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USA – New York: Trends & Developments

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USA – NEW YORK



Trends and Developments

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Defamation by Context: Why Meaning, Medium, and Motion Practice Now Drive the Modern Case

In March 2026, an Ohio jury rejected claims brought by seven sheriff's deputies after Joseph Foreman, the recording artist known as "Afroman," turned footage of a raid on his home into satirical songs and videos, including the viral song "Lemon Pound Cake." The deputies sought nearly USD4 million in damages, but the jury found no liability. While the verdict is trial-level and not precedential, it captures a question that shapes much of modern defamation practice. When does sharp criticism, parody, or rhetorical overstatement become a provably false statement of fact?

This question has come front and centre in an atmosphere where defamation no longer feels like a niche media tort. In the last few years, large verdicts have pushed reputational exposure into ranges once associated with catastrophic torts or headline business litigation. Take E. Jean Carroll – New York juries awarded her almost USD90 million across two trials for repeated defamatory statements about her credibility by President Trump (*Carroll v Trump*, 124 F.4th 140, 145 (2d Cir. 2024) – affirming USD5 million award for sexual assault and defamation ("*Carroll I*"); *Carroll v Trump*, No. 24-644, 2025 WL 4141671 (2d Cir. Sep. 8, 2025) – affirming USD83.3 million award for repeated defamation ("*Carroll II*"). A federal jury in Colorado awarded former Dominion executive Eric Coomer USD2.3 million against Mike Lindell (MyPillow founder) and related entities based on public allegations of election rigging (*Coomer v Lindell*). A Washington, DC, jury awarded Ruby Freeman and Shaye Moss USD148 million against Rudy Giuliani over similar false election-related statements (*Freeman v Giuliani*). And the Supreme Court left in place the roughly USD1.4 billion Connecticut *Sandy Hook* judgment against Alex Jones.

At the same time, not every important case ends in a plaintiff's win. In Nevada, Steve Wynn's (casino executive and former head of Wynn Resorts) defamation suit against The Associated Press (AP), arising from AP's reporting on allegations of sexual misconduct, failed under that state's anti-SLAPP regime (*Wynn v The Associated Press*). Nevertheless, as the upside for plaintiffs has grown, defamation has moved to the

centre of disputes over politics, workplace allegations, celebrity conflict, and misinformation.

This article highlights three trends in modern defamation cases.

- First, many recent defamation cases turn on actionability before they turn on falsity. The threshold question is often whether a statement would be understood as verifiable fact at all.
- Second, once a dispute moves across social media posts, press releases, interviews, and creative works, one accusation can generate multiple statements, multiple claims, and multiple rounds of litigation.
- Third, anti-SLAPP statutes and forum choice often determine whether the truth or falsity of the statement is even analysed (and thus before expensive discovery becomes punishment).

With those points in mind, it finishes with some practical considerations for practitioners.

The first fight is whether the statement is factual at all

Massive verdicts, like those referenced above, explain the stakes. But defamation is not a cause of action for every insult. In reality, many defamation cases still rise or fall on an early motion rather than at trial.

The reason? As communication and expression evolve, courts are starting with a basic question: was the challenged statement the kind of thing a reasonable reader would understand as asserting fact? Under *Milkovich v Lorain Journal Co* and later cases, there is no free-floating constitutional exemption for anything labeled opinion. But even if speech is insulting, inflammatory, or damaging, a defamation plaintiff still needs a statement that conveys an objectively verifiable false assertion of fact (see *Milkovich* at 22).

If a court decides at the pleading stage that the challenged words would be understood as opinion, rhetorical hyperbole, parody, or political commentary rather than literal fact, the claim can be dismissed at that point (see *Trump v Cable News Network, Inc.*, at *1-2 and *Talbert v Tynes*, at *2). The court never needs to reach the questions that we typically associate with defamation

claims (ie, whether the statement was false, a privilege applies, the defendant acted with negligence or actual malice, or the plaintiff can prove damages).

Context matters here. Courts ask how a reasonable audience would understand the statement on that platform, in that format, and with that tone. Recent cases show that a social media post, a cable news epithet, or a satirical music video may fail at this threshold stage because no reasonable audience would read it as a literal factual assertion.

Two exemplars, one arising from tweets and a meme; the other from cable-news commentary, show this question in action.

In *Talbert v Tynes*, the underlying dispute arose between two Columbia University PhD students after one posted tweets and a meme about the other on X. The court held that context is “critical for social media statements,” where “hyperbole and rhetorical exaggeration are common.” Read in context, the tweets were “emotionally charged reactions written in Twitter’s vernacular” and therefore nonactionable opinion. That mattered for two reasons.

- First, the court treated the fact-opinion issue as one for the court, not the jury.
- Second, because the action fell within New York’s anti-SLAPP statute, the court reversed the denial of dismissal and remanded only to calculate attorneys’ fees.

Trump v CNN makes a similar point (though on a much larger stage). Trump argued that CNN defamed him by using the phrase “Big Lie” to describe his false 2020 election claims. The court affirmed dismissal: the court held CNN’s phrasing was not a false statement of fact but a “subjective assessment” of Trump’s conduct. It was “not readily capable of being proven true or false.” The opinion also rejected the idea that a jury had to decide the issue. Whether a statement is fact or opinion, and whether it is susceptible to defamatory meaning, remained a question of law for the court, not the jury.

These cases have impact beyond politics and social media. They supply a practical test for counselling

clients in this modern era of defamation. A client who says on a podcast that a rival’s product launch was “a total disaster” may stand in a different position from someone who says the rival “falsified its clinical trial data.” Calling a public figure “crooked” in an angry, meme-laden post presents a different risk from, in a formal press release, saying that person took specific bribes on specific dates. In an age when speech moves across so many platforms, the law has become more sensitive to how audiences process speech. The better question for counsel is no longer only “Is this false?” It is “Will a reasonable reader, in this setting, hear this as fact?”

Moreover, format often decides how a reader hears the words. A tweet does not read like a newspaper article. A chyron does not read like a judicial opinion. A comedy song does not read like a witness statement. The same words can shift legal meaning when the medium changes.

One accusation can produce several defamation claims – and even more causes of action

Actionability, however, is only the first pressure point. Modern defamation disputes also tend to multiply once the first accusation is made.

- First, many modern defamation fights unfold in stages rather than in a single publication. An accusation is made publicly. The target denies it. The denial then goes further and accuses the original speaker of lying, fabricating events, or acting from improper motives. At that point, the denial itself can become the next allegedly defamatory statement, and employers, studios, brands, or distributors often react in the middle. The result is a loop, not a one-off publication. The pattern became especially visible in sexual-misconduct litigation, but it now appears across many reputational disputes.
- Second, plaintiffs will often add companion claims, especially false-light or privacy-based claims, when they are attacking the overall portrayal rather than a single sentence. But courts will not allow a plaintiff to multiply tort theories merely by relating the same alleged reputational injury. The pleading lesson is simple: ask whether any added tort theory truly alleges a distinct injury.

Bigger verdicts contribute to the procedural turn

The focus on procedure becomes easier to understand once the economics are in view. Plaintiffs continue to file defamation claims because juries have shown a willingness to award substantial damages where defendants repeated false accusations, attacked credibility in public, or acted with actual malice. Defendants, in turn, press hard for early dismissal because the current costs of discovery, jury verdicts, and reputation harm can be enormous. The cases discussed at the outset – *Carroll*, *Freeman-Moss*, *Coomer*, and *Sandy Hook* – all demonstrate how defamation is no longer a low-stakes sideshow. With the right facts, defamation lawsuits can produce eight-, nine-, and even ten-figure exposure.

Carroll I & *Carroll II* (the cases against President Trump discussed at the outset) are especially instructive. They were not just about a single denial, but repeated public comments about an accuser's truthfulness and motives. The verdicts, later upheld on appeal, reflect the legal and reputational force of that pattern. The lesson travels well beyond sexual-misconduct allegations. When a public denial shifts from disputing facts to making new accusations about the other side's honesty, character, or motive, the denial may become the next case.

At the same time, strong speech defences, privilege, and anti-SLAPP protections still matter. In *Wynn*, where AP reported on alleged sexual misconduct by the former casino executive, the Nevada Supreme Court described the article at issue as the kind of good-faith reporting on a matter of public interest that the state's anti-SLAPP law was designed to protect (*Wynn*, at 280). That is the other side of the modern story. Exposure has increased, but so has the value of well-developed threshold defences.

The importance of anti-SLAPP protections

The specific anti-SLAPP protections available in a given jurisdiction are now a critical consideration when counselling clients. These statutes determine whether a court decides the fact-opinion question before discovery. That matters because defamation suits often sweep in sprawling records: emails, texts, DMs, Slack messages, drafts, editorial comments, and communications with sources, publicists, and executives. Col-

lecting and reviewing those materials is expensive, intrusive, and often embarrassing, even for a defendant who expects to win on the merits.

Fundamental components of anti-SLAPP statutes typically include:

- a special motion to dismiss or strike claims arising from protected activity;
- a stay of discovery while the motion is pending; fee shifting in favour of prevailing defendants; and
- in some jurisdictions an immediate appeal as of right from a denial.

In recent years, many state legislatures have broadened the scope of covered speech and strengthened the procedural tools available to defendants.

Take New York's Anti-SLAPP statute. The 2020 amendments extended coverage beyond petitions to government bodies to encompass speech on any issue of public interest, including reporting and commentary in public forums, and paired that expansion with discovery stays and fee shifting. *Talbert* (at *2) shows that this structure has real teeth. The defendant obtained dismissal, avoided ordinary discovery, and secured a fee remand.

New York is not alone. Other states have expanded the reach of existing statutes.

Arizona expanded its law to protect all lawful exercises of First Amendment rights.

Pennsylvania's anti-SLAPP act not only defines "protected public expression" and grants substantive immunity but also:

- creates a dedicated pretrial motion procedure;
- mandates fee awards for prevailing defendants; and
- authorises immediate appeals from immunity decisions.

California remains the most influential anti-SLAPP model. Its statute provides:

- a special motion to strike;

- stays discovery;
- awards fees to a prevailing defendant; and
- permits an immediate appeal.

While many of these statutes differ at the margins, they share a common premise: speech protection means little if a defendant must endure discovery before a court decides whether it was actionable in the first place. But, critically, not every state has adopted anti SLAPP protections: as of the latest [Institute for Free Speech report card](#), a dozen jurisdictions have none.

Federal circuits remain split on the application of state anti-SLAPP laws in federal court. This uncertainty stems from an unresolved *Erie* doctrine question: whether the powerful procedural mechanisms of state anti-SLAPP statutes, such as fee-shifting and discovery stays, are substantive state rights that must be applied in diversity cases, or whether they impermissibly conflict with the Federal Rules of Civil Procedure.

The Eleventh Circuit in *Carbone v CNN* held that Georgia's anti-SLAPP motion-to-strike procedure does not apply in federal court because it conflicts with Rules 12 and 56. The DC Circuit reached the same basic conclusion in *Abbas v Foreign Policy Group*. But the Ninth Circuit has continued to accommodate California's anti-SLAPP framework by routing purely legal attacks through Rule 12 (b)(6) and factual attacks through Rule 56. This split makes forum choice, removal strategy, and appeal rights central parts of early case assessment.

For all of these reasons, procedure and jurisdiction are not just housekeeping in speech litigation. They can determine whether constitutional and statutory protections are enforced before litigation costs and reputational harm do the damage.

Conclusion: what practitioners should consider

Taken together, these themes point to a few practical considerations for counsel.

- First, stress-test provability, not just tone. Ask whether the statement is framed as something a factfinder could verify. "We believe the report is misleading" and "the report fabricated data" are not the same statement. "His explanation is

absurd" and "he lied about being in the room" are not the same statement either. The closer the language moves toward dates, records, transactions, and specific conduct, the more it needs substantiation and careful phrasing.

- Second, the same words can carry different legal meaning in different settings because courts do not read challenged statements in a vacuum. They ask how a reasonable reader or viewer would understand the words in that medium. A loose insult in a tweet, meme, or rap lyric may signal rhetoric, performance, or anger. The same accusation in a newspaper investigation, corporate press release, or SEC filing is more likely to be understood as asserting concrete fact. That is why platform and format matter so much in current cases. They are not just cultural details. They help determine whether the statement is actionable in the first place.
- Third, treat anti-SLAPP, forum, and removal as day-one issues. When filing in a speech-protective jurisdiction, motion practice may decide not just timing but economics. Fee exposure, discovery stays, and interlocutory appeals shape leverage from the outset. In federal court, do not assume the state procedure travels with the case. Ask first which circuit you are in and what that circuit does with state anti-SLAPP law.
- Fourth, draft public statements or denials with the knowledge that they may very well appear in the next complaint. There is a large difference between "we deny the allegation" and "the accuser is a liar with an agenda." The first disputes. The second makes a new factual assertion. The modern cases show the cost of forgetting that distinction.
- Fifth, when the work is creative, preserve the signals of commentary. Parody, anger, performance, and obvious exaggeration do not create blanket immunity. But they do shape meaning. The Afro-man verdict suggests that jurors, like judges, pay attention to expressive cues. Counsel should therefore help clients preserve the features that make commentary legible as commentary, rather than letting downstream promotional assets flatten everything into a factual-sounding accusation.

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