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**2004 MLRC MOTION TO DISMISS STUDY**  
**COVERING MOTIONS TO DISMISS IN LIBEL, PRIVACY AND**  
**RELATED ACTIONS AGAINST THE MEDIA, 1996-2003**

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**80 Eighth Avenue, Suite 200 New York, New York 10011 (212) 337-0200**  
**[www.medialaw.org](http://www.medialaw.org)**

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## I. EXECUTIVE SUMMARY

1. **Study Data:** This Study examines court rulings on motions to dismiss from 1983 to 2003 in cases with libel, privacy and related claims against media defendants. MLRC found 661 such cases, which resulted in 985 trial-court and appellate court decisions. Thus the data is necessarily limited to cases in which there was at least one opinion available in either the Media Law Reporter (1983-2003) or Westlaw (1996-2003).
2. **Ultimate Results:** Ultimately, after all appeals were exhausted, defendants' motions to dismiss were fully granted in 72.9 percent of cases in our Study, and were totally denied in 16.5 percent of cases. There were partial grants of motions to dismiss in 10.6 percent of cases (Table 1, p. 13).
3. **Ultimate Results, Public v. Private Plaintiffs:** Most ultimate rulings on motions to dismiss (71.9 percent) did not address the issue of a plaintiff's status as either a public plaintiff (public official or public figure) or private plaintiff (private figure). In cases in which such a ruling was made, 71.4 percent of public plaintiff cases were ultimately disposed of on a motion to dismiss, while 51.9 percent of the private plaintiff cases were dismissed on motion. (Table 2, p. 15).
4. **Ultimate Results in State and Federal Courts:** State courts were more likely than federal courts to ultimately grant motions to dismiss in our Study, while federal courts were more likely to grant the motions only in part. In state courts, 77.7 percent of cases ended with a motion to dismiss being fully granted. But only 66.7 percent of federal cases ended that way. Meanwhile, federal courts ultimately granted partial dismissal in 18.8 percent of cases, while state courts granted partial dismissals in 14.7 percent. (Table 3, p. 16).
5. **Best Federal and State Courts for Defendants, Ultimate Results:** Amongst the federal courts, the highest rate of dismissal for defendants after all appeals were exhausted was in the Fourth Circuit, where motions were ultimately granted, either by trial courts or on appeal, in 19 of 20 cases (95.0 percent). The least favorable circuit for defendants was the D.C. Circuit, where less than half of the 17 cases ended with a motion to dismiss being fully granted (Table 4, p. 18). In states with more than three cases, defendants saw the most success in Oklahoma, followed by California, Pennsylvania, and New York (Table 5, p. 19).
6. **Trial Court Results:** Trial-level courts granted full motions to dismiss in 77.7 percent of cases, a rate which has remained generally consistent from 1983-2003. (Table 6, p. 21; Figure 3, p. 21). Defendants' motions were fully granted in 74.7 percent of trial court decisions involving public plaintiffs, compared with 67.4 percent of private plaintiff cases (Table 7, p. 22). State trial courts were more likely to grant full motions to dismiss than federal trial courts, 83.0 percent versus 71.0 percent (Table 8, p. 23).
7. **Federal District Court Results:** Amongst the federal trial courts, those of the Sixth Circuit have the highest grant rate for defendants, fully granting the motions in 95.8 percent of cases. District courts in the First Circuit, which granted motions in only 58.3 percent, had the lowest (Table 9, p. 24).
8. **Appellate Results:** There were 282 appeals by plaintiffs of grants of motions to dismiss, but only 39 appeals by defendants of denials (Tables 11a, 11b; p. 27). This is the result of rules that allow for appeals of final rulings but generally disallow interlocutory appeals, such as appeals from denials of motions to dismiss. But in both types of cases, appellate courts ruled in favor of defendants in 71.3 percent of cases, either by affirming dismissal, or granting dismissal on appeal (Table 11c; p. 27). There were no obvious trends from year to year. (Figure 4, p. 28).

9. **Appellate Results, Plaintiffs' v. Defendants' Appeals:** In plaintiffs' appeals, grants of motions to dismiss were affirmed in 72.7 percent of cases, and partially affirmed in 9.9 percent (Table 11a; p. 27). In defendants' appeals, 61.6 percent of the trial court denials were reversed (either reversed and dismissed or reversed and remanded). Trial court denials were partially affirmed in 5.1 percent of the appeals (2 of 39), while the denials were totally affirmed on appeal in a third (33.3 percent) of cases. (Tables 11a, 11b; p. 27).
10. **Appellate Results, Public v. Private Plaintiffs:** Defendants fared better in appeals involving public plaintiffs than they did in appeals of cases involving private plaintiffs, although defendants still won the majority of appeals in both types of cases. (Table 12a, 12b, 12c; pp. 29-30).
11. **Best Federal and State Appellate Courts for Defendants:** State and federal appeals courts both favored defendants in most of their appellate decisions (Tables 13a, 13b, 13c; p. 31). Four federal circuit courts ruled in defendants' favor in all of the motion to dismiss appeals that they considered, while the D.C. Circuit was the most favorable circuit for plaintiffs (Table 14, p. 33). Amongst the states, the most appellate rulings were in New York, which had 50. But while California had almost as many appeals – 42 – it had a higher share of appellate rulings in which defendants prevailed (Table 15, p. 34).
12. **Ultimate Rulings on Issues:** The issue most frequently ruled upon in ultimate court decisions on motions to dismiss was defamatory meaning, followed by whether a statement at issue in a case was opinion. Defendants were successful in all the cases in which courts ruled on the issues of group libel, libel per quod, parody, and venue. (Table 16, p. 36).
13. **Ultimate Rulings on Claims:** The most common non-defamation claim decided in ultimate rulings was false light invasion of privacy, followed by intentional infliction of emotional distress. Defendants' best success rates were on claims of negligent infliction of emotional distress, negligent publication, prima facie tort, eavesdropping, failure/refusal to publish, and RICO claims. Defendants were least successful in cases involving Lanham Act and trademark claims. (Table 17, p. 38).

## II. PREFACE

Much of the focus on litigation strategy prior to trial in cases against media defendants has been on summary judgment, which has been referred to as “the name of the media defendant’s game in many – perhaps most – libel and invasion of privacy actions.”<sup>1</sup> This is likely due, in large part that the U.S. Supreme Court has devoted to the issue, from its seeming condemnation of summary judgment in libel cases in *Hutchinson v. Proxmire*<sup>2</sup> to acceptance, and then the eventual adoption in *Anderson v. Liberty Lobby*<sup>3</sup> of a “clear and convincing” standard for grants of summary judgment.<sup>4</sup>

This focus on summary judgment – while certainly not unjustified – should not obscure the fact that there is another significant procedure in the arsenal of media libel defendants: the motion to dismiss (or demurrer<sup>5</sup>).

MLRC has not completely ignored this procedure. In 1983 we released a study of 95 motions to dismiss ruled upon between April 1981 and August 1983,<sup>6</sup> and in 1996 we expanded this sample for a new study covering motion to dismiss rulings from 1981 to 1995.<sup>7</sup>

Both of these studies verified that the motion to dismiss procedure is an important one for media defendants. In the great majority of the cases in each study, the motion resulted in dismissal of the case in its entirety, either by a trial level or appellate court. Even when the entire case was not dismissed, key claims, parties or issues were eliminated.

Overall, the 1983 study showed that 68 percent of the motions were eventually granted in total, while nine percent were granted in part.<sup>8</sup> In the 1996 study, 72.7 percent of the cases ended with a motion to dismiss being fully granted, and in 8.5 percent the motion was partially granted.<sup>9</sup>

These figures are consistent with the results of this Study, in which 72.9 percent of cases from 1983 to 2003<sup>10</sup> were dismissed entirely either initially or on appeal, and 10.6 percent were partially dismissed.<sup>11</sup>

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1. LDRC BULLETIN No. 8 (Sept. 30, 1983), at 3.

2. 443 U.S. 111, 120 n. 9 (1979).

3. 477 U.S. 242, 255-56 (1986).

4. For a full discussion of the evolution of court’s thinking about summary judgment in actions against media defendants, see 2001 Summary Judgment Survey in 2001 MLRC BULLETIN No. 3 (Aug. 2001), at 32-83.

5. See n. 13, *infra*.

6. See LDRC BULLETIN No. 8 (Sept. 30, 1983).

7. See 1996 LDRC BULLETIN No. 2 (April 20, 1996).

8. LDRC BULLETIN No. 8 (Sept. 30, 1983), at 9.

9. 1996 LDRC BULLETIN No. 2 (April 20, 1996), at 5 and A1 (Table 1).

10. See n. 52, *infra*.

11. See Table 1, p. 13, *infra*.

These results of our motion to dismiss studies are on par with the findings of our studies on summary judgment in libel and related actions against the media. Our most recent summary judgment study, covering cases from 1980 to 2000, found that summary judgment was ultimately granted in full in 77.0 percent of cases, and partially granted in an additional 8.7 percent.<sup>12</sup>

As stated in our prior motion to dismiss studies, these results show that courts are clearly willing to grant motions to dismiss in media defamation, privacy, and related cases. The availability of many preliminary defenses and privileges, perhaps in combination with an underlying, albeit, unstated recognition of the constitutional sensitivities and interests at stake, makes motions to dismiss a potent remedy for media defendants that should be exploited at all appropriate opportunities, with or without any additional First Amendment protections being invoked.

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12. 2001 Summary Judgment Study, 2001 LDRC BULLETIN No. 3 (Aug. 2001), at 3 (Table 1).

### III. MOTIONS TO DISMISS IN MEDIA CASES

#### A. Standards

The basic standards for a motion to dismiss, also known as a demurrer,<sup>13</sup> are laid out in Fed. R. Civ. Proc. 12(b) and its state counterparts. The federal rule allows such motions on the grounds of lack of subject matter or personal jurisdiction; improper venue; insufficient process or service of process; failure to join a necessary party; and failure to state a claim upon which relief can be granted.<sup>14</sup>

The latter of these, governed by Rule 12(b)(6), is the most common.<sup>15</sup> Motions to dismiss complaints on substantive grounds are routinely decided by courts looking to determine whether the allegations set forth in a plaintiff's complaint, construed in the light most favorable to the plaintiff, fail to state a cause of action upon which relief can be granted.

The state rules generally follow the standards of the federal rule.<sup>16</sup> Some states have even adopted the federal rule entirely or virtually verbatim.<sup>17</sup>

A few jurisdictions, however, have developed different approaches to consideration of motions to dismiss, or their local equivalent. Texas, for example, eschews a "standard" motion practice in favor of a process by which a defendant may instead file a "special exception" to the form or substance of a plaintiff's pleadings under Tex. R. Civ. P. 91. Such special exceptions are generally regarded as "the means by which an adverse party may force clarification of vague pleadings"<sup>18</sup> – akin to a motion for more definite statement.<sup>19</sup> The lack of a standard motion to dismiss practice in Texas explains the dearth of available data on motions to dismiss from the state in our Study.

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13. "At common law, the demurrer is the pleading generally employed to challenge the sufficiency of an opponent's pleading as a matter of law. However, demurrers have as such been abolished in many jurisdictions, and in such jurisdictions the rules or statutes governing pleading frequently provide that a motion to dismiss is the means by which the legal sufficiency of an opponent's pleading may be tested. The motion to dismiss has been termed equivalent to the demurrer for this purpose." 61A AM. JUR. 2D PLEADING §536 (2004) (citations omitted). Often, courts use the term "demurrer" to refer to a motion to dismiss, even if the jurisdiction has eliminated the writ. See 61A AM. JUR. 2D PLEADINGS § 665 (2004). This Study will use the terms interchangeably.

14. Fed. R. Civ. Proc. 12.

15. See Observation under 61A AM. JUR. 2D PLEADING §536 (2004).

16. See, e.g., *Wackerli v. Martindale*, 353 P.2d 782 (Idaho 1960) (adopting federal court decisions under FRCP 12(b) in ruling on motion under state rules); *Sherwood v. Moxee School Dist. No. 90*, 363 P.2d 138 (Wash. 1961) (same).

17. See, e.g., Colo. R. Civ. P. 12(b); Idaho R. Civ. P. 12(b); Ohio R. Civ. P. 12(B); Wash. Civ. R. 12(b).

18. *San Benito Bank & Trust Co. v. Landair Travels*, 31 S.W. 3d 312, 317 (Tex. App. – Corpus Christi 2000, no pet.).

19. Texas practitioners report that such practice is normally disfavored and a plaintiff is generally given the opportunity to amend a pleading in the face of such a special exception. See *COC Services, Ltd. v. CompUSA, Inc.*, No. 05-01-00865-CV, 2004 WL 1903254, at \*18 (Tex. App. – Dallas Aug. 26, 2004, no pet.) ("An opposing party should use special exceptions to identify defects in a pleading so the other party can cure them, if possible, by amendment."). That said, there is case law supporting the proposition that a special exception may also be used under limited circumstances in challenging whether a plaintiff's cause of action is permitted by law. See *San Benito Bank*, 31 S.W.3d 312, 317 (Tex.App.-Corpus Christi 2000) (no writ). A dispositive special exception may be effective in cases where amendment to the complaint would be futile. For example, a dispositive special exception would lie under Texas law against a claim for false light invasion of privacy, since the Texas Supreme Court has refused to recognize such a cause of action and such a pleading could not be cured by amendment. Outside of such clearly-delineated circumstances, however, special exceptions are normally confined to the context of obtaining a more definite statement. This explains why MLRC found no reported cases relevant to the Study. Thanks to Charles L. Babcock, Thomas J. Forestier, William W. Ogden, and Thomas J. Williams for providing their collective experience in the preparation of this report.



In addition, a number of states grant plaintiffs generous latitude in amending a complaint before a lawsuit will be dismissed. For example, the Nebraska Supreme Court has significantly curtailed the state's motion to dismiss practice by holding that "when a party challenges the sufficiency of a petition to state a cause of action, a motion for judgment on the pleadings should be sustained *only* when an amendment cannot cure the defect."<sup>20</sup>

Although the federal courts and the courts of many states may share similar standards for a motion to dismiss, federal courts do not feel obliged to apply the procedural pleading rules employed by the state court systems in adjudicating dismissal motions.<sup>21</sup> The statistics in this Study for federal and state courts must be reviewed and analyzed with this principle in mind.

One important difference between federal and many state courts is the requirement in several jurisdictions that a defamation plaintiff include the exact words of the statement alleged to be defamatory, *in haec verba*. Some state courts, especially in fact pleading jurisdictions, will dismiss complaints that do not include the exact words of the alleged defamation.<sup>22</sup> But with the advent of notice pleading and liberal complaint rules, the federal courts and many state courts no longer require an exact quotation.<sup>23</sup> In some instances, decisions by different judges of the same court have disagreed on whether to impose this requirement.<sup>24</sup> A few jurisdictions have staked out a middle ground.<sup>25</sup>

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20. *Hoch v. Prokop*, 507 N.W.2d 626, 630 (Neb. 1993) (emphasis added). See also *Martin v. Johnson*, 975 P.2d 889, 893 (Okla. 1998) ("On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed."); *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 641 N.E.2d 584, 589 (Ill. App. Ct. 1994) (before granting a motion to dismiss a complaint, "Leave to amend should be granted unless it is apparent that even after amendment no cause of action can be stated"); *Albrecht v. Bd. Of Trustees of Internal Imp. Trust Fund*, 481 So.2d 555, 556 (Fla. Dist. Ct. App. 1986) ("Generally, a trial court must allow a litigant the opportunity to amend a complaint before dismissing its suit with prejudice unless it is clear that the pleading cannot be amended so as to state a cause of action.").

21. "The manner of setting forth allegations is a matter of procedure, not substance, and a federal court cannot be bound by a state's technical pleading rules . . ." *Asay v. Hallmark Cards, Inc.*, 594 F.2d 692, 698-99 (8th Cir. 1979) See also *Muzikowski v. Paramount Pictures Corp.*, 322 F.3d 918, 926 (7th Cir. 2003) (stating that although "Illinois imposes a heightened pleading standard for complaints basing claims on publications that do not literally name the plaintiff," the Illinois pleading rule "of course does not apply in a federal court.").

22. See, e.g., *Royal Palace Homes, Inc. v. Channel 7 of Detroit, Inc.*, 197 Mich. App. 48, 495 N.W.2d 392, 22 Media L. Rep. 1577 (1993) (a complaint is subject to dismissal for failure to state a cause of action if it fails to set forth specifically the words of which the plaintiff complains; remanding for amendment); *American Intern. Hosp. v. Chicago Tribune*, 136 Ill. App. 3d 1019, 483 N.E.2d 965 (1985) (defamation complaint must clearly identify the specific defamatory material complained of); *Chertkova v. Connecticut Gen. Life Ins. Co.*, 2002 WL 1902988 (Conn. Super. Ct. 2002) (dismissing false light claim, in part, because "what was said or written about the plaintiff" was never clearly pled).

23. See, e.g., *Sterling Interiors Group, Inc. v. Haworth, Inc.*, 1996 WL 426379, at \*23-\*24 (S.D.N.Y. July 30, 1996) (while *in haec verba* requirement has been cited in the past in the Second Circuit, "the proper question . . . is whether plaintiff has provided enough detail about the statements so that defendant can adequately frame a responsive pleading."). But see *Asay v. Hallmark Cards, Inc.*, 594 F.2d 692, 698-99 (8th Cir. 1979) ("The manner of setting forth allegations is a matter of procedure, not substance, and a federal court cannot be bound by a state's technical pleading rules. . . . Nevertheless, the use of *in haec verba* pleadings on defamation charges is favored by the federal courts because generally knowledge of the exact language used is necessary to form responsive pleadings."); accord *Freeman v. Bechtel Construction*, 87 F.3d 1029, 1031 (8th Cir. 1996) ("[U]nless the complaints set forth the alleged defamatory statements and identify the persons to whom they were published, [defendant] is unable 'to form responsive pleadings.'" Furthermore, it would be an "abuse of the liberal federal pleading rules" to allow plaintiffs to take depositions prior to specifying defamatory statements in their complaint in the hope of uncovering actionable statements).

24. Compare *Guy v. State of Illinois*, 958 F.Supp. 1300 (N.D. Ill. 1997) ("In this district, courts have found that the federal pleading rules do not require a complaint to set forth the exact words, verbatim, of the alleged defamation . . . . Nevertheless, the basic substance of the statements must be alleged so that defendants can form their responsive pleadings") and *Arlington Financial Corp. v. Ben Franklin Bank*, 1999 WL 89567 (N.D. Ill. Feb. 16, 1999) (although restatement of allegedly defamatory material may be impermissibly vague under Illinois pleading standards, complaint was sufficient under federal rules) with *Woodard v. American*

Where the *in haec verba* requirement is imposed, the originally published material that includes the alleged defamatory statement may be appended to the complaint; but inclusion of such material does not convert the motion to dismiss into a motion for summary judgment.<sup>26</sup> Plaintiffs who fail to include the material will often be allowed to amend their complaint, rather than having the suit dismissed.<sup>27</sup> Alternately, the defendant may cure the deficiency by attaching the material to a motion to dismiss.<sup>28</sup>

Besides the more traditional bases for motions to dismiss, 23 jurisdictions have adopted “anti-SLAPP” statutes, which provide for special motions to dismiss where the primary goal of plaintiffs’ claims is stifle discussion of issues of public importance.<sup>29</sup> Media defendants have often been able to take advantage of such legislation to dismiss claims filed against them.<sup>30</sup> They made anti-SLAPP Motions in 11 of the cases in our Study, and the motions were granted in 81.8 percent (nine cases).<sup>31</sup>

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*Family Mut. Ins. Co.*, 950 F.Supp. 1382 (N.D. Ill. 1997) (granting motion to dismiss on grounds that “the precise language or ‘in haec verba’ requirement is employed by most courts in this district.”); and *Smith v. Chicago Park District*, 1999 WL 33883 (N.D. Ill. January 11, 1999), *aff’d*, 221 F.3d 1339 (7th Cir. 2000) (dismissing count because specific defamatory statements were not contained in complaint or in response to motion to dismiss).

25. See, e.g., *Saunders v. VanPelt*, 497 A.2d 1121, 1126 (Me. 1985) (while “material words, those essential to the charges made, must be proved as alleged, . . . some latitude may be allowed with respect to unimportant, connecting, or descriptive words.”).

26. *Fudge v. Penthouse International, Ltd.*, 840 F.2d 1012, 14 Media L. Rep. 2353 (1st Cir.), *cert. denied*, 488 U.S. 821 (1988). See also *Cinquanta v. Burdett*, 154 Colo. 37, 388 P.2d 779, 1 A.L.R.3d 840 (1963) (if alleged defamatory statement is set out in the complaint, question of whether such statement is defamatory per se may be resolved on motion to dismiss) and *Weiser v. Gannett Suburban Newspapers*, 25 Media L. Rep. 2174 (N.Y. App. Div., 2d Dept. 1996) (court hearing a motion to dismiss is not limited to the pleadings but may consider extrinsic matter).

27. See, e.g., *McClure v. Review Publishing Co.*, 38 Wash. 160, 80 P. 303 (1905) (affirming order requiring plaintiff to file an amended complaint furnishing entire article in which alleged libel appeared); *Veilleux v. National Broadcasting Co.*, 8 F. Supp. 2d 23, 36, 26 Media L. Rep. 1929 (D. Me. 1998), *rev’d in part on other grounds*, 206 F.3d 92 (1st Cir. 2000) (“a defendant is entitled to knowledge of the precise language challenged as defamatory.” (citing *Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 724 n.6 (1st Cir. 1992))).

28. *Gaylord Entertainment Company v. Thompson*, 958 P.2d 128, 1998 OK 30 (Okla. 1998).

29. See Cal. Code Civ. Pro. §§ 425.16, 425.17; Del. Code §§ 8136 - 8138; Fla. Stat. §§ 720.304(4) and 768.295; Ga. Code § 9-11-11.1; Guam Code Title 7, §§ 17101 - 17109; Haw. Rev. Stat. Chap. 634F, §§ 634F-1 -634F-4; Ind. Code § 34-7-7; La. Code Civ. Pro. Art. 971; 14 Me. Rev. Stat. § 556; Md. Code § 5-807; Mass. Gen. Laws Chap. 231, § 59H; Minn. Stat. Chap. 554, §§ 554.01 - 554.05; Mo. Rev. Stat. § 537.800; Neb. Rev. Stat. §§ 25-21,241 - 25-21,246; Nev. Rev. Stat. §§ 41.635 - 41.670; N.M. Stat. §§ 38-2-9.1 and 9.2; N.Y. Civ. Rights Law §§ 70-a and 76-a; N.Y. C.P.L.R. 3211(g) and 3212(h); Ore. Rev. Stat. §§ 30.142 - 30.146; 27 Pa. Stat. § 7707, §§ 8301 - 8305; R.I. Gen. Laws Title 9, Ch. 33, §§ 9-33-1 - 99-33-4; R.I. Gen. Laws § 45-24-67; Tenn. Code §§ 4-21-1001 - 4-21-1004; Utah Code §§ 78-58-101 - 78-58-105; and Wash. Rev. Code §§ 4.24.500 - 4.24.520. While Colorado has not adopted a SLAPP statute, the state Supreme Court has adopted a higher standard for such suits to survive a motion to dismiss, and directed lower courts to treat these as motions for summary judgment. See *Protect Our Mountain Environment, Inc. v. District Court*, 677 P.2d 1361 (Colo. 1984).

30. See, e.g., *Adelphi University v. Committee to Save Adelphi*, N.Y.L.J., Feb. 6, 1997, at 33 (Sup. Ct. Nassau. Co. Feb. 6, 1997):

[T]he very use of the phrase “public petition and participation” in the Statute [N.Y. Civ. Rights Law § 76-a] indicates that the legislature intended to protect not just statements made directly to a government agency in opposing a formal permit application (the “petition”), but also to statements made in the course of “participat(ing)” in the broad public debate about the issue. To limit the Statute to the former would render it virtually useless since almost every hotly contested public debate receives press coverage, and the ability of the participants in the debate to influence that coverage often determines the outcome.

See also *Salvo v. Ottoway Newspapers, Inc.*, 1998 WL 34060940, Mass. Lawyers Weekly No. 12-125-98 (Mass. Super. 1998) (applying Massachusetts anti-SLAPP statute to defamation suit against newspaper, but denying defendant’s motion); and *Jacob v. Bezzant*, No. 000403530, slip op. at 16-17 (Utah 4th Dist. Ct. April 2, 2004) (granting motion under Utah’s anti-SLAPP statute to newspaper defendant).

31. See Table 16, p. 36, *infra*.

## B. Interlocutory Appeals

After a trial court's adjudication of a motion to dismiss, the options available to a non-prevailing party depend in large part upon the rules governing interlocutory appeals within the state at issue.

In a small number of states, a defendant may appeal the denial of a motion to dismiss as of right. In New York, for example, interlocutory appeals are available to defendants as of right from all orders aside from three exceptions enumerated in N.Y. C.P.L.R. § 5701.<sup>32</sup> While other states have not adopted such a generous attitude toward interlocutory appeals, a number will allow appeals as of right in a limited set of circumstances.<sup>33</sup>

The ability of a defendant to pursue an interlocutory appeal after denial of a motion to dismiss is often greatly restricted by legislative action or judicial proclamation. In California, for example, while limited appeals from the overruling of a defendant's demurrer in defamation lawsuits have been allowed by writ in cases such as *Polygram Records, Inc. v. Superior Court*,<sup>34</sup> a party's rights after a motion to dismiss is denied are largely circumscribed by Cal. Civ. Proc. Code § 904.1, which specifies the limited class of judgments from which an interlocutory appeal may be taken. A significant amendment to California's appellate practice occurred in 1999, however, which now allows unsuccessful defendants a direct appeal from a denial of a special motion to strike under the state's anti-SLAPP statute.<sup>35</sup>

A number of jurisdictions, including the District of Columbia,<sup>36</sup> Georgia, Illinois, Indiana, New Mexico, and Pennsylvania, provide a process for "discretionary" interlocutory appeals similar to that adopted by the Federal Rules of Appellate Procedure, in which a trial judge must certify an order before an appeal may be sought. In mandating such certification, most states also impose threshold requirements outlining the specific circumstances which must exist before certification. Under Illinois Supreme Court rules, for example, certification may only be granted when "the order involves a question of law as to which there is substantial ground for difference of opinion" and it can be shown that "an immediate appeal from the order may materially advance the ultimate termination of the litigation."<sup>37</sup>

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32. In South Carolina, case law would also allow interlocutory appeals from orders overruling a demurrer on grounds that a pleading failed to state a cause of action. *See, e.g., Costas v. Florence Printing Co.*, 118 S.E.2d 696 (S.C. 1961). The statute on which such decisions are based, however, has since been amended, making it unlikely defendants would want to rely on the court's decisions.

33. *See, e.g.*, Pa. R. App. P. 311 (delineating circumstances under which interlocutory appeal may be had as of right); Ill. Sup. Ct. R. 307 (same); Fla. R. App. P. 9.130 (allowing appeal from non-final orders adjudicating issues of, *inter alia*, venue or personal jurisdiction).

34. 170 Cal. App. 3d 543 (Cal. Ct. App. 1985),

35. *See* Cal. Civ. Proc. Code § 425.16(j); *see also Fabre v. Walton*, 781 N.E.2d 185 (Mass. 2002) (stating that "the denial of a special motion to dismiss interferes with rights in a way that cannot be remedied on appeal from the final judgment. The protections afforded by the anti-SLAPP statute against the harassment and burdens of litigation are in large measure lost if the petitioner is forced to litigate a case to its conclusion before obtaining a definitive judgment through the appellate process. Accordingly, we hold that there is a right to interlocutory appellate review from the denial of a special motion to dismiss filed pursuant to the anti-SLAPP statute").

36. Washington D.C. also provides an example of a state which allows a motion to dismiss to qualify for immediate appellate review under the collateral order doctrine where it: "1) conclusively determines a disputed question of law; 2) resolves an important issue that stands completely separate from the merits of the case; and 3) is effectively unreviewable on appeal from a final judgment." *Heard v. Johnson*, 810 A.2d 871 (D.C. 2002). "In defamation actions, other courts likewise have held that the denial of a motion to dismiss or for summary judgment based on a claim of absolute privilege under the common law--deemed equivalent to a claim of absolute immunity--is immediately appealable under the collateral order doctrine." *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 340 (D.C. 2001) (citations omitted).

37. *See* Ill. Sup. Ct. R. 308(a).

Other variations on interlocutory appellate practice can be seen in states such as Virginia, in which a defendant may file in circuit court a statement of the reasons why an immediate interlocutory appeal should be permitted from an order not otherwise appealable.<sup>38</sup> If such statement is certified by the circuit court, a petition for appeal may then be filed with the appellate court.<sup>39</sup> In Washington State, the Rules of Appellate Procedure allow for discretionary review when either the superior court has certified *or* all parties to the litigation have stipulated that the order sought to be appealed from involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.<sup>40</sup>

In those states permitting an appeal to be taken after certification by the trial court, the decision of whether or not to allow the appeal to advance lies almost entirely within the discretion of the appellate court.

In reviewing appeals of the denial of a motion to dismiss, appellate courts will generally apply a “de novo” standard of review to the trial court’s disposition.

The MLRC Study that follows found that when allowed to appeal, media defendants won at the appellate courts ( either through the affirmance of dismissals or the reversals of denials of dismissals) in 74.4 percent of appeals.<sup>41</sup> In these appeals, 72.2 percent of the trial court grants appealed by plaintiffs were affirmed, and 61.3 percent of the trial court denials that were appealed by defendants were reversed.<sup>42</sup>

What this percentage of favorable results for defendants suggests is that those who see the First Amendment value – or indeed values of judicial efficiency – in the early dismissal of insufficient claims and lawsuits, should endeavor to obtain interlocutory appeal rights for motions to dismiss, at the least those motions that involve First Amendment sensitive claims.

### **C. First Amendment Considerations**

In considering these grounds for a motion to dismiss, the court is not supposed to consider the nature of the defendant; the First Amendment considerations normally present in cases with a media defendant are legally irrelevant at the motion to dismiss stage.<sup>43</sup>

For this reason, very few courts directly discuss First Amendment considerations in their

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38. *See* Va. Code Ann. § 8.01-670.1

39. *See id.*

40. *See* Wash. R. App. P. 2.3(b)(4).

41. Appellate courts also issued split decisions (partially affirming either denials or grants) in 8.6 percent of cases, and ultimately ruled in favor of plaintiffs (by reversing dismissals or affirming denials) in 22.3 percent of cases. *See* Table 11c; p. 27

42. *Id.* The 61.6 percent figure is the sum of the percentages of denials that were reversed and dismissed on appeal (51.3 percent) and of denials reversed and remanded on appeal (10.3 percent).

43. This differs from summary judgment, where the Supreme Court has held – after some doctrinal debate in a series of cases from 1979 to 1986 – that although summary judgement may not be *favored* in First Amendment cases, it is not *disfavored*. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255-256 (1986). For a full discussion of the evolution of the doctrine regarding summary judgement in First Amendment cases, *see* 2001 LDRC BULLETIN No. 3 (Aug. 2001), at 32-38.

decisions on these motions.<sup>44</sup> Of the 729 decisions in the MLRC data for this Study, only 16 directly refer to First Amendment considerations in their decisions.<sup>45</sup> But the results, and in some cases the methodology used by court to reach these results, suggest that in fact courts are acutely aware of the free speech issues at stake in these cases, even when ruling on motions to dismiss on grounds seemingly unrelated to freedom of speech.

Thus determinations on procedural factors such as jurisdiction, venue, statutes of limitations, service of process and necessary parties are generally separate from First Amendment considerations; they apply to a defamation action in the same way that they apply to civil claims generally.<sup>46</sup> Yet some of these issues may be complicated in media cases, and the nature of the defendant may influence the court's evaluation of the factors when considering a motion to dismiss.<sup>47</sup>

Thus courts have ruled that “[b]ecause the threat of protracted litigation could have a chilling effect upon constitutionally protected rights of free speech, prompt resolution of defamation actions, by summary judgment or motion to dismiss, is appropriate,”<sup>48</sup> and that since “[t]he *fear* of libel litigation alone is potentially a greater threat to freedom of speech than the actual litigation[,] ... motions for summary judgment and like motions are exceedingly important tools for disposing of nonmeritorious defamation suits.”<sup>49</sup>

As recognized by MLRC over twenty years ago,

while the First Amendment has not been widely recognized as supporting a special procedural rule favoring motions to dismiss in media libel and privacy actions, a small number of the cases studied recognized such a special rule. Numerous other cases adverted to First Amendment principles in connection with substantive consideration of the legal bases asserted in support of the motion to dismiss—e.g., on issues such as jurisdiction, defamatory meaning and constitutionally-protected opinion.<sup>50</sup>

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44. “[C]ourts do not typically invoke constitutional principles in considering such motions.” R. Sack, *SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS*, § 16.2 (PLI 3d ed. 1999).

45. See Table 17, p. 38, *infra*. Such cases include *AMCOR Investment Corp. v. Cox Publications, Inc.*, 158 Ariz. 566, 568, 764 P.2d 327, 329, 16 Media L. Rep. 1059, 1061 (Ariz. Ct. App. 1988) (in the context of motion to dismiss, “when the complaint implicates the fundamental value of freedom of the press, there is good reason for a court to examine the complaint with a more rigorous eye in order not to burden public debate with insupportable litigation.”). See also *McBride v. Merrell Dow and Pharmaceuticals, Inc.*, 717 F.2d 1460, 1461-62, 9 Media L. Rep. 2225 (D.C. Cir. 1983) (“The ability to frame a pleading that defeats, however narrowly, a motion to dismiss, ought not to be converted into a license to harass. We suggest, therefore, that the district court proceed upon remand in a manner that will minimize, so far as practicable, the burden a possibly meritless claim is capable of imposing upon free and vigorous journalism.”).

46. *Nistico v. Mosler Safe Co.*, 43 Md. App. 361, 405 A.2d 340 (1979) (as to demurrers)

47. *Mitchell v. Random House, Inc.*, 703 F. Supp. 1250, 15 Media L. Rep. 2033 (S.D. Miss. 1988) (“the nature of a libel action lends itself to judicial scrutiny in the early stages of a defamation lawsuit”), *aff’d*, 865 F.2d 664, 16 Media L. Rep. 1207 (5th Cir. 1989).

48. *Barnett v. Denver Publ’g Co.*, 36 P.3d 145, 147 (Colo. Ct. App. 2001).

49. *Gist v. Macon County Sheriff’s Dep’t*, 671 N.E.2d 1154, 1163 (Ill. App. Ct. 1996) (emphasis in original). See also *Flowers v. Carville*, 310 F.3d 1118 (9th Cir. 2002); *Celle v. Filipino Reporter Enterprises, Inc.*, 209 F.3d 163 (2d Cir. 2000); *Nicosia v. De Rooy*, 72 F. Supp. 2d 1093 (N.D. Cal. 1999); *Doe v. TCI Cablevision*, 2002 WL 1610972 (Mo. Ct. App. July 23, 2002).

50. See LDRC BULLETIN No. 8 at 2 (September 30, 1980).



#### IV. FINDINGS OF THE MLRC MOTION TO DISMISS STUDY

As explained more fully in the Methodology section,<sup>51</sup> the MLRC Motion to Dismiss Study is limited by the type of information that is available for a study of this kind. **Our data, which includes 660 cases in which motions to dismiss were either granted or denied from 1983-2003,<sup>52</sup> is necessarily limited to cases in which there was at least one opinion available in either the Media Law Reporter or Westlaw.**

We realize that this does not capture the entire universe of media cases from 1983 to 2003 in which a motion to dismiss was made,<sup>53</sup> and it is impossible to estimate what share of this universe is included within our Study. Within these inherent limitations, however, our goal is to present a broad overview of the use of motions to dismiss in media cases, and give a general idea of how often such motions succeed.

##### A. ULTIMATE DISPOSITION OF MOTIONS TO DISMISS

Tables 1 through 5 and Figures 1 and 2 examine the ultimate disposition of cases in which MLRC found a published decision, or a decision designated by the court as unpublished but nevertheless available, regarding a motion to dismiss. By “ultimate disposition,” we mean the “bottom line result” regarding the motion to dismiss, after all appeals on the issue are exhausted.

A defendant is considered to have prevailed when a trial court decision granting a motion to dismiss is not appealed, or is affirmed on appeal, or a trial court decision denying a motion to dismiss is reversed on appeal. A plaintiff victory is a trial court decision denying a motion to dismiss that is either not appealed or affirmed on appeal, or an ultimate appellate ruling reversing a trial court decision that had granted a motion to dismiss.

A partial decision is one in which a motion to dismiss is ultimately granted only for certain claims in a particular case.

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51. See Appendix B, p. 65, *infra*.

52. MLRC’s previous studies on motions to dismiss included partial information on cases from 1981 and 1982. But because comprehensive details were not collected about these cases, the analysis of them was limited. In this Study, we have decided to exclude these cases because of their limited usefulness in the overall analysis of the Study.

53. For example, there are 14 jurisdictions in which we have no record of *any* motions to dismiss in media cases, including ones such as Texas, where common sense says that this result must be contrary, to some unknown degree, with actual practice. See discussion of Texas procedure on p. 6, *supra*.

**TABLE 1: ULTIMATE DISPOSITION OF MOTIONS TO DISMISS**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	222	168	75.7%	20	9.0%	34	15.3%
1990-95	177	125	70.6%	20	11.3%	32	18.1%
1996-2003	262	189	72.1%	30	11.5%	43	16.5%
1983-2003	661	482	72.9%	70	10.6%	109	16.5%

This Study examines 985 trial-court and appellate court decisions made on 660 motions to dismiss from 1983 through 2003.<sup>54</sup> Of these 661 cases, defendants' motions to dismiss were ultimately granted in 72.9 percent.

During the latest period, from 1996-2003, 72.1 percent of motions were ultimately granted. This is remarkably consistent with the share of motions ultimately granted in both the previous discrete periods studied by MLRC: 1990-1995, when 72.0 percent of motions were ultimately granted, and 1983-1989, when 75.7 percent were granted.<sup>55</sup>

Plaintiffs ultimately prevailed – motions to dismiss were totally denied – in 16.5 percent of cases from 1983 to 2003, while there were partial grants of motions to dismiss in 10.6 percent of cases during this period.

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54. See note 52, *supra*.

55. These figures are only slightly lower than statistics from MLRC's prior studies of summary judgment motions, which found that those motions were ultimately granted in 77.0 percent of reported cases. See 2001 Summary Judgment Study in 2001 LDRC BULLETIN No. 3, at 3.

**FIGURE 1: NUMBER AND ULTIMATE DISPOSITION OF MOTIONS TO DISMISS**

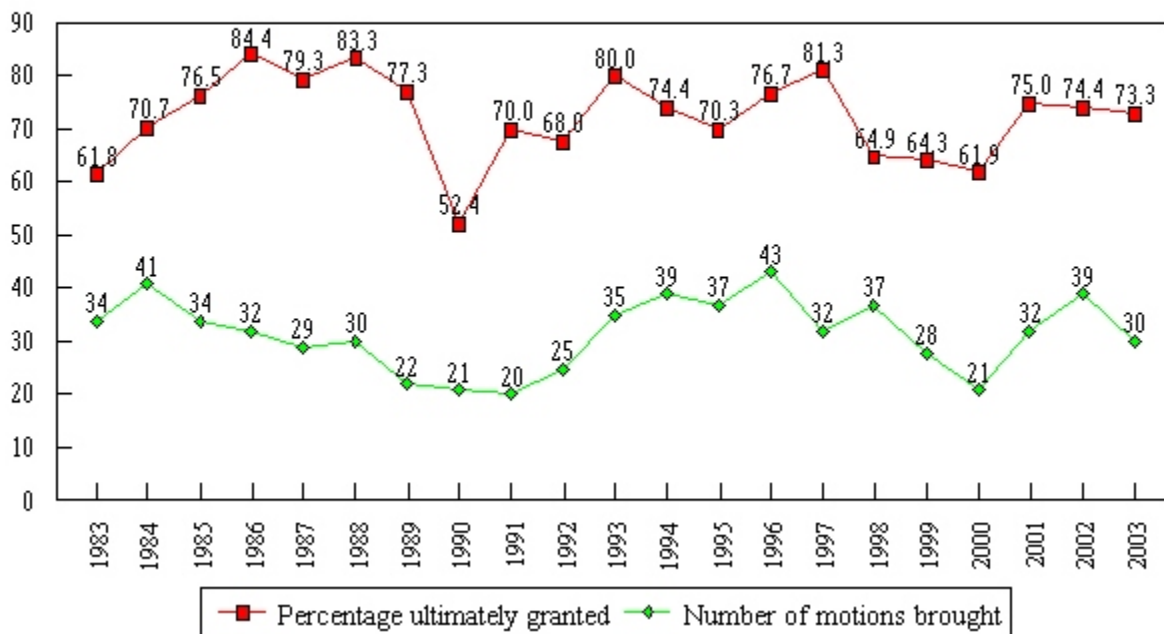


Figure 1 graphically shows both the number of motions to dismiss decided each year and the defendant’s ultimate success rate.

The number of cases in which motions were decided in our Study has averaged 31.5 cases a year. But the number has fluctuated widely on a year-to-year basis, and show no evident patterns.

The defense success rate has averaged 72.6 percent of the cases in our Study, fluctuating from a low of 52.4 percent in 1990 to a high of 84.4 percent in 1986. These changes in the success rate from year to year have moved up and down in rough sync with the number of cases decided.

The high defense success rate in our Study may be the result of a number of factors, including an increased likelihood that defendants will file motions to dismiss when they are more confident of the result, and that decisions, even those officially unpublished, granting such motions are more likely to be publically available than denials, which may often be made summarily and without opportunity for appeal.



**TABLE 2: ULTIMATE DISPOSITION: PUBLIC VERSUS PRIVATE PLAINTIFF**

<b>1983-1989</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	34	25	73.5%	5	14.7%	4	11.8%
Private	22	15	68.2%	2	9.1%	5	22.7%
<b>1990-1995</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	26	19	73.1%	1	3.8%	6	23.1%
Private	16	7	43.8%	3	18.8%	6	37.5%
<b>1996-2003</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	38	26	68.4%	6	15.8%	6	15.8%
Private	14	5	35.7%	3	21.4%	6	42.9%
<b>1983-2003</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	98	70	71.4%	12	12.2%	16	16.3%
Private	52	27	51.9%	8	15.4%	17	32.7%

Motions to dismiss were fully granted more often when the plaintiff was a public figure or official (“public plaintiff”) who must meet the heightened “actual malice” requirement in order to succeed at trial. But it is important to note that since most of the opinions on motions to dismiss did not address the issue,<sup>56</sup> we are aware of plaintiffs’ status in a minority of cases: only 150 of the 660 cases, or 22.7 percent.

Of the 98 cases that we know involved a public plaintiff, 71.4 percent (70 cases) were successfully disposed of on a motion to dismiss. In the 52 cases in the sample that involved private plaintiffs, motions to dismiss were ultimately granted in 51.9 percent (27 cases).

But it is interesting to note that the results from private figure cases are not consistent with those from 1990 onward. In cases from 1983-1989 – years in which the overall and average number of cases per year were higher than during the 1990s and 2000s – defendants’ victory rate in cases involving private plaintiffs (68.2 percent, 15 of 22 cases) was not much lower than the rate in cases involving public plaintiffs (73.5 percent, 25 of 34 cases). Private plaintiffs’ success rates dropped in latter years.

The share of partial dismissals was about the same for both types of plaintiffs: 12.2 percent for public plaintiffs, 15.4 percent for private plaintiffs. However, the percentage of partial wins in private plaintiff cases, rose from the 1980s into the 1990s and 2000s.

56. Only court determinations of this issue are included. Even if the plaintiff in a case is clearly a public or private plaintiff, the case is categorized only according to a court ruling.



**TABLE 3: ULTIMATE DISPOSITION: STATE VERSUS FEDERAL COURT**

<b>State Court</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	132	105	79.5%	8	6.1%	19	14.4%
1990-95	102	82	80.4%	7	6.9%	13	12.7%
1996-2003	139	103	74.1%	13	9.4%	23	16.5%
1983-2003	373	290	77.7%	28	7.5%	55	14.7%

<b>Federal Court</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	90	63	70.0%	12	13.3%	15	16.7%
1990-95	75	43	57.3%	13	17.3%	19	25.3%
1996-2003	123	86	69.9%	17	13.8%	20	16.3%
1983-2003	288	192	66.7%	42	14.6%	54	18.8%

Table 3 shows that state courts are more likely to grant motions to dismiss than federal courts, while federal courts are more likely to grant the motions only in part.

There were 373 cases from state courts in the Study, and 77.7 percent ended with a motion dismiss being fully granted. But in federal court, only 66.7 percent of the 288 cases ended that way. The rates at which motions to dismiss were totally denied are similar between the two types of court: 18.8 percent in federal court, 14.7 percent in state court.

The major difference is in partial grants. Federal courts ultimately dismissed in part in 14.6 percent of cases, while state courts granted partial dismissals in only 7.5 percent.

The annual figures for full grants, partial grants, and total denials have fluctuated in the various MLRC study periods, and there are no clear trends indicated in the numbers in either state or federal court.

The most volatile figure has been the total grants in federal court, which stood at 70.0 percent of cases in 1983-1989, dropped to 57.3 percent of cases in 1990-1995, then jumped back to 69.9 percent in 1996-2003.

**FIGURE 2: ULTIMATE RESULTS OF MOTIONS TO DISMISS: STATE VERSUS FEDERAL COURT**

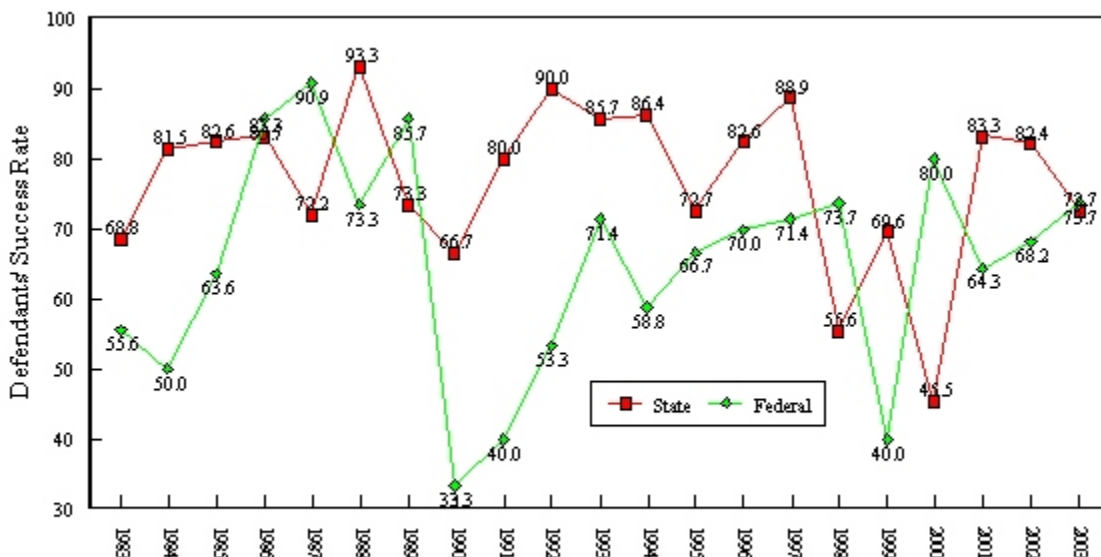


Figure 2 plots federal and state final dispositions on a year-by-year basis, and shows that there is little correlation between the two.

But the year-to-year figures do suggest that the results of federal courts have been more volatile, ranging from a low of 33.3 percent of cases fully dismissed in 1990 to a high of 90.9 cases dismissed in 1987.

The consistency of a set of figures is measured by “standard deviation,” which measures how much the figures as a whole deviate from the mean (average) of the figures; the higher the standard deviation, the more scattered the individual figures are.<sup>57</sup> The standard deviation for the federal statistics in Figure 2 is 15.2, while the standard deviation for the state figures is 11.3.

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57. A full explanation of standard deviation is beyond the scope of this report. For a good, basic introduction, geared towards journalists and other writers, see [www.robertniles.com/stats/stdev.shtml](http://www.robertniles.com/stats/stdev.shtml) (visited Aug. 25, 2004).

**TABLE 4: ULTIMATE DISPOSITION: CIRCUIT BY CIRCUIT**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Supreme Court	1	0	0.0%	0	0.0%	1	100.0%
First Circuit	12	7	58.3%	0	0.0%	5	41.7%
Second Circuit	50	33	66.0%	7	14.0%	10	20.0%
Third Circuit	28	16	57.1%	3	10.7%	9	32.1%
Fourth Circuit	20	19	95.0%	1	5.0%	0	0.0%
Fifth Circuit	22	16	72.7%	2	9.1%	4	18.2%
Sixth Circuit	23	21	91.3%	1	4.3%	1	4.3%
Seventh Circuit	39	23	59.0%	10	25.6%	6	15.4%
Eighth Circuit	12	9	75.0%	2	16.7%	1	8.3%
Ninth Circuit	39	19	48.7%	11	28.2%	9	23.1%
Tenth Circuit	11	9	81.8%	1	9.1%	1	9.1%
Eleventh Cir.	14	12	85.7%	0	0.0%	2	14.3%
D.C. Circuit	17	8	47.1%	4	23.5%	5	29.4%
	288	192	66.7%	42	14.6%	54	18.8%

The U.S. Supreme Court has ruled on a motion to dismiss in only one media case: *Keeton v. Hustler Magazine, Inc.*, in which the unanimous court reversed a lower court's grant of a dismissal motion, based on lack of personal jurisdiction over the defendant magazine.<sup>58</sup>

Amongst the lower federal courts, the highest rate of dismissal for defendants was in the Fourth Circuit, in which the end result of motions to dismiss was entire dismissal in 19 of the 20 reported cases in the circuit, a remarkable 95.0 percent. The other case in the circuit resulted in partial dismissal.

This makes the Fourth Circuit the only circuit in which plaintiffs have not ultimately prevailed on any of the dismissal motions in our Study. The second most favorable circuit for defendants' dismissal motions is the Sixth Circuit, where 91.3 percent were ultimately decided in defendants' favor.

The circuit in which courts were least likely to fully grant the motions was the D.C. Circuit, where less than half of the cases (47.1 percent) resulted in a motion to dismiss being fully granted.

But the D.C. Circuit is not the most favorable to plaintiffs. Instead, the circuit in which courts were least likely, at the end of the day, to fully grant defense motions to dismiss, is the First Circuit, where 41.7 percent of cases resulted in full denials of dismissal motions. But even in this circuit, a majority of cases – 58.3 percent – resulted in motions to dismiss being fully granted.

58. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). The majority opinion by Justice Rehnquist does not discuss standards for motions to dismiss or First Amendment considerations. Justice Brennan's concurrence notes that the forum state's interest in asserting personal jurisdiction over the case is "irrespective of the state's interest in enforcing its substantive libel laws or its unique statute of limitations." *Id.* at 781.

**TABLE 5: ULTIMATE DISPOSITION: STATE BY STATE<sup>59</sup>**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Alabama	2	2	100.0%	0	0.0%	0	0.0%
Alaska	1	1	100.0%	0	0.0%	0	0.0%
Arizona	4	4	100.0%	0	0.0%	0	0.0%
Arkansas	0	0	0.0%	0	0.0%	0	0.0%
California	63	54	85.7%	1	1.6%	8	12.7%
Colorado	3	2	66.7%	1	33.3%	0	0.0%
Connecticut	1	0	0.0%	0	0.0%	1	100.0%
Delaware	3	2	66.7%	1	33.3%	0	0.0%
D.C.	2	2	100.0%	0	0.0%	0	0.0%
Florida	35	23	65.7%	2	5.7%	10	28.6%
Georgia	5	3	60.0%	0	0.0%	2	40.0%
Guam	0	0	0.0%	0	0.0%	0	0.0%
Hawaii	0	0	0.0%	0	0.0%	0	0.0%
Idaho	0	0	0.0%	0	0.0%	0	0.0%
Illinois	36	25	69.4%	7	19.4%	4	11.1%
Indiana	0	0	0.0%	0	0.0%	0	0.0%
Iowa	1	0	0.0%	0	0.0%	1	100.0%
Kansas	0	0	0.0%	0	0.0%	0	0.0%
Kentucky	2	1	50.0%	1	50.0%	0	0.0%
Louisiana	6	6	100.0%	0	0.0%	0	0.0%
Maine	0	0	0.0%	0	0.0%	0	0.0%
Maryland	2	2	100.0%	0	0.0%	0	0.0%
Massachusetts	8	6	75.0%	1	12.5%	1	12.5%
Michigan	4	4	100.0%	0	0.0%	0	0.0%
Minnesota	1	1	100.0%	0	0.0%	0	0.0%
Mississippi	1	0	0.0%	0	0.0%	1	100.0%
Missouri	10	8	80.0%	1	10.0%	1	10.0%
Montana	1	1	100.0%	0	0.0%	0	0.0%
Nebraska	0	0	0.0%	0	0.0%	0	0.0%
Nevada	1	1	100.0%	0	0.0%	0	0.0%
New Hampshire	1	0	0.0%	0	0.0%	1	100.0%
New Jersey	2	1	50.0%	0	0.0%	1	50.0%
New Mexico	0	0	0.0%	0	0.0%	0	0.0%
New York	122	99	81.1%	8	6.6%	15	12.3%
North Carolina	4	4	100.0%	0	0.0%	0	0.0%
North Dakota	0	0	0.0%	0	0.0%	0	0.0%
Ohio	8	4	50.0%	2	25.0%	2	25.0%

59. In this and some subsequent tables, some percentages are calculated as a percentage of zero cases (e.g., the Defendant Win, Partial Decision, and Plaintiff Wins figures for Alabama, which had no cases in the Study). Mathematically, such a percentage is an “irrational number” – it cannot be written as the ratio of whole numbers. In this survey, these results are expressed as 0.0%.

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Oklahoma	8	7	87.5%	0	0.0%	1	12.5%
Oregon	1	0	0.0%	0	0.0%	1	100.0%
Pennsylvania	17	14	82.4%	1	5.9%	2	11.8%
Puerto Rico	1	0	0.0%	0	0.0%	1	100.0%
Rhode Island	1	1	100.0%	0	0.0%	0	0.0%
South Carolina	0	0	0.0%	0	0.0%	0	0.0%
South Dakota	1	0	0.0%	0	0.0%	1	100.0%
Tennessee	3	2	66.7%	0	0.0%	1	33.3%
Texas	0	0	0.0%	0	0.0%	0	0.0%
Utah	2	2	100.0%	0	0.0%	0	0.0%
Vermont	0	0	0.0%	0	0.0%	0	0.0%
Virgin Islands	0	0	0.0%	0	0.0%	0	0.0%
Virginia	3	2	66.7%	1	33.3%	0	0.0%
Washington	4	4	100.0%	0	0.0%	0	0.0%
West Virginia	2	2	100.0%	0	0.0%	0	0.0%
Wisconsin	1	0	0.0%	1	100.0%	0	0.0%
Wyoming	0	0	0.0%	0	0.0%	0	0.0%
	373	290	77.7%	28	7.5%	55	14.7%

The state court cases are concentrated in only a relative handful of jurisdictions: 15 had no cases in our data,<sup>60</sup> 13 had only one case,<sup>61</sup> and there were only two cases in eight jurisdictions.<sup>62</sup>

With 122 cases, New York led the 19 jurisdictions with three or more cases. California had 63 cases, followed by Illinois (36 cases), Florida (35 cases), and Pennsylvania (16 cases). Of the states with three or more cases, defendants saw the most success in Oklahoma, where 87.5 percent of motions to dismiss were fully granted, followed by California (85.7 percent), Pennsylvania (82.4 percent) and New York (81.1 percent).

60. These were Arizona, Guam, Hawaii, Idaho, Indiana, Kansas, Maine, Nevada, New Mexico, North Dakota, South Carolina, Texas, Vermont, Virgin Islands, and Wyoming.

61. Alaska, Connecticut, Iowa, Minnesota, Mississippi, Montana, Nevada, New Hampshire, Oregon, Puerto Rico, Rhode Island, South Dakota, and Wisconsin.

62. Alabama, Delaware, District of Columbia, Kentucky, Maryland, New Jersey, Utah, and West Virginia.

**B. TRIAL COURT DISPOSITION OF MOTIONS TO DISMISS**

**TABLE 6: TRIAL COURT DISPOSITION OF DEFENDANTS' MOTIONS TO DISMISS**

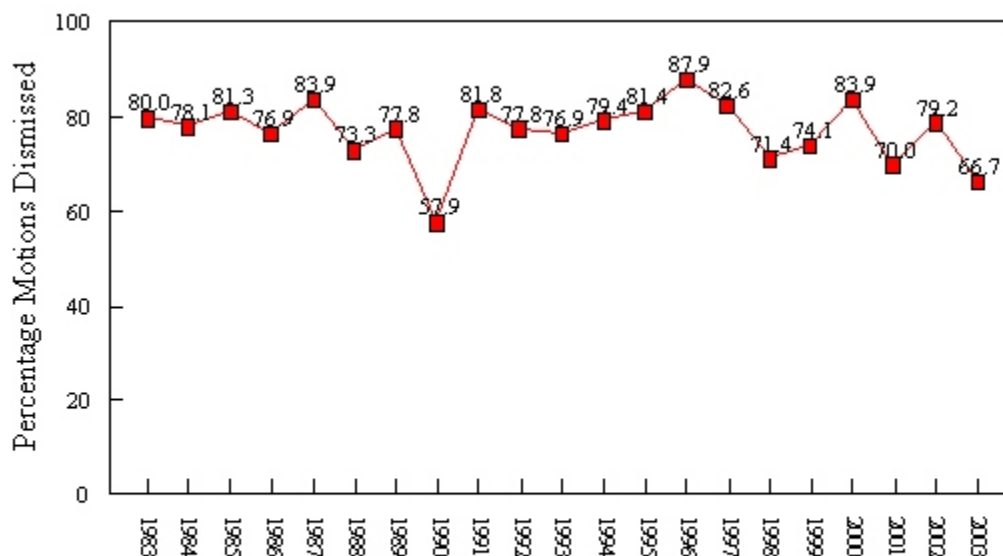
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	214	169	79.0%	17	7.9%	28	13.1%
1990-95	186	143	76.9%	12	6.5%	31	16.7%
1996-2003	229	177	77.3%	21	9.2%	31	13.5%
1983-2003	629	489	77.7%	50	7.9%	90	14.3%

Compared to the final results of cases analyzed in Table 1, Table 6 shows that in our Study the decision of trial-level courts have been slightly more favorable than the overall end results of cases.

Thus trial courts have granted full motions to dismiss in 77.7 percent of cases, while the overall results were favorable in 72.9 percent of cases.<sup>63</sup> Trial courts have fully denied motions to dismiss in 14.3 percent of decisions, and granted the motions in part in 8.0 percent of rulings.

The rates at which these decisions have reached these results have remained generally consistent through the various individual study periods. Dismissal motions were fully granted in 79.0 percent of cases (169 of 214) from 1983-1989, 76.9 percent from 1990-1995, and 77.2 percent from 1996-2003. They were fully denied in 13.1 percent of cases from 1983-1989, 16.7 percent in 1990-1995, and dipped to 13.6 percent in 1996-2003.

**FIGURE 3: TRIAL COURT DISPOSITION OF MOTIONS TO DISMISS: YEAR BY YEAR:**



The year-by-year rate at which trial courts have fully granted motions to dismiss has not varied much, as shown in Figure 3.

63. See Table 1, p. 13, *supra*.



**TABLE 7: TRIAL COURT DISPOSITION: PUBLIC VERSUS PRIVATE PLAINTIFF**

<b>1983-89</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public plaintiff	34	24	70.6%	6	17.6%	4	11.8%
Private plaintiff	21	18	85.7%	1	4.8%	2	9.5%
<b>1990-95</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public plaintiff	34	27	79.4%	1	2.9%	6	17.6%
Private plaintiff	17	11	64.7%	2	11.8%	4	23.5%
<b>1996-2003</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public plaintiff	31	23	74.2%	3	9.7%	5	16.1%
Private plaintiff	8	2	25.0%	1	12.5%	5	62.5%
<b>1983-2003</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public plaintiff	99	74	74.7%	10	10.1%	15	15.2%
Private plaintiff	46	31	67.4%	4	8.7%	11	23.9%

As previously noted,<sup>64</sup> the plaintiff's status as a public or private plaintiff is usually not resolved or even relevant at the motion to dismiss stage. Thus there was no court determination on plaintiffs' status in a majority of cases in our Study, and only 145 cases from the Study data are included in Table 7.

Nevertheless, for cases in which there was a determination of plaintiff's status, defendants fared somewhat better in trial court decisions in cases involving public plaintiffs. Of the 99 such decisions by trial courts, motions to dismiss were fully granted in 74.7 percent (74 cases). In cases with private plaintiff plaintiffs, dismissal motions were fully granted in 67.4 percent of cases (31 of 46).

The better defense victory rate for private plaintiff than public plaintiff cases in the early years of the data, mentioned in the discussion of Table 2, is even more remarkable at the trial court level. Whereas the difference in the rates at which public and private plaintiff cases from 1983-1989 were ultimately dismissed in all cases was less than four percentage points, among trial court rulings from 1983-1989 the difference is 15.1 percentage points: trial courts granted the motions in 85.7 percent of private plaintiff cases during these years, whereas they granted them in 70.6 percent of cases in public plaintiff cases.

The share of public plaintiff cases in which trial courts totally denied dismissal motions during

64. See p. 15, *supra*.

these years, 11.8 percent was also higher than for private plaintiff cases.

**TABLE 8: TRIAL COURT DISPOSITION: STATE VERSUS FEDERAL COURT**

State Court							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	129	104	80.6%	7	5.8%	18	14.0%
1990-95	105	90	85.7%	2	1.9%	13	12.4%
1996-2003	119	99	83.2%	8	6.7%	12	10.1%
1983-2003	353	293	83.0%	17	4.8%	43	12.2%
Federal Court							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	85	65	76.5%	10	11.8%	10	11.8%
1990-95	81	53	65.4%	10	12.3%	18	22.2%
1996-2003	110	78	70.9%	13	11.8%	19	17.3%
1983-2003	276	196	71.0%	33	12.0%	47	17.0%

As with overall dispositions (*see* discussion of Table 3, *supra*) state trial courts are more likely to grant full motions to dismiss than federal trial courts, while federal trial courts are more likely to grant partial motions.

Full motions to dismiss were granted in state trial courts in 83.0 percent of cases in our Study, while federal trial courts granted full motions in 71.0 percent of decisions. The shares in each type of court for each of the Study periods have generally been consistent with the overall figures, although there has been fluctuation in the share of full grants by federal trial courts among the various periods.

The share of denials by federal trial courts also varied among the study periods, from 11.8 percent in 1983-1989, to almost double that in 1990-1995 (22.2 percent), then down to 17.3 percent from 1996-2003. Overall, federal trial courts totally denied motions to dismiss in 17.0 percent of cases. State trial courts which have been more consistent, overall have totally denied dismissal motions in 12.2 percent of cases.

On the other hand, federal trial courts have been consistent in the share of cases in which motions to dismiss have been partially granted; over the entire study period, federal trial courts have made partial grants in 12.0 percent of cases. The rate of partial dismissals by state trial courts has been low, and overall, state trial courts partially granted dismissal in 4.8 percent of cases.

**TABLE 9: TRIAL COURT DISPOSITION: CIRCUIT BY CIRCUIT**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
First Circuit	12	7	58.3%	0	0.0%	5	41.7%
Second Circuit	50	32	64.0%	7	14.0%	11	22.0%
Third Circuit	28	17	60.7%	4	14.3%	7	25.0%
Fourth Circuit	20	18	90.0%	1	5.0%	1	5.0%
Fifth Circuit	21	15	71.4%	2	9.5%	4	19.0%
Sixth Circuit	24	23	95.8%	0	0.0%	1	4.2%
Seventh Circuit	36	23	63.9%	9	25.0%	4	11.1%
Eighth Circuit	11	8	72.7%	2	18.2%	1	9.1%
Ninth Circuit	37	25	67.6%	6	16.2%	6	16.2%
Tenth Circuit	10	9	90.0%	0	0.0%	1	10.0%
Eleventh Circuit	12	10	83.3%	0	0.0%	2	16.7%
D.C. Circuit	15	9	60.0%	2	13.3%	4	26.7%
	276	196	71.0%	33	12.0%	47	17.0%

The federal trial courts of the Sixth Circuit have the highest grant rate for defendants in cases in the Study. The circuit's trial courts granted motions to dismiss in all but one of their 24 cases in the Study, representing 95.8 percent of cases. In the remaining case, the motion was totally denied.

The least favorable trial courts for defendants were the First Circuit, where only 58.3 percent of motions were fully granted by trial courts. The Seventh Circuit trial courts were most likely to totally deny motions to dismiss in the Study, doing so in 25.0 percent of the cases they considered.

But the more interesting story in Table 9 is the Second Circuit, which had the highest number of cases among the federal courts in the Study. The circuit, which is based in New York,<sup>65</sup> is generally not considered hostile to the media and First Amendment interests. But the trial courts of the Second Circuit were recorded granting full motions to dismiss in a relatively paltry 64.0 percent of the 50 cases decided by district courts within the circuit.

65. New York State had the highest number of state trial court cases in the Study. See Table 10, p. 25, *infra*. The Second Circuit also covers Vermont.

**TABLE 10: TRIAL COURT DISPOSITION: STATE BY STATE<sup>66</sup>**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Alabama	1	1	100.0%	0	0.0%	0	0.0%
Alaska	1	1	100.0%	0	0.0%	0	0.0%
Arizona	4	3	75.0%	1	25.0%	0	0.0%
Arkansas	0	0	0.0%	0	0.0%	0	0.0%
California	61	46	75.4%	4	6.6%	11	18.0%
Colorado	3	3	100.0%	0	0.0%	0	0.0%
Connecticut	1	0	0.0%	0	0.0%	1	100.0%
Delaware	3	3	100.0%	0	0.0%	0	0.0%
D.C.	2	2	100.0%	0	0.0%	0	0.0%
Florida	33	33	100.0%	0	0.0%	0	0.0%
Georgia	4	4	100.0%	0	0.0%	0	0.0%
Guam	0	0	0.0%	0	0.0%	0	0.0%
Hawaii	0	0	0.0%	0	0.0%	0	0.0%
Idaho	0	0	0.0%	0	0.0%	0	0.0%
Illinois	29	28	96.6%	0	0.0%	1	3.4%
Indiana	0	0	0.0%	0	0.0%	0	0.0%
Iowa	1	1	100.0%	0	0.0%	0	0.0%
Kansas	0	0	0.0%	0	0.0%	0	0.0%
Kentucky	2	1	50.0%	1	50.0%	0	0.0%
Louisiana	6	6	100.0%	0	0.0%	0	0.0%
Maine	0	0	0.0%	0	0.0%	0	0.0%
Maryland	2	2	100.0%	0	0.0%	0	0.0%
Massachusetts	8	6	75.0%	0	0.0%	2	25.0%
Michigan	3	3	100.0%	0	0.0%	0	0.0%
Minnesota	1	1	100.0%	0	0.0%	0	0.0%
Mississippi	1	1	100.0%	0	0.0%	0	0.0%
Missouri	9	9	100.0%	0	0.0%	0	0.0%
Montana	0	0	0.0%	0	0.0%	0	0.0%
Nebraska	0	0	0.0%	0	0.0%	0	0.0%
Nevada	1	1	100.0%	0	0.0%	0	0.0%
New Hampshire	0	0	0.0%	0	0.0%	0	0.0%
New Jersey	3	1	33.3%	0	0.0%	2	66.7%
New Mexico	0	0	0.0%	0	0.0%	0	0.0%
New York	117	85	72.6%	9	7.7%	23	19.7%
North Carolina	2	2	100.0%	0	0.0%	0	0.0%
North Dakota	0	0	0.0%	0	0.0%	0	0.0%
Ohio	10	10	100.0%	0	0.0%	0	0.0%
Oklahoma	8	6	75.0%	1	12.5%	1	12.5%

66. See note 59, *supra*.

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Oregon	1	0	0.0%	0	0.0%	1	100.0%
Pennsylvania	16	16	100.0%	0	0.0%	0	0.0%
Puerto Rico	1	0	0.0%	0	0.0%	1	100.0%
Rhode Island	1	1	100.0%	0	0.0%	0	0.0%
South Carolina	1	1	100.0%	0	0.0%	0	0.0%
South Dakota	1	1	100.0%	0	0.0%	0	0.0%
Tennessee	3	3	100.0%	0	0.0%	0	0.0%
Texas	0	0	0.0%	0	0.0%	0	0.0%
Utah	2	2	100.0%	0	0.0%	0	0.0%
Vermont	0	0	0.0%	0	0.0%	0	0.0%
Virgin Islands	0	0	0.0%	0	0.0%	0	0.0%
Virginia	3	2	66.7%	1	33.3%	0	0.0%
Washington	5	5	100.0%	0	0.0%	0	0.0%
West Virginia	1	1	100.0%	0	0.0%	0	0.0%
Wisconsin	2	2	100.0%	0	0.0%	0	0.0%
Wyoming	0	0	0.0%	0	0.0%	0	0.0%
	353	293	83.0%	17	4.8%	43	12.2%

Even after eliminating the 35 jurisdictions which have less than three trial court decisions in the Study data,<sup>67</sup> trial level courts in 13 jurisdictions – the District of Columbia (three cases), Florida (18), Georgia (three), Louisiana (four), Massachusetts (seven), Michigan (three), Missouri (eight), North Carolina (three), Ohio (five), Pennsylvania (14 cases), Tennessee (four), Utah (three), and Washington (four) – fully granted all of the motions to dismiss that they considered in our Study. Illinois trial courts granted them in 96.6 percent of cases (28 of 29).

In the state with by far the most cases, New York, trial courts fully granted motions to dismiss in 72.6 percent of cases (85 of 117 cases). In California there were 61 trial court decisions, and full motions to dismiss were granted in 75.4 percent of them (46 cases).

67. The jurisdictions with one case each are Alabama, Alaska, Arkansas, Colorado, Guam, Hawaii, Idaho, Indiana, Kansas, Maine, Montana, New Hampshire, New Mexico, North Dakota, Rhode Island, South Carolina, Texas, Vermont, Virgin Islands, Wisconsin and Wyoming. Those with two are Connecticut, Delaware, Iowa, Kentucky, Maryland, Minnesota, Mississippi, Nevada, Oregon, Puerto Rico, South Dakota, Virginia and West Virginia.

**C. APPELLATE DISPOSITION OF MOTIONS TO DISMISS****TABLE 11A: APPELLATE DISPOSITION OF PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT**

	Total	Grant Affirmed		Grant Partially Aff'd		Grant Reversed	
		No.	%	No.	%	No.	%
1983-89	102	75	73.5%	9	8.8%	18	17.6%
1990-95	57	45	78.9%	6	10.5%	6	10.5%
1996-2003	123	85	69.1%	13	10.6%	25	20.3%
1983-2003	282	205	72.7%	28	9.9%	49	17.4%

**TABLE 11B: APPELLATE DISPOSITION OF DEFENDANTS' APPEALS FROM TRIAL COURT DENIALS**

	Total	Rev'd and Dismissed		Rev'd and Remd'd		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
1983-89	14	9	64.3%	0	0.0%	1	7.1%	4	28.6%
1990-95	11	5	45.5%	0	0.0%	1	9.1%	5	45.5%
1996-2003	14	6	42.9%	4	28.6%	0	0.0%	4	28.6%
1983-2003	39	20	51.3%	4	10.3%	2	5.1%	13	33.3%

**TABLE 11C: OVERALL APPELLATE DISPOSITION - PLAINTIFFS' AND DEFENDANTS' APPEALS**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	116	84	72.4%	10	8.6%	22	19.0%
1990-95	68	50	73.5%	7	10.3%	11	16.2%
1996-2003	137	95	69.3%	13	9.5%	29	21.2%
1983-2003	321	229	71.3%	30	9.3%	62	19.3%

The vast majority of the reported appeals in our Study are by plaintiffs, from grants to motions to dismiss. This is mainly because of limitations on the ability of defendants to appeal rulings denying motions to dismiss.

But in both plaintiffs' and defendants' appeals, appellate courts generally favor defendants, affirming when the lower court has granted dismissal and reversing when it has not. Plaintiffs filed appeals in 284 cases, 58.2 percent of the 488 cases in which trial courts fully granted defense motions to dismiss.<sup>68</sup> The trial court grant was affirmed in 229 (71.3 percent) of these appeals, and partially affirmed in 30, or 9.3 percent. In 62 of these appeals, 20.1 percent, the trial court dismissal was reversed.

68. The figure of 488 cases comes from table 6, p. 21, *supra*. Plaintiffs also filed eight appeals of partial grants of motions to dismiss by trial courts. The trial court rulings were affirmed in five of these appeals (62.5 percent), and partially affirmed in three (37.5 percent). None of the rulings were reversed.

Defendants appealed a lower percentage of trial court denials of dismissal motions. Of the 90 trial court denials of motions to dismiss,<sup>69</sup> only 39 (43.3 percent) were appealed.<sup>70</sup> In these 39 appeals, 51.3 percent of the trial court denials were reversed and dismissed by appellate courts, and 10.3 percent of the denials were reversed and remanded on appeal. This means that 61.6 percent of defendants' appeals of trial court denials were successful. Trial court denials were partially affirmed in 5.1 percent of the appeals (2 of 39), while the denials were affirmed on appeal in one-third (33.3 percent, 13 cases).

Overall, appellate courts ultimately ruled for media defendants (by either affirming dismissals or reversing denials of dismissals) in 74.4 percent of appeals. They issued split decisions (partially affirming either denials or grants) in 5.5 percent of cases, and ultimately ruled in favor of plaintiffs (by reversing dismissals or affirming denials) in 20.1 percent of cases.

**FIGURE 4: APPELLATE DISPOSITION OF MOTIONS TO DISMISS**

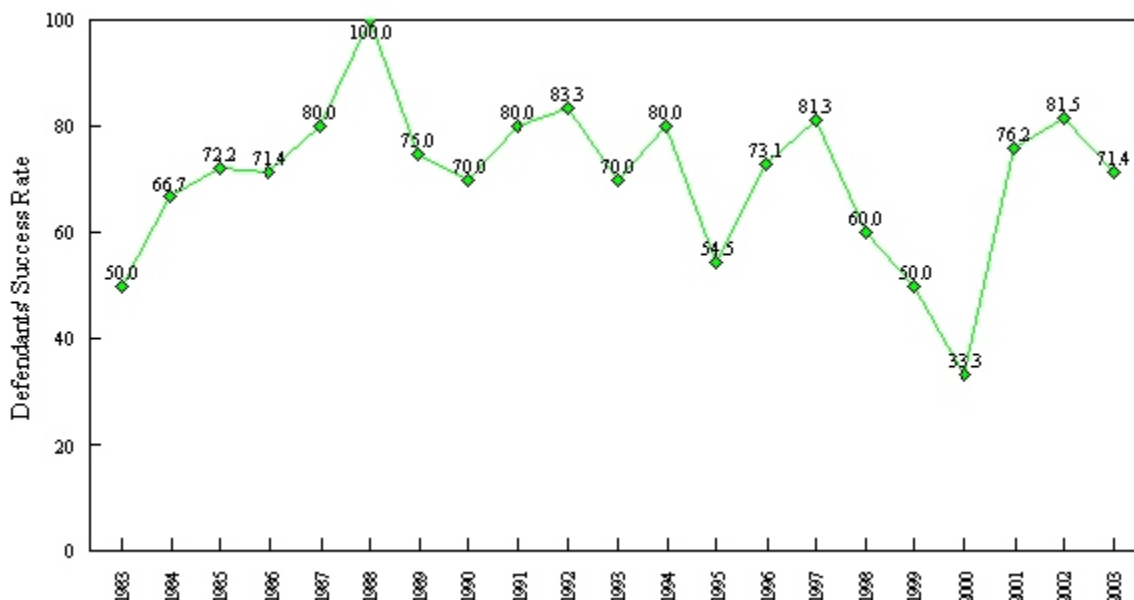


Figure 4 displays defendants' overall success rate in appellate decisions on a year-by-year basis. The graph shows that in most years the defense success rate has been generally within a range from the high 60s percent to the low 80s. But there have been significant aberrations, including a perfect record in appellate decisions from 1988, and a nadir success rate of only 33.3 percent in 2000.

Comparing this chart with Figure 3 shows that the rate of defendant success in appellate court has been more volatile than defendants' success rate in trial level courts. The standard deviation of the annual statistics for trial level decisions in Figure 3 is 6.5, while the standard deviation for appellate decisions in Figure 4 is 14.2.<sup>71</sup>

69. See Table 6, p. 21, *supra*.

70. Defendants also appealed trial courts' partial denials in seven cases. The lower court result was reversed and the case dismissed in six of these appeals (85.7 percent), and affirmed in one (14.3 percent). Plaintiffs appealed partial grants in eight cases, five of which were affirmed (62.5 percent) and three of which were partially affirmed (37.5 percent).

71. See n. 57, *supra*, for an explanation of standard deviation. The mean (average) of the figures in Figure 3 is 77.2; for Table 4, the mean is 69.8.

**TABLE 12A: PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT: PUBLIC VERSUS PRIVATE PLAINTIFF**

1983-1989							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
Public	16	10	62.5%	3	18.8%	3	18.8%
Private	11	7	63.6%	1	9.1%	3	27.3%
1990-1995							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
Public	11	9	81.8%	0	0.0%	2	18.2%
Private	8	5	62.5%	1	12.5%	2	25.0%
1996-2003							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
Public	21	14	66.7%	3	14.3%	4	19.0%
Private	7	3	42.9%	2	28.6%	2	28.6%
1983-2003							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
Public	48	33	68.8%	6	12.5%	9	18.8%
Private	26	15	57.7%	4	15.4%	7	26.9%

**TABLE 12B: DEFENDANTS' APPEALS FROM TRIAL COURT DENIALS: PUBLIC VERSUS PRIVATE PLAINTIFF <sup>72</sup>**

1983-1989									
	Total	Rev'd and Remd'd		Rev'd and Dismissed		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
Public	3	0	0.0%	3	100.0%	0	0.0%	0	0.0%
Private	2	0	0.0%	1	50.0%	0	0.0%	1	50.0%
1990 - 1995									
	Total	Rev'd and Remd'd		Rev'd and Dismissed		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
Public	2	0	0.0%	2	100.0%	0	0.0%	0	0.0%
Private	0	0	0.0%	0	0.0%	0	0.0%	0	0.0%
1996-2003									
	Total	Rev'd and Remd'd		Rev'd and Dismissed		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
Public	1	0	0.0%	0	0.0%	0	0.0%	1	100.0%
Private	0	0	0.0%	0	0.0%	0	0.0%	0	0.0%
1983- 2003									
	Total	Rev'd and Remd'd		Rev'd and Dismissed		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
Public	6	0	0.0%	5	83.3%	0	0.0%	1	16.7%
Private	2	0	0.0%	1	50.0%	0	0.0%	1	50.0%

72. See note 59, *supra*.



**TABLE 12C: OVERALL APPELLATE DISPOSITION: PUBLIC VERSUS PRIVATE PLAINTIFF**

1983-1989							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	19	13	68.4%	3	15.8%	3	15.8%
Private	13	8	61.5%	1	7.7%	4	30.8%
1990-1995							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	13	11	84.6%	0	0.0%	2	15.4%
Private	8	5	69.0%	1	12.5%	2	25.0%
1996-2003							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	22	14	63.6%	3	13.6%	5	22.7%
Private	7	3	56.8%	2	28.6%	2	28.6%
1983-2003							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Public	54	38	70.4%	6	11.1%	10	18.5%
Private	28	16	57.1%	4	14.3%	8	28.6%

Defendants fared better in appeals of cases involving public plaintiffs rather than private plaintiffs, although defendants still won the majority of appeals in both types of cases.<sup>73</sup>

Overall, appeals in public plaintiff cases ended in defendants' favor in 70.4 percent of cases, while 57.1 percent of private plaintiffs cases ended with appellate decisions in defendants' favor. Plaintiffs prevailed on appeal in 28.6 percent of private plaintiff cases, and in 18.5 percent of public plaintiff cases.

73. As in Tables 2 and 7, *see* pp. 15 and 22, *supra*, only cases in which a court determination of plaintiff status was made are included in Tables 12A, B and C.

**TABLE 13A: PLAINTIFFS' APPEALS FROM TRIAL COURT GRANT: STATE VERSUS FEDERAL COURT**

<b>State Court</b>							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
1983-89	69	51	73.9%	5	7.2%	13	19.1%
1990-95	47	37	78.7%	5	10.6%	5	10.6%
1996-2003	81	54	66.7%	8	9.9%	19	23.5%
1983-2003	197	142	72.1%	18	9.1%	37	18.8%

<b>Federal Court</b>							
	Total	Grant Affirmed		Grant Partially Affirmed		Grant Reversed	
		No.	%	No.	%	No.	%
1983-89	33	24	72.7%	4	12.1%	5	15.2%
1990-95	10	8	80.0%	1	10.0%	1	10.0%
1996-2003	42	31	0.0%	5	11.9%	6	14.3%
1983-2003	85	63	74.1%	10	11.8%	12	14.1%

**TABLE 13B: DEFENDANTS' APPEALS FROM TRIAL COURT DENIALS: STATE COURT**

<b>State Court</b>									
	Total	Rev'd and Dismissed		Rev'd and Remd'd		Reversed in Part		Denial Affirmed	
		No.	%	No.	%	No.	%	No.	%
1983-89	13	9	69.2%	0	0.0%	1	7.7%	3	23.1%
1990-95	11	5	45.5%	0	0.0%	1	9.1%	5	45.5%
1996-2003	11	5	45.5%	2	18.2%	0	0.0%	4	36.4%
1983-2003	35	19	54.3%	2	5.7%	2	5.7%	12	34.3%

**TABLE 13C: OVERALL APPELLATE DISPOSITION: STATE VERSUS FEDERAL COURT**

<b>State Court</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	82	60	73.2%	6	7.3%	16	19.5%
1990-95	58	42	72.4%	6	10.3%	10	17.2%
1996-2003	92	61	66.3%	8	8.7%	23	25.0%
1983-2003	232	163	70.3%	20	8.6%	49	21.1%

<b>Federal Court</b>							
	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
1983-89	34	24	70.6%	4	11.8%	6	17.6%
1990-95	10	8	80.0%	1	10.0%	1	10.0%
1996-2003	45	34	75.6%	5	11.1%	6	13.3%
1983-2003	89	66	74.2%	10	11.2%	13	14.6%

State and federal appeals courts both favored defendants in most of their appellate decisions. Defendants prevailed in 70.3 percent of all state court appeals, while they won nearly three-quarters (74.2 percent) of appeals in federal court. Plaintiffs won 21.1 percent of appeals in state court, and 14.6 percent in federal court. And there were partial verdicts in 8.6 percent of state court appeals, and 11.2 percent of appeals in federal court.

Among plaintiff's appeals of state trial court grants, 72.1 percent ended in defendants' favor (with the grant being affirmed), while 18.8 percent ended with favorable results for plaintiffs (grant reversed). Among these appeals in federal court, defendants won 74.1 percent and plaintiffs won 14.1 percent. There were split results – partial affirmances on appeal – in 9.1 percent of state court cases and 11.8 percent of federal court appeals.

Since denials of motions to dismiss are interlocutory, non-appealable rulings in the federal courts,<sup>74</sup> there were only a handful of federal appeals of a trial court rulings on motions to dismiss in the Study data.<sup>75</sup>

State courts are not all as reticent to consider such appeals, and there are 35 such appeals in our Study. Trial court denials of motions to dismiss were affirmed in more than a third of these cases (34.3 percent). But the lower court decisions were reversed in 60 percent – 54.3 percent were reversed and dismissed, 5.7 percent (two cases) were reversed and remanded. Appellate courts issued partial decisions in an additional 5.7 percent (two cases).

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74. See 28 U.S.C. § 1292 (providing for limited interlocutory appeals of trial court orders). 28 U.S.C. § 1292(b) allows for such appeals upon certification.

75. There are a total of four such federal appellate cases in the Study data. Three of these are certified appeals, filed with permission of the appellate court. See *Army Times v. Watts*, 10 Media L. Rep. 1774 (11th Cir. 1984), *Horsley v. Rivera*, 30 Med. L. Rep. 1847 (11th Cir. 2002), and *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002), while one appeal was accepted pursuant to the collateral order doctrine. See *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003). The trial court denial was affirmed in one case, reversed and the case dismissed in one case, and reversed and remanded in two cases.

**TABLE 14: OVERALL APPELLATE DISPOSITION: CIRCUIT BY CIRCUIT, 1983-2003**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Supreme Court	1	0	0.0%	0	0.0%	1	100.0%
First Circuit	4	4	100.0%	0	0.0%	0	0.0%
Second Circuit	9	8	88.9%	1	11.1%	0	0.0%
Third Circuit	7	5	71.4%	0	0.0%	2	28.6%
Fourth Circuit	9	9	100.0%	0	0.0%	0	0.0%
Fifth Circuit	6	6	100.0%	0	0.0%	0	0.0%
Sixth Circuit	9	7	77.8%	1	11.1%	1	11.1%
Seventh Circuit	10	7	70.0%	1	10.0%	2	20.0%
Eighth Circuit	2	2	100.0%	0	0.0%	0	0.0%
Ninth Circuit	18	9	50.0%	4	22.2%	5	27.8%
Tenth Circuit	5	4	80.0%	1	20.0%	0	0.0%
Eleventh Circuit	5	4	80.0%	0	0.0%	1	20.0%
DC Circuit	4	1	25.0%	2	50.0%	1	25.0%
	89	66	74.2%	10	11.2%	13	14.6%

There are 168 federal district court rulings included in the Study, but only 87 of these – 51.7 percent – were appealed.

Of the twelve federal circuit courts of appeal, the western Ninth Circuit handled the most appeals in our Study, with 18. The Seventh Circuit followed with ten cases, followed by the Second and Sixth circuits with nine. The Eighth Circuit had the fewest appeals amongst the circuits, with only two.<sup>76</sup>

Four of the circuit courts ruled in defendants' favor in all of the motion to dismiss appeals that they considered: these were the First Circuit (four cases), Fourth Circuit (nine cases), Fifth Circuit (six cases), and Eighth Circuit (two cases). The Second Circuit ruled for the defense in 88.9 percent of the appeals it considered.

The most favorable circuit for plaintiffs was the Third Circuit, which ruled in plaintiffs' favor in 28.6 percent of cases (two of seven cases). It was followed closely by the Ninth Circuit (five of 18 cases, 27.8 percent) and the D.C. Circuit (one of four cases, 25.0 percent). But even in these circuits, the number of cases that plaintiffs won on appeal is small.

76. As noted *supra*, the U.S. Supreme Court has considered one case centering on a motion to dismiss (*Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984)), and reversed the trial court's grant of the motion, a ruling for the plaintiff.

**TABLE 15: OVERALL APPELLATE DISPOSITION: STATE BY STATE, 1983-2003<sup>77</sup>**

	Total	Granted in Full		Granted in Part		P	Denied in Full	
		No.	%	No.	%		No.	%
Alabama	1	1	100.0%	0	0.0%	0	0	0.0%
Alaska	0	0	0.0%	0	0.0%	0	0	0.0%
Arizona	2	2	100.0%	0	0.0%	0	0	0.0%
Arkansas	0	0	0.0%	0	0.0%	0	0	0.0%
California	42	35	83.3%	1	2.4%	6	6	14.3%
Colorado	2	1	50.0%	1	50.0%	0	0	0.0%
Connecticut	0	0	0.0%	0	0.0%	0	0	0.0%
Delaware	2	1	50.0%	1	50.0%	0	0	0.0%
D.C.	3	2	66.7%	0	0.0%	1	1	33.3%
Florida	20	9	45.0%	2	10.0%	9	9	45.0%
Georgia	5	2	40.0%	0	0.0%	3	3	60.0%
Guam	0	0	0.0%	0	0.0%	0	0	0.0%
Hawaii	0	0	0.0%	0	0.0%	0	0	0.0%
Idaho	0	0	0.0%	0	0.0%	0	0	0.0%
Illinois	34	22	64.7%	7	20.6%	5	5	14.7%
Indiana	0	0	0.0%	0	0.0%	0	0	0.0%
Iowa	1	0	0.0%	0	0.0%	1	1	100.0%
Kansas	0	0	0.0%	0	0.0%	0	0	0.0%
Kentucky	1	1	100.0%	0	0.0%	0	0	0.0%
Louisiana	4	4	100.0%	0	0.0%	0	0	0.0%
Maine	0	0	0.0%	0	0.0%	0	0	0.0%
Maryland	1	1	100.0%	0	0.0%	0	0	0.0%
Massachusetts	1	0	0.0%	1	100.0%	0	0	0.0%
Michigan	2	2	100.0%	0	0.0%	0	0	0.0%
Minnesota	0	0	0.0%	0	0.0%	0	0	0.0%
Mississippi	1	0	0.0%	0	0.0%	1	1	100.0%
Missouri	10	8	80.0%	1	10.0%	1	1	10.0%
Montana	0	0	0.0%	0	0.0%	0	0	0.0%
Nebraska	0	0	0.0%	0	0.0%	0	0	0.0%
Nevada	1	1	100.0%	0	0.0%	0	0	0.0%
New Hampshire	1	0	0.0%	0	0.0%	1	1	100.0%
New Jersey	1	0	0.0%	0	0.0%	1	1	100.0%
New Mexico	0	0	0.0%	0	0.0%	0	0	0.0%
New York	50	36	72.0%	2	4.0%	1	12	24.0%
North Carolina	3	3	100.0%	0	0.0%	0	0	0.0%
North Dakota	0	0	0.0%	0	0.0%	0	0	0.0%
Ohio	8	4	50.0%	2	25.0%	2	2	25.0%
Oklahoma	8	7	87.5%	0	0.0%	1	1	12.5%

<sup>77</sup>. See note 59, *supra*.

	Total	Granted in Full		Granted in Part		P	Denied in Full	
		No.	%	No.	%		No.	%
Oregon	1	0	0.0%	0	0.0%	1	1	100.0%
Pennsylvania	8	5	62.5%	1	12.5%	2	2	25.0%
Puerto Rico	1	0	0.0%	0	0.0%	1	1	100.0%
Rhode Island	1	1	100.0%	0	0.0%	0	0	0.0%
South Carolina	0	0	0.0%	0	0.0%	0	0	0.0%
South Dakota	1	0	0.0%	0	0.0%	1	1	100.0%
Tennessee	2	1	50.0%	0	0.0%	5	1	50.0%
Texas	0	0	0.0%	0	0.0%	0	0	0.0%
Utah	2	2	100.0%	0	0.0%	0	0	0.0%
Vermont	0	0	0.0%	0	0.0%	0	0	0.0%
Virgin Islands	0	0	0.0%	0	0.0%	0	0	0.0%
Virginia	0	0	0.0%	0	0.0%	0	0	0.0%
Washington	3	3	100.0%	0	0.0%	0	0	0.0%
West Virginia	1	1	100.0%	0	0.0%	0	0	0.0%
Wisconsin	1	0	0.0%	1	100.0%	0	0	0.0%
Wyoming	0	0	0.0%	0	0.0%	0	0	0.0%
	225	156	69.3%	20	8.9%	4	49	21.8%

There are 21 state jurisdictions where we found no appeals of motion to dismiss rulings,<sup>78</sup> and 16 more with only one.<sup>79</sup>

The most appellate rulings were in New York (50 cases), California (42 cases), Illinois (34 cases) and Florida (20 cases). California had the highest defense victory rate among these leading states, with favorable results for defendants in 83.3 percent of cases. New York followed with a defense victory rate of 72.0 percent, followed by 64.7 percent in Illinois. In Florida, defendants won a relatively paltry 45.0 percent of appeals.

There were five states among the 18 with two or more appellate decisions on motions to dismiss where defendants won favorable rulings in all cases: Arizona (two cases), Louisiana (four cases), North Carolina (three cases), Utah (two cases), and Washington (three cases). In Oklahoma, defendants won 87.5 percent (seven of eight appeals).

78. These are Alaska, American Samoa, Arkansas, Connecticut, Guam, Hawaii, Idaho, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, Texas, Vermont, the Virgin Islands, Virginia and Wyoming.

79. Alabama, Delaware, Iowa, Kentucky, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, Oregon, Puerto Rico, Rhode Island, South Dakota, West Virginia, and Wisconsin.

**D. ISSUES AND CLAIMS DECIDED****TABLE 16: FINAL DISPOSITIONS OF DEFENDANTS' MOTIONS TO DISMISS: ISSUES DECIDED**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
Actual Malice	42	24	57.1%	0	0.0%	18	42.9%
CDA Immunity	4	3	75.0%	0	0.0%	1	25.0%
Defamatory Meaning	164	116	70.7%	5	3.0%	43	26.2%
Fair Comment	4	3	75.0%	0	0.0%	1	25.0%
Fair Report	65	49	75.4%	1	1.5%	15	23.1%
Falsity	9	5	55.6%	0	0.0%	4	44.4%
First Amendment	16	11	68.8%	3	18.8%	2	12.5%
Gross Irresponsibility	10	8	80.0%	0	0.0%	2	20.0%
Group Libel	8	8	100.0%	0	0.0%	0	0.0%
Hyperbole	41	32	78.0%	0	0.0%	9	22.0%
Incremental Harm	2	1	50.0%	0	0.0%	1	50.0%
Libel Per Quod	7	7	100.0%	0	0.0%	0	0.0%
Libel Per Se	29	22	75.9%	0	0.0%	7	24.1%
Libel Proof Plaintiff	6	4	66.7%	0	0.0%	2	33.3%
Negligence	9	6	66.7%	0	0.0%	3	33.3%
Neutral Reportage	6	2	33.3%	0	0.0%	4	66.7%
Not Provably False	21	16	76.2%	2	9.5%	3	14.3%
Of and Concerning	65	48	73.8%	1	1.5%	16	24.6%
Opinion	127	94	74.0%	3	2.4%	30	23.6%
Parody	7	7	100.0%	0	0.0%	0	0.0%
Personal Jurisdiction	51	33	64.7%	1	2.0%	17	33.3%
Privilege	25	13	52.0%	0	0.0%	12	48.0%
Public plaintiff	17	7	41.2%	0	0.0%	10	58.8%
Republication	6	4	66.7%	0	0.0%	2	33.3%
Single Publication Rule	7	3	42.9%	0	0.0%	4	57.1%
SLAPP Motion	11	9	81.8%	0	0.0%	2	18.2%
Statute of Limitations	50	42	84.0%	1	2.0%	7	14.0%
Subject Matter Jurisdiction	27	21	77.8%	1	3.7%	5	18.5%
Substantial Truth	40	31	77.5%	1	2.5%	8	20.0%
Venue	2	2	100.0%	0	0.0%	0	0.0%

Courts often look at the elements of the claims made by a plaintiff in ruling on a motion to dismiss.

While issues of jurisdiction and statutes of limitation represent a significant number of the arguments made in the motions represented in this Study, in fact defendants in a far larger number of cases made arguments directed at the elements of the plaintiffs' claims.

The issue most frequently ruled on in court decisions making a final determination on motions to dismiss was defamatory meaning. This issue was discussed in 164 (24.1 percent) of the 661 cases in the

Study, and motions to dismiss were granted in 70.7 percent of these cases.

Whether a statement at issue in a case was opinion was the second-most litigated issue, ruled on in 127 cases (18.6 percent of all cases in the Study). Defendants won dismissal motions in 94 of the cases in which opinion was an issue, a dismissal rate of 74.0 percent.

While litigated less often, all of the cases in which the court made rulings on group libel (eight cases), libel per quod (seven cases), parody (seven cases), and venue (two cases) were dismissed.

Less successful were motions arguing the single publication rule (only 42.9 percent of these seven cases were dismissed); incremental harm (one of two cases, 50.0 percent); privilege (52.0 percent of 25 cases) and falsity (55.6 percent of nine cases).

Cases in which actual malice was an issue litigated at the motion to dismiss stage were also among those less likely to be resolved on a motion to dismiss, with the motion granted in only 57.1 percent of the 42 cases in which the issue was decided.

There were only 16 cases in which courts directly addressed First Amendment principles. Of these cases, courts granted motions to dismiss in 11 cases (68.8 percent), and denied them in two cases (12.5 percent). Courts partially granted the motions in 18.8 percent (three cases).



**TABLE 17: FINAL DISPOSITIONS OF DEFENDANTS' MOTIONS TO DISMISS: NON-LIBEL CLAIMS**

	Total	Granted in Full		Granted in Part		Denied in Full	
		No.	%	No.	%	No.	%
<b>Privacy Claims</b>							
False light	97	73	75.3%	0	0.0%	24	24.7%
Intrusion	51	44	86.3%	0	0.0%	7	13.7%
Misappropriation	69	55	79.7%	3	4.3%	11	15.9%
Private facts	35	32	91.4%	1	2.9%	2	5.7%
Contractual Claims	19	14	73.7%	0	0.0%	5	26.3%
Civil Rights Claims	32	30	93.8%	0	0.0%	2	6.3%
Conspiracy	13	12	92.3%	0	0.0%	1	7.7%
Copyright Claims	3	0	0.0%	1	33.3%	2	66.7%
Eavesdropping	6	6	100.0%	0	0.0%	0	0.0%
Failure/Refusal to Publish	4	4	100.0%	0	0.0%	0	0.0%
Fraud	13	7	53.8%	1	7.7%	5	38.5%
Injurious falsehood/TL	8	7	87.5%	0	0.0%	1	12.5%
Int. Infl. Emotional Distress	90	79	87.8%	1	1.1%	10	11.1%
Lanham Act / Trademark	12	4	33.3%	1	8.3%	7	58.3%
Negligent infliction	11	11	100.0%	0	0.0%	0	0.0%
Negligent Publication	11	11	100.0%	0	0.0%	0	0.0%
Prima Facie Tort	10	10	100.0%	0	0.0%	0	0.0%
RICO	4	4	100.0%	0	0.0%	0	0.0%
Tortious interference	41	30	73.2%	1	2.4%	10	24.4%
Trespass	6	4	66.7%	0	0.0%	2	33.3%
Other Claims	63	51	81.0%	4	6.3%	8	12.7%
	598	488	81.6%	13	2.2%	97	16.2%

In many cases, plaintiffs alleged claims other than defamation, either in combination with a libel/slander claim or even without such a claim. Of the 661 cases in the Study data, 351 (53.1 percent) made only a defamation claim, while the remaining 310 cases made at least one additional claim.

The most common non-defamation claim made in the cases in our Study was false light invasion of privacy, made in 97 (13.3 percent) of the 729 cases. The final result on a motion to dismiss was favorable to the defendant in 75.3 percent of the cases in which the court ruled on this issue.

Intentional infliction of emotional distress was the second most popular claim, made in 90 cases. Of these cases, defendants achieved favorable results in 87.8 percent.

Defendants' best success rates were on claims made less frequently: motions were fully granted in every case in which courts ruled on negligent infliction of emotional distress (11 cases), negligent publication (11 cases), prima facie tort (10 cases), eavesdropping (six cases), failure/refusal to publish (four cases), and RICO claims (four cases). Defendants were only slightly less successful in cases involving civil rights claims (93.8 percent of 32 cases), conspiracy (92.3 percent of 13 cases) and private facts (91.4 percent of 35 cases).

Defendants were least successful in cases involving intellectual property claims. Motions were denied in two of the three cases including copyright claims, while it was granted only in part in the third. Defendants successfully obtained motions to dismiss in only four (33.3 percent) of the 12 cases that included Lanham Act or trademark claims.

**APPENDIX A. MOTIONS TO DISMISS REPORTED 1996 - 2003**

Alphabetically within Circuit or State

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>FIRST CIRCUIT</b>				
Christian v. Barricade Books, Inc., 31 Media L. Rep. 2303 (D.N.H. 2003).		Motion granted	Intrusion	Personal Jurisdiction
Faigin v. Kelly, 919 F.Supp. 526 (D.N.H. 1996).		Motion denied		Defamatory Meaning, Personal Jurisdiction
Gray v. St. Martin's Press, Inc., 929 F.Supp. 40 (D.N.H. 1996).		Motion denied		Personal Jurisdiction
Noonan v. Winston Co., 26 Media L. Rep. 1363 (1st Cir. 1998).		Grant affirmed	Intentional Infliction of Emotional Distress; Intrusion; Appropriation; Right of Publicity; Unfair and Deceptive Acts; Loss of Consortium	Personal Jurisdiction
Protective Factors, Inc. v. ABC, 30 Media L. Rep. 2207 (D.Mass. May 28, 2002).		Motion denied		Defamatory Meaning; Of and Concerning
<b>SECOND CIRCUIT</b>				
Celle v. Filipino Reporter Enterprises, Inc., 1998 WL 85822 (S.D.N.Y. 1998), aff'd, 209 F.3d 163 (2d Cir. 2000)..	Public	Denial affirmed		Actual Malice; Opinion; Privilege; Substantial Truth; Defamatory Meaning; Neutral Reportage; Not Provably False
Cerasani v. Sony Corp., 991 F.Supp. 343 (S.D.N.Y. 1998).		Motion granted	Appropriation	Defamatory Meaning; Of and Concerning; Libel-proof Reputation
Church of Scientology v. Time Warner Inc., 1999 WL 126450 (S.D.N.Y. 1999), aff'd, Church of Scientology v. Behar, 238 F.3d 168 (2d Cir. 2001).	Public	Grant affirmed		Actual Malice; Of and Concerning
Fowler v. American Lawyer Media Inc., 2001 WL 1646537 (S.D.N.Y. Dec. 20, 2001)., aff'd, 46 Fed.Appx. 54 (2d Cir. Sept. 20, 2002)..		Grant affirmed		Statute of Limitations; Res Judicata; Subject Matter Jurisdiction

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Friends of Falun Gong v. Pac. Cultural Enter.; 288 F. Supp. 2d 273 (E.D.N.Y. 2003).		Motion granted	Civil Rights; Conspiracy	Defamatory Meaning
Glendora v. Marshall, 947 F.Supp.707 (S.D.N.Y. 1996).		Grant affirmed	Civil Rights	Defamatory Meaning
Gold v. Harrison, 25 Media L. Rep. 1735 (2d Cir. 1996).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion	Hyperbole
Hart v. Internet Wire Inc., 163 Supp.2d 316 (S.D.N.Y. 2001)., aff'd, 31 Media L. Rep. 1027 (2d Cir. 2002)..		Grant affirmed	Securities Fraud (Fake Corporate News Release).	
Horne v. Matthews, 1997 WL 598452 (S.D.N.Y. 1997).		Motion granted		Defamatory Meaning
Idema v. Wager, 120 F. Supp.2d 361 (S.D.N.Y. Nov. 3, 2000)., aff'd, 29 Fed. Appx. 676 (2d Cir. Feb. 15, 2002)..		Grant affirmed	Intentional Infliction of Emotional Distress; Conspiracy; Civil Rights Claims	Defamatory Meaning; Privilege; Fair Report
Karedes v. Village of Endicott, 31 Media L. Rep. 1970 (N.D.N.Y. 2003).	Public	Motion granted		Defamatory Meaning; Fair Report; Falsity
King v. American Broadcasting Cos., 27 Media L. Rep. 1253 (S.D.N.Y. 1998).		Motion granted		Retraction
La Luna Enterprises, Inc. v. CBS Corp., 74 F. Supp.2d 384, 28 Media L. Rep. 1057 (S.D.N.Y. 1999).	Private	Motion partially granted	Fraud Trespass	Of and Concerning
Lehman v. Discovery Channel Communications Inc., 31 Media L. Rep. 1088 (E.D.N.Y. 2002).		Motion granted	Civil Rights	Subject Matter Jurisdiction
Levin v. McPhee, 917 F. Supp. 230 (S.D.N.Y. 1996)., aff'd, 119 F.3d 189, 25 Media L. Rep. 1946 (2d Cir. 1997).		Grant affirmed	Intentional Infliction of Emotional Distress	Opinion
Misek-Falkoff v. McDonald, 177 F. Supp. 2d 224 (S.D.N.Y. 2001).		Motion granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Appropriation; Civil Rights	Fair Comment; Fair Report; Personal Jurisdiction
Pompeyo Roa Realuyo v. Carlos Villa Abrille, et al., 32 Media L. Rep. 1427 (S.D.N.Y. 2003).		Motion granted		Personal Jurisdiction
Shoemaker v. U.S., 1997 WL 96543 (S.D.N.Y. 1997).		Motion granted	Intentional Infliction of Emotional Distress	Failure to State Facts Particularity

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Van Buskirk v. N.Y. Times, Co., 28 Media L. Rep. 2525 (S.D.N.Y. Aug. 24, 2000), aff'd, 31 Media L. Rep. 1609, 325 F.3d 87 (2d Cir. Apr. 2, 2003)..		Grant affirmed	Intentional Infliction of Emotional Distress	Defamatory Meaning; Republication; Statute of Limitations;
Weinstein v. Friedman, 1996 WL 137313 (S.D.N.Y. 1996), aff'd, 112 F.3d 507 (2d Cir. 1996)..		Grant affirmed	Intrusion	Defamatory Meaning; Opinion
<b>THIRD CIRCUIT</b>				
Botts v. N.Y. Times Co., 2003 WL 23162315 (D. N.J. Aug. 29, 2003).		Motion granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Appropriation	Of and Concerning; Statute of Limitations; Substantial Truth
Conti v. Knight Ridder Newspapers, Inc., 1996 WL 94801 (E.D. Pa. 1996).		Motion granted		Subject Matter Jurisdiction
English Sports Betting, Inc. v. Tostigan, 2002 WL 461592 (E.D. Pa. Mar. 15, 2002).		Motion granted		Personal Jurisdiction
Franklin Prescriptions Inc. v. New York Times Co., 29 Media L. Rep.2497 (E.D. PA. Aug. 16, 2001).		Motion partially granted	False Light	Actual Malice; Defamatory Meaning
Fraternal Order of Police v. Crucifucks, 1996 WL 426709 (E.D. PA. 1 996).		Motion granted	False Light; Appropriation; Copyright Infringement	Defamatory Meaning
Istrefi v. Pocono Record Newspaper, Civil No. 02-987 (M.D. Pa. 2002), rev'd, 31 Media L. Rep. 1725 (3d Cir. 2002).		Grant reversed		Subject Matter Jurisdiction
Montefusco v. ESPN Inc., Civil No. 01-01957 (D. N.J. 2001), aff'd, 30 Media L. Rep. 2311 (3d Cir. 2002).	Public	Grant affirmed	False Light	Defamatory Meaning; Fair Report; Falsity
Osby v. A&E Television Networks, 1997 WL 338855 (E.D. PA. 1997).		Motion denied		Summary Judgement
Paul v. Hearst Corporation, 261 F. Supp. 2d 303 (M.D. Pa. 2002).	Private	Motion denied		
Reilly v. North Hills News Record, 1998 WL 1113472, 27 Media L. Rep. 1569 (W.D. Pa. 1998).		Motion granted		Fair Report; Substantial Truth

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Smith v. Garber, 2003 WL 21960720 (E.D. PA. 2003).		Motion granted		Defamatory Meaning; Negligence
Sprague v. ABA, 166 F. Supp.2d 206 (E.D. Pa. Nov. 14, 2001).	Private	Motion denied		Defamatory Meaning
Tucker v. MTS, Inc., 1998 WL 67527 (E.D. Pa. 1998)., aff'd, 229 F.3d 1139 (3rd Cir. 2000).		Partial grant affirmed	Intentional Infliction of Emotional Distress	Statute of Limitations
Van Englen v. Broadcast News Networks, Inc., 25 Media L. Rep. 1693 (D. N.J. 1997).	Public	Motion granted		Actual Malice; Defamatory Meaning; Opinion
<b>FOURTH CIRCUIT</b>				
Abadian v. Lee, 28 Media L. Rep. 2425, 117 F. Supp.2d 481 (D. Md. 2000).		Motion granted	False Light; Injurious Falsehood; Negligence; Interference with Employment	Actual Malice; Defamatory Meaning
Agora, Inc. v. Axxess, Inc., 90 F. Supp.2d 697 (D. MD. Mar. 28, 2000)., aff'd, 1 Fed. Appx. 99 (4th Cir. Apr. 9, 2001).		Grant affirmed		Defamatory Meaning; Fair Comment; Hyperbole; Not Provably False; Opinion; Personal Jurisdiction
Austin v. Spartanburg Herald-Journal, 25 Media L. Rep. 1192 (D. S.C. 1996).		Motion granted	Failure to Publish (Refusal of Advertising).	Fair Report; Lack of Prosecution
Biospherics, Inc. v. Forbes, Inc., 989 F. Supp. 748 (D. MD. 1997)., aff'd, 151 F.3d 180, 26 Media L. Rep. 2114 (4th Cir. 1998)..		Grant affirmed		Defamatory Meaning; Opinion
Boyd v. University of Maryland Medical Systems, 26 Media L. Rep. 1401 (D. Md.. 1998).		Motion granted		Fair Report
Browning v. Washington Post Co., 92 F.3d 1177 (4th Cir. 1996).		Grant affirmed		Defamatory Meaning
Circle Lanes v. Time Inc., 91 F.3d 129 (4th Cir. 1996).		Grant affirmed		Defamatory Meaning; Of and Concerning
Doe 2 v. AP, Civil No. 02-1444-2-18 (D.S.C. 2002)., aff'd, 331 F.3d 417 (4th Cir. 2003).		Grant affirmed	Intentional Infliction of Emotional Distress; Intrusion; Fraudulent Misrepresentation; Intrusion	

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
EEE ZZZ Lay Drain Co. v. Lakeland Ledger Publishing Corp., 28 Media L. Rep. 1954 (W.D. N.C. 2000).		Motion granted	Deceptive Trade Practices; Gross Negligence	Defamatory Meaning; Negligence
Garrett v. Viacom, Inc, 31 Media L. Rep. 2433 (N.D. W.Va. 2003).		Motion granted	Intentional Infliction of Emotional Distress	Outrageousness
Solomon v. National Enquirer Inc., 24 Media L. Rep. 2269, 996 WL 635384 (D. MD. 1996).		Motion granted	False Light; Intrusion; Appropriation	Defamatory Meaning
Vander Linden v. Wilbanks, 128 F. Supp.2d 900 (D.S.C. Dec. 6, 200).		Motion granted	Civil Rights	Subject Matter Jurisdiction
Young v. New Haven Advocate, 184 F. Supp. 2d 498 (W.D. Va. 2001)., rev'd, 315 F.3d 256 (4th Cir. 2002).		Denial reversed and case dismissed		Personal Jurisdiction
Zeran v. American Online Inc., 25 Media L. Rep. 1609 (E.D. Va. 1997)., aff'd, 25 Media L. Rep. 2526 (4th Cir. 1997).		Grant affirmed	Negligence	CDA Immunity
<b>FIFTH CIRCUIT</b>				
Bounty-Full Entertainment, Inc. v. Forever Blue Entertainment Group, 923 F. SUPP. 950 (S.D. Tex . 1996).		Motion denied		Privilege; Personal Jurisdiction; Venue
Brackens v. City of Ennis, Tex., 1998 WL 101938 (N.D. Tex. 1998).		Motion granted		
Revell v. Lidov, 2001 WL 285253 (N.D. Tex. Mar. 20, 2001)., aff'd, 31 Media L. Rep. 1521, 17 F.3d 467 (5th Cir. Dec. 31, 2002).		Motion granted Grant affirmed	Intentional Infliction of Emotional Distress; Conspiracy	Personal Jurisdiction
Texas Beef Group c. Winfrey, 26 Media L. Rep. 1498 (N.D. Tex. 1998).	Public	Motion partially granted	Statutory Disparagement of Food Products; Business Disparagement; Negligence; Negligence per Se; Common Law Defamation	
<b>SIXTH CIRCUIT</b>				
Miles v. Chicago Police Dept., 2000 WL 1279191 (E.D. Mich. 2000)..		Motion granted		Personal Jurisdiction Venue

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Mineer v. Williams, 28 Media L. Rep. 1577 (E.D. Ky. 2000).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion	Outrageous or Extreme
Ruffin-Steinback v. dePasse, 82 F. Supp.2d 723, 53 U.S.P.Q.2d 1823, 28 Media L. Rep. 1417 (E.D. Mich.2000)., aff'd, 267 F.3d 457 (6th Cir. Sept. 28, 2001).		Grant affirmed	Intentional Infliction of Emotional Distress; False Light; Private Facts; Appropriation; Right of Publicity; Unjust Enrichment	Of and Concerning; Claim Does Not Survive Plaintiff's Death
The Suarez Corp. v. CBS, Inc., 25 Media L. Rep. 1159 (6th Cir. Nov. 1, 1996).	Private	Grant affirmed		
<b>SEVENTH CIRCUIT</b>				
Briggs & Stratton Corp. v. National Catholic Reporter Publ. Co., 26 Media L. Rep. 1503, 978 F. Supp. 1195 (E.D. Wis. 1997).		Motion partially granted	Intrusion	Defamatory Meaning; Hyperbole; Not Provably False; Of and Concerning; Opinion; Subject Matter Jurisdiction
Collier v. Murphy, 31 Media L. Rep. 2159 (N.D. Ill. 2003).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion; Publicity; Accounting	
Dilworth v. Dudley, 24 Media L. Rep. 1542 (7th Cir. 1996).	Public	Grant affirmed		Defamatory Meaning
Global Relief Found. v. New York Times Co., 30 Media L. Rep. 2485 (N.D. Ill. 2002).	Public	Motion denied	Commercial Disparagement	Fair Report; Personal Jurisdiction
Hanash v. WFLD Fox Television, 1998 WL 781113 (N.D. Ill. 1998).		Motion granted	Defamation per Quod	Elements
Howell by Goerdts v. Tribune Entertainment Co., Civil No. 96-2666 (W.D. Wis. 1996)., aff'd, 106 F.3d 215, 25 Media L. Rep. 1370 (7th Cir. 1997).		Grant affirmed	Intrusion	Privilege; Republication
Kapetanovic v. Cannell, 1998 WL 474141 (N.D. Ill.1998).		Motion partially granted	Intentional Infliction of Emotional Distress; False Light	Actual Malice; Public Figure
Lou Bachrodt Chevrolet v. Reicheld Corp., 2002 WL 1379155 (N.D. Ill. 2002).		Motion granted		Venue
Milsap v. Stanford, (E.D. Wisc.), aff'd, 139 F.3d 902 (Table), 1998 WL 109720, 26 Media L. Rep. 1602 (7th Cir. 1998).		Grant affirmed		Retraction

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Muzikowski v. Paramount Pictures Corp. (I), 2001 WL 1519419 (N.D. Ill. Nov. 29, 2001), rev'd., 322 F.3d 918 (7th Cir. Mar. 6, 2003).		Grant reversed	False Light	Of and Concerning; Innocent Construction; Failure to Plead Special Damages
Muzikowski v. Paramount Pictures Corp. (II), 31 Media L. Rep. 2601 (N.D. Ill. Dec. 3, 2003).		Motion partially granted	Intentional Infliction of Emotional Distress; False Light; Appropriation; Commercial Disparagement; Unjust Enrichment	Statute of Limitations; Defamatory per se
Smith v. City of Chicago, 992 F. Supp. 1027 (N.D. Ill. 1998).		Motion denied		Mootness
Villalovos v. Sundance Associations, 31 Media L. Rep. 1274 (N.D. Ill. 2003).	Public	Motion partially granted	False Light; Appropriation; Private Facts	Outrageousness
Wilkow v. Forbes, Inc., 2000 U.S. Dist. LEXIS 6587 (N.D. Ill. May 15, 2000), aff'd, 241 F.3d 552 (7th Cir. Feb. 20, 2001).		Grant affirmed		Fair Report; Opinion
<b>EIGHTH CIRCUIT</b>				
Barge v. Knight-Ridder, 25 Media L. Rep. 1658, 1996 WL 905621 (D. Minn. 1996), aff'd, 149 F.3d 1186 (8th Cir. 1998).		Grant affirmed	False Light; Intrusion; Malicious Interference with Prospective Economic Advantage; Rico	Recognition of Tort; Personal Jurisdiction; Service
Knievel v. ESPN, Inc., 223 F. Supp. 2d 1173 (D. Mont. 2002).	Public	Motion granted		Defamatory Meaning; Hyperbole
PatentWizard, Inc. v. Kinko's, Inc., 163 F. Supp.2d 1069 (D. S.D. Sept. 27 2001).		Motion granted		CDA Immunity
Paulucci v. William Morris Agency, Inc., 952 F. Supp. 1335 (D. Minn. 1997).		Motion partially granted	Action for Return of Personal Records	Personal Jurisdiction
<b>NINTH CIRCUIT</b>				
Alpha Therapeutic Corp. v. Nippon Hoso Kyokai, Civil No. 97-2140 (C.D. Cal.), aff'd in part, 199 F.3d 1078, 28 Media L. Rep. 1353 (9th Cir. 1999).		Grant partially affirmed	Intrusion; Conversion; Trade Libel	Forum non Conveniens



CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Batzel v. Smith, 2001 WL 1658210 (C.D. Cal. Mar 21, 2001)., reconsid. denied, 2001 WL 1893843 (C.D. CAL. Jun. 05, 2001)., aff'd, 333 F.3d 1018 (9th Cir. Jun. 24, 2003)., reh'g and reh'g en banc denied, 351 F.3d 904 (9th Cir. Dec 3, 2003)., cert. denied, 124 S.Ct. 2812, 159 L.Ed.2d 246, 72 USLW 3568, 72 USLW 3740 (U.S. Jun 7, 2004)..	Private	Denial reversed and case remanded		Personal Jurisdiction; Forum non Conveniens; Anti-slapp
Batzel v. Smith, 2001 U.S. Dist. LEXIS 11921(C.D.Cal. Jul. 25, 2001).	Private	Motion denied		Anti-slapp
Cochran v. NYP Holdings, Inc, 58 F. Supp.2d 1113, 53 Fed. R. Evid. Serv. 71, 27 Media L. Rep. 1108 (C.D. CAL. 1998).		Motion partially granted		Opinion
Condit v. National Enquirer, 30 Media L. Rep. 2537 (E.D. Cal. 2002).	Private	Motion denied		Defamatory Meaning; Privilege; Public Figure
Condit v. Star Editorial, 31 Media L. Rep. 1673 (E.D. Cal. 2003).	Private	Motion granted		Lanham Act
Copperfield v. Cogedipresse, 26 Media L. Rep. 1185(C.D. CAL 1997).		Motion granted		Personal Jurisdiction
Cunningham v. NBC, Inc., 24 Media L. Rep. 1921 (D. Or. 1996).		Motion granted	False Light; Intrusion	Subject Matter Jurisdiction
Daly v. Viacom, Inc., 238 F. Supp. 2d 1118 (N.D. Cal. 2002).	Public	Motion granted	Intentional Infliction of Emotional Distress; False Light; Private Facts; Appropriation	Outrageousness; Expectation of Privacy
Dodds v. American Broadcasting Co., 26 Media L. Rep. 1705 (9th Cir. 1998).	Public	Grant affirmed	Intentional Infliction of Emotional Distress	Defamatory Meaning; Not Provably False
Fasi v. Gannett, Co., 25 Media L. Rep. 2054 (9th Cir. 1997).		Grant affirmed		Hyperbole; Opinion
Films of Destruction v. Allegro Film Productions, Inc., 12 F. Supp.2d 1068 (C.D. CAL. 1998).		Motion partially granted	Trademark Infringement; Trademark Dilution; Unfair Competition; Intentional and Negligent Interference with Prospective Advantage	Opinion

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Flowers v. Carville (I), 112 F. Supp. 2d 1202 (D. Nev. 2000)., rev'd in part, 310 F.3d 1118 (9th Cir. 2002).	Public	Grant partially reversed	False Light; Intrusion; Private Facts; Conspiracy	Actual Malice; Hyperbole; Opinion; Statute of Limitations
Flowers v. Carville (II), 266 F. Supp. 2d 1245 (D. Nev. 2003). (on remand).	Public	Motion partially granted	False Light	
Gordy v. Daily News, L.P., 95 F. 3d 829 (9th Cir. 1996).		Grant reversed		Personal Jurisdiction
Harris v. City of Seattle, 32 Media L. Rep. 1279 (W.D. Wash. 2003).		Motion partially granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Private Facts; Outrage	
Johnson v. McClatchy Newspapers Inc., 26 Media L. Rep. 2310		Motion granted	False Light	Standing,
Kersis v. ABC, Inc., 25 Media L. Rep. 1700 (9th Cir. Nov. 21, 1996).		Grant partially reversed		Republication
Metabolife Int'l v. Wornick, 72 F. Supp.2d 1160 (S.D. Cal. 1999)., rev'd, 264 F.3d 832 (9th Cir. Sept. 5, 2001).		Grant reversed	Interference with Prospective Economic Advantage	Falsity; Evidence
Miracle v. N.Y.P. Holdings, Inc., , 87 F. Supp.2d 1060, 28 Media L. Rep. 1875 (D. Haw. 2000).	Private	Motion denied		Personal Jurisdiction
Naxos Resources, Ltd. V. Southam, Inc., 24 Media L. Rep. 2265 (C.D. Cal. 1996).		Motion granted		Actual Malice; Of and Concerning; Personal Jurisdiction
Nicosia v. De Rooy, 72 F. Supp.2d 1093, 28 Media L. Rep. 1129 (N.D. Cal. 1999).	Public	Motion partially granted		Actual Malice; Hyperbole; Not Provably False; Opinion; Substantial Truth
Rodriguez v. Panayiotou, Civil No. 99-10576 (C.D. Cal. 2000)., rev'd, 31 Media L. Rep. 1657 (9th Cir. 2002).		Grant reversed		Defamatory Meaning; Opinion
Sanders v. Hearst Corp., 27 Media L. Rep. 1733 (N.D. Cal. 1999).	Public	Motion granted		Actual Malice
Thomas v. Los Angeles Times Communication LLC, 30 Media L. Rep. 1493 (C.D. Cal. 2002)., aff'd, 30 Media L. Rep. 2438 (9th Cir. 2002).	Public	Grant affirmed		Not Provably False; Opinion; Defamatory Meaning

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>TENTH CIRCUIT</b>				
Computerized Thermal Imaging v. Bloomberg, L.P., 2001 WL 670927 (D. Utah Mar. 26, 2001), aff'd, 312 F.3d 1292 (10th Cir. 2002).		Grant affirmed		Defamatory Meaning; Failure to Plead Special Damages
Drake v. Benedek Broadcasting Corp, 2000 WL 528059 (D. Kan., Apr 26, 2000).		Motion granted		Subject Matter Jurisdiction
Lamb v. Rizzo, 242 F. Supp. 2d 1032 (D. Kan. 2003).		Motion granted		Substantial Truth
Schuler v. McGraw-Hill Cos, 25 Media L. Rep. 2409 (D. N.M. 1997), aff'd, 26 Media L. Rep. 1604 (10th Cir. 1998).		Grant affirmed	Intentional Infliction of Emotional Distress; Intrusion; Private Facts; Interference with Business Relations; Prima Facie Tort	Fair Report; Not Provably False; Of and Concerning; Opinion; Republication; Substantial Truth
<b>ELEVENTH CIRCUIT</b>				
Allison v. Barrett, 25 Media L. Rep. 1275 (N.D. Ga. 1996).		Motion granted	Civil Rights	Statute of Limitations
Hoffman-Pugh v. Ramsey, 30 Media L. Rep. 1827 (N.D. Ga. 2002), aff'd, 312 F.3d 1222 (11th Cir. 2002).		Grant affirmed		Defamatory Meaning; Of and Concerning; Statute of Limitations
Horsley v. Rivera, Civil No. 99-142 (N.D. Ga. 2001), rev'd, 30 Media L. Rep. 1847 (11th Cir. 2002).		Denial reversed and case remanded		Hyperbole
Montes v. Capitol Records, Inc., 2003 WL 23163127 (S.D. Fla. Oct. 31, 2003).		Motion granted	Conversion	Personal Jurisdiction
Rubin v. United States News & World Report, Inc., Civil No. 00-1386 (S.D. Fla. 2000), aff'd, 271 F.3d 1305 (11th Cir. Nov. 9, 2001).	Private	Grant affirmed		Defamatory Meaning
Smith v. Kranert, 28 Media L. Rep. 2375(Fla. Cir. Ct. Leon Co. 2000).		Motion granted		Actual Malice; Fair Report; Of and Concerning
Weinstock v. Gannett, 29 Media L. Rep. 2064 (N.D. Ga. 2001).		Motion granted		Jurisdiction

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>D.C. CIRCUIT</b>				
Blumenthal v. Drudge, 992 F. Supp. 44, 26 Media L. Rep. 1717 (D.D.C. 1998).	Public	Motion denied		
Blumenthal v. Drudge, 29 Media L. Rep. 1347, 2001 WL 587860 (D.D.C. 2001).		Motion denied		
Jin v. Ministry of State Sec., 254 F. Supp. 2d 61 (D.D.C. 2003).		Motion granted		
Lohrenz v. Donnelly, 958 F. Supp. 17 (D.D.C. 1997).	Public	Motion granted		
McFarlane v. Esquire Magazine, 24 Media L. Rep. 1332 (D.C. Cir. 1996).	Public	Grant partially reversed		
Weyrich v. New Republic, Inc., (D.D.C.), rev'd, 344 U.S. App. D.C. 245 (D.C. Cir. 2001).	Public	Grant reversed	False Light	
<b>ALASKA</b>				
DeSpain v. Cole, 26 Media L. Rep. 1470 (Alaska Super. Ct. 1997).		Motion granted		
<b>ALABAMA</b>				
Partin v. Fox Television Stations of Birmingham, Inc., 28 Media L. Rep. 1630 (Ala. Cir. Ct. Jefferson Co. 1999).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion; Private Facts	Negligence; Notification of next of Kin Requirement
<b>ARIZONA</b>				
Simon v. Arizona Board of Regents, 28 Media L. Rep. 1240 (Ariz. Super. Ct. 1999).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion	Negligence; Statute of Limitations; Res Judicata
<b>CALIFORNIA</b>				
American Humane Association v. Los Angeles, (Cal. Super. Ct. Los Ang. Cty.), rev'd, 29 Media L. Rep. 2569 (Cal. Ct. App. 2001).		Denial reversed and case dismissed		Not Provably False
Braun v. Chronicle Pub. Co., 25 Media L. Rep. 1594 (Cal. Ct. App. 1997).		Grant affirmed		Fair Report; Anti-slapp

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Burks v. Valley Times, 26 Media L. Rep. 1381 (Cal. Super. Ct. 1997).	Public	Motion granted	Intrusion; Civil Rights	
Canatella v. Renne, 26 Media L. Rep. 2272 (Cal. Ct. App. 1997).	Public	Grant affirmed		Anti-slapp
Colecchio v. Random House Inc., No. BC234449 (Cal. Super. Ct., Los Ang. Co.), aff'd, 30 Media L. Rep. 1574 (Cal. Ct. App. 2d 2001).		Grant affirmed		Hyperbole
Cox Radio Inc. v. Superior Court of Los Angeles County, No. BC207133 (Cal. Sup. Ct. Los Ang. Cty. 1999), aff'd, 28 Media L. Rep. 2183 (Cal. Ct. App. 2000).	Public	Denial affirmed		Actual Malice
Ferlauto v. Hamsher, No. BC178368 (Cal. Super. Ct., Los Ang. Co. 1998), aff'd, 27 Media L. Rep. 2364, 74 Cal. App. 4th 1394. (Cal. Ct. App. 1999).		Grant affirmed	Intentional Infliction of Emotional Distress	Not Provably False
Flanagan v. Leuty (Cal. Super. Ct. 2001), aff'd, 2002 WL 1365601 (Cal. Ct. App. 2002).		Grant affirmed		Actual Malice; Sanctions
Garcia v. Verity Press, Inc., No. 1862 (Cal. Super. Ct.), aff'd, 30 Media L. Rep. 1559 (Cal. Ct. App. 5th 2002).		Grant affirmed		Of and Concerning
Gates v. Discovery Communications, Cal. Super. Ct., San Diego Co., No. GIC 769395, rev'd, 31 Media L. Rep. 2133 (Cal. Ct. App. 4th 2003).		Partial grant reversed	Intrusion	Fair Report
Hitsgalore.com Inc. v. Bloomberg L.P., 29 Media L. Rep. 1249 (Cal. Super. Ct. Los Ang. Co. 2000).		Motion granted	Intentional Infliction of Emotional Distress	Actual Malice
Hooper v. The Recorder, 25 Media L. Rep. 1062 (Cal. Super. Ct. 1996), aff'd, 25 Media L. Rep. 2516 (Cal. Ct. App. 1997).		Grant affirmed		Fair Report; Hyperbole; Opinion; Substantial Truth; Anti-slapp
Jobfinders International, Inc. v. Ian Leicht, Cal. Sup. Ct. Los Ang. Co. No. BC284714		Motion denied	Intentional Interference with Prospective Economic Relations; Trade Libel	

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Laird v. Spelling, (Cal. Super. Ct. Los. Ang. Co.), aff'd, 30 Media L. Rep. 1085 (Cal. Ct. App. 2d. 2001).		Grant affirmed	Intentional Infliction of Emotional Distress; Intentional Interference with Prospective Economic Advantage	Special Damages
Lieberman v. KCOP Television, Inc., Cal. Super. Ct. Los Ang. Co. No. BC274310, aff'd, 31 Media L. Rep. 1933 (Cal. Ct. App. 2d. 2003).		Denial affirmed	Intrusion	
Lights of America Inc. v. Consumers Union of United States, No. KC033419 (Cal. Super. Ct. Los Ang. Co. ), aff'd, 30 Media L. Rep. 2043 (Cal. Ct. App. 2d. 2002).		Grant affirmed		Defamatory Meaning
Lopez v. The Sun, 27 Media L. Rep. 1088 (Cal. Super. Ct. San Bernardino Co. 1998).		Motion granted		Substantial Truth; Anti-slapp
Marich v. QRZ Media Inc., No. BC176082 (Cal. Super. Ct. Los. Ang. Co.), rev'd, 27 Media L. Rep. 2036 (Cal. Ct. App. 2d Dist. 1999).		Grant reversed	Intentional Infliction of Emotional Distress; Intrusion; Private Facts; Wiretapping (Statutory). Note: No Defamation Claim.	Anti-slapp
M.G. v. Time Warner Inc., No. SCV64216 (Cal. Sup. Ct. 2000), aff'd, 29 Media L. Rep. 1883 (Cal. Ct. App. 2001).		Denial affirmed	Intrusion	
Oliveri v. Copley Newspapers, No. GIS003849 (Cal. Super. Ct. San Diego Co.), aff'd, 30 Media L. Rep. 1609 (Cal. Ct. App. 4th 2002).		Partial grant affirmed		Actual Malice
Park v. Sunday Topic Korean News, (Cal. Super. Ct. 1996), aff'd, 24 Media L. Rep. 1731(Cal. Ct. App. Jan. 18, 1996).	Public	Grant affirmed		Falsity; Anti-slapp
Peper v. Gannett Co., 31 Media L. Rep. 2296 (Cal. Super. Ct. 2003).		Motion granted	Fraud; Negligent Misrepresentation; Intentional Interference with Contractual Relationship; Intentional Interference with Prospective Economic Advantage	Fair Report; Falsity; Of and Concerning; Wire Service Doctrine
Pierce v. Press, 25 Media L. Rep. 2311 (Cal. Super. Ct. 1997).		Motion granted		Fair Report; Not Provably False; Opinion; Anti-slapp

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Seelig v. Infinity Broadcasting Corp., No. 315139 (Cal. Super. Ct., City and Co. of San Francisco 2001), rev'd, 97 Cal. App.4th 798 (Cal. Ct. App. 1 Dist. 2002).		Denial reversed		Hyperbole; Not Provably False; Opinion
Sison v. San Francisco Examiner, 26 Media L. Rep. 2503 (Cal. Super. Ct. 1998).		Motion granted		Anti-slap
Tiano v. Monterey County Herald, 27 Media L. Rep. 1637 (Cal. Super. Ct. Monterey Co. 1999).		Motion granted	Private Facts	Fair Report; Expectation of Privacy
<b>COLORADO</b>				
Barnett v. Denver Publ'g Co., (Colo. Dist. Ct., Arapahoe Co.), aff'd, 36 P.3d 145 (Colo. Ct. App. 2001).	Public	Grant affirmed		Substantial Truth
Burke v. Greene, (Colo. Dist. Ct., Pitkin Co. 1996), rev'd in part, 963 P.2d 1119 (Colo. Ct. App. 1998).		Grant partially reversed		Privilege; Republication
Widener v. Westedit Inc., 27 Media L. Rep. 1916 (Colo. D.C. 1999).		Motion granted	Intentional Infliction of Emotional Distress; Collusion; Conspiracy; Malice Aforethought	Hyperbole
<b>DELAWARE</b>				
Cerullo v. Harper Collins Publishers Inc., 30 Media L. Rep. 1499 (Del. Super. Ct. 2002).		Motion granted		Statute of Limitations
Rammunno v. Cawley (Del. Super. Ct. New Castle Co. 1996), rev'd in part, 26 Media L. Rep. 1651 (Del. 1998).		Grant partially reversed	Libel, Conspiracy	
<b>DISTRICT OF COLUMBIA</b>				
Mullin v. Washington Free Weekly, Inc., et al., (D.C. Super. Ct.), aff'd, 30 Media L. Rep. 1092 (D.C. Ct. App. 2001).		Grant affirmed	Intentional Infliction of Emotional Distress; False Light; Intrusion	Statute of Limitations
Kitt v. Pathmakers, Inc., (D.C. Super. Ct.), rev'd, 672 A.2d 76 (D.C. 1996).		Grant reversed	Intentional Infliction of Emotional Distress; False Light; Fraud	

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>FLORIDA</b>				
Adams v. WFTV, Inc., 691 So.2d 557, 25 Media L. Rep. 2242 (Fla. Ct. App. 5 Dist. 1997).		Grant affirmed		Of and Concerning; Group Libel
Ansen v. Paxson Communications Corp, 26 Media L. Rep. 2374 (Fla. Cir. Ct. Broward Co.), rev'd, 736 So.2d 1209, 27 Media L. Rep. 2279 (Fla. Ct. App. 4 Dist., 1999).		Grant reversed		Of and Concerning; Opinion
Bass v. Post-Newsweek Stations, 24 Media L. Rep. 1991 (Fla. Cir. Ct. 1996).		Motion granted		Of and Concerning; Group Libel
Brown v. New World Communications of Tampa, Inc., 25 Media L. Rep. 1510 (Fla. Cir. Ct. 1996).		Motion granted		Of and Concerning
Cantine v. Ocala Star Banner Corp., 30 Media L. Rep. 1127 (Fla. Marion County Ct. 2001).		Motion granted		Defamatory Meaning
Facchina v. Mutual Benefits Corp, No. CACE96000779 (Fla. Cir. Ct., Broward Co.), rev'd, 735 So.2d 499, 27 Media L. Rep. 2168 (Fla. Ct. App. 4 Dist. 1999)..		Grant reversed	Invasion of Privacy; Fraud; Unauthorized Publication	Economic Loss Rule
Fancher v. Lee County Humane Society, 25 Media L. Rep. 2565 (Fla. Cir. Ct. 1997).		Motion granted		Actual Malice; Fair Report; Substantial Truth
Gilliard v. New York Times, 29 Media L. Rep. 1955 (Fla. Cir. Ct. Highlands Co. 2001).		Motion granted	Malicious Interference; Conspiracy; Negligence; Extortion; Professional Malpractice	Statute of Limitations
Heekin v. CBS Broadcasting, Inc., No. 99 CA 5478 SC (Fla. Cir. Ct., Sarasota Co. 2000)., rev'd, 789 So.2d 355 (Fla. App. 2 Dist. Feb. 16, 2001).	Private	Grant reversed	False Light	Statute of Limitations
Lewis v. Sunbeam Television Inc., 28 Media L. Rep. 2214 (Fla. Cir. Ct. Dade Co. 2000).		Motion granted	Intrusion	Statute of Limitations
McNair v. New World Communications of Tampa Inc., 27 Media L. Rep. 2342 (Fla. Cir. Ct. Hillsborough Co. 1999).		Motion granted		
Sheen v. The Time Inc. Magazine Co, 817 So.2d 974 (Fla. Dist. Ct. App. 2002).		Grant affirmed		Failure to Prosecute



CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Stewart v. Sun Sentinel, Co., 25 Media L. Rep. 1763 (Fla. Ct. App.1997).	Public	Grant affirmed		Fair Report; Privilege; Public Figure
Thomas v. Jacksonville Television Inc., (Fla. Cir. Ct. David Co.), aff'd, 26 Media L. Rep. 1335 (Fla. Dist. Ct. App. 1997).	Private	Grant affirmed		Of and Concerning
Thomas v. WTLV, Inc., 24 Media L. Rep. 1894 (Fla. Cir. Ct. 1996).		Motion granted		Of and Concerning
Wilson v. Gannett Co., 26 Media L. Rep. 1703 (Fla. Cir. Ct. Monroe Co. 1998).		Motion granted		Failure to Comply with Notice Requirements of Fla. Stat. 770.01
Wilson v. Gannett Co. Inc., No. 97-CA-9089 (Fla. Circ. Ct. Lee Cty. 1998)., rev'd, Wilson v. News-Press Publishing Co., 738 So. 2d 1000 (Fla. Dist. Ct. App. 2d 1999).	Public	Grant reversed	False Light	
Wilson v. Gannett Co. Inc. II, No. 97-CA-9089 (Fla. Circ. Ct. Lee Cty. 2000). (on remand)., rev'd, Wilson v. News-Press Publishing Co., 819 So. 2d 262 (Fla. Dist. Ct. App. 2d 2002).	Public	Grant reversed		Jurisdiction
<b>GEORGIA</b>				
Bakhtiarnejad v. Cox Enterprises, Inc., (Ga. County Ct., Fulton County)., rev'd, 247 Ga. App. 205, 541 S.E.2d 33, 28 Media L. Rep. 2494 (Ga. Ct. App. Oct. 13, 2000).		Grant reversed		Actual Malice; Fair Report
Davis v. Emmis Publishing Corp., 27 Media L. Rep. 2172 (Ga. Fulton Co. 1999).		Motion granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Libel per Se; Business Libel; Tortious Interference; Punitive Damages	Slapp, Lose D Sol,
Nix v. Cox Enterprises, Fulton State Court (GA)., rev'd, 242 Ga. App. 515 (Ct. App. Ga. Feb. 9, 2000)., rev'd, Cox Enterprises v. Nix, 273 Ga. 152 (Ga. Nov. 13, 2000). (reversing appellate court's reversal).		Grant affirmed		Abuse of Discretion

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>ILLINOIS</b>				
AIDA v. Time Warner Entertainment Co., (Ill. Cir. Ct. Cook Co.), aff'd, AIDA v. Time Warner Entertainment Co., 30 Media L. Rep. 2076 (Ill. App. 3d. 2002).		Grant affirmed	False Light	Ill. Const. Art. I Sec.20
Barrett v. Fonorow, No. 01-L-820 (Ill. Cir. Ct., Du Page Cty.), aff'd, 343 Ill. App.3d 1184, 799 N.E.2d 916, 279 Ill. Dec. 113 (Ill. App. Ct. 2003).		Grant affirmed	False Light	CDA Immunity
Bryson v. News America Publications, Inc., (Ill. Cir. Ct., Gallatin Co. 1995), rev'd in part, 25 Media L. Rep. 1321, 672 N.E.2d 1207 (Ill. Sup. Ct. 1996).	Private	Grant partially reversed	False Light; Intrusion	Of and Concerning; Opinion; Statute of Limitations; Innocent Construction
Cherry v. CBS Broadcasting Inc., 28 Media L. Rep. 2469 (Ill. Cir. Ct. 2000).	Public	Motion granted	Intentional Infliction of Emotional Distress; False Light	Actual Malice; Fair Report
Chicago City Day School v. Wade, (Ill. Cir. Ct. Cook Co.), aff'd, 26 Media L. Rep. 2483 (Ill. App. Ct. 1998).		Grant affirmed		Defamatory Meaning
Gist v. Macon County Sheriff's Dept., 671 N.E.2d 1154 (Ill. App. 4 Dist. 1996).		Grant affirmed		Fair Report; Neutral Reportage; Privilege; Substantial Truth
Green v, Chicago Tribune Co, (Ill. Cir. Ct .Cook Co.).		Motion granted	Intentional Infliction of Emotional Distress; Intrusion; Battery	
Harrison v. Chicago Sun-Times, Inc., No. 01 L 4849 (Cir. Ct., Cook Co. ), aff'd, 341 Ill. App. 3d 555 (Ill. App. Ct. 2003).		Partial grant affirmed	False Light	Fair Report; Substantial Truth; Innocent Construction
Kirchner v. Greene, (Ill. Cir. Ct. Cook Co.1996), aff'd, 26 Media L. Rep. 2032 (Ill. App. Ct. 1998).		Grant affirmed	False Light; Intrusion; Abuse of Process	
Kleros v. Press Publications, 27 Media L. Rep. 1318 (Ill. Cir. Ct. DuPage Co. 1998).		Motion granted		Substantial Truth; Fair Report
Myers v. The Telegraph, No. 01-L-136 (Ill. Cir. Ct. Madison Co ), rev'd in part, 332 Ill. App. 3d 917, 773 N.E.2d 192, 265 Ill. Dec. 830, 30 Media L. Rep. 2463 (Ill. Ct. Ap. 2002).		Grant partially reversed	Intentional Infliction of Emotional Distress; False Light	Fair Report; Incremental Harm; Of and Concerning

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Polish-American Guardian Society v. General Electric Co, 27 Media L. Rep. 1443 (Ill. Cir. Ct. Cook Co. 1998).		Motion granted	Intentional Infliction of Emotional Distress; Defamation per Se; Defamation per Quod; Breach of Fiduciary Duty	Gross Irresponsibility
Salamone v. Hollinger International Inc., 31 Media L. Rep. 1639 (Ill. Cir. Ct. 2002).		Motion granted	False Light	Defamatory Meaning; Innocent Construction Rule
Schivarelli v. CBS, Inc., (Ill. Cir. Ct. Cook Co.), aff'd, 333 Ill. App. 3d 755, 776 N.E.2d 693, 267 Ill. Dec. 321, 30 Media L. Rep. 2268 (Ill. Ct. App. 2002).	Public	Grant affirmed	False Light; Appropriation	Opinion
Snitowsky v. NBC Subsidiary (WMAQ-TV). Inc., (Ill. Cir. Ct. Cook Co.), rev'd, 26 Media L. Rep. 2265 (Ill. App. Ct. 1998).	Private	Grant reversed	Private Facts	Actual Malice; Plaintiff Status
Tepper v. Copley Press, Inc. (Ill. Cir. Ct. Lake Co. 1996).		Motion granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Conspiracy; Interference with Prospective Economic Advantage.	Fair Report; Falsity; Privilege
Tepper v. Copley Press, Inc. , 308 Ill. App. 3d 713, 721 N.E.2d 669, 242 Ill. Dec. 390, 28 Media L. Rep. 1213 (Ill. App. 2 Dist., 1999).		Grant affirmed		
Van Horne v. Muller, 691 N.E.2d 74 (Ill. App 1 Dist. 1998), rev'd in part, 705 N.E.2d 898 (Ill. 1998).		Grant partially reversed	Negligent Hiring/supervision	Defamation per se
Wilson v. Arts & Entertainment, 27 Media L. Rep. 1538 (N.D. ILL. 1998).		Motion granted	False Light	Failure to Plead Special Damages
<b>KENTUCKY</b>				
Stith v. Cosmos Broadcasting, Inc., 25 Media L. Rep. 1151, 1996 WL 784513 (Ky. Cir. Ct. 1996).		Motion partially granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Private Facts; Trespass	Defamatory Meaning; Personal Jurisdiction
<b>LOUISIANA</b>				
Perere v. Louisiana Television Broadcasting Corp. (Louis. City Ct.), aff'd, 29 Media L. Rep. 2562 (La. Ct. App. 2001).		Grant affirmed	False Light	Not Provably False; No Expectation of Privacy

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Stern v. Doe, No. 2000-15612, (La. Dist. Ct., Orleans Parish), aff'd, 30 Media L. Rep. 1793 (La. Ct. App. 4th 2001).		Motion granted Grant affirmed	False Light	
Thomas v. Monroe, (La. Dist. Ct., Ouachita Parish 2002), aff'd, 31 Media L. Rep. 1859 (La. Ct. App. 2d. 2002).		Grant affirmed		Actual Malice; Privilege
<b>MASSACHUSETTS</b>				
Macdonald v. Paton, (Worcester Super. Ct. 1999), rev'd, 57 Mass. App. Ct. 290 (Mass. App. Ct. 2003).		Denial reversed and case remanded		
Salvo v. Ottoway Newspapers, Inc., 1998 WL 34060940 (Mass. Super. 1998).		Motion denied		Falsity; Anti-slap
<b>MICHIGAN</b>				
Davidson v. Detroit Free Press Inc., 24 Media L. Rep. 2391 (Mich. Cir. Ct. 1996), aff'd, 26 Media L. Rep. 2598 (Mich. Ct. App. 1998).		Grant affirmed		Actual Malice
Howe v. Detroit Free Press, Inc., (Mich. Dist. Ct.), aff'd, 25 Media L. Rep. 1602 (Mich. Ct. App. 1996).	Public	Grant affirmed		Republication
<b>MISSOURI</b>				
Chastain v. Kansas City Star, Civil Nos. 99-229047, 99-229051 (Mo. Cir. Ct. Jackson Co. 2000), aff'd, 50 S.W.3d 286 (Mo. Ct. App., W. Dist. Jun. 12, 2001).		Grant affirmed		Of and Concerning
Doe v. TCI Cablevision, (Mo. Cir. Ct. St. Louis), aff'd, 30 Media L. Rep. 2409 (Mo. Ct. App. 2002).		Grant affirmed	Misappropriation	Of and Concerning
Sterling v. Rust Communs., Civil No. 02-736349 (Mo. Cir. Ct., Girardeau Co. 2002), aff'd, 113 S.W.3d 279 (Mo. Ct. App. 2003).		Grant affirmed		Defamatory Meaning; Opinion

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>NORTH CAROLINA</b>				
Salgado v. Joyner Management Services Inc., 26 Media L. Rep. 1595 (N.C. Ct. App. 1997).		Grant affirmed	Intentional Infliction of Emotional Distress; Libel per Quod; Slander per Quod; Negligent Infliction of Emotional Distress; Unfair and Deceptive Trade Practices	Opinion; Substantial Truth
<b>NEW HAMPSHIRE</b>				
Brother Records, Inc. v. Harpercollins Publishers, (N.H. Super. Ct., Hillsborough - S. Dist.), aff'd, 682 A.2d 714 (N.H. 1996).		Denial affirmed		Personal Jurisdiction
<b>NEW JERSEY</b>				
Darakjian v. Hanna, No. L-8295-02 (N.J. Super. Ct. Bergen Cty. 2003).	Public	Motion denied		Actual Malice; Fair Report
<b>NEW YORK</b>				
Alfajr Printing and Pub. Co. v. Zuckerman, 25 Media L. Rep.1446, 646 N.Y.S.2d 858 (N.Y.A.D. 2 Dept. 1996).		Denial reversed and case dismissed		Defamatory Meaning
Brinkley v. National Enquirer Inc., 26 Media L. Rep. 2245 (N.Y. Sup. Ct. 1998).		Motion partially granted	Intentional Infliction of Emotional Distress	
Coakley v. Publishing Corp., 25 Media L. Rep. 2280 (N.Y. Sup. Ct. 1997).		Motion granted	Negligent Publication	Recognition of Tort
Costanza v. Seinfeld, 181 Misc.2d 562, 693 N.Y.S.2d 897, 27 Media L. Rep. 2177, 1999 N.Y. Slip Op. 99348 (N.Y. Sup. Ct. 1999), aff'd, 279 A.D. 2d 255 (N.Y. App. Div., 1st Dept. Jan. 4, 2001).		Grant affirmed	False Light; Intrusion; Civil Rights; Appropriation	Opinion; Statute of Limitations; Recognition of Claims
Craver v. Povich, 31 Media L. Rep. 2609 (N.Y. Sup. Ct. 2003).		Motion partially granted	Intentional Infliction of Emotional Distress; Negligence; Negligent Hiring	Particularity of Pleadings
Crown Fire Supply Co. v. Cronin, 28 Media L. Rep. 1446 (N.Y. Sup. Ct. 1999)..		Motion granted		Statute of Limitations

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Crucey v. Jackall, (N.Y. Sup. Ct. 1999), rev'd, 275 A.D.2d 258, 713 N.Y.S.2d 20, 2000 N.Y. Slip Op. 07537 (N.Y.A.D. 1 Dept., Aug 24, 2000).		Grant reversed		Gross Irresponsibility
Doe v. County of Wayne, (N.Y. Sup. Ct., Wayne County), aff'd, 261 A.D.2d 950, 689 N.Y.S.2d 802, (N.Y.A.D. 4 Dept. 1999).		Grant affirmed	Prima Facie Tort	Gross Irresponsibility
Doe v. Daily News, N.Y. Sup. Ct. (1st Dept. 1997).		Motion granted		Fair Report
Donati v. Queens Ledger Newspaper, 25 Media L. Rep. 1487 (N.Y. Sup. Ct. 1996), rev'd, 25 Media L. Rep. 2375 (N.Y. App. Div. 1997).		Grant reversed		Defamatory Meaning
E.B. v. Liberation Publications, Inc., N.Y. Sup. Ct. Kings County		Motion denied	Intentional Infliction of Emotional Distress	
Feche v. Viacom Intern., Inc., 233 A.D.2d 125 (N.Y. App. Div. 1st Div. 1996).		Grant affirmed		Hyperbole; Of and Concerning; Opinion
Fisher v. Bristol Myers, Inc., 224 A.D.2d 657 (N.Y. App. Div. 2d Dept. 1996).		Grant affirmed	Conspiracy	Defamatory Meaning
Fulani v. New York Times Co, (N.Y. Sup. Ct., N.Y. Co.), aff'd, 260 A.D.2d 215, 686 N.Y.S.2d 703 (Mem), 27 Media L. Rep. 1959, (N.Y.A.D. 1 Dept. 1999).	Public	Grant affirmed		Of and Concerning
Gelbman v. Valleycrest Production Ltd., 29 Media L. Rep. 2434 (N.Y. Sup. Ct. N.Y. Co. 2001).		Motion granted	Intentional Infliction of Emotional Distress	
Gjonlekaj v. Sot, (N.Y. Sup. Ct., Westchester Co.), rev'd, 308 A.D.2d 471 (N.Y. App. Div. 2d 2003).		Grant reversed		Defamatory Meaning; Negligence; Opinion
Golub v. Enquirer/Star Group, Inc., 223 A.D.2d 360, 636 N.Y.S.2d 49 (N.Y. Sup. Ct., App. Div. 1996). (reversing trial court denial and dismissing), aff'd, 89 N.Y.2d 1074, 681 N.E.2d 1282, 659 N.Y.S.2d 836, 25 Media L. Rep. 1863 (N.Y. 1997).		Reversal of denial affirmed		Defamatory Meaning; Of and Concerning

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Gotbetter v. Dow Jones & Co., N.Y. Sup. Ct. (N.Y. Co.), aff'd, 259 A.D.2d 335, 687 N.Y.S.2d 43, 27 Media L. Rep. 1640, (N.Y.A.D. 1 Dept. 1999).		Grant affirmed		Opinion
Herman v. CBS Corp., 30 Media L. Rep. 1029 (N.Y. Sup. Ct. 2001).		Motion granted		Opinion; Libel per se
Hobbs v. Imus, 266 A.D.2d 36, 698 N.Y.S.2d 25, 1999 N.Y. Slip Op. 09142 (N.Y.A.D. 1 Dept., 1999).		Motion granted		Opinion
Huggins v. NBC, Inc., 24 Media L. Rep. 2399 (N.Y. Sup. Ct. 1996).		Motion granted	Tortious Interference with Contract	Hyperbole; Opinion
Huggins v. Povitch, 24 Media L. Rep. 2040 (N.Y. Sup. Ct. 1996).		Motion granted	Tortious Interference with Contract; Inducing Breach of Contract	Hyperbole; Opinion
Jee v. New York Post Co., (N.Y. Sup. Ct. 1998), aff'd, 27 Media L. Rep. 2024 (N.Y. Sup. Ct., App. Div. 1999).	Public	Grant affirmed		Actual Malice
Kane v. Orange County Publications, 649 N.Y.S.2d 23, N.Y.A.D. 2 Dept. 1996		Denial reversed and case dismissed	False Light; Appropriation	Defamatory Meaning; Opinion
Landmark Education Corp. v. Hachette Filipacchi Media Group, 28 Media L. Rep. 1123 (N.Y. Sup. Ct. N.Y. Co. 1999).		Motion granted	Product Disparagement	Actual Malice; Of and Concerning; Opinion; Special Damages
Learo v. Auburn Publishers Inc., 27 Media L. Rep. 1062 (N.Y. Sup. Ct. Onondaga Co. 1998).		Motion granted	Intentional Infliction of Emotional Distress; Appropriation; Punitive Damages; Fraud	Gross Irresponsibility
McCormack v. County of Westchester, N.Y. Sup. Ct. (Westchester Co.), aff'd in part, 255 A.D.2d 296, 679 N.Y.S.2d 659, (N.Y.A.D. 2 Dept. 1998).		Partial grant partially affirmed	Intrusion	Claims Does Not Survive Death of Plaintiff
Misek-Falkoff v. Am. Lawyer Media, Inc., N.Y. Sup. Ct., aff'd, 300 A.D.2d 215 (N.Y. Sup. Ct. App. Div. 2002), aff'd, 100 N.Y.2d 508 (N.Y. 2003).		Grant affirmed	Intentional Infliction of Emotional Distress; False Light; Intrusion; Interference with Economic Advantage; Loss of Consortium	Collateral Estoppel
Montgomery v. Minarcin, (N.Y. Sup. Ct. Albany Co. 1996), rev'd, 245 A.D.2d 920, 667 N.Y.S.2d 438 (N.Y.A.D. 3 Dept. 1997).		Grant reversed		Statute of Limitations

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Montgomery v. Minarcin, (N.Y. Sup. Ct. Warren Co. 1999)., rev'd, 263 A.D.2d 665, 693 N.Y.S.2d 293, 27 Media L. Rep. 2627, 1999 N.Y. Slip Op. 06594 (N.Y.A.D. 3 Dept., Jul 08, 1999).		Grant reversed	Prima Facie Tort	Personal Jurisdiction; Venue
Navrozov v. Novoye Pusskoye Slove Publishing Corp, 26 Media L. Rep. 2439 (Wash. Super. Ct. King Co. 1998).		Motion granted		Insufficient Pleadings
Peeper v. Ledger, 638 N.Y.S.2d 912 (N.Y.A.D. 1 Dept. 1996).		Grant affirmed		Substantial Truth
Pellegrino v Random House, N.Y. Sup. Ct. (1999)., aff'd, 273 A.D.2d 155, 710 N.Y.S.2d 564, 2000 N.Y. Slip Op. 06417		Grant affirmed		Defamatory Meaning; Falsity
Pitsiokos v. Kozakiewicz, 30 Media L. Rep. 2497 (N.Y. Sup. Ct. 2002).	Public	Motion granted		Substantial Truth; Opinion
Posner v. New York Law Pub. Co., 228 A.D.2d 318, 644 N.Y.S.2d 227 (N.Y.A.D. 1 Dept. 1996).		Grant affirmed		Hyperbole; Opinion; Substantial Truth
Pravda v. Saratoga Co., 24 Med, L. Rep. 1633, 637 N.Y.S.2d 508 (N.Y.A.D. 3 Dept. 1996).		Grant affirmed		Statute of Limitations
Rappaport v. VV Publishing Corp., 24 Media L. Rep. 1831, 637 N.Y.S.2d (N.Y. Sup. Ct., App. Div., 1 Dept. 1996).		Grant affirmed		Opinion
Reilly v. North Shore News Group, 30 Media L. Rep. 1381 (N.Y. Sup. Ct. 2001).		Motion granted	Motion to Disqualify Plaintiff's Attorney	Defamatory Meaning
Rothlein v. W.W. Norton & Co., Inc, 185 Misc.2d 66, 712 N.Y.S.2d 279, 29 Media L. Rep. 1023 (N.Y. Sup. Ct. 2000).		Motion granted		Statute of Limitations; Improper Service
Sermidi v. Battistotti, 27 Media L. Rep. 2523 (N.Y. Sup. Ct. N.Y. Co. 1999).		Motion partially granted	Libel per Se; Appropriation; Intentional Infliction of Emotional Distress; Wrongful Entry/trespass; Fraud	Single Publication Rule
Weiser v. Gannett Suburban Newspapers, 25 Media L. Rep. 2174 (N.Y. App. Div. 1997).		Motion granted		Fair Report; Falsity; Substantial Truth



CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
Wong v. World Journal, 31 Media L. Rep. 1214 (N.Y. Sup. Ct. 2002).		Motion granted		Fair Report; Opinion; Privilege
<b>NEVADA</b>				
Mortensen v. Gannett Co., 26 Media L. Rep. 1415 (Nev. 1997).	Public	Grant affirmed		
<b>OHIO</b>				
Ferreri v. Plain Dealer Publ. Co., (Cuyahoga Co. Ct. C.P. 1999), aff'd, 142 Ohio App. 3d 629 (Ohio Ct. App. 8 Dist. May 3, 2001).		Grant affirmed	False Light	Opinion; Incremental Harm
Pollock v. Rashid, 117 Ohio App. 3d 361, 690 N.E.2d 903 (Ohio App. 1 Dist. 1996).		Grant partially reversed	Intentional Infliction of Emotional Distress; Intrusion	Privilege; Statute of Limitations
Rich v. Thompson Newspapers, Inc., No. 2002 CV 1040 (Ashtabula Co. Ct. CP).		Motion granted		Opinion
Sabbato v. Hardy (Ohio Ct. C.P. 2000), rev'd, 29 Media L. Rep. 1860 (Ohio App. Dec. 18, 2000).		Grant reversed		CDA Immunity
Salupo v. Fox, Inc., No. CV-480888 (Ohio Ct. C.P. 2003).		Motion granted	Intrusion	Statute of Limitations
Verich v. Vindicator Printing Co., 126 Ohio Misc. 2d 24 (Ohio Ct. CP Trumbull Co. 2002), aff'd, 152 Ohio App. 3d 127 (Ohio Ct. App. 2003).		Grant affirmed		Opinion
Worldnet Software Co. v Gannett Co., 1996 WL 780551, 25 Media L. Rep. 1089 (Ohio Ct. Comm. Pleas 1996), rev'd in part, 122 Ohio App.3d 499, 702 N.E.2d 149, 25 Media L. Rep. 2331 (Ohio App. 1 Dist. 1997).		Grant partially reversed		Defamatory Meaning; Fair Comment; Parody; Failure to Plead Special Damages; Actual Malice; Of and Concerning; Opinion

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>OKLAHOMA</b>				
Johnson v. KFOR, No. CJ-1998-3206 (Okla. Dist. Ct., Okla. Co. 1998)., aff'd, 6 P.3d 1067, 2000 OK CIV APP 64 (Okla. Civ. App. Div. 2, 1999).		Grant affirmed	False Light	Fair Comment; Privilege; Substantial Truth
Sturgeon v. Retherford Publications, Inc, No. CJ-1998-3385 (Okla. Dist. Ct. Tulsa Co. 1998)., rev'd, 987 P.2d 1218, 28 Media L. Rep. 1144, 1999 OK CIV APP 78 (Okla. Civ. App. Div.4, 1999).		Grant reversed	Intentional Infliction of Emotional Distress; False Light; Abuse of Process; Gross Negligence; Negligent Hiring	Fair Report; Abuse of Discretion
Sturgeon v. Retherford Publications, Inc, No. CJ-1998-3385 (Okla. Dist. Ct. Tulsa Co. 2000).		Motion partially granted	False Light	
<b>PENNSYLVANIA</b>				
DeMary v. Latrobe Printing and Publishing Co., 27 Media L. Rep. 1760 (Pa. Ct. C.P. 1998).	Public	Motion granted	Conspiracy to Defame; Punitive Damages	Fair Report
MacElree v. Philadelphia Newspapers, Inc., 24 Media L. Rep. 2204 (Pa. 1996).		Denial reversed and case remanded		
Richette v. Philadelphia Magazine, 24 Media L. Rep. 2425 (Pa. Ct. C.P. Phila. Co. 1996).	Public	Motion granted	Intentional Infliction of Emotional Distress; False Light; Intrusion; Negligence Negligent Infliction of Emotional Distress	Actual Malice; Falsity; Hyperbole; Opinion
Tucker v. Philadelphia Daily News, (Pa. Ct. CP, Philadelphia Co.), rev'd, 28 Media L. Rep. 2208 (Pa. Super. Ct. 2000).	Public	Grant reversed		Actual Malice; Defamatory Meaning; Fair Report
<b>RHODE ISLAND</b>				
Lett v. Providence Journal Co., (R.I. Super. Ct.), aff'd, 798 A.2d 355 (R.I. May 23, 2002).		Grant affirmed		Fraud on the Court

CASE / CITATION(S)	PLTF STATUS	ULTIMATE RESULT	NON-DEFAMATION CLAIMS	ISSUES
<b>SOUTH CAROLINA</b>				
Moosally v. W.W. Norton & Co., 30 Media L. Rep. 2307 (S.C. Ct. C.P. 2002).		Motion granted		Subject Matter Jurisdiction; Personal Jurisdiction
<b>VIRGINIA</b>				
Howerton v. Kiger, 30 Media L. Rep. 1128 (Va. Cir. Ct. 2001).		Motion granted		Defamatory Meaning; Of and Concerning
Johnson v. Richmond Newspapers, Inc, 25 Media L. Rep. 1541 (Va. Cir. Ct 1996).		Motion granted		Insufficient Pleadings
<b>WASHINGTON</b>				
Schneider v. Amazon.com, Inc., (Wash. Super. Ct. King Co., 2000)., aff'd, 108 Wash. App. 454 (Wash. Ct. App. 2001).		Grant affirmed		CDA Immunity
<b>WISCONSIN</b>				
Schultz v. Sykes, No. 1998CV000724 (Wis. Cir. Ct. Milwaukee Co. 2000), rev'd in part, 248 Wis.2d 746, 638 N.W.2d 604, 2001 WI App 255 (Wis. App Oct. 4, 2001).		Grant partially reversed	Intrusion	Subornation of Perjury
Schultz v. Sykes, No, 1998CV000724 (Wis. Cir. Ct. Milwaukee Co. 2003).		Motion granted	Intrusion	Subornation of Perjury

## APPENDIX B. METHODOLOGY

This is the third study of motions to dismiss that the MLRC has conducted since its founding in 1980.<sup>80</sup> The methodologies of these various studies have evolved in light of new practice trends, and as new technology and information resources have become available. The goal, however, has remained consistent: to chronicle and analyze federal and state cases against a media defendant in which defense motions to dismiss are made and then either granted or denied, by a trial or appellate court.

The previous studies covered motions to dismiss in cases from 1981 to 1983,<sup>81</sup> and 1981 to 1995.<sup>82</sup> We removed cases from 1981 and 1982, since the previous studies on motions to dismiss collected only partial information on these cases and because of their limited usefulness in the overall analysis of the current Study.

The new cases included in this Study were found using two sources: the Media Law Reporter and the Westlaw legal database.

MLRC searched Westlaw and the Media Law Reporter for all opinions, both officially published and officially unpublished, issued by trial and appellate courts from 1996 through 2003 in defamation and privacy cases against the media in which the court ruled on a motion to dismiss.<sup>83</sup>

We then added these cases to MLRC's database of motion to dismiss cases from prior studies,<sup>84</sup> resulting in a database of 661 cases from 1983 to 2003.

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80. See LDRC Study No. 4, "Motions to Dismiss in Media Libel and Privacy Actions," in LDRC BULLETIN No. 8 (Fall 1983), at 1-61; and LDRC Motion to Dismiss Study, 1996 LDRC BULLETIN No. 2 (April 1996).

81. The 1983 study included decisions published in the Media Law Reporter between April 7, 1981 and Aug. 16, 1983 (vols. 7 and 8, plus vol. 9, issues 1 through 29). LDRC BULLETIN No. 8 (Fall 1983), at 1.

82. The 1996 study included decisions published in the Media Law Reporter between 1981 and 1995 (vols. 7 through 23, plus vol. 24, issues 1 through 13).

83. The Media Law Reporter was searched manually. The query used for the Westlaw search, which was conducted in the ALLCASES database, was:

(motion w/2 dismiss! demurrer) w/3 (grant! (deny denied)) & (libel! slander! defam!) ("invasion of privacy" (privacy /25 (intrus! intrud! "false light" appropriat! "private facts"))) "right of publicity" & (print! publish! broadcast! film movie radio television newspaper magazine advert!) % terminat! & da (aft 12/31/1995).

This query resulted in 4,619 decisions, which were then searched manually to remove cases that did not meet the criteria for inclusion in the Study. The end result was 262 cases that were added to the Study database.

84. The two prior studies were based almost entirely on manual searches of the Media Law Reporter, plus some additional cases from MLRC's case files.