

ARBITRATION PANEL DECISION

In the matter of CJPIA's coverage for the case of *James Bieber v. Gene James*

On October 13, 2021, this matter was heard by an Arbitration Panel of selected Chief Executives of Members of the California Joint Powers Insurance Authority, which was composed of Douglas Robertson of Apple Valley, Matthew Bronson of Grover Beach, Adam Pirrie of Claremont, Kerry Kallman from Hidden Hills City, and David Rowlands of Fillmore. The Panel unanimously upheld the prior denials of coverage by CJPIA's staff, Chief Executive Officer, and Appeals Committee.

This issue arises from a lawsuit in which Mr. Bieber alleges, among other things, that Mr. James defamed him during a text exchange on May 2, 2020 with Melissa Phelps, Anthony Rubolino, and Martina McBurney-Wheeler. Ms. Phelps allegedly showed the text to Mr. Bieber that same day. Specifically, the complaint alleged:

Phelps, Rubolino, Wheeler and defendant JAMES had been discussing various issues, including whether defendant JAMES had made an alliance with a rival councilmember (Chris Hamm) who had been at defendant JAMES' home. Defendant JAMES demanded to know how they (Phelps, Rubolino and Wheeler) knew councilman Hamm was at his home, and angrily stated there was a risk to his home. No one would tell defendant JAMES how they knew Hamm had been at defendant JAMES' home and pointed out that such information was not a "safety risk." Defendant JAMES replied in a text: "So you refused to tell me ... Bieber threatened to kill me, and my wife shouldn't be freaked out." Defendant JAMES continued in another text, stating that there are multiple witnesses to Plaintiff threatening to kill him: "There are witnesses to Bieber ... besides its not me ... my wife is completely freaked out since your post."

Defamation is within the scope of CJPIA's coverage. Whether CJPIA has an obligation to defend Mr. James therefore turns on whether he qualifies as a Protected Party for purposes of the described text messages. The Liability Program of the Authority defines Protected Persons as follows:

Persons who are, or were, elected or appointed officials or Employees of the Member, whether or not compensated, while acting within the scope of their duties or employment as such

The *Bieber* complaint does not allege that Mr. James was in the scope of his duties when he made the defamatory statements, does not name the City of San Clemente as a defendant, and does not allege that any government claim was filed before the complaint was filed. Mr. James's answer does not raise the failure to file a government claim as a defense to liability. While the home meeting between Mr. James and Mr. Hamm may well have involved city business, the facts do not indicate that the allegedly defamatory May 2 text exchange about Mr. Bieber's alleged prior threat involved city business. The Panel notes that in a ruling on Mr. James's motion to dismiss, the court found that "the speech did not involve an issue of public interest, dispute or controversy." Accordingly, the Arbitration Panel concludes that Mr. James did not qualify as a Protected Person for purposes of the defamation alleged in the *Bieber* lawsuit.