

Group Defamation Claims and the Evolving Limits of the Group Libel Doctrine

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Authors: [Kate Watson Moss](#), [David D. Pope](#), [Andrea Hoover](#), [Jamie N. Ward](#)

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Key Takeaways

- Courts are increasingly willing to look beyond the traditional small-group requirement when assessing whether an allegedly defamatory statement is "of and concerning" a particular plaintiff. Recent decisions suggest that audience perception and real-world impact may matter as much as group size.
- The emerging trend focuses on whether readers could reasonably understand a statement to apply to identifiable individuals based on surrounding circumstances. Extrinsic facts, community context and the breadth of the accusation can allow claims to proceed even when no plaintiff is expressly named.
- The Maine federal court's decision in *Bean Maine Lobster* represents a significant development in the doctrine, allowing members of a 5,600-person industry to survive dismissal under the Restatement's circumstances-of-publication exception. The ruling highlights the potential risks associated with broadly framed factual accusations that target an entire industry, particularly where they are presented as science-based conclusions and result in measurable economic harm.

The "group libel" doctrine addresses whether a member of a group can satisfy the "of and concerning" element when the defamatory statement targets an entire group rather than any named individual. Traditionally, courts rejected such claims unless the group was very small. But recent decisions-culminating in *Bean Maine Lobster, Inc. v. Monterey Bay Aquarium Foundation* (D. Me. 2025)-show courts increasingly looking past group size to the practical impact of the challenged statements on individual group members. This article traces that trajectory: from the traditional rule, through its recent relaxation, to *Bean Maine Lobster*'s groundbreaking application of the Restatement's "circumstances-of-publication" exception to a 5,600-member industry group.

Defining the Group Libel Doctrine

The Restatement (Second) of Torts § 564A provides the doctrine's foundational formulation:

One who publishes defamatory matter concerning a group or class of persons is subject to liability to an individual member of it if, but only if, (a) the group or class is so small that the matter can reasonably be understood to refer to the member, or (b) the circumstances of publication reasonably give rise to the conclusion that there is particular reference to the member.

As the Second Circuit explained in *Elias v. Rolling Stone LLC*, 872 F.3d 97, 108 (2d Cir. 2017), “under the group libel doctrine, typically a statement made about an organization is not understood to refer to any of its individual members unless that person is distinguished from other members of the group.” But where a statement defames all members of a small group, “the reference to the individual plaintiff reasonably follows from the statement.” To evaluate such a claim, courts consider “the size of the group, whether the statement impugns the character of all or only some of the group’s members, and ‘the prominence of the group and its individual members’ in the community.”

Similarly, in *Vasquez v. Whole Foods Market, Inc.*, 302 F. Supp. 3d 36, 64 (D.D.C. 2018), the court noted that “[w]hen a statement refers to a group, a member of that group may claim defamation if the group’s size or other circumstances are such that a reasonable listener could conclude the statement referred to each member or solely or especially to the plaintiff.”

Traditional Application: The Small-Group Requirement

While there is no bright-line rule for how many members of a group is “too many,” courts have historically treated group size as essentially dispositive. Comment b to § 564A notes that “the cases in which recovery has been allowed usually have involved numbers of 25 or fewer.” Courts have “narrowly construed” the exception to require “no more than 20 or 30 members.” See *Florio v. Gallaudet Univ.*, 619 F. Supp. 3d 36, 43 (D.D.C. 2022).

But even small or medium-sized groups have traditionally presented challenges for plaintiffs. Two cases illustrate the traditional bar. In *Arcand v. Evening Call Publishing Co.*, 567 F.2d 1163 (1st Cir. 1977), all 21 members of a small-town police department sued over a column suggesting that one unnamed officer had misbehaved. The First Circuit affirmed dismissal under the group libel doctrine: the column accused only one unnamed member (not all of them), so no individual could show sufficient “special application of the defamatory matter to himself.” Similarly, in *Lines v. Cablevision Sys. Corp.*, No. 04-CV-2517, 2005 WL 2305010 (E.D.N.Y. Sept. 21, 2005), an employer announced the termination of “14 AMC employees” for fraud, and one of them sued for defamation. The court held the plaintiff could not demonstrate the statement “reasonably gives rise to the conclusion that it particularly referenced” him.

The Doctrine Relaxes: Larger Groups Survive Dismissal in Some Contexts, but There is No Bright-Line Rule for Group Size

In 2014, Rolling Stone published “A Rape on Campus,” recounting a fabricated story about a gang rape allegedly committed by members of the Phi Kappa Psi fraternity at the University of Virginia (53 members at the relevant time). Several members sued for defamation, and the case was initially dismissed. On appeal, the Second Circuit allowed the plaintiffs to proceed under a small-group defamation theory, holding 53 members was “sufficiently small” given that the article implied all members participated in or knowingly tolerated a “decades-long ‘trail’ of sexual violence.” The court emphasized “the size of the university community and the prominence of Phi Kappa Psi on campus” as reinforcing the small-group theory, because university campuses are often “intimate communities.”

Two (of many) organizers of a contested municipal incorporation in Utah sued over social media posts that accused the “ECA [Erda Community Association],” “the sponsors,” and “incorporation sponsors” of being “forgers, fraudsters, and felons.” Defendants invoked the group defamation rule as a defense, arguing the referenced groups had numerous members and neither plaintiff was identified by name. The Utah Supreme Court reversed dismissal, holding the plaintiffs were ascertainable “from the extrinsic facts and circumstances.” Both were specifically named as defendants in the underlying lawsuits to which the posts clearly referred. The court explained that “even if a defamation plaintiff fails to show that he is directly named, the statement may be regarded as actionable if he can show that, from the extrinsic facts and circumstances, it refers to him.”

Key Insights: The group defamation rule is not an automatic shield where extrinsic facts allow a reasonable reader to understand the statement as referring to the individual. Further, group size is not mechanically dispositive; context can sometimes compensate for numbers exceeding the traditional ceiling of around 20 to 30 group members.

Bean Maine Lobster: The Group Defamation Rule Meets Industry-Wide Statements

Background: Five members of the Maine lobster industry—Bean Maine Lobster, Inc. (“BML”); the Maine Lobstermen’s Association (“MLA,” representing ~1,200 of Maine’s roughly 5,600 lobstermen); the Maine Coast Fishermen’s Association (“MCFA”); Atwood Lobster; and Bug Catcher, Inc.—sued the Monterey Bay Aquarium Foundation (the “Foundation”), which operates the “Seafood Watch” sustainability-rating program. On September 5, 2022, Seafood Watch downgraded American lobster from “yellow” to “red,” citing entanglement risks to the North Atlantic right whale population, and urged consumers to “avoid” and “take a pass” on Maine lobster. Plaintiffs alleged the statements were false and that the Foundation ignored substantial contrary scientific data (*i.e.*, there had been no documented entanglement of right whales in Maine lobster gear since 2004).

Following the red rating, major buyers and restaurant chains stopped purchasing Maine lobster, the average per-pound price fell roughly 40%, and each plaintiff allegedly suffered specific, quantifiable lost profits. These included Atwood’s loss of a major purchaser and unrecouped premiums

exceeding \$150,000/year and Bug Catcher's 20% decline in sales. BML, MLA and MCFA also alleged losses exceeding \$75,000.

The Foundation moved to dismiss on multiple grounds, including failure to satisfy the "of and concerning" element under the group defamation doctrine.

The Foundation's Group Libel Argument: The Foundation argued that the fishery "employs more than 5,600 lobstermen" and its statements "neither mention Plaintiffs by name nor imply their identities." The Foundation represented to the court that its research "did not yield a single case where a large group was defamed and a member of that group, who was not specifically identified in the statement, successfully brought a defamation claim." According to the Foundation, allowing the claim would do "what no other American court has done in over 60 years for any group exceeding 30 members."

The Court's Analysis: The court agreed the 5,600-member fishery was "too large a group to qualify for the small-group exception regardless of the threshold" under Restatement § 564A(a). However, the court held the claims survived under the "circumstances-of-publication" exception in § 564A(b), identifying four cumulative factors:

- **Breadth and lack of carve-outs.** The statements applied to the entire American lobster fishery and the statements' "breadth left no room for the possibility that any subset of Maine lobstermen, through particular practices, gear, or location within Maine, did not contribute to the industry's threat to the right whale." The statements "implicated all lobstermen who fish within the Gulf of Maine or Georges Bank," thereby "imput[ing] the Statements' applicability to each individual Maine lobstermen."
- **Scientific and empirical framing.** The statements "purported to be based upon scientific data" through a "rigorous, transparent, science-based process." This, the court held, "distinguishes the statements at issue here from the type of hyperbolic statements that undergird the group defamation rule, creating the implication that each and every Maine lobstermen endangers the right whale." The empirical framing increased the likelihood recipients would understand the statements as factual assertions about every fishery member.
- **A call to action with real economic consequences.** The statements were "not merely informational but included a call to action" because Seafood Watch recommended consumers "avoid" Maine lobster. Consumers "apparently heeded Seafood Watch's recommendation with regard to the plaintiffs specifically," as shown by the 40% price drop, cancelled purchase commitments and restaurant chains removing Maine lobster from menus.
- **Individualized, particularized harm.** Each plaintiff alleged specific economic injuries showing "special application of the defamatory matter" to him or herself.

Denying the motion to dismiss in its entirety, the court held: "Viewing the Complaint's allegations in their totality, the Court concludes that Plaintiffs have pleaded factual content that allows the court to draw the reasonable inference that the Statements were of and concerning the Plaintiffs." The court also held the statements were verifiable assertions of fact (not protected opinion) and that plaintiffs adequately alleged actual malice/negligence.

Key Insights: *Bean Maine Lobster* represents one of the most significant expansions of the group defamation doctrine in decades. The case signals that where a statement has enough identifying factors, the traditional numerical ceiling may no longer be dispositive, even for a group of thousands. For speakers issuing industry-wide assessments, the decision creates meaningful defamation exposure. For plaintiffs in large industry groups, the decision offers a roadmap for surviving dismissal under the § 564A(b) circumstances-of-publication framework.

Conclusion

The trajectory from *Elias* to *Mathews* to *Bean Maine Lobster* reveals a modern trend: under certain circumstances, courts are increasingly willing to look past group size to the practical specificity and real-world impact of defamatory statements. *Elias* expanded the doctrine to a 53-member group by considering the sweep of the implication and community intimacy. *Mathews* allowed claims to survive based on extrinsic identifiability. And *Bean Maine Lobster* pushed the boundary even further, permitting claims by members of a 5,600-person industry through an effects-based, circumstances-of-publication analysis. This pathway to surviving dismissal is something to keep in mind for members of large professional organizations who have suffered reputational harm from false statements by industry commentators. The group libel doctrine is no longer a categorical bar to recovery for injured members of large groups.

Benesch's Litigation and Defamation teams regularly counsel businesses, executives, trade associations and industry participants facing reputational attacks, false public statements and other high-stakes disputes. Our attorneys have extensive experience evaluating potential defamation, business disparagement and First Amendment issues, developing litigation strategies and helping clients manage the legal and business consequences of reputational harm. We will continue monitoring developments in defamation law and the evolving standards governing claims arising from industry-wide and group-directed statements.