

From the reprint department of:

Business Insurance[®]

a publication of Crain Communications Inc.

Reporting weekly for corporate risk, employee benefit and financial executives.

As seen the week of:

APRIL 10, 1995

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Plaintiffs finding favor as juries award more money more often

By SALLY ROBERTS

As Congress is debating sweeping tort reform legislation, a recent study suggests more jurors in personal injury cases may be beginning to side with the plaintiff.

Personal injury plaintiffs won 55% of all types of personal injury jury trials in 1994 and received a median compensatory award of \$57,250, compared with winning 53% of the verdicts in 1993 with a median award of \$50,614, the study said.

Plaintiff recovery rates for product liability and medical malpractice cases also were up in 1994, reversing five-years of decreases, according to Jury Verdict Research, a Horsham, Pa.-based firm that analyzed about 90,000 jury verdicts for the entire study.

Medical malpractice plaintiffs recovered in 37% of the cases that went to verdict in 1994, with a median compensatory award of \$392,790, up from 31% in 1993 but down from a median award of \$500,000. Product liability plaintiffs recovered in 42% of the cases that went to verdict with a median award of \$509,344, up from 38% 1993 with a median award of \$500,000.

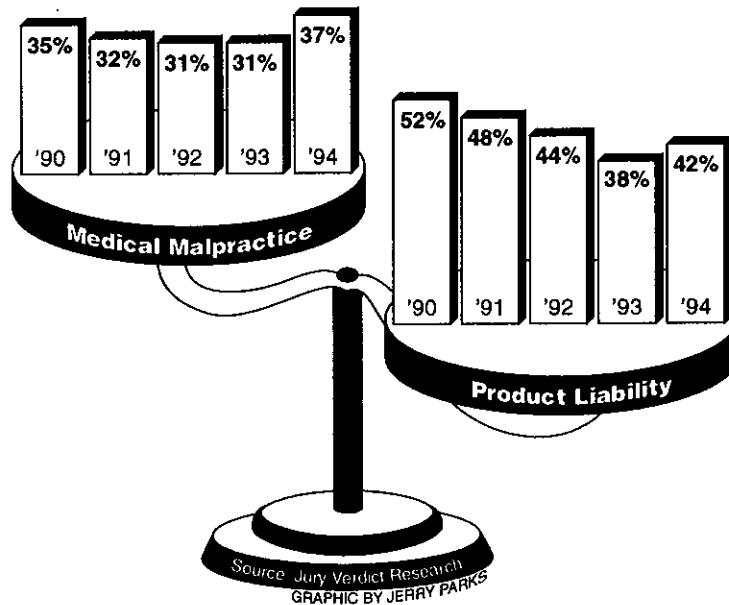
Liability experts caution that some of the Jury Verdict Research data comes from newspaper stories and lawyers who phone in details about their own cases. As a result, the study is not comprehensive or scientific.

Some personal injury attorneys are surprised by the findings and contend the results are inconsistent with their own experiences.

"The atmosphere in trying cases, from a defense lawyer's point of view, is that juries are more realistic and conservative,"

Juries tip the scales

Percent of jury verdicts won by plaintiff



said James P. Donovan, a defense attorney with Wilson, Elser, Moskowitz, Edelman & Dicker in New York. "We have a strong feeling with the jury system that it is willing to listen to the defense side of the case," he said.

Victor Schwartz, a defense attorney with Crowell & Moring in Washington, and a product liability reform lobbyist, said he was surprised with the study's results.

"I know from experience that clients are having fewer cases go to jury, so the cases that are ultimately tried are only the ones in which the defense feels it is absolutely not liable," regardless of the victim's injuries or how large a company the defendant is, he said.

But a plaintiffs attorney used the same reasoning to explain

why more plaintiffs are winning cases.

"Medical malpractice and product liability cases are very expensive and tough to try, therefore plaintiff attorneys are more selective" with their cases, said Edward C. Bassett, a plaintiffs attorney with Mirick, O'Connell, DeMallie & Lougee in Worcester, Mass. Because, only 3½% of the cases actually go to a jury verdict, "The plaintiff must have a pretty darn good case" to go to trial, Mr. Bassett said, adding: "For plaintiffs attorneys, (being selective) is the only way to survive now."

Another plaintiffs attorney suggests any trend now is moot.

Any trend toward juries favoring plaintiffs doesn't matter, due to impending tort reforms, said Thomas A. Demitrio, a plaintiffs

attorney with Corboy, Demitrio, Clifford in Chicago.

"The insurance industry, manufacturers and business groups have done such a terrific job of

public relations, lobbying and contributing to the Republicans, (that) the laws, in effect have gone way overboard. So what ever trend is starting, we'll see cease," Mr. Demitrio said.

Tort reform legislation, if enacted, will not only "dramatically" drop the number of personal injury cases filed, but those cases that are tried "will spiral in favor of the defendant," Mr. Demitrio predicts. The proposals "are so weighted against legitimate injured persons."

Last month, the House of Representatives approved a sweeping tort reform bill—H.R. 956, while the Senate Commerce Committee approved a product liability reform bill last week (see story, page 2).

Among other things, the House bill would cap punitive damages

in "all civil actions" to \$250,000 or three times economic damages, whichever is greater; limit the product liability of sellers under most circumstances; cap non-economic damages in medical malpractice cases at \$250,000; and shield drug manufacturers from punitive damages if their products had been approved by the Food and Drug Administration, unless it can be proved that the companies misrepresented their products or bribed officials to win approval (BI, March 13).

Copies of "1995 Current Award Trends in Personal Injury" are available from LRP Publications for \$39.95 plus shipping and handling by calling 800-341-7874, ext. 307.