

Jury Verdict Trends 18 Months Later

By Jay D. Enloe

In September 2002, we examined Portland tri-county area jury verdicts following September 11, 2001, to see if any trends could be discerned that might relate to jurors' reactions to injury claims following the horrific terrorist attacks, through the end of the second calendar quarter 2002 (see www.lerlaw.com/publications.htm). Our conclusion at that time was that although there seemed to be some changes in traditional jury verdict patterns for all three area counties, from what have been long-understood patterns, it was difficult to tell if these changes were due to the September 11 attacks (and a resulting difference in the way jurors looked at injury claims) or were due to some other factors pre-dating September 11. With another 18 months of verdicts now in the LERLAW database (total verdicts now stand at 1,626), it is clear that historic jury verdict patterns in the tri-county area are changing (see www.lerlaw.com/verdictsearch.asp). This is important for legal and insurance professionals alike to understand when evaluating claims, even if the precise reason for those changes is still difficult to discern.

As an overview, in the 18 months covered by this latest review (July 2002 through December 2003), defense verdicts and low verdicts are still pretty much the rule in all three counties, even Multnomah County, but are becoming less frequent than they had previously been in Washington County. Clackamas County defense verdicts and low verdicts are generally on the rise, as are high verdicts in that county. High verdicts are being returned somewhat less frequently in Multnomah County than formerly, but are still relatively infrequent in Washington County. There are other changes afoot in local jury trial practice, discussed herein.

Total injury cases tried to verdict in 2003 dropped markedly in Multnomah County, to 97 for the entire year. There had been a total of 133 verdicts in 2002 (which was up from 118 in 2001). The 2003 figure clearly reflects a drop in the number of cases tried. The reason for this drop is difficult to be certain of, because in the same timeframe Washington County

tried 28 cases in 2002, and 47 in 2003, up from 21 and 17 in 2000 and 2001. Clackamas County tried 15 and 16 cases to verdict in 2002 and 2003, up from 7 and 3 verdicts in 2000 and 2001. One possible reason is that state budget problems were responsible for the drop in cases tried in Multnomah County, since often trials there were not allowed to continue on Fridays, possibly leading to more settlements. Although budget problems have for the most part been state-wide, the other two counties have seen more injury cases being tried over the same timeframe.

Multnomah County

Multnomah County continues to see the most cases tried of all three counties, even with the drop in 2003. Multnomah County also continues its long history of high verdicts, although it is certainly open to debate as to whether that is because Multnomah County jurors are more liberal than jurors in the other two counties or whether plaintiff attorneys simply select Multnomah County as the venue (when they have a choice) for cases that are likely to result in high verdicts. Although it is somewhat beyond the scope of this article (which examines verdicts from the 18 months of July 2002 through December 2003), it is of interest to note that a Multnomah County jury returned a verdict of \$1,168,660 in January 2004, in a first-party case filed against the plaintiff's own insurer. The fact that the defendant was an insurer (rather than an individual or even a non-insurer business) may have affected that verdict. That has certainly happened before. It is impossible to know if a Clackamas or Washington County jury would have evaluated the case similarly. If the suburban counties are becoming more urbanized, which is to some extent true, we would not be too surprised to see such a verdict show up in one of those counties in the right case. High verdicts in Clackamas County are already about as frequent as in Multnomah County.

Multnomah County jurors do return defense verdicts in significant numbers, although still less frequently

(Continued on next page)

than do jurors in the suburban counties. In the 18 months reviewed, Multnomah County jurors returned full defense verdicts (zero dollars awarded) in 31% of the cases. This reflects a steady climb over the 18 months reviewed, starting at 28% in the last half of 2002 and getting as high as 35% in the last half of 2003. This is still not quite as often as defense verdicts were returned in Multnomah County previously (for example, defense verdicts had been returned 38% of the time in the preceding 18 months), but defense verdicts definitely have been more frequent in cases tried to verdict after 9/11/01, starting after the fourth quarter of 2001 (28%). Defense verdicts had been at 40% over the first three quarters of 2001.

Whether this recent trend back toward more defense verdicts is due to the passage of time since the September 11 attacks, with jurors' generosity becoming more tempered over time, is only speculation, but it is clear that a trend toward more defense verdicts exists. Low verdicts in Multnomah County (defined here as \$10,000 or less) were returned in 53% of the cases in the 18 months reviewed. This compares with 55% low verdicts in the preceding 18 months. High verdicts (defined here as \$50,000 or more) are still fairly frequent in Multnomah County, but the percentage is dropping off slightly. Of the 171 verdicts in the 18 months covered by this review, 17% were high verdicts, with the highest verdict topping out at \$3.8 million in October 2002 (a product liability death case). This is down slightly down from 20% in the preceding 18 months, when the highest verdicts were \$21.5 million against an auto insurer in April 2002 and \$100.1 million against a tobacco industry defendant in February 2002 .

Washington County

In marked contrast to Multnomah County, the number of cases tried to verdict in Washington County is on the rise, from 17 in 2001, to 28 in 2002, and to 47 in 2003. This may be due to the current presiding judge in Washington County aggressively assigning cases to trial and not readily agreeing to reset the trial date, as well as to the same judge encouraging quick trials (one-day jury trials are becoming common in Washington County—unlike in the other two counties).

Washington County jurors still tend to return conservative verdicts, but whether that is from conservative tendencies of jurors in Washington County or from case selection by plaintiff attorneys is unclear. One

sign that Washington County jurors are perhaps becoming more like their more urban Multnomah county neighbors can be seen in the percentage of defense verdicts, which is dropping. Washington County jurors returned defense verdicts 44% of the time in the last half of 2002, which dropped to 28% in 2003. This is down from 56% in the preceding 18 months. Low verdicts were returned in 72% of the cases in the last half of 2002 and in 60% of the cases in 2003. In the preceding 18 months, low verdicts were returned in 81% of the cases. As can be seen, Washington County defense verdicts are becoming less frequent over time, as are low verdicts, although plaintiffs there still do not do as well as in the other two counties. High verdicts (\$50,000 or more) continue to be rare in Washington County. Of the 65 cases tried in the 18 months covered by this review, only 5% were for \$50,000 or more. In the preceding 18 months, this figure was only 4%.

Clackamas County

Clackamas County juries are still being asked to decide cases the least often of any of these counties, but the numbers are on the rise, albeit less so than in Washington County. Whereas in 2000 and 2001, Clackamas County juries returned verdicts in only 7 and 3 cases, in 2002 and 2003 those numbers increased to 15 and 16. Defense verdicts are also on the rise in Clackamas County, from 18% in the 18 months preceding the period of this review, to 57% in the second half of 2002 and 44% in 2003. Low verdicts were returned 86% of the time in the second half of 2002 and 50% of the time in 2003. In the preceding 18 months, 36% were low verdicts. There seems to be a modest decrease in the frequency of defense and low verdicts in the last portion of the period of this study, but these verdicts are still fairly frequent. Clackamas County jurors are more likely to award high verdicts in the right case than are jurors in Washington County. High verdicts were returned in 17% of the cases over these 18 months. In the preceding 18 months, 18% were high verdicts. Clackamas County should still be considered to be a fairly conservative venue, but as with Washington County as it becomes more urbanized it is seeing more liberal verdicts.

If there are any questions about jury verdicts in the Portland tri-county area, please visit our database at www.lerlaw.com or feel free to contact the author at 503-768-9600 or jay@lerlaw.com.