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## Californian Can Be Sued in N.J. for Alleged Libel on Internet

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New Jersey's long-arm jurisdiction over Internet disputes just got a little longer.

A state appeals court ruled Thursday that a California resident accused of making libelous statements in a Web-based forum can be sued in New Jersey because the material was "targeted" toward a New Jersey audience.

Many state courts have ruled that posting libelous material in open forums that can be seen everywhere does not vest jurisdiction in the victim's state. Where the libeler posts the comments is what counts.

But in *Goldhaber v. Kohlenberg*, A-5114-05, the allegedly libelous material was not only directed at a New Jersey resident; it included disparaging or insulting references to a town, a police department and the New Jersey resident's neighbors.

Given such targeting, the defendant had reason to foresee he would be haled into court in New Jersey, Judge Dorothea Wefing said, joined by Judges Lorraine Parker and Joseph Yannotti.

Plaintiff Danna Goldhaber and her father Richard Goldhaber of Cherry Hill sued Charles Kohlenberg of Chino, Calif., because of postings on TravelKB, an uncensored Internet site for people to share travel experiences and dispense advice. They were all frequent contributors to the site.

The Camden County Superior Court suit alleged that Kohlenberg used blue language and made libelous sexual references about the Goldhabers and Danna's hearing problems, causing emotional distress.

Kohlenberg declined to submit to personal jurisdiction in New Jersey and the Goldhabers obtained a default judgment for \$2,644 in compensatory damages and \$1 million in punitive damages. Thursday's appellate decision vacated the default judgment, giving Kohlenberg an opportunity to defend himself against the libel charge, but he will have to do it in New Jersey.

The chief issue before the appeals court has been puzzling state and federal judges around the country since the advent of the Internet: Where can plaintiffs sue if they have been libeled online?

Courts in Minnesota, Connecticut, Nevada, Pennsylvania and North Carolina Alabama, to name a few, have ruled that the mere posting of messages on an open forum by a resident of one state read in a second state was not sufficient to confer jurisdiction on the latter.

In a print media case, though, the U.S. Supreme Court adopted what is known as an "effects" test. The Court granted jurisdiction in California to the libel claims of Hollywood actress Shirley Jones against the Florida-published, but internationally circulated, *National Enquirer* in *Calder v. Jones*, 465 U.S. 783 (1984).

The New Jersey court found *Calder* applicable in an Internet setting and went a step farther and used a so-called targeting-based analysis. It found that the posted comments not only circulated widely in New Jersey; they appeared to be targeted to a New Jersey forum.

"The author not only knew that plaintiffs resided in New Jersey, he knew the municipality in which they resided and made specific disparaging references to that municipality in many of his postings," Wefing wrote.

"Certain of his postings were made in response to plaintiffs' replies to the offending comments," she wrote. "He made insulting comments about that municipality's police department."

And she concluded, "We would deem it against the policy of our courts to deny these plaintiffs a forum in which to seek redress."

Michael Geist, a professor of law the University of Ottawa who writes on Internet law, says "some courts are willing to assert jurisdiction - often motivated by local harm and a reluctance to impede the ability of a plaintiff to seek redress."

Other courts have rejected the local option, finding that speakers cannot foresee where their speech will have an effect, he says. The New Jersey decision takes the view that defamation actions are foreseeable both where the speaker and the target reside, he says.

The lawyer for the alleged target in Thursday's case, Paul Norris of Stark & Stark in Princeton, says he is not sure whether the ruling would be applicable in a case where an Internet libeler did not make specific comments about people in New Jersey.

"It's a very, very blurry line," he says. "They [a court] could very say, 'you're posting this on the Internet and reaching out to every state.' "

"It's a pretty new topic," he says. "The long-arm statutes have been directed mostly to business dealings, which is why this is a little bit different."

Norris says he does not know what motivated the defendant to comment about the Goldhabers and that he asked the defendant to stop making the postings, to no avail, before the suit was filed.

The appeals court opinion said the plaintiffs alleged that the messages accused them of incest and bestiality and referred to Danna Goldhaber's hearing limitations. But the judges said that citing examples of the "vile messages" would serve no purpose in the opinion.

Defense lawyer Noel Schablick, who has a firm in Parsippany, says, "The court leaned on the fact that Kohlenberg knew that his Internet communications were directed toward New Jersey," he says.

Schablick says he was retained solely for the appeal, is not familiar with the merits and probably won't handle the case on remand.

If Kohlenberg has reason to resent being subjected to New Jersey jurisdiction he can at least console himself that there was no slavish devotion to procedure rules in his case.

In lifting the default, the court said Kohlenberg did not defend himself on advice of California counsel, so he deserves a chance to defend himself. Liberality in opening default judgments is tolerated in an effort to reach a just result, the court noted.

The worst part of the default judgment, for Kohlenberg, was the \$1 million punitive damage award, which the court noted, in passing, does not appear to comply with the Punitive Damages Act. That imposes limits on the size of such damages in relation to compensatory awards.