

TRIALS AGAINST THE MEDIA, 1980-2004

Compiled by the Media Law Resource Center

- ***Overall results:*** MLRC is aware of 527 cases involving libel, privacy and related claims against media defendants, and arising out of their acquisition and publication of information, that have reached the trial stage during the 25 years from 1980 through 2004. Plaintiffs won nine of these by default, and there were 12 mistrials (due to hung juries or other reasons). Of the 506 trials in which there were trial verdicts, defendants won 199, or 39.3 percent.
- ***Media win rate has been rising since 1980s.*** Media defendants won seven of the 12 trials in 2004, a victory rate of 58.3 percent. This is the third best win rate since 1980, bested only by the 83.3 victory rate in 2003 and the 70.6 percent victory rate in 1987. The percentage of cases won at trial by media defendants has gone up decade by decade since 1980, from 35.7 percent in the 1980s to 39.1 percent in the 1990s and 54.7 percent so far in the 2000s.
- ***Jury verdicts far outnumber bench trials:*** Of the 506 trials, 466 of them were before juries. Forty of those were decided by directed verdict by the trial judge. Forty of the cases were tried before a judge only, known as a bench trial.
- ***Number of trials remains low.*** The long-term downward trend in the number of trials since the 1980s continues: in the 1980s there were an average of 26.3 trials a year, in the 1990s the annual average was 17.9 trials, and so far in the 2000s the yearly average is 12.5 trials. There were 12 trials that made it to verdicts in 2004, the third lowest annual figure – tied with 1992 – in the history of the REPORT.
- ***Public figure and official plaintiff cases outnumber private figure cases.*** There have been 90 trials in cases brought by public officials against media defendants since 1980, 147 public figure trials, and 221 private figure trials. The overall number of trials involving public official plaintiffs will likely be greater in the 2000s than in the 1990s, as there have been 12 thus far versus 15 in total for the decade of the 1990s. Trials involving both public figures and private figures, however, will likely decline from the number in the 1990s to the first decade of the 2000s.
- ***Media win slightly more often against public figures than public officials or private figures.*** Media defendants have fared best since 1980 against public figures, winning 40.8 percent of

trials. Defendants won 38.5 percent of private figure trials, and 37.8 percent of public official trials. The win rates by media defendants in *all* categories, however, have risen over the course of this Survey. .

- ***Plaintiff trial victories often reversed in motions or on appeal.*** Although plaintiffs have won 60.7 percent of cases that have gone through trial since 1980 or 307 of the trial awards, these plaintiff victories were modified by post-trial motions in 72 of these cases or approximately 23 percent. In 30 of those cases, or just under 10 percent, the trial court on post-trial motion reversed a jury verdict favoring the plaintiff(s) and entered 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 on appeal.
- ***Plaintiffs hold on to one-third of the initial trial awards.*** Looking at the end result from another perspective, of the 276 awards won by plaintiffs at trial that survived post-trial motions, plaintiffs appear to have held on to their awards in 99 cases (35.8 percent):
 - 64 (23.2 percent) were affirmed on appeal, while 35 (12.7 percent) were not appealed.
 - * Awards were reversed or modified on appeal in 132 cases (47.8 percent).
 - * Appeals are currently pending in seven cases (2.5 percent).
 - * There were settlements after trial in 30 cases (10.9 percent), and
 - * The final dispositions of eight cases (2.9 percent) are unknown.
- ***Awards continue to creep upwards.*** With the excessive *MMAR* award from 1997¹ removed from the data, the long-term increase in the average² and median initial trial awards continues. So far in the 2000s, initial trial awards have averaged \$3.4 million, an increase from the 1990s average of almost \$3 million, and the 1980s average of \$1.5 million. (With *MMAR* included, the 1990s average was about \$5.0 million.) The median for the 2000s, \$724,500, is also higher than the *MMAR*-less 1990s median of \$350,000 and the 1980s median of \$200,000.
- ***Compensatory awards dominate.*** Of the \$17.1 total initial trial awards in 2004, 97.7 percent – the highest share in the history of the REPORT – was compensatory damages. The punitive damages share has declined over the years, from constituting 61.7 percent of awards in the 1980s to being only 7.5 percent so far in the 2000s. At the same time the percentage of awards that had

1. The \$222.7 million initial award in *MMAR Group, Inc. v. Dow Jones & Co., Inc.* is the highest award in the history of the Report. The initial award of \$22.7 million compensatory and \$200 million punitive damages was eventually vacated. See p. 94, *infra*.

2. See note 27, *infra*, for definitions of average and median and their significance.

any punitive damages has decreased, albeit not as dramatically as the punitive share of the total: 56.5 percent of awards in the 1980s included punitives, while 44.8 percent of awards so far in the 2000s have included them.

- ***Significantly more state than federal court trials.*** Of the 506 trials in the Survey, 393 of them were in state courts. 113 trials were in federal courts. The percentage of federal trials to the total has been declining from the 1980s to the 1990s to the 2000-2004 period, although not at a dramatic rate.
- ***Libel/Slander most common claim.*** For trials in which the claims that were litigated are known, the most often-litigated claim by far is libel/slander, which were litigated in 74.2 percent of trials. In 61.7 percent of trials, this was the only claim. .
- ***Defense win rate improving before juries.*** Media defendants have won 50 percent of the trials before juries in the 2000s to date. Media defendants won 54.5 percent of the cases heard by juries in 2004. Media win rates before juries have risen each decade of this Survey. In the 1990s, media defendants won 33.3 percent of jury trials, while in the 1980s, they won 28.2 percent. As a result, overall, from 1980 through 2004, defendants have won 32.9 percent of jury trials.
- ***Defense win rate stable in bench trials.*** In trials without juries, bench trials, the media have won 47.5 percent of bench trials from 1980 through 2004. The win rate was 50 percent in both the 1980s and the 2000-2004 periods, and 43.8 percent in the 1990s.
- ***Defense win rate rising in both state and federal courts.*** Media defendants have won 55.8 percent of state court trials since 2000, while they won only 38.6 percent in the 1990s and 34.8 percent in the 1980s. In federal court cases, the win rate has gone from 38.7 percent in the 1980s to 41 percent in the 1990s and 50 percent in the 2000s.
- ***Media win higher percentage of actual malice cases than negligence cases.*** Defendants also did better in trials where plaintiffs had to meet higher legal standards, winning 42.0 percent of those cases in which plaintiffs had to prove that the defendants published with actual malice and 35 percent using the negligence standard.
- ***Print and audio-visual media are defendants equally so far in 2000s.*** In the 1980s, print media

– and particularly newspapers – accounted for the largest number of trials, with 206 cases (164 of them against newspapers) versus 57 audio-visual media trials (44 of which were against television defendants). That gap has closed. With the number of trials involving print media falling significantly in the 1990s and 2000-2004 periods, the number of print media trials since 2000, 32 trials, is virtually the same as for audio-visual defendants, 31 trials.

- ***Audio-visual defendants win at trial at a higher rate than print defendants.*** Audio-visual defendants have consistently done better at trial than print defendants, with audio-visual defendants winning 47 percent of cases since 1980 and print media winning only 36.1 percent. Both print and audio-visual defendants have seen significant increases in their win rate at trial from the 1990s to the 2000-2004 period.
- ***Defense post-trial motion results generally consistent; plaintiffs' motion results more varied.*** Overall since 1980, 25.2 percent of awards to plaintiffs have been modified by post-trial motions. This share has remained generally consistent over the decades: it was 26.6 percent in the 1980s, 22 percent in the 90s, and 28.6 percent so far in the current decade. Plaintiffs' post-trial motions after verdicts for defendants have not had great success. Overall, since 1980, the courts have granted plaintiffs' motions to set aside a jury verdict three times, and new trial motions three times.
- ***Trials per state and federal circuit.*** The highest absolute number of federal trials were in the courts of the First Circuit (11 trials), followed by the 10 cases in the Fifth Circuit. Among the states, the most cases were in California (37 trials), Pennsylvania (31), Texas (27) and Florida (21). . But on a per capita basis, the most litigious state was Delaware, where there were 6.02 trials per one million residents.. Amongst the federal circuits, the highest number of trials per capita was in the D.C. Circuit (3.61 trials per million, but there were only two trials), and the First Circuit (1.14). . For the nation as a whole, including both federal and state trials, there were 1.72 cases per million residents.
- ***Best courts for the media.*** Among federal district courts, those within the Third Circuit produced the best victory rate at trial for media defendants since 1980, 70.0 percent, with defense wins in 7 out of 10 trials. The media fared worst in the district courts within the Second Circuit, where media defendants won only 30.8 percent of cases since 1980 (four of 13 trials). Among states with more than three cases since 1980, Connecticut and Oregon shared the highest media victory rate at trial, 83.3 percent (or 5 of the six trials each), while in Arkansas (5 trials), Hawaii

(3 trials) and Kansas (3 trials), media defendants lost all of the trials held in the state courts.

- *Average awards by state and circuit.* First Circuit courts had the lowest average trial award for plaintiffs, \$409,000, while the Fifth Circuit had the highest, \$24.0 million. Alabama (\$40,000) and Hawaii (\$40,138) vied among states with more than one trial for the lowest average initial trial award. (Vermont's one trial ended in a \$5,001 verdict.). Meanwhile, Ohio had the highest average initial award, \$9.1 million.

