


## THE LIST

# Car crashes, medical malpractice & chemical contamination

## CENTRAL OHIO'S BIGGEST JURY AWARDS OF 2017

BY LAURA NEWPOFF



Attorney Brian G. Miller was told a Union County jury would never return a verdict close to what it did - \$34 million.

The largest jury award in Ohio last year came out of Union County in a negligence case involving a former nurse who struck a utility pole, became trapped in her vehicle and suffered brain damage. The \$34.3 million verdict is the largest recorded by *Columbus Business First* dating back to 2007.

The Lisa M. Jones, et al. v. FirstEnergy Corp., et al. case stemmed from a 2012 crash near Marion. Jones' crash downed a power line and medical personnel couldn't get to her and her son until the utility cleared it from the scene.

According to the Brian G. Miller Co. LPA law firm in Columbus, emergency medical personnel and a MedFlight

helicopter quickly arrived at the site but had to stand by helplessly as they waited nearly an hour for an Ohio Edison worker to arrive.

Miller and Barbara Luke of Luke Lawyers in Marysville were Jones' attorneys.

Ohio Edison is part of Akron-based FirstEnergy Corp., which serves 6 million customers in the Midwest and mid-Atlantic regions.

Miller and Luke argued that the delay by the power company caused Jones to suffer a significant brain injury. She went into cardiac arrest and lost oxygen to her brain before Ohio State University's Wexner Medical Center personnel could operate to repair her bleeding spleen. The permanent damage left her partial-

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**1** on the List  
**\$34.3M**  
verdict

ly paralyzed, unable to work or care for herself and her son, and requiring regular assistance.

In Miller's closing remarks to the jury, he argued that systemic deficiencies within the utility's call management processes led to a failure to fulfill a duty to ensure public safety. Nine days of witness testimony included recordings of FirstEnergy call center operators failing to identify and locate their own pole after being alerted by the 911 dispatcher.

The jury found that Jones was 20 percent responsible for the injury and that FirstEnergy/Ohio Edison was 80 percent responsible.

Defense attorneys argued that substandard care by hospital personnel caused the brain injury, but the jury rejected that position and no liability was attributed to the medical center.

The jury award covered future medical costs and past and future lost income and services. Jones also was awarded non-economic damages (\$20 million

of the award) and her son was awarded money for "loss of consortium" (\$1 million of the award).

It has been reported that the award is the largest ever in Union County, which is known for conservative juries.

"We put a lot of thought into how to ask for an amount of money of this magnitude," Miller said. "In my closing, I went through the computations associated with the economic damages. Then, I challenged the jury, without making a specific request, to collectively determine a reasonable and appropriate figure for non-economic damages."

He laid the groundwork for the non-economic damages part of the case during jury selection.

"I was told by many people a Union County jury would never return a verdict anywhere in the realm of what they did in this case," he said. "Some people don't believe in non-economic damages for things like pain and suffering. So, we asked jurors about that during selection."

Jurors were asked if there were certain figures – large figures – above which they weren't comfortable.

"We told them we expected to stand in front of them at the end of the case and ask for more money than probably any one of them would ever see," Miller said. "This gave context to what we thought

might be appropriate if the evidence supported Lisa's claims and her damages. Ultimately, the jury agreed that they did."

First Energy did not appeal the verdict, but it did settle with Jones for an undisclosed amount.



**3** on the List  
**\$12.5M**  
verdict

### A verdict decades in the making

Motor vehicle crashes and breach of contract cases made up a good chunk of the biggest jury awards list. Other cases included a plaintiff who was awarded \$310,000 after being fired from the Ohio Attorney General's Office in a retaliation case and a Canton golf course that was successfully sued after a golfer fell into a drainage ditch.

One of the lawsuits conjures up memories of the movie *Erin Brockovich*, which was based on the true story of an energy corporation contaminating water and causing nearby residents to become gravely ill.

Kenneth Vigneron Sr. v. E.I. DuPont

de Nemours and Co. involved the company's dumping of chemical waste from its West Virginia Teflon manufacturing plant into the Ohio River, which contaminated local drinking water supplies.

His wasn't the only lawsuit filed over the contamination. About 3,500 individual cases were consolidated before Chief Judge Edmund Sargus in the U.S. District Court for the Southern District of Ohio as part of multi-district litigation.

Vigneron was the third plaintiff to reach a full jury verdict against the company. His lawsuit was possible because a C8 science panel in West Virginia tied to prior litigation had found the chemical could conclusively be linked to six diseases, including testicular cancer.

C8 is what DuPont called PFOA, or perfluorooctanoic acid.

Vigneron, of southeastern Ohio, had been exposed to the water and the chemicals and developed testicular cancer. He had to have a testicle removed and endured a decade of cancer surveillance, *Products Liability Law Daily* reported.

A jury awarded him \$12.5 million – \$2 million stemming from his negligence claim and \$10.5 million in punitive damages.

Vigneron's jury awards in total were significantly larger than the two before

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# A jury found negligence caused cancer patient's death

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Attorney  
David Butler  
of Taft  
Stettinius &  
Hollister LLP

his. David Butler, partner-in-charge of Taft Stettinius & Hollister LLP's Columbus office, who was part of the team representing Vigneron, said he believed the case helped lead to the settlement of thousands of other cases because the jury awards were becoming increasingly punitive.

In 2017, DuPont Co. and Chemours Co. agreed to pay \$671 million to resolve thousands of cases related to C8.

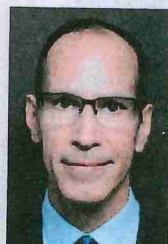
"The Vigneron case put a lot of pressure to get the 3,500 cases settled," Butler said. "The high award that was achieved was a catalyst toward getting the entire inventory of cases settled."

Taft Stettinius' involvement in the DuPont case started in the 1980s when one of its corporate attorneys, Rob Bilott, made a life-changing decision to help a West Virginia cattle farmer whose cows were dying because the chemical was being pumped onto his property. The story has received national attention, including a feature in *The New York Times Magazine*.

DuPont spun off its Chemours business in 2015, in part to shed potential cancer liabilities caused by decades' worth of Teflon manufacturing waste, Law360 reported.



5 on the List  
**\$5.2M**  
verdict



Attorney John  
Rinehardt of  
Rinehardt  
Law Firm

## Fatal mistake

Another big verdict came from a medical malpractice case tried in Franklin County. Represented by John Rinehardt and Melanie Fahey of Rinehardt Law Firm in Columbus, the estate of David Robinson was awarded \$5.2 million from American Health Network.

The case centered on a physician assistant accused of failing to perform proper diagnostic tests when the 35-year-old man complained of blood in his stool. That resulted in an eight-month delay in the diagnosis of rectal cancer, the law firm said. Once discovered, the disease had metastasized and the husband and father of three young children died less than a year later.

The physician assistant denied liability.

After a seven-day trial, a unanimous eight-person jury found that the treatment fell below the standard of care and that the physician assistant's negligence was a cause of Robinson's death.

"When we show up (at the doctor's office), we expect that the steps that are necessary are going to be followed. When that doesn't happen ... it's going to have dire consequences," Rinehardt said. "The evidence showed the steps to determine the likely source of complaints and symptoms were not followed. He lost his

chance to beat a cancer that if caught early is very survivable."

Rinehardt described the jury as "thoughtful and deliberate." All eight jurors had a college education and four had graduate degrees.

"He had a long life ahead of him had he been diagnosed," Rinehardt said. "He was instrumental in the family business, had a lot to offer his family and community. The jury was very attuned to the evidence."

While new research has found that medical malpractice claims are on the decline because of caps related to tort reform, cases involving wrongful death result in jury awards based on unique circumstances, such as the age of the victim.

The \$5.2 million was awarded to make up for the harms and losses caused. The verdict included medical expenses, lost income, mental anguish and loss of society for his wife and family.

*Laura Newpoff is a freelance writer.*