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MEDICAL MALPRACTICE AWARD CAP AIDS INSURANCE INDUSTRY HERE

SOURCE: By Tim Poor
Post-Dispatch Washington Bureau
PUBLICATION: St. Louis Post-Dispatch
SECTION: NEWS

DATE: March 9, 1995

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MISSOURI'S NINE-YEAR experience with capping medical malpractice awards offers lukewarm support for the effort in Congress to limit court awards to patients hurt by sloppy medical care.

After Missouri passed its cap in 1986, malpractice insurance premiums for doctors stabilized, and the number of frivolous suits appeared to decline. But other results were not entirely expected. More claims have gone to court, and jury verdicts have gone up.

Altogether, the biggest beneficiary appears to have been the insurance industry.

In Congress, the original Contract with America proposal did not include a cap on court awards for "pain and suffering" - the big money in malpractice suits. But doctors, hospitals and malpractice insurers have prodded Congress to include the cap in an amendment.

Supporters of malpractice caps say runaway awards have caused insurance premiums to skyrocket, driven up the cost of medical care and caused some specialists to stop practicing altogether.

Opponents say that's exaggerating. Malpractice suits are a useful tool to check a profession that inadequately polices itself, they say.

The ascendance of Republicans in several state legislatures has spawned similar moves to change the civil justice systems in state courts. Last week, the Illinois Legislature approved a \$500,000 cap on awards for "pain and suffering" from most personal-injury suits.

During the debate in the Illinois House, Rep. Ron Stephens, R-Troy, blamed high malpractice premiums for the lack of any obstetrical care in hospitals in 42 counties in Southern Illinois. Stephens said he feared that without malpractice legislation, Illinois would lose doctors to states like Missouri.

The effects of the 1986 Missouri malpractice law are far from clear, however.

In 1986, the Missouri Legislature imposed new requirements on malpractice suits, including a \$350,000 limit on awards for pain and suffering. That cap, which rises or falls with inflation, is now about \$500,000.

One result of the 1986 changes is that insurance companies are flocking to Missouri to do business. It's not hard to understand why: The amount of money that insurance companies are taking in has continued to rise while the amount they are paying out in claims has declined sharply.

In the two years before the Legislature acted, insurers had paid out more in claims than they got in premiums. After the law passed, that ratio dropped dramatically, evening off in 1988 to 1993 when the companies paid out only 50 cents for every dollar in premiums. That's a much higher percentage than for property, casualty and homeowners insurance, say state insurance officials.

One unexpected result of the 1986 law is that it has helped to more than double the number of cases going to court - from 558 in 1986 to 1,123 in 1993. Also, the average award won in court shot up to about \$145,757.

Dr. Edmond Cabbabe, a plastic surgeon in Bridgeton and president of the St. Louis Metropolitan Medical Society, said that the legislative changes lowered malpractice insurance premiums initially but that they've recently been increasing.

Attorneys for the medical profession say the 1986 law eliminated frivolous cases. But patients' lawyers argue that small but justified claims have suffered as well.

"The 1986 act really overreached," said Anthony S. Bruning, a malpractice specialist in St. Louis. He said malpractice suits are more expensive than other suits for patients because doctors in St. Louis are loath to testify against each other, and out-of-state experts are expensive.

The smaller case, one that might net an injured person \$40,000 to \$50,000, now falls by the wayside. "I have to send them away because they weren't hurt bad enough," he said. "Everyone has a right to his day in court if he's injured at all."

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cap on pain and suffering also penalizes the seriously injured person who cannot show large economic losses, he said. A hypothetical example would be a housewife who loses her eyesight as a result of malpractice and might be limited to \$500,000 in court. "If a truck hit her, there would be no limit," **Bruning** added.

Dr. Cabbabe voiced the fears of many in the profession that if Congress limits punitive damages without capping awards for pain and suffering damages, doctors will wind up big losers.

"Product liability (limits) alone would expose the physician to hungry lawyers," he said. They're going to be limited in what they can collect from manufacturers and distributors. We're going to be targeted for the big money."

The Health Care Liability Alliance, a group of doctors, drug manufacturers and insurance firms, is lobbying Congress to write malpractice changes into the law. In addition to the pain-and-suffering limits, the group is pushing to require that awards above \$50,000 be paid in periodic installments; and that each of those involved in a malpractice incident be responsible only for the damages he or she caused.

The group's lawyer is Peter M. Leibold, former legislative director for U.S. Sen. John C. Danforth, R-Mo. Leibold argues that the legal system is an inefficient way to discipline negligent doctors and improve the safety of health care.

"We think it's very important to improve quality in a way that's efficient and smart" - such as tightening state licensing procedures, he said. "The litigation system is a dumb way. The only people who profit from it are trial attorneys."

Caption: Graphic Bar Chart - Missouri Medical Malpractice - Premiums collected by insurers and Claims paid out for 1986 through 1993. SOURCE: Missouri Department of Insurance.

Correction:

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SUIT NAMES DRUG GANG SUSPECTS**SHOOTING VICTIM SEEKS ASSETS U.S. MAY SEIZE****SOURCE:** By Tim Bryant**DATE:** July 15, 1995

Of the Post-Dispatch Staff

Edition: FIVE STAR**PUBLICATION:** St. Louis Post-Dispatch**PAGE:** 1B**SECTION:** NEWS

Eric Drain, a former star football player for the University of Missouri, alleges that four men charged this week in a federal drug case shot him last summer outside an apartment complex.

Drain's personal injury suit, filed Friday in St. Louis Circuit Court, said the men wounded him in the chest, legs and feet. The suit seeks actual and punitive damages.

Defendants are William Yancey Jones, Demetrius Jones, Kevin Pleas and Demetrius Mack, all of St. Louis. A federal indictment made public Friday names all four and others in a conspiracy to distribute drugs here. Demetrius Jones is a son of William Jones.

Drain's lawyer, Anthony S. Bruning, said the suit is a result of prosecutors' effort to seize property they contend William Jones bought with drug money.

He called the suit "an innovative way for a private citizen who has been injured by a person whose assets are subject to forfeiture to avail himself of the government's seizure action."

Authorities allege that William Jones, 43, and Pleas, 35, led a drug ring that bought hundreds of pounds of cocaine in Los Angeles for sale here. Prosecutors have asked judges to order that Jones, Pleas and several other defendants be held without bond pending trial.

Bruning said the shooting Aug. 16 was unrelated to the drug charges against Jones and the others.

Bruning said it sprang from a dispute the previous day between Drain and the defendants at an apartment complex in the 4300 block of Maryland Avenue. Drain, at the time a Boy Scout leader, had allowed some Scouts to use the swimming pool at the complex.

William Jones, who at the time lived at the complex, objected to the Scouts' shouting and splashing and got into an argument with Drain, said Bruning. He said that the former football running back did not know Jones.

Drain, 30, was shot early the next morning as he got out of his car at the apartment complex. Detectives said Drain was hit by six of nearly 20 shots four men fired at him. Police arrested one suspect but released him without seeking charges.

Drain was seriously injured. Now an elementary schoolteacher, he was a running back at Missouri from 1982 to 1984. He also played briefly with the NFL St. Louis Cardinals.

Caption: Photo headshot of (Eric) Drain**Correction:**

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Premises Liability Premises Liability - Two Deaths; Severe Burns To Other Victims

By: MO Lawyers Media Staff January 1, 1996

\$4,750,000 Settlement

Type of Action: Premises liability

Type of Injuries: Death of a 30-year-old woman and her four-year-old son, and severe burns over two-thirds of the body surface of her five-year-old son

Court/Case Number/Date: St. Louis City Circuit Court/942-01828, 942-01829, 942-01830 and 942-01831/May 17, 1996

Caption: Burr, et al. v. J-V-L Housing Authority and McCormack-Baron Management Services, Inc.

ADR Attempts: Plaintiffs rejected defendants' mediation proposal

Judge, Jury or ADR: Settled during jury trial

Name of Judge: Thomas C. Grady

Special Damages Claimed: About \$1,000,000 past medical expense (including \$162,000 Medicaid lien); more than \$3,000,000 for future medical expense, life care plan and lost earnings

Verdict or Settlement: Settlements totalling \$4,750,000

Attorney for Plaintiffs: Anthony S. Bruning, St. Louis

Insurance Carriers: Colonia Insurance Company (for building owner); Zurich American Insurance Company (for building manager)

Plaintiffs' Experts: Capt. Ronald Gronemeyer, St. Louis (origin of fire; effect of limitation of access); Patrick Kennedy, Chicago (fire and explosion analysis); Michael Schulz, Chicago (origin; unsafe condition of premises); Dr. Deborah Dowden, St. Louis (treating skin graft specialist); Dr. Avazian, St. Louis (treatment of burns); Catherine Lozo-Miller, R.N., Chicago (pain and suffering); Dr. Penelope Caragonne, St. Louis (life care planner); Tom Ireland, St. Louis (economist); Dave Kutchbach, St. Louis (vocational expert)

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Facts of the Case: A 30-year-old woman and her four-year-old son burned to death in a fire in their St. Louis apartment, and her five-year-old son and a house guest suffered severe injuries. Representatives of the victims sued the owners and managers of the building, claiming it was unsafe.

The woman and her five children lived in Section 8 housing. Steel bars covered the first floor windows of the residence. The only exit was covered by a metal-clad door and also by a steel-barred gate. When these doors were locked, they could only be unlocked by use of one key for the first door and a separate key for the second door.

The fire began in a mattress in the woman's bedroom on the second floor of the apartment. The woman pulled the mattress down the stairs and tried to exit the building, but could not open the doors. The fire department had to cut the barred door to get inside the building.

The plaintiffs settled their claim against the building owner for the \$1,000,000 limit of its liability policy before trial. They went to trial against the building manager, claiming it had a duty to keep the building safe from unreasonable defects.

Liability was the main issue. Exit doors which can only be opened by use of a key violate a provision of the BOCA Code. Although St. Louis has adopted most of the BOCA Code, it has not adopted this particular provision of it. The plaintiffs claimed this provision is nonetheless the standard of safe practice under Missouri law. The building manager blamed the fire on the carelessness of the woman who died.

The five-year-old boy had third degree burns over 66 percent of his body and underwent more than a dozen skin graft operations. He suffered permanent hypertrophic injuries and may face future surgery, if he is willing to undergo it.

The boy had to enroll in a special school because of low intelligence test scores, and he claimed this resulted from a hypoxic brain injury sustained in the fire. The building manager denied the mental problems were caused by the fire.

After one week of trial, the building manager agreed to a \$3.75 million settlement.

Of the total settlement, \$100,000 goes to the injured house guest, \$100,000 goes to the father of the dead child, \$3,455,000 goes to the injured five-year-old boy, and \$1,095,000 will be divided equally among the dead woman's four surviving children.

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Premises Liability Premises Liability - Two Deaths; Severe Burns To Other Victims

By: MO Lawyers Media Staff January 1, 1996

\$4,750,000 Settlement

Type of Action: Premises liability

Type of Injuries: Death of a 30-year-old woman and her four-year-old son, and severe burns over two-thirds of the body surface of her five-year-old son

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VERDICTS & SETTLEMENTS

Premises Liability

Two Deaths; Severe Burns To Other Victims \$4,750,000 Settlement

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TOP PLAINTIFFS' VERDICTS — 1996

Rank	Case Name / Court	Amount	Type of Case	Plaintiff's Attorneys
1.	Wasilik v. Rehert and Ford Motor Company Circuit Court of Maryland for Baltimore City See Missouri Lawyers Weekly 12/2/96	\$26,470,402 (verdict)	Products Liability (automobile)	Robert L. Langdon and Bradley D. Kuhiman, Lexington; Deborah L. Potter, Annapolis, Md.
2.	Cole v. The Goodyear Tire & Rubber Co. and Tire Mart, Inc. St. Louis City Circuit Court See Missouri Lawyers Weekly 10/28/96	\$24,200,000 (verdict) +\$850,000 (separate settlement)	Products Liability (explosion of tire)	Paul E. Kovacs and David G. Ott, St. Louis
3.	Hedrick, et ux. v. Turbomeca, S.A., Turbomeca Engine Corporation, and Rocky Mountain Helicopters, Inc. Jackson County Circuit Court See Missouri Lawyers Weekly 2/19/96	\$24,999,997 (structured settlement)	Products Liability (helicopter)	John C. Risjord and Randy W. James, Overland Park, Kan.; Richard M. Erickson, Kansas City
4.	Bruemmer, et ux. v. General Motors Corp. and Light St. Louis City Circuit Court See Missouri Lawyers Weekly 11/4/96	\$19,500,000 (verdict)	Products Liability (automobile)	Gerald M. Dunne and Todd J. Muchnik, St. Louis
5.	Rousseau, et ux. v. Bridgestone/Firestone, Inc., The Budd Company, and AA Wheel & Truck Supply Jackson County Circuit Court See Missouri Lawyers Weekly 2/19/96	\$12,999,807 (structured settlement)	Products Liability (wheel assembly explosion)	Randy W. James and John C. Risjord, Overland Park, Kan.
6.	Doe v. Century International Arms, Inc., Pacific International Merchandising Corp., Inter-American Import-Export Co., New Helveta Mercantile Corporation, Faust, China-Sports, and The Peoples Republic of China U.S. District Court, Western District of Missouri See Missouri Lawyers Weekly 7/29/96	\$10,000,000 (default judgment) +\$200,000 (settlement)	Products Liability (semiautomatic rifle)	Richard C. Miller, Springfield; James V. Nichols, Lamar
7.	United Food & Commercial Workers Local 88 v. National Holding Co., Loblaw, Inc., National Supermarkets and National Tea Co. U.S. District Court, Eastern District of Missouri See Missouri Lawyers Weekly 1/15/96	\$7,020,000 (settlement)	Breach Of Contract (collective bargaining agreement)	Jeffrey E. Hartnett, Clayton
8.	Morehead, et ux. v. Ford Motor Co., Torrington Company and Champion Ford Webster Parish District Court, La. See Missouri Lawyers Weekly 9/16/96	\$6,000,000 (verdict)	Products Liability (automobile)	William H. McDonald, Springfield; William R. Robb, Springfield; and Sydney B. Nelson, Shreveport, La.
9.	Bailey, et al. v. Sheetz and SSM Health Care Circuit Court of Cook County, Ill. See Missouri Lawyers Weekly 5/13/96	\$5,975,000 (verdict)	Medical Malpractice (lung surgery)	David Wm. Horan, Clayton; Jerry Latherow, Chicago
10.	Burr, et al. v. J-V-L Housing Authority and McCormack-Baron Management Services, Inc. St. Louis City Circuit Court See Missouri Lawyers Weekly 8/26/96	\$4,750,000 (settlement)	Premises Liability (fire in apartment building)	Anthony S. Bruning, St. Louis
11.	Denesha v. Farmers Insurance Exchange U.S. District Court, Western District of Missouri See Missouri Lawyers Weekly 7/15/96	\$4,205,288 (verdict)	Age Discrimination (insurance claims representative)	Martin M. Meyers, Dennis E. Egan and Stephen C. Thomberry, Kansas City
12.	Confidential Jackson County Circuit Court See Missouri Lawyers Weekly 11/4/96	\$3,750,000 (settlement)	Auto Accident (head-on collision)	Jeff F. Stigall and Tim E. Dollar, Kansas City
13.	Whitman's Candies, Inc. v. Pet Incorporated Jackson County Circuit Court See Missouri Lawyers Weekly 12/23/96	\$3,628,000 (verdict)	Breach Of Contract (sale of assets agreement)	Bernard J. Rhodes and Michael J. Abrams, Kansas City
14. (TIE)	Fowler and Fowler v. Tire America St. Louis City Circuit Court See Missouri Lawyers Weekly 7/1/96	\$2,500,000 (settlement)	Negligence (automotive service)	Mark T. McCloskey, St. Louis
	Parks, et al. v. P. G. Walker & Sons, Inc. and Swearingin Greene County Circuit Court See Missouri Lawyers Weekly 7/22/96	\$2,500,000 (settlement)	Auto Accident (head-on collision)	Thomas Strong, Steven D. Harrell and Clinton M. Smart III, Springfield
16.	McGinnis, et al. v. Aetna Casualty and Surety Co. and Super Market Insurance Agency Jackson County Circuit Court See Missouri Lawyers Weekly 1/22/96	\$2,475,000 (settlement)	Breach Of Contract (fire insurance policy on supermarket)	Louis C. Accurso, Charles H. McKenzie and Mary E. Murphy, Kansas City
17.	Debold, et ux. v. Deuser, et ux., Glynn Barclay & Associates, Investors Insurance Company of America, National Union Fire Insurance Company of Pittsburgh, and Insurance Company of North America U.S. District Court, Western District of Missouri See Missouri Lawyers Weekly 6/3/96	\$2,090,000 (settlement)	Premises Liability; Negligent Undertaking (inspection of water slide)	Walter H. Bley Jr. and Mark D. Pleiffer, Columbia
18.	Mackley v. National Steel Corp. and M & D Truck Repair St. Louis City Circuit Court See Missouri Lawyers Weekly 1/29/96	\$2,025,000 (settlement)	Auto Accident (collision with overturned semitrailer)	Stephen F. Meyerkord, St. Louis
19.	Pohmann v. Bil-Jax, Inc. St. Louis City Circuit Court See Missouri Lawyers Weekly 5/20/96	\$2,000,000 (verdict)	Products Liability (construction scaffold)	John J. Allan and Gregory Brough, St. Louis
20. (TIE)	Plumlee v. Murphy Trucking Co., Inc., Mullinix and Kansas City Southern Railway Co. Jackson County Circuit Court See Missouri Lawyers Weekly 10/14/96	\$1,750,000 (verdict)	Federal Employers Liability Act (train collision with semitrailer)	Tom Strong and Steven D. Harrell, Springfield
	State ex rel. Missouri Highway and Transportation Commission v. Ifrig, et ux. Taney County Circuit Court See Missouri Lawyers Weekly 4/15/96	\$1,750,000 (award)	Eminent Domain (commercial real estate site)	Warren S. Stafford and Monte P. Clithero, Springfield

These are the top verdicts & settlements for 1996 as reported to Missouri Lawyers Weekly. The dollar amounts are as of trial. They do not reflect post-trial proceedings. We acknowledge that there may be other verdicts and settlements that might be eligible for inclusion had we known about them. These are the largest verdicts and settlements for which we received trial reports. Report forms may be obtained by calling 800-635-5297.

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5.	Rousseau, et ux. v. Bridgestone/Firestone, Inc., The Budd Company, and AA Wheel & Truck Supply Jackson County Circuit Court See Missouri Lawyers Weekly 2/19/96	\$12,999,807 (structured settlement)	Products Liability (wheel assembly explosion)	Randy W. James and John C. Risjord, Overland Park, Kan.
6.	Doe v. Century International Arms, Inc.; Pacific International Merchandising Corp., Inter-American Import-Export Co., New Helvetica Mercantile Corporation, Faust, China-Sports, and The Peoples Republic of China U.S. District Court, Western District of Missouri See Missouri Lawyers Weekly 7/29/96	\$10,000,000 (default judgment) + \$200,000 (settlement)	Products Liability (semiautomatic rifle)	Richard C. Miller, Springfield; James V. Nichols, Lamar
7.	United Food & Commercial Workers Local 88 v. National Holding Co., Loblaw, Inc., National Supermarkets and National Tea Co. U.S. District Court, Eastern District of Missouri See Missouri Lawyers Weekly 1/15/96	\$7,020,000 (settlement)	Breach Of Contract (collective bargaining agreement)	Jeffrey E. Hartnett, Clayton
8.	Morehead, et ux. v. Ford Motor Co., Torrington Company and Champion Ford Webster Parish District Court, La. See Missouri Lawyers Weekly 9/16/96	\$6,000,000 (verdict)	Products Liability (automobile)	William H. McDonald, Springfield; William R. Robb, Springfield; and Sydney B. Nelson, Shreveport, La.
9.	Bailey, et al. v. Sheetz and SSM Health Care Circuit Court of Cook County, Ill. See Missouri Lawyers Weekly 5/13/96	\$5,975,000 (verdict)	Medical Malpractice (lung surgery)	David Wm. Horan, Clayton; Jerry Latherow, Chicago
10.	Burr, et al. v. J-V-L Housing Authority and McCormack-Baron Management Services, Inc. St. Louis City Circuit Court See Missouri Lawyers Weekly 8/26/96	\$4,750,000 (settlement)	Premises Liability (fire in apartment building)	Anthony S. Bruning, St. Louis
11.	Denasha v. Farmers Insurance Exchange U.S. District Court, Western District of Missouri See Missouri Lawyers Weekly 7/15/96	\$4,205,288 (verdict)	Age Discrimination (insurance claims representative)	Marlin M. Meyers, Dennis E. Egan and Stephen C. Thornberry, Kansas City
12.	Confidential Jackson County Circuit Court See Missouri Lawyers Weekly 11/4/96	\$3,750,000 (settlement)	Auto Accident (head-on collision)	Jeff F. Stigall and Tim E. Dollar, Kansas City
13.	Whitman's Candies, Inc. v. Pet Incorporated Jackson County Circuit Court See Missouri Lawyers Weekly 12/23/96	\$3,628,000 (verdict)	Breach Of Contract (sale of assets agreement)	Bernard J. Rhodes and Michael J. Abrams, Kansas City
14. (TIE)	Fowler and Fowler v. Tire America St. Louis City Circuit Court See Missouri Lawyers Weekly 7/1/96	\$2,500,000 (settlement)	Negligence (automotive service)	Mark T. McCloskey, St. Louis

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BANKRUPTCY

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"[T]he law in Missouri is that, in the case of a guardianship of a minor, there is a preference to be given to a relative over a

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"The key to winning cases and similar cases are four factors," said Springfield attorney Patrick J. Platter.

"They are: (1) Show the source of the infection or injury. Here there was strong

Amburg of St. Louis) did a good job of investigating these four factors and putting the evidence on to support them."

■ CONTINUED ON PAGE 13

Settlements Top The List Of 1996's Largest Recoveries

Products Liability Suits Lead Year-End List

There was a dramatic increase in the number of top recoveries that were spawned by settlement rather than trial in 1996, a *Missouri Lawyers Weekly* study has shown.

In 1995, only four of the top 20 plaintiffs' recoveries reported came from settlements. Seven settlements made the top 20 in 1994.

But in 1996 plaintiffs' attorneys turned to settlements for



Top
Verdicts &
Settlements
1996

10 of the year's top 20 payouts. Three of the big settlements exceeded \$7 million, and the average of the 10 settlements exceeded \$6.5 million.

Products liability lawyers were the biggest winners last year, ringing up the six largest reported verdicts and settlements, with recoveries ranging from \$10 million to more than \$26 million.

Although plaintiffs' lawyers could not match the sensational results of 1995, when the top four cases alone totaled \$560 million, there were 19 cases worth \$2 million or more, the same number as in 1995.

And the average value of the top 20 plaintiffs' cases was more than \$8.4 million, a little better than the \$7.5 million average of 1994.

Venue Wars

But defense lawyers had some big winners last year too, especially in medical malpractice cases in the southwestern part of the state and in rural areas. Two med mal cases from Greene County made this year's list, along with one each from Jasper, Clinton and Camden Counties.

Springfield attorneys Jeffrey H. Harrison and Kent O. Hyde represented

the winning doctors in three of the med mal cases. No other attorney's name appears on the plaintiffs' list or the defendants' list more than two times.

On the plaintiffs' side, those who have followed the 1996 "venue wars" will not be surprised to find six cases from St. Louis City and six from Jackson County among the winners.

Only two other Missouri circuit court cases made the list, one each from Greene County and Taney County. The other seven cases arose in federal district courts or out of state.

Winning Attorneys

In addition to Harrison and Hyde, Kansas City attorney Randall L. Rhodes was a winning attorney in two of the top defendants' verdicts — a products liability case in Jackson County (the number 4 verdict) and the Clinton County medical malpractice case, which tied for 16th.

Springfield attorneys Thomas Strong and Steven D. Harrell continued their winning streak in plaintiffs' cases, with two of the top 20 verdicts for the second consecutive year. Strong also was on the top 20 list twice in 1994.

The only other attorneys to appear twice on this year's list are John C. Risjord and Randy W. James of Overland Park, Kan., who had two products liability cases among the top five plaintiffs' recoveries for the year.

J. Michael Shaffer of Kansas City and David R. Buchanan, also of Kansas City, were the only attorneys who won defendants' verdicts which placed them in the top 20 for the second year in a row.

■ CONTINUED ON PAGE 6

Eastern District En Banc To Hear Reporter's Fees Issue Jan. 14

The Eastern District of the Missouri Court of Appeals will hold an *en banc* hearing on Jan. 14 to decide whether an appeal must be thrown out because of the failure of the appellant to pay for the trial transcript within ten days.

The Southern District recently refused to take such action and the Missouri Supreme Court declined to interfere, turning down the respondent's request for a writ of prohibition.

At issue is the interpretation of a new statute passed at the end of last year's legislative session. A Supreme Court rule was amended in December reflecting some of the changes contained in the statute. But the new rule has done little to clarify the issue of whether prompt payment of court reporters' fees is jurisdictional.

Many appellate lawyers and the Missouri Bar are urging the General Assembly, which reconvened Jan. 8, to promptly amend § 512.050 again. But others are seeking immediate relief from the Court of Appeals and even the Supreme Court.

For attorneys who may be in a position to file an appeal in the next few months, the times are treacherous.

The Eastern District has agreed to consider the matter in an unusual *en banc* hearing on a motion to dismiss appeal. The hearing is scheduled for Tuesday, Jan. 14.

***En Banc* Hearing**

St. Louis attorney Daniel P. Card II, who represents the respondent in *General*

■ CONTINUED ON PAGE 6

Settlements Top The List Of Year's Largest Recoveries

■ CONTINUED FROM PAGE 1

Dennis E. Egan of Kansas City made the plaintiffs' honor roll for the second straight year.

Anthony J. Bruning of St. Louis was also a repeater. But this year's big case was a \$4.75 million settlement for a plaintiff, whereas last year's winner was a defendant's verdict.

A Definite Trend

"We settled a lot of cases this year," said Bruning. "It seems as if in injury cases there was more of an effort made on the part of defendants to achieve a settlement, including arbitration and mediation."

"Also, it seems that settlement negotiations began earlier than in previous years, that is, several months ahead of time rather than the morning of trial."

Bruning believes that a subtle shift in policy in the defense bar may be responsible for the trend. "Insurance companies, hospitals and corporations are becoming better at managing their risks and avoiding 'mega verdicts,'" Bruning said.

"Though there are still mega verdicts out there," Bruning added. "But in general, corporations are getting wiser about paying big money. Insurance companies, doctors and hospitals seem to be making more of an effort, which is good for everybody."

Bruning noted that he was not aware of the trend when he settled his \$4.75 million case. "I was just trying to protect my client's interest and do a good job," said Bruning.

Practice Areas

In addition to the six biggest plaintiffs' winners, products liability lawyers had two other cases in the top 20.

There were only three auto accident cases in the plaintiffs' top 20, and three recoveries in breach of contract cases. The other seven cases were scattered through six practice areas.

Defendants did the best in medical malpractice cases, placing seven verdicts among

defendants' verdict, a prisoner's claim that he suffered a stroke because he received inadequate medical care.

Method Of Ranking

The prisoner's demand for a settlement of \$4 million placed his case at the top of the defendants' list, because it was the largest pre-trial demand of any case in which the jury returned a verdict for the defendant.

Missouri Lawyers Weekly made no attempt to judge whether the demand was reasonable or not, but ranked the case first by virtue of the size of the demand alone.

This year, for the first time *Missouri Lawyers Weekly* also included, among the defendants' winners, cases which did not result in total victory for the defendants. The cases are ranked according to the difference between the plaintiff's last pre-trial demand and the amount of the verdict. Four cases made the top 20 even though plaintiffs won small verdicts.

Some of the defendants' winners could not be ranked because there was no demand by the plaintiff. And at least one plaintiff's case may have been left off because the amount of the settlement was confidential.

Some excellent results could not be included in this objective ranking, because the relief sought was equitable, such as an order to rezone property.

In a condemnation case we realigned the parties, placing a defendant's big award on the plaintiffs' top 20 list.

Top Five Plaintiff Cases

Capsule summaries of the top five plaintiffs' verdicts and settlements reported to *Missouri Lawyers Weekly* follow.

1. Products Liability (automobile), \$26,470,402 verdict. A 24-year-old man was severely burned when his 1987 Ford pickup caught fire after a head-on collision near Baltimore. He suffered relatively minor orthopedic injuries, but because he could not remove his seat belt, he suffered burns over 65 percent of his body, leading to the amputation of his right arm and right leg. He claimed the truck's seat belt

2. Products Liability (explosion of tire), \$24,200,000 verdict plus \$850,000

separate settlement. A 38-year-old man was hurt when a tire exploded as he inflated it. He claimed the industry knew of the risks associated with this type of tire since the 1950s and Goodyear knew of the risks since the 1960s, but did not correct the defects or warn its customers. Goodyear claimed the tire met state-of-the-art standards when manufactured in 1967. The man bought the tire, used, in 1988. Although the man suffered severe injuries to his head, he can converse and attempts to run his own business. A jury awarded \$5,850,000 actual damages (after allocating 25 percent fault to plaintiff), plus \$18,400,000 punitive damages. *Cole v. The Goodyear Tire & Rubber Co. and Tire Mart, Inc.*, St. Louis City Circuit Court, reported October 28.

3. Products Liability (helicopter), \$24,999,997 structured settlement. A respiratory therapist suffered numerous injuries when a Life Flight helicopter crashed while transporting a patient to a Kansas City hospital. The helicopter crashed because a part known as the central hub of the second stage nozzle guide vane failed. The therapist claimed the manufacturer had replaced a non-defective hub with a defective hub in 1989, even though it knew of the defect in the hubs by 1986. Two other persons injured in the same accident won verdicts against the manufacturer for \$350 million and \$70 million in 1995 — the largest and third largest Missouri verdicts that year. *Hedrick, et ux. v. Turbomeca, S.A., Turbomeca Engine Corporation, and Rocky Mountain Helicopters, Inc.*, Jackson County Circuit Court, reported February 19.

4. Products Liability (automobile), \$19,500,000 verdict. A runaway GMC tow truck ran over the plaintiff and dragged him 65 feet under its undercarriage before coming to a rest. The accident occurred after the driver of the truck parked, set the foot-applied parking brake and left the

Louis City Circuit Court, reported November 4.

5. Products Liability (wheel assembly explosion), \$12,999,807 structured settlement. A 56-year-old man suffered skull fracture, brain damage, paralysis and blindness when a multi-piece wheel assembly exploded in his face as he tried to add air to the tire of his school bus. The man contended a Firestone employee had patented a less expensive and safer alternative to this wheel assembly in 1953, that Firestone continued to manufacture the older model until it discontinued the for safety reasons in 1973, and did recall the defective assemblies. Plaintiff was injured by one of the old assemblies. *Rousseau, et ux. v. Bridgestone/Firestone, Inc., The Budd Company, and AA Wheel Truck Supply*, Jackson County Circuit Court, reported February 19.

Top Five Defendant Cases

Summaries of the top five defendant verdicts published in *Missouri Lawyers Weekly* in 1996 appear below.

1. Civil Rights (medical attention for prisoner), \$4,000,000. A prisoner at the Moberly Correctional Center suffered a stroke while in prison. He claimed the prison doctor should have known he earlier suffered a series of small stroke/transischemic attacks and recognized them as precursors of a larger stroke, but failed to do so. The prisoner also sued two of the prison officials. He said his mother told the officials he was sick and they should check on him, but they did not do so. *Keen v. King, Kaiser and Gammon, U.S. District Court, Eastern District of Missouri*, reported April 29.

2. Fraud (real estate development), \$3,250,000. The owners of lots in a real estate development filed a class action lawsuit against the developers and the lender for fraud under the 1969 *Intersperse Land Sales Act*. They claimed the developers made false statements to them in advertising the lots and made promises they could not possibly keep. They claimed the developers made loans to the developers that were

3. Products Liability (hoist used a freight elevator), \$1,500,000. Plaintiff was injured when a hoist, which a car dealer used as a freight elevator, fell about 10-12 feet while she was aboard. The hoist was designed with an internal limit switch to prevent the hoist from traveling too far up or down, but some unknown person miswired the limit switch, causing it to malfunction. The plaintiff asserted the series of strict liability design defect and failure to warn. She also said the manufacturer should have anticipated that the limit switch might be miswired. *Leemmons Duff-Norton, Inc.*, Clay County Circuit Court, reported August 12.

4. Products Liability (all-terrain vehicle), \$1,300,000. A young man was injured when his Kawasaki all-terrain vehicle rolled over several times and collided with another ATV as he prepared for a race. He claimed the right front steering knuckle, which holds the wheel on, suffered a "tire fracture," which caused him to lose control of his ATV. The defendants said the piece fractured when plaintiff's ATV collided with the other ATV and did not result from a design or manufacturing defect. Defendants presented a videotape of the accident, which they only acquired after the trial began. *Noah v. Kawasaki Motor Corp. U.S.A. and J & H Investments Co. Inc.*, Jackson County Circuit Court, reported December 9.

5. Breach Of Contract (construction of retail store), more than \$1,000,000. Wal-Mart sued a real estate developer for structural damage to a retail store Wal-Mart was building. Wal-Mart contracted with the developer to prepare the site for construction, but this required the developer to bring in 37 feet of fill. Wal-Mart claimed the developer used larger rock than its contract with Wal-Mart permitted, but the developer said it complied with all Wal-Mart plans and specifications. The developer claimed the damage occurred because Wal-Mart should have placed piers down into bedrock to support the building, but failed to do so. *Wal-Mart Stores v. Valcourt Development*, U.S. District Court, Eastern District of Missouri, reported August 26.

— KEITH R. KRUEGER

Eastern District To Hear Reporter's Fees Issue

■ CONTINUED FROM PAGE 1

Electric Capital Auto Lease, Inc. v. Ford, claims that the appellant failed to pay the court reporter within 10 days after filing the notice of appeal, as required by § 512.050.

He filed a motion to dismiss the appeal and the Eastern District on December 30 set his motion for oral argument before the court *en banc*. Card plans to argue to the court that the language of the statute clearly mandates dismissal.

"Dan Card has a good chance of winning, since the Court of Appeals decided to hear the motion *en banc*," observed Kansas City attorney Dennis J. C. Owens, the author of several CLE chapters on appellate practice.

Owens distinguishes the Supreme Courts' ruling on the Southern District case. "The Supreme Court just decided they were not going to enforce the statute, but the denial of a writ of prohibition is not a good predictor of how the court would rule on an appeal," observed Owens.

"Prohibition does not lie if there is a way for the court of Appeals to resolve the problem on direct appeal. But if the Court of Appeals *en banc* says the statute means what it says, they will dismiss the appeal [in Card's case]. Then the Supreme Court may have to face the issue and you've got a real problem."

New Rule

The new Supreme Court Rule, Rule 81.12(c), which is effective July 1, shortens the deadline by which attorneys must order the trial transcript, from 30 days to 10 days.

It does not provide relief from the 1996 amendment to § 512.050, RSMo, which requires them to pay court reporters within 10 days after filing the notice of appeal.

In fact, the amended rule specifically adds the requirement that "charges due for preparation of the transcript shall be paid as directed in § 512.050, RSMo."

Under the new rule, the appellant must order the transcript within 10 days after filing the notice of appeal. Under the statute, the appellant must pay the court reporter by the same deadline — within 10 days after filing the notice of appeal.

But the new rule does not go into effect until July 1. Until then, appellants can order the transcript up to 30 days after filing the notice of appeal, but they must still pay for the transcript within 10 days after filing the notice of appeal.

The Statute

The uproar began last summer when the General Assembly amended § 512.050, on the last day of the legislative session, at the behest of the Court Reporters Association.

Section 512.050 now provides that "[n]o such appeal shall be effective" unless it is timely filed "and all charges due to the court reporter for preparation of the transcript of the record of the trial court are paid within ten days of the filing of the notice of appeal."

Kennett attorney Wendell W. Crow thought the language was clear enough: if the appellant fails to pay the court reporter as provided, the appeal must be dismissed. He filed a motion to dismiss the appeal of an appellant who failed to comply.

But the Southern District said it would overrule his motion to dismiss unless the Supreme Court prohibited it from doing so. Crow then filed a petition for writ of prohibition in the Supreme Court, but this was overruled without explanation, and the Southern District then overruled Crow's motion to dismiss.

An Explanation

Crow thought the ruling was contrary to the plain language of the statute. But Kansas City attorney Alan B. Gallas, chair of the Bar's Civil Practice & Procedure Committee, offered a possible explanation for the ruling.

"The fourth sentence of the statute seems to modify the second sentence," he ex-

plained.

That sentence provides: "After a timely filing of such notice of appeal, failure of the appellant to take any of the further steps to secure the review ... does not affect the validity of the appeal, but is grounds for such action as the court deems appropriate, which may include dismissal of the appeal."

"You can make the argument that the General Assembly intended by the fourth sentence to leave it up to the court to decide whether to dismiss the appeal," Gallas observed.

Gallas also sees a continuing problem with the statute as it now reads.

"The Supreme Court's new rule is not intended to change anything with regard to the statute, which it incorporates. The statute will still have to be amended," Gallas said.

Legislation Planned

The Missouri Bar is supporting a bill which would amend the statute by delaying the deadline for paying the court reporter until 10 days after "ordering of the transcript."

According to Gallas, the Bar has lined up sponsors for this legislation in both the House and the Senate. Neither of the bills had been prefiled as of last week, however.

But Rep. Don Lograsso has prefiled HB 148, which would postpone the deadline for paying the court reporter even longer — until 10 days "after preparation of the transcript."

Even that does not go far enough for Owens, though.

"The suggested amendment to the statute is not sufficient, because it still takes the discretion away from the Court of Appeals," Owens said.

"It looks like they are taking away the court's discretion and making a commercial transaction the basis for a loss of jurisdiction," he added.

"It is a drastic remedy for a problem that does not exist."

— KEITH R. KRUEGER

/COURTS

and identified Davis in court as one of the assailants.

Lemay: Donald L. Mees, 47, was sentenced Friday in St. Louis County Circuit Court to life in prison without parole for the fatal shooting in May 1995 of Jimmie Webster. A jury convicted Mees in February of first-degree murder. The shooting took place at Mees' home in the 100 block of Sylvia Drive in Lemay. Webster, 36, of St. Louis, was shot when he tried to collect a drug debt. Mees claimed self-defense.

St. Louis: All but \$350,000 of a \$3.75 million settlement reached in St. Louis Circuit Court is expected to go to a boy severely burned May 24, 1994, in a fire at his apartment in the 2700 block of Glasgow Avenue. Jeremy Burr, then 5, has undergone numerous surgeries, and faces more, for treatment of burns over two-thirds of his body. His mother, Angie Burr, 20, and a brother, Anthony Burr, 4, died from injuries suffered in the blaze. Paying the settlement is McCormack Baron & Associates. Representatives of the Burrs alleged that McCormack Baron had a contract to maintain the apartment and make sure it met housing codes. The victims were confined in the burning apartment after Angie Burr was unable to open a security gate over the front door to throw out a mattress that had caught fire. Flames spread through the apartment. If given final approval, most of the settlement will go to Angie Burr's four surviving children and the children's grandmother. A \$1 million settlement was reached earlier with a co-defendant, J-V-L Housing Corp.

Award

Man who lost some eyesight wins lawsuit

Continued from D1

documented cases of epithelioid osteosarcoma of the sacrum, or tailbone. Montgomery is said to be the only survivor.

On May 6, 1996, Montgomery had surgery to remove the cancerous tissue and half his tailbone. That was when he lost nearly all sight in his left eye.

Montgomery's suit said excessive pressure on his left eye shut off blood to an optic nerve during surgery and produced the blindness. Bruning contended that Montgomery was placed wrongly on the operating table and that anesthesiologists failed to monitor him properly.

In his closing argument Tuesday, Fournie told jurors that Montgomery is "very lucky" to be alive. The risky surgery was so grueling that doctors had to replace all of Montgomery's blood during the 10-hour operation.

Fournie denied that a face pad for Montgomery was placed improperly during surgery and said the defendant anesthesiologists — Drs. William Turnage and Ata Siddiqui — did nothing wrong.

Jurors ordered Turnage and Siddiqui each to pay Montgomery \$400,000 in damages. Kennedy and two radiologists at South County Radiologists Inc. — Drs. Edward Habert and Jeffrey Judd — were ordered to pay a total of \$1.45 million. Judd and Habert failed to recognize "a sacral mass" on Montgomery's MRIs in 1995, jurors found.

Bruning said Montgomery is a victim of unnecessary disc surgery and now partially blind because of "doctor mistakes."

"The doctors who mistreated him did not save his life," Bruning added. "They caused his blindness, and the jury believed that it took his wife to find out what the problem was."

Fournie said the case could be bad for the city, where jurors may tend to award plaintiffs large judgments.

"People who will learn of (Montgomery's case) will have grave second thoughts staying in medical practice or wanting to locate in the city," he said. "What will eventually happen is that more and more independent medical professionals will leave the area."

Montgomery, who lives in south St. Louis County, said he is happy with the jury's decision but noted that his partial blindness is permanent.

"I can live with it, but it's tough," he said.

He and his wife have 13-year-old twins — a boy and a girl — and a son, 7. Their Thanksgiving today will be like those before — dinner today with his in-laws and dinner Friday with his parents.

"I'm doing OK," Montgomery said. "It's been a long time for this to come to an end. I'm just glad it's behind us. It was all about principle with me. Dollars can't bring my eyesight back."

Reporter Tim Bryant
E-mail: tbryant@post-dispatch.com
Phone: 314-621-5154



On page 12 of our November 27th and our December 7th advertisements, we picture the Hewlett Packard Digital Camera Photo Studio for \$199.99. This was a special, one time purchase by Sears and is available only while quantities last. We apologize for any inconvenience this may have caused our customers.

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OOH, LAW LAW: KC GIANT, TEASDALE FIRM COURTING

SOURCE: By Jerry Berger DATE: October 20, 1996

PUBLICATION: St. Louis Post-Dispatch EDITION: FIVE STAR LIFT

SECTION: EVERYDAY MAGAZINE PAGE: 2F

LEGAL BRIEFS: The silk-stockings law firm of Armstrong Teasdale is in huddles with the powerhouse, 60-member Kansas City firm of Watson & Marshall about joining forces. Said our town's Ken Teasdale: "It would not be a merger. We've had conversations with them for a long time, as have other law firms. We should know something within a month." FYI: Watson & Marshall is the rep of record for United Missouri Bank . . .

Jon M. Baris has passed the bar and has become an associate in the practice of his dad, Iril B. Baris, in the Baris Law Firm. . . .

The new firm of Lacks, Newman & Cohen in Clayton is concentrating its practice on family law, personal injury and a wide range of services. Partners are David Lacks, Burton W. Newman, David V. Collignon and Nathan S. Cohen, with G. William Wynne an associate and Jeanne M. Fox of counsel.

STAR TIME: Actress Lynn Redgrave is expected to attend the unspooling of her new film, "Shine," at 7 p.m. Nov. 1 at the Art Museum as part of the fifth annual St. Louis Film Festival. Afterward, Redgrave has promised to attend a private reception at the Caitlyn Gallery, to host a birthday party in honor of her hub, John Clark. "Shine" was an award winner at the Toronto Film Festival. The festival here Nov. 1-12 will feature about 50 films from more than 15 filmmakers from around the world. The event will kick off at 7 p.m. Oct. 30 at the Esquire Theatre with "Larger Than Life," starring Bill Murray, who inherits an 8,000-pound elephant. Filmed partly here in 1995, the movie co-stars Janeane Garofalo and Matthew McConaughey. Former St. Louisans and Repertory Theatre alums Ellen Crawford and Mike Genovese of television's "ER" will attend a screening of their new film, "Porchlight," at 7 p.m. Nov. 9 at Webster University's Winifred Moore Auditorium. On Nov. 12, Al Pacino's directorial debut with "Looking for Richard" will get a viewing at the Shady Oak. For info, call 231-FILM.

BROADCAST BIZ: The buzz is that Cape Girardeau-based Zimmerer Broadcasting has rejected a bid from EZ Communications for the purchase of its FM stations - WKBQ and WKX. Zimmerer says it has received higher bids from elsewhere.

HOT PLATES: Bonnie Van Gilder of ABC's "20/20" newsmagazine was in town Thursday to interview Leritz Plunkert attorney Tony Bruning for a story about combustible thermoplastics. Last year, Bruning and partner Chris Leritz represented a family in Madison County whose air conditioner's plastic blades caught fire, burning down their home. Says Bruning in the segment: "There are killers in plain view on our kitchen counters. During the last reporting year, nearly 7,000 small plastic appliances caught fire, injuring or killing more than 400 Americans."

COMINGS 'N GOINGS: Alan Epstein, director of new biz, is telling pals that he will soon split with the Kupper Parker ad shop. . . .

Dr. Samuel A. Wells has been named director of the American College of Surgeons, effective June 1998. He will exit his post as chairman of the WashU's department of surgery. . . .

The Spirtas Wrecking trucks worked overtime last week replacing the dirt on the site of the former Ambassador Theatre, which is now owned by Merc Bank. One of the company's staffers explained, "Mercantile didn't like the dirt we originally used." . . .

Former Morton's Steak House chief Solomon Melesse has ankled the Clayton eatery to join the Adam's Mark as manager of Faust's and Pierre's.

TAXI SQUAD: The Cardinals' 14-0 shellacking by Atlanta on Monday left many fans unhappy, but probably none more so than Regional Arts czarina Jill McGuire. McGuire, dropped off at the gate by her hub, Alderman Dan McGuire, discovered that she had left her ticket at home. Stranded and with only \$10 and pennies in her purse, the resourceful McGuire persuaded a downtown cab to whisk her to her Skinker Boulevard home, wait for her to find the ducat, and then return her to Busch Stadium. Groused McGuire after the game, "I should have had the driver leave me at a Rams game."

MR. NITELIFE: Lois Kaplan and her partner, Dan Martorelli, will open their Carbo's: The Piano Club in the Lindell Terrace on Oct. 31. The twosome hope to perpetuate the menu that thrilled patrons at yesteryear's Al

today's deal



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Baker's. Entertainment nightly, valet parking and food prepared by some of our town's leading chefs will be de rigueur. . . .

And, Tony Ziegler and Keith Curtis have opened their TKO's on East Kirkham Avenue, offering traditional bar fare and a rock/country music mix.

DART BOARD: Justin Dart and local disability rights activists will rally outside the Old Courthouse on Friday to announce their support for the candidacy of Bill Clinton. Dart, the father of the Americans With Disabilities Act, is responding to claims by the campaign of Bob Dole that Dole represents the interests of disabled voters. Says Dart, "Not so!" . . .

Meanwhile, Annette Kolis Mandel, an attorney, has announced her intention to run for mayor of Creve Coeur in next April's municipal election. Mandel, a five-year vet of the City Council, is the first declared candidate to succeed retiring mayor William Winter. Says Mandel, "It is important we not return to the factionalism and political bickering which led to the headlines we all remember."

STATIC KLING: Residents of the toney Questover suburb in Creve Coeur have retained the legal services of their neighbor Steve Kling to block the construction of luxury apartments and offices in the commercial shadow of the Barnes West Hospital complex. West County apartment and office occupancy rates are currently running at 97-99 percent.

THE GOOD FIGHT: St. Louis police and firefighters will fight for a good cause at 7:30 p.m. Nov. 27 at Kiel Center to benefit the St. Louis Backstoppers. Maj. Robert Zambo Jr., the Area III commander, says ducats can be purchased by calling the 24-hour Metro Boxing hotline, 351-7855.

Caption: Photo by Stephan Frazier/Post-Dispatch - Dan Martorelli and Lois Kaplan of Carbo's: The Piano Bar.
Correction:

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SLAIN MAN'S FAMILY SETTLES DISPUTE OVER INSURANCE PROCEEDS**SOURCE:** By William C. Lhotka**DATE:** August 20, 1996**Of the Post-Dispatch Staff****EDITION:** FIVE STAR LIFT**PUBLICATION:** St. Louis Post-Dispatch**PAGE:** 2B**SECTION:** NEWS

The adult children of Larry Inman and Inman's widow split \$585,420 in life insurance proceeds Monday, settling a dispute on the eve of a civil trial that could have been a replay of a murder case two years ago.

Alan Inman, of Park Hills, Mo., and Tammy Pindarvis, who lives in Michigan, had sued Frances Inman. They contended that Frances Inman had caused their father's death in August 1992 and therefore should not benefit from it.

Frances Inman, 55, was tried and acquitted of murder by a jury in Franklin County Circuit Court on June 2, 1994.

Missouri's Sunshine Law declares that upon acquittal "official records pertaining to the case shall thereafter be closed records."

Anthony S. Bruning and Edward M. Roth, the siblings' attorneys, agreed that they could not use trial transcripts or records of the judicial proceedings to set aside Frances Inman's insurance claims in a civil trial in St. Louis County. But they argued that the homicide investigation was still open, if inactive, and they wanted to use investigators' notes and reports at the civil trial.

Richard Dempsey, Frances Inman's attorney, said that doing so would defeat the intent of the law, which is to protect the rights of a person acquitted of a crime.

In paragraphs dripping with sarcasm, Dempsey said Bruning and Roth were trying to paint a "horror tale to the effect that one of those wildly liberal Franklin County juries refused to convict an obviously guilty woman, Fran Inman, of the murder of her husband."

Instead, Dempsey said, the jury believed Frances Inman's denial of guilt and rejected the testimony of a convicted felon who got a reduced sentence in an unrelated case for his testimony.

Associate Circuit Judge Patrick Clifford of St. Louis County had taken a broad interpretation of the Sunshine Law, saying it applies to all officials, "including a police officer, criminal investigator, prosecutor, coroner, and the like."

Clifford barred the plaintiffs from using any report to refresh a witness's memory. If a witness lacked independent knowledge of the events of August 1992 when Larry Inman was killed, then the witness would be barred from testifying at the civil trial, the judge ruled.

After the Missouri Court of Appeals refused to overrule Clifford, Bruning and Dempsey worked out the 50-50 split in Clifford's chambers Monday.

Larry and Frances Inman, both assembly workers at Chrysler Corp., were married in November 1990. The couple lived in Washington, Mo. Both had children from previous marriages.

In August 1992, the bludgeoned body of Larry Inman, 48, was found on a motel parking lot in Sunset Hills. At the criminal trial, George Stanley claimed - and Frances Inman denied - that he had been paid \$3,700 in a murder-for-hire scheme. Stanley was in prison for burglary at the time of his testimony.

Caption:**Correction:****today's deal**

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Settlements Top The List Of 1996's Largest Recoveries

By: MO Lawyers Media Staff | January 13, 1997

By Keith R. Krueger

There was a dramatic increase in the number of top recoveries that were spawned by settlement rather than trial in 1996, a Missouri Lawyers Weekly study has shown.

In 1995, only four of the top 20 plaintiffs' recoveries reported came from settlements. Seven settlements made the top 20 in 1994.

But in 1996 plaintiffs' attorneys turned to settlements for 10 of the year's top 20 payouts. Three of the big settlements exceeded \$7 million, and the average of the 10 settlements exceeded \$6.5 million.

Products liability lawyers were the biggest winners last year, ringing up the six largest reported verdicts and settlements, with recoveries ranging from \$10 million to more than \$26 million.

Although plaintiffs' lawyers could not match the sensational results of 1995, when the top four cases alone totaled \$560 million, there were 19 cases worth \$2 million or more, the same number as in 1995.

And the average value of the top 20 plaintiffs' cases was more than \$8.4 million, a little better than the \$7.5 million average of 1994.

'Venue Wars'

But defense lawyers had some big winners last year too, especially in medical malpractice cases in the southwestern part of the state and in rural areas. Two med mal cases from Greene County made this year's list, along with one each from Jasper, Clinton and Camden Counties.

Springfield attorneys Jeffrey H. Harrison and Kent O. Hyde represented the winning doctors in three of the med mal cases. No other attorney's name appears on the plaintiffs' list or the defendants' list more than two times.

On the plaintiffs' side, those who have followed the 1996 "venue wars" will not be surprised to find six cases from St. Louis City and six from Jackson County among the winners.

Only two other Missouri circuit court cases made the list, one each from Greene County and Taney County. The other seven cases arose in federal district courts or out of state.

Winning Attorneys

In addition to Harrison and Hyde, Kansas City attorney Randall L. Rhodes was a winning attorney in two of the top defendants' verdicts – a products liability case in Jackson County (the number 4 verdict) and the Clinton County medical malpractice case, which tied for 16th.

Springfield attorneys Thomas Strong and Steven D. Harrell continued their winning streak in plaintiffs' cases, with two of the top 20 verdicts for the second consecutive year. Strong also was on the top 20 list twice in 1994.

The only other attorneys to appear twice on this year's list are John C. Risjord and Randy W. James of Overland Park, Kan., who had two products liability cases among the top five plaintiffs' recoveries for the year.

J. Michael Shaffer of Kansas City and David R. Buchanan, also of Kansas City, were the only attorneys who won defendants' verdicts which placed them in the top 20 for the second year in a row.

Dennis E. Egan of Kansas City made the plaintiffs' honor roll for the second straight year.

Anthony J. Bruning of St. Louis was also a repeater. But this year's big case was a \$4.75 million settlement for a plaintiff, whereas last year's winner was a defendant's verdict.

A Definite Trend

"We settled a lot of cases this year," said Bruning. "It seems as if in injury cases there was more of an effort made on the part of defendants to achieve a settlement, including arbitration and mediation."

"Also, It seems that settlement negotiations began earlier than in previous years, that is, several months ahead of time rather than the morning of trial."

Bruning believes that a subtle shift in policy in the defense bar may be responsible for the trend. "Insurance companies, hospitals and corporations are becoming better at managing their risks and avoiding 'mega verdicts,'" Bruning said.

"Though there are still mega verdicts out there," Bruning added. "But in general, corporations are getting wiser about paying big money. Insurance companies, doctors and hospitals seem to be making more of an effort, which is good for everybody."

Bruning noted that he was not aware of the trend when he settled his \$4.75 million case. "I was just trying to protect my client's interest and do a good job," said Bruning.

Practice Areas

In addition to the six biggest plaintiffs' winners, products liability lawyers had two other cases in the top 20.

There were only three auto accident cases in the plaintiffs' top 20, and three recoveries in breach of contract cases. The other seven cases were scattered through six practice areas.

Defendants did the best in medical malpractice cases, placing seven verdicts among the top 20. The list included three negligence cases, two products liability cases, one premises liability, and just one auto accident case.

There was also one § 1983 case among the defendants' winners and two civil rights cases, including the number one defendants' verdict, a prisoner's claim that he suffered a stroke because he received inadequate medical care.

Method Of Ranking

The prisoner's demand for a settlement of \$4 million placed his case at the top of the defendants' list, because it was the largest pre-trial demand of any case in which the jury returned a verdict for the defendant.

Missouri Lawyers Weekly made no attempt to judge whether the demand was reasonable or not, but ranked the case first by virtue of the size of the demand alone.

This year for the first time Missouri Lawyers Weekly also included, among the defendants' winners, cases which did not result in total victory for the defendants. The cases are ranked according to the difference between the plaintiff's last pre-trial demand and the amount of the verdict. Four cases made the top 20 even though plaintiffs won small verdicts.

Some of the defendants' winners could not be ranked because there was no demand by the plaintiff. And at least one plaintiff's case may have been left off because the amount of the settlement was confidential.

Some excellent results could not be included in this objective ranking, because the relief sought was equitable, such as an order to rezone property.

In a condemnation case we realigned the parties, placing a defendant's big award on the plaintiffs' top 20 list.

Top Five Plaintiff Cases

Capsule summaries of the top five plaintiffs' verdicts and settlements reported to Missouri Lawyers Weekly follow.

1. Products Liability (automobile), \$26,470,402 verdict. A 24-year-old man was severely burned when his 1987 Ford pickup caught fire after a head-on collision near Baltimore. He suffered relatively minor orthopedic injuries, but because he could not remove his seat belt, he suffered burns over 65 percent of his body, leading to the amputation of his right arm and right leg. He claimed the truck's seat belt design was defective, and he claimed Ford should have installed an antisiphoning device in the fuel line to prevent it from feeding the fire. *Wasilik v. Rehert* and *Ford Motor Company*, Circuit Court for Baltimore City, reported December 2.

2. Products Liability (explosion of tire), \$24,200,000 verdict plus \$850,000 separate settlement. A 38-year-old man was hurt when a tire exploded as he inflated it. He claimed the industry knew of the risks associated with this type of tire since the 1950s and Goodyear knew of the risks since the 1960s, but did not correct the defects or warn its customers. Goodyear claimed the tire met state-of-the-art standards when manufactured in 1967. The man bought the tire, used, in 1988. Although the man suffered severe injuries to his head, he can converse and attempts to run his own business. A jury awarded \$5,850,000 actual damages (after allocating 25 percent fault to plaintiff), plus \$18,400,000 punitive damages. *Cole v. The Goodyear Tire & Rubber Co. and Tire Mart, Inc.*, St. Louis City Circuit

**Headline: JURY AWARDS \$50 MILLION IN KIDS' FIRE DEATHS
\\ PARENTS WIN TRIAL OVER DEFECTIVE SMOKE
DETECTOR \\ MANUFACTURER WILL APPEAL
VERDICT**

Correction:

PubDate: Friday, 7/2/1999

Section: METRO

Page: C1

Byline: By Tim Bryant\Of The Post-Dispatch

Text: A St. Louis jury Thursday awarded Timothy and Mary Gordon a total of \$50 million for the deaths of two of their children that they say should have been prevented by their smoke detector.

Their lawyer called the judgment "extremely large." The jury awarded \$20 million for compensatory damages and \$30 million for punitive damages. Mary Gordon wiped away a tear as she told reporters she's glad the civil trial is over. Her husband said he feels vindicated, pointing out that lawyers for the detector's maker, BRK Brands Inc., contended that he could have gotten the children out of their burning apartment alive.

"It happened just the way I said it did, " Gordon said.

He and his lawyer, **Anthony Bruning**, said the jury award alerts the public that ionization smoke detectors -- the kind most frequently found in homes -- detect flames but do a poor job of detecting smoke from smoldering fires. Homes also should be equipped with photoelectric detectors, which are good at detecting smoke, **Bruning** said.

James Heller, a lawyer for BRK, said his company's detectors "save millions of lives." BRK has "heartfelt sympathies" for the Gordons but will appeal the jury's award, he said.

"In this case the detector sounded but human response resulted in tragic consequences, " Heller added.

Investigators say children playing with a cigarette lighter accidentally ignited a living room chair the morning of April 8, 1997, in a second-floor apartment in the 3800 block of McRee Avenue.

The resulting fire was small but it produced dense smoke that killed Erica Jackson, 4, and her brother, William Phillips, 6. Their parents' wrongful death suit against BRK alleged that the ionization smoke detector in their apartment was defective and did not sound in time.

Bruning had asked jurors in his closing argument Wednesday to order BRK to pay \$10 million in damages for the deaths of each child. Jelisa Jackson, 4, a cousin of Erica and William, also died in the fire. A suit against BRK in Jelisa's death is pending.

In the Gordons' case, **Bruning** had asked jurors to order BRK to pay \$100 million in aggravating damages -- \$1 for each of its 100 million smoke detectors in use nationwide. Jurors were split 9-3 on their decision to award a total of \$50 million in damages.

Some jurors who voted for the judgment said deliberations were at times tense and emotional.

"Safety was a major issue," said juror Zac Adams. "I just want safe houses for people to live in."

Bruning had told jurors that had the Gordons' smoke detector sounded earlier, Timothy Gordon -- stepfather of Erica and William -- would have had time to put out the fire. As it happened, Gordon was unaware of the fire until he heard the children scream and opened a bedroom door to find the rest of the apartment filled with smoke.

Earlier, **Bruning** presented statements of a former BRK official who said his bosses told him to present Underwriters Laboratories "doctored" records to get certification of its ionization smoke detectors, which are designed to sound an alarm when they detect smoke particles. **Bruning** said 100 million such detectors have been sold to consumers.

Heller told jurors that the former official was a "disgruntled" ex-employee used by the plaintiffs "to deflect the facts."

Widespread use of ionization smoke detectors has cut fire deaths to 3,000 yearly in the United States from 12,000 annually in the 1960s and 1970s, Heller told jurors.

Gordon and his infant son, Tyriq, were in a rear bedroom when the fire broke out. He discovered the fire and ordered the children to the back room and then briefly tried to smother the blaze.

He tried to break out the windows in the back of the apartment -- sustaining serious cuts on his arms -- but he couldn't smash through a tightly sealed storm window. And he couldn't find the key for the locked back door because of the smoke and darkness.

Gordon lost consciousness. Later firefighters found him, his son and the other three children huddled together in the back room. Tyriq recovered. Mary Jackson-Gordon, the mother of Erica, William and Tyriq, was at work at the time of the fire.

BRK Brands Inc. is a subsidiary of First Alert Inc.

Last year in Davenport, Iowa, a jury ordered First Alert to pay a couple \$16.9 million in a suit that blamed a faulty smoke detector for the death of their young son. Nathan Mercer, the father in that case, testified for the Gordons in the trial in St. Louis, **Bruning** said.

A fire blamed on a baby monitor that overheated killed the Mercers' 3-year-old son, Bradley, and disfigured their then-18-month-old son, Travis, on Jan. 18, 1993. The boys' mother, Jennifer Mercer, testified in Davenport that their First Alert smoke detector activated too late, preventing her husband from saving Bradley.

Pending in St. Clair County Circuit Court in Belleville is a class-action suit against BRK. One of the plaintiffs' lawyers, James Fetterly of Minneapolis, said Thursday that the suit is asking that the company provide photoelectric detectors as companions to ionization detectors for as many as 100 million customers nationwide. As an alternative, the suit seeks a refund for people who bought ionization detectors.



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JURY DELIBERATES SUIT OVER CHILDREN'S DEATHS**PARENTS SAY SMOKE DETECTOR FAILED, ASK FOR \$20 MILLION** **FIRM IS ACCUSED OF FRAUD****SOURCE:** Tim Bryant**DATE:** July 1, 1999**Of The Post-Dispatch****EDITION:** FIVE STAR LIFT**PUBLICATION:** St. Louis Post-Dispatch**PAGE:** B1**SECTION:** METRO

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The parents' lawsuit claims that they would have escaped had a smoke detector made by a subsidiary of First Alert Inc. worked properly.

Jurors began deliberating the case Wednesday afternoon after more than a week of testimony in St. Louis Circuit Court. They also heard part of a deposition in which a former First Alert official claimed the company used false documents to get a safety certification for the smoke detector.

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Jury deliberates suit over children's deaths

7/1/99
Parents say smoke detector failed, ask for \$20 million

Firm is accused of fraud

By TIM BRYANT
Of the Post-Dispatch

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Detectors

Jury is deciding suit over children's deaths

Continued from Page B1

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Headline: FIRM KNEW OF ALARM DEFECTS, EX-EMPLOYEE SAYS

Correction:

PubDate: Saturday, 7/3/1999

Section: NEWS

Page: 7

Byline: By Tim Bryant\Of The Post-Dispatch

Text: * The jurors in a trial stemming from two children's fire deaths saw an engineer's deposition, but the company denies the accusations.

A former employee of BRK Brands Inc., makers of First Alert smoke detectors, alleged in a sworn statement that the company's home fire alarms may have a defect causing them to sound too late in smoky fires. The allegations arose last week in a lawsuit in which a St. Louis couple won a \$50 million verdict against BRK in the deaths of two of their children. Lawyers for the children's mother, Mary Gordon, said her BRK-made First Alert smoke detector did not activate in time. A June 25 deposition by David A. Minnis, the former BRK engineer, figured prominently in the case. Minnis said in his sworn statement that as many as 75 million to 100 million smoke detectors could have problems with the horn contacts that would delay them from sounding an alarm. Minnis also alleged that a BRK official encouraged him to alter detectors being evaluated by Underwriters Laboratories so they would pass.

But millions of other smoke detectors have been sold to the public without that alteration, the former engineer said.

Lawyers for First Alert have said Minnis is a disgruntled ex-employee. They denied the allegations and said they would appeal the decision in the St. Louis case. They said their alarms save 3,000 people annually.

Minnis, from Montgomery Ill., did not take the stand, although the plaintiffs did bring him to St. Louis this week.

In total, First Alert and its companies face about two dozen similar lawsuits, including one in Belleville that seeks a class-action designation.

Last year in Iowa, a jury ordered First Alert to pay a couple more than \$16 million for the death of one child and disfigurement of another because a First Alert detector did not sound in time for the father to save his 3-year-old son from a fire in his room.

Minnis said that First Alert alarms failed to pass UL safety certification several years ago. Minnis said he told a company executive that putting drops of oil on the horn contacts made the alarms sound properly, allowing told them to pass UL's retest.

"What did he tell you when you told him this?" asked Gordon's lawyer, **Anthony Bruning**. Minnis replied: "He told me that you have to look at it this way, that it's not the smoke detector that causes the fire."

Bruning continued: "So don't feel guilty or don't feel bad about deceiving the UL and deceiving the public when people die because the smoke detectors don't cause the fires."

"That's correct," Minnis said.

"Did you buy that?" **Bruning** asked.

"It made me sick to my stomach," Minnis replied.

Jurors watched a half-hour of Minnis' videotaped deposition. But on Friday, the jury's foreman said Minnis' claims did not affect the jury's decision directly.

"I think that it served as a kind of background," said the foreman, William Hedrick, pastor of the Second Presbyterian Church in St. Louis. "None of us came to any clear decision ... about whether all of Mr. Minnis' charges were true or not. He may very well be a disgruntled former employee."

That was how BRK lawyers portrayed Minnis at the trial. James Heller, a company lawyer, told jurors that UL also tests detectors it gets from manufacturing plants and retail outlets. The detectors passed tests, Heller said.

And BRK official Mark Devine denies he told Minnis not to worry because smoke detectors don't cause fires.

Minnis, 38, said in his deposition that BRK fired him in 1994 after his doctor did not release him from treatment for insomnia.

Another issue at trial was whether ionization detectors - the type most commonly found in homes - fail to give timely warnings because they do a poor job of detecting smoke from smoldering fires. The alarm in the Gordons' home was an ionization detector.

Widespread use of ionization smoke detectors has cut fire deaths to 3,000 yearly in the United States from 12,000 annually in the 1960s and 1970s, Heller told jurors this week.

But, Hedrick said, BRK should do more to educate the public about the need for homes to be equipped with ionization and photoelectric detectors, which do a good job of detecting smoke, Hedrick said. About 80 percent of First Alert's detectors are ionization detectors.

The jurors awarded Timothy and Mary Gordon \$20 million in actual damages for the deaths of their children - Erica Jackson, 4, and William Phillips, 6 - and an additional \$30 million in punitive damages. BRK lawyers said the company will appeal the judgment.

The Belleville lawsuit, pending in St. Clair County Circuit Court, is asking a judge to make the company provide photoelectric detectors as companions to ionization detectors it has sold to 100 million customers or to provide refunds, said one of the plaintiffs' lawyers, James Fetterly of Minneapolis. A hearing on whether to allow the suit to proceed as a class action is scheduled for next month in Belleville, Fetterly said.

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\$50 Million Verdict Against Smoke Alarm Maker - Children Died When Alarm Failed To Sound In Apartment

By: Missouri Lawyers Media | April 19, 1999

\$50 Million Verdict

The plaintiff was the mother of two children who died in an apartment fire. She sued the manufacturer of a smoke alarm.

The fire happened at about 8:00 a.m. on April 8, 1997 in a second-floor apartment in the city of St. Louis. There were five people in the apartment at the time: a 5-year-old boy, his 4-year-old sister, an infant, the plaintiff's husband, and a 4-year-old cousin. When the fire broke out, the three older children were in a front room watching TV while the father was behind a closed door in the back room with the infant.

The husband heard the sound of screaming in the front room and emerged to find the apartment filling with smoke. He put the children into the back room and attempted to put out the fire, but failed. All exits from the apartment, including the one in the back bedroom, had dead bolts which required a key to unlock. The husband made several attempts to find his keys but was unable to do so because of the thick smoke. He tried without success to break out a rear bedroom window before he was overcome with smoke. The three older children died. The husband survived but suffered cuts, burns and smoke inhalation. The infant also survived. It was later presumed that one of the older children had started the fire.

Both the husband and a downstairs neighbor testified that the smoke detector in the apartment never sounded. The plaintiff claimed in her suit that the smoke detector was defective, that the manufacturer knew it was defective and that it failed to warn its past customers that the detector would not work in certain kinds of fires.

Specifically, the plaintiff contended that the smoke detector, an "ionization" type detector, does not respond as quickly to slow, smoldering fires as detectors with photoelectric sensors. The plaintiff claimed the manufacturer had received hundreds of complaints from consumers that the detectors failed to respond to smoke, but had never taken any steps to warn purchasers that the alarms may not respond timely to smoldering smoky fires.

The plaintiff also argued that the manufacturer sold a combination detector using both ionization and photoelectric sensors but continued to sell the faulty ionization detectors.

The defendant denied the fire was slow and smoldering and claimed the detector was adequate, citing its certification by Underwriters Laboratories. It said that ionization detectors were responsible for a 75 percent reduction in annual deaths from fire in the United States.

But the plaintiff presented testimony of a former employee of the manufacturer whose job it was to obtain UL certification of the detectors. He testified that his superiors instructed him to resubmit a smoke detector that had failed the UL certification process, and to doctor the detector in a manner that would insure its correct functioning during the second test. He said that the doctored detector passed the second test and earned UL certification, and that the company then sold the detector to the public without changing the design. The defendant denied the employee's allegations and said he was motivated by anger after being fired.

The \$50 million verdict included \$10 million in actual, and \$15 million in punitive, damages for the death of each child.

The plaintiff also sued her landlord, claiming that the landlord was negligent for having dead bolts on the apartment exits that required a key to operate. Those claims were settled in 1998 for \$1.2 million.

Type of Action: Products liability

Type of Injuries: Death

Court/Case Number/Date: St. Louis City Circuit Court/972-1114/July 1, 1999

Caption: Gordon v. BRK Brands Inc.

Judge, Jury, or ADR: Jury

Name of Judge: Margaret Neil

Special Damages Claimed: None submitted

Verdict or Settlement: \$50 million verdict

Allocation of Fault: None

Last Offer: None

Last Demand: \$8.8 million

Attorney for Plaintiff: Anthony S. Bruning, Leritz, Plunkert & Bruning, St. Louis

Insurance Carrier: Lexington Insurance Co., Royal Insurance Co., Steadfast Insurance Co., Travelers Insurance Co.

Plaintiff's Experts: Dr. Michael Graham, St. Louis (medical examiner); Dr. Donald Russell, College Station, Texas (electrical engineer); Michael Schulz, Chicago (fire investigation)

Defendants' Experts: Dr. Kenneth Finemann, Huntington Beach, Calif. (human factors); Gerald D. Rork, West Dundee, Ill. (smoke detector design and operation); Ralph E. Transue, Vernon Hills, Ill. (fire investigation); Randolph Tucker, Houston, Texas (fire investigation)

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Verdicts & Settlements

Smoke-Alarm Maker Slapped With \$50 Million Verdict in Fire Deaths

Berkman

St. Louis jury has hit a smoke-detector manufacturer with a \$50 million verdict for the mother of two children who died of smoke inhalation in an apartment fire.

The jury found that the manufacturer's detector's "ionization sensor" was too slow to detect a smoldering, smoky fire like the one in this case, and failed to warn the public of the dangers. Plaintiffs' attorney James Leritz of St. Louis says the key challenge in the case is countering the defendant's assertion that no smoke detector could have prevented the deaths in this case. They contend that the incident involved a fast blaze rather than a smoldering fire and that the children could have survived had the father concentrated on getting them out rather than on trying to fight the fire.

Leritz, whose firm represented plaintiff, Mary Gordon: "You can tell the fire-detector company that these people would all be to blame no matter what happened — that they weren't going to get out. So we have to prove to the jury that the faulty alarm did make a difference."

Notes that he and partner Anthony Bruning, lead trial counsel in the case, did this through the use of a smoke-based fire investigator, who interviewed victims and firemen to construct a timeline of the blaze which showed that there would have been enough time to escape if the alarm had sounded on time.

Defendant, BRK Brands Inc., employs no fire expert of its own, according to Leritz.

Lead defense lawyer Arnold Joseph argued that the father could have saved the children anyway had he focused on getting them out of the apartment rather than fighting the fire. "The father] testified that the fire was bigger than a waste can when he saw Arnold Joseph. "He could have just led the children out the front door, which the fire shows was unlocked."

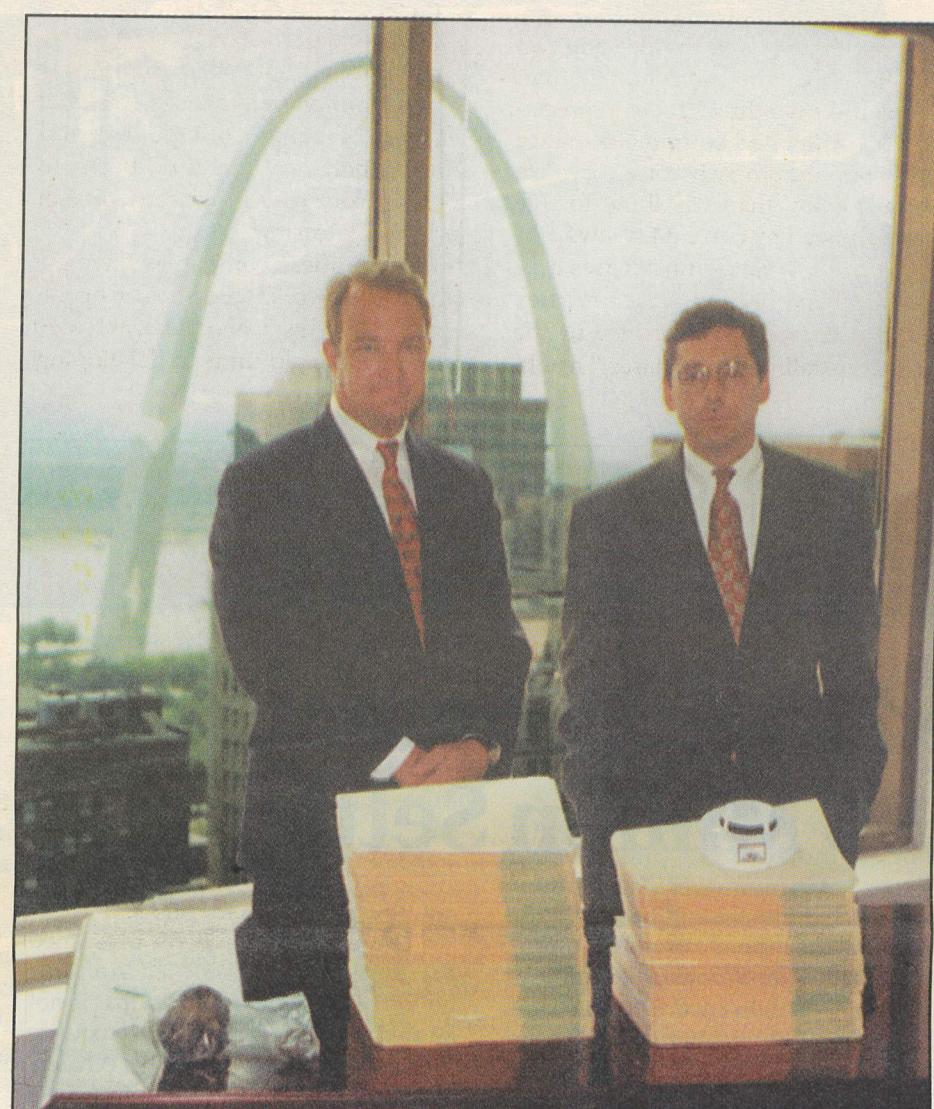
Disputes this. "The stairwell [in the front entryway] was full of smoke. The firemen could not get through that stairwell without oxygen, so I don't know how they would have gotten the kids out there," he says.

Second critical issue was the company's knowledge of the smoke detector's defects.

Plaintiffs demonstrated this in admissions by BRK officers, according to Leritz. He says those admissions were made during an interview on April 20/20' in which a company official he knew the ionization detector could take 15 minutes more to respond to a smoky fire than a photographic detector which the company used.

"Fire, 15 minutes is an eternity. I saw this," says Leritz.

Also obtained through discovery of written consumer com-



Anthony Bruning (left) and Jim Leritz convinced a St. Louis jury that the defendant's smoke alarm was slow to detect smoky fires.

plaints showing that BRK knew it had a defective product on its hands.

"[The complaints] said things like, 'I know it had fresh batteries, but I woke up in the middle of the night and my house was full of smoke. Thanks for nothing — my family's lucky to have gotten out alive,'" says Leritz. "And there must have been many others who just never notified the company. We had a file on each complaint."

Jim Heller of Philadelphia, who represented BRK, counters that these complaints were irrelevant to the case because they did not take into account the exact conditions of this fire.

"Their own smoke-detector expert testified that the only way to compare how smoke detectors work is to know all the fire factors," he says. "And he admitted that he knew none of the factors in the Gordon case or any of the consumer reports."

In fact, Heller maintains that according to the evidence — as well as testimony by the plaintiff's own smoke-detector expert — the fire was actually a fast, flaming fire best detected by the type of detector in place, and that the smoke had not reached the detector by the time the plaintiff's husband discovered the fire.

"Throughout the case they talked about 'smoldering' fires and how ionization detectors have a difficult time detecting them," he says. "But since their expert testified that it was actually

a flaming fire, they changed terms and used the term 'smoky' fire. So they had to go around the facts and try to put it into their case."

Bruning, however, dismisses such arguments as "games of semantics."

"The smoke detector doesn't care if it's a fast, flaming or slow, smoldering fire," he says. "The detector senses smoke particles. The real issue is the size of the smoke particle, and in this instance our expert testified — based on the different materials that burned — that we had large smoke particles consistent with a smoky, oxygen-starved fire. That's why the alarm didn't sound in a timely fashion."

Besides, Bruning contends that the company still had a responsibility to notify the public of potential danger.

"At an absolute minimum they had to warn consumers who rely on smoke detectors that there are different types of detectors and each has its limitations," he says. "If the consumers were educated and warned that for an extra \$20 they could have full protection [by buying a combination detector employing both technologies], I suspect consumers would spend the money."

Tragic Blaze

At approximately 8:00 a.m. on April 8, 1997, Mary Gordon's husband Tim was in a back room of their second-floor apartment attending to their 3-month-old baby.

Meanwhile, Mary's two young children from a prior relationship were watching TV in the front room with a 4-year-old cousin when a fire broke out. Investigators presume that one of the older children started the fire.

Both Tim and a downstairs neighbor testified that the BRK smoke detector in the apartment never sounded. Alerted by screams from the front room, Tim emerged to find the apartment filled with smoke. He then herded the children into the back room and tried, unsuccessfully, to extinguish the fire.

Tim then tried to get the children out of the apartment, but all exits had deadbolts which wouldn't unlock without a key. Tim couldn't find the keys amid the thick smoke, so he tried to punch open the bedroom window. He smashed the inner pane, cutting his hand in the process, but couldn't break through the tempered outer pane. Trapped, he gathered the children around him on the bed, covered them with blankets, and passed out.

Firefighters arrived to find the three older children dead of smoke inhalation. Tim suffered cuts, burns and smoke inhalation as well, but survived along with the infant.

Mary brought a wrongful-death action against BRK and on July 1, following a two-week trial, was awarded \$20 million in actual damages and \$30 million in punitive damages. She also brought a claim against her landlord alleging negligence in having deadbolts on apartments requiring keys to operate. That claim settled for \$1.2 million in 1998.

Leritz and Bruning recently commenced litigation against BRK on behalf of the mother of the cousin who perished in the fire.

Punitive Damages

In order to recover punitive damages, the plaintiff had to show that BRK's conduct was outrageous.

They did this through a former BRK employee who testified that the company had committed fraud in efforts to win approval of other smoke alarms from Underwriters Laboratories, a Chicago organization that certifies the quality of electronic products.

Bruning acknowledges that there's no evidence that BRK committed fraud in obtaining certification of this particular detector, "but when the defendant has a pattern of deceiving UL to receive certifications across the board, that evidence is relevant and properly admitted," he says.

Plaintiff's attorneys: Jim Leritz and Tony Bruning, Leritz, Plunkert & Bruning, P.C., St. Louis.

Defendant's attorneys: Jim Heller, Arnold Joseph and Robert Hayes, Cozen & O'Connor, Philadelphia.

The case: St. Louis City Circuit Court, *Gordon v. BRK Brands, Inc.*, Case No. 97-1114, Judge Margaret Neill. **LWUSA**

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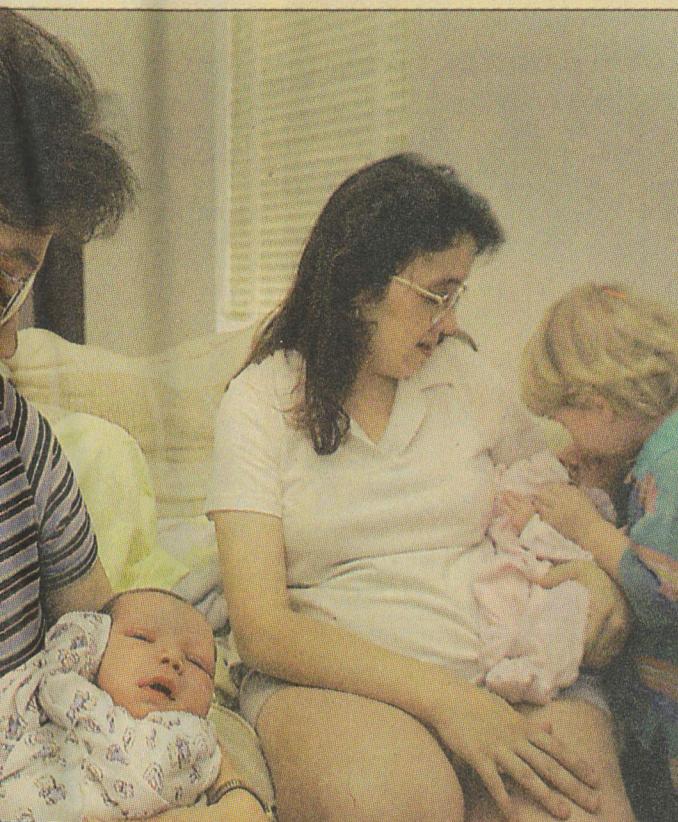
C19+

Business begins
on Page C10.



SECTION C

y; giving birth the same day



ODELL MITCHELL JR. / POST-DISPATCH

Schell, gave birth on the same day last week. Gray holds her help with newborn Kristen from her 2-year-old son, Anthony.

other
t: newborns

June 24, Susie Gray's son, Warren Gray Jr., made it into the cradle at St. John's Medical Center in Creve Coeur. He weighed 9 pounds, 8

14 hours later, his cousin, Dolores Schell, arrived. She weighed 9 pounds, 2 ounces. Sandy's third child in three

a neat thing," said Sandy, "I'm three minutes. It's another thing we'll share. I was fate."

Two's dual delivery is also

hospital hasn't kept figures. See Twins, Page C7

SOME THINGS IN COMMON

Fraternal twins Sandy Dahm-Schell and Susie Gray are alike in more ways than their looks:

- Their husbands have the same occupation: engineer.
- Both were married on Nov. 7 (Sandy in 1992, Susie in 1998.)
- They live only 10 minutes apart.
- They both work at Graybar Electric in Clayton.
- They're about the same height, have brown, shoulder-length hair, and wear eyeglasses.

Jury awards \$50 million in kids' fire deaths

Parents win trial
over defective
smoke detector

Manufacturer will appeal verdict

BY TIM BRYANT
Of the Post-Dispatch

A St. Louis jury Thursday awarded Timothy and Mary Gordon a total of \$50 million for the deaths of two of their children that they say should have been prevented by their smoke detector.

Their lawyer called the judgment "extremely large." The jury awarded \$20 million for compensatory damages and \$30 million for punitive damages.

Mary Gordon wiped away a tear as she told reporters she's glad the civil trial is over. Her husband said he feels vindicated,

After Thursday's verdict, a teary-eyed Mary Gordon said, "I just want to go home and play with my 2-year-old." Gordon and her husband, Timothy, were awarded \$50 million for the deaths of two of their children.

pointing out that lawyers for the detector's maker, BRK Brands Inc., contended that he could have gotten the children out of their burning apartment alive.

"It happened just the way I said it did," Gordon said.

He and his lawyer, Anthony Bruning, said the jury award alerts the public that ionization smoke detectors — the kind most frequently found in homes — detect flames but do a poor job of detecting smoke from smoldering fires. Homes also should be equipped with photoelectric detectors, which are good at detecting smoke, Bruning said.

James Heller, a lawyer for BRK, said his company's detectors "save millions of lives." BRK has "heartfelt sympathies" for the Gordons but will appeal the jury's award, he said.

"In this case the detector sounded but human response resulted in tragic consequences," Heller added.

Investigators say children playing with a cigarette lighter accidentally ignited a living room. See Alarms, Page C3



LAURIE SKRIVAN / POST-DISPATCH

Smoke Alarm Maker Hit For \$50M After Deaths In Fire

■ continued from PAGE 1

ment responds very slowly, if at all, to smoky, smoldering fires," said James C. Leritz of St. Louis, whose firm represented Gordon. "The manufacturer knew this and failed to warn its customers."

"There have been more than 100 million of these things sold over the years, and the company has neglected its duty to warn about a significant defect in its product."

"The company knew and didn't say anything — that's what got to the jury. That's why there's \$30 million in punitive damages in this case."

Lead trial attorney for the plaintiff was Leritz's partner Anthony S. Brunning, who was unavailable for comment. A verdict report on the case appears on page five.

Smoky Fire

The fire happened in the second-floor apartment at about 8:00 a.m. on April 8, 1997. There were five people in the apartment at the time: a 5-year-old boy, his 4-year-old sister, an infant, the plaintiff's husband, and a 4-year-old cousin. When the fire broke out, the three older children were in a front room watching TV while the husband was behind a closed door in the back room with the infant.

The husband heard the sound of screaming in the front room and emerged to find the apartment filling with smoke. He put the children into the back room and attempted to put out the fire, but failed.

All exits from the apartment, including the one in the back bedroom, had dead bolts which required a key to unlock. The husband made several attempts to find his keys but was unable to do so because of the thick smoke. He tried without success to break out a rear bedroom window before he was overcome. The three older children died. The husband survived but suffered cuts, burns and smoke inhalation. The infant also survived. It was later presumed that the fire was started by one of the children playing with a lighter.

Silent Alarm

According to testimony of Gordon's husband and a downstairs neighbor, the fire alarm in the apartment never sounded, although the neighbor's alarm did eventually sound.

"The fire in this case developed relatively slowly, but produced a lot of smoke," said Leritz. "By the time Tim Gordon came out of the back room, the place was filled with smoke, and the detector didn't go off."

According to their experts, the husband came out of the back room about two and one-half minutes after the fire began — and one and one-half minutes after a properly functioning alarm would have sounded. "If the alarm had gone off when it should have, Tim Gordon would have been able to put out the fire," said Leritz.

As is most often the case, it was the smoke rather than the flames that posed a deadly peril to those in the apartment. "In the vast majority of fires, it is smoke, not flames, that kills people," noted Leritz. "And in this case, it was the smoke that kept them from being able to get out."

With smoke filling the stairway to the front door, "Gordon's first instinct was to get the kids away from the smoke and flames so he could try to put out the fire," said Leritz. "So he took them to the back

room and then came back out."

After failing to put out the fire, Gordon had only one option left — to find a way out. But dead-bolt locks on the front and back doors barred their way. "The back door was locked, and he thought the front door was locked," explained Leritz. "So he made several efforts to find his keys amidst the smoke, without success."

"In desperation, he then tried to break out the glass in the back door, but again he was unable. Eventually he passed out."

Inherently Defective

The plaintiff's team contended that the alarm failed to sound because it was

combination-type is more expensive and some people will opt not to buy at all — and go without any protection — rather than pay the extra."

Leritz said the company tried to draw an analogy with the automobile industry. "Their position was, you don't give people just one choice — Mercedes or nothing," explained Leritz. "But our answer to that was, even Hondas have to have basic safety features like seat belts and airbags."

It was also crucial to Gordon's case that BRK failed to explain to consumers the difference between the ionization alarms and the combination alarms.

UL tests due to faulty electrical contacts. The employee later found that the alarms would sound if the contacts were cleaned with oil.

After this discovery, the employee testified that he mounted a campaign to win the friendship and trust of his contacts at Underwriters Laboratories with the ultimate goal of having a retest without a costly re-engineering of the device — which was normally required.

Much to the pleasure of his superior, said the employee, UL eventually agreed to the retest, and the doctored device passed. The company then placed the alarm on the market without re-engineering the faulty contacts.

At trial, BRK denied the ex-employee's charges, saying he was a disgruntled employee who fabricated the story after he was fired.

Decline In Fire Deaths

In addition to arguing that its devices were not defective and denying charges of fraud, BRK mounted a defense of its products based on a dramatic decline in fire-deaths in the United States since the 1970s, when its products began to flood the market.

"They claimed that their ionization smoke alarms had saved a vast number of lives since they were introduced, based on the drop in deaths by fire that has occurred in the last couple of decades," said Leritz.

"But our answer to that is that a lot of other things have changed in the meantime that are much more directly related to the drop in fire-related deaths, including the 911 system, better fire departments and emergency response, better building materials and clothing materials and upholstery materials."

Sympathy Verdict

Jim Heller of Philadelphia, who represented BRK Brands along with Arnold Joseph, said the evidence showed that the fire in the Gordon apartment was a hot, flaming fire rather than a slow smoldering fire.

"One of the plaintiff's own experts testified that the fire started one or two seconds after one of the children placed the flame of a cigarette lighter against a chair or some clothing," said Heller. "He also admitted that a fire starting that way would not be considered a slow smoldering fire."

Heller insisted that the ionization detector in the Gordon apartment was the best possible detector for a fast fire.

Joseph contended that the children could have been saved if Tim Gordon had not made "a tragic decision" to fight the fire rather than get the children out of the apartment.

"The husband testified that the fire was no bigger than a waste can when he first saw it," said Joseph. "He could have just led the kids out the front door, which the evidence shows was unlocked."

Heller characterized the jury's decision as the triumph of "sympathy and prejudice over the facts," and lamented its possible effect on fire safety. "Large verdicts like this one threaten the existence of companies that provide smoke detectors, which have been so important in reducing fire deaths. The result could well be an increase of fire deaths."

Heller also said that BRK plans post-trial motions and a possible appeal.



Firemen attempting to rescue one of the children.

inherently defective.

"This apartment had a smoke detector with an ionization sensor," said Leritz. "This kind of alarm works well with hot fires with a lot of flames. But it doesn't work well in smoky, smoldering fires."

Leritz pointed out that the company had received complaints from at least 400 customers concerning fires where alarms with ionization sensors did not sound or sounded too late.

"It took some doing, but we were able to get the complaints file from BRK and bring some of these complaints before the jury," he said. "These were cases where people wrote to say, 'I awoke to find my house filled with smoke, and the alarm never went off — thanks for nothing.'"

The plaintiff contended that the smoke alarm should also have been equipped with a photoelectric sensor, which detects smoky fires much more quickly than ionization sensors. Leritz pointed out that BRK makes such alarms.

"BRK makes a combination alarm and admits that the combination offers the best protection," said Leritz. "But they argue that it makes sense to continue selling ionization alarms too because the

"We argued that the ionization alarms are defective, but also that BRK knew they were defective and that they took no steps to inform their customers," said Leritz.

Leritz pointed out that BRK has mounted national campaigns to inform the public about other issues, such as the need to replace smoke alarms every 10 years. "But evidently they did not feel it was necessary to do so unless the campaign resulted in more of their detectors being sold," he noted.

Whatever It Takes

An important element of the case for punitive damages, said Leritz, was the charge that BRK committed fraud in its efforts to win approval of some of its smoke alarms from Underwriters Laboratories.

"We had the deposition testimony of a former employee of BRK who had been in charge of the company's dealings with Underwriters Laboratories," said Leritz. "And he testified that the company encouraged him to 'do whatever it takes' to get certification of a smoke alarm that had failed in its first effort at certification."

The alarm at issue in the employee's testimony had failed to go off during the

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the fire. As it happened, Gordon was unaware of the fire until he heard the children scream and opened a bedroom door to find the rest of the apartment filled with smoke.

Earlier, Bruning presented statements of a former BRK official who said his bosses told him to present Underwriters Laboratories "doctored" records to get certification of its ionization smoke detectors, which are designed to sound an alarm when they detect smoke particles. Bruning said 100 million such detectors have been sold to consumers.

Heller told jurors that the former official was a "disgruntled" ex-employee used by the plaintiffs "to deflect the facts."

Widespread use of ionization smoke detectors has cut fire deaths to 3,000 yearly in the United States from 12,000 annually in the 1960s and 1970s, Heller told jurors.

Gordon and his infant son, Tyriq, were in a rear bedroom when the fire broke out. He discovered the fire and ordered the children to the back room and then briefly tried to smother the blaze.

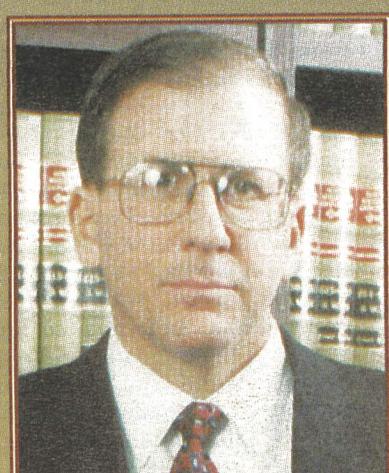
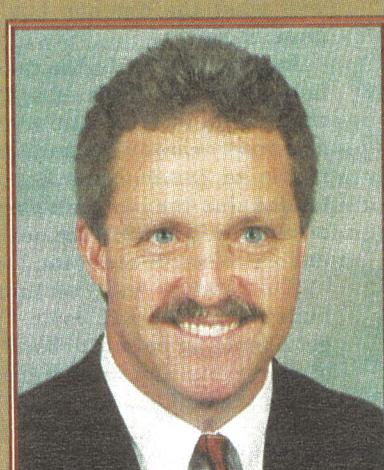
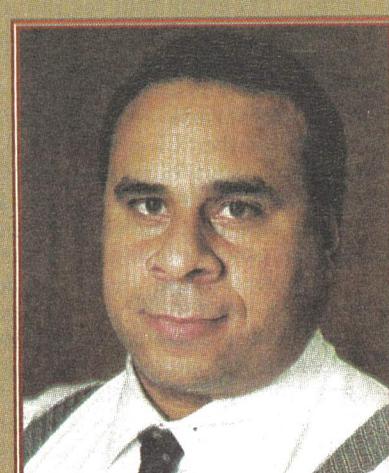
He tried to break out the windows in the back of the apartment — sustaining serious cuts on his arms — but he couldn't smash through a tightly sealed storm window. And he couldn't find the key for the locked back door because of the smoke and darkness.

Gordon lost consciousness. Later firefighters found him, his son and the other three children huddled together in the back room. Tyriq recovered. Mary Jackson-Gordon, the mother of Erica, William and Tyriq, was at work at the time of the fire.

BRK Brands Inc. is a subsidiary of First Alert Inc.

Last year in Davenport, Iowa, a jury ordered First Alert to pay a couple \$16.9 million in a suit that blamed a faulty smoke detector for

TOP VERDICTS OF 1999

**Grant L. Davis****John H. Quinn III****Scott S. Bethune****Anthony S. Bruning****Gary C. Robb****Evan A. Douthit****Michael R. Fletcher**

It was a banner year for plaintiffs in 1999, as Missouri Lawyers Weekly's Top Verdicts list shows. The average of the 20 largest awards was \$14.3 million, up from \$6.3 million in 1998 and \$7.1 million in 1997. And the top verdict, \$160 million in a railroad crossing case, was over six times more than last year's highest.

Jackson County proved to be the best plaintiffs' venue, with six of the top 10 verdicts. St. Louis City had three of the top 10, and Scott County had one.

The top verdicts came in a wide variety of areas: eight auto accidents, four products liability, two negligence, two medical malpractice, and one each in failure to supervise clergy, nuisance, civil rights/police misconduct, and condemnation.

The railroad crossing verdict, obtained by Grant L. Davis and Thomas C. Jones of Lantz Welch, P.C. in Kansas City, was also the largest crossing accident verdict ever in the United States for a single plaintiff. The plaintiff, a passenger in an automobile who suffered severe brain injuries and multiple fractures, was awarded \$40 million in actual damages and \$120 million in punitive.

St. Louis attorneys John H. Quinn III and Karen Baudendistel of Armstrong Teasdale registered the highest defense verdict of the year. They represented the manufacturer of a wood-truss press in a \$5 million claim by a worker whose legs were crushed when they were caught in the press. Another set of St. Louis attorneys successfully defended a medical malpractice case in which there was a \$5 million claim, but they are not featured in this supplement because there were multiple defendants involved.

Scott L. Bethune, also of Lantz Welch, P.C., garnered the largest settlement in 1999. Bethune recovered \$6.7 million in a truck accident case in which the plaintiff's arm and leg were amputated.

Inside you'll find the 1999 rankings, including in-depth stories on the top five plaintiffs' verdicts, the top defense verdict, and the top settlement. Note that only jury verdicts involving an individual or single family as a plaintiff made the list, thus eliminating class actions and suits with corporate plaintiffs. And the figures used for the rankings are those delivered by the jury prior to any reductions by the trial judge, by statute or on appeal.