No. 24-

IN THE

Supreme Court of the United States

TRI-CORP HOUSING, INC.,

Petitioner,

v.

ROBERT BAUMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE STATE OF WISCONSIN SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) When is a claimant an "involuntary public figure" within the meaning set forth in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), thereby requiring proof of actual malice in an action for defamation?

(2) In a jury trial, must the question of whether a party claiming defamation is a "limited purpose public figure" be raised by the defense and decided by the court before the case is sent to the jury?

PARTIES TO THE PROCEEDING

All parties are listed in the caption.

RULE 29.6 STATEMENT

The petitioner Tri-Corp Housing, Inc., is a nongovernmental corporation. The petitioner does not have a parent company or any nonwholly owned subsidiaries.

STATEMENT OF RELATED PROCEEDINGS UNDER RULE 14.1(b)(iii)

This is a petition for review of the January 16, 2025 decision of the Wisconsin Supreme Court to deny Tri-Corp's petition to review an adverse decision of the Wisconsin Court of Appeals. *Tri-Corp Hous., Inc. v. Bauman*, 2025 WI 8, 18 N.W.3d 698 (Table), 2025 WL 804230 (App.A,p.1)[1] The decision of the Wisconsin Court of Appeals is not reported, but is available at *Tri-Corp Hous., Inc. v. Alderman*, 2024 WI App 56, 14 N.W.3d 95 (Table), 2024 WL 3949135, and in Petitioner's Appendix. (App.B,p.3)

The Wisconsin Court of Appeals considered this case twice before, and issued opinions which were not reported, but are available at *Wisconsin Housing and Economic Development Authority v. Tri-Corp Housing Inc.*, 2011 WI App 58, 332 Wis. 2d 804, 798 N.W.2d 320, 2011

[1] Record references designated "App." are to Petitioner's Appendix filed with this Petition.

WL 781079 and *Wisconsin Housing and Economic Development Authority v. Tri Corp Housing, Inc.*, 2011 WI App 99, 334 Wis. 2d 809, 800 N.W.2d 958, 2011 WL 1760449. In the case found at 2011 WI App 99, the Wisconsin Court of Appeals reversed a trial court decision to grant the Respondent Bauman summary judgment, and extensively discussed the facts.

On remand from the Wisconsin Court of Appeals, Tri-Corp amended its complaint to include claims under the Federal Fair Housing Act, Americans with Disabilities Act, the Rehabilitation Act, and 42 U.S.C. §1983. The Respondent Bauman then removed the case to the United States District Court for the Eastern District of Wisconsin. There the district court dismissed the federal claims and remanded the case to the Milwaukee County Circuit Court for further proceedings on the defamation and tortious interference claims. Tri-Corp appealed this decision. The Seventh Circuit Court of Appeals affirmed the district court. Tri-Corp petitioned the Supreme Court for review of this decision, but its petition was denied. See *Tri-Corp Hous. Inc. v. Bauman*, 196 L. Ed. 2d 474, 137 S. Ct. 592 (2016). The Seventh Circuit's decision is reported at *Tri-Corp Hous. Inc. v. Bauman*, 826 F.3d 446 (7th Cir. 2016). The district court's decision was not reported, but is available at *Tri-Corp Hous., Inc. v. Bauman*, No. 12-C-216, 2014 WL 238975 (E.D. Wis. Jan. 22, 2014).

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PETITION FOR A WRIT OF CERTIORARI

Tri–Corp Housing, Inc. ("Tri-Corp"), respectfully petitions for a writ of certiorari to review the judgment of the Wisconsin Supreme Court in this case.

OPINIONS BELOW

The Wisconsin Supreme Court denied Tri-Corp's petition to review the decision of the Wisconsin Court of Appeals which was adverse to Tri-Corp. *Tri-Corp Hous., Inc. v. Bauman*, 2025 WI 8, 18 N.W.3d 698 (Table), 2025 WL 804230 (App.A,p.1)[2] The decision of the Wisconsin Court of Appeals is not reported, but is available at *Tri-Corp Hous., Inc. v. Alderman*, 2024 WI App 56, 14 N.W.3d 95, (Table), 2024 WL 3949135. and in Petitioner's Appendix. (App.B,p.3)

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). This case involves the question of how the First Amendment to the United States Constitution restricts a common law claim for defamation in the light of this Court's decision in *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). The issues presented were raised and decided adversely to Tri-Corp by the Wisconsin Court of Appeals. The Wisconsin Supreme Court denied Tri-Corp's petition to review the decision of the Wisconsin Court of Appeals on January 16, 2025.

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[2] Record references designated "App." are to Petitioner's Appendix filed with this Petition.

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Summary. The petitioner Tri-Corp prevailed in a jury trial and was awarded $1.4 million in damages in a defamation suit against the respondent Robert Bauman ("Bauman"). Following post-trial motions, the trial court applied its own, unprompted analysis and determined that Tri-Corp was a "limited purpose public figure." The trial court then set aside the jury's verdict, stating that there was no evidence of actual malice. Tri-Corp appealed. Bauman conceded in the state court appeal that he had never raised the issue of whether Tri-Corp was a "limited purpose public figure." There never was a hearing on the issue of whether Tri-Corp was a "limited purpose public figure."

The petitioner Tri-Corp is a nonprofit organization which provided community-based housing for people with mental disabilities. Tri-Corp owned and operated a 92-unit facility, known as West Samaria, where it provided room, board and other services to people with disabilities. Tri-Corp, whose mission was to enable disabled individuals to have equal access to housing in the community, had applied to the zoning board and obtained a "reasonable accommodation" to house people with mental disabilities at West Samaria.

The respondent Bauman bought a house approximately two blocks away from West Samaria and was later elected alderman of the district. Bauman defamed Tri-Corp and used his position to interfere with Tri-Corp's ability to operate West Samaria, and this ultimately caused the facility to close.

Statement of Facts. Tri-Corp is a non-profit organization which provided housing for mentally disabled individuals. In 2007, Tri-Corp operated two buildings serving over 160 disabled individuals, providing them with room and board. One building, "West Samaria", was located at 2713 West Richardson Place, Milwaukee, Wisconsin, and the other, "New Samaria", was located at 6700 West Beloit Road, West Allis, Wisconsin.

At West Samaria and New Samaria people with mental disabilities could live in the community. Residents were not confined and typically frequented stores and restaurants in the neighborhood. Residents were people of limited means. Their primary source of income was social security benefits averaging approximately $650.00 per month. [R617:122][3]

Most of the residents of both West Samaria and New Samaria came to Tri-Corp by referral from Milwaukee County and were participants in programs administered by Milwaukee County. [R617:118,132-134] Some of the rooms at West Samaria were leased by the Red Cross and Milwaukee County for their own programs. [R616:24,33-34,53-54] Tri-Corp charged residents $530.00 per month for a private room, three meals per day, and room cleaning services. [R617:126-127;R616:24]

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[3] Record references designated "R" are to the electronically filed record in the Milwaukee County Circuit Court Case No. 2007CV013965, which became part of the record on appeal in *Tri-Corp Hous., Inc. v. Alderman*, 2024 WI App 56, 14 N.W.3d 95 (Table), 2024 WL 3949135. (This appeal was filed as *Tri-Corp Housing, Inc. v. Robert Bauman, Alderman,* Appeal No. 2022AP000993).

Tri-Corp essentially functioned as a landlord. [R617:134;R616:185] Residents had room keys which also operated the front door of the building, and residents could come and go at will. [R617:131-132] Prior to West Samaria's closure in 2007, many residents had been living in West Samaria for as many as seven to nine years, and the population was extremely stable. [R616:21,23]

In 1997, Robert Bauman bought a house approximately two blocks from West Samaria and in 2004 was elected alderman of the district. [R533,Ex2;R618:7-8] Bauman displayed a not uncommon prejudice against residences for mentally disabled individuals. He immediately engaged in efforts to close West Samaria. From 2005 to 2007, he tried to force the closure of West Samaria by demanding that the City of Milwaukee Board of Zoning Appeals ("BOZA") deny Tri-Corp an occupancy permit. [R616:16] When that effort failed, Bauman sought the closure of West Samaria through other avenues.

In its earlier 2011 opinion, the Court of Appeals determined that "issues of material fact exist regarding Tri-Corp's tortious interference with a contract or prospective contract claim against Alderman Bauman" and that Bauman made statements regarding Tri-Corp "that were factually untruthful." *Wisconsin Housing and Economic Development Authority v. Tri Corp Housing, Inc.*, 2011 WI App 99, ¶¶1,8, 334 Wis. 2d 809, 800 N.W.2d 958, 2011 WL 1760449.

After the case was remanded, the trial court determined that Tri-Corp could not present evidence of what Bauman said to BOZA and ruled that because those

statements were absolutely privileged, they could not be used at trial for any purpose. [R387:30,32-33]

Later, at trial, the trial court granted Bauman a directed verdict on Tri-Corp's tortious interference claim. [R623:32-34,App.H,pp.54-59]

Tri-Corp contested these rulings [R387:28-29; R392:1-5;R623:27-30], but presented its case to the jury on the three remaining defamation claims.

At trial, the trial court found that there was no dispute that Bauman made the first two of the following three statements, and the jury found that Bauman made the third statement. The jury was asked to decide whether each of these three statements were false, and if so, made by Bauman with actual malice. [R437,App.F,pp.44-50]:

(1) "Did Robert Bauman say to the City of Milwaukee Department of Neighborhood Services that the fact that Joseph Droese died and was not discovered for four days suggested that West Samaria was not operating in compliance with the plan of operation or operating in a manner consistent with the health, safety and welfare of the public?"

(2) "Did Robert Bauman say that 'West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who live there?'"

(3) "Did Robert Bauman say that West Samaria had a bad design, bad location and bad operator?"

The jury found that all three statements were false, and that the second and third statements were made with actual malice.

The trial testimony gave context to these statements and showed that Bauman was out to shut down West Samaria and would lie when it suited his objective.

The first defamatory statement considered by the jury was part of a ruse by Bauman to suggest that Tri-Corp was responsible for the death of a resident, Joseph Droese. On March 1, 2007, the Milwaukee Journal/Sentinel published an article stating that Droese had been dead in his room "for as long as four days before his body was discovered." [R416,Ex517]

Droese was found dead in his room on January 20, 2007. It was never established when he died. A staff member and a resident of West Samaria stated that they had seen him the day before. The "four days" stated in the newspaper article were measured from the day that his mother had last visited him, which she said was January 16, 2007. Obviously, the jury found that Tri-Corp was not responsible for Droese's death. Droese was not healthy and had been receiving a number of medications, including fentanyl, which were being administered by his Milwaukee County caseworker. [R616:29-31,137;R677:26-27,Ex525][4]

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[4] In *Wisconsin Housing and Economic Development Authority v. Tri Corp Housing, Inc.*, 2011 WI App 99, 334 Wis. 2d 809, 800 N.W.2d 958, 2011 WL 1760449, the Court of Appeals noted (at footnote 2): As a result of his death, Droese's parents sued both Milwaukee County and Tri–Corp. Their claims were dismissed by summary judgment in

However, Bauman seized on the publication of this newspaper article. Bauman emailed the City of Milwaukee Department of Neighborhood Services ("DNS") directing DNS to issue an order to close West Samaria. The email, dated March 1, 2007, [R516,Ex26] stated:

> Please take immediate action regarding West Samaria.... The fact that a resident died and was not discovered for 4 days suggests that the facility is not operating in compliance with their plan of operation or operating in a manner consistent with the health, safety and welfare of the public.
>
> Please issue the appropriate orders revoking their special use permit so this matter can be brought back before BOZA at the earliest possible time.

Based on Bauman's request, on March 2, 2007, DNS gave Tri-Corp notice to vacate West Samaria within 30 days. [R616:26-27]

Tri-Corp's plan of operation stated that as to residents, Tri-Corp provided room and board and Milwaukee County provided caseworkers to monitor residents. Michael Brever, Tri-Corp's Executive Director, testified that to his knowledge no building inspectors visited West Samaria before the notice was issued. [R616:27]

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favor of both Milwaukee County and Tri-Corp in Milwaukee County Case 08–CV–942.

At trial, Bauman called Chris Kraco from DNS, who claimed there was an inspection initiated by Bauman. Kraco testified that none of the DNS inspectors made any effort to contact Brever during or after the inspection. [R621:33,35,41] Kraco conceded that West Samaria's plan of operation required Milwaukee County (and not Tri-Corp) to provide "monitoring by case workers." [R621:45]

Also at trial, James Hill testified that in late 2007 he became Director of Housing for Milwaukee County, pending approval of the County Board. [R625:34] Hill had appeared before BOZA in 2007 to support the continued operation of West Samaria and testified that he was not aware of any instances where Tri-Corp violated its plan of operation. [R625:48-49,52-54;R575,Ex120:2]

The jury determined that Bauman's statement that Droese's death showed that Tri-Corp was not in compliance with its plan of operation was false.

The second defamatory statement considered by the jury was Bauman's March 23, 2007, press release [R414,Ex537] stating: "West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who live there." Bauman testified that his statement was based on the deaths of two residents, "residents of the community" complaining to him about the conditions at West Samaria, and added the "audit report where they found fraud." [R624:47-48]

The jury found that this statement was not only false, but was made with actual malice. None of the so-called complaining "residents of the community" testified at trial. The audit report (which had been orchestrated by Bauman) did not find fraud. [R616:173-178] Moreover, Bauman knew that the circumstances of the deaths of the two residents he referred to contradicted his defamatory statements.

Three years earlier, in 2004, a West Samaria resident named David Rutledge was assaulted on the corner of 28th Street and Richardson Street. The corner was not even visible from West Samaria. The assault was witnessed by another of West Samaria's residents who helped Rutledge to the West Samaria building. West Samaria staff called the police and paramedics, and Rutledge was transported to the hospital within a half hour of the assault. He died in the hospital. [R616:180-181;R628:56-58] Tri-Corp's Executive Director testified that Tri-Corp was not at fault for Rutledge's death. [R616:181]

Bauman blatantly lied about the circumstances of Rutledge's death. He testified at his video deposition (shown at trial) that Rutledge was assaulted fifty feet outside of West Samaria, made his way into West Samaria without anyone noticing his condition or calling for medical assistance, and that because Tri-Corp "dropped the ball" he died at West Samaria several days later. [R677:2,18-23;R618:22-34] At his deposition Bauman emphasized that his information came from the police reports. [R677:21-23] At trial, Bauman hedged, and suggested that his information came "probably from the

neighbors." [R618:20-21] He was impeached with his deposition testimony. [R618:34]

Bauman showed his reckless disregard for the truth by inventing other reasons for his stating that Tri-Corp "dropped the ball." [R624:89]. On direct examination Bauman testified that Rutledge "was beaten up with two-by-fours" and that the assault could have been stopped had there been "security cameras that would normally project out to the sidewalk area." [R624:90] On cross-examination Bauman conceded that he did not know whether Rutledge was beaten up "with two-by-fours." [R624:92] Brever demonstrated with an aerial photograph that it would have been physically impossible to have a security camera in front of West Samaria which could view the street corner where Rutledge was assaulted. [R574,Ex111;R628:56-58]

The jury found that Bauman's statement that Tri-Corp was not operating in line with its plan of operation was false. The jury also found that Bauman made the statement with actual malice.

At the time of this press release, Bauman was familiar with West Samaria's plan of operation and knew that the DNS inspection which he ordered did not support his false statements. Bauman's knowledge that Tri-Corp was not in violation of West Samaria's plan of operation, coupled with evidence that Bauman had never been inside of West Samaria, that Bauman refused invitations to tour West Samaria, and that Bauman even threatened Tri-Corp's executive director [R616:11-13], certainly

support the jury's finding that Bauman made the statement with actual malice.

The third defamatory statement considered by the jury was Bauman's statement that "West Samaria had bad design, bad location and bad operator." The jury considered the context of this statement. This was a lie calculated to harm Tri-Corp's reputation with its lender and the source of its referrals, Milwaukee County. Bauman made the statement in a meeting that Tri-Corp was not aware of until after it occurred.

The meeting was arranged by WHEDA at Bauman's request. Bauman and Antonio Riley, the head of WHEDA (Tri-Corp's mortgage lender), were friends. [R614:54-55] Bauman met with Antonio Riley and Riley's assistant, Rae Ellen Packard, in Milwaukee at Bauman's office to discuss West Samaria. [R614:57] Neither Antonio Riley nor Rae Ellen Packard had ever been inside of West Samaria. [R614:57;R625:12] Bauman made it clear to Riley that he wanted West Samaria closed. [R677:10-14]

Afterwards, Riley had WHEDA staff arrange a meeting at WHEDA's Milwaukee office, which took place on October 19, 2007. At WHEDA's invitation, representatives of Milwaukee County (Jim Hill and James Mathy), and a representative of the City of Milwaukee Department of City Development (Maria Prioletta), attended the meeting along with Bauman and others from WHEDA. Tri-Corp was not notified of the meeting. [R616:63;R567,Ex88]

Maria Prioletta reported Bauman's defamatory statement in a contemporaneous email. [R619:44; R567,Ex88] She also testified that at the meeting "Bauman said that this was a badly run project" [R619:54-55] and that "it would be a bad idea" for another organization to acquire and continue West Samaria as a residence for mentally disabled individuals, and that he, as alderman, would not support any redevelopment of the project. [R567,Ex88;R619:46-47] Prioletta's email showed that Bauman's defamation influenced WHEDA. She reported: "It's not a matter of if WHEDA is going to foreclose, it's when. They want Tri-Corp out."

James Mathy testified that this was the only meeting Mathy had with Bauman, and that the focus of the meeting was the closure of West Samaria. [R619:24-25] Mathy testified that Bauman raised as "his two major issues" at this meeting "the David Rutledge incident and the Joseph Droese incident." [R619:16]

At trial, Bauman attempted to downplay his role at the October 19, 2007 meeting. Bauman denied discouraging Milwaukee County from referring residents to West Samaria [R618:55-56]:

> Q. Would it be fair to say that at the October 19th meeting you were discouraging Milwaukee County from sending residents to West Samaria?
>
> A. That wasn't my role. I have nothing to do with Milwaukee County.

However, he was impeached with his deposition testimony [R677:15]:

> Q. You don't think that you discouraged people from – such as Milwaukee County, from using West Samaria?
>
> A. Discourage them? I told them as much. I thought it was contrary to their – I thought they were disserving their clients by sending clients to that facility. You bet.

At trial, Bauman admitted that his statements that West Samaria had bad design, bad location and a bad operator were intended to advance his goal of closing down and razing West Samaria. [R618:49-50]

Immediately after the meeting, Milwaukee County began relocating residents of West Samaria. [R616:35] While New Samaria was under the same mortgage as West Samaria and under the same threat of foreclosure, none of its residents were relocated. [R448,Ex539; R616:32-36]

The Court of Appeals stated in its May 10, 2011 decision: "A jury could reasonably infer from these undisputed facts that Alderman Bauman's charges were a substantial factor in Milwaukee County's decisions not to continue to refer residents to West Samaria and to remove existing residents." *Wisconsin Housing and Economic Development Authority v. Tri Corp Housing, Inc.*, 2011 WI App 99, ¶28, 334 Wis. 2d 809, 800 N.W.2d 958, 2011 WL 1760449. At trial, the circumstantial evidence was

supported by direct evidence that immediately after the meeting, Mathy drew up a "relocation plan" for residents of West Samaria [R619:17], and relocation was underway at least by November 2, 2007. [R570,Ex95] Mathy testified there was no similar effort to relocate residents of New Samaria. [R619:20] Mathy himself never recommended shutting down West Samaria. [R619:22]

Brever testified that West Samaria and New Samaria were subject to the same mortgage and were operated by Tri-Corp no differently. In fact, meals came out of the same kitchen. [R616:37] Brever testified that he did not believe that the mortgage or later foreclosure proceeding explained why West Samaria was being emptied out. [R616:37] Brever acknowledged that Tri-Corp was delinquent in its mortgage payments, but in his experience with WHEDA, WHEDA would typically work out arrangements with borrowers. [R616:40-42] By October 2007, Brever and Tri-Corp's bookkeeper had initiated meetings with WHEDA to discuss readily available options for bringing the loan current. [R616:62-63]

On November 12, 2007, WHEDA notified Tri-Corp that WHEDA intended to foreclose its mortgage and close West Samaria. [R616:63-64] Tri-Corp was surprised. It had not been privy to the discussions of relocating residents and believed that WHEDA was considering Tri-Corp's proposals to bring its loan current.

WHEDA filed its foreclosure action on November 19, 2007. [R42] As was stated by the Court of Appeals in its 2011 decision, this certainly did not require or justify relocating the residents of West Samaria. Tri-Corp

remained in charge of both West Samaria and New Samaria during the foreclosure proceedings through April 30, 2009, when a receiver was appointed for New Samaria. [R442,Ex552] No receiver was ever appointed for West Samaria; it continued to be managed by Tri-Corp until it was empty. During the foreclosure proceedings, New Samaria remained at full occupancy while West Samaria was depleted of its residents over the span of a year. [R538,Ex3;R544,Ex4]

When Milwaukee County relocated residents of West Samaria, Tri-Corp lost its rental income, but its expenses continued. [R541,Ex23;R616:52-59] Tri-Corp kept West Samaria open (at a substantial loss to itself) until all residents were relocated. [R616:68-69] When Tri-Corp tried to sell the building to mitigate its loss, Bauman discouraged the potential buyer. [R628:70,72-75; R547,Ex42] Ultimately, West Samaria was razed. [R621:25]

Procedural History. Although this case was filed by WHEDA on November 19, 2007 as a foreclosure action against Tri-Corp, Tri-Corp answered, counterclaimed, and filed a third-party complaint against Robert Bauman. [R56] At present, the only parties to this case are Tri-Corp and Bauman.

On early motions for summary judgment, the Circuit Court dismissed Tri-Corp's claims against WHEDA and Bauman. Tri-Corp appealed, and the appeals were heard separately. On March 8, 2011, the Court of Appeals affirmed the dismissal of WHEDA in *Wisconsin Housing and Economic Development Authority v. Tri-Corp*

Housing Inc., 2011 WI App 58, 332 Wis. 2d 804, 798 N.W.2d 320, 2011 WL 781079. On May 10, 2011, the Court of Appeals reversed and remanded the dismissal of Tri-Corp's claim of tortious interference against Bauman in *Wisconsin Housing and Economic Development Authority v. Tri Corp Housing Inc.*, 2011 WI App 99, 334 Wis. 2d 809, 800 N.W.2d 958, 2011 WL 1760449.

Following the remand, Tri-Corp amended its complaint against Bauman to add causes of action for defamation and for violations of 42 U.S.C. § 1983, the Federal Fair Housing Act, the Americans With Disabilities Act, and the Rehabilitation Act. [R17] On March 5, 2012, Bauman removed the action to the United States District Court for the Eastern District of Wisconsin. [R14]

Bauman moved the District Court for dismissal of Tri-Corp's claims. On January 22, 2014, the District Court granted Bauman's motion for summary judgment on Tri-Corp's federal claims, but declined to exercise supplemental jurisdiction over Tri-Corp's state law claims of tortious interference and defamation, and remanded the case to the Circuit Court. *Tri-Corp Hous., Inc. v. Bauman*, No. 12-C-216, 2014 WL 238975 (E.D. Wis. Jan. 22, 2014). Tri-Corp appealed the dismissal of its federal law claims, but on June 13, 2016, the Seventh Circuit affirmed. *Tri-Corp Hous. Inc. v. Bauman,* 826 F.3d 446 (7th Cir. 2016). Tri-Corp filed a petition for writ of certiorari with the Supreme Court of the United States, but on December 12, 2016, its petition was denied. *Tri-Corp Hous. Inc. v. Bauman*, 196 L. Ed. 2d 474, 137 S. Ct. 592 (2016). The case then returned to the Milwaukee County Circuit Court.

Tri-Corp amended its defamation claims. [R197] Bauman filed additional motions to dismiss and for summary judgment, but none of them raised the issue of whether Tri-Corp was a "limited purpose public figure." At a hearing held on July 2, 2019, the trial court (Judge Witkowiak), decided that absolute privilege precluded Tri-Corp's defamation claims arising from statements Bauman made at hearings before the Board of Zoning Appeals ("BOZA"), but that otherwise, the defamation claims presented questions for the jury, and on July 11, 2019, entered its order [R314,App.G,pp.51-53;R356].

On August 23, 2019, the parties filed their pretrial reports, proposed jury instructions and proposed verdict questions. Bauman did not raise the issue of whether Tri-Corp should be regarded as a "limited purpose public figure" in this filing [R325] or when he later filed revised jury instructions and verdict questions. [R379-R380]

The jury trial began on February 7, 2022, and the testimony concluded on February 14, 2022. [R628:75] Bauman filed a motion for directed verdict. [R403] The next morning, on February 15, 2022, the trial court heard argument and granted Bauman's motion as to Tri-Corp's tortious interference claim and denied the motion with respect to Tri-Corp's defamation claim. [R620:34-38, App.H.pp.54-59]

Following a lengthy instruction conference, the jury convened the afternoon of February 16, 2022 and heard instructions and closing arguments. [R623:34-120] The trial court denied Tri-Corp's request to have punitive damages on the verdict. [R623:26-27] At Bauman's request,

over Tri-Corp's objection, the trial court instructed the jury that they would have to find "actual malice" on the part of Bauman in order for Tri-Corp to recover. The trial court instructed the jury that: "Your answers to Questions 3, 4, 8, 9, 13 and 14 of the verdict will determine whether Robert Bauman acted with actual malice in making or publishing the alleged defamatory statements." [R623:49-51]

On February 17, 2022, the jury returned its verdict in favor of Tri-Corp on its defamation claims, found actual malice on two of the three claims, and awarded damages in the amount of $1.4 million. [R437]

The trial court heard post-trial motions on April 14, 2022, and asked for additional submissions on whether or not Judge Witkowiak had ruled as a matter of law that the defamatory statements in the jury's verdict presented questions for the jury. [R630:35] Bauman and Tri-Corp filed their submissions on April 18, 2022. [R594-R595]

On May 16, 2022, the trial court filed its Decision and Order Granting Motion to Change Verdict Answers. [R598,App.E,pp.25-43] Tri-Corp appealed from both this order and the subsequent judgment. [R608,App.D,pp.23-24] The two appeals proceeded under the same case number.

On August 27, 2024, the Wisconsin Court of Appeals issued its Decision affirming the trial court. (App.B,pp.3-20) On September 13, 2024, Tri-Corp filed a Motion for Reconsideration. On September 17, 2024, the Court of Appeals denied the motion. (App.C,pp.21-22)

On October 11, 2024, Tri-Corp filed a Petition for Review with the Wisconsin Supreme Court. The petition was denied on January 16, 2025. (App.A,pp.1-2)

Tri-Corp now files this Petition with the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

1. The Supreme Court should clarify when a claimant is an "involuntary public figure" within the meaning set forth in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974), and is therefore required to prove actual malice in an action for defamation.

In *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80, 84 S. Ct. 710, 726, 11 L. Ed. 2d 686 (1964), an elected public official sued the New York Times for publishing defamatory statements. The Supreme Court decided that the First Amendment requires "a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

In *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 155, 87 S. Ct. 1975, 1991, 18 L. Ed. 2d 1094 (1967), the Court extended the "actual malice" requirement to "public figures," and in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971), a plurality of the court

broadly extended the actual malice requirement to other defamation claimants.

Then, in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974) the Supreme Court retracted the broad application of the "actual malice" requirement and clarified that an individual who is neither a public official nor a public figure was not required to prove actual malice in a defamation claim. *Gertz* articulated two types of public figures: (1) those who achieve such "pervasive fame or notoriety" that they are public figures for all purposes ("all-purpose public figures"); and (2) those who inject themselves into a particular public controversy and thereby become public figures only with respect to a limited range of issues ("limited public figures"). *Id.* at 351, 94 S. Ct. 2997.

However, in *Gertz*, at 345, 94 S. Ct. 3009, the Court added: "Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare."

Forty years later, in *Alharbi v. Beck*, 62 F. Supp. 3d 202, 210 (D. Mass. 2014), a district court observed:

> The viability of the "involuntary public figure" category has been uncertain since the Supreme Court first suggested it as a hypothetical and "exceedingly rare" occurrence in *Gertz*. In the forty years since, the Supreme Court has never found any defamation plaintiff to be an involuntary

> public figure, and only a few lower courts have done so.

We have not found any Supreme Court cases after 2014 which have addressed this issue.

The Court's decisions in *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S. Ct. 958, 47 L. Ed. 2d 154 (1976), *Hutchinson v. Proxmire*, 443 U.S. 111, 99 S. Ct. 2675, 61 L. Ed. 2d 411 (1979), and *Wolston v. Readers Digest Association, Inc.*, 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979), indicate that becoming newsworthy does make a defamation claimant an "involuntary public figure."

In *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S. Ct. 958, 47 L. Ed. 2d 154 (1976), Firestone sued Time because a story published in Time magazine relating to her divorce was defamatory. Firestone was married to a "scion of a wealthy industrial family," the divorce attracted public interest, and Time asserted that she was a public figure. The Court disagreed and declined to "reinstate the doctrine advanced in the plurality opinion in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971), which concluded that the New York Times privilege should be extended to falsehoods defamatory of private persons whenever the statements concern matters of general or public interest." *Time, Inc.*, at 424 U.S. 454, 96 S. Ct. 965.

In *Hutchinson v. Proxmire*, 443 U.S. 111, 117-118, 99 S. Ct. 2675, 2684–85, 61 L. Ed. 2d 411 (1979), Hutchinson sued Senator Proxmire for defamation after receiving a "Golden Fleece of the Month Award" ridiculing his

research grant. The Supreme Court held that Hutchinson was not a "public figure." Citing *Wolston,* at 443 U.S. 167–168, 99 S. Ct. 2708, the Court stated: "Clearly, those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."

In *Wolston v. Readers Digest Association, Inc.*, 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979), Readers Digest argued that Wolston (who was accused of being a Soviet spy) was a "public figure" because he became involved in a public controversy. Wolston's failure to appear before a grand jury and ensuing contempt citation were previously reported in fifteen newspaper stories over a period of six weeks. *Id.* at 161-163, 99 S. Ct. 2704-2705. Citing *Gertz*, the Supreme Court held that Wolston did not fall within the category of those public figures who have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." *Id.* at 158, 99 S. Ct. 2702. Wolston's conduct "was in no way calculated to draw attention to himself in order to invite public comment or influence the public with respect to any issue." *Id.* at 158, 99 S. Ct. 2702–03 Citing *Time, Inc. v. Firestone*, 424 U.S., at 454, 96 S. Ct., at 965 the Court stated: "A libel defendant must show more than mere newsworthiness to justify application of the demanding burden of *New York Times*."

In *Alharbi v. Beck* the district court reviewed the decisions of a number of federal courts where the concept of "involuntary public figure" was expanded to require defamation claimants to prove actual malice. The *Alharbi* court concluded at 211–12:

> ... to accept a definition of "involuntary public figure" that includes any unfortunate person swept up into a public tragedy is the functional equivalent of returning to the rule that any person involved in a matter of public interest cannot make out a claim for defamation without alleging actual malice. The Supreme Court has indeed squarely rejected that logic. See *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157, 167, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979) ("A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention.").

In the case made the subject of this petition, the trial court, the Wisconsin Court of Appeals, and by default, the Wisconsin Supreme Court determined that Tri-Corp was a "limited purpose public figure" as defined in *Gertz*. However, in substance, that was most certainly not the case.

The trial court correctly stated that in *Gertz* the US Supreme Court reconsidered its decision in *Rosenbloom*, stating at page 7 (App.E,p.34):

> In *Rosenbloom v. Metromania [sic], Inc.*, 403 U.S. 29, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971), a plurality of the court extended the actual-malice standard to protect speakers who discuss "matters of public or general concern," even when the plaintiff is a private

> figure. However, three years later, observing that there had been a 'general problem of reconciling the law of defamation with the First Amendment,' the Supreme Court reconsidered its decision in *Rosenbloom*. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 333, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974).

After this nod to *Gertz*, the trial court cited a Wisconsin Court of Appeals case, *Wiegel v. Cap. Times Co.*, 145 Wis. 2d 71, 426 N.W.2d 43 (Ct. App. 1988) and stated (App.E,p.38):

> ... a defamation plaintiff need not consciously or voluntarily thrust itself into the dispute in order to be considered a limited purpose public figure. *Wiegel*, 145 Wis. 2d at 85. Instead, a plaintiff may be a limited purpose public figure if his or her activities "almost inevitably put him [or her] into the vortex of a public controversy." *Id.*

This runs contrary to *Gertz, Time, Hutchinson*, and *Wolston,* because it fails to recognize that the Supreme Court intended to restrict, rather than broaden, its decision in *Rosenbloom*.

Gertz held that defamation claimants "who inject themselves into a particular public controversy" could be limited purpose public figures. The Wisconsin Court of Appeals departed from *Gertz* when, citing *Wiegel*, 145 Wis. 2d at 85, it stated: "[T]he focus of the inquiry should be on

the plaintiff's role in the public controversy rather than on any desire for publicity or other voluntary act on his or her part." (App.B,p.17) The trial court likewise departed from *Gertz* when (also citing *Wiegel*) it stated that "a defamation plaintiff need not consciously or voluntarily thrust itself into the dispute." (App.E,p.38)

Other Wisconsin cases cited by the Wisconsin Court of Appeals have similarly departed from *Gertz* in defining the "limited purpose public figure." See, e.g.,, *Sidoff v. Merry*, 2023 WI App 49, ¶44, 409 Wis. 2d 186, 208, 996 N.W.2d 88, 99, where there was no dispute that a defamation claimant (determined by the court to be an "involuntary limited purpose public figure") did not willingly thrust himself into the controversy, did not provide statements to the press or engage in interviews and generally, made no attempt to involve himself in the controversy made the subject of the defamation.

As stated in *Alharbi v. Beck*, *supra*, this is exactly what the Supreme Court sought to avoid when it stated: "A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." *Wolston, supra*.

If given the opportunity, Tri-Corp would ask the Supreme Court to clarify or eliminate the concept of "involuntary public figure" stated in *Gertz*.

2. The Supreme Court should (1) require a defendant to timely raise the issue of whether a defamation claimant is a "limited purpose public figure" prior to submission of the case to the jury and (2) require the trial court to decide that issue at a pretrial hearing.

At no time prior to the submission of this case to the jury did Bauman even raise the issue of whether Tri-Corp should be a "public figure" of any sort. The jury instructions and verdict questions which Bauman submitted both with his pretrial report [R325:1-16] and just before trial [R379:1-5, R380:1-8] did not raise that issue. Bauman did not even raise the issue at the final instruction conference [R623:4-34]. The matter went to the jury without the trial court making that determination.

After the jury returned its verdict, Bauman did not even raise this issue in his post-trial briefs. The trial court developed this argument for Bauman in the trial court's post-trial decision and in effect, became Bauman's advocate.

Bauman concedes that he never raised this issue. Instead, in his response to Tri-Corp's petition to the Wisconsin Supreme Court he argued:

> It should also be noted that there was nothing amiss in the circuit court's decision to address specifically the question of limited-purpose public figure status, somewhat on the trial court's own initiative, after the parties developed the evidentiary

> record at trial. A court is not bound by the issues as framed by the parties, and can decide a case on whatever grounds it sees fit. [Response to Petition for Review, p.14, footnotes omitted]

Tri-Corp disagrees that the trial court's action was justified. There is no Wisconsin authority permitting the trial court to resolve the "public figure" issue in this fashion. To the contrary, in *Bay View Packing Co. v. Taff*, 198 Wis. 2d 653, 676–77, 543 N.W.2d 522, 530 (Ct. App. 1995), the Wisconsin Court of Appeals stated that if necessary, the court should conduct an evidentiary hearing.

As detailed in Tri-Corp's motion for reconsideration filed with the Wisconsin Court of Appeals on September 13, 2024, the Court of Appeals did not cite what specific exhibits or testimony underlie its conclusions that "Tri-Corp, through its executive director, Brever, made statements throughout the public controversy that attempted to mitigate West Samaria's responsibility" or that "Brever again pointed the blame to a case worker from Milwaukee County." [Court of Appeals' decision, at ¶27] (App.B,p.16) In its post-trial decision, the trial court appeared to reference newspaper articles that it admitted (for other limited purposes) during the trial over Tri-Corp's objection. Also, the trial court exaggerated the content and import of these articles. This is all the result of never having a hearing focused on whether Tri-Corp was a limited purpose public figure.

In *Rosenblatt v. Baer*, 383 U.S. 75, 87, 86 S. Ct. 669, 677, 15 L. Ed. 2d 597 (1966), the Supreme Court indicated that the "public figure" issue should be resolved before a case goes to the jury, and not post-trial. The Court noted, at 77: "In the interval between the trial and the decision of petitioner's appeal by the New Hampshire Supreme Court, we decided *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686." So, in this particular case, the parties would not have known to raise the issue. However, the Court declined to resolve the issue based on the record before it, stating, at 87-88:

> The record here, however, leaves open the possibility that respondent could have adduced proofs to bring his claim outside the New York Times rule. Moreover, even if the claim falls within New York Times, the record suggests respondent may be able to present a jury question of malice as there defined.

The case was remanded for a proper evidentiary hearing.

Tri-Corp asks that the Supreme Court rule that (1) a defendant is required to timely raise the issue of whether a defamation claimant is a "limited purpose public figure" prior to submission of the case to the jury and (2) the trial court must decide that issue at a pretrial hearing. Here, Bauman's failure to raise the issue of whether Tri-Corp was a limited purpose public figure should be treated as a waiver of that defense.

CONCLUSION

For these reasons, Tri-Corp asks this Court to grant its petition.

Dated this 16th day of April, 2025.

Respectfully submitted,

Electronically signed by John E. Machulak

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APPENDIX

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APPENDIX A

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2022AP993

[Filed January 16, 2025]

January 16, 2025

To:

Hon. Pedro A. Colon
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals
Processing Division
Electronic Notice

Emily Marie Behn
Electronic Notice

John E. Machulak
Electronic Notice

Matthew R. McClean
Electronic Notice

You are hereby notified that the Court has entered the following order:

No. 2022AP993 Tri-Corp Housing, Inc. v. Bauman, L.C. 2007CV965

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of third-party-plaintiff-appellant-petitioner, Tri-Corp Housing, Inc., and considered by this court;

IT IS ORDERED that the petition for review is denied, with $50 costs.

Samuel A. Christensen
Clerk of Supreme Court

APPENDIX B

COURT OF APPEALS
DECISION
DATED AND FILED

August 27, 2024

Samuel A. Christensen
Clerk of Court of Appeals

Appeal No. 2022AP993
Cir. Ct. No. 2007CV13965

STATE OF WISCONSIN
IN COURT OF APPEALS
DISTRICT I

TRI-CORP HOUSING, INC.,

THIRD-PARTY PLAINTIFF-APPELLANT,

V.

ROBERT BAUMAN ALDERMAN,

THIRD-PARTY DEFENDANT-RESPONDENT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PEDRO A. COLÓN, Judge. *Affirmed*.

Before White, C.J., Donald, P.J., and Geenen, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Tri-Corp Housing, Inc. appeals from the judgment and order dismissing its claims after the circuit court granted Robert Bauman's motion to change the jury's answers in its verdict in the defamation action Tri-Corp brought against Bauman. Tri-Corp argues that the circuit court erred in three ways. First, when the court found that Tri-Corp was a public figure, which meant it had to prove "actual malice" to prevail. Second, when the court concluded that there was insufficient evidence that Bauman acted with actual malice when he defamed Tri-Corp. Third, if a new trial were ordered, Tri-Corp's tortious interference claim, which had been dismissed in a directed verdict, should be tried. Upon review, we reject Tri-Corp's arguments and we affirm.

BACKGROUND

¶2 This case has a long and convoluted procedural history and we recite only relevant background information. In November 2007, the Wisconsin Housing and Economic Development Authority (WHEDA) filed a

complaint to foreclose upon a mortgage taken by Tri-Corp for two multi-family parcels: West Samaria, located in the 2700 block of West Richardson Place in Milwaukee, and New Samaria, located in the 600 block of West Beloit Road in West Allis. Tri-Corp executed the mortgage in 2003 and it operated both facilities as housing for cognitively disabled individuals. The complaint alleged that Tri-Corp had not made all required mortgage payments.

¶3 Tri-Corp answered the foreclosure complaint with counterclaims of conspiracy and tortious interference with contract against WHEDA and City of Milwaukee Alderman Robert Bauman. Tri-Corp alleged that WHEDA was not foreclosing in good faith, but acting in concert with Bauman, who had publically expressed displeasure about the facility. Tri-Corp alleged that Bauman met with representatives from WHEDA, who then actively discouraged Milwaukee County from placing individuals with cognitive disabilities under the County's care at West Samaria. It further alleged that in mid-November 2007, WHEDA notified Tri-Corp that it would issue a press release indicating that Tri-Corp agreed that the West Samaria facility should be closed. Tri-Corp protested that the release would be false, but WHEDA published it anyway. Tri-Corp alleged that it requested, unsuccessfully, that WHEDA separate the mortgages for West Samaria and New Samaria, a facility with nearly 100% occupancy. Tri-Corp further alleged that WHEDA refused to allow it to bring the loan current by using a reserve account or by using proceeds from the sale of another property.

¶4 West Samaria was operated with a special use permit from the City of Milwaukee, a permit that Bauman publicly opposed. The record reflects the death of two residents of West Samaria occurred during the controversy over West Samaria's operation in Milwaukee. First, in July 2004, resident David Rutledge was assaulted by a street gang near the facility. Another resident helped Rutledge get to West Samaria, where a security guard called 911 and Rutledge was transported to a hospital, where he died a few days later. Second, in 2007, resident Joseph Droese died of natural causes in his room, but his death was not discovered until four days later. Droese was placed at West Samaria through Milwaukee County and a caseworker was supposed to regularly check on him.

¶5 Tri-Corp's claims against WHEDA were litigated separately from its claims against Bauman, and we focus on the procedural history with Bauman.[1] In May 2010, the circuit court granted Bauman's motion for summary judgment and dismissed Tri-Corp's claims with prejudice. In May 2011, this court affirmed the judgment on the conspiracy claim, but reversed on the tortious interference of contract claim and remanded to resolve issues of material fact. *WHEDA v. Tri-Corp Hous., Inc.*, No 2010AP1443, unpublished slip op., ¶30 (WI App May 10, 2011).

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[1] In January 2010, the circuit court granted WHEDA's motion for summary judgment and dismissed Tri-Corp's counterclaim, with prejudice, a decision affirmed by this court in March 2011. *WHEDA v. Tri-Corp Hous., Inc.*, No. 2010AP418, unpublished slip op. (WI App Mar. 8, 2011).

¶6 On remand, in February 2012, Tri-Corp filed an amended third-party complaint against Bauman alleging tortious interference with contract and defamation, which it further amended in February 2018.[2] In July 2019, the circuit court dismissed three of Tri-Corp's defamation claims upon Bauman's motion for summary judgment on grounds of absolute privilege because the statements were made "in a quasi-judicial proceeding" to the City of Milwaukee Board of Zoning Appeals (BOZA).[3] We recite

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[2] Tri-Corp also alleged a violation of 42 U.S.C. § 1983 in the remand filing. Bauman removed Tri-Corp's claims to the federal court. In January 2014, the United States District Court for the Eastern District of Wisconsin granted Bauman's motion for summary judgment dismissing the § 1983 claim, and declined to exercise supplemental jurisdiction over the state law claims. *See Tri-Corp Hous., Inc. v. Bauman*, No. 12-C-216, 2014 WL 238975 (E.D. Wis. Jan. 22, 2014), aff'd, 826 F.3d 446 (7th Cir. 2016). The case was remanded to the Milwaukee County Circuit Court.

In March 2018, Bauman moved for partial summary judgment on the basis that the municipal liability limit on damages under WIS. STAT. § 893.80(3), which limits damages at $50,000 for acts done in official capacity, applied to claims against Bauman. Tri-Corp argued that whether Bauman's acts were within the scope of his employment were a question for the jury. The court determined there was a question of fact and denied Bauman's motion in May 2018.

[3]The claims dismissed were: Bauman's testimony at the May 18, 2006 BOZA meeting concerning the death of West Samaria resident David Rutledge in July 2004. Bauman was quoted about the same hearing in the Milwaukee Journal Sentinel that West Samaria was "unfit for human habitation." Additionally, Bauman circulated a letter in April 2007 which presented to BOZA two additional complaints alleging assault and mistreatment of West Samaria residents. This

the substance of the remaining three claims of Bauman's speech allegedly defaming Tri-Corp through false and malicious speech.

¶7 Tri-Corp's first remaining claim is that in March 2007, Bauman emailed the City of Milwaukee Department of Neighborhood Services (DNS) asking it to take immediate action to revoke West Samaria's special use permit for being inconsistent with the plan of operation, after Droese's death earlier that year. DNS determined that West Samaria was operating in a manner inconsistent with its approved plan of operation, and its special use permit was revoked. Also in March 2007, after the special use permit was revoked, Bauman emailed his aldermanic constituents stating: "[DNS] has determined that the recent events at West Samaria violate its plan of operation. DNS is going to issue an order revoking the Special Use Permit and order the property vacated." When Tri-Corp appealed the revocation to BOZA later that month, DNS admitted at a hearing that it had failed to conduct an investigation, and the order revoking Tri-Corp's permit was stayed.

¶8 Tri-Corp's second claim is that in a March 23, 2007 news release from the City of Milwaukee about BOZA's stay of the revocation order, Bauman was quoted

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court noted in our previous decision that a subsequent police investigation found no factual support for the allegations in Bauman's letter. *WHEDA v. Tri-Corp Hous., Inc.*, No. 2010AP1443, unpublished slip op., ¶10 (WI App May 10, 2011).

stating: "The problem with BOZA's action is that West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who live there."

¶9 The final defamation claim is that in October 2007, Bauman spoke at a meeting convened by WHEDA to discuss West Samaria and the referral of residents by Milwaukee County. Bauman was quoted as stating that West Samaria had "bad design, bad location, and a bad operator."

¶10 The circuit court conducted a jury trial in February 2022 on the tortious interference with contract claim and the remaining defamation claims. Testimony was presented from Michael Brever, the executive director of Tri-Corp during the relevant time, Bauman, as well as staff members from WHEDA, Milwaukee County, and the City of Milwaukee. Tri-Corp and Bauman presented expert accounting witnesses who analyzed the fiscal impact on Tri-Corp of the controversy with Bauman.

¶11 At the close of evidence, Bauman moved for a directed verdict, pursuant to WIS. STAT. § 805.14(4) (2021-22).[4] Bauman argued that Tri-Corp had submitted no evidence to establish that Bauman acted out of a personal motivation to harm Tri-Corp or deviated from his official role. Bauman contended that the circuit court must

[4] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

dismiss the tortious interference with contract claim because Bauman's "alleged interference involved matters of public concern, his actions are privileged as a matter of law and cannot be the basis of any liability" under the law. Additionally, Bauman argued that the tortious interference claim failed on the facts.

¶12 The circuit court found that Bauman's comments at issue in the tortious interference with contract claim were a matter of public concern, noting that a pretrial question was whether there was evidence that Bauman's efforts opposing West Samaria occurred before or outside the time he was alderman. After concluding that no evidence was adduced at trial that Bauman's speech or conduct concerning Tri-Corp being was made outside of his aldermanic role, the court granted a directed verdict on the tortious interference with contract claim.

¶13 The circuit court denied a directed verdict on the defamation claims and sent questions about three statements to the jury: (1) "Did Robert Bauman say to [DNS] that the fact that Joseph Droese died and was not discovered for four days [suggests] that West Samaria was not operating in compliance with the Plan of Operation or operating in a manner consistent with the health, safety and welfare of the public?" (2) "Did Robert Bauman say that 'West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who live there?'" and (3) "Did Robert Bauman say that West Samaria had a bad design, bad location and bad operator?"

¶14 The circuit court answered "yes" to the threshold question that the statements were made, but then the jury was asked whether each statement was true. If the statement was not true, the jury was then asked if the statement was made "with reckless disregard of its truth or falsity." If that was answered affirmatively, the jury was asked whether "[i]n making or publishing the statement, did Robert Bauman abuse his First Amendment privilege?" Finally, if that was answered affirmatively, the jury was asked whether Bauman's statements were made while "acting within the scope of his employment."

¶15 While the jury found that all three statements were not true, it did not find that Bauman made the first statement "with reckless disregard of its truth or falsity." The jury found that Bauman's second and third statements were made with reckless disregard of truth, made in abuse of his First Amendment privileges, and were not made within the scope of his employment. Finally, the jury answered that $1.4 million would be the sum that would reasonably compensate Tri-Corp for Bauman's defamatory statements.

¶16 Bauman filed after-verdict motions. First, he moved for judgment notwithstanding the verdict (JNOV) on the basis that the First Amendment protected public officials engaged in matters of public concern and he was engaged in advocacy when the statements were made. He asserted that Tri-Corp had failed to show actual malice at trial, pointing out that the circuit court concluded that punitive damages were not appropriate. Second, Bauman moved for the court to change the jury special verdict

questions related to actual malice and the First Amendment.

¶17 The circuit court granted Bauman's after-verdict motion, concluding it must change the jury's answers to the questions asking whether the second and third statements were made "with reckless disregard of its truth or falsity" from "yes" to "no" and render moot the subsequent questions about abusing First Amendment privilege and acting within the scope of employment. The court concluded that "all of the statements at issue are substantially true, and Bauman's statement regarding West Samaria's 'bad design, bad location, and a bad operator' is pure opinion." The court determined that Tri-Corp was "a limited purpose public figure" and that there was no evidence in the record to demonstrate that Bauman acted with actual malice. The court dismissed Tri-Corp's claims. Tri-Corp now appeals.

DISCUSSION

¶18 Tri-Corp argues that the circuit court erred when it changed the verdict answers. Tri-Corp asserts that the circuit erred when it found that Tri-Corp was a public figure, thus triggering the requirement of actual malice to prevail on its claims. Further, Tri-Corp argues that there was credible evidence to the support the jury's finding that Bauman acted with actual malice. Finally, Tri-Corp contends that if a new trial were granted, the tortious interference with contract claim should be reinstated because the circuit court erred when it granted the motion for directed verdict.

¶19 Any party may move the court after the verdict to "change an answer in the verdict on the ground of insufficiency of the evidence to sustain the answer." WIS. STAT. § 805.14(5)(c). When the circuit court considers a motion to change a jury's answer, it "must view the evidence in the light most favorable to the verdict and affirm the verdict if it is supported by any credible evidence." *Richards v. Mendivil*, 200 Wis. 2d 665, 671, 548 N.W.2d 85 (Ct. App. 1996).

¶20 "An appellate court should not overturn a circuit court's decision to dismiss for insufficient evidence unless the record reveals that the circuit court was 'clearly wrong.'" *Legue v. City of Racine*, 2014 WI 92, ¶138, 357 Wis. 2d 250, 849 N.W.2d 837 (citation omitted). A circuit court is "clearly wrong" when it "dismisses a claim that is supported by any credible evidence[.]" *Berner Cheese Corp. v. Krug*, 2008 WI 95, ¶36, 312 Wis. 2d 251, 752 N.W.2d 800. "Because a circuit court is better positioned to decide the weight and relevancy of the testimony, an appellate court 'must also give substantial deference to the [circuit] court's better ability to assess the evidence.'" *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388-89, 541 N.W.2d 753 (1995) (quoting *James v. Heintz*, 165 Wis. 2d 572, 577, 478 N.W.2d 31 (Ct. App.1991)).

¶21 We therefore must assess whether there is any credible evidence to support the jury's findings of reckless disregard for the truth in the second and third defamation claims. A common law action for defamation has three elements:

> (1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the one defamed; and (3) the communication is unprivileged and tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her.

Ladd v. Uecker, 2010 WI App 28, ¶8, 323 Wis. 2d 798, 780 N.W.2d 216. "The United States Supreme Court has determined that the First and Fourteenth Amendments to the federal constitution require that defamation plaintiffs who are public figures must also prove by clear and convincing evidence another element, actual malice." *Storms v. Action Wis. Inc.*, 2008 WI 56, ¶38, 309 Wis. 2d 704, 750 N.W.2d 739.

¶22 "Generally, 'public figures' are defined as 'those persons who, although not government officials, are nonetheless 'intimately involved in the resolution of important public questions.'" *Bay View Packing Co. v. Taff*, 198 Wis. 2d 653, 675, 543 N.W.2d 522 (Ct. App. 1995) (citation omitted). "One may become a public figure … for all purposes due to general fame or notoriety." *Wiegel v. Capital Times Co.*, 145 Wis. 2d 71, 82, 426 N.W.2d 43 (Ct. App. 1988) (citation omitted). Alternatively, one can become a limited purpose public figure through "involvement in a particular public issue or controversy[.]" *Id.*

¶23 "Actual malice is a term of art; it is not used in its ordinary meaning of evil intent." *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis. 2d 524, 536, 563 N.W.2d 472 (1997). To prove actual malice, the plaintiff must show "that the defamatory falsehood was published with knowledge of its falsity or with reckless disregard for its truth." *Id.*

¶24 Tri-Corp argues that it is not a "public figure," therefore it would not need to show "actual malice" in Bauman's statements to prevail. The question of whether an entity is a "'limited purpose public figure' is an issue left solely to the court to decide as a matter of law, not an issue of fact to be decided by the jury." *Bay View Packing Co.*, 198 Wis. 2d at 676-77. Therefore, we independently review the circuit court's determination that Tri-Corp was a limited purpose public figure.

¶25 We begin with the two-prong inquiry to determine whether a plaintiff is a "limited purpose public figure" for a defamation action: "(1) there must be a public controversy; and (2) the court must look at the nature of the plaintiff's involvement in the public controversy to see whether the plaintiff has injected himself or herself into the controversy so as to influence the resolution of the issues involved." *Id.*, at 677-78 (citing *Denny v. Mertz*, 106 Wis. 2d 636, 649-50, 318 N.W.2d 141 (1982)). The record reflects that there was a public controversy over the continued operation of West Samaria.

¶26 The second prong is subject to three inquiries to determine whether the plaintiff's involvement in the

controversy, framed either as a "voluntary injection" or if the public figure was drawn into a particular public controversy. *Sidoff v. Merry*, 2023 WI App 49, ¶18, 409 Wis. 2d 186, 996 N.W.2d 88 (citation omitted). The three inquiries require us to (1) isolate the controversy; (2) examine the plaintiff's role in the controversy to determine if it was "more than trivial or tangential"; and (3) determine "if the alleged defamation was germane to the plaintiff's participation in the controversy." *Van Straten v. Milwaukee Journal Newspaper-Publisher*, 151 Wis. 2d 905, 913-14, 447 N.W.2d 105 (Ct. App. 1989).

¶27 Tri-Corp argues that merely being newsworthy does not mean that it involved itself in a public controversy. However, as the circuit court noted in its analysis, Tri-Corp undertook certain actions relevant to the "involvement" analysis. For example, Tri-Corp, through its executive director, Brever, made statements throughout the public controversy that attempted to mitigate West Samaria's responsibility, particularly with regard to the supervision and monitoring of Droese. The record reflects that when DNS issued the order to vacate West Samaria because inspectors determined that Tri-Corp violated conditions of its special permit by not properly monitoring residents, Brever again pointed the blame to a case worker from Milwaukee County for failing to monitor Droese.

¶28 Our examination of the record supports that the second prong—the three part inquiry into Tri-Corp's involvement in the public controversy—is satisfied. The controversy can be isolated to the continuing operations

for West Samaria after the death of two residents. As the operator in question, we consider Tri-Corp's role to not be tangential or trivial. Finally, Bauman's statements were germane to Tri-Corp's role in the controversy. "[T]he focus of the inquiry should be on the plaintiff's role in the public controversy rather than on any desire for publicity or other voluntary act on his or her part." *Wiegel*, 145 Wis. 2d at 85. Here, Tri-Corp was intrinsic to the discussion and we agree with the circuit court's conclusion that it was a "limited purpose public figure" for this issue. As a public figure, Tri-Corp was therefore required to show actual malice to prove defamation.

¶29 We now consider whether there was any credible evidence of actual malice on Bauman's part in making statements that West Samaria repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who live there and that West Samaria had a bad design, bad location, and bad operator.

¶30 Tri-Corp appears to ask us to conclude that the circuit court erred because that the jury could have found credible evidence that Tri-Corp did not mismanage West Samaria. However, that is not our inquiry. Our inquiry focuses on Bauman's perspective at the time of the statements. Credible evidence of actual malice does not look for evil intent, but whether Bauman made false statements "with the high degree of awareness of ... probable falsity," *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964), or that Bauman "entertained serious doubts as to the truth" of his statements, *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

¶31 The record reflects that at the time of Bauman's statements, two West Samaria residents had died, Bauman had received complaints about Tri-Corp and its management of West Samaria, he had heard criticism of Tri-Corp at multiple BOZA hearings, and he had received an audit by the City of Milwaukee Comptroller that found non-compliance with grant regulations and potential fraud in subcontractor billing related to Tri-Corp. At the same time, there was repeated and in-depth news coverage of the housing, care, and treatment of individuals with mental disabilities and illnesses in Milwaukee by the local newspaper, with over a dozen articles admitted into evidence including multiple references to Tri-Corp and West Samaria.

¶32 Although Tri-Corp argues that Bauman did not investigate the truth of the operation of West Samaria, the "mere proof of failure to investigate the accuracy of a statement, without more, cannot establish reckless disregard for the truth." *Van Straten*, 151 Wis. 2d at 918. We cannot consider Bauman to be speaking with actual malice because he did not investigate Tri-Corp's operations more fully. Bauman believed that Tri-Corp was failing to provide appropriate care for the residents of West Samaria. We agree with the circuit court's conclusion that there was no credible evidence of actual malice adduced at trial; therefore, the motion to change the jury's answers on the verdict was appropriate.

¶33 Further, Bauman was an alderman representing his constituents in the City of Milwaukee. His speech occurred within his political advocacy over a

matter of public concern. The law has recognized a defense of privilege in defamation actions for government officials to allow them to "be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties" because such suits would distract from government service and "the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government." *Barr v. Matteo*, 360 U.S. 564, 571 (1959). The record reflects that this case went to trial to determine if Bauman's speech was part of his advocacy as an alderman and not with a "personal motive not connected with the public good." *Id.* (citation omitted). Although Tri-Corp suggested that Bauman acted out of a desire to keep individuals with mental disabilities out of his own neighborhood, there was no evidence of this produced at trial.

¶34 The record also reflects that West Samaria was a matter of public concern. "Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community[.]'" *Snyder v. Phelps*, 562 U.S. 443, 453 (2011). Bauman's statements were made as part of the controversy over West Samaria and housing its residents. The First Amendment protects speech over matters of public concern even when the speech is "upsetting or arouses contempt." *Id.* at 458. The jury's verdict shows it may not have approved of Bauman's statements; nevertheless, "public debate" must be tolerated under the First Amendment. *Id.*

¶35 We conclude that the circuit court did not err when it concluded Tri-Corp was a limited purpose public figure, that there was no credible evidence of actual malice, and that the jury's answers to the reckless disregard questions should be changed. Therefore, we affirm the circuit court's judgment and do not order a new trial.

¶36 Tri-Corp argues that if a new trial were ordered, the tortious interference with contract claim should be tried because the directed verdict was decided in error. Because we conclude that a new trial is not required, we decline to address this argument. *See Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 ("An appellate court need not address every issue raised by the parties when one issue is dispositive.").

CONCLUSION

¶37 For the reasons stated above, we conclude that the circuit court did not err when it dismissed Tri-Corp's claims. We affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

APPENDIX C

OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
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DISTRICT 1

[Filed September 17, 2024]

September 17, 2024

To:

Hon. Pedro A. Colón
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Appeals
Processing Division
Electronic Notice

Emily Marie Behn
Electronic Notice

John E. Machulak
Electronic Notice

Matthew R. McClean
Electronic Notice

You are hereby notified that the Court has entered the following order:

2022AP993 Tri-Corp Housing, Inc. v. Bauman
(L.C. #2007CV13965)

Before White, C.J., Donald, P.J., and Geenen, J.

Tri-Corp Housing, Inc. moves the court to reconsider its August 27, 2024 decision. After reviewing the motion, this court concludes that reconsideration is not warranted.

Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

Samuel A. Christensen
Clerk of Court of Appeals

APPENDIX D

[Filed June 15, 2022]

DATE SIGNED: June 15, 2022

Electronically signed by Honorable Pedro A. Colon
Circuit Court Judge

STATE OF WISCONSIN
CIRCUIT COURT BRANCH 18
MILWAUKEE COUNTY

TRI-CORP HOUSING, INC.,

Plaintiff,

v. Case No. 07-CV-013965

ROBERT BAUMAN, ALDERMAN,

Defendant.

JUDGMENT

This matter having been tried from February 7, 2022 to February 17, 2022, the jury having reached a verdict, and the Court having granted the Defendant's Post Verdict Motion to Change Answers by its written decision dated May 16, 2022:

IT IS HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of the Defendant, Robert Bauman, Alderman, against the Plaintiff, Tri-Corp Housing, Inc., and all claims are dismissed. Pursuant to Wis. Stat. §814.03, Defendant Bauman is entitled to costs and disbursements in an amount to be determined.

Dated this ____ day of _____, 2022.

BY THE COURT

_____
Milwaukee County Judgment Clerk

APPENDIX E

[Filed May 16, 2022]

DATE SIGNED: May 16, 2022

Electronically signed by Honorable Pedro A. Colon
Circuit Court Judge

STATE OF WISCONSIN
CIRCUIT COURT BRANCH 18
MILWAUKEE COUNTY

TRI-CORP HOUSING, INC.,

Plaintiff,

v. Case No. 07-CV-13965

ROBERT BAUMAN, ALDERMAN,

Defendant.

DECISION AND ORDER GRANTING
MOTION TO CHANGE VERDICT ANSWERS

This case was initiated on November 19, 2007, as a foreclosure action filed by the Wisconsin Housing and Economic Development Authority against Tri-Corp Housing, Inc. (Tri-Corp). On February 17, 2022 – almost fifteen years later - a jury awarded Tri-Corp $1,400,000 in compensatory damages for its counterclaim for defamation, based on several statements made by City of Milwaukee Alderman Robert Bauman (Bauman) during the course of his opposition to Tri-Corp's operations. Shortly thereafter, Bauman filed a motion for judgment notwithstanding the verdict and motion to change answers. For the reasons stated below, the court finds that the evidentiary record is entirely devoid of evidence to demonstrate that Bauman acted with actual malice by clear and convincing evidence. The court find that Tri-Corp is a "limited purpose public figure," and actual malice is a condition precedent for recovery in defamation cases involving public figures. Accordingly, Tri-Corp is not entitled to any compensatory damages as a matter of law.

INTRODUCTION

This case was initially assigned to Judge Michael Dwyer. Since then, the case has been reassigned – due to judicial rotation, a substitution and a recusal – to seven different branches, including a vacant branch with a reserve judges presiding.[1] The most recent reassignment

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[1] The case was also appealed to the Wisconsin Court of Appeals. In addition, it was removed to the federal district court, which declined to exercise supplemental jurisdiction over Tri-Corp's state law claims.

did not occur until early 2020, when the courts were significantly disrupted by the COVID-19 pandemic. As a result, the court was faced with the daunting task of making eleventh-hour decisions with respect to the formulation of the jury verdict and jury instructions, without having the ability to fully decipher the logic and rationale of the predecessor judges' decision-making process.

Fortunately, many of the facts are undisputed. Tri-Corp is a non-profit agency whose mission, among others, is to provide housing to individuals with mental disabilities who are not in need of confinement and are capable of living in the community. In the early 1990s, Tri-Corp acquired a 92-unit facility housing facility, known as "West Samaria," located at 2713 West Richardson Place, in Milwaukee. The "American Red Cross" and Milwaukee County Mental Health Division occupied the fourth floor of the facility with their own occupancy permit from the City and independently rented 32 units from Tri-Corp. In 1997, Bauman purchased a home approximately two blocks from West Samaria.

In 2003, the Wisconsin Housing and Economic Development Authority (WHEDA) gave Tri-Corp a multi-family mortgage for approximately $1.6 million, which was secured by the West Samaria facility and another building in West Allis, known as "New Samaria." Both facilities

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The federal case ultimately proceeded to the Seventh Circuit Court of Appeals.

were operated by Tri-Corp to providing housing and meals for cognitively disabled persons.

In the spring of 2004, Bauman was elected Alderman of the Aldermanic District in which West Samaria is located.

Since 2005, Bauman was an opponent of the West Samaria Facility and publicly opposed Tri-Corp's special use permit to operate West Samaria. In the process of doing so, he made several statements, which, according to Tri-Corp, were defamatory in nature. There were initially seven statements at issue, but Judge Witkowiak prevented three of the seven statements from going to the jury because they were made during administrative hearings before the Board of Zoning Appeals (BOZA), and they were therefore subject to an "absolute privilege."

On March 2, 2007, the City of Milwaukee Department of Neighborhood Services (DNS) issued a 30-day notice to vacate. The jury heard evidence that on the same date, Bauman emailed his constituents informing them that DNS determined that West Samaria violated its plan of operation after it became public that Joseph Droese, a resident of West Samaria, was found dead in his room after four days from the last day he was seen alive on January16, 2022. Droese's death led to subsequent public discussion regarding the manner and circumstances that caused his death. After Droese's death became public, Bauman requested and confirmed that DNS would issue an order revoking Tri-Corp's special use permit. In addition, in a news release dated March 23, 2007, Bauman stated

that "West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who lived there." Finally, at an October 19, 2007, meeting with county officials, a city employee, WHEDA representative, and a representative from a prospective buyer, Bauman stated that West Samaria "was a combination of three things – bad design, bad location, and a bad operator."[2] At issue is whether there is sufficient evidence in the record that would allow Tri-Corp to recover compensatory damages for these statements through the requirements of the law of defamation.

DISCUSSION

The first inquiry in evaluating a defamation claim is whether the communication is capable of a defamatory meaning, that is, whether the words complained of are reasonably capable of conveying a defamatory meaning to the ordinary mind and whether the meaning ascribed by the plaintiff is a natural and probable one. *Laughland v. Beckett*, 2015 WI App 70, ¶21, 365 Wis. 2d 148, 870 N.W.2d 466. The determination is one of law for the circuit court. *Id*.

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[2] The jury also heard evidence that on March 1, 2007, Bauman told the Department of Neighborhood Services (DNS) to revoke Tri-Corp's special use permit because "a resident died and was not discovered for 4 days." According to Bauman, this suggested that the facility was not operating in compliance with its operation or operating in a manner that was consistent with the health, safety and welfare of the public. As part of their verdict, the jury determined that Bauman did not make this statement with actual malice, thereby precluding recovery for this allegedly defamatory statement.

The elements of a common law action for defamation are: (1) a false statement; (2) communicated by speech, conduct or in writing to a person other than the one defamed; and (3) the communication is unprivileged and tends to harm one's reputation, lowering him or her in the estimation of the community or deterring third persons from associating or dealing with him or her. *Id.*, ¶ 22. If the court determines that the statements at issue are defamatory, it must also consider the defenses alleged. *Id.*

"Substantial truth" is a complete defense, and opinions may be valid defenses under certain circumstances. *Id*. The doctrine of substantial truth provides that "slight inaccuracies of expression" do not make the alleged defamation false. *Id*. An expression of opinion generally cannot be the basis of a defamation action. However, where the defamer departs from expressing "pure opinion" and communicates what the courts have described as "mixed opinion," then liability may result ... "Mixed opinion" is a communication which blends an expression of opinion with a statement of fact. This type of a communication is actionable if it implies the assertion of undisclosed defamatory facts as the basis of the opinion.

In this case, all of the statements at issue are substantially true, and Bauman's statement regarding West Samaria's "bad design, bad location, and a bad operator" is pure opinion. It is unclear why any of these statements were even issued to the jury.[3]

In addition to the common law defenses, the First Amendment to the United States Constitution provides its own limitations to recovery. The First Amendment, made applicable to the states by the Due Process Clause of the Fourteenth Amendment, provides that "Congress shall make no law ... abridging the freedom of speech, or of the press." U.S. Const. amend. I. The landmark case of *New York Times Co. v. Sullivan* recognized that enforcement of state tort law through civil litigation may "impose invalid restrictions on ... constitutional freedoms of speech and press" and thus constitute state action denying due process of law in violation of the Fourteenth Amendment. 376 U.S. 254, 265, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

When speech involves private matters, the state's interest in compensating its citizens for injuries arising

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[3] When a new judge is appointed, he or she has all the powers and authority of his or her predecessor. *Starke v. Village of Pewaukee,* 85 Wis.2d 272, 282, 270 N.W.2d 219 (1978). "[A] successor judge may in the exercise of due care modify or reverse decisions, judgments or rulings of his [or her] predecessor if this does not require a weighing of the testimony given before the predecessor and so long as the predecessor would have been empowered to make such modifications." *Id.* at 283, 270 N.W.2d 219.

from tortious speech will generally outweigh any First Amendment concerns. However, the balance changes significantly when speech involves a matter of public concern.

"[I]n the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment." *Hustler Magazine v. Fallwell,* 485 U.S. 46, 53, 108 S.Ct. 876, 99 L.Ed.2d 41 (1988). This is because "[a]t the heart of the First Amendment is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern." *Id.* at 50, 108 S.Ct. 876; *accord Dun & Bradstreet,* 472 U.S. at 758–59, 105 S.Ct. 2939 ("[S]peech on matters of public concern ... is at the heart of the First Amendment's protection.") (internal quotation marks omitted).

In fact, the recognition that this right under the First Amendment applied to Bauman's statements led the Seventh Circuit Court of Appeals to conclude that Tri-Corp could not prevail on its federal discrimination claim against Bauman. As the court stated:

> Speech is a large part of any elected official's job, in addition to being the means by which the official *gets* elected (or re-elected). Teddy Roosevelt called the presidency a "bully pulpit," and all public officials urge their constituents and other public bodies to act in particular ways. They have every right to do so, as long as they

> refrain from making the kind of threats that the Supreme Court treats as subject to control under the approach of *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969).

Tri-Corp Hous. Inc. v. Bauman, 826 F.3d 446, 449 (7th Cir. 2016).

In *New York Times Co. v. Sullivan,* 376 U.S. 254, 279–80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), the Supreme Court held that the First Amendment's guarantee of freedom of speech limits a state court's "power to award damages for libel in actions brought by public officials against critics of their official misconduct." *Id*. at 283. The court held that in such cases the First Amendment "prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id*. at 279-80. The court considered the case "against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id*. at 270.

In *Rosenbloom v. Metromania, Inc*., 403 U.S. 29, 91 S.Ct. 1811, 29 L.Ed.2d 296 (1971), a plurality of the court extended the actual-malice standard to protect speakers who discuss "matters of public or general concern," even when the plaintiff is a private figure. However, three years later, observing that there had been a "general problem of reconciling the law of defamation with the First Amendment," the Supreme Court reconsidered its decision in *Rosenbloom. Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 333, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). In doing so, the court changed its position and decided that a negligence standard would be imposed for defamation suits brought by private individuals in federal court, but left it up to the states to define for themselves the appropriate standard of liability in state court actions for defamatory statements made about a private individual. *Id*. at 347.

In *Denny v. Mertz*, 106 Wis. 2d 636 (1982), the Wisconsin Supreme Court accepted the *Gertz*' court's invitation and imposed a simple negligence standard for cases involving private figure plaintiffs. *Id*. at 654. However, in *Wiegel v. Capital Times Co*., 145 Wis. 2d 71 (1988), the court clarified that the simple negligence standard does not apply "limited purpose public figures," which remain subject to the actual-malice standard. *Id*. at 79.

A limited purpose public figure is one who "assumes that status by involvement in a particular public issue or controversy and thereby becomes a public figure for a limited range of issues." *Id*. at 82. The question of whether a person is a limited public purpose public figure

"is an issue left solely to the court to decide *as a matter of law*, not an issue of fact to be decided by the jury." *Bay View Packing Co. v. Taff*, 198 Wis. 2d 653, 676, 543 N.W.2d 522, 530–34 (Ct. App. 1995).

In *Wiegel v. Cap. Times Co*., 145 Wis. 2d 71, 83–84, 426 N.W.2d 43 (Ct. App. 1988), the court established several criteria to determine whether a defamation plaintiff may be considered a public figure:

> First, there must be a public controversy. While courts are not well-equipped to make this determination as pointed out in *Gertz,* the nature, impact, and interest in the controversy to which the communication relates has a bearing on whether a plaintiff is a public figure. Secondly, the court must look at the nature of the plaintiff's involvement in the public controversy to see whether he [or she] has voluntarily injected himself [or herself] into the controversy so as to influence the resolution of the issues involved. Factors relevant to this test are whether the plaintiff's status gives him [or her] access to the media so as to rebut the defamation and whether plaintiffs should be deemed to have "voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them."

Id. (citation omitted).

In this case, the first factor is satisfied because the community at large has a great societal interest in safe, clean, publicly-funded housing for mentally ill individuals that require assistance from the community. Even Jim Hill, who was directly responsible for providing and administering housing for the mentally ill in Milwaukee County, testified that that he understood that the conditions were so poor that any attention would be beneficial – including that of reporter Meg Kissinger, who wrote a series of articles criticizing Hill and Milwaukee County's incompetence as it related to housing for the mentally ill – would be beneficial.[4] Furthermore, in the series of articles many opinions were shared regarding West Samaria, Milwaukee County, County Executive Scott Walker, county supervisors, BOZA members, and of course, Bauman and Tri-Corp's executive director, Michael Brever.

Bauman questioned whether the West Samaria's operations were based on a safe policy decision, given the difficulty in providing housing to a population of overwhelmingly indigent, mentally ill individuals who are not severely ill enough to be legally required and compelled to endure difficult mental health treatment choices. As Hill, the Director of Housing for Milwaukee County from 2007 until 2009 and Director of Metal Health in Milwaukee County from 2003 until 2007, testified:

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[4] On March 1, 2, 3, 6, 11, 23, and 29, 2007, Kissinger wrote a series of articles under the headline, "Abandoning Our Mentally Ill."

> I spent the most difficult years of my public service career managing this agency [that oversaw mental health housing, including West Samaria]. [T]he agency was starved for revenue to make services available in the community to persons with mental illness, in part because the institutions that were being run or being operated by the agency were gobbling up most of the resources. It was very difficult to get in front of this. Housing choices were very slim. There extremely few decent choices. And those choices, whatever choices there were, were offered to individual who needed housing, but they were under no obligation to take those choices. Of course, the may well have ended up homeless if they had declined the choice, but the choices were few and the quality of care in those choices were few and the quality of the care in those choices was not very good. The system needed – urgently needed improvement . . ."

Trial Testimony of Jim Hill, Pg. 15, lns. 19-25 , and Pg. 16, lns, 1-9. Hill's testimony is consistent with other evidence in the record, which establishes that housing for the mentally ill in Milwaukee County was in a dire state with regards to housing options for those who were diagnosed with severe mental illness during the period that Bauman made the statements at issue in this trial.

In addition, the issues associated with West Samaria were debated publicly on numerous occasions, and the outcome had foreseeable and substantial ramifications for a large segment of the community. Joseph Droese, a resident of West Samaria, was last seen alive on January 16, 2007. It wasn't until January 20, 2017 - after Droese's mother made several calls requesting that Droese be located, and ultimately insisting that someone check his room – that Droese was found dead by West Samaria's on-duty receptionist. The incident was not made public until March 1, 2007. This incident became the catalyst event for the community's public debate regarding appropriate housing options for the mentally ill in Milwaukee County and whether the actions of the County, the County's mental health workers, West Samaria staff and other factors could have prevented Droese's death. Throughout this discussion, the press on several occasions covered the debate and reported statements made by Tri-Corp, Bauman, and many others. There is no question that the issues associated with West Samaria were debated publicly and had foreseeable and substantial ramifications for the neighborhood and beyond. There was a "public controversy" within the meaning of *Weigel*.

With respect to the second factor, it has been stated that a defamation plaintiff need not consciously or voluntarily thrust itself into the dispute in order to be considered a limited purpose public figure. *Wiegel*, 145 Wis. 2d at 85. Instead, a plaintiff may be a limited purpose public figure if his or her activities "almost inevitably put him [or her] into the vortex of a public controversy." *Id*. By making statements throughout the controversy which

mitigated West Samaria's responsibility in the events that led to Droese's death, Brever and others made public comments which in turn transformed Tri-Corp from a private organization to a limited purpose public figure. Brever testified that Tri-Corp was not responsible for Droese's care. His statements were made to press and compounded in court during his testimony. During the trial, Tri-Corp, through Brever and Hills' testimony, established that Jill Rodrigues, Droese's mental health case worker, failed to provide the six required visits to West Samaria as part of her job.

In a March 1, 2007, Milwaukee Journal Sentinel article, Meg Kissinger wrote: "Michael Brever, executive director of Tri-Corp Housing Inc., which runs West Samaria said Wednesday that residents normally are accounted for when they come to the dining room for dinner. But because Droese had moved in only recently, his absence was not noted. . . . [However] [a] staff worker told investigators that they were understaffed and attendance was not always take as
promised." Exh. 217.

On March 3, 2007, the City of Milwaukee building inspectors issued an order to vacate West Samaria because the inspectors determined that Tri-Corp violated conditions of its special permit by not properly monitoring residents. Again, in an effort to protect the actions of West Samaria staff, Brever pointed the proverbial finger of blame on the county. He explained that "wish[ed] that things turned out differently" and that he and others fully believed that Droese was being monitored by his

caseworkers. Exh. 519. In the course of doing so, Tri-Corp voluntarily thrusted itself to the forefront of the controversy in order to achieve a special prominence in the debate and corresponding resolution in its favor.

Brever's persistence paid off to some degree. On March 23, 2007, BOZA stayed the order to close West Samaria, and Tri-Corp was allowed to continue to house mentally ill residents under additional conditions regarding reporting and monitoring of residents. Tri-Corp's participation in the matter was far from trivial, and as is noted above, its attorney and executive director on several occasions provided timely statements to the press in response to the alleged infirmities of its operation. The second factor is easily satisfied.

Since the court has determined that Tri-Corp is a limited purpose public figure, the dispositive question is whether there is any evidence in the record to demonstrate that Bauman acted with actual malice. *See Bay View Packing Co. v. Taff*, 198 Wis. 2d 653 at 677. Framed in terms of the applicable burden of proof at this stage of the proceedings, the court must determine whether the facts developed at trial are sufficient to prove actual malice by clear and convincing evidence. After listening to the testimony of all the witnesses and weighing the facts as required, there is no clear and convincing evidence that Bowman acted of actual malice.

In *St. Amant v. Thompson,* 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968), the Supreme Court of the United States clarified the meaning of "reckless disregard"

of a statement's probable falsity. The test is not whether a reasonably prudent person would have published or would have investigated before publishing; rather, the evidence must show that the defendant in fact entertained serious doubts as to the truth of the statement but published in spite of his doubts. *Id.* at 731, 88 S.Ct. at 1325. The *St. Amant* court listed several examples of circumstances that might give rise to recklessness: (1) a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call; (2) the allegations are so inherently improbable that only a reckless man would have put them in circulation; or (3) there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports. *Id.* To be sure, the defendant in a defamation action cannot automatically prevail merely by testifying or stating in an affidavit that he published with a belief that the statements were true. *Id*. at 732, 88 S. Ct. at 1326.

In this case, the applicable questions on the verdict provided as follows:

> Question 8: Did Robert Bauman [say that "West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who lived there] with reckless disregard of its truth or falsity?
> Question 9: In making (publishing) the statement, did . . . Robert Bauman abuse his First Amendment privilege?

> Question 13: Did Robert Bauman [say that West Samaria had a bad design, bad location and bad operator] with reckless disregard of its truth or falsity?
> Question 14: In making or publishing the statement, did . . . Robert Bauman abuse his First Amendment privilege?

Based on an independent review of the record, and drawing all reasonable inferences in Tri-Corp's favor, the court concludes that the evidence presented at trial is of insufficient caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence. It is clear that Bauman's allegations were neither fabricated nor "so inherently improbable that only a reckless man would have put them in circulation." *St. Amant,* 390 U.S. at 732, 88 S.Ct. at 1326. Tri-Corp's and Bauman's view on the whether West Samaria was providing competent housing for the mentally ill were greatly divergent, but both parties spoke as they saw the situation as it related to Droese's death and as it related more broadly for the mentally ill segment of the community. While there may have been reasons to doubt the veracity of Bauman's statements, there was no evidence that Bauman formed his opinion based on anonymous or unverified complaints. To the contrary, Bauman's statements were consistent with and corroborated by numerous statements made by the press, elected officials, city staff, BOZA members, and members of the community.

Bauman attended numerous meetings and administrative hearings, where he heard criticisms that were entirely consistent with his own. Mayor Tom Barrett sought to have the DNS conduct an investigation to determine whether West Samaria was meeting the conditions of its plan of operation required by its permit. Jim Hill, the County Director of Housing, expressed reservations about the services by West Samaria. Viewing these circumstances as a whole and the evidence adduced at trial, the court finds that no rational fact finder could find actual malice by clear and convincing evidence.

Accordingly, the jury's answers to Questions 8 and 13 must be changed from "yes" to "no." Since there is no reasonable inference that Bowman knowingly or recklessly lied, Questions 9 and 14 are rendered moot. Bowman's motion after the verdict must therefore be granted, and Bowman's alternative arguments need not be decided.

CONCLUSION

For the above reasons, Alderman Robert Bauman's motion is **GRANTED**.

SO ORDERED.

THIS DECISION IS FINAL
FOR PURPOSES OF APPEAL.

APPENDIX F

[Filed February 17, 2022]

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

Plaintiff:

TRI-CORP HOUSING, INC.

VERDICT

vs.

Defendant: Case No. 2007CV01395

ROBERT BAUMAN, ALDERMAN

QUESTION 1: Did Robert Bauman say to the City of Milwaukee Department of Neighborhood Services that the fact that Joseph Droese died and was not discovered for four days suggested that West Samaria was not operating in compliance with the plan of operation or operating in a manner consistent with the health, safety and welfare of the public?

Answered by **YES** by the Court.

Answer this question no 2.

QUESTION 2: Was the statement true?

Answer: NO (Yes or No)

If you answered the preceding question NO, then answer question 3. If you answered YES, then proceed to question 6

QUESTION 3: Did Robert Bauman make such statement with reckless disregard of its truth or falsity?

Answer: NO (Yes or No)

If you answered YES to the preceding question, then answer question 4. If you answered NO, then proceed to question 6.

QUESTION 4: In making (publishing) the statement, did the Robert Bauman abuse his First Amendment privilege?

Answer _____ (Yes or No)

QUESTION 5: Was Robert Bauman acting with the scope of his employment when he made the statement?

Answer _____ (Yes or No)

QUESTION 6: Did Robert Bauman say that "West Samaria has repeatedly demonstrated that they are unwilling or unable to provide quality care to the mentally disabled residents who lived there"?

Answered **YES** by the court.

Answer question 7.

QUESTION 7: Was the statement true?

Answer NO (Yes or No)

If you answered NO to the preceding question, then answer question no. 8. If you answered YES then proceed to question no. 11.

QUESTION 8: Did Robert Bauman make such a statement with reckless disregard of its truth or falsity?

Answer: YES (Yes or No)

If you answered the preceding question YES, then answer question 9. If you answered NO, then proceed to the question no. 11.

QUESTION 9: In making (publishing) the statement, did the Robert Bauman abuse his First Amendment privilege?

Answer: YES (Yes or No)

QUESTION 10: Was Robert Bauman acting with the scope of his employment when he made the statement?

Answer: NO (Yes or No).

QUESTION 11: Did Robert Bauman say that West Samaria had bad design, bad location and bad operator?

Answer: YES (Yes or No)

If you answer YES to the preceding question answer then answer question 12, if you Answer NO, then proceed to the instructions prior to question 16.

QUESTION 12: Was the statement true?

Answer: NO (Yes or No)

If you answer ~~YES~~ NO to the preceding question, then answer question no. 13, if you answered ~~NO~~ YES, then proceed to the instruction prior to question 16.

[The Court crossed out "YES" and added "NO" after the jury asked for clarification of this sentence in the verdict.]

QUESTION 13: Did Robert Bauman make the statement with reckless disregard of its truth or falsity?

Answer: YES (Yes or No)

QUESTION 14: In making or publishing the statement, did the Robert Bauman abuse his First Amendment privilege?

Answer YES (Yes or No)

If you answered the preceding question YES, the answer question 15. If you answered NO then go to question 16.

QUESTION 15: Was Robert Bauman acting with the scope of his employment when he made the statement?

Answer: NO (Yes or No)

Regardless of how you answered any of the questions above answer questions 16.

QUESTION 16: What sum of money will fairly and reasonably compensate Tri-Corp, Inc. Housing because of the defamatory statement(s) made by Robert Bauman?

Answer: $1,400,000

[The following italicized print was handwritten in original:]

PRESIDINGNG JUROR:

/s/ Tim E. Kontos

DISSENTING JUROR:

Juror #15 /s/ Benjamin Gohlke (Benjamin Gohlke)

#13, #14, #15
As to question No. #8, #9, #10, #16

#8 Juror /s/ Billie Guthrie (Billie Guthrie)

As to question No. #13, #14

Dated this *17* of February, 2022

#8 - I do not believe Bauman made the statement with "reckless disregard."

#9 - I do not believe Bauman abused his First Amendment Privilege.

#10 - I believe Bauman acted within the scope of employment

#13 - I don't believe he made the statement with "reckless disregard"

#14 - I don't believe Bauman abused 1st Amendment Privilege.

#15 - I believe Bauman acted within the scope of employment

#16 - I believe damages should be $0.

APPENDIX G

[Filed July 11, 2019]

DATE SIGNED: July 11, 2019

Electronically signed by Timothy M Witkowiak
Circuit Court Judge

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

TRI-CORP HOUSING, INC.,

Plaintiff,

vs. **Case No. 07-CV-013965**

ROBERT BAUMAN, Alderman,

Defendant.

ORDER ON MOTIONS HEARD ON JULY 2, 2019

The above-captioned case having come on for hearing on July 2, 2019, before the Honorable Timothy M. Witkowiak, Milwaukee County Circuit Court Judge, Branch 22, presiding, on the motions of the defendant, Robert Bauman, for summary judgment (filed February 28, 2019) and for reconsideration of the Court's denial of the defendant's previous motion for partial summary (filed April 10, 2019) and the motion of the plaintiff, Tri-Corp Housing, Inc., to compel discovery and for discovery sanctions (filed May 29, 2019), the plaintiff, Tri-Corp Housing, Inc. ("Tri-Corp"), appearing by its attorneys, Machulak, Robertson & Sodos, S.C., by Attorney John E. Machulak, and the defendant, Robert Bauman, appearing by his attorneys, Grant F. Langley, City Attorney, by Deputy City Attorney Jan A. Smokowicz;

And the Court having considered the written submissions and oral arguments of the parties and having made its decision on the record;

NOW, THEREFORE, IT IS ORDERED:

1. The motion of the defendant, Robert Bauman, for reconsideration of the Court's denial of the defendant's previous motion for partial summary, filed April 10, 2019, is denied.

2. The motion of the defendant, Robert Bauman, for summary judgment, filed February 28, 2019, is granted in part and denied in part. The Court dismisses the plaintiff Tri-Corp's defamation claims on grounds of

absolute privilege as to the defendant Robert Bauman's testimony at the May 18, 2006 BOZA meeting, the newspaper quote of Robert Bauman's testimony at the same BOZA hearing that West Samaria is "unfit for human habitation", and the defendant Robert Bauman's April 19, 2007 letter written to BOZA. Otherwise, the Court denies the motion for summary judgment.

3. The motion to compel discovery and for discovery sanctions filed by the plaintiff Tri-Corp on May 29, 2019, is granted in part and denied in part.

a. The defendant Robert Bauman will pay the expert witness fee of Andrew Holman for 3.4 hours at $375 per hour.

b. The defendant Robert Bauman will pay the expert witness fee of Walter Laux for his time at the rate of $300 per hour.

c. Counsel for the defendant Robert Bauman will provide counsel for the plaintiff Tri-Corp with mutually acceptable dates on which he can take the deposition of the defendant's expert, John D. Friestedt.

d. This matter is adjourned to 9:00 a.m. on July 10, 2019, to determine compliance.

APPENDIX H

[Filed July 8, 2022]

STATE OF WISCONSIN
CIRCUIT COURT BRANCH 18
MILWAUKEE COUNTY

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY, ET AL,

Plaintiff(s),

Case No. 07 CV 13965

vs.

TRI-CORP HOUSING INC., ET AL,

Defendant(s).

PROCEEDINGS: Jury Trial-AM PROCEEDINGS

DATE: Tuesday, February 15, 2022

BEFORE: The Honorable PEDRO COLON,
Milwaukee County Circuit Court Judge

APPEARANCES: JOHN MACHULAK
Machulak, Robertson & Sodos, S.C.,
1733 North Farwell Avenue
Milwaukee, WI 53202
Appeared on behalf of Third-Party Plaintiff, TRI-CORP;

MATTHEW MCCLEAN,
Davis|Kuelthau,
111 East Kilbourn Ave, Ste. 1400
Milwaukee, WI 53202
Appeared on behalf of Third-Party Defendant, ROBERT J. BAUMAN, who also appeared.

ALYCIA BEIN-RPR
OFFICIAL COURT REPORTER

[p.34, ll.22-25]

THE COURT: We're back on the record. After reviewing the cases and the arguments, and of course listening to the trial, as to the tortious interference with contract claim, the Court finds that

[p.35, ll.1-25]

the comments that were made and the context in which those comments were made, were a matter of public concern. That is a constitutional issue that must be decided by the Court.

So, the first step is whether it's public concern. It is a public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community; or, when it is a subject of legitimate news interest that is subject of general interest and value of concern to the public.

In this case, the comments were both. They were matters that were discussed given the concerns to the community and social concerns. Everybody agrees that this West Samaria is housing. It's supportive housing. It's supporting housing for the mentally ill, and all of the testimony that was had about, whether it was from plaintiffs or defendants, is that this is part of the population that was served by this building.

Whether or not the building was meeting its conditional use or its Variance consistent with the Operational Agreement, was a matter of public concern. Mr. Hill testified about that. In fact, it was a matter of public concern because it was--there was some real questions as to whether that model of housing and the way it was being managed was--would, at the time,

[p.36, ll.1-25]

guarantee the most humane and/or competent level of concern for the residents of West Samaria, and whether there was general interest in value to the public. I think that's clearly answered in this case.

We have numerous articles from a reporter for the Milwaukee Journal who has come up over and over in this case, Meg Kissinger, and not only was the issue of mental health at West Samaria was discussed, but the mental health system as a whole. It was a general interest of the community. In fact, that was the title of the series, what were we doing as a community with our mentally ill?

I think it meets both of those, whether it's a matter of political social concern to the community and is subject of legitimate news interest; specifically, as to West Samaria, because of the death of two people, but mostly I think that Mr. Bauman's comments came within the context of the second death and its battles at BOZA for this Special Use permit or Variance.

I'm required to analyze the whole context of this speech, and I think I have done that. I have listened to the whole trial. I've listened to Mr. Hill. I've listened to the DNS person who was the head person for doing the inspection. I've listened to--certainly

[p.37, ll.1-25]

listened to Mr. Brever's testimony and to the representative for--the representative, Jim Hill, for the County on the mentally ill for DNS who actually did the inspection, and to Ms. Prioletta who was the real estate person.

Based on all that, it's clear that this is a matter of public concern. Therefore, I will grant the motion for directed verdict, as I don't think there's any inference in the record that indicates that this isn't a matter of public concern, and that this isn't a matter that is news worthy that is appropriate for discussion in the public as it was both. I'll dismiss the claim on the tortious interference with contract.

On the libel claim, I think the fact is--I will deny that portion of the motion for directed verdict. I think, as I sit here and as I'm required to do, and I have done, I have searched the record for any indication that there may be some inference of personal motive outside of Mr. Bauman's official capacity as alderman.

Based on that, I think that there's one fact, in fact, that I think may do that for purposes of the jury, and that is that he lives three blocks away. Based on that, I think we're going to have to go to the jury and determine that portion of it.

[p.38, ll.1-6]

The *Ranous* case, we discussed at length that--what the factors are to consider; whether the concerns are legitimate or factual or not is in the discussion at pages 566, 567, 568. We'll go through those in the jury conference now. We'll proceed in that manner.