



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

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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 2000.¹

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

¹This 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.² 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.

²“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;³ 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

³The 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) (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 \$7,232,427,218.⁴ The sum of punitive damages in all cases in the sample was \$6,391,565,454, or 88.4% of the total verdict amount.⁵ 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.

⁴ 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.

⁵ 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 ⁶ for punitive damages is substantially higher than the mean for compensatory damages. By contrast, the median ⁷ 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 ⁸ 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 50th percentile, the compensatory award of \$225,000 slightly exceeds the punitive award of \$200,000. However, by the 75th 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 90th 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.

⁶ 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.

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

⁸ 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.⁹ 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).

⁹ 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.¹⁰

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 |

¹⁰Although 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.¹¹ 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.¹²

¹¹ 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.

¹² 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.

There 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.

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 1.76.¹³

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 50th 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.

¹³As 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.