

# Fieger's wins lose luster in appeals

## Recent cases show 3 awards lessened or tossed by judges

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By now, the sequence of events has become ritualistic.

Tragedy (or reasonable facsimile thereof) strikes in southeast Michigan. Aggrieved party joins forces with Geoffrey Fieger, demands redress. Jury awards millions.

It happened again last week, when the family of a Detroit man shot to death by an off-duty police officer was on the receiving end of a \$6-million verdict.

You might call it just another day at the office for Michigan's most-famous lawyer, a man who apparently can do no wrong in the courtroom.

You might also be missing something.

Juries don't have the last word. And Fieger's record with those who do -- Michigan judges -- is less impressive.

In the last two years, Fieger and his clients have watched as judges, acting on appeal or post-trial motion, erased more than \$55 million in jury verdicts.

Roughly a third of those verdicts would have been Fieger's income.

While not quite a ritual, this pattern of post-trial reversal of fortune is also becoming familiar, at least to those in legal circles.

In the months to come, it also may reach the attention of the public, if the pattern holds as appellate courts examine Fieger verdicts totaling an estimated \$50 million to \$100 million now pending before them. Among those cases is \$25 million awarded in the infamous Jenny Jones talk-show case and \$20 million to a woman who was sexually harassed at a Chrysler plant.

"He obviously has great magic with juries. He gets more big-dollar verdicts than anyone I know," said John Jacobs, a Southfield attorney and regular Fieger opponent on appeal.

"But he doesn't hold up in the quiet half of the lawsuit. And without winning the appeal, you haven't won the lawsuit."

Even Fieger acknowledges that the proceeds from his trial victories are in peril.

"There is no sanctity for jury verdicts in favor of plaintiffs in Michigan, especially mine," the Southfield-based lawyer said last week. "The appeals courts hold them in utter contempt."

The former Democratic candidate for governor also has a ready explanation -- a politically motivated vendetta to punish him by Republicans and insurance companies.

Salvatore Badalamenti, whose \$15 million medical malpractice award against Beaumont

Hospital was wiped out by the appeals court, said he agreed with Fieger that the reversal was "political, a belief that we shouldn't have medical malpractice lawsuits."

He said he doesn't blame Fieger at all.

But Jacobs and other lawyers familiar with his cases said Fieger's failure to hang onto the jury awards is often due to the same tactics that have made him so successful at trial.

### **Attacks work, at first**

Before a jury, Fieger frequently spends as much time excoriating the defendant -- say, a corporation or public institution -- as huge, uncaring and greedy, as he does focusing on evidence, said Detroit lawyer Barbara Erard.

Erard was part of an appellate defense team that removed a \$15-million medical malpractice verdict from the pockets of Fieger and his client in 1999.

He bullies and badgers witnesses, Erard said.

"He attacks" the defendant "as callous and indifferent ...accuses them of conspiracy, collusion and hiding evidence," she said. "If you convince the jury that that's true, the real evidence becomes suspect and they stop inspecting it."

In theory, Fieger shouldn't be able to get away with such tactics. Michigan law doesn't permit punitive damages, so implying that a defendant should be punished is supposed to be out of bounds.

But, Jacobs said, trial court judges are sometimes "overwhelmed by Geoffrey's theatrics."

In the arid, legalistic atmosphere of an appeal, good theater is less persuasive. In fact, Fieger has been repeatedly admonished by appellate courts for abusive trial tactics.

An appeals court panel in the case defended by Erard noted that Fieger "completely tainted the proceedings by his misconduct."

Another appellate court, before striking down a \$13-million wrongful-death verdict in February 2000, said Fieger engaged in "inappropriate hyperbole," improperly belittled witnesses and inexcusably attacked defense lawyers.

Fieger said those admonitions were groundless, an attempt to mask the "results-oriented ...political agenda" of a conservative, pro-defendant judiciary. He said he has no plans to amend his conduct. Nor does he think he should.

"Trials are battles," Fieger said. Intimidating witnesses "is what trial attorneys do," he said.

### **Over the line?**

But even some of Fieger's allies in the trial bar suggest he can be his own worst enemy.

"There's no question he is much more outspoken in the courtroom than other attorneys," said Carol McNeilage, a Southfield lawyer and past president of the Michigan Trial Lawyers Association.

"And there's no question that it sometimes backfires."

While McNeilage said she shares Fieger's concern that Michigan appellate courts have become increasingly hostile to large jury verdicts, she said Fieger doesn't help himself or his clients by launching profane, personal attacks on appellate judges, as he did on his canceled WXYT-AM radio show after losing a \$15-million verdict in 1999.

"If you call a judge a jerk, you run the risk ...that it may affect outcomes," she said.

Fieger rejects that notion as well.

The standards by which Michigan appellate courts measure his conduct stand in stark contrast to those used in criminal cases, he said. Prosecutors, who represent the plaintiff in criminal trials, routinely suggest that witnesses are lying or that juries should act out of civic duty by punishing the accused, Fieger said.

But those tactics almost never result in a guilty verdict being overturned, he said.

### **Fighting all the way**

Neither Fieger's run of post-trial bad luck nor his perception that Michigan's appellate judiciary has it in for him appears to have affected his willingness to do battle in that forum, however.

The Free Press examined more than 60 cases decided by the state Court of Appeals during the last five years in which Fieger represented one of the parties. The overwhelming majority were on matters other than the fate of a large verdict, and Fieger won as often as he lost.

Although most of those victories came on pretrial motions, he hasn't been bashful about seeking justice at the appellate level. In one case, Fieger filed three separate appeals, attempting to recoup \$25,000 from another lawyer who had been cocounsel in a medical malpractice case that settled. He didn't get it, though the other lawyer said a fourth appeal is possible.

Nor did it appear that appellate judges Fieger often accuses of malice toward him -- those who came out of the Republican Party -- are markedly more likely to rule against him than the rest of the bench. In the cases reviewed by the Free Press, Fieger won appeals before three-judge panels made up entirely of Republicans, and lost before three Democrats.

Jacobs points out that a majority of the appeals court panel in the reversal of the 2000 wrongful-death verdict was made up of judges generally viewed as liberals -- former Detroit Mayor Roman S. Gribbs and Judge Mark Cavanagh. The Flint trial court judge, Geoffrey Neithercut, who lopped \$27 million off a \$30-million Fieger verdict this year, is anything but a conservative, Jacobs said.

In Jacobs' view, the reduction of huge and legally unsupportable jury verdicts is a signal that "the system works."

To Fieger, the message is more sinister.

"It's not a wild, paranoid delusion. It's a conspiracy to get me."