

Outside of Phila., Are Pa.'s Counties Becoming More Plaintiff-Friendly?

P.J. D'Annunzio, *The Legal Intelligencer*, February 11, 2014

Several attorneys say they have observed a paradigm shift taking place in the state's counties outside of Philadelphia, indicating that some historically defense-friendly regions are becoming more receptive to medical malpractice and personal injury cases brought by plaintiffs.

The shift, some say, started within the last two to five years and is due in large part to changing political affiliations, demographics, and attitudes toward hospitals, insurance companies and corporations.

Matthew Casey of Ross Feller Casey said that in addition to changes in the counties, increased access to information has prompted a greater awareness of medical negligence, for example.

"There are demographic shifts occurring and have been for some time in northeastern PA, the Lehigh Valley, and the Philadelphia suburbs, but there's also universal access to information through social media and the Internet that sheds light into previously less-well-known parts of our society. There's a growing recognition, for example, that medical errors are a serious problem and in some instances bordering on an epidemic," Casey said.

He added that because there are fewer filings of suits with questionable liability and more viable cases being referred to attorneys with specific practice areas, the cases that appear before county juries have higher success rates.

"The net result is better cases being better funded, handled by more experienced practitioners," Casey said.

Northampton County-based attorney Kelly Clifford Rambo of Cohen, Feeley, Altemose & Rambo noted that there has been less outright antagonism toward plaintiffs in the counties.

"There was a period of time it seemed, anecdotally, that there was no chance of winning a case no matter how meritorious it was," Rambo said. "But in the last five years I've seen a change." Pittsburgh-based attorney Robert Bracken, who won a \$32.8 million verdict in a Chester County birth-injury case in January, said that the severity of the injuries brought forth in a case plays a part in the receptiveness of the jury pool.

"I think that in any county, if you have a good case with real injuries, jurors tend to be fair. That's the most important thing," Bracken said. "A more conservative jury might give a lesser number, but they'll be fair. They'll be more receptive than if you come in with some soft tissue, minimal injury case."

Thomas R. Kline of Kline & Specter also stressed the importance of case selection, noting that while the counties are becoming more plaintiff-friendly, there is still a smaller margin of error for a plaintiffs attorney in those regions than in Philadelphia.

"In our suburban counties, which I believe is mirrored nationwide, the first and foremost requirement is case selection. Marginal cases with large damages still will not succeed. Strong cases with strong damages will succeed," Kline said.

While a careful examination of cases is still crucial for a plaintiffs attorney in deciding to commence action in the counties, Rambo said that she has noticed an increased willingness on behalf of jurors to listen to the facts of a case.

Rambo likened the current shift to the swinging of a pendulum in that jurors once felt greater sympathy toward doctors and hospitals as they heard reports that medical professionals were leaving Pennsylvania, but are now swinging back to the center as they become more receptive to the facts and liability put forth in a case.

Lancaster County-based personal injury lawyer Michael McDonald opined that the shift hasn't been a drastic, overnight one, and it is partially the result of increased class-consciousness among jurors and a sensitivity to tough economic times shared by plaintiffs.

McDonald said that county juries are more receptive to personal injury cases and the medical expenses a plaintiff incurs.

"People are starting to get a little bit more of a collective consciousness that they're in this together," he said. "The economy factors into it, that we're all in the same boat."

McDonald added that jurors tend to be less receptive to public relations efforts on behalf of corporations and insurers claiming that plaintiffs awards contribute to negative societal effects.

Companies try to "convince the individual that any award is going to reflect an economic detriment to society," McDonald said. "I think that campaign is receding somewhat with jurors becoming more educated as to that dynamic."

Defense attorney Gary Samms of Obermayer Rebmann Maxwell & Hippel said that the shift can be attributed to the attitudes of younger jurors.

"Younger people today don't have the same reverence for physicians" that persons in previous generations did, Samms said, adding that "as a consequence ... physicians have to prove their case more so than the plaintiffs."

Kline also indicated that jurors now have less sympathy for health care defendants than in previous years.

"There is less penetration of the notion among the jury pools that physicians and health care providers are under siege and are vulnerable to a jury verdict," Kline said. "There's been a shift to a more neutral ground where there is far less sensitivity among educated, affluent jurors to that notion

and, in fact, more of a feeling that there's greed and waste and overreaching in the health care system generally."

Stephen A. Ryan, chairman of Marshall Dennehey Warner Coleman & Goggin's medical device and pharmaceutical liability practice group and the firm's birth-injury litigation practice group echoed Samms' views on a younger jury's perception of medical defendants and noted that rural counties are experiencing demographic shifts in terms of age and profession.

"In Lehigh County, what used to be acres and acres of farmland could now be an online distribution center with a bunch of young hipsters staring at computer screens. Instead of seeing a farmer come in with overalls, you get someone with a Paul Bunyan beard and Birkenstocks."

"By and large I think young folks are optimistic and hopeful and are perhaps a little more gullible than somebody who has been around," Ryan added. "I think they're more egalitarian and more inclined to be anti-institution and anti-big business."

Ryan also said that despite not seeing a major shift, he's seen more cases with stronger-liability arguments being tried by more skillful plaintiffs attorneys replacing the weaker cases.

"I think you're seeing counsel who are used to trying certain cases ... you're seeing more cases referred to attorneys who specialize. The upside is that those attorneys screen and make sure the cases have a decent shot of succeeding," Ryan said.

In terms of jury awards, Kline said he noticed a predilection of suburban juries in not awarding high non-economic damages.

"If there's one subtle trend, it's that juries generally have tended to favor the provable economic damages with some particularity, meaning that in some cases, they've literally awarded the damages down to the dime," Kline said. "They have been less generous in non-economic damages awards, especially when the economic damages have been very large."