

Photo by Lisa Predko

What do you really know about verdicts and settlements?

By Roy Strom

Trial lawyers pride themselves on winning over juries. But first, they must decide to go to trial rather than settle. That decision sometimes rests less on one's ability to win over a skeptical jury and more on playing the odds.

Test your knowledge of settlement rates in med-mal cases, the top names in plaintiff firms and when lawyers start 'running scared.'

Is a jury in Cook County or one of the collar counties more likely to rule in favor of the defense? Is my client too old to elicit sympathy? How often do juries vote in favor of the plaintiff suing over a medical-malpractice neglect claim? What about wrongful death?

Think you know the answers?

Chicago Lawyer constructed a quiz using data from the *Jury Verdict Reporter* — a division of Law Bulletin Publishing Company — and past settlement reports to help trial lawyers translate the answers to those questions into the best trial strategy and to stay up to date on what firms are raking in the biggest settlements.

Take the quiz below. Test your courtroom acumen. The results might change how you approach your next settlement hearing.



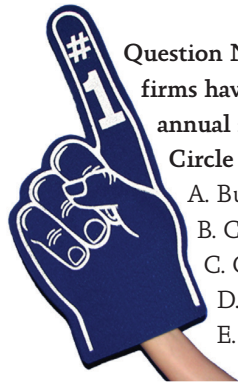
Question No. 1: True or False? The plaintiff in the largest settlement in the 2015 Settlements Report, worth \$61 million, was represented by a defense firm.

- A. True
- B. False



Question No. 5: In most types of medical-malpractice cases, the defense verdicts become more likely as the plaintiff gets older. For plaintiffs with a cardiovascular-related claim, at what age range does the plaintiff-verdict winning rate dip below 50 percent?

- A. 10-19 years old
- B. 20-39 years old
- C. 60+ years old



Question No. 2: Over the past 10 years, which firms have ranked No. 1 in *Chicago Lawyer's* annual settlements report?

Circle all that apply.

- A. Burke Wise Morrissey Kaveny
- B. Clifford Law Offices
- C. Corboy & Demetrio
- D. Power Rogers & Smith
- E. Salvi Schostok & Pritchard

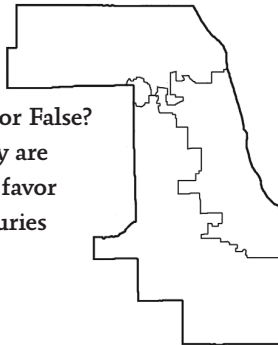


Question No. 6: Which type of case is more likely to settle?

- A. A medical-malpractice lawsuit
- B. A personal-injury suit resulting from an auto accident

Question No. 3: True or False? Juries in Cook County are more likely to rule in favor of the plaintiff than juries in the collar counties.

- A. True
- B. False



Question No. 7: In which type of case is a defense verdict more likely?

- A. A medical-malpractice lawsuit
- B. A personal-injury suit resulting from an auto accident



Question No. 8: Among the following types of medical-malpractice claims, which settles most frequently?

- A. Cardiovascular-related claims
- B. Wrongful-death claims
- C. Neglect claims

Question No. 4: Where are deadlocked juries more common?

- A. Cook County
- B. The collar counties
- C. I'm at an impasse; I can't decide



Question No. 9: Among verdicts reached in the following types of medical-malpractice claims, which most frequently favor the plaintiff?

- A. Cardiovascular-related claims
- B. Wrongful-death claims
- C. Neglect claims



Answer No. 1: True. The plaintiff who received the largest settlement was represented by a defense firm.

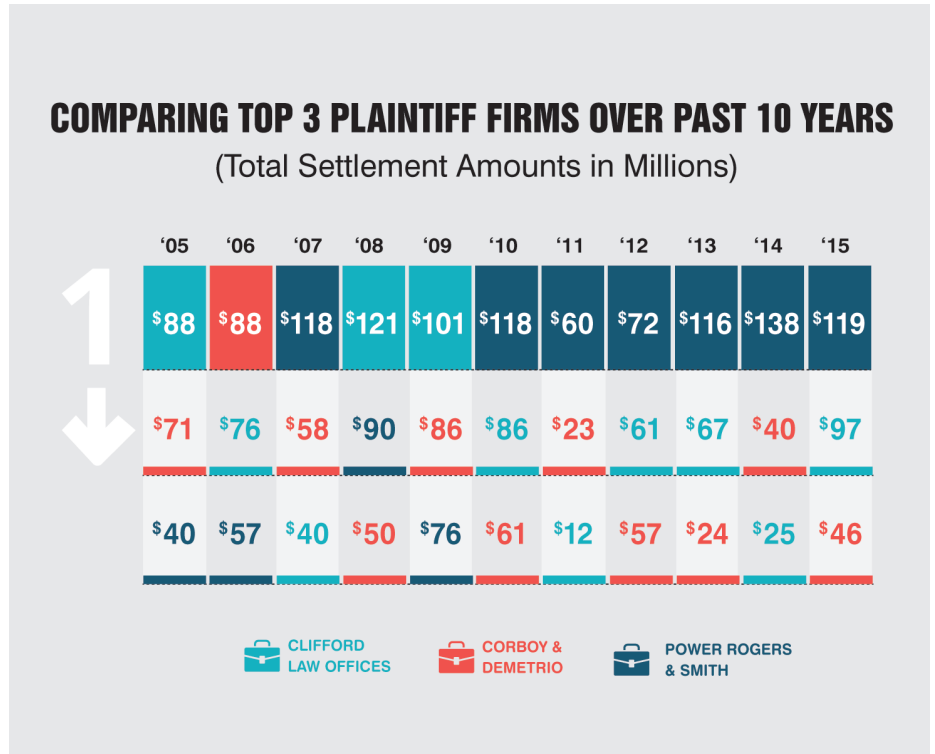
As if spoiling cases brought by Chicago's best-known plaintiff firms wasn't enough for Swanson Martin & Bell, the high-powered litigation-defense firm also grabbed the largest settlement of the year.

P. Stephen Fardy (featured on the cover of the magazine) and Peter G. Skiko negotiated \$61 million for their client, Business Logic, which filed a trade-secrets lawsuit alleging Morningstar Inc. used its software without permission to manage retirement accounts.

Swanson Martin & Bell is better known for defending hospitals and health-care professionals in medical-malpractice lawsuits. In one 12-day span last year, the firm won four med-mal defense verdicts in Cook County. But it also features a growing intellectual property practice led by Fardy, who represents both plaintiffs and defendants.

"We've had other seven-figure settlements, but not eight-figure settlements," said Fardy, who began the practice after the firm paid for him to earn an IP LL.M. in 2001.

Today, the firm lists 16 lawyers in its

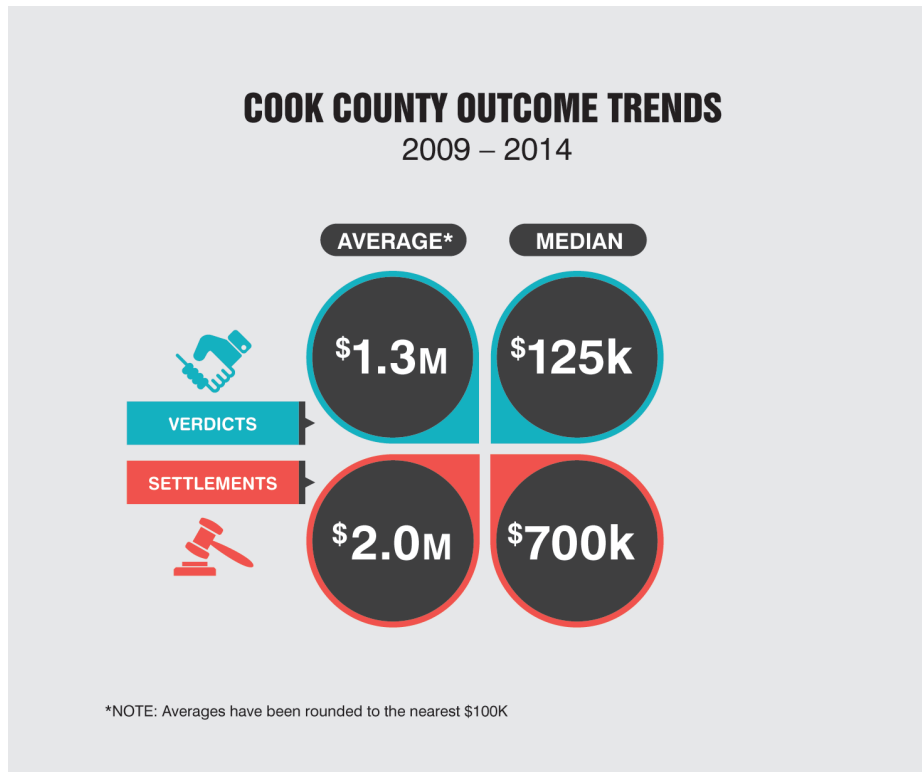


Dynasties: One of these three firms has ranked No. 1 in each of the last 10 Chicago Lawyer Settlement Reports. Graphics by Maria Marquez

intellectual property litigation and transactional services practice.

"This was a culmination of 14 years of hard work," Fardy said.

Plaintiff's lawyers can take some solace in this though: The defense firm doesn't plan on venturing into contingent fee-based plaintiff-side litigation any time soon.





\$2.0M

VERDICTS



\$700k

SETTLEMENTS

High, low: Cook County's largest cases create a wide gap between the court's median verdicts and settlements and the averages.

Answer No. 2: B, C, D. Only Clifford Law Offices, Corboy & Demetrio and Power Rogers & Smith have topped the charts in the past 10 years.

Parity? Save it for the sports leagues. The upper echelon of Chicago's plaintiff firms has been dominated during the past decade by just three firms: Clifford Law Offices, Corboy & Demetrio and Power Rogers & Smith. They are the only firms to haul in the most money in any given year for clients in settlements worth more than \$2 million over the past decade.

Even among those three firms, Power Rogers & Smith has been separating itself from the pack: It has ranked No. 1 in the survey in each of the past five years. The last time it was out of the Top 3? 2005. So how does the firm do it?

Partner Joe Power attributed the firm's success to its attorneys' work ethic and to a history of strong relationships with attorneys who refer them cases.

He begins looking for lawyers dedicated

to their practices with a single question.

“I was joking about this yesterday: My first question in an interview of a lawyer is if they’re a golfer or not,” Power said. “If I get an answer to that question, I know whether or not I want to continue with the interview.”

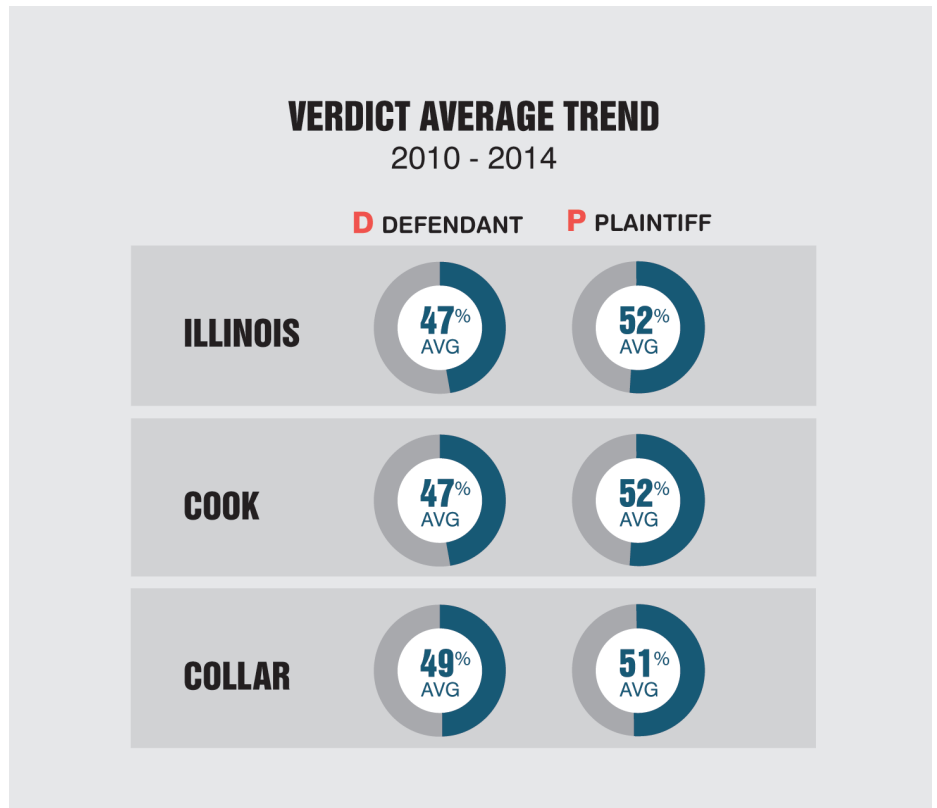
Translation: If you have an upcoming job interview with Power, ditch your clubs.

Answer No. 3: B. False. Juries in Cook County and the collar counties rule in favor of the plaintiff at nearly the same rates.

In Cook County, 51.6 percent of verdicts reported to JVR have gone to plaintiffs since 2009, while 51.0 percent of verdicts in the collar counties have been for the lawsuit-filer.

While it is well-known that Cook County juries have historically returned higher verdict amounts, it is less obvious that they are statistically just as likely to find in favor of the defense as are their counterparts in suburbia.

“What separates Cook County from the collar counties is, in the serious cases, you’re much more likely to get the eight-figure verdicts in Cook than in the collar counties,” said Patrick A. Salvi, whose firm



Flip the script: Cook County may be known for higher damages awards than the collar counties, but its jurors are not necessarily pro-plaintiff.

maintains offices in Chicago and in Waukegan.

That sentiment is captured by another

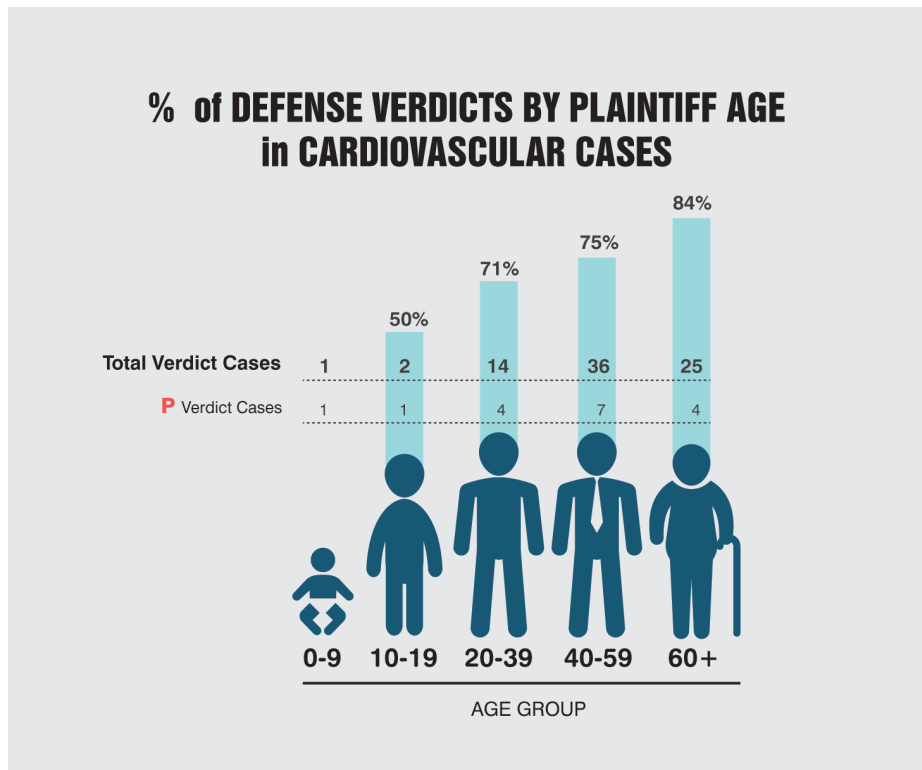
data point — the vast difference between the average and median value of settlements and verdicts in Cook County.

The median verdict amount is \$125,000 — half of verdicts went higher, half went lower — but the average verdict amount is more than 10 times higher at \$1.3 million. The spread between the median and average settlement is narrower, with the median at \$700,000 and the average at \$2 million; just less than three times the median.

Answer No. 4: A. Juries in the collar counties are much more decisive than their Cook County peers.

While there hasn’t been a single deadlocked jury in the collar counties in the past five years reported to JVR, there were 24 in Cook County, averaging just less than five a year, causing plaintiffs and defendants to shoulder the extra cost of a retrial or, in some cases, leading to a settlement. Take comfort, though, in the fact that deadlocks still account for a mere 1 to 2 percent of trials in Cook County a year.

Answer No. 5: B. Plaintiffs with a



Age Bias: A stark example of the difficulties facing older plaintiffs.

cardiovascular claim lose more often than not starting in the 20 to 39 age range.

For plaintiffs who are 20 to 39 years old, the defense won 71 percent of verdicts in cardiovascular cases from 2009 to mid-2015.

It is well-known that older plaintiffs fare less favorably in the courtroom than younger ones. But nowhere is that trend better seen than in cardiovascular cases.

There were zero defense verdicts when the plaintiff was 9 years old or younger. That percentage jumped to 50 percent in the 10-to-19 age range. For plaintiffs aged 20 to 39, the defense won 71 percent of verdicts. For those 40 to 59, 75 percent of cases ended in defense verdicts and for plaintiffs 60 and older, 84 percent of the trials went to the defense.

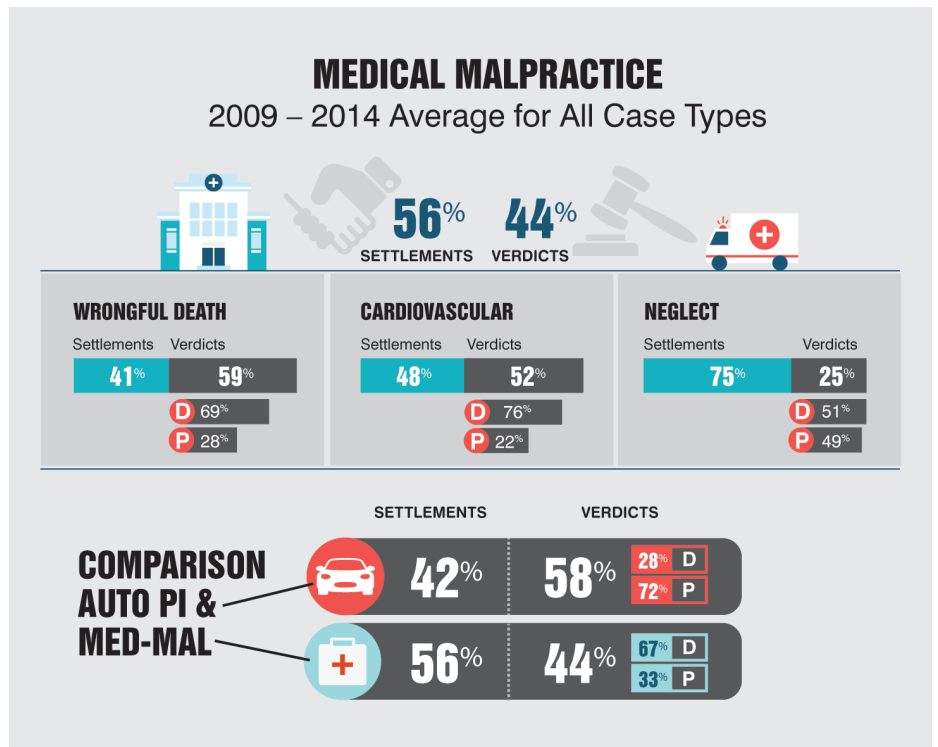
Answer No. 6: A. Medical-malpractice cases are more likely than auto cases to settle.

Medical-malpractice lawsuits were settled 56 percent of the time, while only 42 percent of personal-injury suits resulting from auto accidents got settled.

The reason? See the answer to the next question.

Answer No. 7: A. Defense verdicts are more likely in medical-malpractice cases.

The defense won 67 percent of verdicts



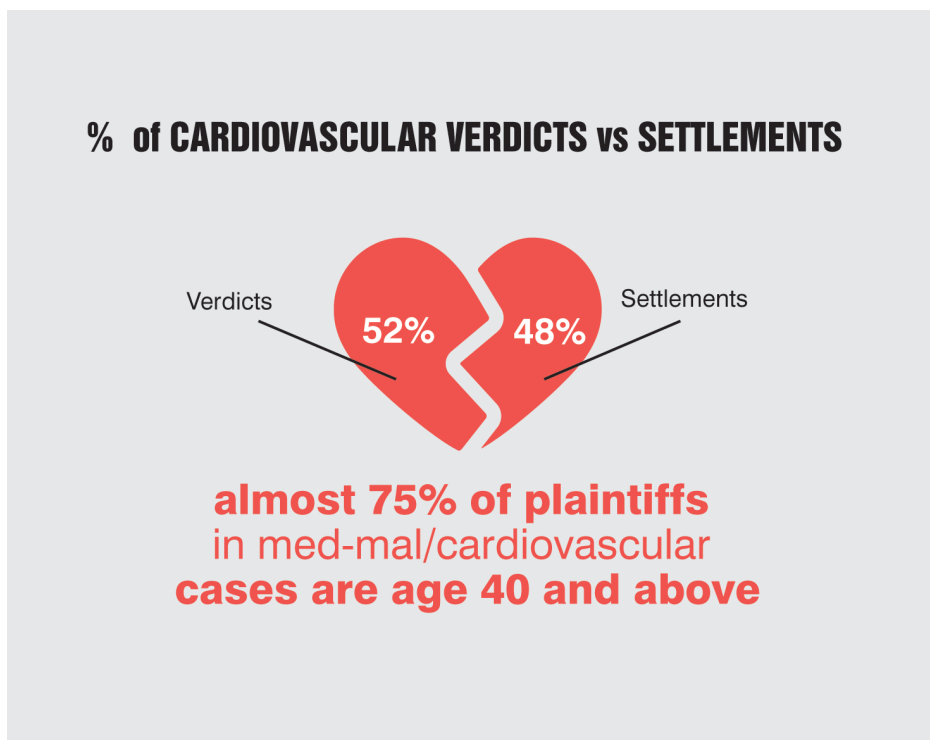
in medical-malpractice cases from 2009 to mid-2015, while they won only 28 percent of verdicts in auto-accident trials.

Venturing a guess at how often the defense wins in med-mal cases, Power pegged the number at around 80 percent.

He was not going from personal experience, however. He said he has never

lost a verdict in a medical-malpractice case. He stresses one tactic: Simplify.

“If it’s a very complicated case and it remains complicated to the jury, invariably, in my opinion, the defense is going to win,” Power said. “I want the jury to say to themselves, ‘I understand what went wrong. How come the doctor didn’t?’”



Answer No. 8: C. Neglect claims are more likely to settle than cardiovascular or wrongful-death claims.

Neglect claims settled 75 percent of the time, while cardiovascular claims settled 48 percent of the time and 41 percent of wrongful-death claims settled.

See the next answer to understand why this result is unexpected.

Answer No. 9: C. Verdicts in neglect cases are more likely to favor the plaintiff than verdicts in wrongful-death or cardiovascular cases.

Verdicts in medical-malpractice neglect cases favor the plaintiff 49 percent of the time, compared to 28 percent in wrongful-death trials and 22 percent in cardiovascular trials.

This bucks a general trend seen across other types of cases: When verdicts are won less often by the plaintiff, cases are more likely to settle.

Daniel Wolfe, a senior vice president at trial consultancy Decision Quest, said plaintiff lawyers become less likely to try cases as the percentage of defense verdicts increases.

“The plaintiff attorneys start running scared,” Wolfe said. “They see an increase in defense verdicts and there’s that phenomenon. Perception becomes reality.”

For instance, medical-malpractice verdicts go to the defendant much more

often than auto personal-injury verdicts (67 percent versus 28 percent) and also go to verdict far less often (44 percent of cases versus 58 percent). Among medical-malpractice claims, the trend also holds true when comparing wrongful-death lawsuits to cardiovascular lawsuits: Wrongful-death cases go to verdict more frequently and the plaintiff wins those verdicts more often.

Neglect cases seem to be an outlier. They

go to verdict less often than any other claim type in the data despite the fact that plaintiffs have a relatively high chance of winning (49 percent).

Your results?

1 to 3 correct: Law student.

4 to 6 correct: Recent graduate.

5 to 8 correct: Partner.

9 correct: You must not play golf. ■

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