

Comments by **Hanna Basha, Dispute Resolution Partner and privacy law specialist at Payne Hicks Beach**, originally published by The Times online on 5 November 2020 and reproduced with kind permission <https://www.thetimes.co.uk/article/how-johnny-depp-has-lost-more-than-his-libel-case-v6fxc5g2>

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Johnny Depp is suing his former wife, Amber Heard, in the state of Virginia in a bid to restore his damaged reputation

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How Johnny Depp has lost more than his libel case

The actor's defeat in London could ruin his forthcoming US court case

Johnny Depp once claimed he was “overpaid” for his turn as Captain Jack Sparrow in the *Pirates of the Caribbean* films, clocking up \$300 million for what many said amounted to little more than a schoolboy impersonation of Keith Richards.

After his decisive [libel claim defeat](#) in the High Court this week, the 57-year-old Hollywood bad boy will hope that he has enough left in the kitty — after admitting to having spent bucket loads on drugs — to pay what is estimated to be up to £5 million in legal costs for both sides.

Commentators had speculated that Depp's action against *The Sun* newspaper over a report that he had beaten his former wife, the actress Amber Heard, was merely a

tactical prelude to a bigger and more personal fight looming in the US.

Depp is suing Heard personally in Virginia — the state where *The Washington Post* is printed — over an article she wrote in that newspaper that, he claims, made the same defamatory allegation.

It was thought that Depp's US legal team were licking their lips at the prospect of waving an English ruling in favour of their client in front of a Virginia jury. An esteemed judge of the Royal Courts of Justice has ruled that these horrible allegations were not proved true, they would tell the jurors, and so must you.

This week Mr Justice Nicol put paid to that tactic. The transatlantic phone lines between the US legal team and Schillings, the London law firm that acted for Depp in the High Court, will have been buzzing ever since.

“This decision is as perverse as it is bewildering,” said Jenny Afia, a Schillings partner and Depp's lawyer, after the ruling as she hinted at a possible appeal.

Others in the English media law world wanted to aid her understanding.

“Depp's reputation has been hoist by the petard of his own libel action; a claim brought to protect his good name has blown up in his face,” said Amber Melville-Brown, a partner at Withers.

Melville-Brown is based in the English firm's New York office and she forecasts rough seas ahead for Depp as his case navigates its way to Virginia. “Not only will the extensive evidence in the English case be dissected by Heard's attorneys in the US, but this week's High Court judgment may stop the US proceedings in their tracks,” Melville-Brown said.

She pointed out that the burden of proof on defendants in English libel cases is much higher than it is in the US. “Accordingly, Depp's failure to convince an English judge when the newspaper had a higher bar to reach for a successful defence may sink the American libel ship of Hollywood's most famous pirate.”

Steven Heffer, a lawyer at Collyer Bristow, describes Depp's strategy as being “high-risk” and one that has ultimately “proved an absolute disaster”.

“A better approach may have been to publish a public statement denying the allegations,” he says. “That would have left question marks, but would have avoided the disaster scenario. Nobody can be forced to bring a libel claim, and given the stormy background of the relationship, it was probably unwise to do so.” Heffer predicts that the High Court ruling will have implications for the actor far beyond his next defamation bout in the US. “Unfortunately for Depp, it is highly likely to have been a

career-ending decision,” Heffer says.

Hanna Basha, a partner at Payne Hicks Beach, illuminates the potential rationale of Team Depp in bringing the claim initially. “It is incredibly rare these days for [celebrity defamation claims](#) to end up in a trial, most being settled long before they get to the doors of court,” she says, adding that “it is as rare for a celebrity to lose because the publisher has been able to prove the truth of what it published, rather than relying on a more technical defence”.

Caroline Kean, a partner at Wiggin, was even more convinced that this week’s ruling could end the assumption that England is a soft touch for libel claimants. “This is a heartening and just decision,” she said, “which serves as a reminder that British libel laws are not there to curtail free speech and the media is right to publish on stories of global interest.”

Heffer agreed, saying that the High Court ruling “will be seen as a victory for media freedom by the press, who will always argue that our libel laws have a chilling effect on reporting”. He added that the case was “a good old-fashioned libel trial of the likes rarely seen in recent years, though much more common in the last century”.

One reputation management spin doctor, Alex Felton of the PHA Group, sounded a warning to claimant lawyers. “It would have been far better for Depp to deal with this behind closed doors, rather than having the entire case picked apart in the courts and the public eye,” he said.

As Depp and his lawyers contemplated the US case, Melville-Brown invoked the maxim that “the definition of madness is doing the same thing over and again, expecting different results”.

A lesser-known role for Depp was the Mad Hatter in Tim Burton’s 2010 film *Alice in Wonderland*. “He will be trusting it isn’t madness to seek to restore his reputation, tarnished in one libel action in one jurisdiction, by following it with another libel action in another jurisdiction,” Melville-Brown said.

“Whether he is right to do so will be a matter for an American jury, and thereafter the public, to decide.”

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