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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Strong-Arming Of Bezos May Go Beyond Atty Hardball

By **Andrew Strickler**

Law360 (February 8, 2019, 10:54 PM EST) -- An in-house lawyer at the National Enquirer and others playing hardball with Jeff Bezos, the world's richest man, may have crossed a legal line into blackmail by threatening to publish embarrassing photos of him while making a "request" that he back off the tabloid, experts said.

While tough negotiations are an expected part of an attorney's job, Bezos' published account of how a general counsel and others at the American Media Inc.-owned paper allegedly tried to blackmail him does appear to describe a violation of state and federal statutes, ethics and white collar specialists said.

The reason: The alleged trade involved Bezos publicly declaring he had no evidence the Enquirer's coverage of his extramarital affair was "politically motivated." In turn, the paper would agree not to publish graphic photos of Bezos, the founder of Amazon.com and the owner of The Washington Post.

The federal extortion statute frees a "threatener" from liability when the threat is connected to something the threatener is already entitled to. For example, if the buyer of a faulty toaster threatened the manufacturer with some public embarrassment — like a bad Yelp review — for refusing to honor a warranty, that would not be a crime, said constitutional scholar Eugene Volokh.

It's only when threateners use the threat of embarrassment to get something they never had a right to — like 20 free toasters — that the law is triggered.

The Bezos photos lack that "nexus to a claim of right" in the publisher's request for the statement, and thus fill that key requirement of the statute, he said. That lack of a connecting thread also helped distinguish the pressure from the Enquirer from the hardball threats lawyers make — sometimes fulfilled, sometimes not — to reveal embarrassing materials in court as leverage over an adversary.

"It is true that there are lawyers who routinely and permissibly do things that are a hair's breadth away from prohibited blackmail," he said. "What makes this different is that there, the complaint [lawsuit] is expected to have some legal plausibility, and rightly or wrongly, and perhaps inevitably, that winds up being allowed."

Late Thursday, Bezos posted a politely worded but scathing accusation that Jon Fine, a deputy general counsel for American Media Inc., and AMI executive Dylan Howard tried in recent days to extort him by using risque photos of Bezos and his paramour Lauren Sanchez, a former TV news anchor.

In one Feb. 6 email purportedly written by Fine and included in Bezos' post on Medium.com, the lawyer laid out a series of terms for a confidential deal in which Bezos would agree to say through "a mutually-agreeable news outlet" that he had no knowledge that the Enquirer's coverage was politically motivated or "influenced by political forces."

In turn, AMI would agree not to distribute as-yet unpublished texts and photos. Those pictures, described in another email purportedly penned by Howard, which was also included in Bezos' post, included a "naked selfie" of Bezos in a bathroom and one of Sanchez smoking a cigar in "what appears to be a simulated oral sex scene." In another email, Fine referred to "unsubstantiated

defamatory statements and scurrilous rumors" generated by Bezos in the press and defended "the legality of our newsgathering and reporting on this matter of public interest and concern."

The Enquirer's story about Bezos and Sanchez included private text messages between the pair. The article ran in January the day after Bezos and his wife, MacKenzie Bezos, announced they were getting divorced.

Tagging AMI owner David Pecker as the prime mover behind the alleged blackmail attempt, Bezos said in his post that he had hired an investigator to learn "how those texts were obtained, and to determine the motives for the many unusual actions taken by the Enquirer." That evidently led to the proffer by the AMI representatives to bury the unpublished photos in exchange for a public statement from Bezos saying there was no political motivation for the Enquirer's coverage of him.

Legal ethics expert Stephen Gillers of New York University called the scenario laid out by Bezos a "classic" instance of coercion, largely because AMI wasn't threatening to embarrass Bezos with information that would counter his probe or opinion of AMI's political connections with anything related. In terms of a New York misdemeanor statute, "it matters there is not a relation between the information that the Enquirer is threatening to disclose and whatever harm it claims to be suffering," Gillers said.

In his post, Bezos also alluded to Pecker's relationship to President Donald Trump and to AMI's agreement with federal prosecutors related to assistance the company gave Trump during the campaign to arrange "hush money" payments to women who claimed they had affairs with him.

"Of course I don't want personal photos published, but I also won't participate in their well-known practice of blackmail, political favors, political attacks and corruption," Bezos wrote.

Whatever the motivations behind the dispute, ethics experts agreed that the AMI proffer was legally problematic, including for Fine.

Jeremy Saland of criminal defense firm Crotty Saland PC in Manhattan said an attempt to induce another person to do or not do something the individual is legally entitled to do — including voice an opinion about a newspaper's political motivations — through a threat to embarrass would at least run afoul of a misdemeanor coercion statute. If the threatening party is seeking property or money, it likely rises to felony extortion.

"Whether you gussy up coercion with a suit and tie, delivering your threat through a lawyer as a claimed legal issue or part of a civil claim doesn't change the equation," said Saland, a former assistant district attorney in Manhattan.

The New York statute makes it a crime for a person to compel a person "by means of instilling in him or her a fear" that if a demand is not met the threatener will "expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule."

On Friday, AMI issued a statement saying the company would investigate Bezos' allegations.

"American Media believes fervently that it acted lawfully in the reporting of the story of Mr. Bezos," the statement said. "Further, at the time of the recent allegations made by Mr. Bezos, it was in good faith negotiations to resolve all matters with him."

Fine's resume includes a nine-year stay at Amazon, where he was an associate general counsel for media and copyright and later a director of an Amazon publishing group. He joined AMI in November. Messages left for Fine were not returned Friday.

A message to William Isaacson, the vice chair of Boies Schiller & Flexner LLP, which is representing Bezos, was also not returned. An attorney representing Gavin de Becker, Bezos' investigator, also did not respond to an email.

Saland said many acts of criminal coercion never go public because the target simply gives in to the demand — particularly when the pressure is exerted through lawyers.

Many targets "just acquiesce," he said. "Not everyone is within the same stratosphere as Jeff Bezos, with deep pockets to outlast a harasser. They're in a much more vulnerable position and they just accept it."

--Editing by Jill Coffey and Michael Watanabe.

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