

DUPLICATE

NOV 18 2014

F. CLARK
DAY FORWARD

Control No. 14081094

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT J. FISHEL and CECIL V.	:	
KNOTTTS, JR., INDIVIDUALLY and as	:	
EXECUTORS OF THE ESTATE OF ROBERT	:	
G. FISHEL, DECEASED	:	
Plaintiffs	:	MARCH TERM, 2014
vs.	:	
	:	NO. 1312
CHRISTIAN-BAKER COMPANY and	:	
BRIAN WARNER	:	
Defendant	:	

ORDER

And Now, this 18th day of November, 2014, after consideration of the Preliminary Objections filed by Defendants Christian-Baker Company and Brian Warner to Plaintiffs' Amended Complaint and Plaintiffs' Responses thereto, after oral argument held on September 24, 2014, and, for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED**. The Defendants shall file an Answer to the Amended Complaint within Twenty (20) Days from the date this Order is docketed.

BY THE COURT:



 FREDERICA A. MASSIAH-JACKSON, J.

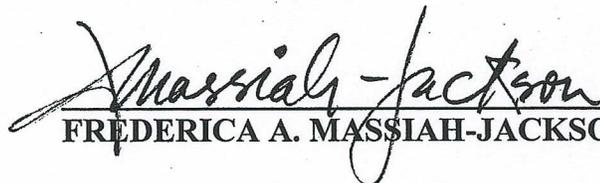
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	:	NO. 1312	DOCKETED
CHRISTIAN-BAKER COMPANY and	:		
BRIAN WARNER	:		NOV 18 2014
Defendant	:		F. CLARK DAY FORWARD

ORDER

And Now, this 8th day of November, 2014, after consideration of the Petition to Transfer Venue Pursuant to Rule 1006(d)(1), filed by Defendants Christian-Baker Company and Brian Warner, and Plaintiffs' Responses thereto, and for the reasons set forth in Court Exhibit "A", attached hereto, it is hereby **ORDERED** that Defendants' Petition is **DENIED**. The parties shall move forward with the Case Management Protocols of the First Judicial District and prepare for trial.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.

Court Exhibit "A"

In these Motions, the Defendants-Insurance Agency and its Broker have asked the Court of Philadelphia County to exercise its discretion and to transfer this litigation to Harrisburg and the Court of Common Pleas of Dauphin County.

Following a tragic accident at a stone quarry in Harrisburg, Pennsylvania, in 2010, litigation ensued in the Philadelphia courts. A verdict and judgment was entered on February 12, 2014. Because the Plaintiffs are unable to collect judgment through the insurance proceeds, this cause of action was promptly initiated against Christian-Baker Insurance Company and its Broker Agent Brian Warner. The Five Counts of the Amended Complaint filed on July 21, 2014, contain allegations of Negligence, Negligent Misrepresentation, Breach of Fiduciary Duty and Breach of Contract by these Defendants when they failed to procure adequate and proper liability insurance coverage for Plaintiffs and decedent. **All parties agree that this is not a personal injury litigation.**

Both of the submissions from these Defendants assert that Philadelphia's courts were selected by Plaintiffs not for any legitimate purpose but solely "for the purpose of harassing Defendants." Memorandum, dated September 23, 2014, page 12. Defendants' Memorandum

in Support of Preliminary Objections, states at page 13:

“Plaintiffs know this action has no place in Philadelphia County. They are only seeking to avail themselves of the Philadelphia Court’s resources in the hopes of capturing a sympathetic Philadelphia jury, a favorite of plaintiffs’ attorneys where allegations involve personal injuries. For all the preceding reasons, the Court should transfer this action from Philadelphia County, because this action is not properly venued here.”
(footnote omitted)

In Defendants’ Memorandum in Support of *Forum Non Conveniens*, the City Hall courthouse is derided and labeled “oppressive and vexatious”. In their Memorandum, at page 6:

“Plaintiff’s selection of Philadelphia for the venue of this action can only be the product of forum shopping.”

But see, Court Exhibits collectively attached as “A-1”.

After careful and thoughtful consideration of the numerous memoranda and exhibits filed by all parties, and after oral argument held on September 24, 2014, this Court concludes that while venue may exist in Dauphin County where the insurance company offices are located, that does not preclude proper venue in Philadelphia County where the underlying wrongful death and survival action was litigated in state court. These two Defendants have failed to meet their burden of proof.

A. Preliminary Objections (Control No. 14081094)

Rule 2179(a)(4) of the Pennsylvania Rules of Civil Procedure states in pertinent part:

“Rule 2179. Venue

(a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in . . .

(4) a county where a transaction or occurrence took place out of which the cause of action arose,”

When considering what is the “occurrence” which gives rise to the cause of action herein, the Defendants proffer only a “part of the transaction.” It is inappropriate to limit review to the events surrounding the purchase of the liability insurance coverage. Rather, this Court is convinced that the extensive litigation in Philadelphia County which found H&W Equities, Inc. liable to the Fishel Estate must be included in the analysis of “occurrence.”

Proper venue does exist in Philadelphia where these Plaintiffs chose their forum. Philadelphia County has a substantial relationship to the controversy. Clearly, Philadelphia County is the place out of which the cause of action arose. Rule 2179(a)(4); e.g. County Construction Co. v. Livengood Construction Corporation, 142 A.2d 9 (Pa. 1958); Deyarmin v. Conrail, 931 A.2d 1 (Pa. Superior Ct. 2007); PHEAA v. Christon, 400 A.2d 1329 (Pa. Commonwealth Ct. 1979).

B. Forum Non Conveniens (Control No. 14093317)

Defendant-Broker and Agent have filed a Petition to Transfer Venue pursuant to Rule 1006(d)(1) primarily based on the argument that they reside and work 100 miles from Philadelphia. See, Defendant's Memorandum, dated September 23, 2014, pages 1-2.

The Affirmation Exhibits submitted by the CEO of Defendant Christian-Baker Insurance Company and from Defendant-Warner indicate that traveling to Philadelphia would be disruptive, taxing and difficult. Both gentlemen express concerns about travel time, congestion and unknown traffic conditions. Significantly, these Defendants are concerned that this insurance negligence/breach of contract case is likely to take weeks of trial time, thus disrupting their personal and professional lives. In both Supplemental Affirmations the gentlemen clarify that they regularly use telephones and email to conduct their business affairs . . . presumably this includes their use of smart phones and/or tablets and/or laptop electronics. Further, it must be noted that Harrisburg is only two hours on the Pennsylvania Turnpike.

Defendants rely on Bratic v. Rubendall, 99 A.3d 1 (Pa. 2014) as a "watershed in clarifying what factors a trial court is permitted to consider in assessing petitions to transfer venue for *forum non conveniens* purposes." Memorandum, page 5. It is apparent in the circumstances present here that after proper consideration of the totality of the record these

Defendants failed to establish more than inconvenience if this litigation remains in Plaintiffs' chosen forum. See also, Zappala v. Brandolini Property Management, Inc., 909 A.2d 1272 (Pa. 2006); Cheeseman v. Lethal Exterminator, Inc., 701 A.2d 156 (Pa. 1997).

- ◆ Initially, we look at access to justice in the Philadelphia Courts, 99 A.3d at 8. This case will be placed on track for trial in 18 to 24 months by the First Judicial District's Differentiated Case Management Protocol. The parties will be given discovery deadlines, expert deadlines and a Trial Date Certain. All witnesses will have several months notice for pre-trial and trial scheduling.
- ◆ Next, the Supreme Court in Bratic held that consideration of whether the Plaintiffs are from Philadelphia is peripheral to the transfer issue. 99 A.3d at 8-9. When considering access to proof, Defendants assert that the jury will be required to view a stone quarry. If the Trial Court determines that the quarry is relevant to an understanding of the Employer's Liability Exclusion clause, then videos or photographs brought to the courtroom will suffice.
- ◆ The two witnesses who submitted Affirmations did describe disruption of their daily schedules. It is not reasonable to conclude, however, that their depositions will take place in Philadelphia or that the litigation will take "weeks" of trial time. The Bratic Court noted that distance alone is not dispositive. 99 A.3d at 9-10.

This Court suggests that it is much more likely that the experienced counsel for all parties herein will arrange for depositions at an office or conference room in the Harrisburg area. Whether or not the depositions involve video testimony, the witnesses' schedules will be well-coordinated by seasoned legal professionals. Further, it is not clear to this Court why trial will last more than four or five days -- whether or not a Trial Judge permits Defendants to re-litigate the quarry accident matter. The testimony of Mr. Creason and Mr. Warner will be handled expeditiously and without delay. They will have timely advance notice so they can set up their drive to the City Hall courthouse.

◆ The parties and witnesses who comprise the Plaintiffs' Team chose Philadelphia County to initiate this litigation. It is not a weighty factor considered by this Court that Theodore Lankemann, Jr. or Yvette Banks or Robert J. Fishel or Cecil V. Knotts, Jr. are not residents of Philadelphia because they chose Philadelphia. Further, the possibility that executives from Endurance Insurance Company or Tower Insurance Company can arrive at either Harrisburg International Airport or Philadelphia International Airport does not tip the balance toward Defendants' burden of proof. 99 A.3d at 10.

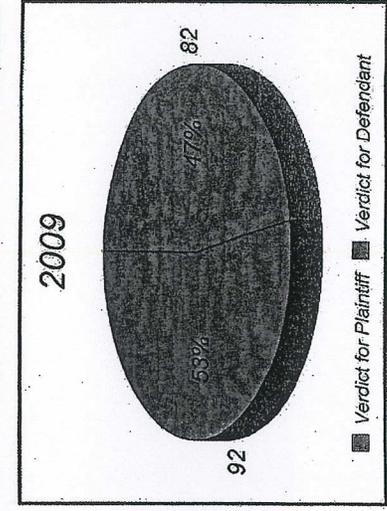
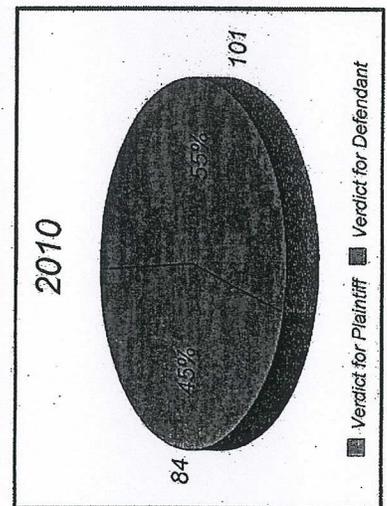
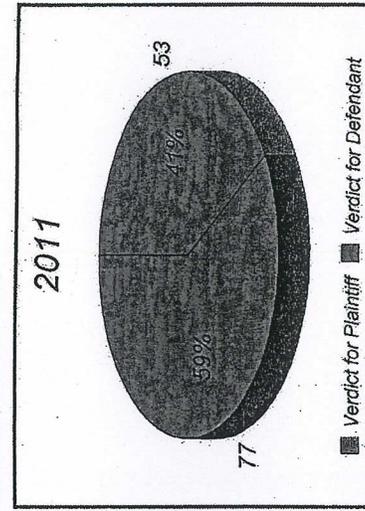
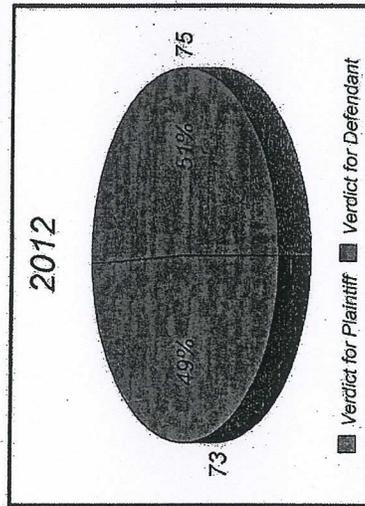
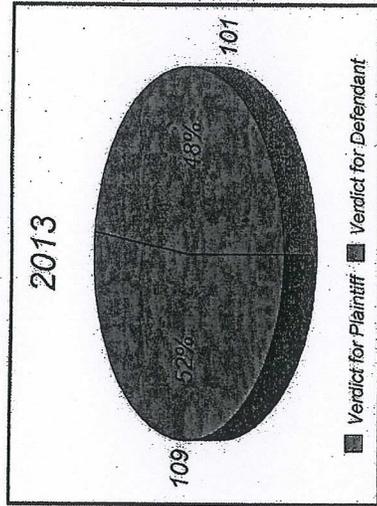
After careful consideration, this Court concludes that the arguments presented by the Defendants have insufficient weight to counterbalance Plaintiffs' chosen forum. See, Zappala, supra, 909 A.2d 1283-1284. While it is not necessary to show "near-draconian consequences" this record demonstrates mere inconvenience to two individuals.

A handwritten signature in black ink, appearing to be "M. J. [unclear]", is written over a horizontal line that spans the width of the page.

First Judicial District of PA: Trial Division - Civil

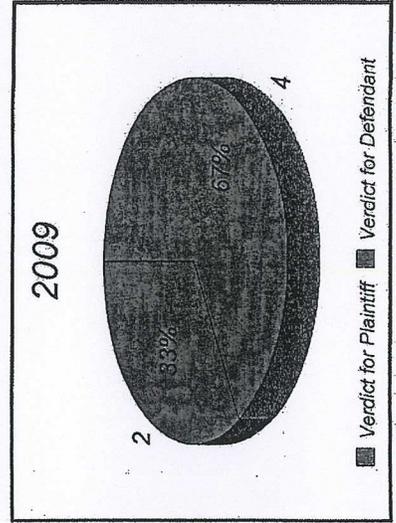
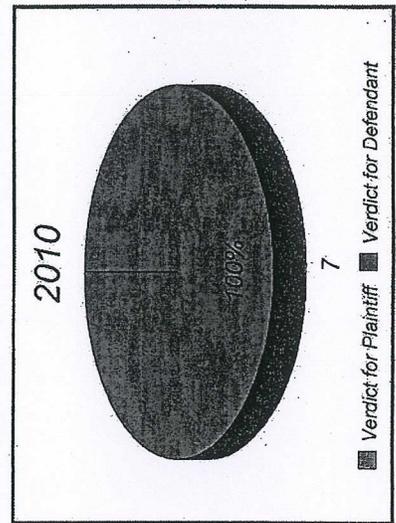
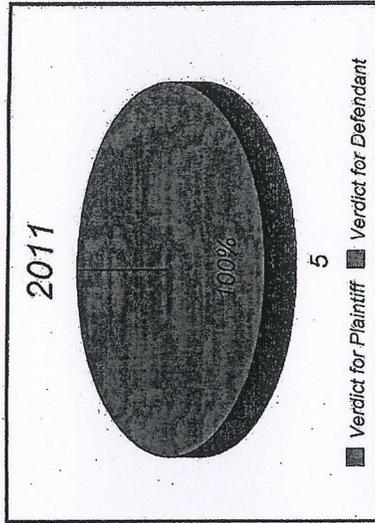
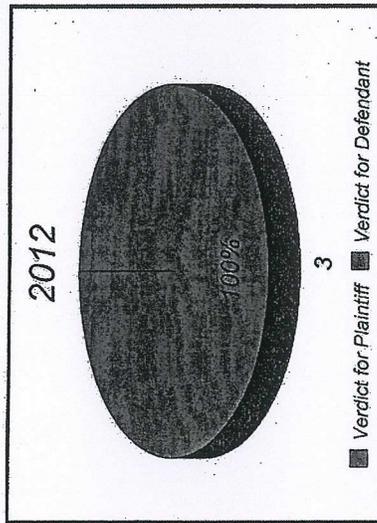
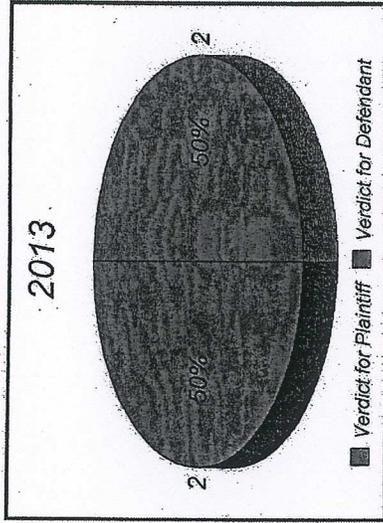
Major Jury Verdicts

2009 - 2013



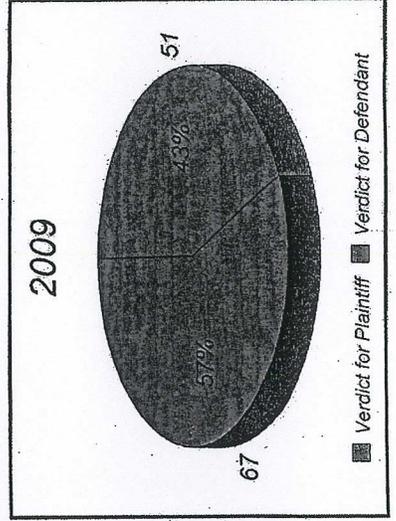
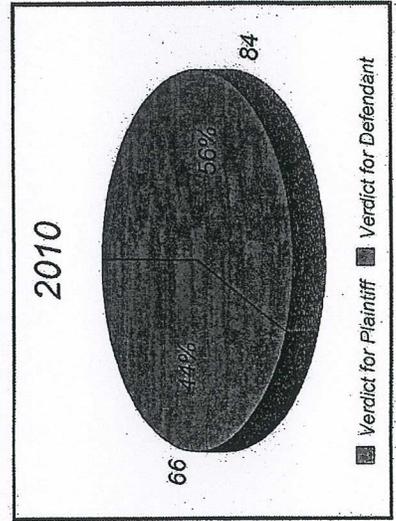
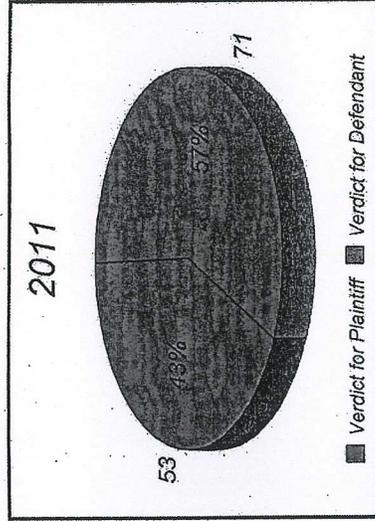
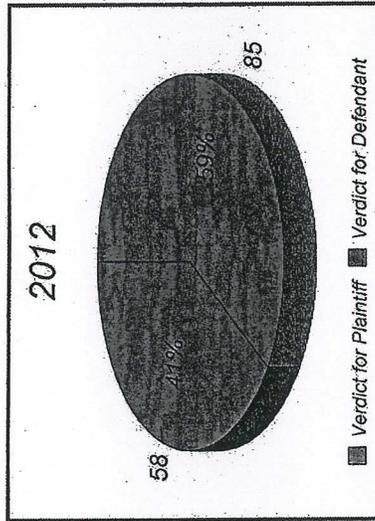
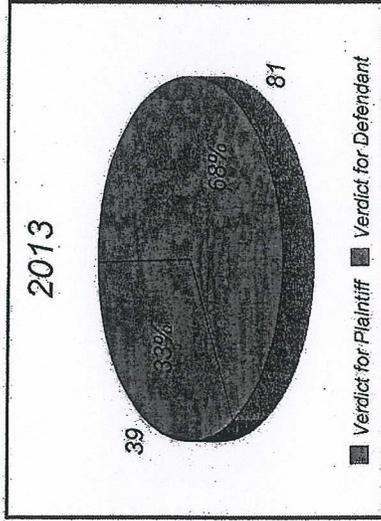
Commerce Program Verdicts

2009-2013

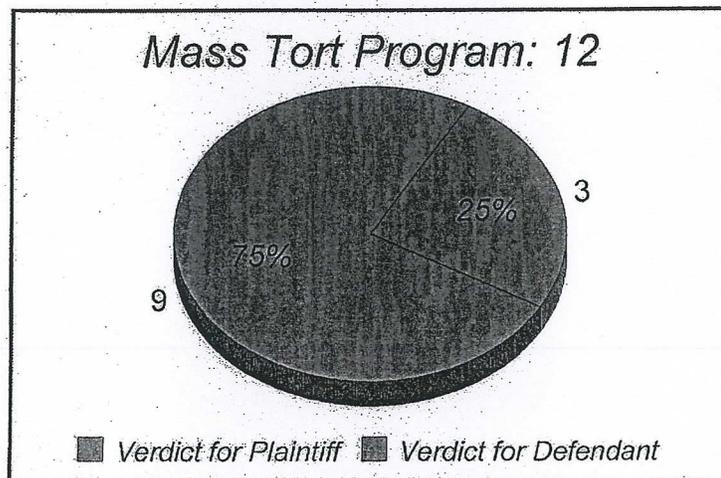
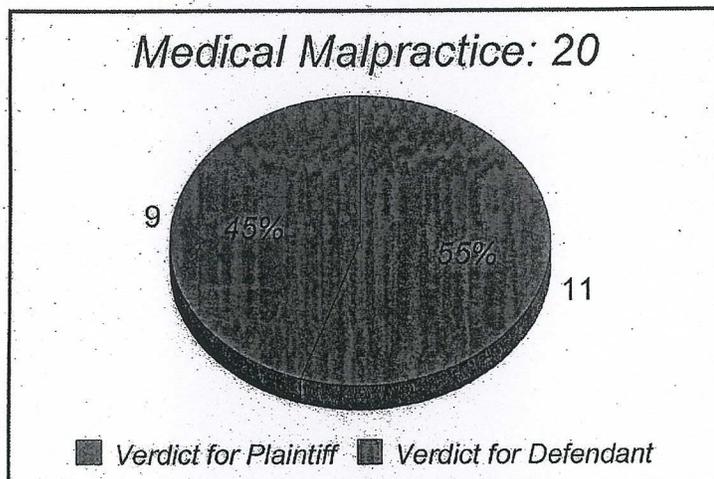
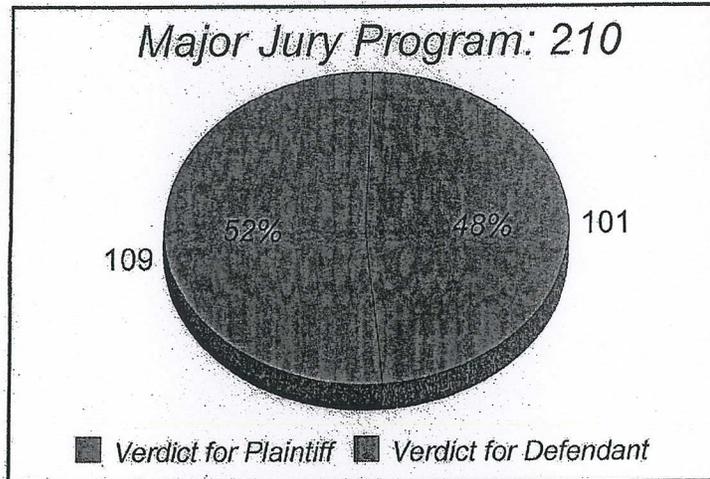


Arbitration Appeal Verdicts

2009-2013



*First Judicial District of PA: Trial Division - Civil
Major Jury, Medical Malpractice & Mass Tort
2013 Verdicts*



REGIONAL NEWS

FJD Awards of More Than \$1 Million Increase Slightly

BY P.J. D'ANNUNZIO
Of the Legal Staff

There were 18 jury verdicts and judicial awards of more than \$1 million in the Philadelphia Court of Common Pleas in the first three quarters of 2013, according to the First Judicial District's civil trial division statistics, a number that exceeds the number for all of 2012.

By comparison, the total number of jury verdicts and judicial awards over \$1 million in 2012 was 15. Despite there being more large verdicts so far in 2013, the highest amount awarded this year, \$20 million, was roughly 74 percent less than the highest amount awarded in 2012, which was \$78 million.

Comparisons are made between current available court statistics for the first three quarters of this year and all of 2012.

So far in 2013, the verdicts and findings of more than \$1 million have made up roughly 7 percent of the 126 verdicts and the 44 judicial findings. There were 187 defense verdicts and findings, or 42.3 percent of the total verdicts and findings rendered in Philadelphia.

The average amount of the plaintiffs jury verdicts was \$798,089, ranging from a high of \$20 million to a low of \$500.

The average amount of the plaintiffs judicial awards was \$80,574, ranging from a high of \$2.7 million to a low of \$1.

Contrary to popular belief, Philadelphia

juries in 2013 have tended to side more with defendants than with plaintiffs.

There were more jury verdicts in favor of defendants, with 143 defense verdicts to 126 plaintiffs verdicts. By contrast, there were more judicial awards in favor of plaintiffs than in favor of defendants, with 221 plaintiffs findings to 73 defense findings.

The highest amount awarded, according to the most current court statistics, was the \$20 million jury verdict awarded to plaintiffs in the personal injury case *Rolland v. Senn*.

The jury awarded \$18 million to Rolland and \$2 million in loss of consortium to his wife, Holly Rolland. The jury also came back with a \$16,000 punitive damages award against defendant Stephen Senn.

Rolland sued the defendant because of an accident that caused his leg to be amputated above the knee, the result of a 10-year-old boy running him over with a five-ton track loader.

Medical malpractice cases that resulted in verdicts or awards of more than \$1 million in 2013 were less frequent than in 2012.

According to 2012 court statistics, half of the largest 10 jury verdicts came from

medical malpractice cases. They ranged from the highest award of \$78 million, to the lowest award of \$3 million.

The top medical malpractice jury verdict for 2013 so far has been \$2 million awarded to plaintiff Yaris Casiano in *Casiano v. Dolan*.

In 2012, not one verdict or finding from an asbestos case was rendered in favor of a plaintiff, whereas this year two asbestos verdicts passed the \$1 million threshold in favor of plaintiffs.

In 2011, The Legal reported that the largest asbestos verdict of the year was handed down by a Philadelphia jury, which awarded \$8 million, including \$4 million in loss of consortium damages, \$3.5 million in Survival Act damages, \$500,000 in Wrongful Death Act damages, in *Shelkner v. A&A Auto Parts Store*, over a plaintiff's mesothelioma, a rare cancer of the lining of the lungs.

Other top 2013 verdicts or judicial awards worth noting include:

- \$19.1 million jury verdict awarded in *Hennessey v. Robertson* in favor of plaintiff Patrick Hennessey in a motor-vehicle accident case.

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- \$19.1 million jury verdict awarded in *Hennessey v. Robertson* in favor of plaintiff Patrick Hennessey in a motor-vehicle accident case.

- \$15.6 million jury verdict awarded in *Lewis v. Toyota Motor* to plaintiff Noreen Lewis in a products liability case.

- \$6.3 million jury verdict awarded in *Heyse v. Acme Markers* to Kathleen and Edward Heyse in a slip-and-fall, premises liability case.

- \$5.1 million jury verdict awarded in *Belgravia Condominium Association v. 1811 BELG* to plaintiff Belgravia Condominium Association in a contracts case.

- \$3.5 million jury verdict awarded in *Wilson v. Jamison Road Associates* to plaintiffs Patricia and Bernhard Wilson in a slip-and-fall, premises liability case.

- \$3.3 million jury verdict awarded in *Lorenzo v. Miler* to plaintiff John Lorenzo in a legal malpractice case.

- \$2.7 million judicial finding in *Henao v. Hall* to plaintiff Yalile Henao in an assault and battery case.

- \$2.5 million jury verdict awarded in *Kappe v. Leutz Cantor & Massey LTD* to plaintiff Robert Kappe in a legal malpractice case.

- \$2.5 million jury verdict awarded in *Amato v. Bell & Gossett* to plaintiff Thomas Amato in an asbestos case.

- \$2.3 million jury verdict awarded in *Vinciguerra v. Bayer Cropscience* to plaintiff Frank Vinciguerra in an asbestos case.

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