable fact patterns in order to determine what constitutes reasonable compensation (see Nolan v Union Coll. Trust of Schenectady, N.Y., 51 AD3d 1253, 1256 [3d Dept 2008], lv denied 11 NY3d 705 [2008]; Karney v Arnot-Ogden Mem. Hosp., 251 AD2d 780, 782 [3d Dept 1998], lv dismissed 92 NY2d 942 [1998]). Of course, while case law helps to assess what circumstances warrant a particular type of monetary award, each situation is different and is driven by its own particular facts. Here, claimant was ascribed what the Third Department has deemed "one of the most loathsome labels in society" when his photograph was included among those of sex offenders during a conference designed to warn the public about the danger of online sexual predators (Rossignol v Silvernail, 185 AD2d at 499). Monetary awards in cases involving such an accusation vary significantly. In one case, the Third Department upheld an award of \$225,000.00 in damages to a physician who was accused of sexually abusing his three-year-old daughter, recognizing the harm inflicted upon the plaintiff's well being and professional reputation (see Dobies v Brefka, 45 AD3d at 1000). In another case, however, the Court upheld Supreme Court's reduction of the jury's award from \$800,000.00 to \$85,000.00 where allegations of sexual abuse - which were later found to be baseless - were transmitted to the State, local social services agencies, and the plaintiff's employer (see Rossignol v Silvernail, 185 AD2d at 499-500). With respect to claimant's preexisting brain injury, courts have drawn a notable distinction between latent mental conditions and patent mental conditions. For example, in a case involving a patent mental condition, the Court of Claims determined that an infant claimant was entitled to recover \$90,000.00 in damages for the aggravation and exacerbation of a psychological disorder due to a sexual assault in a State-owned mental hospital (see AA v State of New York, 43 Misc 2d at 1014). By contrast, the Fourth Department upheld a \$500,000.00 jury verdict where a plaintiff suffering from a latent psychotic condition prior to an automobile accident was left permanently disabled by schizophrenia as a result of the accident (see Bartolone v Jeckovich, 103 AD2d at 634-635).

Turning to the case at bar, it is defendant's position that claimant was already suffering the effects of his traumatic brain injury at the time of the June 2008 press conference and that his condition today "represents an unbroken line of development" with respect to said injury (AA v State of New York, 43 Misc 2d at 1011). Having reviewed claimant's medical records and the trial testimony in this case, the Court agrees with defendant that claimant cannot attribute all of his current problems to the defamation at issue here. For example, according to his progress notes from CDS, claimant suffered from severe anxiety and rage post status the traumatic brain injury. Claimant also had difficulty keeping a job prior to 2008 and it appears that other factors in his life could have contributed to his loss of employment following the press conference. However, it is the Court's opinion that the testimony of claimant's witnesses and the medical records received from CDS clearly establish that claimant's mental condition was aggravated and exacerbated as a result of being falsely identified by the State Police as a sexual predator (see Bartolone v Jeckovich, 103 AD2d at 634-635; AA v State of New York, 43 Misc 2d at 1013-1014; see also Bialik v Dupont De Mours & Co., 142 Misc 2d at 929-930). Martin was the first to note the press conference as one of the significant stressors in claimant's life in her notes of July 2008. Nearly a year later, Lovejoy remarked that claimant still presented as terrified and anxious about the incident and the societal perception that arose from the broad dissemination of the press conference on television and the internet. It is true that claimant did not mention the press conference to Priest until December 2013, and even at that time, Priest opined that the incident did "not appear to have an ongoing effect from a psychiatric point of view" (Exhibit 2, 12/19/13 Progress Note). At the time of trial, however, Priest testified that he believed that the wrongful portrayal of claimant as a pedophile is partially causally related to his current mental condition. Significantly, all three experts were in

agreement that the traumatic brain injury negatively impacted claimant's ability to process the false identification at the press conference and continues to prevent him from fully appreciating the significance of the stigma. Furthermore, claimant's friends testified that the incident has negatively impacted claimant's quality of life, making him more withdrawn and hesitant to participate in social outings for fear that people still associate him with being a sexual predator.

The foregoing facts evince a sympathetic situation with respect to claimant's current mental and emotional condition. However, it is well settled that "punitive damages may not be assessed against the State," and, in any event, "claimant was wronged as a result of a clerical error rather than as the result of intentional or egregious conduct" (Harvey v State of New York, 281 AD2d 846, 849 [3d Dept 2001]; see Sharapata v Town of Islip, 56 NY2d 332, 338-339 [1982]). Nevertheless, claimant, in an already tenuous mental state, was given "one of the most loathsome labels in society" when his photograph was included among those of pedophiles and disseminated broadly on local television stations and the internet (Rossignol v Silvernail, 185 AD2d at 499; see Bialik v Dupont De Mours & Co., 142 Misc 2d at 929). As set forth above, "[i]n calculating non-economic damages in a defamation case, including humiliation, mental suffering and damage to plaintiff's reputation, a [factfinder] may properly consider a number of factors[, including but not limited to] (1) the plaintiff's standing in the community, (2) the nature of defendant's statements made about the plaintiff, (3) the extent to which the statements were circulated, (4) the tendency of the statement to injure a person such as the plaintiff, and (5) all of the other facts and circumstances in the case" (Cantu v Flanigan, 705 F Supp 2d at 227-228 [internal quotation marks and citation omitted]; see PJI 3:29; Xiaokang Xu v Xiaoling Shirley He, 147 AD3d at 1224; Dobies v Brefka, 45 AD3d at 1000). Taking into account all of these factors, as well as the legal precedent regarding monetary damages in comparable cases of this nature, the Court hereby awards claimant \$300,000.00, with appropriate interest from the date of determination of liability on October 4, 2013, for the humiliation, shame, and despair caused by the actions of defendant and the aggravation and exacerbation of his preexisting mental condition (see Dobies v Brefka, 45 AD3d at 1000-1001; Yamine v DeVita, 43 AD3d at 522; Rossignol v Silvernail, 185 AD2d at 499-500; Bartolone v Jeckovich, 103 AD2d at 634-635; AA v State of New York, 43 Misc 2d at 1014).

In addition, to the extent claimant has paid a filing fee, it may be recovered pursuant to Court of Claims Act § 11-a (2).

All motions heretofore not decided are hereby denied, and the Clerk of the Court is directed to enter judgment in accordance with the foregoing.

June 9, 2017  
Albany, New York

JUDITH A. HARD  
Judge of the Court of Claims

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1. At the end of trial, claimant's attorney moved to amend the pleading to conform to the proof (T: 220).
  2. Claimant was unable to testify at the damages trial due to severe anxiety. His examinations before trial, taken in 2011 and 2015, were offered and received, with the consent of defense counsel, in lieu of live testimony pursuant to CPLR 3117 (Exhibits 9, 10).
  3. Priest is licensed as a physician in New York State. He received his undergraduate degree from St. Lawrence University and his medical degree from State University of New York at Buffalo. His residency was completed at Albany Medical College and he has been board certified in psychiatry since 1987.
  4. The Court notes that defendant declined to put forth its own expert witness in this case.
  5. Lovejoy has a master's degree in social work from the State University of New York at Albany and has been licensed as a social worker in New York State since 1979.