

First District Statistics Dispel Myth Of Generous Philadelphia Juries

Only 5% of Verdicts Pass \$1 Million; Defendants Win Half

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While handling trials last year, Common Pleas Court Administrative Judge John W. Herron presided as juries handed down six

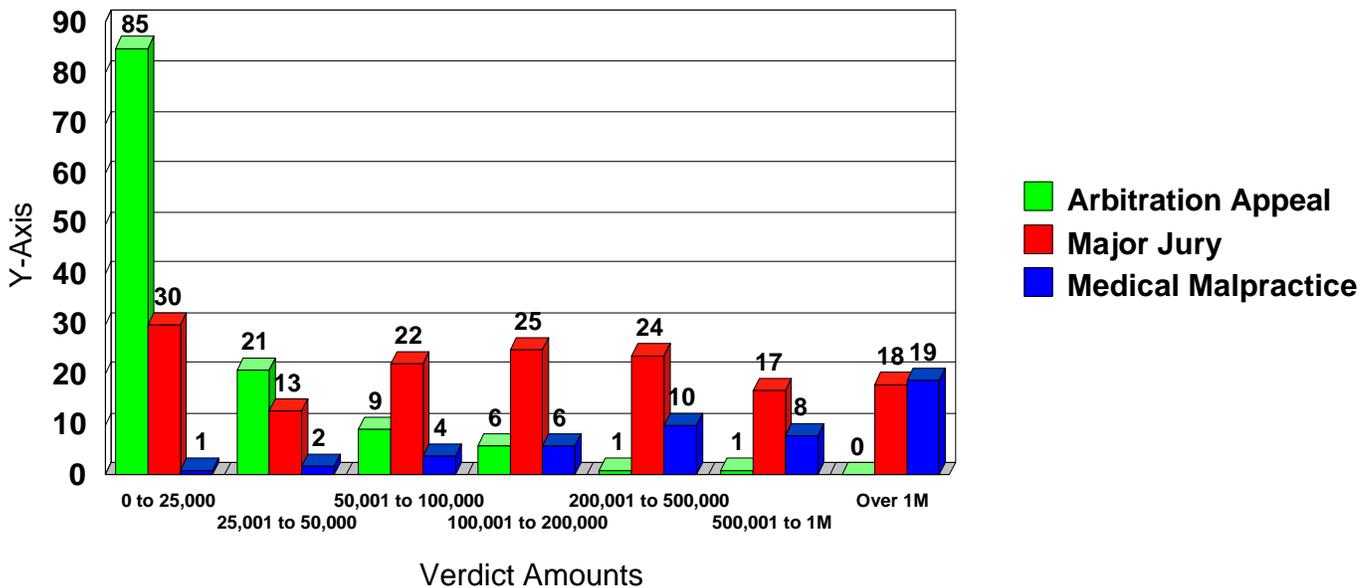
straight defense verdicts.

None of the cases was particularly remarkable or shocking. But the decisions made by those jurors struck Herron, because he had heard, as many have heard, the reputation of city courts as featuring "giveaway juries."

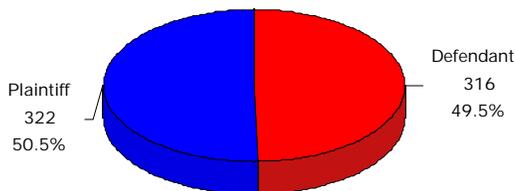
Indeed, Pennsylvania case law includes pitched battles between plaintiffs and defendants over whether tort cases should be litigated in city courts or the courts of other counties.

So Herron and his colleague, Judge Albert W. Sheppard Jr., resolved to rev up the

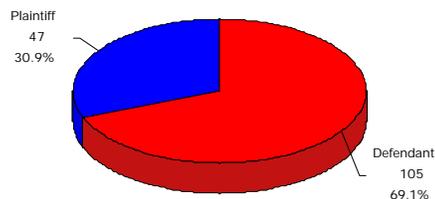
First Judicial District Civil Plaintiff Verdicts Jury Verdict Amounts: 12 Months - 1998



Comparison of Civil Jury Verdicts
First Judicial District of Pennsylvania
Jury Verdicts - All Cases (Including Appeals from Arbitration)
12 Months: January Through December, 1998

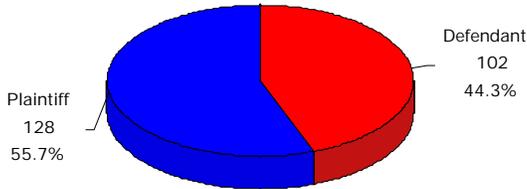


Comparison of Civil Jury Verdicts
First Judicial District of Pennsylvania
Jury Verdicts - Medical Malpractice
12 Months: January Through December, 1998



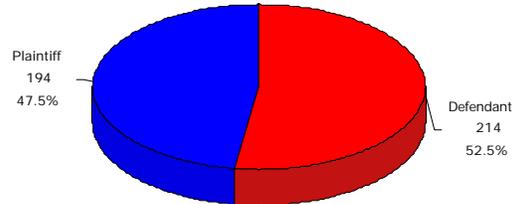
**Comparison of Civil Jury Verdicts
First Judicial District of Pennsylvania
Appeals from Arbitration - 1998**

12 Months: January Through December, 1998



**Comparison of Civil Jury Verdicts
First Judicial District of Pennsylvania
Other than Appeals from Arbitration - 1998**

12 Months: January Through December, 1998



First Judicial District's computers, open up case files, and quantify the facts about what Philadelphia juries are actually doing.

Unveiling data that he said would be surprising to Philadelphia practitioners, the court has released a study showing that city juries are just as inclined to hand down defense verdicts as plaintiffs' verdicts, and that seven-figure judgments are rather rare in Common Pleas Court.

Lawyers reacting to the numbers did not say that the findings were shocking, but did say that the release of the verdict study - which Herron plans to make an annual report - had the potential to bring reality to perceptions of the jury system in this city.

"There is a perception among defense clients that Philadelphia is not a fair litigation climate," Herron said. "I am convinced that there is a mythology and a misperception of what goes on in this courthouse."

Herron and Sheppard said that the study of 1998 verdicts was the first systematic study ever produced by the court. Among the main findings of the study were that:

! Slightly more than half (50.2 percent) of jury verdicts in Philadelphia are awards to the plaintiff, and the rest are defense verdicts.

! There were in 1998 only about three jury awards per month in

excess of \$1million - 37 over the course of the year.

! Only 26 additional plaintiff verdicts exceeded \$500,000.

! Of 638 cases tried to jury verdicts in 1998, 106, or roughly 15 percent, yielded plaintiff awards of less than the jurisdictional limit for arbitration - \$50,000. Only 17 arbitration appeals were decided for amounts in excess of the arbitration limit.

It is the arbitration figures that give Herron and Sheppard the most to think about when it comes to management of trial division resources, they said.

The difference in terms of judicial economy could be made up if only all parties viewed their chances in arbitration appeals more realistically, Herron said.

"The jury verdicts are, in many cases, exactly the same as the arbitration results," he said. "There is just incredibly poor judgment by those taking the appeals in many cases."

The figures also show that medical malpractice litigation is a longshot in Philadelphia, as it is anywhere else. Nearly two-thirds of all trials end in defense verdicts, and seven plaintiff verdicts were nominal by med mal standards - \$100,000 or less.

"An award of less than \$100,000 I would count as a defense victory," said Ed Edelstein, a judge pro tem and a founder of the defense firm Margolis Edelstein. Six more plaintiff verdicts came in at less than \$200,000, or below the primary coverage limits that a physician is required to carry. In medical malpractice, there were a total of 37 awards over \$200,000, which would require indemnification by the state Medical

Professional Liability Catastrophe Loss Fund, and 19 of those exceeded \$1 million.

"I don't believe that most attorneys in big cases believe in the 'big score,'" Edelstein said. "They are looking for a settlement that is 'better than fair.' They don't change their strategy because they read about a \$16 million verdict in the paper. ... Good lawyers don't do that."

But Herron said there are lawyers who are less wise in the folkways of the Philadelphia court system who could benefit from the dose of reality represented by the new statistics.

"There is a myth that you can score big with Philadelphia juries, compared to the real value of a case," said Ellen M. Cavanaugh, president of the Philadelphia Association of defense Counsel. "More information is needed to get a better handle on [the real litigation climate]. The dialogue to follow will be very interesting."

Edelstein said that the biggest surprise was the fact that plaintiffs secure verdicts in only about 55 percent of major jury trials, defined as those that are not appeals from arbitration but are not medical malpractice cases.

"That statistic was a surprise to me," said the veteran defense counsel. "I thought it would be much heavier on the plaintiffs' side."

Philadelphia Trial Lawyers Association President Gerald A. McHugh said he was not surprised by the results of the study.

"To me, the numbers are not surprising," McHugh said. "I think they reflect that [Philadelphia] juries are far more realistic and hard-nosed than the public generally assumes."

While veteran trial lawyers are not likely to be shaken up by the study, less-experienced plaintiffs' lawyers may be disabused of any notion that large verdicts are "easily won or frequently awarded," if they peruse the report, McHugh said. He added that he welcomed the release of the figures because it debunks some well-worn presumptions.

"To me, this shows that the system is balanced and the concern that juries here have a knee-jerk pro-plaintiff orientation is not founded," he said.

Philadelphia Bar Association Chancellor Edward F. Chacker, a veteran trial lawyer in the firm Gay & Chacker, sardonically noted that defendants may be motivated to keep their purse strings tight in the face of the data.

McHugh said he would not be fearful of the court's dissemination of the study.

"The defense bar has always had access to a broad pool of data from insurance carriers and corporations," McHugh said. "They are well aware of the realities of the jury system."

My view is that accurate information helps everyone - plaintiffs, defendants and the court," McHugh said. "One thing I've noted in the past 10 years is how much misinformation there is."

Herron said he has canvassed lawyers privately for six weeks as the study was being prepared for public dissemination, and said none guessed the actual distribution of awards.

He said that large award and settlement coverage in the legal press, including the Legal Intelligencer, fed the misperception of how lucrative

practice in city courts can be.

"People tend to read about the substantial settlements and verdicts without looking at the rest of the system," Herron said. "What we are doing is offering this information so there is more knowledge and understanding of what goes on in this courthouse."

One management challenge faced by the court is the unwillingness of parties to accept arbitration awards of less than the \$50,000 jurisdictional amount, said Herron, pointing out some of the raw data showing that arbitration results pretty accurately presaged the eventual jury awards, with the main difference coming in the cost of litigation and the loss of judicial economy.

One hundred and six jury awards came in at less than the jurisdictional limit for sending cases to arbitration, Sheppard said. And each one of those required three days of a trial judge's labor, taking judges away from other valuable tasks such as handling the upswing in arrests under the Police Department's Operation Sunrise, or finishing off the hardest core of backlogged cases inherited from the Day Backward program.

There were 85 appeals taken from arbitration decisions that resulted in final judgments of less than \$25,000, Herron said, and those cases represent "an extraordinary commitment of legal resources and expense" not just for the court but for litigants.

"When the arbitrators' awards are right on the money, and the verdicts are right there on the money, or there is very little difference," Herron said, "the trial is a loss for both sides."

Sheppard said some parties view arbitration as a "run-through" and not as a real attempt to resolve a case. And that attitude, he said, needs to change, because it is now the single biggest strain on civil court resources.

But Chacker said he would be "skeptical that insurance carriers would ever change their point of view despite" the release of information, because of the way internal policies are made by carriers.

"The problem is that cases valued at \$25,000 to \$150,000 after judge pro tem and Common Pleas Court evaluation are not getting reasonable offers," Chacker said,

arguing that it is not exclusively an arbitration appeals issue.

Edelstein said carriers develop offer policies based on an overall assessment of exposure throughout a range of cases, and not really on a case-by-case basis.

"The philosophy of certain carriers is to take a statistical risk" and spread it over a number of cases, Edelstein said. "You [as a carrier] may be wrong, but it is your constitutional right to be wrong" and demand a full-dress trial.

Chacker suggested as a means of saving on litigation and trial expenses a hike in the jurisdictional limit of Municipal Court, since many clients insist on a final judgment from a court with a commissioned judge in charge.

"We should talk about it, and we should look into it," Chacker said.

But Herron said there would be an "extraordinary amount of resistance," since Municipal Court cases are decided without juries.

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