

**Mike Arnzen v. Fisher Broadcasting, Inc. et al.**, this case was tried to a complete defense verdict in May of 2004. (Plaintiff requested \$1.5 million from the jury.)

On May 4, 2004, after a seven-day trial in the District Court of Lewiston, Idaho, a jury returned a complete defense verdict in favor of KLEW-TV News, owned by Fisher Broadcasting, on defamation and related claims. *Arnzen and Bryden Pawnshop, Inc. v. Fisher Broadcasting, Inc. et al*, No. CV02-02832 (Dist. Ct. Idaho, County of Nez Perce).

The plaintiff, Michael Arnzen, the owner of Bryden Pawn Shop, sued the station over an error made in a December 19, 2000, KLEW-TV news broadcast. During the broadcast, the anchor read an accurate script describing the dismissal of criminal charges against Steve's Pawn Shop, owner Steven J. Taulbee and his two sons. However, during the 73-second story, the station aired 55 seconds of video of a different pawn shop, Bryden Pawn Shop owned by the plaintiff.

Arnzen never demanded a retraction from the station, instead filing suit for defamation and related tag-along theories days before the two-year statute of limitations expired.

Plaintiff asked the jury to award him \$1.5 million, claiming that his pawn shop lost profits as a result of the broadcast. He claimed that the broadcast made him look like "a crook." He furthermore claimed that he suffered significant emotional distress as a result of the broadcast. He calculated his "damages" by multiplying the number of KLEW's potential audience members by \$1 to \$5.

The pretrial motions by the defendants primarily consisted of the defendants making a motion for summary judgment on the basis that the gist and sting of the broadcast in question was not of and concerning the plaintiff. Rather, it was of and concerning Steven J. Taulbee and his two sons, and, as such, it was factually accurate. The defendants also argued that it was not defamatory by its very nature because the thrust of the broadcast was that the criminal charges had been dismissed against Steven Taulbee and his sons, which again was factually accurate, and the mere juxtaposition of pictures of the plaintiff and his shop were not by their very nature defamatory. This motion was denied.

Additionally, the motion for summary judgment was made trying to establish that the plaintiff had to prove actual malice on the basis of the fact that the defendants were reporting on a judicial proceeding, reporting on the comments of a public official (defendants were relating what the prosecutor was stating as to the dismissal of the criminal charges against the Taulbees) and that the plaintiff was a limited purpose public figure. Again, the judge denied this motion and ruled that the plaintiff was a private person and that he merely had to establish negligence.

The trial started on a Monday and the plaintiffs' case went through Friday and a small portion of the following Monday morning. The plaintiffs' witnesses consisted of a CPA who testified that the Bryden Pawn Shop was enjoying a 20% growth from 1998 through the year 2000, and that as a result of the broadcast, it failed to enjoy that continued 20% growth per year for the years 2001 through 2003. Additionally, the plaintiffs called a video expert who freeze-framed the broadcast to focus upon those snippets which included Mike Arnzen individually or signage from the Bryden Pawn Shop or inventory in his store in an attempt to imply that the entire focus was directed toward the plaintiff and/or his shop. Also, the plaintiffs called multiple witnesses who were friends, relatives, or friendly acquaintances of the plaintiff who testified as to the various ways that the plaintiff's reputation had been negatively impacted in the community. The plaintiffs had intended to call a media expert who would have testified that the acts and actions of the defendants essentially constituted negligence and/or actual malice. Her testimony was presented in the form of an affidavit in support of a pretrial motion by the plaintiffs and the defendants relied upon that affidavit and made a motion in limine to exclude her testimony. The judge granted the motion in limine essentially on the basis that her testimony would invade the province of the jury, and it was up to the jury to determine the ultimate factual issues of negligence and/or actual malice, if need be.

The station called only three witnesses, the former news director, a financial expert and Steven Taulbee, the actual subject of the news story. The station successfully defended itself by demonstrating that the broadcast did not cause a negative business impact on Arnzen's pawn shop when its largest competitor, Steve's Pawn Shop (the subject of the dismissed criminal charges) began operating again. In fact, financial evidence (i.e the plaintiff's tax returns) showed that the plaintiff actually generated a greater gross profit the year after the broadcast.

The jury returned a special verdict and found that there was no liability whatsoever in regard to defamation and/or false light, and as a result did not go to the next question which would have them contemplate damages.

In discussing the situation with some of the jurors, it appears that their entire deliberations took less than 55 minutes, and perhaps more like 16 minutes. They did not look at one exhibit of the many exhibits that had been submitted during the trial, and simply gathered around the table and discussed the situation fairly briefly, deciding that Mr. Arnzen nor Bryden Pawn Shop was defamed (or cast in a false light) and thus Mr. Arnzen had also not been damaged.

In closing argument, Mr. Brown argued that KLEW-TV made "an honest mistake" and inadvertently included the video footage of Arnzen, his shop, and his inventory in the broadcast for which they were genuinely sorry. But, that was far different than having defamed Mr. Arnzen or Bryden Pawn Shop.

In discussing the matter with the jurors, it appeared that they felt genuinely uncomfortable with the plaintiffs' convoluted interpretation of the broadcast and, in addition to that, felt uncomfortable with his allegation that the broadcast caused the tremendous damages to which he was laying claim.

**Verdict:** It was a 12-person jury with a unanimous defense verdict.