

Jury Verdict Reporter

Medical Negligence Litigation in Illinois: Facts and Figures

By John L. Kirkton

We have all seen the misinformation about medical negligence litigation that has been stated as fact by insurance lobbyists masquerading as public interest advocates, and often repeated by the mainstream media. In this brief article, I will present the truth about medical negligence litigation in Illinois—unvarnished facts and figures—just as the Jury Verdict Reporter’s newsletters have done for nearly 50 years.¹ The Jury Verdict Reporter is the most comprehensive source of information regarding Illinois medical malpractice verdicts, even more comprehensive than the database of Illinois verdicts compiled by the U.S. Department of Justice Bureau of Justice Statistics.²

Cook County Law Division Medical Malpractice Jury Verdicts (2002-2007)

The first section of this article focuses on Cook County Law Division medical malpractice jury verdicts that were returned during the five “volume years” spanning 2002 through 2007.³ Approximately 525 medical malpractice trials were summarized in the Cook County Jury Verdict Reporter during that period.

2002-2003:

- 37.3% of the trials resulted in plaintiff verdicts
- \$1,205,372 median verdict
- \$3,081,425 average verdict
- 6 plaintiff verdicts were for \$5 million or more
- \$22,353,000 was the highest reported medical malpractice verdict

2003-2004:

- 29.9% of the trials resulted in plaintiff verdicts
- \$2,500,000 median verdict
- \$5,524,156 average verdict
- 9 plaintiff verdicts were for \$5 million or more
- \$30,000,000 was the highest reported medical malpractice verdict

2004-2005:

- 30.0% of the trials resulted in plaintiff verdicts
- \$975,000 median verdict
- \$3,449,453 average verdict
- 6 plaintiff verdicts were for \$5 million or more

- \$32,036,787 was the highest reported medical malpractice verdict

2005-2006:

- 35.1% of the trials resulted in plaintiff verdicts
- \$1,000,000 median verdict
- \$2,296,240 average verdict
- 6 plaintiff verdicts were for \$5 million or more
- \$17,070,000 was the highest reported medical malpractice verdict

2006-2007:

- 29.4% of the trials resulted in plaintiff verdicts
- \$1,112,500 median verdict
- \$3,131,443 average verdict
- 5 plaintiff verdicts were for \$5 million or more
- \$31,351,107 was the highest reported medical malpractice verdict

Overall, plaintiffs prevailed in approximately 32.4% of the Cook County medical malpractice jury trials during the five-year period.⁴ This figure is comparable to “plaintiff win rates” that have been reported for other venues around the U.S., although Professor Vidmar’s 2005 analysis cites plaintiff win rates of 20%-30% as the norm.⁵ For comparison, the plaintiff win rate for the “Traffic” case category is routinely in excess of 60% for Cook County trials.⁶

The Medical Malpractice Settlement Conundrum

Early in my legal career, another newly-minted attorney mused that her objective was to sign a medical negligence plaintiff as a client, quickly negotiate a “fat” settlement with the insurer, then retire to the Caribbean on her fee. I’ve since lost touch with that attorney, but I suspect that, given the settlement offers that I reviewed during my Cook County medical malpractice analysis, she is probably still working on her tan locally.

Over the five volume years that were reviewed, defendants had an offer on the table at the time the verdict was returned in only about 27% of the cases. And most of those offers could probably be characterized as *de minimis* when the high costs associated with bringing a medical negligence case are considered. Out of more than 500 Cook County medical malpractice trials, only 43 had reported an offer of \$500,000 or more. So, many of the cases that ended in a plaintiff verdict went to the jury with no “significant” offer for the plaintiff to consider. Of the approximately 140 cases in which an offer to settle was reported to the Jury Verdict Reporter, only 6 cases resulted in a plaintiff verdict that was lower than the defense offer.

Note that roughly 150 medical malpractice settlements are collected annually from Illinois venues and summarized by the Jury Verdict Reporter—and the financial impact of these settling defendants was not included in the preceding “offer analysis” which focused only on those defendants who remained in the case when the verdict was

rendered. So, the possibility exists that the defendants with the greatest potential exposure settled out, leaving only the toughest matters to be litigated. This would, at least in part, account for the low number of substantial offers.

Other Illinois Counties: Medical Malpractice Jury Verdicts (2002-2007)

The second part of this article examines the approximately 200 medical malpractice jury trials that were reported from Illinois counties other than Cook (U.S. District Court cases excluded) and summarized in the Illinois Jury Verdict Reporter during the same five-year period.

2002-2003:

- 36.1% of the trials resulted in plaintiff verdicts
- \$500,000 median verdict
- \$1,490,725 average verdict
- 2 plaintiff verdicts were for \$5 million or more
- \$7,200,000 (DuPage Co.) was the highest reported medical malpractice verdict

2003-2004:

- 34.6% of the trials resulted in plaintiff verdicts
- \$1,313,226 median verdict
- \$3,947,115 average verdict
- 1 plaintiff verdict was for \$5 million or more
- \$23,300,000 (Lake Co.) was the highest reported medical malpractice verdict

2004-2005:

- 17.1% of the trials resulted in plaintiff verdicts⁷
- \$900,000 median verdict
- \$1,095,813 average verdict
- No plaintiff verdicts were \$5 million or more
- \$1,439,824 (McLean Co.) was the highest reported medical malpractice verdict

2005-2006:

- 30.2% of the trials resulted in plaintiff verdicts
- \$976,784 median verdict
- \$3,656,782 average verdict
- 3 plaintiff verdicts were for \$5 million or more
- \$24,775,000 (Kane Co.) was the highest reported medical malpractice verdict

2006-2007:

- 34.5% of the trials resulted in plaintiff verdicts

- \$1,387,400 median verdict
- \$3,656,782 average verdict
- 4 plaintiff verdicts were for \$5 million or more
- \$8,480,000 (St. Clair Co.) was the highest reported medical malpractice verdict

Overall, plaintiffs prevailed in approximately 30.3% of the Illinois medical malpractice trials conducted outside Cook County—an outcome that is quite similar to the 32.4% plaintiff win rate in Cook County Law Division.⁸ For comparison, plaintiffs prevailed in 65.2% of the non-Cook County traffic trials that were reported during the 2005-2006 volume year.⁹ County-specific plaintiff win rates for those Illinois venues where five or more medical malpractice trials were reported are:

DuPage County	20.5%
Kane County	29.2%
Lake County	32.0%
Madison County	33.3%
McHenry County	0.0%
McLean County	12.5%
Peoria County	25.0%
Will County	44.4%
Winnebago County	0.0%

The Medical Malpractice Settlement Conundrum

Over the five volume-years that were reviewed for this article, defendants had an offer on the table at the time the jury verdict was returned in only 17.9% of the cases. Of the more than 200 medical malpractice trials reported from outside of Cook County, only 9 indicated an offer of \$500,000 or more. And of the roughly 40 cases in which an offer to settle was reported to us, only 1 case resulted in a plaintiff verdict that was lower than the defense offer.

Conclusion

When I first joined the Jury Verdict Reporter more than 15 years ago, the conventional wisdom was that in order for a medical malpractice plaintiff to have a fighting chance of securing a sizeable jury award, the case had to be venued in Cook County. Yet over the past five years, the difference between Cook County and non-Cook county plaintiff win rates in medical malpractice trials is surprisingly small. Further, non-Cook County juries have clearly been willing—given the right case factually—to award individuals who have been injured by medical negligence substantial sums in damages.¹⁰ Over the five volume years that were examined, Cook County juries awarded at least \$5 million 32 times, which represents approximately 6% of the reported trials. During that same period, jurors in other Illinois counties awarded \$5 million or more 10 times, which is approximately 5% of the reported trials. This certainly does not mean that medical malpractice litigation

has become less difficult, since plaintiffs continue to prevail in less than one-third of the medical malpractice trials statewide. However, there is little doubt that the litigation landscape has changed.

Endnotes

1. The Jury Verdict Reporter, a division of Law Bulletin Publishing Co. (Chicago), was founded in 1959 and is the second oldest business of its kind in the U.S. For information regarding its many products and services, or to request a sample newsletter, please visit the Jury Verdict Reporter section of the Law Bulletin's webpage (www.lawbulletin.com/legal/jury-verdict) or email the author at kirkton@lbpc.com.
2. Neil Vidmar, "Medical Malpractice and the Tort System in Illinois," (prepared for the Illinois State Bar Association and submitted to the Illinois General Assembly in connection with the tort reform debate, May 2005), 4, 24, 49 (hereinafter Vidmar, "Medical Malpractice"). (Report available online at: www.illinoisbar.org/medmal05.html.) To assist Professor Vidmar, the Jury Verdict Reporter prepared comprehensive research of medical malpractice cases in specific Illinois venues using its 65,000-case database of published summaries.
3. The Jury Verdict Reporter's "volume year" runs from September 1 through August 31, corresponding to the old court calendar.
4. The statistics in this section of the article differ slightly from what was reported for Cook County outcomes in the Jury Verdict Reporter's annual Summary and Category Index because this analysis has been limited to Law Division trials for clarity and consistency.
5. Vidmar, "Medical Malpractice," *supra* at 14.
6. Jury Verdict Reporter, Summary and Category Index Volume XX (2005-2006). The index showed a plaintiff win rate in traffic cases of 67.4% for that volume year. Plaintiff win rates in Cook County traffic cases have ranged from a low of 62.8% to a high of 72.3% during the past five years.
7. The 2004-2005 non-Cook County plaintiff win rate of only 17.1% occurred during the height of the "tort reform" debate. However, the Cook County plaintiff win rate did not drop similarly during that volume year, so juror awareness of and response to tort reform publicity may not adequately explain this variation from the other years that were reviewed.
8. The statistics in this section of the article differ slightly from what was reported for non-Cook County outcomes in the Jury Verdict Reporter's annual Summary and Category Index because this analysis has been limited to Circuit Court trials for clarity and consistency.
9. Jury Verdict Reporter, Summary and Category Index Volume XX (2005-2006). Plaintiff win rates in non-Cook County traffic cases have ranged from a low of 65.2% to a high of 72.4% during the past five years.
10. In October 2007, a DuPage County jury awarded a medical malpractice plaintiff \$12 million (see the Illinois Jury Verdict Reporter at 07 O/1). Although this recent trial falls outside the 5-year span of volume years reviewed for this article, I believe that the very substantial verdict—from a county where the plaintiff win rate is well below the statewide norm—illustrates this.