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Mansfield Rule Certified 2018–2024

The Domino Effect of Runaway Jury Verdicts in Plaintiff-Friendly Venues, authors Megan Yllanes, Esq., & Matthew Solomon, Esq., New York Law Journal, 10-11-22

The impact of runaway jury verdicts for defendants—and the insurance industry, in particular—has been palpable. By Matthew Solomon and Megan Yllanes

Is it fueled by anger and meant to punish a defendant, or based on the notion that corporate defendants have "deep pockets"? Is the intention to cast a wide net and send a message to certain communities at large? Are the jurors identifying with the plaintiff and commiserating that the accident "could have happened to them" or, is their judgement a reflection of the market and socioeconomic influences? Could it be that the jurors are not adequately equipped to determine fair and just compensation awards? Whatever the cause behind it, the impact of runaway jury verdicts for defendants—and the insurance industry, in particular—has been palpable.

Over the past decade, defense attorneys have witnessed an increase in large compensatory jury awards in plaintiff-friendly venues, such as Kings and Bronx Counties in New York. As a result, defense attorneys have changed the way in which they place value on certain body parts and medical procedures, as well as how they litigate personal injury actions, including when, where, and why efforts are made towards early resolution.

When cases are litigated in such plaintiff-friendly venues, defense attorneys are often reluctant to leave the question of "what is fair and reasonable" up to the jury. This reluctance is not necessarily because of the severity of the injury or the extent of the medical treatment, but, instead, simply based on the venue in which the lawsuit is commenced and the reputation jury pools in those venues have acquired.

By way of example, two personal injury cases out of Supreme Court, Queens County, resulted in seven-figure verdicts despite the absence of surgical intervention. In Carillo v. Slattery/Skanska, 11567/03, JVR No. 507993, 2006 WL 6463382, a 29-year-old male was involved in a slip and fall accident. He claimed to have sustained tears to his anterior cruciate ligament and meniscus of his right knee, and tears of the rotator cuff and labrum in his right shoulder. He did not undergo surgery. Nevertheless, in April 2006, the jury rendered a verdict of $7,125,000. Then, more than a decade later, an adult male construction worker, was involved in a workplace accident. He claimed to have suffered two disc herniations, two disc bulges, a left knee tear and a hip strain. He also did not undergo surgery. In October 2019, the jury rendered a verdict of $11,700,000, with $8,000,000 rendered for future pain and suffering. See McGrath v. R.C.P.I. 30 Rock 222344849, 713224/16, JVR No. 2007080037, 2019 WL 9355863.

Similarly, in Supreme Court, Kings County, an extraordinary jury verdict was rendered to a 38-year-old female, who allegedly sustained a single-level herniation and knee injury as a result of a trip and fall at work. Again, no surgery was performed. Nevertheless, in January 2009, the jury rendered a verdict of $8,400,000. See Singleton v. City of New York, 9640/06, JVR No. 508947, 2009 WL 5794172. Another Kings County verdict from April 2013 awarded an adult male plaintiff $2,500,000 for his claimed two lumbar disc herniations and one cervical disc herniation, along with bulges, after a motor vehicle accident. He did not require surgery, and $1,300,000 of the jury award was apportioned for past pain and suffering, and $1,200,000 for future pain and suffering. See Ballschmeider v. The Port Authority of New York and New Jersey, 15669/04, JVR No. 1307160015, 2013 WL 3693499.

Even going back 30-40 years, jurors in Bronx County were awarding seven-figure verdicts to plaintiffs in personal injury actions despite the absence of surgery. One such verdict awarded a 56-year-old female $1,900,000 for an alleged ankle fracture as a result of a slip and

fall, where no surgical intervention was required. See Dauria v. City of New York, 6075/85, 1990 WL 640710. Similarly, in 1990, a 40-year-old taxi driver claimed to have sustained a single herniated disc as a result of a motor vehicle accident. Once again, there was no surgical intervention. There, the Bronx jury awarded $1,000,000. See Moore v. Lynch, 7317/88, 1990 WL 640753.

Current verdicts in Bronx County are no different, and, in fact, this phenomenon of runaway jury verdicts in pro-plaintiff venues appears to be on the rise. One such example is a 2019 award of $4,174,000 to an adult female, who allegedly sustained cervical and lumbar herniations after a portion of her ceiling fell on her in her Bronx apartment. The plaintiff did not undergo surgery for her injuries. The verdict was comprised of $2,400,000 for future pain and suffering, $1,500,000 for future medical expenses, $137,000 for past pain and suffering and $137,000 for past medical expenses. See De La Rosa v. Nelson Avenue Holdings, 3020467, JVR No. 1907090022, 2019 WL 2994377.

The foregoing jury verdicts for the types of injuries sustained and extent (or lack thereof) of medical treatment are often difficult to comprehend. However, while these verdicts carry quite a "wow" factor, unfortunately they are not mere outliers. On the contrary, such verdicts are what earn these venues their labels as "pro-plaintiff" jurisdictions. The risk of being on the other side of such inexplicable jury verdicts in the millions and even tens of millions of dollars have caused defense attorneys to proceed with caution when litigating cases in such plaintiff-friendly venues. This is especially true for New York insurance defense attorneys who must manage the expectations of out-of-state claims examiners and insureds, who often believe the values being placed on cases are "too high" with the unwarranted appearance of being "afraid" to go to trial, coupled with the need to mitigate such known risks of exposure in these jurisdictions.

Runaway jury verdicts have had far-reaching impacts on the insurance defense industry as demonstrated by a rise in social inflation as well as the number of settlements being entertained and agreed upon for values that are significantly higher than their defense-friendly venue counterparts. While defendants, claims examiners and defense attorneys alike believe personal injury cases are being settled for much more money than they may be worth, it has become a necessity in certain pro-plaintiff venues due to the risk of such unreasonable jury awards.

Even the plaintiff's bar has become increasingly aware of the significance of commencing litigation in such pro-plaintiff jurisdictions and the resulting litigation shift enacted by defense attorneys. As such, some plaintiffs have become more inclined to settle cases before trial to avoid years of post-trial appellate practice that aim to set aside and/or reduce hefty jury awards; and, in contrast, other plaintiffs have increased their litigation funding, refusing to settle when they anticipate, or even expect, a large pay day at the end of a trial.

Beyond the effect that these outrageous jury verdicts have had on how personal injury cases are litigated by both plaintiffs and defendants, there has been a significant impact on the insurance industry as a whole. This is demonstrated by rising costs of insurance claims for insurers and increased rates for impacted lines such as casualty for insureds. As long as the jury composition in these plaintiff-friendly venues continue to impact the outcomes of awards, we can expect insurance policy limits, premiums and the availability of coverage for certain activities in New York to be impacted.

There is no secret recipe on how to litigate cases in such plaintiff-friendly venues nor should every case be settled for significant value due to the potential risk of exposure at trial. However, knowledge of the domino effect that runaway juries have had on certain jurisdictions in New York is the first step towards ensuring that accurate verdict and settlement values are placed on personal injury cases in order to manage client expectations and recommend appropriate litigation and/or resolution strategies.

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