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These Lawyers Won Some of Biggest Verdicts and Settlements in the Nation. What's the Magic Sauce?



A premises liability lawsuit Bryan Hofeld, left, tried with Schlesinger Law Offices colleagues David Silverman and Zane Berg in 2019 had hallmarks of a valuable case: severe injuries and egregious conduct.

by Raychel Lean

Beneath most high verdicts lies a devastating injury or death, often

coupled with outrageous wrongdoing. But many other factors can also affect a jury's award, according to plaintiffs lawyers who won big in premises lia-

bility and motor vehicle accident cases across the Southeast United States in 2019.

Is there a winning combination?

Georgia and Florida juries proved the most generous in 2019, awarding 14 of the 20 highest verdicts reported. Among them a \$60 million verdict for a girl who was sexually assaulted at a treatment center.

Context is crucial in examining that award, according to plaintiffs attorney Andrew Rogers of Deitch & Rogers in Atlanta, who noted that only \$5 million was compensatory damages. Cobb County jurors apportioned \$50 million in punitive damages against the treatment center, which had a history of similar incidents, and \$5 million against a staff member found to be at fault.

Rogers said alleged wrongdoing by a defendant before and after the incident, and the character of a plaintiff, tends to increase a case's value.

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VERDICTS

"Ofentimes, the response to the particular incident is relevant," Rogers said. "And frankly, the likability, if you will, of a plaintiff and the jury's interest in helping that plaintiff has a lot to do with the amounts."

Rogers handled the case with Naveen Ramachandrapa of Bondurant Mixson & Elmore in Atlanta. Their biggest obstacle was navigating the fact that their client had been sexually assaulted before arriving at the facility, where she was being treated for sexual reactivity issues.

"As you can imagine, it's hard to tease out multiple incidents of trauma to pinpoint particular damage flowing from a particular trauma," Rogers said. "The challenge we had was having the jury understand that not only in spite of, but also probably because of, her prior history of being assaulted, it was just as important to consider the fact that this particular assault was at the hands of a caregiver, supposedly."

No matter the facts of a case, Rogers said he's learned "there's no substitute for preparation," so he conducts focus groups before every trial to eliminate as much surprise as possible.

And sometimes, Rogers said insurers have pushed cases to verdict when they might have settled for less.

"We've had multiple cases where the insurance companies have refused to make an offer that would settle the case, and they end up getting hit for much larger verdicts, certainly, than they expected, and much larger than our clients would have agreed to accept," Rogers said.

DON'T UNDERESTIMATE LIKABILITY

Jurors deliberating on the 10 most costly premises liability cases across the Southeast dished out more than \$360 million in damages in 2019, while the 10 biggest motor vehicle accident cases raked in

more than \$589 in awards, according to data collected from CaseMetrix.

But that doesn't mean the defendants actually paid those judgments in full.

"Most of them get appealed, and most, if they do settle, they settle for typically significantly less amounts than what the judgments were," Rogers said.

High verdicts instead become bargaining chips, as insurance companies weigh the risk of having to pay the full award plus interest if it's affirmed on appeal.

While a larger verdict might "grab the headlines," Alan Hamilton of Shiver Hamilton in Atlanta said it's more the exception than the rule for defendants to pay the total amount.

Hamilton said he's also fed up of seeing stories focusing on high verdicts.

"In the media it's a big deal to report on, and create fear around this perception that juries are out there just wildly giving away nuclear sums of money, and it's not the experience," Hamilton said. "I reject outright the term nuclear verdict because it's an intentionally loaded term. The jury system is the most localized, small form of government that we have, and it is frankly disrespectful of that system and our fellow citizens to brand a verdict as nuclear or outrageous, divorced from the facts and the law of that case."

Hamilton helped land a \$27 million verdict with Jeff Shiver, Margaret Randels and Jim Roth of the Roth Firm in 2019. They represented the mother of 22-year-old U.S. Army veteran Cindy Tran Huynh, who was killed when a tractor-trailer suddenly changed lanes in front of her motorcycle.

Tran Huynh's young age and likable character probably contributed to the high award, according to Hamilton, who said his biggest challenge was that "there was nothing to get the jury mad at all."

"The defendant driver was probably one of the nicest truck drivers I've ever met in a long time of doing this," Hamilton said. "He was not going to

make anybody mad and, to his credit, he admitted it was his fault."

Though it's theoretically irrelevant who the plaintiff is, Hamilton believes it can affect how much money jurors award.

"It is somewhat naïve to not notice that the jury notices if a breadwinner was killed and their spouse who's a stay-at-home homemaker is the plaintiff," Hamilton said. "Legally, that does not matter, but it is something that effective defense lawyers can signal, and even if they don't signal, it's just something that the jury is thinking about."

MISGUIDED VALUATIONS

Sometimes, high verdicts are born when insurers simply undervalue a really good case.

"I think insurance companies get it right very often in terms of their risk assessment, but sometimes mistakes are made when there's a failure to realize a particular quality of a particular case, and the risk that that presents," Hamilton said.

In Tran Huynh's mother's case, Hamilton said the defendant's initial valuation was \$3 million, and it rejected a \$12 million settlement offer well before trial.

Likewise, in South Florida attorney Bryan Hofeld's experience, the conduct of both parties during settlement negotiations can greatly impact how a case gets resolved.

"For example, if an insurance company is not being realistic and reasonable about the extent of the damages and the full value of the case in terms of what might happen at trial, then, as a result, there's no meaningful settlement discussions, and you go to trial and there may be a significant verdict if the plaintiff is able to make out their case," Hofeld said. "That could be either side that's unreasonable, or may just have a belief about the case and make a judgment about the case that turns out to be wrong. It's not necessarily something malicious."

A premises liability lawsuit Bryan Hofeld, left, tried with Schlesinger Law

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Elizabeth Frank was 11 when she fractured her skull, broke both legs and several ribs on a carnival ride called the "Psycho Swing," which swings participants in high-speed, 360-degree loops.

Arguments that the amusement ride company defendant didn't take necessary steps to ensure the ride was safe appeared to strike a chord with jurors, who awarded \$6.5 million.

But because it took years for the case to get to trial, the biggest challenge for the plaintiff's team was to convince jurors that Frank, now a young lady, was still suffering because of the accident. That meant digging deep into the pain, arthritis and cognitive issues she still has.

"She looks like a normal 19-year-old girl, and you can't tell that she was ever injured," Hofeld said. "You can't tell that she's in pain just by looking at her when she's sitting at a table in a courtroom."

While every trial aims to reach a fair and just verdict based on the evidence, the law and the jury's own common sense, Hofeld said other factors do creep in—including perceptions about the people doing the arguing.

"We're all human. And being human, sometimes, if a particular lawyer representing one side or the other is not likable, or is unprofessional or is rude, certainly that can color how a jury may view that side's version of the case, because it's hard to separate that," Hofeld said. "I think ultimately, in the end, the right thing happens the vast majority of the time, based on the facts and the law. But those things absolutely can play a role."

MP McQueen contributed to this report.

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