

STUDY OF MEDIA TRIALS ANALYZES 18 NEW CASES TRIED IN 2010 & 2011

Past two years marked by higher rate of plaintiff victories and award amounts.

Now in its 32nd year, the Media Law Resource Center's 2012 REPORT ON TRIALS AND DAMAGES has added 18 new cases to its ongoing study of trials in lawsuits brought against the media with libel, privacy and related claims. Defendants won seven of the trials during the 2010-11 study period, and plaintiffs won eleven. This represents a win rate for media defendants of 38.9 percent over the past two years, close to the 32-year average of 41.3 percent. But in the decades since 1980, the trend has actually been for media to win increasingly higher percentages of trials and 2010-11 is somewhat of a departure from that trend.

In the 11 trials in which plaintiffs won during 2010 and 2011, the awards averaged \$3.2 million. While this result is above both the average for the first decade of the 2000's (\$2.6 M) and the 32-year average of this study (\$2.9 M), it is due, in large part, to three very big jury verdicts, all of which have already been reduced or overturned on post-trial motions.

The MLRC REPORT is an ongoing study of libel, privacy, and related claims against media defendants, showing the results and trends in this area of First Amendment litigation in trials from 1980 to present. Overall, MLRC's 2012 REPORT analyzes 588 trial verdicts from 1980 through 2011, as well as reporting on hung juries and default judgments. The vast majority of the trials in the MLRC's study involve defamation claims, with well over 70% of the cases having only defamation claims.

The findings for the 32 years include:

- **Media defendants often win in the end.** Although media defendants won only 41.3 percent of the verdicts at trial from 1980 through 2011, after post-trial motions and appeals, defendants were the complete winners in 56.0 percent of cases that go to trial. Plaintiffs have only been able to hold on to their entire judgments in 18.8 percent of cases.
- **The average initial award for plaintiffs is \$2.86M, thanks to a few very large verdicts. The median is \$300,000.** However, after post-trial motions and appeals, total damage awards dropped 86.6 percent from the initial amount awarded at trial. The average damage award at trial was reduced to an average final award of only \$674,168 while the median dropped to \$100,000.

The 32-year history of the REPORT also allows us to study some interesting differences between the decades. For example:

- **The number of trials per year is decreasing.** In the 1980s there were 263 trials; the 1990s, 188; and in the first decade of the 2000s, 119. The biggest drop overall is in the number of trials involving newspapers, by two-thirds from 1980-89 to 2000-2009. Magazines as well saw a stiff drop in the number of trials, but the overall numbers were much lower than for newspapers.
- **Most awards have been under \$1,000,000, but that is changing.** Across the REPORT's 32-year history, the vast majority of initial awards — 69.9 percent — have been under \$1,000,000. However, the percentage of awards over \$1,000,000 has been increasing from decade to

decade: it was 22.4 percent in the 1980s, then 29.5 percent in the 1990s, and 36.8 percent in the first decade of the 2000s. During 2010 and 2011, 45.5 percent (5 of 11 awards) were over a million dollars.

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Who we are:

The MEDIA LAW RESOURCE CENTER, INC. (MLRC) is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law and policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues.

MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment. Today MLRC is supported by over one hundred and ten members, including America's leading publishers, broadcasters, and cable programmers, internet operations, media and professional trade associations, and media insurance professionals. The MLRC's Defense Counsel Section includes more than 200 law firms in the United States, and around the world, that specialize in media defense representation.