

# Missouri Lawyers WEEKLY

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**SPECIAL REPORT: TOP VERDICTS & SETTLEMENTS OF 2013**

TOP **V&S** CASES

## TRENDING WEST

Top cases for 2013 include many high-dollar verdicts and settlements from the Kansas City area

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It was a big year in Jackson County. As tracked by Missouri Lawyer's Weekly, five of the 10 biggest settlements and verdicts in 2013 — including the largest settlement, the largest verdict and the largest known settlement for a single individual — occurred in Jackson County Circuit Court. Overall, the Kansas City-centered circuit saw 17 cases valued at \$1 million or up, more than any other single circuit in the state.

Why, you might ask? Well, that's a tough one. "I think it's just

happenstance," said Pat Stueve, the lead lawyer in this year's top case, a \$220 million settlement over the drug Vioxx.

Happenstance, of course, can be the name of the game when tracking Missouri litigation. While Jackson County might have been busy, overall litigation in 2013 was quite restrained.

For the past two years, the annual Top Verdicts & Settlements issue has been dominated by huge cases. In 2011, that included a \$750 million settlement in multidistrict litigation over genetically modified rice, and a \$358.5 million jury verdict against a lead smelter. In 2012 there were two cases valued not with an "M" but a "B": a \$4.7 billion environmental settlement in St. Louis and a \$1

billion verdict in Monsanto's suit against DuPont.

In comparison, 2013's top cases don't approach those figures, and the total number of plaintiffs' wins worth \$1 million or more plummeted. Missouri Lawyers Weekly tracked 91 million-dollar cases in 2012, but that number fell to 74 in 2013 — three fewer than in 2011. The combined value of the top 10 plaintiffs' wins was just \$713.5 million in 2013, compared to more than \$6 billion in 2012 and more than \$1.4 billion in 2011.

Does that mean that the heady days of eye-popping cases are gone for good? Not likely.

With a slightly broader view, 2013 looks less like a downturn than simply a return to normal, and perhaps even an uptick.

The single largest plaintiffs' wins in 2009 and 2010 were just \$89 million and \$60 million, respectively, and the total value of 2013's top 10 cases exceeds the value of the top 10 cases in 2009 and 2010 combined.

**\$2.75 million**

Perhaps the best measure is that of the median plaintiffs' win, which, by focusing on the midpoint value, minimizes the effect that a few enormous cases can have. In 2013, the median value of all plaintiffs' wins of \$1 million or more was \$2.75 million. Yes, that is \$300,000 less than the median case in 2012 (a 10 percent drop in value). But it's above the median result for million dollar cases in 2009, 2010 and 2011, where

the midpoint hovered between \$2.5 million and \$2.6 million.

As a quick scan of 2013's 10 biggest cases shows, settlements — particularly class actions — tend to work their way to the top. The four biggest settlements of the year, in fact, were all class actions, with an average value well north of \$100 million.

“Those damages go up very quickly, of course, when you're dealing with so many people,” said John F. Edgar, of The Edgar Law Firm in Kansas City, who led the seventh-biggest case of 2013.

Edgar's \$25.45 million settlement with AT&T was, ironically enough, an offshoot of the second-ranked case from 2009. In that year, municipalities across the state reached a \$65 million settlement on allegations that the phone company had underpaid taxes on landline phones. But a group of customers filed their own litigation after the phone company passed on the costs of the settlement to them.

That settlement won final approval in late July, but according to court records the parties had reached the deal the previous September, demonstrating that many cases drag on so long that picking the year in which the case ended is a bit of semantic argument. (Missouri Lawyers Weekly tracks cases decided by a judge or jury by the date of verdict. For settlements, the key date is when the judge finally approves or dismisses the case.)

## Vioxx

The Vioxx case, *Plubell v. Merck & Co.*, is also instructive. The suit alleged Merck violated the Missouri Merchandising Practices Act by concealing the anti-inflammatory drug's safety risks. The parties reached — and publically announced — the settlement shortly before the matter was to go to trial in November 2012, but final approval didn't come until March. Stueve, of Stueve Siegel Hanson in Kansas City, noted that the case lasted eight years — not uncommon, given the procedural hurdles that come up in big cases.

“It's not surprising to me that you're going to have certain years where you're just not going to have the quantity of those, just because of the length of time it takes to prosecute them,” he said.

Stueve also said there's a bit of a selection bias to class action settlements, which are



**John F. Edgar, of The Edgar Law Firm in Kansas City, led the seventh-biggest case of 2013.** Submitted photo

almost always approved in open court and publicized. In contrast, many other settlements, whether between individuals suing businesses or businesses suing each other, are confidential.

The other two top settlements in 2013 offer different illustrations of that point. The law firm of Davis, Bethune & Jones in Kansas City obtained a \$22 million settlement in a business dispute but could reveal almost nothing about it. Yet the sixth-largest settlement — the biggest involving an individual who sued a company for personal injuries — was public.

The \$18 million settlement resulted when John Douglas Wixom III was partially crushed between a trailer and a trash compactor at a Deffenbaugh landfill. Wixom's lawyer, Tim Dollar, of Dollar, Burns & Becker in Kansas City, said he favors settlements that aren't confidential.

“We're trying to demonstrate where unsafe practices exist, in order that we might make things safer,” he said. But, he added, it depends on the case. “I can give advice on that subject, but it's ultimately the client's decision.”

Such a case is largely an exception to the rule. Paul Seyferth, of Seyferth, Blumenthal & Harris in Kansas City, does a large amount of commercial defense work. Most of those disputes settle, he said, and “most worth talking about would be confidential.”

Seyferth, however, helped secure the largest verdict in the state last year — a \$161.9 million judgment against a hospital system.

The case stemmed from allegations that the Hospital Corporation of America had failed to properly maintain several formerly not-for-profit hospitals in Kansas City it had purchased in 2003. It's another illustration that a “2013” case can actually stretch out over multiple years: Jackson County Circuit Court Judge John Torrence heard evidence in the case in 2012, entered his order in January, then referred the case to a special master to determine other potential damages. Hearings are scheduled for this summer. Had Torrence's order come out a month earlier, it would have been the third-largest case of 2012.

## Jury verdicts

That case involved a bench trial, but jury verdicts also featured prominently. Juries in rural Missouri continued to prove willing to award large damages in the right circumstances.

A Polk County jury in February assessed \$30 million in punitive damages against a man who defrauded two Illinois lawyers in an investment scheme. The defendant, Eric Schmickle, had previously been ordered to pay nearly \$99,000 in actual damages and is currently in prison on federal wire fraud charges.

In November, a Laclede County jury awarded \$28 million to Philip Berger, an employee of a company in Lebanon that makes air conditioner compressors. Berger alleged lung injuries from his work. The award included \$23 million in punitive damages against Copeland Scroll Compressors Corp. The company has vowed to fight the verdict.

In comparison, just one of the top 10 jury verdicts occurred in an urban district. In August, a St. Louis jury awarded \$25 million to a man who was beaten by a group of people outside a Jack in the Box restaurant. The verdict was reduced to \$20.5 million under comparative fault.

Of the 74 plaintiff wins over \$1 million in 2013, 28 were awarded by juries — the same number as in 2012.

“Companies are probably getting smarter about settling bad cases, rather than holding their noses and hoping for the best,” Seyferth said.

## Bus crash

Not that such a strategy always fails. The single largest defense verdict in 2013 stemmed from a fatal bus crash in Liberty. Two people died and several children were injured when a bus ran a red light in 2005. The suit on behalf of one of the decedents and two children made a pre-trial demand of \$28 million in damages from three companies that made parts of the bus' brake system. A Clay County jury found in favor of the defendants in March. The case is now on appeal.

Defense wins are ranked by subtracting the verdict from the last demand.

Even the good defense bets can be a close call. In April, a St. Louis County jury once again ruled that a hospital was not responsible for a doctor's career-ending injury. Dr. J. Alexander Marchosky slipped on spilled fluid and fell at St. Luke's Hospital, injuring his shoulder.

The case had gone to trial in 2010, resulting in the largest defense verdict that year, but Marchosky won a new trial on appeal. The second jury, however, also

judged the doctor's injury as simply an accident. The plaintiff had sought \$13 million before trial.

The hospital's attorney, Tim Gearin, of Armstrong Teasdale in St. Louis, said that even with the first trial's result in mind, the second trial was "unnerving." No matter how long the case has gone on, he said, a case tried in 2013 will have a jury affected by the events, and the economy, of 2013.

"Middle-class individuals and people in general are struggling," Gearin said. "That has to be factored in." **MO**

## TOP PLAINTIFF WINS IN 2013

Rank	Result/value	Type	Case category	Case name	Venue	Winning Attorneys	Firm	Opposing counsel	Firm
1	<b>\$220</b> million	S	Missouri Merchandising Practices Act	<b>Plubell v. Merck &amp; Co.</b>	Jackson County (Independence)	Patrick Stueve, Todd Hilton, David Hickey, Jack McInnes; Don Downing, Gretchen Garrison; Thomas Neill	Stueve Siegel Hanson; Gray, Ritter & Graham	Dan Ball; John Beisner	Bryan Cave; Skadden, Arps, Slate, Meagher & Flom
2	<b>\$161.9</b> million	V	Contracts	<b>Health Care Foundation of Greater Kansas City v. Hospital Corporation of America</b>	Jackson County	Paul D. Seyferth, Michael L. Blumenthal; Harold Lowenstein	Seyferth, Blumenthal & Harris; Armstrong Teasdale	Thomas G. Kokoruda, Robert Henderson, Cathy Dean, Lauren Tucker McCubbin	Polsinelli
3	<b>\$152.6</b> million	S	Contracts, class action	<b>MBA Surety Agency Inc. v. AT&amp;T Mobility Inc.</b>	St. Louis	Edward D. Robertson Jr., Mary D. Winter	Bartimus, Frickeon, Robertson & Gorny	Roman P. Wuller	Thompson Coburn
4	<b>\$30.5</b> million	S, C	Business/commercial	<b>Vantage Credit Union v. Trimble</b>	St. Charles County	Thomas Martin, Joseph Bant; Timothy Bosslet	Lewis, Rice & Fingersh; Kramer & Frank	Martin Daesch, Jesse Rochman	Sandberg Phoenix & von Gontard
5	<b>\$30</b> million	V	Business/commercial	<b>Gori v. Schmickle</b>	Polk County	Joseph J. Trad, W. Elliot Benoist Jr.	Lewis, Rice & Fingersh	None	
6	<b>\$28</b> million	V	Personal injury	<b>Berger v. Copeland Corp.</b>	Laclede County	Kenneth B. McClain, Andrew K. Smith, Lauren E. McClain, Scott Britton-Mehlisch	Humphrey, Farrington & McClain	Joseph C. Orlet, Adam Miller	Husch Blackwell
7	<b>\$25.4</b> million	S	Business/commercial	<b>Barry Road Associates Inc. v. Southwestern Bell Telephone Co.</b>	Jackson County	John F. Edgar, Anthony E. LaCroix	Edgar Law Firm	Stephen B. Higgins, Amanda J. Hettinger, Kimberly M. Bousquet	Thompson Coburn
8	<b>\$25</b> million	V	Premises liability	<b>Aziz v. Jack in the Box</b>	St. Louis	John D. Anderson, Andrew S. Martin	Anderson & Associates	Richard A. Day; Randy P. Scheer, Jacob Sappington	Hennessy & Roach; Sanders Warren & Russell
9	<b>\$22</b> million	S	Business/commercial	<b>Confidential v. Confidential</b>	Jackson County	Scott S. Bethune, Grant L. Davis, Wes Shumate, David Harris	Davis, Bethune & Jones	Confidential	
10	<b>\$18</b> million	S	Personal injury	<b>Wixom v. Deffenbaugh</b>	Jackson County	Tim Dollar	Dollar, Burns & Becker	Richard Modin	Dougherty, Modin, Holloway & Kardis