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By JOSEPH G. LARIOS

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CHICAGO (*jGLi*) – When boxer Floyd Mayweather, Jr. and numerous associates, including his father Floyd Mayweather, Sr., his uncle and trainer Roger Mayweather, his promotion company Mayweather Promotions and boxing promoters Oscar de la Hoya and Richard Schaefer stated publicly that Filipino boxer Manny Pacquiao has used and is using performance-enhancing drugs, including steroids, they “are motivated by ill-will, spite, malice, revenge and envy.”

In dismissing the motion to dismiss Friday (March 18) filed by Mayweather and company, United States District Court of Nevada Judge Larry R. Hicks in Las Vegas said, they “made these statements out of malice and spite. Given Pacquiao’s spotless record with drug tests over the course of his 15-year career and the absence of any evidence suggesting his use of performance-enhancing drugs, defendants issued these statements with actual knowledge that such statements were false and in reckless disregard for their falsity. In either case, defendants issued these statements intending to harm Pacquiao.”

In an eight-page order, Judge Hicks said the “court finds that these allegations are sufficient to aver that defendants’ acted with malice in making the alleged defamatory statements.”

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PAVES WAY FOR JURY TRIAL

The order paves the way for a jury trial of the federal defamation suit demanded by the Filipino boxing icon whose “direct and proximate result of defendants’ statement” has caused Pacquiao damage “far in excess of \$5-M” and “because defendants’ conduct was undertaken in bad faith and with fraud, malice and oppression,” Pacquiao is also “seeking punitive damages” for which “defendants are jointly and severally liable for all the conduct and damages alleged therein.”

This development could force Mayweather to return to the bargaining table with Pacquiao in the welterweight megafight that promises to be the richest fight ever after they reached agreement over everything from size of their purses to the make of their gloves only to come into deadlock when Mayweather’s camp suggested for both fighters to undergo an Olympic-style blood testing 14 days to 48 hours at random before fight time.

But during the teleconference hearing of the Nevada State Athletic Commission on random blood and urine testing last June 9, 2010 conducted in Las Vegas and monitored by this reporter, Dr. Robert Voy, chief medical officer of the U.S. Olympic Committee between 1985 and 1989, told the Commission chaired by Pat Lundvall that if there are performance-enhancing substances in the blood, they will be present “in the blood within six to 24 hours after use.”

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This debunked the highly publicized claim of Travis Tygart, a lawyer and chief operating officer of the U.S. Anti Doping Agency (USADA), that the most effective way to detect steroids is to draw blood at least 48 hours before the fight. Tygart, who was a member of the panel, later said, "in the next few months" a reliable blood test will be available which can catch HGH (human growth hormone) users 14 to 21 days after usage.

According to the court order, beginning on September 2009, Pacquiao alleged that defendants stated publicly that he had used, and is using, performance enhancing drugs (PED's), including steroids and HGH. On Dec. 30, 2009, Pacquiao filed a complaint against the defendants.

ALLEGED DEFAMATORY STATEMENTS

A mong the alleged defamatory statements made by defendants are the following:

1. Schaefer told a Philippine news reporter (Ronnie Nathanielsz of *Manila Standard* and boxing website philboxing.com) that "he 'was sure' that Pacquiao uses PEDS ... and had used them in the past."

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2. “De la Hoya compared Pacquiao’s punches to two other fighters known to have used PEDs during their fights.” And

3. Mayweather Promotions’ CEO, non-party Leonard Ellerbe, and President, defendant Mayweather, Jr. statements to the press where they stated and/or inferred that Pacquiao was using PEDs. On or around October 29, 2009, Mayweather, Jr. gave an interview on *Sirius Satellite Radio*

. During the nationally-broadcast interview, the host asked Mayweather, Jr. to explain how his physical development differed from that of Pacquiao.

When Mayweather, Jr. responded, “cause we know the Philippines got the best enhancing drugs,” the host observed, “[so] he’s saying Pacquiao’s taking enhancement drugs. (“This is a simple question. If you have nothing to hide, then, why not comply [with more blood tests]?”) Mayweather, Jr. issued a statement that he had “great doubt as to the level of fairness [he] would be facing in the ring that night. (“On or about March 4, 2010

, at a press junket for his upcoming fight, Mayweather stated that ‘Pacquiao’s got the power pellets, yo, and the steroid juice. Pacquiao got the power pellets you know.’”

In its motion to dismiss, Mayweather Promotions argues that it is not responsible for the alleged defamatory statements of its President, Mayweather Jr. because the statements were not authorized communications of Mayweather Promotions. The court ruled that “(g)enerally, a

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company is responsible for the defamatory statements made by its agents and employees.

The order added that “defendants’ alleged statements are actionable defamatory statements because they falsely assert an objective fact; namely, that Pacquiao was using and had used PEDs.”

PRESUPPOSES FACT NOT AVAILABLE TO LISTENER

It said the court “finds that a reasonable listener would understand and interpret the moving defendants’ statements to imply that Pacquiao has used and is using PEDs.” It added, “the court finds that the alleged statements are presupposed facts not available to a reasonable listener but that a reasonable listener would assume implied actual knowledge of the statement’s truth.”

The order said Pacquiao as a world famous boxer is a public figure for First Amendment purpose. To claim defamation, Pacquiao “must plead actual malice by the defendants in making the alleged defamatory statements.” And actual malice is “knowledge of the falsity of a statement or a reckless disregard for its truth.”

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The order also noted that Pacquiao was not alleging separate cause of action for civil conspiracy against the defendants but “solely within the context of his defamation per se claim and that defendants, together, conspired to defame him publicly stating that he used PEDs . . . to support his claim for malice.” # # #

Editor's Note: To contact the author, please e-mail him at: (lariosa_jos@sbcglobal.net)

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