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## Decency Act Shields Facebook From \$1B Suit, DC Circ. Says

By **Daniel Siegal**

Law360, Los Angeles (June 13, 2014, 7:01 PM ET) -- The D.C. Circuit on Friday tossed a political advocate's \$1 billion suit against Facebook Inc. alleging the company took too long to remove a page advocating a "Third Intifada" against Jews from the social network, ruling Facebook is protected by the Communications Decency Act.

In an unanimous opinion issued Friday, a three-judge panel soundly rejected plaintiff Larry Klayman's arguments that Facebook should not qualify for protection under the CDA, which generally frees companies from liability for third-party statements published on their websites, and affirmed a district court's dismissal of the suit.

Circuit Judge Patricia A. Millett, writing for the panel, rejected Klayman's assertion that because Facebook, unlike companies like American Online envisioned by the 1996 statute, could control the content of the messages posted by third-party users, it was not entitled to the CDA's protections

"The short answer is that Congress did not write that additional limitation into the Act, and it is this court's obligation to enforce statutes as Congress wrote them," Judge Millett wrote. "It would make nonsense of the statute to say that interactive computer services must lack the capacity to police content when the act expressly provides them with immunity for doing just that."

Klayman sued Facebook and company founder Mark Zuckerberg in March 2011, accusing the company of assault and negligence by allowing a user-created Facebook page threatening violence against Israeli Jews to remain on the site for several days.

U.S. District Judge Reggie B. Walton eventually dismissed the case in September 2011, ruling that because Klayman had failed to amend his complaint by the appropriate deadline, the case would be closed. Klayman had represented he would be filing an amended complaint, but ultimately didn't, and "in accordance with the court's prior warning that this case was at risk of being dismissed," the case was dismissed with prejudice, Judge Walton said.

While Klayman acknowledged **during oral arguments** in February that he had failed to meet the deadline, he also urged the D.C. Circuit to review the case on its merits. He tried to differentiate the case from decisions unfriendly to his appeal in other circuits, such as the Ninth Circuit's 2005 decision in *Barnes v. Yahoo Inc.*, which held that Yahoo could not be held liable for failing to remove third-party content.

On Friday, the appeals court rejected Klayman's argument that his claims arise from Facebook's breach of duties based on its "special relationship" with its users established by

its "Statement of Rights of Responsibilities," akin to contractual liability, pointing out that Klayman did not plead any breach of contract claims, and saying that a statement of rights and responsibilities doesn't in itself create a heightened state-law duty of care in publishing.

"State law cannot predicate liability for publishing decisions on the mere existence of the very relationship that Congress immunized from suit," Judge Millett wrote. "In other words, simply invoking the label 'special relationship' cannot transform an admittedly waived contract claim into a non-preempted tort action."

Facebook Associate General Counsel Pankaj Venugopal told Law360 on Friday afternoon that the company is "pleased with the court's decision."

Circuit Judges David S. Tatel, Janice Rogers Brown and Patricia A. Millett sat on the panel that issued Friday's opinion.

Larry Klayman is representing himself.

Facebook is represented by Craig S. Primis and K. Winn Allen of Kirkland & Ellis LLP.

The case is *Klayman v. Zuckerberg et al.*, case number 13-7017, in the U.S. Court of Appeals for the D.C. Circuit.

--Additional reporting by Brian Mahoney. Editing by Emily Kokoll.

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