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LAW PRACTICE / MEDICAL MALPRACTICE

Utah is not the place for runaway med-mal juries

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Donna K. W. Johnson

In the summer of 2004, Don Winder, a founding partner in the Salt Lake City firm of Winder & Haslam, served on a panel at a Renaissance Weekend–an exchange of ideas between people from all walks of life–with a professor from the University of Wyoming Law School.

"Professor Dubois told me that Wyoming had been targeted for legislative tort reform in connection with medical malpractice cases," Winder recalls. "It didn't seem to her that Wyoming had a problem with excessive med mal jury verdicts, so she decided to find out. She went to every county in the state and studied several years' worth of med mal verdicts. And after looking at all those cases, she told me, 'There are no runaway med mal juries in our state.' It was my discussion with her that gave me the idea of doing the same thing in Utah. I'd heard a lot of talk about runaway juries, but I didn't believe we had a problem here, either."

Winder decided to limit his survey to Third District Court because it serves Salt Lake City, where a large percentage of Utah's population is gathered. With the assistance of Third District Court's Patricia A. Nosanchuk, Winder examined all of the court's med mal filings and dispositions–case outcomes–for the four-year period running from January 1, 1999 to December 31, 2002.

"There were 386 med mal cases filed in that time, and 368 case dispositions," Winder says. "The fact that those two figures were so nearly the same told us we probably weren't looking at an unusually large or small number of dispositions during the time we studied."

Winder and Nosanchuk broke down all of the dispositions in terms of what happened, reasons behind the judgments that were issued, and monetary awards given. Of all of the case dispositions in those four years, 168, or 45.5 percent, were dismissed with prejudice: a result which, Winder explains, often indicates that the parties asked the court to dismiss the case because they settled it. An additional 106 cases, or 28.7 percent, were simply dismissed, with no further information given. A further 10 cases were dismissed by the court because the plaintiff either failed to prosecute or failed to serve notice on the defendant that the case had been filed. In these cases, the plaintiff usually has the option of re-filing. A dismissal for failure to prosecute can also indicate that a settlement was reached but the court never heard about it, Winder says.

In three cases, the court entered a dismissal with prejudice pursuant to a stipulation, or an agreement, by the parties: another indication of a probable settlement. An additional 7.6 percent, or 28 cases, were dismissed without prejudice. This type of dismissal is not a final judgment. The plaintiff may file the case again if future circumstances warrant.

An additional 7.3 percent, or 27, of the remaining cases were

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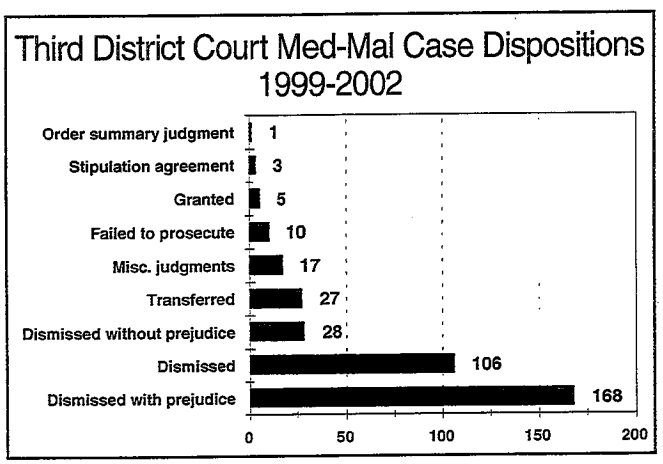

transferred, granted a change of venue or consolidated with other cases. Taken all together, these cases added up to 343, or 93.2 percent of the total filings, that never made it in front of a jury.

Of the remaining 25 cases, five were marked "granted," which usually refers to a judge's decision on a motion filed by one of the parties. Such a decision may or may not end the case, but it is not a jury verdict. In one more case, the court issued an order granting summary judgment to the defendant. Summary judgment to the defendant is a verdict from the bench in the defendant's favor: again, it does not come from a jury. The remaining 17 cases, or 4.6 percent, ended in a judgment, but several of those judgments were almost certainly not based on jury verdicts.

Of the cases that resulted in judgments, three were marked as "judgments by stipulation," indicating that the defendants agreed to the entry of the judgment from the bench. Another case was entered pursuant to defendant's confession, and one more was a judgment on the pleadings from the bench decisions, Winder says. Another case ended as a dismissal judgment, and one more as a judgment set aside. The dismissed judgment was not from a jury verdict, although the set aside may have been. The final case was marked, simply, "judgment in favor of the defendant." When all of these cases were subtracted from the total, 9 cases were left that probably ended in jury verdicts: only 2.4 percent of the total.

Of the cases that might have gone to a jury, four resulted in "no cause of action" verdicts in favor of the defendants. One was marked "judgment–appeal dismissed with prejudice." The other four were monetary judgments, and the defendants appealed all of them.

Of the four cases, or 1.08 percent of the total dispositions, that resulted in monetary judgments, two ended in awards of $0 to the plaintiffs. The third case ended in an award of $192,277.80 to the plaintiff, and in the fourth case, the court awarded the plaintiff $4,203.25. "That's not millions," Winder says. The two cases that ended in actual monetary awards constituted one-half of one percent of the total case dispositions.

(Coming next week: If public perceptions are skewed, what's skewing them?)