

# U.S. Judges, Not Juries, Hand Out Stiffer Awards

## Small Percentage of Cases in State Courts Result in Damages

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Are U.S. juries showering plaintiffs with punitive-damage jackpots?

Not according to new figures from the U.S. Justice Department. A study by the agency's research arm shows that only a tiny percentage of cases in state courts result in any punitive award.

The study, which is scheduled to be released this summer, also contradicts the conventional assumption that cases heard by juries are more likely to result in huge verdicts than those decided by judges. In fact, juries are far more stingy than judges in imposing punitive damages, the Bureau of Justice Statistics found.

Whether imposed by judge or jury, the majority of all punitive awards amount to less than \$40,000 (€41,962), the study concluded — far below the gargantuan figures in a relative handful of cases that have riled business leaders and made civil-justice reform a major plank of George W. Bush's U.S. presidential campaign.

The results of the study are "simply staggering," says Theodore Eisenberg, a Cornell Law School professor who was engaged by the independent National Center for State Courts to analyze the figures. "The stereotype is that juries are pushovers for plaintiffs," he adds, but "the perceptions are just the opposite of what we are seeing" in the data.

The survey, which reviewed the 10,278 state-court "tort," or injury, trials held in 1996 in the U.S.'s 75 largest counties, found that punitive damages were imposed in only 162 cases, or 3.3% of the 4,879 trials won by plaintiffs. Overall, judges found for plaintiffs 57% of the time, while

juries ruled for the defendant in 52% of cases — another result that casts doubt on the commonly held notion that juries are more plaintiff-friendly than judges.

Strikingly, the data — which appear in a draft report prepared by the Bureau of Justice Statistics and the National Center for State Courts — show that judges are more than three times as likely as juries to award punitive damages in the cases they hear. Bench trials — those decided by a judge, rather than by a jury — resulted in punitive damages 7.9% of the time, compared with 2.5% for jury trials. Moreover, the median punitive award made by a judge was \$75,000, nearly three times the \$27,000 median amount imposed by a jury.

### One Person vs. Twelve

"Judges are people, too, and they can be swept away by the emotions of a trial the same way that jurors can," says Mark Behrens, co-counsel for the American Tort Reform Association, a business-lobbying group in Washington. In some cases, he adds, the jury system may act as a safeguard against excessive awards. With a jury of 12, "one person might stand up and say, 'what are we doing here? \$50 million seems like a lot to put on the defendant'" for a punitive award.

Punitive damages have been in the news lately as a Florida state-court jury in Miami nears a decision in a huge class-action suit against the tobacco industry. Combatants on both sides of the tobacco fight have predicted that the Miami jury could return a record punitive award of many billions of dollars.

Punitive damages are available in some cases as a tool to punish misconduct;

they are awarded in addition to compensatory damages that reimburse a plaintiff for actual losses. Critics of the civil justice system note that while the typical damage award may be small — and the typical jury may be tight with a punitive award — the handful of mammoth verdicts remains a threat to business.

"What is destructive to any sort of rational business planning is these extraordinary figures — they are not commonplace, but you get seven or eight or 10 a year in the multihundred millions," says George L. Priest, a law professor at Yale University.

Mr. Behrens concedes that although punitive awards are both rare and usually small, the possibility of the single extraordinary verdict still imposes costs on business. In "the 96% of cases that are settled and never go to court," he says, "the threat of punitive damages can be used as a club at the settlement table, because you never know when the lightning strike is going to hit."

### Music to My Ears'

Although judges awarded higher median punitive damages in the cases studied by the Justice Department, the single largest verdict by far was imposed by a jury: \$138 million awarded by a Houston jury to residents of a Wesley, Texas, neighborhood that was destroyed by a gas-pipeline explosion. By contrast, the largest bench award was \$2 million in a "premises-liability" case that was otherwise unidentified. Premises liability usually refers to a property owner, such as a landlord, being held responsible for harm suffered on his premises.

Plaintiffs' lawyers say the new data from the Justice Department provide sup-

port for their view of a system that functions more or less fairly. "This is music to my ears — it's what I always thought I knew," says Kathryn Clarke, former president of the Oregon Trial Lawyers Association, which spent \$1.5 million to defeat a state ballot measure last month that would have authorized the legislature to restrict punitive damages. The results show that "despite the rhetoric we've heard, when you get into a courtroom and have case-by-case justice, the results don't seem to be out of whack," Ms. Clarke says.

Prof. Eisenberg says the statistics suggest that contrary to expectations, judges and juries react similarly when presented with similar facts. But because plaintiffs' lawyers — like those representing defendants — mistakenly believe that juries are a soft touch, "they route their worst cases to juries." But in the end, plaintiffs do no better before juries than they would have before a judge.

Some corporate advocates also express dismay over the findings. "I am a little bit surprised," says John H. Sullivan, president of the business-backed Civil Justice Association of California, which is lobbying for tougher restrictions on punitive damages in that state. Even after hearing about the new study, Mr. Sullivan maintains, "You have to assume that a judge . . . has a better feel for an appropriate award in a case," whereas jurors are often put in the courtroom with little guidance. The jury system is "one of the most standardless operations in our courts system," Mr. Sullivan adds.

Of the cases included in the study, about 85% went to juries; in most lawsuits, either side is entitled to a jury trial if it wants one.