

## Claims & Litigation Update

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# 2023 Illinois Litigation Trends

- Increased litigation activity from covid slowdown.
- Many cases that were delayed or dormant in 2020-2022 were settled or taken to trial in 2023.
- Some plaintiff-friendly rulings by the Courts.
- Severity continues to be a trend.
- Plaintiff's bar is asking for larger dollar amounts at trial. No longer a fear of offending juries.
- More defense verdicts than plaintiff verdicts but several large verdicts.
- Increased defense collaboration to discuss strategy in the current environment.

# Large Settlements – IPT 2023

- **Top Ten Claims for 2023 – \$24,300,000**
- **7 claims settled at or above \$1 million**
  - Birth Injury Case \$9.7M
  - Med Dosing/Stevens-Johnson Syndrome \$6.25M
  - Spinal Cord Injury During Epidural Injection \$2.4M
  - Spinal Cord Injury During Surgery \$1.35M
  - Death following Gastric Bypass \$1.25M
  - Death following multiple outpatient visits \$1M
  - Death following narcotic medication overdose \$1M
- **Increase in Top 10 IPT settlement amounts compared to prior years**



# Large Settlements - IRMS

- **Increase in Top 10 IRMS settlement amounts in 2023 compared to prior years**
- **Eight figure settlements**
- **Largest Settlements - Obstetrics, Sexual Misconduct, Failure to Diagnose Cancer**
- **25 claims settled above \$1 million**
  - 7 Surgery Related
  - 5 ED – Failure to Diagnose/Admit/Consult
  - 4 Obstetrics/Delivery
  - 3 Nursing – Failure to Monitor/Treat
  - 1 Failure to Diagnose – Radiology, Failure to Diagnose – Physician Office, Sexual Misconduct, Medical Management, Mental Health/Suicide, Failure to Timely Treat

# IPT Top 5 Cause Codes

Top Five Cause Codes by Count					
Claims Set Up in 2023		Claims Set Up in 2022		Claims Set Up in 2021	
Falls	38	Negligence in patient care	35	Negligence in patient care	40
Negligence in patient care	33	Falls	32	Covid	33
Surgical/Postoperative complication	15	Covid	15	Falls	23
Failure to diagnose-ED	14	Failure to diagnose-ED	12	Postoperative complication	13
Failure to Diagnose	10	Deposition assist	11	Emergency medicine cause other	12

# IRMS Top 5 Cause Codes

IRMS Top Five Cause Codes by Count			
2023		2022	2021
1.	<b>OB Cause Other (118)</b>	OB Cause Other (86)	OB Cause Other (76)
2.	<b>Falls (79)</b>	Postoperative Complication (65)	Postoperative Complication (69)
3.	<b>Postoperative Complication (72)</b>	Negligence in Patient Care (61)	Negligence in Patient Care (60)
4.	<b>Surgery Cause Other (72)</b>	Surgery Cause Other (47)	Failure to Properly Monitor (56)
5.	<b>Failure to Diagnose/Delay Treatment – ED (68)</b>	Falls (44)	Surgery Cause Other (50)

# Update - Verdicts

## 2023 Verdicts

- Based on the jury verdict reporter, more defense verdicts than plaintiff verdicts in med mal cases in all counties (including Cook).
- Many six and seven figure jury verdicts for plaintiffs.
- 8 Nuclear verdicts (\$10M+) in Illinois in 2023
  - Largely in Cook County
  - Ranging from \$10M - \$55M
  - Verdict against MAIC insureds and post-trial settlement (Cook County)
  - Recent \$75M verdict in Cook County (2024)
    - Birth injury case
    - Reported high-low agreement

# Update - Verdicts



## Severity Increase Factors

- Anchoring
- Admissions from Depositions
- Social Inflation/Social Media
- Tactics to anger jury/responsibility
- Venue
- Non-Economic Damages

## Defense Considerations

- Witness prep, experts and action plan
- Strategy - Motion for Summary Judgment, Mediation or Trial
- Risk Mitigation
- Motions *in Limine*
- High-Low Agreements
- Preserving appealable issues



# Case Law Update – Wilcox, 2024 IL App (1st) 230355

## Facts

- Paraplegic patient with abdominal pump implanted that administers antispasmodic drug baclofen into the the intrathecal space of his spinal canal by catheter (replacement needed every 5-10 years due to battery).
- Without the medication, patient at risk for baclofen withdrawal.
- July 28 - Patient's physician determines pump is not working and needs to be replaced.
- Admits to hospital to monitor for withdrawal symptoms.
- Neurosurgeon contacted to perform replacement procedure early the following week.
- Hospital allegedly advised 2000mcg concentration of baclofen necessary for pump by fax and call.
- Multiple physicians and nurses provide care over the weekend.
- Use of hospital text system where some physicians asked nurses to send a message requesting consults.
- Family complaints about progressing symptoms and withdrawal symptoms.
- Pain, mental status changes, muscle spasticity, elevated temperature, heart rate and blood pressure.
- July 31 – added to surgery schedule that morning for afternoon procedure.
- 1:00pm – surgeon learned that pump was not in OR. Arrived 30 minutes later.
- 1:30 pm –surgeon learned that 2000mcg baclofen was not in OR. Arrived at 5pm from another hospital.
- 3:00 pm – code event, patient stabilized but irreversible brain damage and patient passed two weeks later.

# Case Law Update

- Expert testimony that the hospital was directly negligent and committed institutional negligence.
- Trial - Jury Instruction – Was the hospital negligent in the following respects?
  - Allowed a systems failure to exist resulting in the delay of the patient receiving his intrathecal baclofen.
  - Failed to ensure effective communication among the patient's healthcare providers resulting in the delay of the patient receiving his intrathecal baclofen.
- Hospital argued that plaintiff's arguments were agency claims masked as institutional negligence claims and providers' medical judgment was at issue as opposed to any system or administrative issue.
- Verdict in favor of Plaintiff in the amount of \$42.4M on both vicarious liability and institutional negligence theories.
- Hospital appealed on multiple issues including institutional negligence allegations being improper and PJI.

# Case Law Update

## 1<sup>st</sup> District Appellate Court:

- Agreed with hospital that the issues as presented by plaintiff on institutional negligence were broad as to communication between physicians and nurses.
- However, Court felt that there was sufficient evidence to move forward on institutional negligence theory given the facts based on the *method* of communication by providers.
- Found hospital's general policies were violated including one regarding family involvement in care.
- “Facts of this case demonstrated that it was the responsibility of the hospital as an institution to procure the equipment and medication needed by a surgeon in the course of a particular surgery.”
- 1<sup>st</sup> Dist. affirmed trial court rulings.
- Likely Petition for Leave to Appeal to IL Supreme Court.

# Pre-Judgment Interest - Recap

## **735 ILCS 5/2-1303(c):**

- 6% prejudgment interest is applied to plaintiff verdicts
- Any cases pending prior to July 2021 - accrues starting 7/1/2021
- New cases – accrues starting on date of lawsuit filing
- Maximum accrual 5 years
- Settlement offer at or before 12 months affects the computation – PJI applies if verdict is higher than offer. Only computed on the difference between offer and verdict
- Does not apply to governmental entities

# Pre-Judgment Interest - Appeals

## Challenges

- Several challenges made to PJI including violating due process, equal protection, separation of powers, the right to trial by jury and the inherent power of the judiciary.

## Appeals

- In *Cotton* appeal, 1<sup>st</sup> Dist upholds PJI noting that PJI is constitutional, within legislative power and referencing the delay in compensation for the tort victim/injured party.
- In *Overstreet* appeal, 4<sup>th</sup> Dist upholds PJI.
- The Illinois Supreme Court has denied the petition to hear the *Cotton* appeal.
- In recent *Wilcox* appeal, 1<sup>st</sup> Dist. upholds PJI. Potential petition for leave to appeal to IL Supreme Court.