

---

## Jury Awards Hale and Dorr Client \$4.2 Million in Libel and Defamation Suit

2002-02-19

Just over six years after the Complaint was filed, and after more than nine interlocutory appeals, five summary judgment motions, twenty motions in limine, and five weeks of trial, a jury on February 12 awarded our client \$4.2 million on her claims against the Dana-Farber Cancer Institute, its former physician-in-chief, Dr. David Livingston, the Boston Globe, and one of its former reporters, Richard Knox.

The case arose from the aftermath of the highly-publicized overdoses that were administered to two patients who were enrolled in an experimental breast cancer protocol in 1994. One of the patients, Betsy Lehman, was a medical columnist for the Globe. She died; the other patient was gravely injured.

Our client, Dr. Ayash, had written the protocol under which both patients were being treated. She was not involved in ordering or administering the overdoses or in the clinical treatment of either patient at the time of the overdoses. Despite this, she was misidentified by the Globe, in its initial front-page article, as having countersigned the overdoses and as having been the "leader of the team." Also despite her lack of involvement in the overdoses, she claimed she became Dana-Farber's scapegoat. She was thus: stripped of her clinical privileges, subjected to a campaign of isolation, referred to the Board of Registration in Medicine for investigation,

subjected to internal disciplinary procedures, and ultimately fired as part of a "lay-off" that consisted of two people.

The case has had many fascinating procedural and substantive issues, including the Globe's assertion of the reporter's privilege. Massachusetts is one of the small minority of states that do not recognize the right to protect confidential sources. As a result, the Globe defendants were on several occasions ordered to produce in discovery confidential source information that was important to our client's claims. As a sanction for their failure to comply, liability was entered on all claims against them. Thus, at trial, the jury was only required to find whether the Globe defendants had caused compensable injury and in what amount. With respect to the Dana-Farber defendants, however, the trial included both liability and damages.