

'Big-number' verdicts hit the heights in 2007



Top five all exceed \$10M; \$26M med-mal award largest ever reported

By David E. Frank
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When a Suffolk County jury returned a verdict against Notre Dame football coach Charlie Weis last October in his lawsuit against the two surgeons who had performed his gastric bypass surgery, most legal experts said the case was yet another example of the hurdles plaintiffs face when they sue doctors.

After all, if someone like Weis — who was able to put New England Patriots' MVP Tom Brady on his witness

list — could not get a jury to find in his favor, how would anyone else be able to do so?

While it is true that many medical-malpractice plaintiffs, including high-profile litigants such as Weis, do indeed lose at trial, a review of last year's top jury awards shows that a patient's ability to win big remains a distinct possibility.

In fact, for the fourth time since 1995, when Lawyers Weekly first began compiling jury data, the largest verdict of 2007 was rendered in a medical-malpractice trial.

On Oct. 11, a Superior Court jury awarded a permanently disabled child, who was injured during birth, more than \$26 million after finding two doctors at Boston's Brigham & Women's Hospital liable.

Elizabeth N. Mulvey of Boston persuaded the jury that the physicians' eight- to 10-hour delay in performing a Caesarean section on the mother led her client to ultimately suffer severe

cerebral palsy and hypoxic encephalopathy.

The \$26 million award is the largest med-mal verdict ever recorded by Lawyers Weekly, exceeding a \$23.4 million award reported in 2005.

"You don't see large verdicts like this every day, but I've been involved in a trial with a verdict that was almost as big as this one from the defense side," says veteran med-mal attorney Charles P. Reidy III of Boston.

"I would bet you that neither [party] ever would have predicted in their wildest imagination that a juror would award this sum of money," he adds. "But the bottom line is that, in terms of telling clients what could happen, verdicts like this require lawyers to clearly let them know that a big number is a possibility."

If the number of multi-million-dollar jury awards is an accurate barometer of success, 2007 was also an excellent year for plaintiffs outside the medical-malpractice arena.

For the third straight year, the top

five verdicts all exceeded the largest award handed out in 2004, which was \$9.41 million.

The top five of 2007 also all exceeded \$10 million — a feat accomplished only once before, in 2005.

"A lot of big verdicts are coming from cases that involve catastrophic injuries, where you're finding that medical expenses in this day and age are going to be in the eight-figure range," observes James D. Gotz of Boston.

Gotz should know: He earned the second largest verdict of the year — a \$16 million award for a client who lost use of his arms and legs after being hit by a car outside a Salem commuter rail station.

"I don't think these are examples of runaway juries," says Gotz. "You're talking about situations, in many cases, where special damages are going to be an issue. So once liability is established, you're going to continue seeing big awards."

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\$13.1 MILLION
(motor vehicle negligence)

Dodge v. Tezel

Suffolk Superior Court**Date of verdict:** June 29, 2007**Plaintiff's attorney:** James D. Gotz,
Kreindler & Kreindler, Boston**Status of verdict:** Post-trial motions

Although it has been said that a picture is worth a thousand words, James D. Gotz has learned that, in a personal-injury case, sometimes a picture is worth \$13 million.

Thanks in part to a series of photographs taken by Salem police officers minutes after a car driven by a Turkish college student struck his client, rendering him permanently paralyzed from the chest down, Gotz was able to dispel the defense's argument that road conditions — not the defendant — were responsible for the catastrophic injuries.

The case unfolded on an April afternoon in 2005 when plaintiff William Dodge was hit by a car driven by defendant Arda Tezel, who was believed to be traveling between 42 and 47 miles per hour in a 30 mph zone.

The impact lifted the plaintiff, who was in a crosswalk at the time, off the ground, shattered the car's windshield and ultimately fractured the plaintiff's spine and tore open his scalp.

"Our biggest challenge here was dealing with the fact that this accident happened on a road known to be dangerous at a time when it was raining and when my client was wearing dark clothes," Gotz says. "But with those photos, we were able to show that, although the defense was laying it on pretty thick, the road had good enough visibility that the [driver] should have been able to avoid all this."

Gotz also claims that an error by the defense's accident reconstruction expert did major damage to the opposing side's theory that speed was not a factor.

**GOTZ**

The expert reportedly based his calculations on tests he had performed using a two-door car, rather than a four-door, which the defendant was driving at the time of the accident.

"He used the wrong kind of car, and once he acknowledged that mistake, all of his conclusions were off. I simply sat down and didn't need to ask any more questions of him," he says.

Once the road and weather condition evidence was in place, Gotz says it became a simple matter of presenting his client's extensive injuries to the jury. Rather than do that by submitting detailed testimony from the plaintiff, Gotz opted for a low-key approach.

"We tried to be understated and not hit the jury over the head with it, because the feeling was that the injuries spoke for themselves," he explains. "Mr. Dodge only took the stand for 15 minutes or so; instead we had his sister testify in order to talk about what his life was like before this situation."

That left Gotz with one last challenge: the defendant, who had fled to Turkey after the collision and was not present at trial.

Although a warrant for his arrest had been issued in connection with a criminal charge that arose out of the crash, the jury was not permitted to hear that fact. Instead, it was instructed that it could draw an adverse inference from the man's absence.

"The judge did not allow me to comment on the arrest warrant, but I don't think there's any question that his absence was not lost on the jury," says Gotz.

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