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TOP TEN
Jury Verdicts
OF 2006

Top Ten verdicts plummet for second year in a row

By Bill Ibelle
 Staff writer

Maybe it's just a 24-month coincidence, but for the second year in a row, the nation's largest verdicts to individual plaintiffs have fallen dramatically.

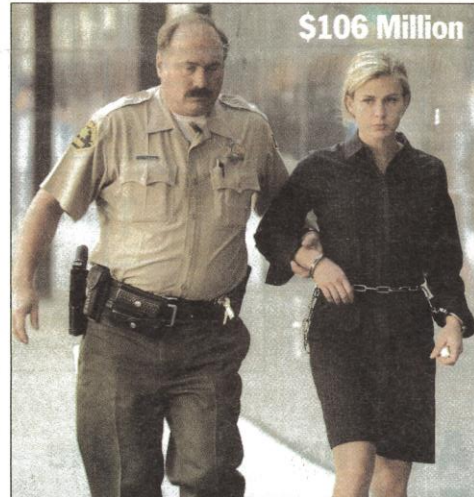
This past year's total is one third of the total for the previous year, which was half the total of the year before.

Although we can't use the most extreme verdicts to draw conclusions about the overall tort landscape in America, there does seem to be a trend away from the eye-popping awards that have dominated our Top Ten list for the last decade.

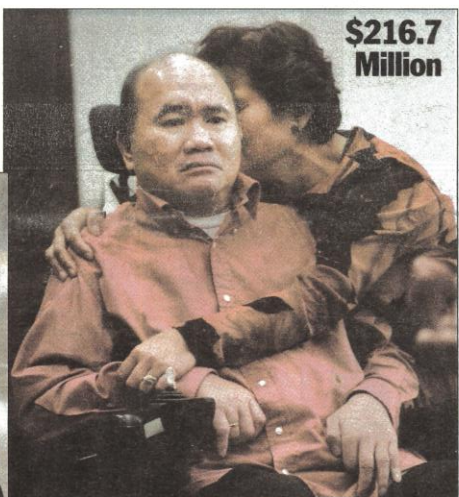
While a verdict of \$216 million – this past year's largest – is still a substantial chunk of change, it is the smallest #1 verdict to an individual plaintiff since 1993.

To put this into perspective, two years ago, all 10 verdicts on our list were for more than \$100 million (and two were for more than a billion), but this past year there were only three above \$100 million. In fact, for the second year in a row, each of the Top Ten verdicts was smaller than the verdict in the corresponding position the year before. That's a lot of coincidence.

Some observers point directly to tort reform. This past year's #1 verdict involved a man who died after an unlicensed emergency room physician's assistant misdiagnosed his stroke as a sinus infection. Although the verdict was one of the largest malpractice verdicts in Florida history, the plaintiff's attorney, David Dickey, believes it



AP Photo/Denis Poroy



AP Photo/Jay Nolan



is likely to be the last of its kind because of recent caps on non-economic damages.

That prediction seems to be supported by developments in Texas, where similar caps took effect three years ago. Plaintiffs' lawyers

Verdicts: Supreme Court case may have fueled decline. Continued on page 2

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TOP #1 TEN

JURY VERDICTS OF 2006

\$216.7 MILLION

Record med-mal verdict in Florida

Tort reform may render it the last blockbuster of its kind

By Natalie White
Contributing writer

In one of the largest medical malpractice verdicts in U.S. history, a Florida jury awarded \$216.7 million to a Tampa man left brain-injured and disabled after emergency room personnel misdiagnosed a stroke as a sinus infection.

The award included more than \$100 million in punitive damages.

The verdict is the nation's largest verdict to an individual plaintiff this year, and the third largest med-mal verdict in U.S. history, according to attorneys for the family.

But it is likely to be the last large malpractice verdict in Florida, according to plaintiffs' attorney David Dickey. He said the state's cap on non-economic damages in medical malpractice cases, which went into effect in 2002, could prevent complicated, labor-intensive cases such as this from going to trial.

"It's not surprising that the verdict was this large. It is a devastatingly large loss."



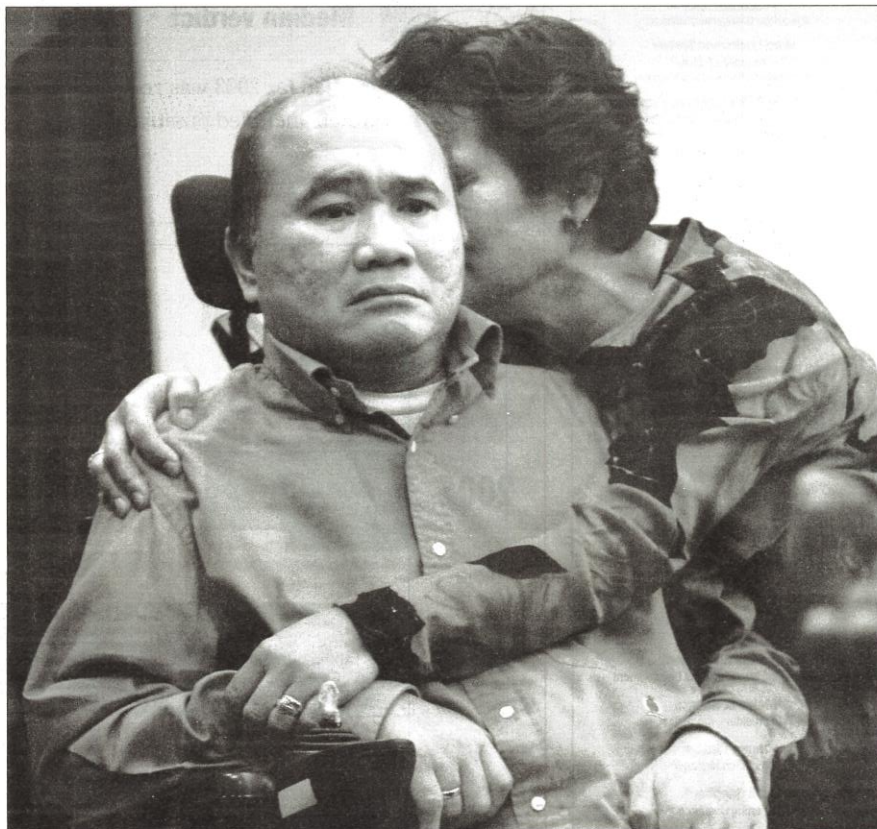
— Steve Yerrid

"This case shows why you shouldn't have limits," he said. "In this case, lawyers were able to discover what really happened and [prevent the defendants] from getting away with a cover-up. You won't see these types of cases going forward anymore."

In Texas, where caps on non-economic damages went into effect three years ago, the Texas Alliance for Patient Access has reported a 50 percent drop in medical malpractice suits in the state's four major cities.

The Florida damage caps didn't apply to this case because it was filed before 2002.

As for the size of the verdict, lead plaintiffs' attorney Steve Yerrid contends that it is an appropriate amount for a man sentenced to a living nightmare, and in which he can no longer play or communicate with



AP Photo/Jay Nolan

Allan Navarro listens to his wife Marilyn during a trial against the ER personnel who misdiagnosed his stroke as a sinus infection.

his 10-year-old son.

"It's not surprising that the verdict was this large," said Yerrid. "It is a devastatingly large loss. This case acts as a testimonial that the system still works. The jury found fault and recognized the magnitude of this family's loss in dollars and cents."

He said the jury's award was intended both to punish the defendants and to serve

as a deterrent to prevent similar errors in the future.

The jury found Dr. Martin Austin and physician's assistant Mark Herranz each 25 percent responsible, and assessed the remaining 50 percent of liability to Dr. Austin's practice, the Carrollwood Emergency Physicians, and its affiliate Franklin, Favata & Hulls.

An amateur diagnosis

Allan Navarro was paralyzed in 2000 after a physician's assistant—who had failed a state licensing exam four times—examined him in the emergency room and concluded that the intense pain in his head was caused by a sinus infection.

In fact, Navarro had suffered a stroke. But the doctor in charge at the time did not examine Navarro and sent him home based on the evaluation of the physician's assistant.

Yerrid told the jury that his client was experiencing classic signs of a stroke, such as his description that he felt a sudden pop in his head before the onset of his headache. He was also dizzy, nauseous, confused and unsteady on his feet.

Furthermore, Navarro told hospital personnel that his family had a history of strokes.

But after five hours in the emergency room at the University Community Hospital-Carrollwood, a doctor sent Navarro home with a painkiller and some antibi-

otics, telling him he had a headache from a sinus infection.

Yerrid said medical experts testified that if his client's brain swelling had been checked

Continued on page 6

AT-A-GLANCE

Verdict: \$216.7 million
\$100.1 million in punitive damages

State: Florida

Type of case: Medical malpractice

Trial: 3 weeks

Deliberations: 3 hours for compensatories, less than an hour for punitives

Status: Defendants have appealed.

Case name: *Navarro v. Carrollwood Emergency Physicians*

Date of verdict: Oct. 3, 2006

Plaintiff's attorneys: C. Steve Yerrid and David Dickey (formerly of de la Parte & Gilbert) of The Yerrid Law Firm in Tampa, Fla.; Richard A. Gilbert of de la Parte & Gilbert in Tampa, Fla.

Defense attorneys: Jeffrey M. Goodis of Thompson, Goodis, Thompson, Groseclove & Richardson in St. Petersburg, Fla.; Brian D. Stokes of The Unger Law Group in Orlando, Fla.

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Second deposition of doctor yields big break

Continued from page 3

earlier, the damage would have been much less.

"When they sent him home, he lost the window for a cure," said Yerrid. "He still could have had a relatively normal lifestyle."

A one-time professional basketball player in his native Philippines, Navarro was 44 years old and working as a machine operator at the time of his stroke.

The morning after his first visit to the emergency room, Navarro woke with excruciating head pain, slurred speech and nausea. He was confused and had trouble walking. He was readmitted to the emergency room at 6 a.m. but the stroke still wasn't diagnosed until that afternoon, when he was transferred to a sister hospital for surgery.

By then the stroke had already done a great deal of damage.

During surgery, Navarro slipped into a coma which lasted for four months. He is now completely paralyzed in three limbs and has only limited use of his one functioning hand. As a result, he is confined to a wheelchair and has no control over his bladder or his bowels. He cannot play with his 10-year old son, or hug his wife, Yerrid said.

"It's a nightmare for them, and the nightmare will go on," he said.

A surprise development

According to co-counsel Richard Gilbert, the turning point occurred when one of the defense attorneys withdrew three years into the case, citing a conflict of interest. The late withdrawal didn't make sense to Gilbert, and he suspected something was amiss.

"I thought there must be some conflict with the testimony," he said. "Someone

thought someone was lying. We filed to reopen the depositions."

The defense was contending at the time that although the physician's assistant had seen Navarro, the doctor had actually done the exam. Even during the second round of depositions, the physician's assistant, who died before trial, insisted that he was "just a scribe" and had not done the final exam, according to Gilbert.

"At the time we didn't know the exam had been done by an unlicensed person. We were still being led to believe that it was done by a doctor or at least redone by a doctor," Gilbert said.

But when the doctor was deposed a second time, he admitted that he did not examine Navarro and that he didn't know whether the physician's assistant was qualified to make such an assessment.

The jury was clearly outraged by the attempts to cover up the mistake.

After awarding \$116.7 million in compensatory damages on Sept. 29, the jury hammered the defendants a second time with a punitive award of \$100.1 million. The family and their attorneys have pledged to donate the entire punitive award to charities dedicated to helping people with spinal cord and brain injuries.

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Pumping up the damages

Although the \$116 million in compensatory damages is large in comparison with those awarded for other devastating medical errors, Yerrid said it is trivial next to the suffering of the family.

He asked the jury to award "tens of millions of dollars" that would "adequately demonstrate the enormity of the injury and devastation."

A life care planner testified that it would cost \$15 million to care for the plaintiff over his 25-year life expectancy.

But the medical costs were only part of the equation. Because Navarro was not earning a lot of money prior to the devastating medical error, Yerrid put a new twist on the lost wages argument. He asked jurors to consider that his client now has a 24/7 job, a job that he can never quit, a job that causes him and his family only misery and pain, a job that he will have to do for the rest of his life.

"He's a prisoner in his own body. There never will be any recovery, just slow, horrible deterioration and one day, maybe a merciful death," Yerrid said.

As for the enormity of the compensatory award, Yerrid said many intangibles came together.

"The only way to explain it is there was a little bit of magic," he said. "It's a combination of things that come together in the courtroom. We had a great legal team, great clients and a compassionate jury willing to see the truth."

In spite of the gigantic award, Dickey said the money will do little to change the lives of the plaintiff and his family, although it may ease some of his physical discomfort. The family is looking for a computer device that would help Navarro communicate.

When the doctor was deposed a second time, he admitted that he did not examine the plaintiff and didn't know whether the physician's assistant was qualified to make such an assessment.

"Some people look at the verdict and say, 'They're rich.' It really doesn't convert to any large difference in their lives," he said. "Their lives aren't any better today than they were yesterday because of the profound nature of Allan's injuries."

Getting the right jury

Yerrid said jury selection is critical in medical malpractice cases such as this because the tort reform lobby has done such a good job creating a general bias in favor of doctors and health care providers.

"The insurance lobby has poisoned the general public," he said.

During jury selection, Yerrid tries to weed out those with bias by engaging potential jurors in dialogue.

"What you're really trying to do is unpick the jury — trying to take out the bad jurors," Yerrid said. Although carefully designed questions can help ferret out biased jurors, Yerrid said he ultimately has to rely on his own instincts to determine who is "telling the truth."

Questions or comments can be directed to the features editor at: bill.ibelle@lawyersusaonline.com