PUNITIVE DAMAGES AWARDS IN CIVIL LITIGATION: EFFECTS OF PROFIT INFORMATION AND AMOUNT OF PAIN AND SUFFERING AWARD

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ABSTRACT

A study addressing jury decisions regarding punitive damages awards in civil litigation was carried out. Two issues explored were the fact that jurors typically do not have a good metric for assigning a value to such damages and the concept of "leakage." The latter concept refers to decisions regarding compensatory damages and punitive damages influencing each other; in the law they are supposed to be independent. Forty-two participants were given three scenarios describing accidents, injuries, liability outcomes, and the amounts of economic and non-economic (pain and suffering) awards. Their task was to decide on punitive damages awards. Two variables manipulated in the scenarios were the presence or absence of defendant profit information and the amount (high or low) of the pain and suffering award. Results indicated the main effects of the two variables were not statistically significant. A significant interaction between the profit-information and pain-and-suffering-amount variables indicated that when profit information was available, low pain and suffering awards led to higher punitive damage awards. When profit information was not available, high pain and suffering awards led to higher punitive damage awards. The results indicate that decisions regarding compensatory and punitive damages are not independent as the law intends; an outcome that may be due, at least in part, to the uncertainty associated with these types of decisions. These findings have implications for judicial procedures, particularly jury instructions.

INTRODUCTION

In civil trials involving personal injury and product liability litigation, jurors may be asked to make several types of decisions. One type is a decision on liability or fault in which jurors apportion blame for an accident and injury to several entities such as the product manufacturer, the distributor and/or retailer, and the end user (usually the plaintiff). Two other decisions involve awards (money) for compensatory damages; one decision is for economic damages and the other is for pain and suffering damages. Economic damages are money that goes to the plaintiff to cover loses such as medical expenses and lost wages. Often economist experts provide the jurors with evaluations of such economic losses that in turn may serve as a basis for the jurors' decision. The pain and suffering, or non-economic, damages may include consideration of bodily harm, emotional distress, and loss of enjoyment of life. There are no generally accepted bases for assessing and assigning values to such damages (Brookshire and Slesnick, 1999), and jurors are usually "on their own" to make such assessments and award decisions. Consistent with the notion that jurors lack a useful metric for assessing pain and suffering are the results of two recent studies that explored the

effects of suggested values on jurors' decisions. Marti and Wissler (2000) reported amounts of awards suggested by plaintiff's and/or defendant's attorneys affected the award allocations. Laughery, Paige, Bean and Wogalter (2001) found that day-rate suggestions (based on remaining life expectancy and a suggested value per day) had a substantial effect on the amount awarded. It should be noted that both economic and pain and suffering damages have as an objective to "restore the plaintiff"; that is, to compensate the plaintiff for economic and non-economic losses.

The fourth decision that jurors may make concerns punitive damages. In this decision the focus shifts from the plaintiff to the defendant. Punitive damages are designed to punish the defendant for grossly inappropriate behavior and to deter similar conduct in the future. Although in most jurisdictions punitive damage awards (money) go to the plaintiff, again, the objective is to punish the defendant not to further compensate the plaintiff. Like pain and suffering damages, it is generally argued that jurors have no good metric for assessing punitive damages. Also like pain and suffering awards, recent research has shown that attorney's suggestions influence punitive awards (Hastie, Schkade and Payne, 1999). Similarly, research has shown that recent reforms setting various limits on punitive damages may lead to outcomes where higher limits (or anchors) will result in higher punitive awards (Robbenolt and Studebaker, 1999).

One other issue that arises in punitive damage decisions is the notion of "leakage." Given the intent of punitive damages is to punish the defendant, the amount of such damages should be independent of the amounts awarded for compensatory (economic and non-economic) damages. Leakage refers to the influence that the amount awarded in one category has on the amount awarded in another category (Cather, Greene and Durham, 2000; Greene, Woody and Winter, 2000). For example, economic and non-economic damage decisions are usually made before punitive damage decisions. If the plaintiff has been awarded substantial sums in the two compensatory categories, jurors may be inclined to make a lower punitive damage award because such a "windfall" for the plaintiff is not warranted. Hastie, Schkade and Payne (1998) reported such results. Similarly, if jurors feel the plaintiff should get more than the compensatory amounts awarded, a larger punitive damage decision may be reached.

This article reports the results of a study designed to explore the two issues outlined above. The first issue concerns a possible metric that may influence punitive damage decisions; namely, information about the defendant's profits. If the intent of punitive damages is to punish and deter, then profit information may influence the juror's judgment about what amount of money will serve as an effective punishment and deterrent. We hypothesize that the amount of punitive damages awarded will be greater when information about substantial profit is provided. The second issue concerns leakage. Will the amount awarded for pain and suffering influence the amount of punitive damages awarded? Our hypothesis is that lower pain and suffering awards will be associated with higher punitive awards.

METHOD

The methodology consisted of presenting three accident-injury scenarios to participants. Each scenario was described as representing a product liability civil litigation case in which the participant was to consider him/herself a member of the jury. The scenarios described the accident, the injuries, other relevant information, the results of the liability decision, and the amount of economic damages and pain and suffering damages awarded. After reviewing each scenario, the participants decided on an award for punitive damages. No constraints, small or large, were placed on the amount of the awards.

Participants

Participants were 42 students enrolled either in an introductory psychology course at Rice University or an introductory economics course at the University of Houston.

Design

There were two variables in the study. Each participant was presented the three scenarios. The

first variable was the presence or absence of the defendant's profit information. This variable was manipulated between participants; that is, for a given participant all three scenarios either did or did not contain profit information. The second variable was the amount of pain and suffering award (high or low) that was presented in the scenario. This variable was also manipulated between participants.

Materials

The first scenario described an automobile accident in which the passenger (JF) of a vehicle was severely and permanently injured when the driver of an 18 wheeler fell asleep and crossed over into the oncoming lane. The truck driver had been pressured by his employer to work long hours violating local laws. The second scenario described an accident in which a construction site employee (BT) was severely injured in a fall that resulted when a power tool that he was operating failed. The manufacturer of the power tool had continued to market the tool despite having information of a substantial number of such failures. The third scenario involved a woman (SM) who was severely burned in a hotel fire as a result of the failure of the alarm and sprinkler systems in the hotel. All three scenarios were designed to be quite critical of the defendant so as to make punitive damages a creditable issue. The defendant profit levels for the JF, BT and SM scenarios were $3,500,000, $5,000,000, and $10,000,000 respectively. The low pain and suffering awards for the JF, BT and SM scenarios were $650,000, $900,000 and $237,500 respectively. The high pain and suffering awards were $5,000,000, $5,000,000 and $5,437,500. These high and low values for the pain and suffering awards were in part based on the distributions of such awards in previous research that employed similar scenarios.

Procedure

Each participant was provided a packet consisting of a number of sheets. The first sheet contained instructions for the study and was followed by the three scenario descriptions. At the end of each scenario was a designated space in which the participant recorded the punitive damages award. It should be noted that there were no group deliberations or group decisions in this experiment. Each participant recorded his/her own award decision. Several sheets then requested gender and age information and responses to questions designed to explore attitudes about civil litigation.

RESULTS

Table 1. Mean Punitive Damage Awards (Dollars) for Various Conditions

Profit Information Available

	Scenario		
	JF	*BT*	*SM*
Low P&S	3,855,000	5,500,000	9,264,000
High P&S	2,340,000	2,000,000	4,200,000

Profit Information Not Available

	Scenario		
	JF	*BT*	*SM*
Low P&S	1,683,000	1,266,000	1,378,000
High P&S	6,993,000	3,750,000	5,607,000

The mean of the punitive damage awards for each of the four conditions and three scenarios is presented in Table 1. A repeated measures analysis of variance indicated that the interaction between the profit information and pain and suffering variables was statistically significant, F (1, 32) = 2.83, p = .05. Table 2 presents the means involved in the interaction. When profit information was available, a low pain and suffering award resulted in a high award for punitive damages, while a high pain and suffering award resulted in a low punitive award. When no profit information was available, the outcome was reversed; high pain and suffering awards led to greater punitive awards. The main effects of profit information and level of pain and suffering were subsumed by the interaction and

Table 2. Mean Punitive Damage Awards (Dollars) in Four Profit Information and Pain and Suffering Level Conditions (Collapsed Across Scenarios)

Pain and Suffering Award	Profit Information	
	Not Available	*Available*
Low	1,442,000	6,206,000
High	5,081,000	2,847,000

consequently were not statistically significant, F (1, 34) < 1.0 and F (1, 34) = < 1.0 respectively, all ps > .05.

There was also a statistically significant main effect of scenario, F (2, 68) = 6.76, p < .02. As can be seen from Table 1, the amounts allocated for the different scenarios varied a great deal. Scenario also interacted with profit information, F (2, 68) = 8.21, p < .01. This effect is difficult to interpret as the scenarios differ along many dimensions (e.g., gender of plaintiff, type and severity of injury, amount of profits).

DISCUSSION

The influence of the profit information variable as well as the effect of the amount of pain and suffering awarded must be considered in the context of the significant interaction between the two variables. An interpretation consistent with the results would be that when profit information is available it provides jurors a metric or guideline for judging the financial status of the defendant and what would be an appropriate punishment. If in such circumstances the pain and suffering award is high, jurors may decide the defendant is already being punished financially and opt for a lower punitive award. If the award for pain and suffering is low, the juror may decide that a greater punitive award is needed to adequately punish the defendant. An alternative interpretation in the low pain and suffering award condition is that jurors believe that award was too low and decide to increase the plaintiff's total award with higher punitive damages. It should be noted that all of these circumstances where the amount of pain and suffering is implicated in the punitive damages decision, the concept of "leakage" is relevant. In short, the data support the conclusion that jurors are not completely separating the two categories of awards.

When profit information is not available, the decision process may be different. One possible interpretation of the results is that in such situations jurors lack a useful metric or guideline for deciding an appropriate punishment (in money terms); no anchors or other guidelines are available. Lacking such metrics or anchors, jurors may be influenced simply in the sense that a large pain and suffering award indicates this is a "big-money case," and a substantial punitive damages award is in order. The opposite logic would apply for small pain and suffering awards.

The issue of amount of profit effects on punitive damages decisions cannot be evaluated, since in this study the amount of profit is confounded with the scenario. However, it may be noted that the scenario where the defendant had the largest profit (SM) was the scenario for which the highest punitive awards were given. Another comment on this point is that the profits in the three cases range from $3.5 million to $10 million. While these values are not small, they are not in the hundreds of millions or billions that may characterize the profits of major corporations. Nevertheless, the results support the notion that in decision situations characterized by uncertainty, such as jurors making punitive damage allocations, information such as a defendant's profits may have an effect on the outcome.

The above interpretations of the results are consistent with the findings of other research. Decisions regarding compensatory and punitive damages are not independent as the law intends. This outcome may be due, at least in part, to the uncertainty associated with these types of decisions.

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