

Court revives 'Perfect Storm' lawsuit

Two fishermen's families allege the men were cast in a negative light. The lawsuit seeks part of the movie's profits.

©Associated Press
January 12, 2003

BRADENTON -- A federal appeals court in Atlanta has agreed to hear arguments in a lawsuit that alleges two fishermen were negatively portrayed without consent in the movie *The Perfect Storm*.

The court agreed Friday to revive the lawsuit filed by the fishermen's families. The suit was dismissed last year in Orlando when a judge ruled that no law prohibited filmmakers from making up events. A hearing is set for March 14.

Jodi Tyne, the wife of the late fishing boat captain Frank William "Billy" Tyne Jr., sued Time Warner Entertainment Co. and the two companies that produced the film in U.S. District Court in 2000 contending Tyne was cast in a negative light in the film. The lawsuit also charged the film was produced without her consent and her privacy was violated.

The family of one of Tyne's crew members, Dale Murphy, later joined the lawsuit.

The film, based on Sebastian Junger's bestselling book by the same name, tells the story of Tyne's final swordfishing expedition in October 1991 into the heart of storms that converged in the North Atlantic.

Tyne and five crew members on the Gloucester, Mass., vessel drowned, and the boat, the *Andrea Gail*, was never found.

Tyne and her two daughters are seeking part of the \$150-million made from the movie. According to the complaint, the film depicted Tyne, who was portrayed by actor George Clooney, as "unprofessional, unseaworthy, and incompetent."

A lawyer for Jodi Tyne of Bradenton said all filmmakers should be concerned about how the lawsuit turns out.

"To have your loved one fictionalized for the purpose of exploiting some aspect of your life just to make money harms the subject, the subject's family and the public," said Steve Calvacca.

But Warner Bros. attorneys said the studio did not illegally profit off family members.

"We didn't make an action figure out of them and we didn't put them on a Wheaties box," Tampa attorney Gregg Thomas said. "We simply used their story."

THE SARASOTA HERALD-TRIBUNE

Date: Monday, May 13, 2002

Source: By HOWARD M. UNGER howard.unger@heraldtribune.com

Judge sinks 'Perfect Storm' lawsuit

A Bradenton woman loses her court battle against Warner Bros. over the 2000 film

Like the *Andrea Gail* itself, a lawsuit against the studio and producers who filmed "*The Perfect Storm*" is sunk.

After nearly two years of legal wrangling, Jodi Tyne's claim that Warner Bros. should have paid her to make a film about her ex-husband's death was dismissed.

"The Perfect Storm" may have grossed more than \$150 million at the box office, U.S. District Judge Anne Conway ruled, but Tyne and family members of other Andrea Gail crew members aren't even entitled to a VHS copy of the movie.

Warner Bros. officials are calling the decision, issued in Orlando on Thursday, a major victory for the First Amendment.

Tyne, who divorced former Cortez fisherman Billy Tyne one year before he captained the Andrea Gail into Hurricane Grace in October 1991, still lives in Bradenton. The family of another crew member, Dale Murphy, joined in the suit. Tyne declined to comment on the case Friday, saying she was too upset.

"You can call my lawyer. He has plenty to say," Tyne said.

Her Winter Park attorney said Conway's ruling gives moviemakers the right to fictionalize real people's lives and profit from their pain and suffering.

"They should make it right or change the names of the people," Ed McLeod said.

Jodi Tyne and the Murphy family claimed that Warner Bros. fictionalized their story about the Andrea Gail and how its crew was killed in a storm.

The filmmakers also used their names throughout the movie without permission, McLeod said. Their characters were also seen in brief portions of the film, he said.

In the movie, George Clooney, who played Billy Tyne, makes the fatal decision to turn the Andrea Gail into a raging storm. A wave then flips the boat, killing all six crew members.

In her 14-page order, however, Conway ruled that no law prohibits Warner Bros. from making up events.

She also ruled that the depictions of Jodi Tyne and members of Dale Murphy's family were true.

In a statement, Warner Bros. said the lawsuit "profoundly threatened free speech."

"The court's ruling is a huge victory not only for Warner Bros., but for all writers, artists and filmmakers who may now continue to find inspiration in historical events without having their creative visions censored and controlled," the Warner Bros. statement reads.

Lawyers for the company called the ruling a victory for filmmakers hoping to document historical events.

"You should be able to do stories about history, without paying for it," said Gregg Thomas, lead attorney for Warner Bros. and the movie's producers.

"These people all suffered a great loss when their loved ones died in that storm, but this action was not about that loss, but about important First Amendment issues," he said.

Thomas said the sinking was a tragic yet historic event, sparking numerous magazine articles, a best-selling novel, and, in June 2000, a movie.

"People are still doing movies about the Titanic," Thomas said. "You shouldn't have to pay to document history."

The lawyer for Tyne said the difference between the Andrea Gail and the Titanic is that his clients were "exploited on film."

Warner Bros. embellished facts to sell the film as a "real life" story, McLeod said. In doing so, Tyne and her daughters suffered when "The Perfect Storm" showed Billy Tyne steer the Andrea Gail into the storm.

The film's events, producers said, were based on Sebastian Junger's 1997 best-selling novel of the same name.

Legal Matters: Florida Court Clarifies Law On Publicity Rights

By SUSAN BUTLER

Publication: [Billboard](#)

Saturday, May 14 2005

Litigators for the entertainment industry were caught up in legal storms throughout the Southeast last month.

Warner Bros. Pictures emerged from "The Perfect Storm" in Florida with a sense of clarity. The state's highest court on April 21 interpreted a misappropriation statute, defining "commercial purpose" in a way that effectively permits producers to use an individual's name and likeness in a motion picture without consent.

Many states have laws prohibiting commercial use of a person's name or identity without permission (Billboard, March 5). Under a Florida statute, no one may "publish, print, display or otherwise publicly use" a person's name or likeness without consent "for purposes of trade or for any commercial or advertising purpose."

Warner Bros. released a film in 2000 dramatizing the true story of the fishing vessel *Andrea Gail*, which was lost in a rare, powerful weather system off the New England coast. No one asked permission from—or compensated—heirs or individuals depicted in the film.

A statement appeared at the beginning of the movie: "This film is based on a true story." A disclaimer was inserted during the closing credits: "This film is based on actual historical events contained in 'The Perfect Storm' by Sebastian Junger. Dialogue and certain events and characters in the film were created for the purpose of fictionalization."

The film fabricated portions of its portrayal of the crew and "took additional liberties" with their interpersonal relationships, the court noted.

A former crewman and relatives of captain Frank William "Billy" Tyne Jr. and crewman Dale Murphy Jr. sued Time Warner Entertainment d/b/a Warner Bros. Pictures, Baltimore/Spring Creek Pictures and Radiant Productions in U.S. District Court in Orlando, Fla. They sought damages under the state's commercial misappropriation law.

After the producers won a summary judgment and the plaintiffs appealed, the 11th Circuit Court of Appeals (covering Florida, Georgia and Alabama) asked the Florida Supreme Court to determine whether a motion picture was within the meaning of "commercial purpose" under state law.

The court held that as used in the statute, "commercial purpose" does not apply to publications, including motion pictures, that do not directly promote a product or service. The law was not intended to prevent a publication from including names or likenesses, the court wrote, but from associating the name or personality "with something else."

Agreeing with earlier case opinions, the court stated that releasing a publication to make money through sales of copies—making it "commercial" in this sense—is not the kind of commercial exploitation prohibited by the statute. "Commercial" in the misappropriation and right-of-publicity context is limited to the promotion of a product or service—not as used in an expressive work.

For example, in 1983 the 11th Circuit Court of Appeals held that Bob Dylan and Jacques Levy did not violate the statute when they wrote a song that depicted the murder trial of prizefighter Rubin "Hurricane" Carter. The names used in the

ballad were not used to directly promote a product or service.

"This decision effectively ends the case, because it holds that the plaintiffs do not have a claim for commercial misappropriation under Florida law," says Gregg Thomas with Holland & Knight in Tampa, Fla., who represented the production companies. "All that is left for the 11th Circuit to do is affirm the trial court's decision in favor of Warner Bros."

Source: <http://www.allbusiness.com/retail-trade/miscellaneous-retail-retail-stores-not/4559772-1.html#ixzz1XHkyFiTd>