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Verdict amounts are on the rise, but are they fair?

Judge Panter asked if there's such a thing as too much — here's one lawyer's take

Editor's note: The author wrote this column in response to Wednesday'sthe Nov. 15 Mediation Circus column by Michael R. Panter, "As verdict amounts rise, when does it become too much?"

Last week, while smashed in the corner of an elevator at the Daley Center, I was mentally contemplating how to avoid getting yelled at on the 22nd floor.

In front of me, two neophyte members of the bar were talking about some of the recent injury verdicts and that the "tables were hot" in the courthouse. I asked them their names. When I got back to the office, I did a verdict search on them. Neither one had taken a case to verdict.

I found it slightly entertaining that these two newbies could comment on how our judicial system was performing without having any "skin in the game." I pondered whether this mentality was permeating throughout the courthouse.

While there have been some eye-catching verdicts in the past year, there have been even more not guilty verdicts. There are also a fair share of verdicts that fall under the defense offer. Regardless, the amount of work that goes into trying a lawsuit on both a plaintiff's behalf, as well as the defense's, is truly incomprehensible to nontrial lawyers.

Let's face it: If you try enough cases, you are going to win some and lose some. Some verdicts are large, others are not. The size of the verdicts are solely what has grabbed headlines as of late, not the nature and extent of the injuries, nor, in many circumstances, the egregious conduct of a defendant.

This lead me to thinking about what exactly would constitute an excessive verdict in today's society. Ironically, as I was mulling over this topic, I read the column by Michael R. Panter pointing out that verdict amounts are on the rise. Judge Panter asked his readers, "Is there such a thing as too much?"

I went back and looked at one of the seminal decisions, *Barry v. Owens-Corning Fiberglas Corp.*, 282 Ill. App. 3d 199 (1st Dist. 1996). There, the court recognized:

"Courts rarely disturb jury awards. For good reason. We are in no better position to judge the appropriate amount of a verdict than are the 12 people who see and hear arguments and the evidence. They use their combined wisdom and experience to reach fair and reasonable judgments. We are neither trained nor equipped to second-guess those judgments about the pain and suffering ... incurred by other human beings. To pretend otherwise would be shear hubris."

The Barry decision was 21 years ago. I was not married nor did I have any children. The world was a very different place.

To put things into perspective regarding the value of a dollar 21 years ago, let's examine baseball salaries from that period of time.

In 1996, no ballplayers made $10 million. Cecil Fielder had the top salary at $9,237,500. Today, there are 119 players with a salary of $10 million or more, led by Clayton Kershaw's $35 million. Yes, 119 baseball players earn $10 million or more a year playing a sport they love.

Funny enough, Judge Panter recognized this same phenomenon in his article.

Are these baseball salaries excessive? Some may think so, but the market has dictated their salaries. No differently, today's juries are awarding the amounts of verdicts based on countless, mildly diverse life experiences and hearing and seeing all of the evidence of the injured party. Who better to determine the value of loss than those 12 sets of eyes and ears?

The cynics may think that comparing baseball players' salaries today with yesteryear are appropriate or relevant to the discussion. To the contrary, I believe such comparisons are inappropriate and irrelevant. Such a comparison would assuredly form their basis as to why today's athletes are "overpaid." I do not believe that comparison is appropriate nor germane to the salary discussion.

Similarly, Illinois courts traditionally decline to make comparisons with awards in other cases in determining whether an award is excessive. *Richardson v. Chapman*, 175 Ill. 2d 98, 114 (1997). The clear weight of authority in Illinois has always been to reject any such "comparison *concept.*" *Tierney v. Community Memorial General Hospital*, 268 Ill. App. 3d 1050, 1065 (1st Dist. 1994).

As the 1st District Appellate Court aptly noted:

"This case is not about an injury to a [body part]. It's about the nature and extent of injuries to a particular woman. It is about the life she is required to lead because of the defendant's negligence. We will not compare." *Epping v. Commonwealth Edison*, 315 Ill. App. 3d 1069, 1072 (1st Dist. 2000) (Emphasis added).

We live in a time which is far different than any other period in American history. The stock market is hovering around its highest closing record. Salaries in all professions are on the rise. While it may be true that in a few cases the amounts of verdicts may in fact be on the rise, that in and of itself does not render a verdict excessive.

Whether an award is excessive must be decided from consideration of permanency and extent of the injury, possible future deterioration, medical expenses and the restrictions on one's daily life due to the injury.

So to answer your question, Judge Panter, from my perspective as a trial lawyer of 27 years: I suspect those 12 people do a pretty darn good job of getting it right when performing their civic duty for a mere $17.20 per day.

I can see why courts defer to jurors being in a better position, using their combined wisdom and intellect to reach a fair and reasonable verdict.

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