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MEDICAL MALPRACTICE CLAIMS IN MISSISSIPPI: A PRELIMINARY ANALYSIS

Randall K. Johnson*

ABSTRACT

This Article explains where medical malpractice claims are filed in Mississippi. It initially does so by collecting state circuit court data, which have been recently released by the Administrative Office of Courts. Next, this Article computes summary statistics. Last, it examines these statistics in order to determine which county had the most medical malpractice claims.

I. INTRODUCTION

Over the last fifteen years, the State of Mississippi has made it more difficult to file medical malpractice claims.¹ It did so, specifically, through legislative² and judicial action.³ Examples include the imposition of statutory caps on noneconomic damages,⁴ additional filing requirements,⁵ an expanded insurance risk pool,⁶ and several other changes to Mississippi law.⁷

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1. See, e.g., Mark A. Behrens, *Medical Liability Reform: A Case Study of Mississippi*, 118 *OBSTETRICS & GYNECOLOGY* 335 (2011).

2. *Id.* at 335 (“In late 2002, a special session of the Mississippi legislature responded [to unfavorable press coverage] by passing . . . House Bill (HB) 2, . . . which generally became effective for causes of action filed on or after January 1, 2003 In the same special session, the legislature enacted HB 19, which also became effective for causes of action filed on or after January 1, 2003 In June 2004, another special session of the legislature enacted a comprehensive civil justice reform bill, HB 13, for causes of action filed on or after September 1, 2004.”).

3. *Id.* at 337 (“The Mississippi Supreme Court also appears to have contributed to improvements in the state’s civil litigation climate.”).

4. *Id.* at 335-336 (“The core of HB 2 was a \$500,000 limit on noneconomic damages, such as pain and suffering, applicable to most medical negligence cases . . . HB 13 creates a hard limit of \$500,000 on noneconomic damages in medical liability cases, removing exceptions found in the 2002 law as well as scheduled increases to the cap.”).

5. *Id.* (“In June 2004, [the Mississippi Legislature] enacted a comprehensive [tort reform] bill, HB 13, for causes of action filed on or after September 1, 2004 The legislation [among other things] provides that a medical negligence suit against a licensed health care provider shall be brought in the county in which the alleged act or omission occurred, and venue must be proper as to each plaintiff.”).

6. See Leonard J. Nelson III, Michael A. Morrissey and Meredith L. Kilgore, *Medical Malpractice Reform in Three Southern States*, 4 *J. HEALTH & BIOMED. L.* 69, 118 (2008) (“In 2003, in reaction to continuing problems with insurance availability and affordability, the Mississippi legislature passed the Medical Malpractice Insurance Availability Act. This legislation, which was signed by Governor Musgrove on April 25, 2003, created a state run malpractice insurance risk pool to provide a ‘temporary market of last resort’ for health care providers.”).

7. See Behrens, *supra* note 1 at 337 (“For example, in 2005, the [Mississippi Supreme Court] reversed prior case law and held that ‘a plaintiff must produce expert witness testimony to establish the

This state action, which is also referred to as “tort reform,” has been challenged on several grounds.⁸ For example, one argument is that it may be unconstitutional.⁹ A second theory asserts that tort reform could unjustifiably impair plaintiffs’ rights.¹⁰ A third argument is that it may have unexpected consequences.¹¹ But Mississippi courts have upheld tort reform because it is thought to provide economic benefits.¹²

Legal scholars, on the other hand, are not sure that tort reform actually lives up to its promise.¹³ Some researchers find that it is not useful for “stabilizing the insurance market and moderating the increases in premium levels.”¹⁴ Other scholars have shown that tort reform does not limit moral hazard.¹⁵ A third category of investigator finds that it is “ineffective in controlling liability insurance costs, expanding access to care, and reducing defensive medicine.”¹⁶ None of this scholarship, however, recognizes an unambiguous benefit of tort reform—it provides useful information about the distribution of claims.¹⁷

material risks and available alternatives of a medical procedure. Absent such expert testimony, a jury may not consider whether a physician conducted a medical procedure without informed consent.”).

8. Nelson, *supra* note 6 at 78 (“[U.S.] state courts are divided on the constitutionality of tort reform measures as analyzed under various provisions of their state constitutions.”).

9. See *Sears, Roebuck & Co. v. Learmonth*, 95 So. 3d 633 (Miss. 2012).

10. See, e.g., David F. Maron, *Statutory Damages Caps: Analysis of the Scope of Right To Jury Trial and the Constitutionality of Mississippi Statutory Caps on Noneconomic Damages*, 32 *MISS. C. L. REV.* 109 (2013).

11. *Id.* at 111-12 (In the last few years the high courts in several . . . states have . . . considered challenges to noneconomic damage caps with different results. While a majority of the caps have been upheld, a few were struck down. With few exceptions, arguments in recent challenges have involved policy judgments and strong arguments exist on both sides. While there is sound evidence that such caps can result in positive social impact, tort reform opponents make forceful arguments to the contrary [T]hat debate will no doubt continue.”).

12. See John T. Nockleby, *How To Manufacture A Crisis: Evaluating Empirical Claims Behind ‘Tort Reform’*, 86 *OR. L. REV.* 533, 533 (2007) (“For several decades, tobacco companies, large corporations, and insurance companies have systematically attacked the civil justice system. Mounting a campaign of anecdotes purportedly representative of a complex system that adjudicates several million civil cases each year, political entities have proclaimed that changing the civil justice system [via ‘reform’] is necessary to preserve American business competitiveness.”).

13. See, e.g., Joanna C. Schwartz, *A Dose of Reality for Medical Malpractice Reform*, 88 *N.Y.U. L. REV.* 1224 (2014).

14. Nelson, *supra* note 6 at 80.

15. *Id.* at 77 (“Traditional malpractice reform measures are not intended to reduce the costs of . . . insurance premiums by reducing the rate of injuries, but rather are intended ‘to alter the probability of winning an award, the size of the award, and the costs of litigation . . . [In other words, these measures are] designed to reduce claim frequency and severity. [As such, each actually leads to moral hazard, instead of preventing its occurrence].”).

16. *Id.* at 80.

17. Accurate information about the geographic distribution of these claims is important because few doctors, hospitals or regulators collect any data about medical malpractice, which too often impedes timely health care reform. See Richard Harris, *Who Keeps Track If Your Surgery Goes Well Or Fails?*, *NAT’L PUBLIC RADIO* (May 3, 2015), <http://www.npr.org/blogs/health/2015/05/03/403611589/who-keeps-track-if-your-surgery-goes-well-or-fails> (last visited May 3, 2015) (“In order to improve the quality of health care and reduce its costs, researchers need to know what works and what doesn’t. One powerful way to do that is through a system of ‘registries,’ in which doctors and hospitals compile and share their results. But even in this era of big data, remarkably few medical registries exist.”).

This Article, in contrast, recognizes this benefit and uses it to undertake a preliminary analysis.¹⁸ In doing so, it makes three contributions to the tort reform literature.¹⁹ First, this Article identifies every medical malpractice claim that was filed in Mississippi over the last ten years.²⁰ Next, it identifies the specific county where each claim was made.²¹ Last, the Article analyzes this data in order to identify the county with the most claims.²²

This Article proceeds in three parts. Part II describes the Article's methodological approach. Part III contains its analysis of claims over time. Part IV is the conclusion.

II. METHODOLOGY

This Article introduces a new Mississippi state court dataset,²³ which identifies the distribution of medical malpractice claims.²⁴ A single methodological approach, addition, is used to analyze these data.²⁵ Addition requires the Article to “[calculate] the sum of two or more numbers.”²⁶

This approach, however, may not be useful if the Article fails to account for a range of potential issues.²⁷ So these issues are deliberately accounted for. This Article, for example, deals with selection effects by looking at the ten years since comprehensive tort reform.²⁸ In contrast, missing values have been addressed through the use of a single data source.²⁹ Other issues are avoided, perhaps completely, by focusing on claims that are filed in the proper place.³⁰ As a result, this Article will explain where medical malpractice claims are filed in Mississippi.³¹

III. ANALYSIS

This Article collects information about 2,521 state court claims, which were filed in Mississippi between 2004 and 2014.³² It then distributes these

18. See *infra* Table 1.

19. See Ronen Avraham, *An Empirical Study of the Impact of Tort Reforms on Medical Malpractice Settlement Payments*, 36 J. LEGAL STUD. 183, 188-189 (2007) (“There is a dearth of reliable empirical or experimental evaluations of medical malpractice tort reform . . . In fact, over the last 3[sic] decades, only a dozen or so empirical studies have examined the impact of tort reforms on medical malpractice payments or medical liability insurance premiums.”).

20. See *infra* Table 1.

21. *Id.*

22. *Id.*

23. See Administrative Office of Courts, *Medical Malpractice Claims Data, 2004-2014* (2014), which was directly provided to the author by the Office of the Administrative Office of Courts in November 2014.

24. See *infra* Table 1.

25. See E.J. Borowski & J.M. Borwein, *THE HARPER-COLLINS DICTIONARY OF MATHEMATICS* 6 (Collins 2002) (1991).

26. *Id.*

27. See, e.g., John Antonakis, Samuel Bendahan, Philippe Jacquart, & Rafael Lalive, *On Making Causal Claims: A Review and Recommendations*, 21 THE LEADERSHIP QUARTERLY 1086 (2010).

28. *Id.* at 1094.

29. *Id.* at 1090.

30. *Id.* at 1094.

31. See *infra* Table 1.

32. *Id.*

claims among the state's eighty-two counties.³³ Last, this Article interprets this data, finding that Hinds County faced the most claims.³⁴ This preliminary analysis, and other useful information, is provided in the Appendix.³⁵

This preliminary analysis carries positive and normative implications. Among the positive implications is that the total number of claims has declined over time.³⁶ But the normative implications are much less clear. For example, it is unclear whether the observed reduction in claims translates into better outcomes in economic, social, or medical terms.³⁷ Additional work, therefore, is needed in order to answer basic research questions.

Within this context, Mississippi should encourage more research on tort reform. And the state could direct its administrative agencies to analyze all publically available information. Mississippi should also provide new incentives for third parties to undertake this work. An additional option for the state would be to negotiate public-private partnerships.

IV. CONCLUSION

This Article finds that Hinds County had the most medical malpractice claims—at least over the last ten years.³⁸ This preliminary finding remains true whether reference is made to each individual year or to the entire study period (2004 to 2014).³⁹ The preliminary finding is initially based on the fact that Hinds County had at least twenty-seven claims each year.⁴⁰ It is later supported by the fact that Hinds County had 537 claims over the ten-year study period.⁴¹ As a result, this Article explains where medical malpractice claims are filed in Mississippi.

33. *Id.*

34. *Id.* This conclusion is initially based on the fact that Hinds County had at least 27 claims in each individual year. It later is supported by a secondary finding that Hinds County had a total of 537 claims between 2004 and 2014.

35. *See infra* Table 1.

36. *Cf.* Behrens, *supra* note 1 at 338 (“In the five-year period (2005-2009) after the implementation of tort reform, the average number of lawsuits per year against all [Medical Assurance Company of Mississippi]-insured physicians (regardless of specialty) dropped 227% (from 318 to 140).”).

37. *Cf.* Schwartz, *supra* note 13 at 1228-29 (“Despite the strong rhetoric . . . neither side [of the tort reform debate] offers much evidence in support of its claims. To be sure, researchers have examined various effects of medical malpractice suits on the provision of medical care. But no empirical studies support the contention that the threat of medical malpractice suits prevents open discussion with providers and patients. There is also limited evidence to support the contrary view [T]here are case studies but ‘no systematic research on the role of medical malpractice lawsuits in identifying dangerous conditions and dangerous doctors.’”) (citations omitted).

38. *See infra* Table 1.

39. *Id.*

40. *Id.*

41. *Id.*

APPENDIX

Table 1. Medical Malpractice Claims Filed in State Circuit Courts By County

COUNTY ⁴²	2004 ⁴³	2005 ⁴⁴	2006 ⁴⁵	2007 ⁴⁶	2008 ⁴⁷	2009 ⁴⁸	2010 ⁴⁹	2011 ⁵⁰	2012 ⁵¹	2013 ⁵²	TOTAL
ADAMS	8	4	10	8	5	4	4	1	4	2	50
ALCORN	5	6	3	2	3	3	3	2	3	1	31
AMITE	1	0	0	0	0	0	0	0	0	0	1
ATTALA	4	2	2	0	0	2	0	1	0	0	11
BENTON	1	0	0	0	0	0	0	0	0	0	1
BOLIVAR	8	5	9	4	3	6	6	6	2	9	58
CALHOUN	1	0	2	1	1	0	0	0	0	0	5
CARROLL	0	0	0	0	0	0	0	0	0	0	0
CHICKASAW	0	0	0	0	1	0	0	0	0	0	1
CHOCTAW	0	0	0	0	0	0	0	1	0	0	1
CLAIBORNE	2	3	2	3	1	0	2	2	1	0	16
CLARKE	1	0	0	0	1	0	1	0	0	1	4
CLAY	7	3	2	1	5	1	2	0	3	3	27
COAHOMA	6	4	6	7	4	5	12	11	3	2	60

42. See Summer Davis & Janet P. Baird, County Government in Mississippi 289 (4th ed. 2011), <http://gcd.msucare.com/sites/gcd.msucare.com/files/county%20government%20in%20ms%202011.pdf> (last visited Apr. 12, 2015).

43. See Administrative Office of Courts, *supra* note 23 at 1.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

COPIAH	1	0	0	0	0	3	0	3	0	0	1	0	8
COVINGTON	0	1	0	0	0	1	1	1	1	0	0	0	5
DESOTO	7	10	7	8	6	6	2	8	12	9	16	85	
FORREST	16	7	14	10	6	6	1	10	8	4	4	80	
FRANKLIN	0	0	0	0	1	1	0	0	0	0	0	1	
GEORGE	2	4	1	0	1	1	2	0	0	0	0	10	
GREENE	0	0	0	0	0	0	0	0	0	1	1	2	
GRENADA	6	5	2	3	4	3	2	2	4	3	6	38	
HANCOCK	6	6	0	1	0	1	1	1	2	2	3	22	
HARRISON	25	21	17	18	14	4	4	22	20	26	0	167	
HINDS	85	63	65	56	46	36	53	53	53	27	537		
HOLMES	0	0	1	1	1	0	0	0	1	0	0	4	
HUMPHREYS	2	0	2	0	1	0	0	0	0	4	1	10	
ISSAQUENA	0	0	0	0	0	0	0	0	0	0	0	0	
ITAWAMBA	2	0	1	1	0	0	0	0	0	0	0	4	
JACKSON	15	15	5	8	3	4	7	9	9	8	9	83	
JASPER	1	0	0	0	0	0	0	0	0	1	0	2	
JEFFERSON	1	2	0	0	1	0	0	0	0	0	0	4	
JEFFERSONDAVIS	0	0	0	0	1	0	0	0	0	1	0	1	
JONES	12	10	6	10	9	3	7	4	4	8	7	76	
KEMPER	1	0	0	0	0	0	0	0	0	0	0	1	
LAFAYETTE	9	5	6	5	7	3	2	4	4	4	6	51	
LAMAR	4	3	4	8	7	6	6	3	3	6	5	52	
LAUDERDALE	18	7	9	8	15	2	11	12	10	7	99		
LAWRENCE	0	0	1	0	1	0	0	0	0	0	0	2	
LEAKE	3	0	2	1	0	0	0	1	1	0	0	7	
LEE	16	12	9	10	20	7	10	3	9	7	103		
LEFLORE	6	10	3	0	13	3	5	1	3	0	44		
LINCOLN	1	0	5	1	3	0	2	2	1	1	1	16	

UNION	1	1	0	0	0	1	0	0	1	2	4	2	12
WALTHALL	0	0	1	0	0	0	0	0	0	4	0	0	5
WARREN	14	6	10	7	11	7	0	0	7	4	1	0	60
WASHINGTON	16	13	9	7	9	7	5	8	8	5	5	5	82
WAYNE	1	0	1	1	4	1	1	1	1	1	2	2	14
WEBSTER	1	0	0	0	0	0	0	1	1	1	3	1	7
WILKINSON	0	0	1	2	2	1	1	0	0	0	0	0	6
WINSTON	0	0	0	0	0	0	0	0	0	2	0	0	2
YALOBUSHA	3	1	1	0	1	0	0	0	0	0	0	1	7
YAZOO	12	3	2	1	4	1	1	2	2	0	1	0	26
ALL 82 COUNTIES	405	293	264	257	271	134	247	237	240	173	2,521		

Table 2. Other Relevant Information By County

COUNTY ⁵³	TOTAL POPULATION ⁵⁴	TOTAL LAND AREA ⁵⁵	TOTAL ASSESSED VALUE ⁵⁶
ADAMS	32,297	488	284,997,965
ALCORN	37,057	401	230,815,110
AMITE	13,131	732	116,949,561
ATTALA	19,564	737	175,490,603
BENTON	8,729	409	68,021,978
BOLIVAR	34,145	906	281,765,264
CALHOUN	14,962	588	79,855,876
CARROLL	10,597	635	73,351,838
CHICKASAW	17,392	504	92,519,110
CHOCTAW	8,547	420	226,089,772
CLAIBORNE	9,604	501	67,881,179
CLARKE	16,732	694	204,895,290
CLAY	20,634	416	142,850,886
COAHOMA	26,151	583	181,417,110
COPIAH	29,449	780	204,759,199
COVINGTON	19,568	415	240,976,925
DESOTO	161,252	497	1,553,344,200
FORREST	74,934	470	654,299,563
FRANKLIN	8,118	567	88,155,456
GEORGE	22,578	484	156,731,301
GREENE	14,400	719	153,620,366
GRENADA	21,906	449	180,303,025
HANCOCK	43,929	553	561,163,674
HARRISON	187,105	976	2,002,889,027
HINDS	245,285	877	1,900,972,164
HOLMES	19,198	765	119,468,712
HUMPHREYS	9,375	431	74,506,625
ISSAQUENA	1,406	441	21,029,039
ITAWAMBA	23,401	541	128,992,605
JACKSON	139,668	1,043	1,663,061,627
JASPER	17,062	678	400,247,287
JEFFERSON	7,726	527	47,241,011

53. See Davis & Baird, *supra* note 42 at 289–93.

54. United States Census Bureau: Census 2010 (2014); Davis & Baird, *supra* note 42 at 289–93.

55. *Id.* The unit of measurement for total land area is square miles, rounded to the nearest whole number.

56. *Id.* The unit of measurement for total assessed value is United States dollars, rounded to the nearest whole number.

JEFFERSON DAVIS	12,487	409	182,130,263
JONES	67,761	700	662,411,658
KEMPER	10,456	767	53,484,357
LAFAYETTE	47,351	679	476,357,659
LAMAR	55,658	500	573,428,397
LAUDERDALE	80,261	715	605,087,555
LAWRENCE	12,929	436	135,941,393
LEAKE	23,805	586	117,286,358
LEE	82,910	453	811,772,940
LEFLORE	32,317	606	236,214,721
LINCOLN	34,869	588	386,567,382
LOWNDES	59,779	517	912,322,594
MADISON	95,203	742	1,368,840,345
MARION	27,088	549	171,689,611
MARSHALL	37,144	710	224,949,716
MONROE	36,989	772	314,750,917
MONTGOMERY	10,925	408	57,671,701
NESHOPA	29,676	572	160,564,843
NEWTON	21,720	580	111,473,897
NOXUBEE	11,545	700	63,541,129
OKTIBBEHA	47,671	462	342,890,632
PANOLA	34,707	705	272,002,719
PEARL RIVER	55,834	819	383,039,567
PERRY	12,250	650	118,083,636
PIKE	40,404	411	351,349,995
PONTOTOC	29,957	501	168,936,464
PRENTISS	25,276	418	132,601,702
QUITMAN	8,223	406	46,912,096
RANKIN	141,617	806	1,456,266,294
SCOTT	28,264	610	179,943,010
SHARKEY	4,916	435	38,854,974
SIMPSON	27,503	591	218,387,983
SMITH	16,491	637	177,366,011
STONE	17,786	448	110,532,365
SUNFLOWER	29,450	707	170,705,673
TALLAHATCHIE	15,378	652	89,344,808
TATE	28,886	411	168,255,671
TIPPAH	22,232	460	113,398,059
TISHOMINGO	19,593	445	147,380,386
TUNICA	10,778	481	247,809,202

UNION	27,134	417	203,457,509
WALTHALL	15,443	404	101,043,739
WARREN	48,773	619	627,475,767
WASHINGTON	51,137	761	387,106,438
WAYNE	20,747	814	364,277,367
WEBSTER	10,253	423	63,086,129
WILKINSON	9,878	688	74,799,719
WINSTON	19,198	610	118,229,628
YALOBUSHA	12,678	495	72,556,170
YAZOO	28,065	934	328,360,402
ALL 82 COUNTIES	2,967,297	48,432	17,334,231,242

