



**An Analysis of Punitive Damages  
in California Courts, 1991-2000**

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### **Quantitative Researcher**

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## Chapter 1. Executive Summary

For the past twenty years or so, the business community, some academic scholars and many political and community leaders have expressed serious concerns about what appears to be a rise in the number of punitive damages awards, a rise in the amount of punitive damages awarded, and a rise in the number of cases where punitive damages are claimed. The topic has been studied and debated repeatedly over the years with the business community and some scholars contending, on the one hand, that a surge of punitive damage awards is having an adverse impact upon the economy and many trial attorneys and other scholars contending, on the other hand, that there has not been a substantial increase in punitive damage awards and that the tort system is functioning as it should with punitive damages limited primarily to appropriate cases. This study by the Capital Center for Government Law and Policy is intended to contribute to the debate by examining punitive damage judgments in California from 1991 to 2000.<sup>1</sup>

There is no official, governmental source of information about all punitive damage awards in California; the data simply is not collected. We therefore turned to a private source of information, collecting data for our study from verdicts reported in Westlaw's database for the *California Jury Verdict Reporter*. According to Westlaw, this database contains jury verdict and judgment summaries supplied through an agreement between West Publishing Company and Trials Digesting Publishing, Inc., from 1991, when Trials Digest began publication, to the present. Jury verdict reports for the database are gathered from attorneys who have tried cases in the superior courts and in the U.S. District Courts in California. Because the database is dependent upon

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<sup>1</sup>This study was supported by a grant from the Civil Justice Association of California ("CJAC"). CJAC is one of the leading proponents of punitive damage and civil justice reform in California. In order to ensure our independence and the integrity of our results, the Capital Center did not consult with CJAC regarding the methodology for the study. Instead, we employed the same quantitative methodologies we used in our two prior reports on verdicts in medical malpractice and insurance bad faith cases, neither of which was supported by outside funding. See J. Clark Kelso & Kari C. Kelso, *Jury Verdicts in Medical Malpractice Cases and the MICRA Cap* (August 1999); J. Clark Kelso & Kari C. Kelso, *Jury Verdicts in Insurance Bad Faith Cases* (August 1999). The statistical analysis we report here is similar to the type of analysis employed by other scholars and researchers who study verdicts and punitive damages. See, e.g., Carol J. DeFrances & Marika F.X. Litras, *Civil Trial Cases and Verdicts in Large Counties, 1996* (Bureau of Justice Statistics, Sept. 1999); Erik Moller, *Trends in Civil Jury Verdicts Since 1985* (Rand 1996); Carol J. DeFrances, et al., *Civil Jury Cases and Verdicts in Large Counties, 1992* (Bureau of Justice Statistics, July 1995).

voluntary reports by attorneys, it does not represent a comprehensive database of all jury verdicts, although the size of the database makes it likely that the sample collected is fairly representative of verdicts in California (although representative, the database clearly underestimates the total number of punitive awards and the total amount of punitive damages awarded by California juries).

The sample for the study consisted of 489 cases in which punitive damages had been awarded by a California court between January 1, 1991, and December 31, 2000. In cases where punitive damages are awarded, punitive damages account for an overwhelming proportion of all damages awarded. In the sample, punitive damages accounted for approximately 88.4% of the total amount of compensatory and punitive damages awarded to plaintiffs.<sup>2</sup> In other words, in cases where punitive damages were awarded, the total amount of punitive damages awarded was 7.6 times greater than the total amount of compensatory damages awarded. In slightly over half of the cases, the punitive award is equal to or less than the compensatory award. However, in the remaining cases, the punitive award is substantially larger than the compensatory award, and in a small number of cases, the punitive award is extremely large compared to the compensatory award.

There is a distinctive set of “high punitive damage cases” (“HPDCs”) where the average punitive awards and the ratio between the punitive and compensatory awards are substantially greater than in non-HPDC cases. *See* Tables 4-6. The set of HPDCs is limited to four causes of action: product liability, insurance bad faith, unfair competition and trespass / nuisance.

Finally, there has been an increase in punitive awards during the 1990s based on a comparison of awards in the first half of the decade with awards in the second half of the decade. Moreover, punitive damages have been rising more quickly in HPDCs than in non-HPDCs, as shown, among other things, by substantially greater increases in the ratios of punitive to compensatory awards in HPDCs. *See* Tables 7 through 10.

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<sup>2</sup>“Compensatory damages” are intended to compensate a person for actual loss or harm suffered as a consequence of unlawful acts or omissions. *See* Civil Code §§ 3281 & 3282. The measure for compensatory damages depends upon the type of harm involved. For example, in a personal injury case, compensatory damages will often include past and future medical expenses, lost wages, and pain and suffering. In a case involving damage to property, compensatory damages will often include such things as the decrease in market value of the property, repair costs, damages for loss of use of the property. “Punitive damages” are intended to punish the defendant and to deter others by making an example of the defendant. *See* Civil Code § 3294(a).

The results in this report suggest that those who are concerned about high or rising punitive damage awards should focus their attention on a well-defined subset of tort and business cases where punitive damages appear to predominate. The statistics reported here do not, by themselves, support a conclusion about whether punitive damages in HPDCs are too high, too low, or just about right. However, in light of the apparent increases in punitive awards in these cases over the course of the 1990s and the overwhelming predominance of punitive damages in these cases, further inquiry into the causes and consequences of punitive damages in HPDCs appears warranted.

## Chapter 2. Analysis of California Punitive Damage Verdicts, 1991-2000

### A. Introduction

For the past twenty years or so, the business community, some academic scholars and many political and community leaders have expressed serious concerns about what appears to be a rise in the number of punitive damages awards, a rise in the amount of punitive damages awarded, and a rise in the number of cases where punitive damages are claimed. The topic has been studied and debated repeatedly over the years with the business community and some scholars contending, on the one hand, that a surge of punitive damage awards is having an adverse impact upon the economy and many trial attorneys and other scholars contending, on the other hand, that there has not been a substantial increase in punitive damage awards and that the tort system is functioning as it should with punitive damages limited primarily to appropriate cases. *See* Marc Galanter, *Shadow Play: The Fabled Menace of Punitive Damages*, 1998 Wisconsin Law Review 1 (introducing a major symposium issue on punitive damages).

There has been a prolonged effort by the business community to engage the Supreme Court of the United States in reviewing punitive damage awards, but that effort has been only partly successful. Although punitive damage awards are subject to review under the due process clause of the United States Constitution, the standard employed by the Supreme Court is essentially the same standard employed by virtually all state appellate courts in reviewing punitive damage awards. *See BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996). There is no evidence that the possibility of Supreme Court review has had any substantial impact upon the incidence or amount of punitive damages being awarded by juries or approved by state courts.

Punitive damage reform has come almost exclusively from the legislative branch, and that reform has originated at the state level. The reforms vary from state to state and include increasing the standard of proof, procedural reforms such as bifurcation, imposing caps on the amount of punitive damages, and providing that some portion of punitive damage awards be paid to the state instead of to the plaintiff.

The public policy discussion about punitive damages has reached something of a stalemate at this point. Both sides have staked out their positions, and for each thrust in the public debate, there is a ready-made parry. Proponents of punitive damage reform point to the occasional large and, they assert, unpredictable punitive

awards; opponents of reform point to statistics suggesting a small incidence of punitive damages in tort litigation overall and greater predictability in the amount of punitive damages than is commonly supposed. Proponents of reform assert that the threat of punitive damages drives settlement amounts upward and adversely affects business judgments about risk;<sup>3</sup> opponents of reform point out that such claims are speculative since there are virtually no empirical studies which have rigorously examined these issues. There has even been debate about the most basic question of whether the existence of punitive damages has *any* deterrent effect on business behavior.

## **B. Analysis of Punitive Damage Awards in California Courts, 1991-2000.**

There is no official, governmental source of information about all punitive damage awards in California; the data simply is not collected. We therefore turned to a private source of information, collecting data for our study from verdicts reported in Westlaw's database for the *California Jury Verdict Reporter*. According to Westlaw, this database contains jury verdict and judgment summaries supplied through an agreement between West Publishing Company and Trials Digesting Publishing, Inc., from 1991, when Trials Digest began publication, to the present. Jury verdict reports for the database are gathered from attorneys who have tried cases in the superior courts and in the U.S. District Courts in California. Because the database is dependent upon voluntary reports by attorneys, it does not represent a comprehensive database of all jury verdicts, although the size of the database makes it likely that the sample collected is fairly representative of verdicts in California (although representative, the database clearly underestimates the total number of punitive awards and the total amount of punitive damages awarded by California juries).

We reviewed all cases in the database from January 1991 to December 2000 where the words "punitive" or "exemplary" appeared in the verdict report. After removing cases with missing data and cases where punitive damages had not been

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<sup>3</sup>The threat of punitive damages may drive up settlement amounts because of the uncertainty associated with both the likelihood of a punitive award and, most importantly, the large variance in punitive damages if an award is made. Because of the risk of very large punitive judgments, defendants may be more willing to settle for increased sums in order to avoid placing other assets at risk. Whether settlement amounts are being driven up in a substantial number of cases depends in part upon the incidence of punitive damage *claims* (as opposed to the incidence of punitive damage verdicts). Several recent studies suggest that in some jurisdictions, there is a high incidence of punitive damage claims which might provide a mechanism for the threat of punitive damages to drive up settlement amounts. See John H. Sullivan, "New State Data Confirms Runaway Abuse of Punitive Damages," published in *The Legal Background* (Washington Legal Foundation, Feb. 7, 1997) (reprinted at [www.cjac.org/research/punitivedamages.pdf](http://www.cjac.org/research/punitivedamages.pdf)) (discussing recent studies).



awarded, we were left with a sample of 489 cases where punitive damages had been awarded.

### 1. Descriptive Statistics on Sample of Punitive Damage Verdicts

The sum of jury verdicts in all cases in the sample was \$7,232,427,218.<sup>4</sup> The sum of punitive damages in all cases in the sample was \$6,391,565,454, or 88.4% of the total verdict amount.<sup>5</sup> The summary of descriptive statistics for the sample is as follows:

Damages (n=489)	Sum	Median	Mean	Trimmed Mean
total verdict	7,232,427,218	569,235	14,790,239	2,241,837
compensatory	840,861,911	225,000	1,719,554	664,903
punitive	6,391,565,454	200,000	13,070,686	1,342,926

**Table 1. Descriptive statistics for California jury verdicts where punitive damages were awarded, 1991-2000.**

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<sup>4</sup> The total verdict amount includes only compensatory and punitive damages and excludes collateral recoveries such as for attorneys fees and interest. The figures reported in this study do not reflect post-verdict motions, appeals or settlements which may have resulted in a decrease in compensatory or punitive awards. For example, the single largest punitive award made by a jury in the sample was the \$4.2 billion punitive damage award in *Anderson v. General Motors Corp.*, which involved injuries suffered in an automobile accident where the fuel tank burst into flames severely injuring the plaintiffs. That \$4.2 billion punitive damage award was reduced by the trial court to \$1.2 billion. While the presence in the sample of such very large awards which were subsequently reduced will affect the values reported for the mean total and mean punitive awards and for the mean ratio of punitive to compensatory awards, statistical outliers will generally not affect the figures reported for median and trimmed mean awards (for definitions of these terms, see footnotes 3 through 5). For example, if we were to have used the \$1.2 billion figure in calculating the figures in Table 1, the sum of all damages would be \$4,232,427,218, the sum of punitive damages would be \$3,391,565,454, the mean total verdict would be \$8,655,270, and the mean punitive award would be \$6,935,717. However, the median and trimmed mean figures would not change at all.

<sup>5</sup> Substituting \$1.2 billion for the \$4.2 billion punitive award made in *Anderson v. General Motors Corp.* reduces the 88.4% figure cited in the text to 80%.

As shown in Table 1, the mean <sup>6</sup> for punitive damages is substantially higher than the mean for compensatory damages. By contrast, the median <sup>7</sup> for punitive damages is slightly less than the median for compensatory damages. These numbers reflect the effect of a number of extremely large punitive awards and the fact that the punitive damage sample is highly skewed in a positive direction. Looking at the data, the top five punitive damage awards were for \$4,200,000,000, \$386,433,000, \$173,000,000, \$100,000,000, and \$99,298,252. However, the disparity between compensatory and punitive awards is not entirely attributable to statistical outliers. Even when the upper and lower 5% of the sample is discarded to remove outliers, the trimmed mean <sup>8</sup> for punitive damages is still more than twice as high as the trimmed mean for compensatory damages.

An examination of total awards, punitive awards and compensatory awards by percentile gives a sense of the distribution of awards. As shown in Table 2, at the 50<sup>th</sup> percentile, the compensatory award of \$225,000 slightly exceeds the punitive award of \$200,000. However, by the 75<sup>th</sup> percentile, the punitive award has increased to \$1,234,183 compared to a compensatory award of \$825,500 (that is, the punitive award is 49.5% larger than the compensatory award). At the 90<sup>th</sup> percentile, the punitive award is 2.67 times larger than the compensatory award.

Damage Type (n=489)	5%	10%	25%	50%	75%	90%	95%
total verdict	18,500	43,618	153,500	569,235	2,567,250	10,456,000	31,632,149
compensatory	4,304	12,000	56,885	225,000	825,500	2,870,579	7,816,250
punitive	3,000	8,000	30,000	200,000	1,234,183	7,670,961	18,000,000

**Table 2. Damage awards by percentiles.**

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<sup>6</sup> The “mean” is a measure of the central tendency of a sample. It is the arithmetic average of the sample which is calculated by dividing the sum of the cases by the number of cases.

<sup>7</sup> The “median” is the value above and below which half the cases fall (i.e., the 50<sup>th</sup> percentile). The median is a measure of central tendency not sensitive to outlying values in a skewed sample.

<sup>8</sup> The trimmed mean figures are calculated after discarding the highest and lowest 5% of the sample. Trimmed means better reflect the central tendency of the data and are appropriate to use when a sample is highly skewed (and thus non-normal). The sample of damage judgments is highly skewed in a positive direction as a result of a small number of extremely large judgments.

## 2. Examination of Punitive Damage Verdicts by Type of Case

To explore whether there was any substantial difference in the assessment of punitive damages across different types of claims, we divided the cases into subject matter categories. The median, mean and trimmed mean results are set forth in the following table:

		Median	Mean	Trimmed Mean
Fraud (n=104)	total verdict	633,060	5,532,486	2,039,641
	compensatory	250,828	1,422,024	695,312
	punitive	247,141	4,110,462	1,059,272
Wrongful Termination (n=79)	total verdict	597,000	3,116,406	1,499,100
	compensatory	300,000	715,104	483,314
	punitive	229,000	2,401,302	1,007,603
Insurance Bad Faith (n=53)	total verdict	5,600,000	17,733,042	8,073,853
	compensatory	500,000	2,079,687	1,097,227
	punitive	3,300,000	15,653,355	6,885,431
Product Liability (n=11)	total verdict	3,300,500	399,940,798	205,040,952
	compensatory	1,860,000	12,480,298	7,882,381
	punitive	750,000	387,460,500	197,177,639
Unfair Competition (n=17)	total verdict	2,979,401	17,149,726	13,439,954
	compensatory	1,600,000	3,338,712	2,598,569
	punitive	1,000,000	13,811,014	9,828,724
Intentional Torts (n=19)	total verdict	56,600	468,665	370,461
	compensatory	40,000	246,709	180,566
	punitive	15,000	221,955	146,617

Malicious Prosecution (n=15)	total verdict	600,000	3,738,242	2,285,424
	compensatory	225,000	1,707,995	863,811
	punitive	200,000	2,030,247	1,422,219
Landlord / Tenant (n=16)	total verdict	285,516	3,330,087	1,365,499
	compensatory	129,425	2,472,302	691,446
	punitive	112,957	857,785	619,205
Civil Rights (n=21)	total verdict	245,200	794,088	481,585
	compensatory	145,000	715,863	397,255
	punitive	50,000	78,225	67,729
Trespass / Nuisance (n=9)	total verdict	880,000	26,347,850	17,059,393
	compensatory	212,000	5,802,446	3,842,555
	punitive	400,000	20,545,404	13,216,838
Other (n=145)	total verdict	326,807	2,814,076	1,150,601
	compensatory	150,000	1,345,476	490,277
	punitive	100,000	1,468,600	452,264

**Table 3. Descriptive statistics for damage awards by case type.**

The “other” category in Table 3 establishes a useful baseline against which to compare the results in the named case categories.<sup>9</sup> In the “other” category, compensatory and punitive damages are roughly equal in amount. The punitive median (\$100,000) and trimmed mean (\$452,264) are lower than the compensatory median (\$150,000) and trimmed mean (\$490,277), and the punitive mean (\$1,468,600) is slightly higher than the compensatory mean (\$1,345,476).

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<sup>9</sup> The “other” category includes the following types of cases: medical and professional malpractice, vehicle negligence, premises liability, breach of fiduciary duty, employee solicitation, arson, foreclosure, wrongful death, breach of contract, construction defect, false arrest, false imprisonment, dog bite, defamation, invasion of privacy, conversion, negligence, partnership dissolution, intellectual property, elder abuse neglect, trade secret misappropriation, maritime, and intentional infliction of emotional distress.

By contrast, the median, mean and trimmed mean punitive awards in the “insurance bad faith” and “trespass / nuisance” categories are higher than the compensatory awards in those cases. In insurance bad faith cases, the median, mean and trimmed mean punitive damage awards range from 6.3 to 7.5 times higher than compensatory awards. In trespass / nuisance cases (which includes toxic contamination cases), the median, mean and trimmed mean punitive damage awards range from 1.9 to 3.5 times higher than compensatory awards. The fact that the median punitive award in these two categories is higher than the median compensatory award indicates that punitive damages in these two categories of cases are higher than compensatory damages in a majority of the cases within each category.

The median punitive award is lower than the median compensatory award in every other case category. Of the remaining categories, “intentional torts,” “malicious prosecution,” “landlord / tenant,” and “civil rights” are closest in profile to the awards in the “other” category. In the malicious prosecution category, punitive mean and trimmed mean (\$2,030,247 and \$1,422,219) are only slightly larger than the compensatory mean and trimmed mean (\$1,707,995 and \$863,811). In the other three categories, the median, mean and trimmed mean for punitive damages are lower than the compensatory median, mean and trimmed mean.<sup>10</sup>

In the remaining categories, “fraud,” “wrongful termination,” “product liability,” and “unfair competition,” although the median punitive award is lower than the median compensatory award, the mean and trimmed mean punitive award is substantially higher than the mean and trimmed mean compensatory award.

Table 4 shows the proportionality of the median, mean and trimmed mean punitive awards to median, mean and trimmed mean compensatory awards for the same causes of action listed in Table 3. The table has been ordered based on decreasing proportionality of trimmed mean punitive awards to trimmed mean compensatory awards.

	Median	Mean	Trimmed Mean
Product Liability	0.40	31.04	25.01
Insurance Bad Faith	6.60	7.53	6.27

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<sup>10</sup>Although the median, means and trimmed means for punitive damages for these categories are lower than the compensatory median, mean and trimmed mean, these statistical measures are intended to reflect only the central tendency of the sample. In each of the categories, there are punitive damage awards in particular cases that are substantially greater than the compensatory award in the same case.

Unfair Competition	0.62	4.14	3.78
Trespass / Nuisance	1.89	3.54	3.44
Wrongful Termination	0.76	3.36	2.08
Fraud	0.98	2.89	1.52
Malicious Prosecution	0.89	1.19	1.65
Other	0.67	1.09	0.92
Landlord / Tenant	0.87	0.35	0.89
Intentional Torts	0.37	0.90	0.81
Civil Rights	0.34	0.11	0.17

**Table 4. Proportionality of the median, mean and trimmed mean punitive awards to compensatory awards.**

As can be seen in Table 4, there is a significant break in terms of the proportionality of means and trimmed means between the top four categories (i.e., product liability, insurance bad faith, unfair competition, and trespass / nuisance) and the remaining categories.<sup>11</sup> This result suggested the utility of breaking the entire sample into two categories: high punitive damage case-types (which encompasses the four categories mentioned above) and other.

Table 5 shows the descriptive statistics based upon a bifurcation of the sample into high punitive damage case-types (“HPDCs”) and other cases. In Table 5, we add as an additional statistic the median, mean and trimmed mean of the ratio between punitive and compensatory damages.<sup>12</sup>

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<sup>11</sup> Wrongful termination falls below the break because its proportion of trimmed means is much closer to the proportion of trimmed means for fraud than for trespass / nuisance and because its proportion of medians is well below 1.00. By contrast, although the proportion of medians for product liability and unfair competition are even lower than for wrongful termination, the proportion of trimmed means for product liability and unfair competition are substantially higher than for wrongful termination, which puts product liability and unfair competition above the break.

<sup>12</sup> Because the distribution of punitive awards is more highly skewed than the distribution of compensatory awards, this ratio will *not* equal the median, mean and trimmed mean punitive figure divided by the median, mean and trimmed mean compensatory figure (and will usually be less than this figure). Instead, the ratio of punitive to compensatory is calculated for *each* case, and the statistic reports the median, mean and trimmed mean of ratios. For example, assume that compensatory awards for three cases were 2, 4 and 6, and the punitive awards for those three cases were 4, 16, and 36. The ratios of punitive to compensatory awards for these three cases would be 2, 4 and 6. The mean compensatory

	Damages	Sum	Median	Mean	Trimmed Mean
HPDC (n=90)	total verdict	5,867,876,018	3,326,484	65,198,622	9,492,512
	compensatory	356,486,834	772,500	3,960,965	1,672,319
	punitive	5,511,389,220	2,125,000	61,237,658	7,581,585
	ratio of punitive to compensatory		3.51	11.19	9.05
Other (n=399)	total verdict	1,364,551,196	440,000	3,419,928	1,229,903
	compensatory	484,375,079	200,000	1,213,973	493,038
	punitive	880,176,121	133,286	2,205,955	634,366
	ratio of punitive to compensatory		0.87	4.95	1.76

**Table 5. Descriptive statistics for “high punitive damage case-types” and other cases.**

The are substantial differences between HPDCs and other cases. Although there are 4.43 times as many other cases as HPDC cases, the total sums awarded in HPDC cases in the sample is 4.30 times higher than the total sums awarded in other cases. The sum of compensatory damages in other cases (\$484,375,079) is slightly larger than the sum of compensatory damages in HPDC cases (\$356,486,834). But the lower sum of compensatory awards in HPDC cases is more than offset by the sum of punitive awards in HPDC cases, which is 6.26 times higher than the sum of punitive awards in other cases.

The median, mean and trimmed mean of compensatory damages in HPDC cases is substantially higher than in other cases. The median is 3.86 times higher, the mean is 3.26 times higher and the trimmed mean is 3.39 times higher. The differences between punitive damages in HPDC cases and punitive damages in other cases is much greater. The median is 15.94 times higher, the mean is 27.76 times higher and the trimmed mean is 11.95 times higher.

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award for this three case sample would be 4, the mean punitive award would be 18.7, and the mean ratio would be 4.0, even though the mean punitive figure of 18.7 is 4.67 times greater than the mean compensatory figure of 4.0.

The ratios of punitive to compensatory damages within the other cases category indicate that punitive damages in most of these cases are roughly equal to or less than compensatory damages, and that even when the extremely high awards are taken into account, the ratio of punitive to compensatory is still relatively small. Thus, the median ratio is 0.87, the mean ratio is 4.95, and the trimmed mean ratio is 1.76.<sup>13</sup>

By contrast, the ratios of punitive damages to compensatory damages in HPDC cases indicates that punitive damages in most of these cases are between 3 and 4 times greater than compensatory awards, and that there are a substantial number of punitive awards that are much higher than compensatory awards. Thus, the median ratio is 3.51, the mean ratio is 11.19, and the trimmed mean ratio is 9.05.

An examination of the HPDC awards by percentiles gives a sense of the distribution. Table 6 reveals that punitive awards increase much more rapidly across the distribution than compensatory awards. At the 50<sup>th</sup> percentile, punitive damages are 3.24 times larger than compensatory awards.

	5%	10%	25%	50%	75%	90%	95%
total verdict	78,700	233,860	852,500	3,326,484	12,851,668	49,559,800	94,502,138
compensatory	7,750	32,506	146,481	722,500	2,102,750	7,914,850	16,975,000
punitive	18,650	41,700	243,750	2,125,000	10,028,000	44,400,010	87,034,213
ratio	0.09	0.32	0.74	3.51	13.63	40.51	50.92

**Table 6. HPDC damage awards and ratio of punitive to compensatory by percentiles.**

The statistical differences between HPDC cases and other cases do not, by themselves, support any conclusions about whether the recoveries in HPDC cases are improperly high. However, the differences do suggest the need for further inquiry both into the causes and consequences of high compensatory and punitive awards in HPDC cases.

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<sup>13</sup>As noted above in footnote 10, these statistical measures reflect the central tendency of the sample. Even within the “other” category, there are individual cases where punitive damages are substantially in excess of compensatory damages. Indeed, in 17% of the “other” cases, punitive damages are more than 3 times greater than compensatory damages, and in 7% of the cases, punitive damages are more than 10 times greater than compensatory damages.



### 3. Examination of Punitive Damage Verdicts by Year

One of the more contentious disputes among proponents and opponents of punitive damage reform is whether punitive damage verdicts have been dramatically increasing over time. Table 7 shows the median, mean and trimmed mean figures in HPDC cases where punitive damages were awarded by year from 1991 to 2000.

		Median	Mean	Trimmed Mean
1991 (n=5)	total verdict	1,736,458	5,817,932	5,617,757
	compensatory	69,200	1,195,132	1,045,010
	punitive	1,700,000	4,622,800	4,510,500
	ratio	2.00	12.85	11.67
1993 (n=3)	total verdict	3,205,000	30,806,051	-----
	compensatory	1,205,000	4,447,717	-----
	punitive	2,000,000	26,358,333	-----
	ratio	6.35	5.17	
1994 (n=19)	total verdict	2,277,792	40,691,950	21,564,316
	compensatory	458,310	5,226,460	3,202,667
	punitive	1,900,000	35,465,489	17,937,321
	ratio	3.69	7.45	5.48
1995 (n=7)	total verdict	4,329,310	6,011,785	5,806,873
	compensatory	1,860,000	2,809,935	2,535,929
	punitive	3,200,446	3,201,849	3,001,360
	ratio	1.21	6.73	5.63
1996 (n=11)	total verdict	3,225,000	5,909,829	5,603,980
	compensatory	1,600,000	1,341,589	1,259,501
	punitive	1,000,000	4,568,240	4,241,377

	ratio	1.18	11.19	9.51
1997 (n=18)	total verdict	6,174,562	12,777,716	8,566,887
	compensatory	1,199,150	2,129,439	1,555,439
	punitive	2,441,000	10,648,275	6,306,514
	ratio	2.73	15.11	11.86
1998 (n=9)	total verdict	3,352,468	12,303,402	9,211,225
	compensatory	752,468	3,057,291	2,281,656
	punitive	2,600,000	9,246,111	6,938,734
	ratio	3.03	6.68	6.16
1999 (n=14)	total verdict	2,389,845	314,841,632	110,509,293
	compensatory	236,000	9,083,901	4,113,042
	punitive	1,371,567	305,757,731	106,396,251
	ratio	3.46	13.50	12.43
2000 (n=4)	total verdict	24,906,838	29,404,544	28,904,799
	compensatory	869,101	2,604,520	2,411,696
	punitive	24,100,047	26,800,023	26,500,026
	ratio	24.22	23.68	23.74

**Table 7. Descriptive statistics for HPDC damage awards by year.**

While no clear pattern emerges from the year-to-year display in Table 7 (perhaps due to the small sample size for HPDC cases per year), dividing the decade into two halves (which reduces the impact of yearly fluctuations) and examining the median, mean and trimmed mean awards for those two halves reveals changes during the decade. As can be seen in Table 8, there was a 45.6% increase in median total verdicts, a 73.2% increase in median compensatory awards, and a 30.8% increase in median punitive awards. Although the mean punitive award was 3.58 times higher in the second half of the decade than in the first half, the mean compensatory award and the trimmed mean compensatory and punitive awards decreased. Most important, the median ratio of punitive to compensatory damages increased by 8%, the mean ratio increased by 67.3%, and the trimmed mean ratio increased by 80.4%. These percentages indicate that the

spread between compensatory and punitive damages in many cases substantially increased over the course of the decade in the HPDC category.

		Median	Mean	Trimmed Mean
1991-1995 (n=34)	total verdict	2,850,000	27,551,099	11,671,062
	compensatory	479,155	4,067,385	2,089,490
	punitive	1,950,000	23,483,713	9,506,691
	ratio	3.28	7.89	6.07
1996-2000 (n=56)	total verdict	4,150,430	88,056,047	9,089,868
	compensatory	830,150	3,896,352	1,566,088
	punitive	2,550,000	84,159,695	7,253,623
	ratio	3.54	13.20	10.95

**Table 8. Descriptive statistics for HPDC damage awards by half-decade.**

The results in Table 8 suggested the possible utility of examining trends using the entire sample of punitive damage cases. Table 9 shows the half-decade trends for all cases where punitive damages were awarded. The data reveals increases in compensatory and punitive awards during the decade, although when all punitive damage cases are considered, the spread between punitive and compensatory damages becomes much less pronounced than is true of HPDC cases.

		Median	Mean	Trimmed Mean
1991-1995 (n=223)	total verdict	435,001	7,477,251	2,022,034
	compensatory	181,489	1,805,308	648,404
	punitive	160,000	5,671,942	1,069,549
	ratio	1.00	3.94	2.18
1996-2000 (n=266)	total verdict	794,861	20,921,054	2,509,613
	compensatory	275,594	1,647,662	719,467
	punitive	250,000	19,273,391	1,615,313
	ratio	1.00	7.91	3.27

**Table 9. Descriptive statistics for damage awards by half-decade.**

Finally, Table 10 contains the half-decade statistics for all non-HPDC cases. Comparing Table 10 with Table 8 suggests some substantial differences in the trends of HPDC and non-HPDC cases. The most revealing difference is in the median, mean and trimmed mean ratio of punitive to compensatory damages. The HPDC ratios are all larger than the corresponding non-HPDC ratios, and the trends suggest that the ratios are increasing more rapidly in the HPDC category than in the non-HPDC category. Thus, within the HPDC category, the 1996-2000 median ratio is 8% larger than the 1991-1995 median ratio; in the non-HPDC category, by contrast, the 1996-2000 median ratio is 27% smaller than the 1991-1995 median ratio. The HPDC 1996-2000 trimmed mean ratio is 80.4% larger than the 1991-1995 trimmed mean ratio, while the non-HPDC 1996-2000 trimmed mean ratio is only 9.9% larger than the 1991-1995 trimmed mean ratio.

		Median	Mean	Trimmed Mean
1991-1995 (n=189)	total verdict	340,000	3,866,082	1,107,274
	compensatory	141,615	1,398,373	459,184
	punitive	125,000	2,467,709	496,487
	ratio	0.94	3.23	1.69
1996-2000 (n=210)	total verdict	533,750	3,018,389	1,366,422
	compensatory	237,391	1,048,012	549,642
	punitive	133,286	1,970,377	760,428
	ratio	0.74	6.51	1.84

**Table 10. Descriptive statistics for non-HPDC damage awards by half-decade.**

The results reported in Tables 7 through 10 indicate that, over the course of the 1990s, punitive damages have been rising more quickly in HPDCs than in non-HPDCs, and that there has been a greater proportional increase in punitive damages in HPDCs than in compensatory damages in HPDCs.

#### **4. Examination of Punitive Damage Verdicts by County**

Table 11 shows median, mean and trimmed mean figures for all cases where punitive damages were awarded by county. We include in Table 11 only those counties where there were 10 or more punitive damage awards.

Los Angeles county has the greatest concentration of cases (n=213), and also has the highest mean punitive awards (\$26,150,850). However, this high mean primarily reflects a small number of very large punitive damage awards. The median punitive award in Los Angeles is \$250,000, which is the third largest median in the table after Contra Costa and Sacramento. Moreover, the trimmed mean ratio of punitive to compensatory damages is 2.62, which is lower than the trimmed mean ratio in 6 other counties in Table 11.

Aside from the fact that a substantial number of extremely high punitive awards seem to be clustered in Los Angeles, no clear pattern emerges from the results in Table 11. Instead, the results seem to be fairly evenly distributed from county to county.

		Median	Mean	Trimmed Mean
Alameda (n=11)	total verdict	780,000	4,433,513	3,454,826
	compensatory	429,310	447,417	415,404
	punitive	100,000	3,986,097	3,040,051
	ratio	0.32	5.14	4.75
Contra Costa (n=12)	total verdict	939,300	5,472,241	3,611,890
	compensatory	307,500	1,987,491	1,240,501
	punitive	625,000	3,484,750	2,371,389
	ratio	1.79	5.32	4.74
Los Angeles (n=213)	total verdict	690,000	28,605,124	3,145,608
	compensatory	290,909	2,454,273	1,027,039
	punitive	250,000	26,150,850	1,839,208
	ratio	1.15	7.75	2.62
Orange (n=49)	total verdict	412,500	2,743,491	1,214,781
	compensatory	131,600	1,271,203	436,093
	punitive	150,000	1,472,288	564,445
	ratio	1.14	4.14	2.73

Sacramento (n=14)	total verdict	1,033,621	4,432,608	3,888,654
	compensatory	324,500	450,651	435,085
	punitive	475,000	3,981,956	3,413,146
	ratio	1.41	11.48	10.00
San Bernardino (n=15)	total verdict	652,259	6,590,667	3,454,630
	compensatory	492,259	4,151,256	2,412,229
	punitive	160,000	2,439,410	1,043,507
	ratio	0.34	0.94	0.77
San Diego (n=63)	total verdict	264,864	5,708,295	1,714,879
	compensatory	125,000	1,161,908	404,763
	punitive	122,000	4,546,386	959,769
	ratio	1.00	3.83	2.09
San Francisco (n=37)	total verdict	750,000	2,926,786	1,368,236
	compensatory	296,602	589,527	459,074
	punitive	140,000	2,337,259	763,343
	ratio	0.93	6.38	3.58
San Mateo (n=11)	total verdict	393,781	1,027,580	910,368
	compensatory	168,250	373,443	292,520
	punitive	100,000	654,136	511,735
	ratio	1.11	2.30	1.80
Santa Clara (n=18)	total verdict	340,000	2,529,944	949,336
	compensatory	150,000	299,437	265,996
	punitive	158,000	2,230,507	664,452
	ratio	0.83	8.73	4.03

**Table 11. Descriptive statistics for damage awards by county.**

## 5. Examination of Punitive Damage Verdicts by Defendant Type

We examined differences in median, mean and trimmed mean figures for all punitive damage verdicts based upon whether the defendant was an individual, a business or government. The results in Table 12 confirm that punitive awards against business are substantially higher than punitive awards against individuals. This is to be expected since, among other things, juries are instructed to consider the net worth of the defendant in setting an appropriate amount for punitive damages, and the net worth of most businesses will be greater than the net worth of most individuals.

Defendant Type		Median	Mean	Trimmed Mean
Individual (n=86)	total verdict	231,150	1,906,992	727,300
	compensatory	132,186	1,221,658	360,301
	punitive	55,000	685,334	247,910
	ratio	0.51	1.61	1.02
Business (n=385)	total verdict	760,000	18,285,878	2,811,805
	compensatory	263,722	1,855,270	727,769
	punitive	291,500	16,430,608	1,854,223
	ratio	1.26	7.06	3.29
Government (n=18)	total verdict	315,000	1,575,721	1,263,257
	compensatory	200,000	1,195,577	842,057
	punitive	25,000	380,144	288,460
	ratio	0.21	6.92	1.91

**Table 12. Descriptive statistics for damage awards by defendant type.**

Table 13 reports the median, mean and trimmed mean figures by defendant type only in HPDCs. The most interesting result here is that the business punitive damage figures and business ratios are substantially greater in the HPDC cases than are the business punitive damage figures and business ratios in Table 12. In other words, in terms of punitive damage awards, businesses do much worse in HPDCs than businesses do in non-HPDC cases. In part, this is no doubt due to the fact that compensatory damages against business defendants in non-HPDCs are much smaller than compensatory damages against business defendants in HPDCs, as Tables 12 and 13

confirm. However, the increase in compensatory damages cannot entirely account for the substantially higher ratios of punitive to compensatory damages that occur in HPDCs. This is another subject worthy of additional study.

Defendant Type		Median	Mean	Trimmed Mean
Individual (n=2)	total verdict	167,500	167,500	-----
	compensatory	111,000	111,000	-----
	punitive	56,500	56,500	-----
	ratio	3.84	3.84	-----
Business (n=86)	total verdict	3,851,800	68,163,468	10,089,310
	compensatory	748,734	4,124,210	1,764,263
	punitive	2,500,000	64,039,258	8,081,388
	ratio	3.51	11.55	9.41
Government (n=2)	total verdict	2,741,396	2,741,396	-----
	compensatory	791,396	791,396	-----
	punitive	1,950,000	1,950,000	-----
	ratio	3.34	3.34	-----

**Table 13. Descriptive statistics for HPDC damage awards by defendant type.**

## **6. Examination of Punitive Damage Awards by Jury or Judge**

Finally, we examined differences in median, mean and trimmed mean figures for all punitive damage verdicts based upon whether the amount of punitive damages were set by a jury or by a judge. The results in Table 14 confirm that punitive awards by juries are significantly higher than punitive awards by judges. In part, this result undoubtedly reflects a sampling bias since cases in which a plaintiff believes punitive damages are likely to be awarded are probably cases where, more often than not, a jury is requested. In other words, cases with large potential recoveries may be more likely to be tried to a jury than to a judge. Nevertheless, the differences in the median, mean and trimmed mean ratios between jury verdicts and judge verdicts may suggest that judges are more likely than juries to use proportionality as a limit in setting punitive damage amounts.



Decision-Maker		Median	Mean	Trimmed Mean
Jury (n=408)	total verdict	732,915	17,352,542	2,729,273
	compensatory	287,880	1,871,698	775,910
	punitive	250,000	15,480,844	1,647,439
	ratio	1.17	6.94	3.16
Judge (n=81)	total verdict	239,000	1,883,830	473,128
	compensatory	135,000	953,199	285,773
	punitive	100,000	930,631	178,372
	ratio	0.67	1.90	0.91

**Table 14. Descriptive statistics for damage awards by decision-maker type.**