

MILRC Media Law Resource Center PRESS RELEASE

80 EIGHTH AVE., SUITE 200 NEW YORK, NY 10011 212.337.0200 FAX 212.337.9893 WWW.MEDIALAW.ORG

For Release: February 25, 2005
New York, New York

Contact: Sandra S. Baron, Esq.
(212)337-0200 x206; medialaw@medialaw.org

MEDIA WON SEVEN OF 12 TRIALS IN 2004, ANNUAL STUDY OF MEDIA LAW TRIALS SHOWS

**NUMBER OF TRIALS PER YEAR CONTINUES DECLINE,
WHILE PERCENTAGE OF WINS BY THE MEDIA CONTINUES TO RISE.**

There were 12 trials against media defendants based on editorial content in 2004, according to the 2005 REPORT ON TRIALS AND DAMAGES by the Media Law Resource Center (MLRC) and media defendants won seven of them (58.3 percent of the 12 verdicts).¹ In the five trials won by plaintiffs, the average award was \$3.4 million, while the median award was \$625,500.

With these 12 cases from 2004, this edition of MLRC's annual REPORT ON TRIALS AND DAMAGES includes the results of a total of 527 cases that have gone to trial from 1980 through 2004 against media defendants on libel, privacy and related content-based claims. Of 506 cases in which there were verdicts at the end of the trials, 199, or 39.3 percent, were won by media defendants.

Since 1980, when MLRC began to maintain statistics on media trials, the annual average number of trials in each decade has declined, primarily the result of there having been fewer trials involving newspaper defendants. The percentage of trials won by media defendants has gone up, but the average damages award assessed against media defendants when they lose at trial has also risen.

Media defendants consistently do well on appeal of their losses at trial. Since most cases lost at trial by media defendants are appealed, the end result is that, after appeals were over, plaintiffs who won awards at trials from 1980 to 2004 kept these awards in only about one-third – 35.9 percent – of cases.

1. There were also three cases in which trials were not completed: the plaintiff won a default verdict in one case, and there were mistrials because of problems during trial in two others.

Other key findings of the REPORT include:

- ! ***Number of trials continues to decrease.*** The REPORT shows a long-term downward trend in the number of trials. In the 1980s there were an average of 26.3 trials a year, while in the 1990s the average was 17.9 trials, and so far in the 2000s the yearly average is 12.5 trials. The 12 trials that made it to verdicts in 2004 is the third lowest annual figure in the 25 years that MLRC has compiled its REPORT.

- ! ***Media win rate continues to rise.*** The media win rate in 2004 was one of the highest annual win rates in the MLRC REPORT. The percentage of cases won at trial by media defendants has gone up each decade since 1980: the overall win rate for media defendants from 2000-2004 has been 54.7 percent, while the defense win rate was 35.7 percent in the 1980s and 39.1 percent in the 1990s .

- ! ***Media win slightly more often against public figures than public officials or private figures.*** Media defendants have fared best since 1980 against plaintiffs classified as public figures, winning 40.8 percent of trials. Defendants won 38.5 percent of trials with private figure plaintiffs, and 37.8 percent of trials involving public officials. The win rates by media defendants in each of these categories, however, have risen over the course of the past 25 years

- ! ***Plaintiff trial victories are often reversed in motions or on appeal.*** Although plaintiffs have won 60.7 percent of cases that have gone through trial since 1980 (307 of the 506 trials), these plaintiff victories were modified by post-trial motions in 72 of these cases, or 25.2 percent. In 31 of those cases, or 10.5 percent of plaintiff victories at trial, the trial court used post-trial motions to reverse a jury verdict favoring the plaintiff(s) and enter judgment for the media defendant(s). Further, almost half (47.8 percent) of the awards that survived post-trial motions in some form were modified – either reduced or eliminated – on appeal.

! ***Plaintiffs hold on to one-third of the initial trial awards.*** Looking at the end result from another perspective, of the 307 awards won by plaintiffs at trial, plaintiffs appear to have held on to their awards in total in 99 cases (32 percent):

- ▶ 31 (10.5 percent) were reversed by the trial judges on post-trial motions;
- ▶ 64 (20.8 percent) were affirmed on appeal, while 35 (11.4 percent) were not appealed;
- ▶ Awards were reversed or modified on appeal in 132 cases (42.9 percent);
- ▶ Appeals were currently pending in seven cases upon completion of the REPORT (2 percent);
- ▶ There were settlements after trial in 30 cases (9.7 percent); and
- ▶ The final dispositions of eight cases (2.6 percent) are unknown.

! ***Awards creep upwards.*** The MLRC REPORT also shows a long-term increase in the average and median initial awards after trial. So far in the 2000s, initial trial awards have averaged \$3.4 million, an increase from the 1990s average of just under \$3 million,² and the 1980s average of \$1.5 million. The median for the 2000s, \$724,500, is also higher than the 1990s median of \$350,000 and the 1980s median of \$200,000.

! ***Compensatory damages dominate in the 2000s ,while the percentage of punitive damages falls.*** Of the \$17.1 total initial trial awards in 2004, 97.7 percent was compensatory damages. That is by far the highest share of compensatory (versus punitive) damages in the history of the REPORT. Of all damages won by plaintiffs in trial awards in the 2000s, only 7.5 percent has been punitive damages. That compares with 61.7 percent of all dollars awarded in the 1980s, and 67 percent in the 1990s.

2. The 1990s figures exclude the excessive \$222.7 million initial award in *MMAR Group, Inc. v. Dow Jones & Co., Inc.*, which was eventually vacated and the case dismissed.

! ***State court trials.*** Among the states, the most trials were in California (37 trials), Pennsylvania (32), Texas (27) and Florida (21). But on a per capita basis, the most trials were in Delaware, where there were 6.02 trials per one million residents. Media defendants won 38.9 percent of state court trials since 1980. Among states with more than three cases since 1980, Connecticut and Oregon shared the highest media victory rate at trial, 83.3 percent, while media defendants have lost all state court trials in Arkansas, Hawaii, and Kansas. Alabama (\$40,000) and Hawaii (\$40,138) vied among states with more than one trial for the lowest average trial award. (Vermont's one trial ended in a \$5,001 verdict.) Ohio had the highest average award, \$9.1 million.

! ***Trials in federal courts.*** The highest absolute number of federal trials were in the courts of the First Circuit (16 trials), followed by the 15 cases in the Fifth Circuit. Media defendants have won 40.7 percent of trials in federal court since 1980, with the Third Circuit producing the best victory rate at trial for media defendants, 70.0 percent. The media fared worst in the district courts within the Fourth Circuit, where media defendants won only 30 percent of trials, followed closely by the Second Circuit (30.8 percent). First Circuit courts had the lowest average trial award for plaintiffs, \$509,000, while the Fifth Circuit had the highest, \$24.0 million.

The REPORT has full state-by-state and federal circuit-by-circuit comparisons on number of trials, cases per capita, win rate, and damage awards.

! ***Print and audio-visual media are now defendants equally, but audio-visual defendants win more often at trial.*** While print media – particularly newspapers – accounted for the largest number of trials in the 1980s, with 206 cases (164 of them against newspapers) versus 57 audio-visual media trials, that gap has closed. The number of print media trials since 2000, 32 trials, is virtually the same as the number for audio-visual defendants, 31 trials. But audio-visual defendants have consistently done better at trial than print defendants, with audio-visual defendants winning 47 percent of trials since 1980 and print media winning only 36.1 percent. There have been only two Internet trials, with one defense win.

! ***Final awards fluctuate.*** The average final awards – after trial and all appeals – for the 2000s stands at almost \$795,000, a 33.1 percent drop from the 1990s figure of almost \$1.2 million. But the median for the 2000s, almost \$458,000, is almost five times the 1990s median, \$93,000. In the 1980s, the average final award was just under \$277,000, while the 1980s median was \$75,000

“The statistics on trials of libel, privacy and related claims against media defendants, and media continue to be mixed,” said MLRC Executive Director Sandra Baron. “That the media are engaged in fewer trials and are winning a higher percentage of those that do go to trial is good news for those who understand the threat posed to free speech and press from these kinds of lawsuits.”

“But the cases that do go to trial remain a concern,” she added. “While most excessive trial awards are reduced in post-trial rulings or on appeal, the expense of litigating can be daunting. The danger is that excessive damage awards, and the cost of litigating and appealing them, may give editors and publishers pause when covering controversial people and topics.”



The Media Law Resource Center is a non-profit information clearinghouse organized in 1980 by leading media groups to monitor developments and promote First Amendment rights in the libel, privacy and related fields. MLRC has systematically monitored trends in libel and privacy trials and appeals since 1980, and its empirical data have been widely cited and reported in the media, in scholarly publications and in judicial opinions. MLRC’s studies have thus played a central role in the ongoing debate over the effect of libel claims on freedom of the press.

MLRC's members include leading publishers and broadcasters, media and professional trade associations representing newspaper, magazine, newsletter and book publishers, broadcasters, journalists, authors, news directors and newspaper editors, and also media insurance carriers. MLRC's law firm wing, the MLRC Defense Counsel Section, consists of over 200 member firms around the country and abroad with specialities in media and libel defense representation.

The MLRC REPORT is available free to the press from MLRC by calling (212) 337-0200. It is available to others for \$35.

More information from the MLRC REPORT can be found at www.medialaw.org.

#

For more information please contact:

Sandra S. Baron, Esq., Executive Director
Media Law Resource Center
(212) 337-0200 x 206
medialaw@medialaw.org