

44 N.Y. Jur. 2d Defamation and Privacy § 234

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Defamation and Privacy

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Part One. Defamation of Persons

XI. Damages

A. In General

§ 234. Excessiveness or inadequacy of damages

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West's Key Number Digest

West's Key Number Digest, [Libel and Slander](#)  [121](#), [123\(9\)](#), [123\(10\)](#)

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[Excessiveness or inadequacy of compensatory damages for defamation](#), 49 A.L.R.4th 1158

Trial Strategy

[Litigating Defamation Claims](#), 128 Am. Jur. Trials 1

The question of the amount of damages to be awarded in defamation actions is peculiarly within the jury's province,¹ requiring prudence and restraint by a trial court in the exercise of its discretion over such awards.² The jury's judgment as to the damages for the wrong which the plaintiff has suffered and the amount which the defendant should be made to pay for invading his or her rights ought not to be disturbed, unless it is so manifestly unjust as to indicate that the jury reached its verdict through passion,

bias, or prejudice and not upon principles of a sound discretion, taking into consideration all circumstances in mitigation or aggravation.³

However, as in other actions for damages,⁴ verdicts or awards in libel and slander actions are subject to vacation or adjustment in a proper case on the ground of the excessiveness or inadequacy of damages. Verdicts or awards have been overturned as excessive where—

— an award of \$20 million punitive damages, to a steel corporation, rather than \$2 million, was based on the writing and mailing of a letter which asserted that a corporation had an ongoing relationship with organized crime, was involved in racketeering activities, and was on the verge of financial collapse.⁵

— a jury award of \$250,000 in damages to an employee in his defamation action against his employer, alleging that his former supervisor told a coworker that he had defecated on the sidewalk and had been terminated for that reason, deviated materially from what was considered reasonable compensation, such that reduction of the award to \$50,000 was warranted, where there was no evidence that the statement was widely disseminated, and there was little proof of statement's impact on employee.⁶

— the jury determined that the plaintiff never uttered the racial slurs attributed to him in the press release disseminated by the defendants and had awarded \$200,000 compensatory and \$600,000 punitive damages, but the evidence showed only that the plaintiff was deprived of \$130,000 in fees because his firm, which had previously been retained by the city, was removed from representing the city because of fear of a discrimination claim.⁷

— in a defamation action by a surgeon against a declarant arising from a statement on a billboard, affixed to a vehicle, stating that the surgeon earned "nearly \$700,000 in this community yet refuses to pay child support," an award was made of \$200,000 in compensatory and \$600,000 in punitive damages, rather than \$35,000 of compensatory and \$100,000 in punitive damages.⁸

— a sheriff department news release stated that the plaintiff was dismissed as undersheriff because of his unprofessional conduct causing internal strife within the department, and the jury had awarded \$150,000 compensatory and \$100,000 punitive damages, but the proof fell short of establishing that plaintiff was substantially injured by the false statement in the news release, and the only proof of injury was plaintiff's self-serving testimony, which was never corroborated by expert medical opinion, that the news release caused him to become emotionally upset and "uptight" and that as a result he visited a doctor who prescribed medication.⁹

— only one individual was present when words imputing moral unchastity were uttered, and the verdict was for \$4,500.¹⁰

— a law book publisher published a book with errors without noting on the title page that the plaintiff was no longer the editor thereof, and the jury had awarded \$20,000 compensatory and \$30,000 punitive damages, but the publisher was not actuated by actual malice, and publication was not made so recklessly that its carelessness indicated heedless disregard for rights of others.¹¹

— a jury had awarded \$5 million punitive damages and \$2.5 million compensatory damages on two counterclaims for common-law libel arising out of letters accusing plaintiff of "doctoring" samples of its products and using "various influences" in order to promote its product, and a common-law slander counterclaim involving an alleged statement that plaintiff had supplied women to the store's buyers.¹²

On the other hand, the courts have sustained as appropriate and not excessive—

— a compensatory damages award of \$26,800 and a punitive damages award of \$117,500 for defamation and malicious prosecution claims in the plaintiff's action against a building supply store, its owner, and the owner's son-in-law, where

- baseless criminal charges brought against the plaintiff by the defendants were reported in a local newspaper, which resulted in the plaintiff's suspension and ultimate resignation from his position as a code enforcement officer, a decrease in carpentry work and income from his position as a substitute teacher, and the plaintiff suffered emotional and physical harm and incurred legal expenses in defending himself against the charges, and the ratio of compensatory damages to punitive damages was not so exorbitant as to be deemed actuated by passion.¹³
- a jury award of \$200,000 in compensatory damages to each plaintiff in a defamation action brought against a village's police chief and village officials; while draped in the authority of his police uniform, the chief publicly asserted on numerous occasions that the plaintiffs, who owned and operated a restaurant in the village, were terrorists, drug dealers, and gun runners associated with Osama Bin Laden, the chief continued to make such statements after being told to cease by village officials, and the plaintiffs felt publicly scorned, both professionally and personally, as did their children.¹⁴
 - an award of \$225,000 in compensatory damages in a defamation action, where, as a result of the defendant's false statement that the plaintiff had sexually abused his daughter, the plaintiff was permitted only supervised visitation with his children for a significant period of time and was also forced to resign from his position as a physician at a local hospital and to relocate to another community.¹⁵
 - an award of \$20,000 in compensatory and punitive damages to the plaintiff in a defamation action, in view of evidence of emotional distress caused to the plaintiff, and given the reprehensible and repetitive nature of the defendant's defamatory conduct in per se slandering the plaintiff in his occupation and by accusing him of a serious and heinous crime.¹⁶
 - awards of \$40,000 for presumed harm to reputation, and \$100,000 for four years of emotional distress suffered prior to trial in a libel action brought by woman whose picture was altered by a newspaper to make it appear that she was a convict and the woman was a mother and a successful businesswoman.¹⁷
 - jury verdicts for \$550,000 for past compensatory damages and \$175,000 for future compensatory damages where (1) the plaintiff was discharged as counsel for a lucrative investment project as a direct result of defendants' defamatory statements, (2) the attorney who was hired to replace plaintiff provided about 1,800 hours of legal services to the project over a 4½-year period, (3) there was testimony that it would take eight to 10 years more to finish the project, at an annual cost of \$150,000 to \$200,000 for legal fees, and (4) the local law firm had stopped referring cases to the plaintiff, and several clients left him, as a result of the defamatory statements.¹⁸
 - an award of \$85,000 compensatory and \$15,000 punitive damages, where the plaintiff was the victim of a 2½-year ordeal, orchestrated by the defendants, during which his professional and personal integrity were called into question, the plaintiff was labeled a child abuser by the defendants and was accused of having sexual intercourse and deviate sexual intercourse with the 4-year-old child, and the plaintiff was also accused of beating the child and indiscriminately injecting her with needles.¹⁹
 - an award of \$400,000 compensatory and \$150,000 punitive damages for deliberate libels ending an actor's broadcasting career by charges of Communism.²⁰
 - an award of \$175,000 in punitive damages for a newspaper article attacking a well-known war correspondent, author, and lecturer and telling of his public nudity with a woman.²¹

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Footnotes

- 1 Toomey v. Farley, 2 N.Y.2d 71, 156 N.Y.S.2d 840, 138 N.E.2d 221 (1956); Yammine v. DeVita, 43 A.D.3d 520, 840 N.Y.S.2d 652 (3d Dep't 2007); Calhoun v. Cooper, 206 A.D.2d 497, 614 N.Y.S.2d 762 (2d Dep't

1994); *Prozeralik v. Capital Cities Communications, Inc.*, 188 A.D.2d 178, 593 N.Y.S.2d 662 (4th Dep't 1993), rev'd on other grounds, 82 N.Y.2d 466, 605 N.Y.S.2d 218, 626 N.E.2d 34 (1993).

2 *Yammine v. DeVita*, 43 A.D.3d 520, 840 N.Y.S.2d 652 (3d Dep't 2007).

3 *Toomey v. Farley*, 2 N.Y.2d 71, 156 N.Y.S.2d 840, 138 N.E.2d 221 (1956); *Kruglak v. Landre*, 23 A.D.2d 758, 258 N.Y.S.2d 550 (2d Dep't 1965).

4 N.Y. Jur. 2d, Damages §§ 135 to 138.

5 *New Jersey Steel Corp. v. Lutin*, 297 A.D.2d 557, 747 N.Y.S.2d 89 (1st Dep't 2002).

6 *Allen v. CH Energy Group, Inc.*, 58 A.D.3d 1102, 872 N.Y.S.2d 237, 52 A.L.R.6th 719 (3d Dep't 2009).

7 *O'Neil v. Peekskill Faculty Ass'n Local No. 2916*, 156 A.D.2d 514, 549 N.Y.S.2d 41, 57 Ed. Law Rep. 1331 (2d Dep't 1989).

8 *Grieco v. Galasso*, 297 A.D.2d 659, 747 N.Y.S.2d 120 (2d Dep't 2002).

9 *Nellis v. Miller*, 101 A.D.2d 1002, 477 N.Y.S.2d 72 (4th Dep't 1984) (holding that the jury award would be reversed unless plaintiff stipulate to reduce the award of compensatory damages to \$5,000 and punitive damages to \$15,000).

10 *Laskowski v. Nassau County*, 57 A.D.2d 888, 394 N.Y.S.2d 442 (2d Dep't 1977) (holding verdict excessive to the extent it exceeded \$2,000).

11 *Clevenger v. Baker Voorhis & Co.*, 19 A.D.2d 340, 243 N.Y.S.2d 231 (1st Dep't 1963), order aff'd, 14 N.Y.2d 536, 248 N.Y.S.2d 396, 197 N.E.2d 783 (1964) (holding that compensatory damages should be reduced to \$10,000, and the punitive damages award should be stricken).

12 *Perfect Fit Industries, Inc. v. Acme Quilting Co., Inc.*, 494 F. Supp. 505 (S.D. N.Y. 1980) (stating that the awards were so excessive as to suggest possibility that prejudice and passion had tainted the verdict).

13 *Strader v. Ashley*, 61 A.D.3d 1244, 877 N.Y.S.2d 747 (3d Dep't 2009).

14 *Yammine v. DeVita*, 43 A.D.3d 520, 840 N.Y.S.2d 652 (3d Dep't 2007).

15 *Dobies v. Brefka*, 45 A.D.3d 999, 846 N.Y.S.2d 669 (3d Dep't 2007).

16 *Liker v. Weider*, 41 A.D.3d 438, 838 N.Y.S.2d 140 (2d Dep't 2007).

17 *Morsette v. "The Final Call"*, 309 A.D.2d 249, 764 N.Y.S.2d 416 (1st Dep't 2003).

18 *Calhoun v. Cooper*, 206 A.D.2d 497, 614 N.Y.S.2d 762 (2d Dep't 1994).

19 *Rossignol v. Silvernail*, 185 A.D.2d 497, 586 N.Y.S.2d 343 (3d Dep't 1992) (stating that the persistent unfounded accusations of child abuse made by the defendants belied their claims that their actions were merely those of concerned parent and grandparent).

20 *Faulk v. Aware, Inc.*, 19 A.D.2d 464, 244 N.Y.S.2d 259 (1st Dep't 1963), order aff'd, 14 N.Y.2d 899, 252 N.Y.S.2d 95, 200 N.E.2d 778 (1964).

21 *Reynolds v. Pegler*, 123 F. Supp. 36 (S.D. N.Y. 1954), judgment aff'd, 223 F.2d 429 (2d Cir. 1955).