"Judicial Hellholes:" Medical Malpractice Claims, Verdicts and the "Doctor Exodus" in Illinois[1] [2]

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1. This Article is based upon a longer report, NEIL VIDMAR, MEDICAL MALPRACTICE AND THE TORT SYSTEM IN ILLINOIS: A REPORT TO THE ILLINOIS STATE BAR ASSOCIATION (2005), *available at* http://eprints.law.duke.edu/archive/00001125/01/Medical_Malpractice_and_the_Tort_System_in_Illinois.pdf. However, additional analyses and data have been added to this Article. These changes do not substantially alter the conclusions reached in the ISBA report. The authors are indebted to James Covington of the Illinois State Bar Association, Judy Nelson and Matt Melucci of the Madison County Circuit Clerk's Office, John Kirkton of the Cook County Jury Verdict Reporter, and Dr. Paul Lee of Duke Medical School.

2. The opinions and conclusions in this Article and the report are solely those of the authors and do not necessarily reflect the opinions of Duke University or Duke Law School.

I. ILLINOIS AS A REPORTED "JUDICIAL HELLHOLE" FOR PHYSICIANS

Beginning about the year 2000, physicians around the nation experienced an explosive jump in their professional medical liability insurance premiums.[3] The state of Illinois has been identified as one of the "crisis" states by the American Medical Association ("AMA") insofar as cost and availability of liability insurance is concerned.[4] Madison and St. Clair counties, just across the Mississippi River from St. Louis, have garnered particular attention, acquiring the label "judicial hellhole" for medical malpractice claims.[5] The notoriety is so great that President Bush visited Madison County in January 2005 as part of his campaign for a nationwide $250,000 cap on pain and suffering for medical malpractice jury verdicts.[6] The claims are not limited to these two counties, however. In the greater Chicago area, in particular Cook and DuPage counties, similar claims have been made about

3. *See* Peter Akmajian, *A Fair and Balanced Look at Tort Reform*, FOR THE DEF., Nov. 2004, at 33 (noting that medical liability insurance is increasingly expensive); Michelle M. Mello et al., *The New Medical Malpractice Crisis*, 348 N. ENGL. J. MED. 2281, 2281–82 (2003) (identifying 18 states where insurance premiums have "increased dramatically for physicians in high-risk specialties"); David M. Studdert et al., *Medical Malpractice*, 350 N. ENGL. J. MED. 283, 283–84 (2004) (describing the "malpractice crisis" that has led to spiked premiums).

4. *See* Am. Med. Ass'n, *America's Medical Liability Crisis Backgrounder: Illinois*, Mar. 4, 2004, *available at* http://www.ama-assn.org/ama1/pub/upload/mm/450/illinois04.pdf (noting that medical liability insurance premiums in Illinois have increased dramatically due to the frequency of lawsuits).

5. *See* Editorial, *Buying Justice*, ST. LOUIS POST-DISPATCH, Nov. 5, 2004, at B6 (discussing why certain Illinois counties are lawsuit magnets); Georgina Gustin & Philip Dine, *Insurance Regulations Bear Blame, Critics Say*, ST. LOUIS POST-DISPATCH, Jan. 2, 2005, at A1 (describing Madison and St. Clair counties as "judicial hellholes"); Sherman Joyce, *Judicial Hellholes*, WALL ST. J., Dec. 15, 2004, at A20 (explaining that the Illinois legal system is deteriorating); Patrick J. Powers, *Doctors Flee Area Hospitals*, BELLEVILLE NEWS-DEMOCRAT, Mar. 23, 2005 (explaining that fifteen percent of the practicing physicians in the Metro-East area have left in recent years); AM. TORT REFORM ASS'N, JUDICIAL HELLHOLES 2005 20–28 (2005), *available at* http://www.atra.org/reports/hellholes/report.pdf (listing Madison and St. Clair counties as two of the nation's top six "judicial hellholes").

6. *See* Gustin & Dine, *supra* note 5, at A1 ("Bush uses the "judicial hellholes" of Madison and St. Clair counties as backdrops to advance his tort reform agenda . . . ."); William Lamb, *County's Reputation Draws Bush*, ST. LOUIS POST-DISPATCH, Jan. 3, 2005, at A1 (describing Bush's visit to the county as part of his re-election campaign in support of medical malpractice caps); *Bush Pushes Anew for Lawsuit Limits*, HELENA INDEP. REC., Jan. 6, 2005, *available at* http://www.helenair.com/articles/2005/01/06/national/a02010605_03.txt (discussing Bush's trip to Madison County and his campaign for a $250,000 cap).

excessive jury verdicts and their effect on professional liability insurance.[7]

Accompanying the claims of runaway juries are reports of an exodus of doctors from Illinois to escape the "abusive litigation climate."[8] While these reports have been applied to Illinois as a whole without specific statistics about the size or nature of the exodus, various numbers have been obtained from Madison and St. Clair counties. In November 2003, an article in the Belleville *News Democrat* reported that fifty-nine doctors had left one hospital.[9] In April 2004, another article stated that "[a]t least 60 doctors in the past two years have left or announced plans to leave Madison and St. Clair counties."[10] In 2004, the Springfield *Journal-Register*, the *St. Louis Post-Dispatch*, and the *Wall Street Journal* variously reported that the two counties had lost a total of 160 or 161 doctors.[11] In March 2005, the *News Democrat* upped its earlier figure to 136,[12] based upon a study by two business professors from Southern Illinois University, Edwardsville, who estimated their figures from surveys of area

7. *See* Jeff Ignatius, *Doctor Dash: Lawyers and Physicians Spar over Medical-Malpractice Reform, but Causes and Solutions Aren't Clear*, RIVER CITIES' READER, May 19, 2005, *available at* http://www.rcreader.com/display_article.php3?index=1&artid=2314 (noting that "average jury awards for malpractice in Cook County . . . [increased] 314 percent in five years" and acknowledging both claims that these awards caused increases in insurance premiums and claims by the Illinois State Bar Association that "the Illinois tort system does not appear to be the cause of the increase in doctors' liability insurance premiums").

8. *See* William Lamb, *Doctors May See Premiums Lowered*, ST. LOUIS POST-DISPATCH, Mar. 15, 2006, at A1 (stating that the insurance arm of the Illinois State Medical Society, along with many doctors and Republicans, argued that generous jury awards were to blame for the high cost of health insurance, forcing many doctors to leave the state); Illinois Chamber of Commerce, Our Illinois Courts are In Crisis . . . It's Time For A Change, http://www.ilchamber.org/legalreform/ (last visited May 31, 2006) ("Illinois is earning an anti-business reputation that is scaring off doctors"); HARRIS INTERACTIVE, INC., 2005 STATE INTERACTIVE SYSTEMS RANKING STUDY, FACT SHEET: "ILLINOIS' ABUSIVE LEGAL CLIMATE IS FORCING DOCTORS TO LEAVE THE STATE" (Mar. 8, 2005) (on file with author).

9. Patrick Powers, *Doctor Exodus Continues*, BELLEVILLE NEWS DEMOCRAT, Nov. 9, 2003, at A1.

10. Steve Stanek, *Doctors Flee Illinois,* HEALTH CARE NEWS, Apr. 1, 2004, *available at* http://www.heartland.org/Article.cfm?artId=14633.

11. *See* Sherman Joyce, *Judicial Hellholes*, WALL ST. J., Dec. 15, 2004, at A20 (stating that Madison and St. Clair counties together lost 161 doctors); William Lamb, *Illinois Trauma Cases Surge at SLU*, ST. LOUIS POST-DISPATCH, Jan. 11, 2005, at A1 ("Steep increases in malpractice insurance premiums—particularly for doctors in high-risk specialties such as neurosurgery and obstetrics—have forced at least 160 doctors in Madison and St. Clair counties to retire or leave the area, according to many doctors and politicians."); Dean Olson, *Shimkus: Chance for Malpractice Caps Getting Better*, STATE J.-REG., Feb. 24, 2005, at 20 (citing "an August report by hospitals in Madison and St. Clair counties that said 161 doctors had left those counties or retired early the previous two years because of a malpractice insurance crisis").

12. Powers, *supra* note 5.

hospitals and counts of doctors' offices in the area.[13] As late as June 9, 2005, the figure had grown to 180 physicians leaving Madison and St. Clair counties.[14]

The controversy in Illinois is part of a contentious nationwide debate about the causes and consequences of the undisputed problems regarding availability and cost of malpractice insurance. While consumer groups and trial lawyers insist that the cause of the premium jumps lies with the business cycle in the insurance industry, physician groups, hospitals, liability insurers, and business organizations blame the tort system.[15] In Illinois, as in other states, these latter groups argue that increasingly frequent claims and increasingly large jury verdicts, particularly the "pain and suffering" component of awards, have resulted in excessive payouts. Industry groups argue that such payouts result not only from jury verdicts directly but also from the "shadow effect" of large verdicts arising when health care providers settle malpractice claims for higher amounts than are warranted, if warranted at all, out of fear of exposure to even larger jury awards.[16]

This Article examines the claims about jury verdicts and the medical malpractice climate in Illinois. We first examine claims and jury verdicts in the especially notorious region – the "judicial hellhole" –comprised of Madison and St. Clair counties. Our data are derived from the *Southwestern Illinois Jury Verdict Reporter*, reported in both *Westlaw* and *Lexis*, which covers these two counties. The data for Madison County were checked by a direct examination of the files in the Madison County Courthouse. We then present a similar analysis of the greater Chicago area involving Cook and DuPage counties. Our data for this research are derived from the *Cook County Verdict Reporter*, supplemented by additional sources in *Westlaw* and *Lexis* databases and brief telephone interviews with lawyers to confirm

13. JOHN NAVIN & TIMOTHY SULLIVAN, RECOMMENDED FOR A HEALTHY ECONOMY: THE IMPORTANCE OF THE HEALTH CARE SECTOR IN MADISON AND ST. CLAIR COUNTIES 2 (2005), *available at* http://www.senategop.state.il.us/index.php?option=com_docman&task=cat_view&gid =117&Itemid=121.

14. Ann Knef, *Memorial Hospital Head Harry Maier Discusses Med Mal Reform*, THE MADISON - ST. CLAIR RECORD, June 9, 2005, *available at* http://www.madisonrecord.com /news/newsview.asp?c=161029.

15. *See* Peter Budeti, *Tort Reform and the Patient Safety Movement*, 293 J. AM. MED. ASS'N 2660, 2661 (2005) (noting that physicians associate malpractice suits with increased premiums); John Gibeaut, *The Med-Mal Divide*, 91 A.B.A. J. 38, 40 (2005) (describing the "cycle of blame" that exists among physicians and lawyers); Joseph Treaster & Joel Brinkley, *Behind those Medical Malpractice Rates*, N.Y. TIMES, Feb. 22, 2005 (explaining that even though those in the insurance industry acknowledge that other "industry forces and practices" impact insurance prices, many "in the insurance industry still regard lawsuits as their biggest problem").

16. *See* Thomas Koenig, *Measuring the Shadow Effect of Punitive Damages*, 1998 WIS. L. REV. 169, 169–209 (discussing the "shadow effect" theory and evidence of its existence).

missing information about settlements. A separate section uses the Cook and DuPage data to consider the potential effect of caps on damage awards for pain and suffering. In another section of the Article, we investigate the claims about the doctor exodus by examining official statistics of the AMA on the distribution of doctors for the Madison-St. Clair and Cook-DuPage regions, and also for the whole state of Illinois.

II. JURY VERDICTS IN MADISON AND ST.CLAIR COUNTIES

A. Madison County

Madison County, whose largest city is Edwardsville, and St. Clair County, whose largest city is Belleville, have a combined population of roughly 520,000.[17] AMA data indicate that in the year 2003 there were slightly over 700 physicians in the two counties who classified themselves as non-federal physicians engaged in patient care.[18]

Table 1 reports the total number of jury trials in Madison County in the 13.5 years from 1992 through the first six months of 2005. These data were reported by the Southwestern Illinois Verdict Reporter and checked by the senior author against the original files in the Madison County Circuit Court.

17. U.S. Census Bureau, State and County Quick Facts, St. Clair County, IL (2004), http://quickfacts.census.gov/qfd/states/17/17163.html (last visited May 31, 2006) (listing St. Clair County's population as 259,132); U.S. Census Bureau, State and County Quick Facts, Madison County, IL (2004), http://quickfacts.census.gov/qfd/states/17/17119.html (last visited May 31, 2006) (listing Madison County's population as 264,350).

18. AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS AND DISTRIBUTION IN THE U.S. 223 (2005) [hereinafter AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS). Federal physicians are those employed or supported by the U.S. Government, which is self-insured for the liability of its physicians. Some federal physicians are patient-treating physicians such as those associated with military bases, Veterans Administration hospitals and the Public Health Service. Lawsuits against federal physicians fall under the Federal Tort Claims Act, which requires trials to be conducted by judges acting without a jury. Consequently, malpractice lawsuits against federal physicians do not play a role in private liability insurance issues.

Table 1
Jury Verdicts in Medical Malpractice Cases:
Madison County Court, 1992-2005

Year	***Case Name***	***Verdict***	***Amount***
1992	Buie v. St. Elizabeth Medical Center	Defense	$0
1992	Hungate v. Allendorph	Defense	$0
1992	Brown v. Afuwape	Defense	$0
1992	Marshall v. Harley	Defense	$0
1993	Garcia v. Tulyasthien	Plaintiff	$600,000
1993	Beets v. Mucci	Plaintiff	$332,000
1993	Krause v. Greaves	Defense	$0
1994	Fisher v. Friedman	Plaintiff	$350,000
1994	Rives v. Hamilton	Defense	$0
1995	Pruett v. Mucci	Plaintiff	$900,000
1995	Holbert v. Malench	Defense	$0
1996	Barnes v. St. Elizabeth's Medical Center	Plaintiff	~~$402,000~~ $174,000*
1996	Grant v. Petroff	Defense	$0
1997	Finazzo v. Hill	Defense	$0
1998	Lanz v. Chen	Defense	$0
1999	Arnold v. Gittersonki	Defense	$0
1999	Roberts v. Fernandez	Defense	$0
2000	Adams v. Marrese	Plaintiff	$1,784,000
2000	Knight v. Miller	Defense	$0
2001	Lemons v. Dave	Plaintiff	$470,000
2002	Wagoner v. Gingrich	Plaintiff	$75,000
2002	Moffitt v. Skirball	Defense	$0
2002	Jenkins v. Dai	Defense	$0
2002	Terry v. Hamilton	Defense	$0
2003	Budwell v. Freeman	Plaintiff	$25,000
2005	Grant v. Petroff	Defense	$0

* Settled for $174,000 following a verdict of $400,000

Table 1 indicates there were twenty-six reported jury trials involving medical malpractice in Madison County from 1992 through the first six months of 2005, an average of 1.7 trials per year. Nine of the twenty-six trials ended with an award for the plaintiff, a win rate of 35 percent. The average award in those plaintiff wins was $523,333. One award (*Adams*) was almost $1.8 million and another (*Pruett*) approached $1 million. It is useful to briefly examine the basic facts of the cases resulting in verdicts of $500,000 or more.

Garcia v. Tulyasthien involved a claim of negligent surgery and resulted in a verdict of $600,000 ($796,000 in 2005 dollars).[19] The plaintiff, age thirty-three, had his leg fractured in a bar room brawl.[20] He claimed that the surgeon negligently inserted a metal rod in his leg that was unnecessary for the tibia and fibula fractures to heal.[21] The result was osteomyletitis, inflammation of the bone and marrow.[22] His past medical costs were $2500 and his past wage loss was $15,000.[23] The record provided no information about future economic losses.

Pruett v. Mucci involved permanent neurological damage to the brain and spinal cord of a child during her mother's labor.[24] The plaintiff's guardian alleged failure to monitor during delivery and inappropriate use of forceps.[25] The jury concluded that Dr. Mucci was an agent of the hospital. Before trial, the plaintiff demanded $750,000 to settle, but the defendant offered only $250,000. The jury verdict of $900,000 ($1,132,680 in 2005 dollars) involved the following breakdown: past and future medical expenses, $200,000; past and future disability, $250,000; past and future disfigurement, $250,000; past and future pain and suffering, $200,000.[26] After the trial, the case settled for $875,000. Because the case involved a minor, the court record contains a formal settlement distribution approved by a judge. Of the total award, $500,000 was invested in an annuity to provide the plaintiff with a guaranteed annual income with graduated income amounts that would eventually provide $5,600 per month for life (expected total lifetime yield from the annuity would be more than $4 million) over the plaintiff's lifetime. From the balance of $375,000, a lien (unspecified, but likely from Medicaid or a private insurer) of $28,000 for medical expenses was deducted. Expert fees and other litigation expenses amounted to slightly over $22,000. Under the Illinois fee structure, the plaintiff's lawyers received $281,000. The plaintiff received the net balance of $43,437.

Adams v. Mareese involved a claim by a twenty-nine-year-old man that the defendant had performed three unnecessary fusion

19. No. 91-L-1026 (Ill. Cir. Ct. July, 6, 1993). Note that throughout this Article we report the relevant court's docket number to identify where the case can be found. The Consumer Price Index ("CPI") is used to make this and subsequent inflation adjustments. Though medical inflation costs have risen more steeply than the CPI, we have chosen the more conservative number.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. No. 91-L-823 (Ill. Cir. Ct. Mar. 1995).

25. *Id.*

26. *Id.*

surgeries to the man's neck requiring a fourth corrective surgery with an internal fixation.[27] The alleged result was a complete loss of range of neck motion, chronic pain, permanent disability, and inability to work for the remainder of his life.[28] The claim involved $91,000 in past medical expenses, approximately $140,000 in past wage loss and approximately $400,000 in future wage loss.[29] The defendant denied the claims of negligence, stating that the original surgeries were necessary. The jury awarded the plaintiff $1,784,000 ($2,004,049 in 2005 dollars) divided as follows: $140,000 for past wage loss; $400,000 for future wage loss; $90,000 for past medical expenses, and $1,154,000 for disability, disfigurement and pain and suffering. The trial judge affirmed the verdict and in the judgment commented on judicial restraint "in response to defendant's evasive answers, unsolicited elaborations, and assorted courtroom shenanigans."[30] The judgment further noted that the defendant was chastised out of the presence of the jury but threatened with chastisement in front of the jury for this behavior.[31] The defendant appealed to the Fifth District Appellate Court and then to the Illinois Supreme Court, but the appeals were denied.[32]

Lemons v. Dave involved a claim of wrongful death for failure to diagnose and treat bladder cancer in a timely manner.[33] A delay of twenty-five months allegedly resulted in the premature death of the patient. At the time of her death, the patient was fifty-eight and the mother of four children.[34] The breakdown of the jury verdict of $470,000 ($509,000 in 2005 dollars) was as follows: medical expenses $70,000; pain and suffering, $250,000; husband of the deceased, $50,000 for loss of money, services, society, and sexual relations; the estate value of wife's services, $50,000; reasonable society and loss of companionship and sex, $50,000. Judgment affirming the jury verdict was made on December 7, 2001.[35] The verdict reporter notes that the plaintiff's estate reached a confidential settlement with another defendant named in the lawsuit, suggesting that the plaintiff recovered more money than the verdict reflects.

27. No. 98-L-858 (Ill. Cir. Ct. Oct. 2000).
28. *Id.*
29. *Id.*
30. *Id.* Judgment at 26.
31. *Id.* at 25.
32. 792 N.E.2d 305 (Ill. 2003) (table).
33. No. 99-LM-651 (Ill. Cir. Ct. Dec. 7, 2001).
34. *Id.*
35. *Id.*

B. St. Clair County

Table 2 reports verdicts in St. Clair County from 1992 through 2004. The table shows one very large verdict in 1993 of over $8 million, later reversed by an appeals court, but the note draws attention to the fact that another defendant in the case settled before trial for $2,950,000 ($3,915,000 in 2005 dollars). Only one other medical malpractice verdict for $250,000 was reported. Details are listed below.

Table 2: St. Clair Jury Verdicts in Medical Malpractice Trials: 1993-2004

Year	***Case Name***	***Verdict***	***Amount***
1993	Holten v. Memorial Hospital	Plaintiff	$8,816,500 Retrial[a]
1993	Taylor v. Murphy	Defense	$0
1994	Smith	Defense	$0
1995	Karr v. Tschoe	Defense	$0
1995	Eggemeyer v. Metropolitan Ref Labs and Simons	Plaintiff	$0 [b]
1996	Earle v. Diehl	Defense	$0
1996	Abbitt v. Price	Defense	$0
1997	McClure v. Ramon	Defense	$0
1997	Restoff v. S.Ill. Surgical Consultants	Defense	$0
1998	Eck v. Prosser	Defense	$0
1999	Trentman v. Associated Orthopedic Surgeons	Defense	$0
2002	Sherrod v. Ramaswami	Plaintiff	$250,000 [c]
2003	Mcginnis	Defense	$0
2003	Cretton v. Protestant Memorial Medical Center	Plaintiff	$0 [d]

Notes: a. Reversed and remanded by Ill.S.Ct. but another defendant settled pre-trial for $2,950,000; b. Doctor not liable but $550,000 assessed against the hospital for "slip and fall;" c. A civil rights claim with $150,000 in compensatory and punitive damages; d. Physicians not liable for medical negligence but a verdict of $950,000 against the hospital for "slip and fall."

Holten v. Memorial Hospital involved a claim that the hospital failed to properly diagnose the plaintiff's condition.[36] The plaintiff alleged that, in 1990, she was admitted to Memorial Hospital emergency room with complaints of numbness and tingling in her lower extremities.[37] She alleged that on the following day, the numbness and tingling progressed to paralysis which was not noticed by the nurses on the ward assigned to care for her. Plaintiff contended

36. No. 91-L-900 (Ill. Cir. Ct. Dec. 9, 1993).

37. *Id.*

that two days after admission, she was completely paralyzed in her lower extremities because the defendant had failed to properly diagnose her condition and administer treatment before her condition worsened.[38] Memorial Hospital asserted that the plaintiff's condition was properly diagnosed as being the result of a blood clot or circulation failure in the spine. Further, in a cross-claim, Memorial alleged that the treating physician incorrectly diagnosed her condition as caused by cancer, treated her for cancer, and failed to properly treat an infection in her spine, leading to the worsening of her condition.[39]

The jury awarded $8,706,500 to the plaintiff and $110,000 to her spouse. The trial judge agreed with the verdict on liability but reduced the award by $1,500,000.[40] The appellate court affirmed the judgment on liability but further reduced the award to $4,366,500. The Illinois Supreme Court reviewed the case and ruled that the evidence supported the jury's determination that the failure of the hospital staff to report the progression of the patient's paralysis was a proximate cause of her paralysis. However, the supreme court further concluded that the trial court's stated belief that a defense witness had been led by defense counsel to offer false testimony combined with plaintiff counsel's prejudicial remarks during closing arguments (charging attorney misconduct) denied the hospital a fair trial. In addition, the court ruled that a jury instruction on aggravation of an injury caused by another tortfeasor's (the surgeon's) negligence and an additional instruction on proximate cause should not have been given. The case was reversed and remanded back to the original trial court. No further information could be found about the case, possibly indicating settlement between the parties or abandonment of the claim. However, it is noteworthy that a co-defendant, the plaintiff's treating neurosurgeon, settled with plaintiff before trial for $2,950,000 ($3,314,606 in 2005 dollars). Additional research uncovered no evidence of a retrial or a settlement involving Memorial Hospital.

The notes to Table 2 indicate that, in two other cases, doctors were sued along with other parties but were found not liable for medical negligence, while co-defendants were found liable on other grounds and substantial damages were awarded.[41] It is noteworthy that the juries in

38. *Id.*

39. *Id.*

40. *Id.*

41. *Sherrod v. Ramaswami and Shroff*, No. 97-63-GBC (Ill. Cir. Ct. Apr. 22, 2002), is an unusual case. The plaintiff was a convicted rapist who complained of abdominal pain and was diagnosed with suspected appendicitis. *Id.* The doctors did not take additional action for over two weeks despite continued complaints of severe pain by the plaintiff. *Id.* Eventually, a surgeon operated and found a ruptured appendix with gangreen having spread to the intestines. *Id.* The surgeon had to remove the appendix, four inches of small intestine, three inches of large

these latter cases were clearly capable of making a distinction between malpractice and other claims.

C. Federal Cases in the Southern District of Illinois

Medical malpractice cases are tried in federal rather than state courts under two circumstances: (1) when one of the parties to a lawsuit resides in another state, the case may be moved to a federal court under diversity jurisdiction; (2) when the defendant is a federal agency, such as a VA hospital or a military hospital, the case will be tried in federal court. However, under this second circumstance the Federal Tort Claims Act requires that the case be decided by a judge rather than by a jury.

Table 3 presents medical malpractice verdicts reported for the Southern District of Illinois federal court (located in East St. Louis).

Table 3: Federal Court Jury Medical Malpractice Verdicts, Southern District of Illinois: 1992- 2004

Year	***Case Name***	***Verdict***	***Amount***
1993	Taylor	Defense	$0
1994	Ridenour v. Muller	Defense	$0
1995	Cripps v. Union Pacific and Heshmatpour	Plaintiff	$375,000
1995	Haas v. Group Health Plan	Plaintiff	$100,000
1996	Kaufman v. Cserny	Defense	$0
1997	Mandrell	Defense	$0
2001	Treadway	Defense	$0
2003	Mize	Defense	$0

Table 3 shows that since 1992, there have been two plaintiff verdicts from federal court juries involving claims related to medical malpractice. There was an additional verdict involving a brain-injured child that resulted in a verdict of $19,253,549 in *Coleman v. United States of America and Touchette Regional Hospital.*[42] While this case was extremely newsworthy, it did not, in fact, involve a jury verdict. *Coleman* involved a claim against a physician considered a federal employee of the United States. The plaintiff's mother alleged that during the birthing process the physician attempted to apply a

intestine, and the cecum, leaving the patient with a large scar and a risk of future intestinal blockage. *Id.* In addition to medical malpractice, the plaintiff claimed a civil rights violation. *Id.* The jury awarded $250,000 for medical malpractice, $100,000 compensatory damages and $50,000 against Dr. Ramaswami, but found defendant Shroff not liable. *Id.*

42. No. 01-CV-314 (S.D. Ill. July 15, 2003).

vacuum extractor to the baby's head about fifteen times rather than following the manufacturer's recommendation of no more than three attempts.[43] The result was severe brain injury to the plaintiff.[44] The court dismissed defendant Touchette Regional Hospital from the suit before trial. Under the Federal Tort Claims Act, the trial was required to be conducted by judge alone and resulted in a verdict of $19,253,549. The plaintiff reportedly had offered to settle for $8 million before trial and the defendant's last offer was reported as $3.1 million. Newspaper coverage of the *Coleman* verdict may have contributed to the perception of Madison and St. Clair counties as the "judicial hellhole" for physicians, but the award had no implications for private medical liability insurance.[45]

D. Summary

These data lend scant support to the claims that Madison and St. Clair counties are "judicial hellholes" for medical malpractice defendants who go before juries. Overall, jury trials are rare, plaintiff verdicts are infrequent, and a strong case can be made that the amounts awarded were justified. While the intense media coverage of the *Coleman* verdict likely helped further public perceptions of excessive jury verdicts, it is imperative to note that *Coleman* was decided by a judge, not a jury. Further, since the defendant was a federal employee, the U.S. government, not private liability insurers, is responsible for the award.[46]

III. COOK AND DUPAGE COUNTIES

Cook and DuPage counties together have a population of 6.2 million residents, representing 49 percent of Illinois's more than 12.6 million citizens.[47] The two counties accounted for 67.6% of Illinois's 30,264 non-federal patient care physicians in 2003.[48]

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43. *Id.*

44. *Id.*

45. *See, e.g.*, William Lamb, *Botched Birth Nets Verdict of $19 Million; Judge Holds U.S. Government Liable for Procedure*, ST. LOUIS POST-DISPATCH, Aug. 1, 2003, at B1 (reporting on the outcome of the *Coleman* verdict).

46. We have recently been made aware of some statistics compiled by the Madison County Circuit Court showing an increase in overall personal injury claims in 2001, including claims in which a doctor or hospital is a defendant. Court personnel can offer no explanation for the increase. It may or may not be an aberration. Unfortunately, there is currently no way to explore the matter further.

47. *See* U.S. Census Bureau, State and County Quick Facts, Cook County, Illinois (2004), http://quickfacts.census.gov/qfd/states/17/17031.html (last visited May 31, 2006) (listing Cook County's population as 5,327,777); U.S. Census Bureau, State and County Quick Facts, DuPage

The data for this Part are derived primarily from the *Cook County Verdict Reporter*, which comprehensively covers jury verdicts in Cook and DuPage counties.[49] In many instances, that reporter also contains follow-up information on settlements following trial. These data were checked, whenever possible, against court records and databases of verdict reports and appellate decisions contained in *Westlaw* and *Lexis*. Additionally, when relevant information about post-trial settlements was absent or unclear, telephone interviews were conducted with the plaintiffs' lawyers to fill in the missing information.

A. Case Filings in Cook and DuPage Counties: 1994-2004

The *Cook County Jury Verdict Reporter* compiles statistics on annual filings of civil litigation, including separate statistics for medical malpractice filings. These data shed light on the extent to which the frequency of medical malpractice lawsuits has changed over the past decade.

Case filings do not always translate into settlements or jury verdicts. In some instances, the filing enables a plaintiff's lawyer to obtain medical records and other material that may persuade the lawyer that there is insufficient evidence to continue the lawsuit, and thus it is abandoned.[50] To the extent that this is true, the statistics may overestimate the extent of medical malpractice litigation. On the other hand, recent research bearing on malpractice litigation in Florida uncovered the fact that the parties settled over 20 percent of all cases involving payments to claimants without a formal lawsuit being filed.[51] For settlements involving payments over $1 million, slightly more than 10 percent were settled in a pre-lawsuit phase.

County, Illinois (2004), http://quickfacts.census.gov/qfd/states/17/17043.html (last visited May 31, 2006) (listing DuPage County's population as 928,718).

48. AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS, *supra* note 18, at 223–24.

49. The data were provided by Mr. John Kirkton of the COOK COUNTY VERDICT REPORTER, *available at* http://www.juryverdicts.com/999990/about.html. The verdict data was verified against the Bureau of Justice Statistics data. Carol J. DeFrances & Marika F.X. Litras, *Civil Trial Cases and Verdicts in Large Counties, 1996*, BUREAU JUST. STATISTICS BULL., Sept. 1999, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc96.pdf; Thomas H. Cohen & Steven K. Smith, *Civil Trial Cases and Verdicts in Large Counties, 2001*, BUREAU JUST. STATISTICS BULL., CIVIL JUSTICE SURVEY OF STATE COURTS, Apr. 2004, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ctcvlc01.pdf. While the 1996 data were roughly comparable in both sources, the VERDICT REPORTER was more comprehensive than the BJS data for 2001. As previously mentioned, the VERDICT REPORTER contains follow-up data on settlements that are not available in the BJS data, as well as summaries of the nature of the complaint and names of lawyers for the parties.

50. NEIL VIDMAR, MEDICAL MALPRACTICE AND THE AMERICAN JURY 69–92 (1995).

51. Neil Vidmar et al., *Uncovering the "Invisible" Profile of Medical Malpractice Litigation: Insights from Florida*, 54 DEPAUL L. REV. 315, 349–50 (2005).

Assuming similar processes occur in Illinois, case filings may underestimate payments by medical health providers and their insurers. Nevertheless, filings provide a reasonable measure of medical malpractice claiming.

Table 4 shows the number of medical malpractice filings in Cook and DuPage counties by year. In addition, the table presents data on the number of non-federal treating physicians in each county per year through 2003.[52] From these two figures, a third variable was constructed to show the number of lawsuits filed per number of physicians practicing in the county. This last statistic must be treated cautiously as there is a time lag between a medical incident and the filing of a lawsuit. Typically, at least two years elapse between a medical incident and a claim, but in some cases the lawsuit may be filed many years after the incident.[53]

Table 4: Case Filings, Number of Treating Physicians and Filings Per Capita of Treating Physicians: 1994-2004

Year	***Cook County***			***DuPage County***		
	Number of Filings	***Number of Physicians***	***Filings/ 100 Physicians***	***Number of Filings***	***Number of Physicians***	***Filings/ 100 Physicians***
1994	1831	15,114	12.1	113	2,393	4.7
1995	1722	15,579	11.0	119	2,618	4.5
1996	1235	15,673	7.9	80	2,735	2.9
1997	1262	16,298	7.7	70	2,881	2.4
1998	1353	16,043	8.4	60	2,916	2.1
1999	1214	15,835	7.7	70	3,028	2.3
2000	1319	16,205	8.1	60	3,208	1.8
2001	1360	16,339	8.3	60	3,319	1.8
2002	1324	16,266	8.1	80	3,327	2.4
2003	1443	16,782	8.5	60	3,423	1.8
2004	1226	*	*	57	*	*

Table 4 shows that filings from 2000 through 2004 in both Cook and DuPage counties were substantially lower than in 1994 and 1995. Except for a decrease in 2004, filings have remained relatively steady since 1998, with slight yearly fluctuations. The second column in the table shows that filings per 100 treating physicians in Cook County

52. Physician figures for 2004 and 2005 were not available at the time this Article was written.

53. For instance, a person who was a minor when an incident occurred may file after he or she reached the age of majority, producing an extended lag time.

remained steady between approximately 8 and 8.5 from 1996 through 2003. DuPage County shows a similar trend, though the filing rates are much lower, varying between 1.8 and 2.4 per one 100 physicians.

At first glance, the much higher rate of filings per 100 physicians in Cook County as opposed to DuPage County appears puzzling. However, an additional examination of physician statistics suggests a likely explanation for part of the difference. The AMA's physician database disaggregates treating physicians into a number of separate categories and one of those categories is "hospital based practice."[54] In Cook County, 35 percent of treating physicians in 2003 listed themselves as engaged in hospital-based practice whereas, in DuPage County, only 18 percent listed themselves in this category.[55] To the extent that claims involving medical incidents are more likely to arise in hospital settings, hospital practice may explain part of the difference. The demographics of the patients seeking health care, the types of health services provided, and other factors may also contribute to the higher rate, but the data do not allow analysis of these hypotheses.

Once again, it is important to note that filings do not necessarily correspond perfectly with payments to claimants and that unpaid claims also cause liability insurers to incur defense costs.[56] Nevertheless, with these caveats in mind, the principal findings from this analysis show no upward trends in filings or in filings per 100 treating physicians in either Cook or DuPage counties in recent years.

B. Trials, Plaintiff Win Rates and Mean Awards: 1996 versus 2001

We chose the years 1996 and 2001 to assess changes over time since these years coincided with the Bureau of Justice Statistics survey of state courts, and we planned to use both the *Cook County Verdict Reporter* and the BJS data in tandem. However, our research indicated a sampling problem with the BJS data for 2001: it under-

54. AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS, *supra* note 18, at 223–24.

55. *Id.*

56. *See* Neil Vidmar et al., *Uncovering the "Invisible" Profile of Medical Malpractice Litigation: Insights from Florida,* 54 DEPAUL L. REV. 315, 318 (2005) ("[I]f claims are settled without formal litigation they never appear in public court records even though such cases may account for substantial insurer losses. This is true for cases resulting in payment to claimants and for claims resulting in no payment."); Bernard Black et al., *Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas*, *1988-2002*, 2 J. EMPIRICAL LEGAL STUD. 207, 235, 245 (2005), *available at* http://www.ssrn.com/abstract=770844 (noting that "a physician's risk of facing a payout is much smaller than the risk of facing a claim," and that "[a]ggregate defense costs in zero-payment cases can be substantial").

counted medical malpractice cases by 21 percent.[57] Therefore, we rely solely on the *Cook County Verdict Reporter* data involving claims against physicians and hospitals.[58]

The current debate in Illinois has centered on jury trials and the effect of jury awards on settlements. Thus, it is reasonable to consider jury trial frequency in relation to the number of treating physicians for the two counties. Table 5 reports the number of medical malpractice trials in Cook and DuPage counties during the two time periods with adjustments for changes in the number of treating physicians. In 1996 Cook County had 15,673 non-federal treating physicians and in 2001 it had 16,339 treating physicians. DuPage County had 2,735 physicians in 1996 and in 2001 there were 3,319 physicians. Table 5 shows that in Cook County between 1996 and 2001 the number of trials per 1,000 physicians increased from five to six, but in DuPage County the number of trials decreased from four to two per 1,000 physicians.

Table 5: Frequency of Jury Trials by Year
and in Proportion to 1000 Treating Physicians:
1996 and 2001

Year	***Cook County***		***DuPage County***	
	Number of Jury Trials	***Trials/per 1000 Treating Physicians***	***Number of Jury Trials***	***Trials/1000 Treating Physicians***
1996	76	5	10	4
2001	93	6	6	2

How often do plaintiffs prevail when a jury decides their case? In addressing this question we combined the data for Cook and DuPage counties. The findings are reported in Table 6.[59]

57. *See* Vidmar, *supra* note 1, at 23–24 ("BJS reported 78 jury trials whereas the Verdict Reporter identified 99 jury trials.").

58. Cases related to dental, nursing home, and other non-physicians, and claims against hospitals that were unrelated to medical malpractice, such as "slip and fall", were removed from consideration.

59. In a small number of cases, the jury was deadlocked. Deadlocked juries are treated as a defense win since the plaintiff bears the burden of proof.

Table 6: Plaintiff Win Rates By Year
(Frequencies and Percentages[a]): 1996 and 2001

Year	***1996***	***2001***
Plaintiff Verdicts	18 (21%)	30 (30%)
Defense Verdicts	65 (76%)	66 (67%)
Directed Verdict for Defendant	1 (1 %)	0 (0 %)
Other	2 (2%)	3 (3%)[b]
Total	86 (100%)	99 (100%)

Notes: a. Percents are rounded to nearest whole number; b. Other, in 2001, includes two jury deadlocks and one verdict mixed on liability with no dollar award.

Table 6 shows that the number of trials increased by thirteen from 1996 to 2001, or 15 percent. Table 6 also shows that plaintiffs were more successful when they went to trial. The plaintiff's win-rate trends are somewhat at variance with nationwide trends in plaintiff win rates.[60] In 1996, the national plaintiff win rate was 26 percent, and in 2001 the plaintiff win rate was 27 percent.[61] Thus, win rates in 1996 in Cook and DuPage counties were lower than the national average, and in 2001 they were higher than the national average.

It is not possible to ascertain a precise cause of these differences in plaintiff win rates, either over time or in comparison to nationwide data because there are different plausible, and not necessarily exclusive, explanations. One hypothesis is that jury attitudes toward plaintiffs and defendants changed (or differ from state to state), but there are equally conceivable competing hypotheses. Laws may differ from state to state; ws may change over time within states; plaintiff lawyer strategies in the cases they choose to litigate may change; the development of alternative dispute resolution such as mediation or arbitration may affect rates of trial; both plaintiff and defense negotiation strategies may change and thus affect whether cases are settled or go to trial; the way evidence is presented at trial may change. Posed simply, from these data we "*cannot determine whether juries [were] deciding cases differently or*

60. DeFrances & Litras, *supra* note 49, at 1 ("Plaintiffs prevailed in about a fourth (27%) of medical malpractice trials."); Thomas H. Cohen, *Tort Trials and Verdicts in Large Counties, 2001*, BUREAU JUST. STATISTICS BULL., Nov. 2004, at 4, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ttvlc01.pdf (noting that plaintiffs prevailed in almost 27 percent of medical malpractice cases); Thomas H. Cohen, *Medical Malpractice Trials and Verdicts in Large Counties, 2001*, BUREAU OF JUST. STATISTICS CIVIL JUST. DATA BRIEF, Apr. 2004, at 1, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/mmtvlc01.pdf (stating that the "overall win rate for medical malpractice plaintiffs" is 27 percent).

61. *Id.*

whether they [were] deciding different cases."[62] Perhaps, however, there is a hint. Data reported in Table 4 allow us to calculate that between 1996 and 2001 the number of doctors increased by 6 percent (from 18,408 to 19,658), and the number lawsuit filings increased by 8 percent. These figures suggest a slightly greater tendency for lawsuits to go to trial as opposed to being settled. Part of the explanation, therefore, may lie with shifting litigation strategies: plaintiffs or defendants or both appear to be slightly less likely to settle cases.

The mean jury award, without any post-trial adjustments, when the plaintiff prevailed was $2,496,990 in 1996 and $3,461,671 in 2001. Using the Midwest urban Consumer Price Index to adjust the mean award to 2004 dollars, these figures are $2,980,068 and $3,657,993, an increase of 28 percent.

C. Jury Awards and Ultimate Payments in Cook and DuPage Counties: 2001

Post-trial settlements are an accepted but seldom studied fact of the litigation process.[63] In some cases, the judge may reduce that amount in entering judgment. In other cases, the parties may enter into a high-low agreement prior to the verdict. Often, cases with high-low agreements are not disputes about the health provider's liability but rather about the amount of the damages. In other instances, high-low agreements may reflect the fact that the two sides recognize that the issue of liability is about a fifty-fifty probability and both are risk-averse. As a consequence, they enter into a mutual agreement that prevents an extreme outcome, such as the plaintiff receiving nothing or the defendant being faced with a catastrophic damage award. Plaintiffs may settle post-verdict for the limits of the defendant's medical liability insurance coverage rather than press for the full judgment.[64] In other cases, the plaintiff may agree to settle for less than the judgment in order to avoid the potential consequences of the defendant's appeal of the verdict, such as the possibility of a severe reduction or loss of the entire judgment, or merely to avoid the potentially long delay in receiving any money as the case winds its

62. Neil Vidmar, *Pap and Circumstance: What Jury Verdict Statistics Can Tell Us About Jury Behavior and the Tort System*, 28 SUFFOLK U. L. REV. 1205, 1216 (1994).

63. *See* Neil Vidmar et al., *Jury Awards For Medical Malpractice and Post-Verdict Adjustments of Those Awards*, 48 DEPAUL L. REV. 265, 278 (1998) ("[J]ury awards may be altered by a number of processes in the post-verdict phase of the trial.").

64. *See* Tom Baker, *Blood Money, New Money, and the Moral Economy of Tort Law in Action*, 35 LAW & SOC'Y REV. 275, 284–85 (2001) ("It is easier to collect from an insurance company than it is to go against the individual . . . .").

way through the appeals courts. Frequently there is a considerable delay between the verdict and the settlement as the parties file appeals or negotiate a lesser figure.

Table 7 reports the verdicts of the thirty Cook and DuPage cases in which plaintiffs prevailed during 2001. An advantage for choosing the year 2001 is that it allows time for these post-trial adjustments, explained above, to occur. Each entry contains the name of the case, a short description of the plaintiff's claim, the amount of the verdict, and any post-trial adjustments to the verdict. The footnotes in the table report the nature of the adjustment.

Table 7: Plaintiff Verdicts and Adjustments in Cook and DuPage Counties, 2001

Case	***Claim***	***Amount of Award***	***Award after Adjustment***
Bryant v. LaGrange Memorial Hospital, Kim & others	Birth injury-cerebral palsy	$30,000,000	$1,100,000[a]
Lawler v. Lamont	Delayed cancer diagnosis	$3,800,000	$3,800,000[b]
Brewster v. West & two others	Foot fracture misdiagnosed requiring subsequent surgery	$170,000	$170,000
Aceves v. Orihuela	Bile duct cut-reconstructive surgery	$467,900	$467,900
E. Munoz v. Clemis & others	Delayed cancer diagnosis: larynx surgery; chemotherapy	$2,495,893	$2,495,893
D. Munoz v. Herman & others	Misdiagnosis resulting in testicle removal	$150,000	$0[c]
McNamara v. Grimaldi	Failure to obtain informed consent regarding vasectomy resulting in pain and suffering	$317,000	$317,000
Matthews v. Gottlieb Memorial Hospital	Stillborn birth due to doctor negligence	$3,781,393	$3,781,393
Genovese v. Caro	Cornea puncture requiring subsequent surgery	$494,906	$494,906
Willis v. Bracket & others	Hip surgery error requiring corrective surgery	$120,608	$120,608
Bales v. Groya & others	Misdiagnosis resulting in leg amputation	$2,812,553	$2,812,553
Washington v. Wilczynski & others	Diagnosis delay resulting in loss of testicle	$200,000	$200,000
Gonzales v. Pla	Delayed kidney disease diagnosis requiring transplant	$1,191,256	$950,000[d]
Waliczek v. Gutta	Incorrect patient's blood thinner given resulting in death	$6,500,000	$800,000[e]
Stajsczyk v. MacNeal Memorial Hospital & others	Jugular vein puncture resulting in death	$801,643	$801,643

Case	***Claim***	***Amount of Award***	***Award after Adjustment***
Thomas v. Hosain & others	Antibiotic delay resulting in death	$835,000	$835,000
Matei v. Patel & others	Premature discharge resulting in infant death	$525,000	$525,000
Skonieczny v. Gardner & others	Negligently caused birth injury resulting in nerve damage (Erb's palsy)	$13,298,052	$2,000,000[f]
Christy v. Cavanaugh	Misdiagnosed brain disease resulting in pain and suffering	$2,500,000	$2,500,000
Cork v. Cook County Hospital	Improper management of injury resulting in child's death	$5,300,000	$0[g]
Simpson v. Allswede & others	Improper tracheal tube insertion injuring child burn victim	$2,563,492	$1,900,000[h]
Cummings v. Suprenant & others	Excessive radiation resulting in severe burns	$1,250,000	$1,250,000
Salas v. Michael Reese Hospital & others	Unnecessary surgery resulting in death of toddler	$2,750,000	$2,750,000
Guerin v. Yu & others	Negligent? C-section resulting in death of the mother	$7,622,040	$7,000,000[i]
Banis v. Loyola U Hospital& others	Surgical error & misdiagnosis resulting in amputation below elbow	$1,710,000	$1,710,000
Perrier v. Feinstein & others	Penile implant infection	$218,626	$218,626
Gonzalez v. St. Mary of Nazareth Hosp. & others	Misdiagnosis of stroke resulting in death	$1,250,000	$1,255,000[j]
Schlindler v. Lipshitz	Prostatectomy & rectum puncture resulting in eventual death	$1,262,748	$1,262,748
Macias v. St. Anthony Hosp	Absence of lab work resulting in baby's death	$1,500,000	$1,400,000
Carroll v. Barrows & others	Misdiagnosed eye cancer resulting in toddler's total blindness	$7,962,024	$2,000,000[k]

Notes: a: Loyola dismissed after settling for $100,000 before trial; plaintiff accepted Kim offer of $1million policy limits during jury deliberations. b: Appealed, judgment affirmed. c: Two defendants settled before trial; setoff leaves on $4,000 judgment for costs. d: High-low agreement ($150,000-$950,000); e. High-low agreement ($350,000-$800,000 during jury deliberations. f. High-low agreement before verdict for policy limits of $1million for two defendants. g. Reversed on appeal; remanded for new trial. h: Post-trial settlement. i: High-low agreement ($500,000-$7,000,000) during deliberations. j: Case settled post-trial. k: Case settled for policy limits.

Based on the data in Table 7, a quick calculation indicates that the mean verdict was $3,461,671. However, the last column in the table shows that at least seven of the verdicts were adjusted downward. Thus, the mean adjusted verdict when plaintiffs prevailed

at trial was substantially lower, namely $1,497,276, 43 percent lower than the unadjusted figure.

The downward adjustment is very likely a conservative figure since post-trial settlements of awards may occur after the verdict reporter summaries are published. Additionally some settlements are kept confidential as a condition of settlement. Nevertheless, the central finding from Table 7 confirms the view that the amount that the jury awards the plaintiff is frequently not the end of the story. The amount actually paid may be substantially less.

Summaries of all the cases in Table 7 are reported elsewhere,[65] but two selected cases help to illustrate post-trial settlements. *Bryant v. La Grange Memorial Hospital, Kim, Nath and Loyola University Hospital* involved a claim that in 1995 Dr. Kim and the hospital employees were negligent in delaying a Caesarian section following signs of distress in the infant.[66] As a result of this delay, the child suffered severe cerebral palsy and now cannot walk or talk and is totally dependent but cognitively intact.[67] The jury deliberated for seven hours and found only against Dr. Kim for $30 million ($15 million disability; $4 million pain and suffering; $4 million disfigurement; $5.5 million for future medical expenses; $1.4 million for lost earnings and $116,700 for past medical expenses).[68] Loyola University hospital and its employee, Dr. Nath, settled for $100,000 prior to trial, and the plaintiff accepted Dr. Kim's offer of his $1 million policy limit during the jury's seven hours of deliberations. The plaintiff subsequently appealed the verdict in favor of LaGrange Memorial Hospital, but a unanimous opinion of the Third Division Appeals Court affirmed the verdict favoring LaGrange.[69]

Skonieczny v. Gardner, Northwest Professional Obstetrics and Gynecology, Levy and Northwest Community Hospital concerned a claim that a brachial plexus injury during delivery resulted in permanent loss of the use of the child's left arm and shoulder plus the likelihood of future arthritis and pain.[70] The plaintiff claimed that the obstetrician applied excessive traction to the baby's head and that hospital nurses inappropriately pushed down on the mother's stomach during delivery.[71] The jury awarded $13,298,052, but found defendant

65. More details about the individual cases and the basis of the post-trial adjustments are contained in Vidmar, *supra* note 1, at 33–47.

66. No. 96L-11679 (Ill. Cir. Ct. tried July 16, 2001).

67. *Id.*

68. *Id.*

69. Bryant v. LaGrange Mem'l Hosp., 803 N.E.2d 76, 87 (Ill. App. Ct. 2003).

70. No. 98L-4578 (Ill. Cir. Ct. Sept. 2001).

71. *Id.*

Levy not liable.[72] Defendants Gardner and Northwest Professional had entered into a high-low agreement of $1 million to $2 million with the plaintiff before the verdict. Each defendant had a $1 million policy limit.

D. Selected Defense Verdicts Involving Payments to Plaintiffs

Even when plaintiffs lose against some defendants at trial they may nevertheless recover money from other defendants. Of the seventy-two defense verdicts, several examples illustrate this fact.[73]

Foley v. Lutheran General Hospital involved a third trial in a wrongful death lawsuit.[74] The other two trials resulted in deadlocked juries in which a majority of jurors favored the plaintiff. The plaintiff's estate claimed that in 1993 her bowel was perforated during a tubal ligation and she subsequently became physically distressed and died from sepsis.[75] Although the hospital's policy was that its laboratory activate a panic button when lab results reveal a dire situation, the log book that would document such a panic call was missing.[76] The defense argued that the most likely cause of death was a pulmonary embolism. The plaintiff was survived by her husband and two daughters, ages four and seven months.[77] The jury sided with the defense in this third trial. However, the parties entered into a high-low agreement during deliberations of $1 million versus $5 million. The plaintiff's estate thus received $1,000,000 from the hospital and $900,000 from another original defendant who settled with the estate before trial.

Jones v. Jordan involved a claim that the defendant was negligent in failing to diagnose meningitis in an eighty-six-day-old child resulting in quadraplegia and severe mental retardation (an IQ of about 30).[78] The plaintiff claimed that, over the phone, the doctor recommended giving the child castor oil rather than examining the child.[79] Two wittnesses corroborated the mother's version of events. The doctor denied that he recommended castor oil for a child under two, and claimed that even if a phone call had taken place, the standard of care would not require that the child be seen

72. *Id.*
73. Additional cases are discussed in Vidmar, *supra* note 1, at 42–46.
74. No. 95L-5339 (Ill. Cir. Ct. Jan. 5, 2001).
75. *Id.*
76. *Id.*
77. *Id.*
78. No. 96L-13425 (Ill. Cir. Ct. Sept. 10, 2001).
79. *Id.*

immediately.[80] The jury sided with the defense.[81] In earlier proceedings, the HMO that employed the treating doctor was dismissed from the lawsuit by the judge, but the summary judgment was reversed by the Illinois Appellate Court with an order for a new trial.[82] Prior to the trial the HMO settled with the defendant for $1,700,000.

E. Jury Verdicts 2001-2004

We also obtained data on jury verdicts in Cook and DuPage counties for 2002, 2003, and 2004. Post-verdict adjustments often take many months and are often not available in initial verdict reports. As demonstrated with the 2001 data, without these adjustments the verdicts can be quite misleading. As a consequence, we report only the frequency of jury trials and plaintiff win-rates for the combined counties.

Table 8 reports the frequency of jury trials and plaintiff win rates for Cook and DuPage counties for 2001 through 2004.

Table 8: Jury Trial Frequency, Plaintiff Win Rates and Mean Jury Verdicts in Cook and DuPage Counties (Combined): 2001-2004

Year	***Trials***	***Win Rate***	***Mean Award***
2001	99	30%	$3,461,671
2002	110	35%	$3,857,731
2003	100	35%	$4,316,079
2004	97	29%	$6,499,478

The table shows that trial frequency changed from 99 trials in 2001 to 110 trials in 2002, an increase of 10 percent. The table also indicates that the plaintiff win rate jumped 5 percent. However, in 2003 the number of trials dropped to 100, although the plaintiff win rate held steady at 35 percent. In 2004, there were two fewer trials than in 2001, and the win rate dropped to 29 percent. In short, there is no evidence of increasing jury trials or increased win rates over the four-year period.

The average awards by juries increased over the four-year period. There was a large jump in 2004, compared to 2003. However, note that the plaintiff win rate decreased substantially between these

80. *Id.*

81. *Id.*

82. Jones v. Chicago HMO, 703 N.E.2d 502, 508–11 (Ill. App. Ct. 1998).

two years. While this may represent a true change in actual jury behavior, plausible alternative hypotheses are either that the differences in the mean awards are affected by differing characteristics of cases that went to trial[83] or that the difference is just a random year-to-year fluctuation. The data do not allow us to differentiate between competing hypotheses. A major caveat is that these verdicts do not yet reflect final results of appeals and post-verdict settlement agreements. As we saw for the year 2001, the amounts of post-verdict adjustments may be substantially lower than verdicts.

IV. CAPS ON PAIN AND SUFFERING

Although President Bush has previously advocated a cap of $250,000 for pain and suffering in Illinois,[84] tort reform proposals for medical malpractice have centered around a cap of $500,000, perhaps reflecting political pragmatism.[85] In support of the cap, one source reported, without documented substantiation, that non-economic damages "now make up more than 90 percent of the money awarded by Illinois juries in malpractice cases."[86]

In most cases, although not all, the summary from the *Cook County Jury Verdict Reporter* describes the various elements that make up a damage award, including the pain and suffering component. Table 9, below, repeats the data in Table 7, but includes the breakdowns of the verdict combined with post-trial adjustments where available. Table 9 allows a rough estimate of what the verdict would have been if the judge had been required to reduce the pain and suffering component of the award to $500,000. Recall that in a number of cases the settlement was less than the verdict due to high-low agreements, settlements for the amount of the liability insurer's coverage, or for other reasons.

In Table 9, the first column reports the case. The second column contains the jury verdict. The third column reports any adjustment to the verdict that the judge would have applied if the

83. *See* Vidmar et al., *supra* note 51, at 320 (suggesting that the increase in average awards may be caused by changes in the types of claims that go to trial, i.e., greater numbers of large claims and fewer small claims).

84. *See Bush Pushes Anew for Lawsuit Limits*, *supra* note 6 (noting Bush's campaign for a $250,000 cap).

85. *See, e.g.*, Christopher Wills, *Ill. Law Makers OK Deal to Fight Malpractice*, ABC NEWS, May 31, 2005, http://abcnews.go.com/US/LegalCenter/wireStory?id=805055 (last visited May 31, 2006) (describing an Illinois plan to cap non-economic damages at $500,000 against physician defendants).

86. Stanek, *supra* note 10.

pain and suffering component of the award exceeded $500,000. The fourth column reports any known settlement amount that differed from the verdict. The remaining columns report the itemized verdict elements. The pain and suffering component of the award is in the fourth column, allowing the reader to see how much the jury award differed from the proposed $500,000 cap.

Column 3 in the table shows that the $500,000 cap would have reduced the jury's verdict in ten of the thirty cases: *Bryant*, *Lawler*, *E. Munoz*, *Gonzales*, *Christy*, *Simpson*, *Guerin*, *Banis*, *Macias*, and *Carroll*. *Bryant*, however, settled for $1,100,000 - far less than the jury's award for economic damages. A cap thus would have made no difference in the settlement outcome. Similarly, *Gonzales* settled for less than the proposed cap adjustment, as did *Simpson*, *Guerin*, and *Carroll*.

Table 9: Estimating Effects of a $500,000 Cap on Pain and Suffering

Case	*Verdict*	*Cap-Adjusted Award Where Applicable*	*Settlement Amount Where Applicable*	*Award Breakdown By Damage Type*				
				Pain & Suffering	*Medical and income loss*	*Disfigurement*	*Loss of Normal Life*	*Loss Society/ Wrongful Death/Loss Consortium*
Bryant	$30,000,000	$26,500,000	$1,100,000	$4,000,000	$16, 476,000	$4,000,000	$0	$0
Lawler	$3,800,000	$1,800,000		$2,500,000	$0	$100,000	$1,200,000	$0
Brewster	$170,000			$150,000	$20,000	$0	$0	$0
Asceves	$467,000			$0	$32,900	$0	$0	$0
E. Munoz	$2,495,893	$1,870,000		$1,000,000	$887,300	$500,000	$0	$0
D. Munoz	$150,000		$0	$100,000	$0	$50,000	$0	$0
McNamara	$317,000			$280,000	$37,000	$0	$0	$0
Matthews	$3,781,393				$31,393	$0	$0	$3,750,000
Genovese	$494,906			***	***	***	***	***
Willis	$120,608			***	***	***	***	***
Bales	$2,812,553			$500,000	$715,723	$750,000	$800,000	$0
Washington	$200,000			$100,000	$0	$100,000	$0	$0
Gonzales	$1,191,256	$1,091,256	$950,000	$600,000	$141,256	$0	$450,000	$0
Walisczek	$6,500,000		$800,000	***	***	***	***	***
Stajsczyk	$801,643			$0	$1,643	$0	$0	$800,000
Thomas	$835,000			$0	$835,000	$0	$0	$0
Matei	$525,000			***	***	***	***	***
Skonieczny	$13,298,052		$2,000,000	$0	$298,052	$0	$0	$0

Case	*Verdict*	*Cap-Adjusted Award Where Applicable*	*Settlement Amount Where Applicable*	*Award Breakdown By Damage Type*				
				Pain & Suffering	*Medical and income loss*	*Disfigurement*	*Loss of Normal Life*	*Loss Society/ Wrongful Death/Loss Consortium*
Christy	$2,500,000	$2,000,000		$1,000,000	$0	$0	$1,000,000	$500,000
Cork	$5,300,000		$0	$0	$0	$0	$0	$0
Simpson	$2,563,492	$1,963,492	$1,900,000	$1,100,000	$263,492	$550,000	$650,000	$0
Cummings	$1,250,000			$500,000	$500,000	$250,000	$0	$0
Salas	$2,750,000			***	***	***	***	***
Guerin	$7,622,040	$7,122,040	$7,000,000	$1,000,000	$1,622,040	$0	$0	$5,000,000
Banis	$1,710,000	$1,640,000		$570,000	$570,000	$570,000	$0	$0
Perrier	$218,626			$100,000	$68,626	$50,000	$0	$0
Schlindler	$1,262,748			$200,000	$462,748	$0	$0	$600,000
Macias	$1,500,000	$1,000,000		$1,000,000	$42,705	$0	$0	$457,295
Carroll	$7,962,024	$7,462,024	$2,000,000	$1,000,000	$5,962,024	$1,000,000	$0	$0

Notes: *** indicates breakdown by damage type not available.

Thus, only five of the thirty cases would have been affected by the proposed caps: *Lawler*, *E. Munoz, Christy, Banis,* and *Macias*. The verdicts in *E. Munoz, Christy,* and *Macias* would have been $500,000 less. In *Banis* the cap would have reduced the jury's award by $70,000. *Lawler* resulted in the biggest reduction, namely $2 million. In some cases, the breakdown of the elements of the verdict was not reported (these are noted with question marks), but the total verdicts of these cases were, in any event, below the $500,000 limit of the proposed cap.

Note that in addition to medical costs and income losses, jury verdicts described in Table 9 also included damages for disfigurement, loss of a normal life, loss of society, wrongful death, and loss of consortium. Under Illinois law, these elements of damages have important economic consequences bearing on claims even though there is no fixed metric by which the amounts can be assessed. The determination of amounts is left to the jury under the supervision of the judge.[87]

Recognition of the economic component to so-called "non-economic damages" is a common source of confusion about "pain and

87. *See* ILL. PATTERN JURY INSTR.-CIV. 30.04.03, 30.04.04 (2006) (computing damages for increased risk of future harm); ILL. PATTERN JURY INSTR.-CIV. 34.02 (2006) (concerning future damages); 740 ILL. COMP. STAT. 180/1 (2006) (governing damages in wrongful death actions).

suffering."[88] In short, the claim in one report that more than 90 percent of Illinois jury awards are for "non-economic" damages[89] might be true—better data would be needed—but this does not mean that 90 percent of jury awards in medical malpractice cases are for pain and suffering. Indeed, although data are missing for breakdowns of damages in some cases, a very rough estimate of the proportion of the total awards that pain and suffering represented in the cases reported in Table 9 can be obtained by dividing the total of the pain and suffering (column 5) by the total of the jury verdicts (column 2). By this rough calculation "pain and suffering" constitutes only 15 percent of verdicts. Perhaps if the missing data were known and added in, the percentage would be higher, but even if the missing information doubled the figure - an unlikely projection - the percentage would be a far cry from 90 percent.

V. TESTING THE DOCTOR EXODUS CLAIM AGAINST AMA STATISTICS

We noted in the introduction to this Article that a common claim of tort reform proponents is that doctors are leaving Illinois, especially Madison, St. Clair, and Cook counties, because of the "abusive litigation climate." For Madison and St. Clair counties, specific estimates have ranged from 59 doctors to 180 doctors. To test this hypothesis we turned to official statistics of the AMA. *Physician Characteristics and Distribution in the US*, an annual publication of the AMA that provides a number of important statistics about doctors, including county breakdowns by state, some information on certain specialties, and state-by-state comparisons of physician-to-population ratios.

There is a two-year time lag between the date of the publication and the statistics. Thus, for example, the 2005 edition presents data on doctors as of December 31, 2003.[90] Consequently, the data reported in this chapter begin with 1993 and end at 2003. The data cannot speak to changes in the number of Illinois doctors after that period. There are additional qualifications. The first is that our analysis is limited to non-federal "Total Patient Care Physicians." Some physicians are federal employees, such as those associated with military bases, Veterans Administration hospitals, and the Public Health Service. These physicians are not affected by the liability insurance crisis since the United States Government assumes tort

88. For more discussion on this issue, see Vidmar et al., *supra* note 63, at 297–98.

89. Stanek, *supra* note 10.

90. AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS, *supra* note 18.

liability for these providers, and malpractice claims are adjudicated under the Federal Tort Claims Act (which provides for trial by judge alone). Other physicians are employed by insurance carriers or pharmaceutical companies or work in academics only. Some other physicians list themselves as inactive and a few remain unclassified in the AMA statistics.[91] Thus in 2003, Illinois had a total of 37,608 physicians, of whom 30,264 classified themselves as non-federal physicians focused on patient care; although of this number, 3,147 classified themselves as "inactive."[92] Some physicians may only work part-time and others may have limited their practices, e.g., abandoned surgery, certain types of surgery, or stopped delivering babies.[93] The statistics provide some general breakdowns as to how physicians classify their practice, but these are self-designations and do not provide estimates of types of actual patient care. Thus, an obstetrician/gynecologist may not deliver babies as part of his practice or may refer difficult cases to another obstetrician. A surgical specialist may conduct only low-risk surgery and avoid high-risk operations. A physician whose classification is "Family Medicine/General Practitioner" may conduct surgery or deliver babies.

A. Illinois Physicians: 1994-2003

In the AMA's 2003 statistics, 30,264 of the 37,608 private physicians in Illinois were self-classified as patient care physicians.[94] This reflects a 3.88% increase over 2002, and an average yearly increase of 2.15%, though with some clear year-to-year fluctuations over the decade.

Table 10 allows examination of trends in the total number of patient care physicians, patient care physicians per 100,000 persons in

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91. *Id.* at 222.

92. *Id.* at 222, tbl. 3.11.

93. There is evidence that the cost of malpractice insurance may affect the decisions of where to practice, but this research does not address the cause of the malpractice insurance costs. *See* Michelle M. Mello & Carly N. Kelly, *Effects of a Professional Liability Crisis on Residents' Practice Decisions*, 105 OBSTETRICS & GYNECOLOGY 1287, 1293 (2005) (suggesting that "the malpractice environment will have substantial effects on the number of young physicians in high-risk specialties establishing practices in Pennsylvania in the near future"). However, a study by Pamela Robinson et al., *The Impact of Medical Legal Risk on Obstetrician-Gynecologist Supply*, 105 OBSTETRICS & GYNECOLOGY 1296, 1300–01 (2005), found no relationship between the AMA's "Crisis" states and non-crisis states, nor between the American College of Obstetricians and Gynecologists' Red-Alert states and safe states.

94. AM. MED. ASS'N, PHYSICIAN CHARACTERISTICS, *supra* note 18, at 222. The remaining 7,344 doctors were self-designated as engaged in other professional activity (1,772), inactive (3,147), and not classified (2,425). The not classified physicians may or may not be treating physicians and inactive physicians might still carry liability insurance. For purposes of the analyses, we chose the AMA's definition of "Total Patient Care Physicians." *Id.*

Illinois, and patient care physicians per 100,000 persons in the nation as a whole. The final column is the number of licensed practicing physicians in Illinois taken from the Federation of State Medical Boards, a separate data source.[95] These latter data were used as an additional check against the AMA data. This source is compiled independently from the AMA statistics but reports only information for the whole state.

Table 10: Patient Care Physicians in Illinois, Physicians in Relation to Population in Illinois and Nation and Number of Licensed Practicing Physicians: 1994-2003

Year	***Illinois Total Patient Care Physicians***	***Illinois Patient Care Physicians per 100,000 Persons***	***National Patient Care Physicians per 100,000 Persons***	***Total Licensed Practicing Physicians***
2003	30,264	239	235	32,842
2002	29,135	235	234	31,422
2001	29,116	237	235	32,449
2000	28,730	231	230	31,255
1999	27,779	229	224	*
1998	27,630	233	230	34,968
1997	27,733	235	227	29,546
1996	26,758	226	217	28,061
1995	26,054	221	216	28,936
1994	25,020	213	207	27,472

***** This year could not be successfully accessed from the web site

The second column of Table 10 shows a steady increase in the absolute number of Illinois's total patient care physicians. The third column shows that the overall number of treating physicians relative to the population has also increased. The fourth column reports nationwide figures and shows that Illinois is above average in the number of treating physicians relative to population. The final column reports the number of licensed practicing physicians from the Federation of State Medical Boards. The number of licensed doctors nationwide is consistently higher than the AMA estimates. Some doctors hold Illinois licenses that entitle them to practice in the state

95. Federation of State Medical Boards, http://www.fsmb.org (last visited May 31, 2006).

but may not actually practice there and so would not necessarily be captured by the AMA surveys. Regardless, these alternative data are in synchrony with the AMA data: the number of doctors licensed to practice in Illinois, with some yearly fluctuations, has increased since 1994.

Obstetrician-gynecologists and neurosurgeons are frequently discussed as two medical specialties most likely to leave or avoid Illinois because of the litigation climate. Table 11 reports the total number of patient care doctors in these specialties as well as the number of patient care doctors per 100,000 population in Illinois by year from 1994 through 2003.

Table 11: Total Illinois Patient Care Physicians in Obstetrics-Gynecology and Neurosurgery Specialties 1994-2003

Year	***Obstetrics-Gynecology***	***OBG per 100,000 Population***	***Neurological Surgery***	***NS per 100,000 Population***
2003	1814	14.34	212	1.68
2002	1774	13.86	205	1.63
2001	1769	14.12	199	1.59
2000	1796	14.44	209	1.68
1999	1715	14.49	207	1.71
1998	1800	14.91	205	1.70
1997	1785	14.86	208	1.73
1996	1734	14.51	204	1.71
1995	1669	14.04	213	1.79
1994	1547	13.52	191	1.62

With some year-to-year variations, the number of ob-gyns and neurological surgeons per 100,000 persons has remained relatively steady since 1994.

B. Patient Care Physicians: Madison and St. Clair Counties 1993-2003

Table 12 reports the number of physicians in Madison County from 1994 through 2003, with breakdowns for specialties. Table 13 reports the same information for St. Clair County.

Table 12: Non-federal Physicians in Madison County
By Self-Designated Practice Area: 1994-2003

Year	Total Physicians	Total Patient Care	Family/ General Practice	Medical Specialties	Surgical Specialties	Other Specialties	Hospital Based Practice	***Other***	***Inactive***	Not Classified
2003	338	280	39	94	72	50	25	5	44	9
2002	341	286	37	99	72	53	25	6	39	10
2001	341	292	38	100	75	58	21	7	33	9
2000	328	282	37	98	73	58	16	7	28	11
1999	334	279	34	94	77	60	14	8	28	19
1998	332	277	34	90	78	59	16	8	28	2
1997	329	277	30	83	74	58	32	8	32	12
1996	328	281	32	87	78	59	25	8	28	11
1995	318	266	35	78	73	57	23	8	32	12
1994	316	275	37	73	74	64	27	8	29	4

Table 13: Non-federal Physicians in St. Clair County
By Self-Designated Practice Area: 1994-2003

Year	Total Physicians	Total Patient Care	Family/ General Practice	Medical Specialties	Surgical Specialties	Other Specialties	Hospital Based Practice	***Other***	***Inactive***	Not Classified
2003	526	431	72	112	85	78	84	15	60	20
2002	503	402	67	112	81	84	58	19	60	22
2001	494	402	57	116	82	87	60	19	60	13
2000	493	396	56	117	78	86	59	17	59	21
1999	456	356	48	102	82	80	44	19	60	21
1998	432	348	48	100	81	72	47	16	52	16
1997	386	320	33	95	78	72	42	15	48	3
1996	376	312	38	88	74	73	39	15	43	6
1995	354	292	37	87	72	65	31	13	43	6
1994	351	298	40	86	71	65	36	15	34	4

Table 12 shows a slight drop in total patient care physicians in 2002 and 2003 in Madison County compared to 2001. But 2001 appears to be an anomalous year with respect to total number of treating physicians in the sense that instead of a slow rise in the number of physicians by one or two annually, the number jumped by ten. On the other hand, the number of "inactive" physicians increased

steadily so that, in 2003, fully forty physicians reported themselves as inactive.

In contrast to Madison County, Table 13 indicates that St. Clair County has had a steady increase in both total number of physicians and total number of patient care physicians, with a big jump in the number of physicians describing themselves as having a hospital-based practice.

One could ascribe Madison County's drop in total patient care physicians and increase in inactive physicians in 2003 to increased liability insurance premiums. However, the problem with this interpretation is that it is contradicted by the increase in treating doctors and the stable rate of inactive doctors in St. Clair County. Doctors in St. Clair County were presumably exposed to the same rates of liability insurance premiums as those in Madison County. Perhaps, then, the explanation lies in shifting demographics, including the possibility that some doctors have shifted their offices from Madison County to St. Clair County. Perhaps another clue lies in the big jump in hospital-based practice in St. Clair in 2003. The data do not allow conclusions on these hypotheses, but they do invite closer examination and research on such issues. Taken as a whole, however, the data for the two counties combined are not consistent with a sudden decrease in the availability of physicians overall. A simple calculation from data in Tables 12 and 13 shows that in 2003 there were 711 private patient care physicians in the two counties compared to 678 in the year 2000, just before the liability insurance premiums began to increase. Put in percentage terms, in 2003 the number of patient care physicians actually *increased* by 4 percent over 2000.

Changes in the number of physicians in the two counties may have occurred between 2003 and 2005. The available data cannot speak to a sudden exodus, but this seems unlikely. One claim is that 136 physicians left the two counties.[96] Given that there were 678 treating physicians in the combined counties in 2000, that would mean that fully 20 percent of doctors had left. The latest claim that 180 physicians had exited for other states would mean that the number of doctors had diminished by 26.5 percent. Not only do neither of these figures seem probable, there are no other indicators – such as patients desperately seeking unavailable medical treatment – supporting the claim. The explanation between these figures and the claims of tort reform advocates may lie in large part in the distinction between gross loss and net loss. It is possible that a number of doctors

96. The 136 figure is derived from a study by two business school professors at Southern Illinois University, Edwardsville and is critiqued in Vidmar, *supra* note 1, at 80–82.

completing residencies left area hospitals at the end of their terms but were replaced by new residents.

VI. SUMMARY AND CONCLUSIONS

Proponents of medical malpractice tort reform in Illinois have argued that the increase in medical liability insurance premiums, a trend that became increasingly pronounced around the years 2000 and 2001, is directly attributable to increasing claims and increasingly large jury verdicts. The region of Madison and St. Clair counties, in particular, was described by President Bush, the Illinois Chamber of Commerce, and medical societies as a "judicial hellhole" for medical practitioners.[97] The data reported in this Article provide no support for the "hellhole" label. Jury trials and plaintiff verdicts were infrequent, and, since 1992, only two verdicts exceeded a million dollars, one of which was overturned on appeal.

Cook and DuPage counties, which account for almost half of Illinois's population and two thirds of its doctors, experienced no increase in medical malpractice filings between 1994 and 2004. Plaintiff win rates did increase and so did the average jury verdict. These changes may be due to a number of factors that could not be explored from current data. However, the data clearly showed that, in many instances, the final settlement for prevailing plaintiffs was much less that the jury verdict, often matching the amount of the defendant or defendants' liability coverage. Further analysis based on 2001 verdicts showed that a $500,000 cap on pain and suffering would have substantially affected the judgments awarded in only a few cases.

Finally, we examined the claim that doctors were leaving Madison and St. Clair counties in particular and Illinois in general for states with a "less abusive" litigation climate. Using official statistics of the AMA and statistics from an independent source, we found absolutely no support for the claims that the net number of doctors in Illinois has decreased. In fact there has been a slow, sometimes faltering, but steady increase. In particular, the claims that Madison and St. Clair counties have experienced a net loss of between 69 and 180 doctors since the year 2000 is absolutely contradicted by the data. The number of practicing physicians has actually increased by about 4 percent.

A postscript to this Article is that on May 25, 2005, after highly contentious hearings, the Illinois legislature passed Senate Bill 475

97. *See supra* note 5 and accompanying text.

placing a $500,000 cap on the total of all non-economic damages in medical malpractice verdicts. The cap thus includes not only pain and suffering but other elements such as disfigurement, loss of a normal life, consortium, and wrongful death. It is uncertain that the legislation will survive a legal challenge, since prior Illinois case law has stated that these latter elements of damages have economic components. To the extent that the legislative decision was made on claims of tort reform advocates concerning trends in the tort system and an exodus of doctors from Illinois, the bill is based on unsupported empirical foundations.