

## JUDICIAL DECISIONS GO AGAINST ABC NEWS SHOWS

*U.S. Supreme Court keeps alive libel suit against '20/20', and in Chicago U.S. Court of Appeals finds network's 'World News' guilty of 'conversion'*

In separate hearings last week, ABC News programs *20/20* and *World News Tonight* had judicial decisions go against them. In *Jones v. ABC*, the U.S. Supreme Court kept alive a four-year-old, \$4 billion dollar libel suit against ABC's *20/20*, while in Chicago, the U.S. Court of Appeals found ABC's *World News* guilty of "conversion" in *FMC Corporation v. Capital Cities/ABC Inc.*

On Tuesday, Oct. 9, the Supreme Court asked the Appeals Court to reexamine *Jones* in light of June's *Milkovich v. Lorain Journal* decision. The suit against ABC, filed in 1987 by Nautilus exercise equipment inventor Arthur Jones, contended that a *20/20* episode "falsely cast [Jones] as a liar and a hypocrite and accused him of animal cruelty" of 63 baby elephants he brought to Florida from Africa in 1984.

The *Milkovich* decision held that expressions of opinion that are asserted as fact may be libelous if the assertion is

proved false. A U.S. District court judge dismissed the original *Jones* case on a summary judgment. That decision was later upheld by the U.S. Court of Appeals.

Gregory G. Jones, a partner in Tampa-based law firm Carlton, Fields, Ward, Emmanuel, Smith & Cutler, representing ABC, said he believes that upon review, the lower court will find in ABC's favor again because libel "analysis is [still] very similar as before" *Milkovich*. The comments in question, said Jones, were "not defamatory" and therefore "are not actionable."

Meanwhile, the U.S. Court of Appeals for the Seventh Circuit in Illinois said ABC must return documents shown on a *World News Tonight* report regarding FMC spare parts pricing policies contracted for the U.S. Army's Bradley Fighting Vehicle. After the report, FMC found that they no longer had the original or any copies of the documents (needed to comply with Department of

Defense contracts) and sought to have the originals or copies returned to them.

ABC believed the First Amendment protected them from having to return the documents, because applying conversion standards "would cripple all investigative reporting."

"This is not a First Amendment issue," said Joseph A. Cari Jr., a partner of Chicago firm Coffield Ungaretti Harris & Slavin. "It's a very simple tort case...a conversion case."

The Appeals Court agreed, saying that, "ABC's retention of the documents amounts to the exercise of unlawful dominion over them...[which] constitutes conversion." ABC, can "keep...and disseminate any information contained" in the documents, the Court ruled, "so that its First Amendment activities will not be chilled or discouraged."

ABC can provide the information in some alternative way, if needed, to protect its sources, the Court said. —PJS

## NCTA, SUPERSTATIONS TAKE SWING AT BASEBALL'S EXCLUSIVITY PROTECTION PITCH

Major League Baseball's request for special exclusivity protection for live sports telecasts "is aimed at maximizing the revenues of sports interest, not enhancing the public interest," according to the National Cable Television Association in comments filed at the FCC ("In Brief," Oct. 8).

At issue is whether the "right to televise the game itself is the essential product licensed by a baseball club to local stations," as a petition from Local Sports Telecasters stated; or, "that local and distant-signal telecasts of the same sports events are genuinely different" as Tribune Broadcasting Co.'s opposing petition said.

Although not limited to them, the petition is primarily directed at the three superstations: WGN-TV Chicago, WWOR-TV New York and WTBS(TV) Atlanta (BROADCASTING Sept. 10).

Not surprisingly then, Tribune Broadcasting Co., licensee of WGN-TV, and Turner Broadcasting System, licensee of WTBS(TV), filed against baseball's request.

TBS said that the nonduplication rules apply where the "material is identical." Since "neither the audio nor the video" is the same as the opposing team's broadcast, nonduplication restrictions do not apply, and MLB's petition "has little, if any, relationship to the network nonduplication rule," TBS said, adding that implementing MLB's request "would impose significant costs on cable systems, sports fans and superstations."

The MLB petition is "protectionist," said Tribune Broadcasting, adding that there is no evidence that "viewers' current ability to choose between a local broadcast and a different version of the same game is harmful to either sports or the public interest."

TCI, United Artists, Continental Cablevision, Telecable Corp. and United Video Cablevision, said MLB profits from selling rights to telecaster from both cities that have teams playing a game, and is in essence, "asking the FCC to create new exclusive rights after MLB has profited from authorizing non-exclusive productions."

The NCTA sided with the superstations, saying that two broadcasts of the same game "typically feature different audio (and often different video)" and "as every sports fan knows...are far from interchangeable."

The National Basketball Association and the National Hockey League, in a joint filing, supported MLB's position by urging "that the same kind of protection be given to sports rights sales as is given to other broadcast programming."

Local Sports Telecasters, representing the owners of WDAF-TV Kansas City, KCRA-TV Sacramento; KPLR(TV) St. Louis, and WPHL-TV Philadelphia. Denying MLB's request, it said, "local exclusivity rights granted for sports events should be enforceable to exactly the same extent...as any other type of programming licensed to local stations."

Fox Television Stations, licensee of KTTV-TV Los Angeles, said "the game itself is the copyrighted material that the Los Angeles Dodgers have licensed to KTTV, and the game play is what people want to watch." —PJS