

This handout relates to a suggestion to collect additional information related to trial activity.

The E-mail from Kathryn Zeiler refers to a January 8, 2009 memo which is available at http://www.naic.org/documents/committees_c_sif_090120_comments_zeiler_et_al.pdf.

The first section is to change Part A of the June 8 draft to add subsections L and M to Section 7 - Reporting of Specific Data Elements.

The data fields to be captured follows.

Bieniek, Joe

From: Kathryn Zeiler [zeiler@law.georgetown.edu]
Sent: Friday, June 05, 2009 8:11 AM
To: Bieniek, Joe
Cc: Bernard Black; Charlie Silver; David Hyman; William Sage
Subject: Proposal for collection of med mal trial information
Attachments: Proposed Trial Data Fields for NAIC Model Law--final version--060509.xlsx

Hi Joe,

The attached proposal relates to our memo dated January 8, 2009 (Part A, proposed new sections 8 and 9). We put our heads together and, based on our work with the TX data, came up with what we believe is the ideal set of questions to get the most useful data on trials. As you know, this information will be extremely helpful for studying medical malpractice trials.

Thank you again for allowing us to participate in this project. We look forward to discussing this proposal on one of the next calls. Please let us know if you have questions in the meantime.

Take care, Kathy

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Section 7 Reporting of Specific Data Elements

L. Trials

- (1) If a claim results in the start of a trial, the reporting entity must report:
 - (a) Whether the trial was by a judge or judge and jury;
 - (b) The number of plaintiffs and the number of defendants who started the trial;
 - (c) Whether the trial resulted in a verdict.
- (2) If the trial resulted in a verdict, the reporting entity must report:
 - (a) The number of plaintiffs and the number of defendants in the trial at the end;
 - (b) Whether the plaintiff(s) prevailed against the reporting entity's insured, and whether the plaintiff(s) prevailed against all defendants, some defendants, but not all, or against no defendants;
 - (c) If there was a verdict against the reporting entity's insured, whether the insured appealed;
 - (d) If there was a verdict for the reporting entity's insured, whether the plaintiff appealed;
 - (e) If the plaintiff prevailed, at least in part, the reporting entity must report
 - (i) The total verdict against all defendants (this amount should reflect the jury award without applying any damages caps, remittiturs, additurs, interest, or other adjustments);
 - (ii) A breakdown of the total verdict into the following damages categories: economic compensatory damages, non-economics compensatory damages, and punitive damages;
 - (iii) The amount, if any, of pre-judgment interest awarded by the court
 - (iv) Whether the court reduced damages, pre-judgment interest, or both, by applying a damages cap, and the total reduction due to the damages cap
 - (v) The type(s) of damages applied including caps on total compensatory damages, economic compensatory damages, non-economic compensatory damages, punitive damages, pre-judgment interest and any others;
 - (vi) Whether the court issued a remittitur or additur, and the amounts of each;
 - (vii) The total judgment awarded by the court, including pre-judgment interest, after any caps, additurs, or remittitur

- (f) Whether the plaintiff was found comparatively or contributorily negligent, and, if so, the reporting entity must report the total amount for which the defendants were held liable, after taking plaintiff negligence into account;
- (g) If the verdict is against multiple defendants, whether the reporting entity's insured was held jointly and severally liable or proportionately liable;
- (h) If there was more than one liable defendant, and the jury assigned percentage fault to different defendants, the percentage for which the insured is responsible.

M. Claimant Demands

- (1) The reporting entity must report the final demand by the claimant or attorney for the claimant. The amount should reflect the final demand, not the final settlement amount, which might differ.
- (2) The reporting entity must report whether the plaintiff ever demanded a settlement payment equal to or greater than the insured's available policy limits.

Overview

For all claims in which a trial began, answer 8.A-C.

For all claims tried to verdicts, also answer 8.D and subsequent questions, as indicated.

			QUESTION	DATA FIELD	INSTRUCTIONS
					Answer Questions 8.A-C if a trial started (whether or not the claim settled before the trial finished)
8	A.		If the case went to trial, was it	(Enter 1 or 2)	Choose one option
		1	Trial by jury?		
		2	Trial by judge alone?		
	B.		If the case went to trial,		
		1	How many plaintiffs started the trial?	(Enter Number)	
		2	How many defendants started the trial?	(Enter Number)	
	C.		If the case went to trial, was there a verdict?	(Enter 1 or 2)	Choose one option. If the answer is "No", proceed to Section 9.
		1	Yes		
		2	No		
	D.		If there was a verdict,		Answer Questions 8.D-H only if the answer to 8.C is 1 (Yes, there was a trial verdict).
		1	how many plaintiffs were in the trial at the end?	(Enter Number)	
		2	how many defendants were in the trial at the end?	(Enter Number)	
	E.		If there was a verdict, did the plaintiff prevail against your insured?	(Enter 1 or 2)	Choose one option
		1	Yes		
		2	No		
	F.		If there was a verdict, did the plaintiff(s) prevail against any defendants?	(Enter 1, 2, or 3)	Choose one option
		1	The plaintiff(s) prevailed against all defendants		

	2	The plaintiff(s) prevailed against some defendants but not all		
	3	The plaintiff(s) lost against all defendants		
G.		If there was a verdict against your insured, did your insured appeal?	(Enter 1 or 2)	Choose one option
	1	Yes		
	2	No		
H.		If there was a verdict for your insured, did the plaintiff appeal?	(Enter 1 or 2)	Choose one option
	1	Yes		
	2	No		
				Answer Questions 8.I-W only if the answer to 8.C is 1 (Yes, there was a verdict), and the answer to 8.E is 2 or 3 (the plaintiff prevailed at least in part). Otherwise, proceed to Section 9.
I.		If the plaintiff obtained a verdict against any defendant, enter the total verdict against all defendants.	(Enter dollar amount)	For questions 8.I through 8.N enter the jury award without applying any damages caps, remittiturs, additurs, interest, or other adjustments
J.		If the plaintiff obtained a verdict against any defendant, was the plaintiff found to have also been negligent (comparative or contributory negligence)?	(Enter 1 or 2)	If the answer is 2 (No), skip to 8.L.
	1	Yes		
	2	No		
K.		If there was comparative or contributory negligence, enter the total amount for which the defendants were held liable, after taking plaintiff negligence into account?	(Enter dollar amount)	If the answer to 8.J is 2 (No), skip this question.

L.		If the plaintiff obtained a verdict against more than one defendant, was liability:	(Enter 1 or 2)	If liability is joint and several, skip to question 8.N.
	1	joint and several liability?		
	2	separate liability of each defendant?		
M.		If there was more than one liable defendant, and the jury assigned percentage fault to different defendants, for what percentage was your insured responsible?	(Enter percentage)	If the answer to 8.L is 2 (separate liability of each defendant), skip this question.
N.		How was the verdict reported in 8.I across the following categories of damages?		The sum of 8.N.1-3 must equal the total reported in 8.I. Enter "\$0" if no damages of a particular type were awarded by the jury.
	1	Economic compensatory damages	(Enter dollar amount)	Enter amount of economic damages (sometimes called "special damages") awarded by jury without any adjustments
	2	Non-economic compensatory damages	(Enter dollar amount)	Enter amount of non-economic compensatory damages (sometimes called "general damages") awarded by jury without any adjustments
	3	Punitive damages	(Enter dollar amount)	Enter amount of punitive damages (sometimes called "exemplary damages") awarded by jury without any adjustments
O.		Enter the amount, if any, of pre-judgment interest awarded by the court.	(Enter dollar amount)	Enter "\$0" only if no pre-judgment interest was awarded.
				Questions 8.P-V apply only to cases tried to a jury. For cases tried to a judge, skip to question 8.W

P.		Did the court reduce the amount of damages, pre-judgment interest, or both, by applying a damages cap?		
	1	Yes		
	2	No		
Q.		If the court reduced the amount of damages, pre-judgment interest, or both, by applying a damages cap, enter the total reduction due to the damages cap.	(Enter dollar amount; enter "\$0" if appropriate.)	Enter the amount, if any, by which the court reduced the jury verdict because of a cap on an element of the claimant's recovery, including any reduction of pre-judgment interest. Enter \$0 if no reduction was imposed.
R.		Indicate below the type(s) of damages caps which caused the reduction.		Indicate all that apply.
	1	Cap on total compensatory damages.	1=Yes, 2 = No	
	2	Cap on economic compensatory damages.	1=Yes, 2 = No	
	3	Cap on non-economic compensatory damages.	1=Yes, 2 = No	
	4	Cap on punitive damages.	1=Yes, 2 = No	
	5	Cap on pre-judgment interest.	1=Yes, 2 = No	
	6	Other type of cap.	1=Yes, 2 = No	
		Please describe this other cap	Enter textual response	
S.		Did the court order a remittitur?	(Enter 1 or 2)	If no, skip to question 8.U
	1	Yes		
	2	No		
T.		If the court ordered a remittitur, enter the amount of the remittitur	(Enter dollar amount; enter "\$0" if appropriate.)	(Do not include in the remittitur any reduction in the jury award due to applying a damages cap).
U.		Did the court order an additur?	(Enter 1 or 2)	If no, skip to question 8.W
	1	Yes		
	2	No		
V.		If the court ordered a additur, enter the amount of the additur.	(Enter dollar amount; enter "\$0" if appropriate.)	

	W.	Enter the total judgment awarded by the court, including pre-judgment interest, after any caps, additur, or remittitur.		Must equal 8.I (awarded damages) + 8.O (prejudgment interest) - 8.Q (effect of damage caps) - 8.T (remittitur) + 8.V (additur).
11	A.	Indicate the amount of the final demand by claimant or attorney for claimant		Always Complete; this field is meant to indicate the final demand by the plaintiff, not the final settlement amount, which may be different.
	B.	Did the plaintiff ever demand a settlement payment equal to or greater than the available policy limits for your insured?	(Enter 1 or 2)	
		1 Yes		
		2 No		