

Coverage of Big Awards for Plaintiffs Helps Distort View of Legal System

By Myron Levin , L.A. Times Staff Writer *Mon Aug 15, 7:55 AM ET*

When a jury sticks it to a huge corporation, it's always big news. A crushing verdict of \$4.9 billion against General Motors Corp. in Los Angeles drew massive media coverage, as did a \$5-billion award in the Exxon Valdez oil spill case and a \$144.8-billion thrashing of the tobacco industry in a Florida class action.

Mega-verdicts such as these have helped fuel legislative campaigns to overhaul the legal system by limiting lawsuits and jury awards. Driving the crusade for what business groups call tort reform is the notion that frivolous suits and jackpot judgments are strangling the economy.

While acknowledging that excesses no doubt occur, many legal observers say there is no evidence that people are filing more lawsuits or that juries are getting more generous — indeed, there is some data to the contrary. And mammoth verdicts, in the rare cases in which they occur, almost always are tossed out or sharply reduced later.

Feeding the perception of a crisis in the legal system, they say, is the way the news media cover the courts.

After the big headlines, critics say, the media often drop the ball, losing interest in what happens later. Published studies of news content and a Times examination of major recent cases show that when the immense verdicts were overturned or dramatically reduced, the news frequently was banished to the inside pages or simply not reported.

Legal experts and media observers say such coverage gives a distorted picture of the civil justice system while lending credence to fears of irrational jury awards. News coverage has reinforced the message "that the system's out of control, and that juries are using the tort system to redistribute wealth in some unjust and unprincipled way," said Robert MacCoun, a professor of law and public policy at UC Berkeley.

The popular view that there are more lawsuits and bigger damage awards than ever before is not supported by available evidence.

A 35-state survey by the National Center for State Courts found that the number of tort filings declined 4% from 1993 through 2002 despite population growth. And in the nation's 75 largest counties, the median award to victorious plaintiffs was \$37,000 in 2001 — much less than the inflation-adjusted median of \$63,000 in 1992, according to the Bureau of Justice Statistics, a branch of the U.S. Department of Justice.

If such context is absent from news reports, it's not because of media bias but "the holler of the dollar," said William Haltom, a professor of politics and government at the University of Puget Sound and co-author of "Distorting the Law: Politics, Media and the Litigation Crisis."

News coverage is "in favor of the noteworthy and the attention-arresting," Haltom said.

Journalists "are expected to produce something that someone is going to want to watch, listen to or read."

"From the media's perspective, extremes are news," New York University law professor Stephen Gillers said. The humdrum workings of the legal system, with its minor traffic cases and contract disputes, he said, is "completely distorted by the emphasis on what I would call the grotesque or extreme cases."

At the same time, no one would argue for covering fender-bender suits instead of big cases with broad implications. And plaintiff victories are legitimately more newsworthy because they change the status quo — moving money around and exposing dangerous products or financial wrongdoing.

But that can give a skewed impression of what typically happens in the courts, because research shows that news coverage shapes perceptions of the frequency of events.

For example, surveys show that people generally believe they face a greater risk of dying from widely publicized disasters such as fires and murders than from diseases like diabetes — when the opposite is true. Haltom said "it's reasonable to presume that people who read about all sorts of plaintiffs' victories get an inflated notion of how often plaintiffs win."

Certainly, plaintiffs prevail less often in the real world than they appear to in the news media.

Consider:

- A 1999 survey by Rand Corp.'s Institute for Civil Justice found auto liability cases were 12 times more likely to draw news coverage when plaintiffs won than when defendants did, a difference the study called "very stark." In its review of 351 trials conducted during the 1980s and '90s, the institute found that 38 of 92 plaintiff verdicts, or 41%, were featured in news reports, versus 9 of 259 verdicts for the defense — or about 3%.

A plaintiff win "is perceived to be more newsworthy than a headline that says 'jury rejects arguments that a product is unsafe,'" said Theodore Boutros Jr. of law firm Gibson, Dunn & Crutcher, who has represented Ford Motor Co., Wal-Mart Stores Inc. and various news organizations, including The Times.

Reflecting the pattern was news coverage of a June 2004 verdict in which a San Diego jury ordered Ford to pay \$367 million to Benetta Buell-Wilson, who was paralyzed when her Explorer SUV rolled over and its roof collapsed. Ford previously had won a dozen similar Explorer cases but the media hardly batted an eye. Ford's victories received a smattering of coverage, mainly in business and legal publications, whereas the Buell-Wilson verdict was widely reported by the mainstream news media.

- A 1995 article in the Hofstra Law Review showed that personal injury verdicts reported in the New York Times and Newsday were dramatically higher than typical awards in the New York courts. According to the survey, awards covered by the New York-based papers over a five-year period were 13 times and 9 times higher than average, respectively.
- A 1996 survey of leading magazines such as Time, Newsweek and Fortune showed that plaintiff verdicts were "considerably overrepresented" in reports on civil litigation. The examination of 249 articles by Daniel S. Bailis and UC Berkeley's MacCoun found that plaintiffs were victorious in 85% of cases cited in the articles, compared with a real-world average of no more than 50%. Damage awards cited in the articles were also several times above the norm, leaving "little doubt that the selective reporting practices ... provide a tremendously distorted picture of the jury award distribution," the study said.

A review of some recent high-profile cases by The Times showed newspapers that extensively covered huge damage verdicts seemed to lose interest when the awards were slashed or overturned. The review involved a computer database survey of articles about the cases and follow-up queries to newspaper librarians.

One such story was the \$5-billion punitive damage award in the Exxon Valdez oil spill case. At the time of the verdict in September 1994, front-page reports appeared in such major dailies as The Times, New York Times, Chicago Tribune, Philadelphia Inquirer, San Francisco Chronicle,

Houston Chronicle, Detroit Free Press, Dallas Morning News, Seattle Times and St. Petersburg Times.

When a federal appeals court overturned the award in November 2001, three of the 10 papers reported it on the front page.

When a Los Angeles jury in July 1999 ordered General Motors to pay a then-record \$4.9 billion in compensatory and punitive damages to six people burned when the gas tank of their Chevrolet Malibu exploded after a rear-end collision, the story made the front page of leading U.S. papers — including the Washington Post, Chicago Tribune, Chicago Sun Times, Boston Globe, Philadelphia Inquirer, Detroit Free Press, San Francisco Chronicle, Ft. Worth Star Telegram, San Jose Mercury News and The Times.

Coverage was sparser a few weeks later when the trial judge trimmed the punitive damages to a still-huge \$1.2 billion. Two of the 10 papers ran the story on the front page.

Then in July 2003, while the case was on appeal, it was settled for an undisclosed sum. Brief items appeared in four of the papers, while no mention could be found in the other six.

When a Florida jury socked top cigarette makers with a \$144.8-billion punitive damage award, it was the lead story for many print and broadcast outlets. Front-page reports on the July 2000, verdict appeared in The Times, New York Times, Washington Post, Chicago Tribune, Boston Globe, Miami Herald, Dallas Morning News, San Francisco Chronicle, Houston Chronicle and Indianapolis Star, among others.

When a Florida appeals court overturned the award in May 2003, two of the 10 papers ran front-page reports.

Other cases reviewed by The Times showed a similar pattern.

"Journalists, by and large, are not as good as they should be in keeping up with what happens after a large verdict — even though they know full well from experience that the verdict will most likely be cut dramatically," said Tom Goldstein, a professor of journalism and mass communications at UC Berkeley. "There surely is less of an attention span than there should be."

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