

LAVELY & SINGER

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 2400

2049 CENTURY PARK EAST

LOS ANGELES, CALIFORNIA 90067-2906

TELEPHONE (310) 556-3501

FACSIMILE (310) 556-3615

WWW.LAVELYSINGER.COM

JOHN H. LAVELY, JR.
MARTIN D. SINGER
BRIAN G. WOLF
LYNDA B. GOLDMAN
PAUL N. SORRELL
MICHAEL E. WEINSTEN
EVAN N. SPIEGEL
TODD S. EAGAN^Δ

ANDREW B. BRETTLER^Δ
ALLISON S. HART
T. WAYNE HARMAN
DAVID B. JONELIS
MELISSA Y. LERNER
JAKE A. CAMARA
KELSEY J. LEEKER
MARTIN F. HIRSHLAND

^Δ ALSO ADMITTED IN NY

^{*} ALSO ADMITTED IN NY AND NJ

July 19, 2020

CONFIDENTIAL LEGAL NOTICE
PUBLICATION OR DISSEMINATION IS PROHIBITED

VIA EMAIL: roddy@ffj-online.org

VIA EMAIL: wdcohan@me.com

Mr. Roderick Boyd, Founder and Editor
Foundation for Financial Journalism

William D. Cohan

Re: **Michael Shillaker / Foundation for Financial Journalism, William D. Cohan, et al.**

Our File No.: 6552-2

Dear Messrs. Boyd and Cohan:

Our firm is litigation counsel to Michael Shillaker, and I am writing regarding the false, outrageous and highly defamatory story described in your July 17, 2020 email to my client (the "Story"), which the Foundation for Financial Journalism ("FFJ") is considering for publication. In your July 17, 2020 email to my client, you "assure" him that "FFJ is going to great lengths to be measured, clear and above all, accurate. What's more, FFJ spares little expense during the editing and pre-publication review process." FFJ's website, <https://ffj-online.org/>, further states: "The hallmark of the foundation's reporting is a commitment to accuracy, depth in news gathering and clarity in presentation. In doing this work, we strive to conduct the foundation's business by meeting or exceeding the highest standards in nonprofit governance and ethical journalism." With these journalistic standards in mind, you should know that William Cohan, a director of FFJ, has been shopping the Story to multiple better known and highly reputable publications for at least two years, including without limitation, the *New York Times*, *Vanity Fair* and *Sunday Times*, all of whom have refused to publish this defamatory Story. It is obvious that since Mr. Cohan has been unable to convince any publication to publish his bogus Story that he is working with FFJ and you to attempt to publish this ten (10) year old discredited Story. Given the FFJ's stated "commitment to accuracy" it is shocking that Mr. Boyd would state in his July 17, 2020 email to my client that "FFJ *will* be publishing" (emphasis added) the Story if Mr. Cohan had truthfully disclosed to Mr. Boyd and FFJ that multiple highly respected publications had refused to publish the Story, including the *New York Times* – to which FFJ's website states Mr. Cohan "frequently contributes", and *Vanity Fair* – for which FFJ's website identifies Mr. Cohan as a "special correspondent."

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 2

The Story that Mr. Cohan is desperately attempting to publish is to accuse my client, a private figure, of engaging in unlawful conduct. So that it is clear, there is zero truth to the allegation that my client drugged and sexually assaulted a fellow Credit Suisse employee in 2010. ***My client never drugged or sexually assaulted anyone.*** My client was thoroughly investigated by law enforcement on two (2) separate occasions after the allegation was first made in 2010, and police investigating the matter refused to charge my client with any crime. The claims were also thoroughly investigated by Credit Suisse in 2010 and again in 2018, which cleared my client of any wrongdoing. Although my client's employment with Credit Suisse was terminated in August 2018 following the ex-employee's further request for investigation after the #MeToo movement, my client immediately pursued claims against Credit Suisse in late 2018, and Credit Suisse admitted in court documentation that the termination of my client's employment was unfair, and that he was dismissed without cause. If FFJ recklessly publishes a Story falsely asserting – either directly or implicitly – that my client drugged and/or sexually assaulted a woman, or that his employment was terminated because of these false allegations, it will be defamatory *per se* and FFJ and all those involved in the publication will be exposed to multi-millions of dollars in liability.¹

Ever since law enforcement did not want to pursue the matter, and my client was cleared of wrongdoing by Credit Suisse (including in a court document), the individual who claimed that she was drugged and sexually assaulted by my client in 2010 has been seeking to publicize her claims in an effort to ruin my client. Since 2012, numerous other highly regarded publications have declined to publish the Story. When Mr. Cohan first approached my client and requested an interview with him in September 2018, he falsely stated that publication of the Story by the *New York Times* was imminent. My client relented to Mr. Cohan's request for an interview under duress based on Mr. Cohan's false representations concerning the *New York Times*' intentions to publish the Story. Moreover, the interview was conducted under extraordinarily stressful and upsetting circumstances, on or around the anniversary of the date when my client was among the victims of the September 11, 2001 terrorist attacks. After the *New York Times* refused to publish the Story Mr. Cohan sought to have both *Vanity Fair* and the *Sunday Times* publish the Story in 2019. It is obvious that both *Vanity Fair* and the *Sunday Times* also refused to publish the Story since Mr. Cohan is now seeking to have the Story published by the FFJ. We find it extremely troubling that both Mr. Boyd and FFJ would give any consideration to publishing the Story after the *New York Times*, *Vanity Fair*, the *Sunday Times* and other publications refused to publish the defamatory Story within the last two years.

You should know that since 2012, multiple other reputable publications have been approached with the Story, including the *Financial Times* and the *Guardian*, all of whom refused to publish the

¹ See *Condit v. Nat'l Enquirer, Inc.*, 248 F. Supp. 2d 945, 965 (E.D. Cal. 2002) (“Statements which falsely impute the commission of a crime are libelous on their face.”); *Goehring v. Wright*, 858 F. Supp. 989, 1004 (N.D. Cal. 1994) (“A false charge of criminality is defamatory *per se*”; plaintiff may recover presumed damages to reputation without establishing “special” or identifiable damages); *Allard v. Church of Scientology*, 58 Cal. App. 3d 439 (1976), cert. denied, 97 S. Ct. 1101 (unnecessary to prove special damages; general damages presumed as a matter of law).

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 3

Story.² Clearly a story that a top executive at a huge multinational financial institution was accused of drugging and sexually assaulting an employee would be newsworthy. Had the *Sunday Times*, *Financial Times*, *Guardian*, *New York Times* or *Vanity Fair* found that the allegation that my client drugged and sexually assaulted a Credit Suisse employee was corroborated by any credible evidence, there is no doubt that they would have published the Story. The fact that each of these highly respected publications declined to publish the Story speaks volumes.

To be clear, my client did not drug and did not sexually assault anyone in 2010 or at any other time. On Friday April 16, 2010, my client was scheduled to travel to Madrid for the weekend, but at the last minute his trip was cancelled due to the ash cloud from the volcanic eruption in Iceland which disrupted air travel throughout Europe at that time. After learning that his flight to Madrid had been cancelled, at approximately 6:00 p.m. that evening, my client invited approximately six co-workers, including Amy Walker (who at that time was employed as a member of Credit Suisse's chemical team), to join him at Corney & Barrow, which was just 20 meters from the Credit Suisse offices in London. The group arrived at Corney & Barrow at approximately 6:30 p.m. They sat outside on the terrace, which at that time was crowded with approximately 100 other patrons, and ordered food and drinks. My client and the other Credit Suisse employees who were present enjoyed a festive atmosphere, and lively and flirtatious conversation, including gossiping about romantic relationships at work.

Between approximately 7:30 p.m. and 8:30 p.m., the other members of the group departed Corney & Barrow one by one, and ultimately my client and Ms. Walker were the last two remaining at their table, though the terrace was still very crowded with other patrons. The Credit Suisse employees who were with my client and Ms. Walker that evening later confirmed that when they left Corney & Barrow, although Ms. Walker had been drinking, she did not seem incapacitated in any way or overly intoxicated at the time they left the bar. At approximately 8:35 p.m., Ms. Walker visited the restroom, and when she returned, she pulled up a chair next to my client and started kissing him. They engaged in other *consensual* sexual contact on the outside of their clothing.³ My client asked Ms. Walker if she "fancied" him and she said yes.⁴ They also discussed going to a hotel together, and when my client asked Ms. Walker what her boyfriend would think of her going to a hotel with him, she replied that she could "do what she liked." All of this occurred in broad daylight with my client and Ms. Walker sitting side-by-side at a table on Corney & Barrow's outdoor terrace in full view of the adjacent sidewalk and approximately 100 other patrons and staff at Corney &

² Although the *Independent* published an article online regarding the allegation without identifying my client, the article was promptly taken down.

³ While this was going on a gentleman passing by shouted at my client and Ms. Walker to "get a room," suggesting that he viewed the activity between my client and Ms. Walker to be consensual.

⁴ Although Ms. Walker later told law enforcement that she "despised" my client, that alleged sentiment is inconsistent with her having accepted my client's invitation to have drinks with him and other co-workers, and remaining at Corney & Barrow with my client after the rest of their group had left.

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 4

Barrow. No one at Corney & Barrow that evening reported anything amiss between my client and Ms. Walker. These facts belie any claim that my client's contact with Ms. Walker on April 16, 2010 was not consensual.

At approximately 9:00 p.m., Ms. Walker slipped out of her chair, and my client observed that she suddenly seemed to be quite drunk and unsteady. At this point, my client decided that Ms. Walker ought to go home (alone), and he escorted her to a taxi stand outside the Credit Suisse building with the intention of having a taxi take Ms. Walker home. Due to Ms. Walker's state of intoxication, however, the cab driver refused to drive her home unless my client escorted her. My client did not want to go home with Ms. Walker, so he helped her out of the cab, at which time she began vomiting outside of the Credit Suisse building in full view of the CCTV cameras. Canary Wharf security immediately came to assist my client with Ms. Walker. My client obtained the phone number for Ms. Walker's boyfriend, and called him to request that he come to take her home and the boyfriend agreed. Significantly, while this was going on, Ms. Walker admitted that she had taken prescription drugs while she was drinking, stating, "*I should not be drinking on Valium and Prozac.*" Canary Wharf security remained with my client and Ms. Walker until Ms. Walker's boyfriend arrived to take her home. When Ms. Walker's boyfriend arrived at approximately 9:40 p.m., he was not happy with Ms. Walker and stated that Ms. Walker should not have been drinking on her medications. Later that evening, Ms. Walker's boyfriend sent a text message to my client stating, "*Hey Mike, thanks for your help with Amy - she's home now and starting to sober up. Appreciate your having stuck around.*" Clearly, if Ms. Walker had told her boyfriend at the time that she believed she had been drugged or that my client had sexually assaulted her, her boyfriend would not have thanked my client for helping Ms. Walker and sticking around until he arrived to take her home.

The following Monday, April 19, 2010, my client and Ms. Walker each went to work at Credit Suisse as usual. It was not until days later that my client was told that Ms. Walker had alleged that my client sexually assaulted her and that a complaint had been filed against him with the police. My client was suspended from Credit Suisse with pay while Credit Suisse investigated Ms. Walker's claim. My client fully cooperated with the police investigation of Ms. Walker's complaint, and in July 2010 my client was informed by law enforcement that the criminal investigation was closed and no further action would be taken. Following a thorough investigation by Credit Suisse's human resources department, my client was also cleared of any wrongdoing and was reinstated to his position as Managing Director of the steel and mining team on May 20, 2010.

Notwithstanding the foregoing, approximately one year later, in May 2011, my client was contacted by a detective from a different division of the police department that investigated Ms. Walker's complaint in 2010. My client was informed that the investigation had been re-opened because Ms. Walker had complained about the conduct of the female officer who conducted the first

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 5

investigation,⁵ and based on alleged new evidence presented in the form of vomit on the coat Ms. Walker claimed to have worn on April 16, 2010. My client was also informed that Ms. Walker was contemplating bringing a civil suit against him, and a detective told my client that Ms. Walker had allegedly “*been fighting for a year to prove she was drugged.*”

My client did not drug Ms. Walker and there is absolutely no evidence corroborating this outlandish claim. The decision to go to Corney & Barrow for drinks on April 16, 2010 was a spontaneous decision that was not made by my client until approximately 6:00 p.m. that evening after his flight to Madrid was cancelled. While at Corney & Barrow, my client never handled any food or drinks that Ms. Walker consumed. My client gave money to another gentleman in the group to purchase drinks from the bar, and food was ordered from and delivered to the table by a waiter working on the terrace. Although Ms. Walker allegedly claimed to police that the second glass of wine she drank that night tasted “funny,” not one of the other Credit Suisse employees who went to Corney & Barrow with them that night recalled Ms. Walker stating that her drink tasted “funny.” My client was told by police that the vomit on the Ms. Walker’s coat showed that she had ingested diphenhydramine – a substance found in many common over the counter antihistamine and sleep aid products. However, in addition to the fact that my client never touched any food or drinks consumed by Ms. Walker, the alleged presence of this drug in the vomit on Ms. Walker’s coat proved absolutely nothing since the chain of custody of the coat after April 16, 2010 was unclear, and there was no way to know when the vomit with the diphenhydramine got on the coat. Ultimately, there was zero evidence corroborating the claim that my client drugged Ms. Walker, and the police investigation was once again closed with no action taken against my client.

In fact, my client’s conduct on the night of April 16, 2010 was the polar opposite of what one would expect of someone with an intention to drug and sexually assault a woman. After she became unsteady at Corney & Barrow, my client easily could have gotten into the cab with Ms. Walker and taken her to a secluded location to take advantage of her. He did not. Instead, my client called Ms. Walker’s boyfriend and stayed with her for 40 minutes outside of Credit Suisse’s offices with Canary Wharf security in full view of CCTV cameras until Ms. Walker’s boyfriend arrived to take her home.

After my client was cleared of any wrongdoing and law enforcement would not pursue the matter, a number of reputable media outlets, including the *Sunday Times*, *Financial Times* and the *Guardian*, contacted both my client and Credit Suisse regarding the Story. Ultimately, each of these publications refused to publish the Story, no doubt because there was no evidence corroborating Ms. Walker’s claims.

My client is informed that in January 2018, in the wake of the #MeToo movement, Ms. Walker (who left her employment with Credit Suisse in 2010) sent a letter to the former CEO of

⁵ We are informed that the first investigating officer did not believe Ms. Walker’s claims and Ms. Walker was upset that the officer had disclosed information from her psychiatric records to Credit Suisse security.

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 6

Credit Suisse, Tidjane Thiam, regarding Credit Suisse's investigation of my client in 2010. We are informed that Mr. Thiam claimed he never saw and had no knowledge of Ms. Walker's letter, but apologized to Ms. Walker for failing to respond to her request. In March 2018, the *Financial Times* contacted Credit Suisse regarding Ms. Walker's 2010 complaint against my client, and my client was told that Credit Suisse would be reinvestigating the matter. My client's employment with Credit Suisse was later terminated without any clear explanation and without my client being shown any documentation supporting his dismissal. As a result of my client's termination, my client immediately pursued legal claims against Credit Suisse. In January 2019, Credit Suisse admitted in documents filed with the Spanish court that my client's dismissal was unfair and he was dismissed without cause. These facts can easily be corroborated by Credit Suisse.

To the extent that Ms. Walker is a source for the Story, she is not a reliable source. Ms. Walker may have been motivated to report her allegations in 2010 out of concern that her professional reputation would be negatively affected after CCTV cameras captured her drunk and vomiting in front of the Credit Suisse offices. Moreover, since Ms. Walker had a boyfriend at the time, she may have been motivated to fabricate a claim that she was drugged and sexually assaulted by my client to cover up the fact that she engaged in consensual kissing and other sexual contact with him that evening. In addition, we are informed that Ms. Walker has disclosed to other media outlets that she was under psychiatric care in 2010 when she alleges the incident occurred. Since both Credit Suisse and law enforcement cleared my client of wrongdoing and declined to take any action against him in connection with Ms. Walker's claims, we are further informed that she harbors substantial personal animus toward our client.

It is clear that my client is a private figure. As such, my client simply needs to establish negligence on the part of FFJ in publishing the Story. *See, Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323. This is ample basis not to publish the Story based on all of the prior responsible publications refusing to publish the Story.

However, even if my client would be considered to be a public figure, which we categorically dispute, my client could establish defamation by FFJ and Mr. Cohan if the Story is published. As you know, malice can be proven in a libel case by, among other things, the publisher's reliance on sources known to be hostile, biased or unreliable, or relying on persons who the publisher does not know to be reliable. *St. Amant v. Thompson* (1968) 390 U.S. 727, 88 S.Ct. 1323; *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845 (1996) ("A failure to investigate..., anger and hostility toward the plaintiff, reliance upon sources known to be unreliable..., or known to be biased against the plaintiff... --such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication").

You should also be familiar with the latest rulings in the U.K., where the alleged events described in the Story took place and where my client was a citizen, *ZXC v Bloomberg LP* ([2020] EWCA 611). This case confirms that an individual who is investigated by a law enforcement body has a reasonable expectation of privacy in the fact and details of such an investigation. This provides a crucial extra level of protection for the rights of criminal suspects whose lives have, in the past,

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Finacial Journalism; William D. Cohan, et al.

July 19, 2020

Page 7

often been severely damaged by media reporting of false allegations being published or caused to be published. In the event FFJ publishes the Story, it will also be sued in the U.K. since my client has U.K. counsel who will not hesitate to assert all his rights against you for breach of his privacy in accordance with this ruling. He has never been named in the U.K. or anywhere else worldwide, and full responsibility and liability for his identification will fall on you.

When, one of my client's former attorneys raised with Mr. Cohan the issue of Ms. Walker's psychiatric records, and my client's understanding that Ms. Walker had provided such records to the police, Mr. Cohan refused to discuss this matter. Mr. Cohan's refusal to seek more facts concerning Ms. Walker's psychiatric treatment in 2010 is outrageous since this issue goes to the heart of her claim that my client allegedly drugged her, when the truth is that she admitted in 2010 that she was taking medications, which may have been prescribed by a physician to treat a mental health condition. Mr. Cohan's refusal to discuss or thoroughly investigate this matter constitutes a purposeful avoidance of the truth, supporting a finding of malice.

In addition, although one witness who was present with my client and Ms. Walker at Corney & Barrow on April 16, 2010 was willing to speak to Mr. Cohan on background based on privacy constraints imposed by that individual's employer, because Mr. Cohan would not agree to keep that person's name out of the Story the interview was never completed. That individual witnessed Ms. Walker flirting with my client throughout the evening, and corroborated that my client never went to the bar and never handled Ms. Walker's food or drinks. In addition, Mr. Cohan failed to interview a Managing Director at Credit Suisse with knowledge of Credit Suisse's investigation of Ms. Walker's claims because that individual also would only speak to Mr. Cohan off the record. Such "purposeful avoidance of the truth" also supports a finding of Constitutional malice. *Harte-Hanks, Inc. v. Connaughton* (1989) 491 U.S. 657, 692, 109 S.Ct. 2678, 2698.

Mr. Cohan's refusal to inquire into Ms. Walker's history of psychiatric treatment and refusal to interview witnesses on background or "off the record" without the individual going on the record and/or without identifying the individual in the Story confirms that Mr. Cohan has an agenda to publish the Story, whether it is true or false. This may be a reason why, both the *New York Times* and *Vanity Fair* refused to publish the Story. It is obvious that the *New York Times* and *Vanity Fair* refused to publish the Story and Mr. Cohan now wants to have the Story published by FFJ even if it is untrue. If the Story is published, the reckless disregard by FFJ and Mr. Cohan of their obligation to provide their readers with accurate information in favor of advancing Mr. Cohan's agenda will support a finding of Constitutional malice. *Gertz v. Robert Welch, Inc.* (7th Cir. 1982) 680 F.2d 527, 539, *cert denied*, 103 S.Ct. 1233 (1983) (malice found where "[the editor] conceived of a story line, solicited ... a writer with a known and unreasonable propensity to label persons or organizations as Communist, to write the article; and after the article was submitted, made virtually no effort to check the validity of statements that were defamatory."); *Suzuki Motor Corp. v. Consumers Union of U.S., Inc.* (9th Cir. 2003) (evidence that defendant "rigged" its test to support conclusion that plaintiff's vehicle rolled over too easily supported finding of malice). However, my client does not even need to establish malice for there to be significant liability against FFJ if it publishes the Story since my client is a private figure.

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Financial Journalism; William D. Cohan, et al.

July 19, 2020

Page 8

Significantly, although we are informed that Ms. Walker stated in 2011 that she intended to pursue civil claims against my client, she did never do so. In fact, my client's attorneys invited Ms. Walker's attorneys to pursue a civil action, but warned that if such an action was brought by Ms. Walker, she and her attorneys would be exposed to liability. It is obvious that Ms. Walker failed to file a civil suit against my client because she and her attorneys knew that her alleged claims against my client had no merit and that if she filed a lawsuit against him in the U.K. and lost, she would be responsible for paying my client's legal fees.

As a result of Ms. Walker's refusal to file a civil action against my client when she had civil attorneys and she and her attorneys were aware that she faced liability if she did so, it would be reckless for FFJ to publish the Story. This is confirmed by major publications refusing to publish her claims. If FFJ publishes the Story, it will be exposed to lawsuits seeking significant damages in multiple jurisdictions.

There is absolutely no corroborating evidence supporting the claim that my client drugged and sexually assaulted Ms. Walker in 2010. My client has earned a stellar reputation working in the financial industry for well over two (2) decades, including heading the steel and mining team as a Managing Director at Credit Suisse from 2004 to 2018. My client is a devoted family man, with a wife and young children. It is difficult to imagine many things more damaging to somebody's reputation than to falsely accuse him of sexual assault. Publication of a false allegation that my client drugged and sexually assaulted a co-worker in 2010 would be devastating to him both personally and professionally. Be advised that my client will file a lawsuit for defamation and invasion of privacy in the U.K., Spain and/or potentially in the U.S. if this outrageous Story is published. We have been advised by a Queen's Counsel in the U.K. that the awards on these claims will be in the highest brackets given the allegation that my client drugged Ms. Walker coupled with the fact that after two separate investigations the police in the U.K. did not charge my client with any offense whatsoever, as well as the fact that my client has never been publicly identified as the subject of these specious allegations. Therefore, if FFJ publishes a Story stating that my client drugged and sexually assaulted Ms. Walker after being put on notice of the facts, and in the utter absence of even a single scrap of corroborating evidence to substantiate these scurrilous allegations, it will be acting recklessly and with Constitutional malice. FFJ will face enormous liability based on its adoption of Ms. Walker's allegations.⁶

⁶ See, *Khawar, supra*, 19 Cal. 4th at 268 (“At common law, one who republishes a defamatory statement is deemed thereby to have adopted it and so may be held liable, together with the person who originated the statement, for resulting injury to the reputation of the defamation victim”); *Jackson v. Paramount Pictures Corp.*, 68 Cal. App. 4th 10 (1998) (“[a] false statement is not less libelous because it is the repetition of rumor or gossip or of statements or allegations that others have made concerning the matter”); Smolla, *Law of Defamation* (2d ed. 2016) Vol. 1, § 4:91 (secondary publisher, or republisher, may be liable for defamatory publication); *Flowers v. Carville*, 310 F.3d 1118, 1128 (9th Cir. 2002), quoting 1 Smolla, *Law of Defamation* § 4:87, at 4-136.3 to -136.4 (2d ed. 2001) (defendant “overlooked the venerable principle that a person who repeats a defamatory statement is generally as liable as the one who first utters it.... Liability for repetition of a libel may not be avoided by the mere expedient of adding

Mr. Roderick Boyd

Mr. William D. Cohan

Re: Michael Shillaker / Foundation for Finacial Journalism; William D. Cohan, et al.

July 19, 2020

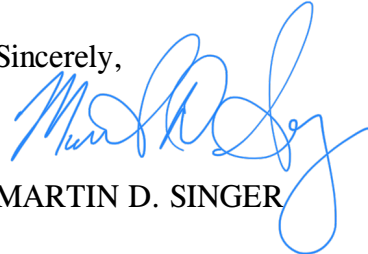
Page 9

It would be reckless in the extreme to publish a Story asserting either directly, indirectly or implicitly that my client drugged and sexually assaulted a woman, and it would be defamatory *per se*. Publication of a Story falsely accusing my client of engaging in such egregious criminal conduct as sexual assault would ruin my client's life and career, and could foreseeably cause multi-millions of dollars in damages. That liability will arise whether these outlandish allegations are made directly or by implication.⁷ The fact that FFJ purports to be a non-profit organization will not shield it or Mr. Cohan from liability. If FFJ recklessly publishes this extraordinarily damaging Story, FFJ, Mr. Cohan and all those involved in its publication will be sued in multiple jurisdictions, including without limitation the U.S. and/or the U.K.

This is an extremely serious matter. Therefore, if FFJ proceeds to recklessly publish this egregious Story, then it will be acting at its own peril.

This does not constitute a complete or exhaustive statement of all of my client's rights or claims. Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This is a confidential legal communication and is not intended for publication.

Sincerely,



MARTIN D. SINGER

MDS:ash

cc: Mr. Michael Shillaker
Charlotte Harris, Esq.
Allison S. Hart, Esq.

MDS-FFJ 071920(a).wpd

the truthful caveat that one heard the statement from somebody else.”) (internal quotes omitted).

⁷ *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990) (“defamation by implication stems not from what is literally stated, but what is implied”); *Kapellas v. Kofman*, 1 Cal. 3d 20, 33 (1969) (libel defendant liable “for what is insinuated as well as for what is stated explicitly.”); *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1083 (9th Cir. 2002), quoting *Selleck v. Globe Int’l*, 166 Cal. App. 3d 1123 (1985) (“our inquiry is not to determine whether the publication may have an innocent meaning but rather to determine if it reasonably conveys a defamatory meaning. In making that determination we look to what is explicitly stated as well as what insinuation and implication can reasonably be drawn from the publication.”); *Armstrong v. Simon & Schuster, Inc.*, 85 N.Y.2d 373 (1995) (“‘Defamation by implication’ is premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements.”).