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JURY TRIALS IN THE HEARTLAND

Stephen E. Chappellear*

In this Article, Stephen Chappellear draws on his study of civil jury trials in the Franklin County Court of Common Pleas in Columbus, Ohio. He concludes that trial by jury results in justice. Despite the popular belief that juries are modern day Robin Hoods, empirical data suggests that their verdicts are lower than commonly believed.

INTRODUCTION

For over 200 years, the jury trial has served as the foundation of the American civil justice system. Litigants come to the courthouse, present their evidence and their arguments, and receive a just and true verdict by a jury of their peers. Some suggest, however, that the verdicts are not all that just and true. Politicians, media representatives, business people, and others with vested interests frequently make sweeping negative generalizations about jury verdicts, based on one or two unusual cases out of the thousands of cases tried each year.¹ They claim that the verdict for the New Mexico woman burned by a scalding hot cup of McDonald's

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1. William McCormick of Fireman's Fund Insurance claimed that "[r]unaway tort litigation means we all pay higher prices for everything, whether it's in product prices, insurance rates or in municipal, state or federal taxes." William M. McCormick, *The American Tort System: A Time to Rebalance the Scales of Justice*, in 52 VITAL SPEECHES OF THE DAY 267, 268 (1986). Robert Mallott, CEO and Chairman of the FMC Corporation, criticized juries for making "absurdly generous liability awards." R. H. Mallott, *America's Liability Explosion: Can We Afford the Cost?*, in 52 VITAL SPEECHES OF THE DAY 180, 180 (1986). He asked in a widely distributed speech: "Who ends up paying for our current mania for litigation? It's obvious that we all do. The growing tide of liability is imposing enormous costs on consumers, on business, and on society as a whole." *Id.*

Hardly a day goes by that we do not hear or read of the dramatic increase in the number of lawsuits filed, of the latest multimillion verdict, or of another small business, child care center, or municipal corporation that has had its insurance canceled out from under it . . . [Why?] Because, quite simply, everyone is suing everyone, and most are getting big money . . . [Americans have developed a] mad romance . . . with the civil litigation process.

132 CONG. REC. 1579 (1986) (statement of Sen. McConnell) (proposing the Alternative Dispute Resolution Promotion Act). "While our judicial system is basically a good one, it has been handicapped by unnecessary lawsuits, . . . exorbitant awards, and unpredictable results." INSURANCE INFO. INST., *THE LAWSUIT CRISIS* 1-2 (1986).

coffee² and the Alabama verdict for the BMW owner defrauded over a paint job³ represent the norm of all jury verdicts, and that such verdicts paint a picture of juries running wild.⁴ They are wrong. Contrary to popular belief, empirical evidence demonstrates that only a tiny fraction of all disputes are resolved through a jury trial, and the verdicts in those trials are, both in absolute numbers and on average, much lower than commonly reported.⁵

Big verdicts make news. Newspapers report on very few civil jury trials. Typically, the only cases to hit the press are those with unusual facts or very high verdicts; the most coverage is given to cases with both unusual facts *and* very high verdicts.⁶

2. See *Liebeck v. McDonald's Restaurants, Inc.*, No. CV-93-02419, 1995 WL 360309, at *1 (D.N.M. Aug. 18, 1994) (awarding compensatory damages of \$200,000, reduced by comparative negligence of 20 percent to \$160,000, and punitive damages of \$2,700,000 to 81 year-old woman who received third degree burns after she spilled hot coffee on her lap). The trial judge subsequently reduced the punitive damage award to \$480,000 by trebling the compensatory damage award. See *\$2.9 Million Coffee-Scalding Award is Trimmed by Judge to \$640,000*, COLUMBUS DISPATCH, Sept. 15, 1994, at 3A.

3. See *BMW of North America, Inc. v. Gore*, 646 So. 2d 619 (Ala. 1994), *rev'd and remanded*, 517 U.S. 559 (1996), *aff'd conditionally*, 701 So. 2d 507 (Ala. 1997). The trial court had awarded compensatory damages of \$4,000 and punitive damages of \$4,000,000. See 646 So. 2d at 622. On appeal, the Alabama Supreme Court found the punitive damage award to be excessive and ordered it reduced to \$2,000,000. See *id.* at 629. On further appeal, the United States Supreme Court found that the amount was still excessive and remanded to the Alabama Supreme Court for further consideration. See 517 U.S. at 586. On remand, the Alabama Supreme Court found that a punitive damage award of \$50,000 would be appropriate, see 701 So. 2d at 515, and the plaintiff accepted the remittitur. See *In the Courts: Fraud and Negligent Misrepresentation*, 10 BUS. TORTS REP. 231, 234 (1998).

4. See George F. Will, *BMW Paint-Line Case Illustrates Outrageousness of Excessive Jury Awards*, COLUMBUS DISPATCH, Oct. 20, 1995, at 15A.

5. Professor Michael Saks of the University of Iowa wrote an exhaustive and detailed review in 1992, concluding that the negative characterization of juries and the civil justice system is "built of little more than imagination." Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System—And Why Not?*, 140 U. PA. L. REV. 1147, 1156 (1992). In light of the best empirical evidence, "much of what we think we know about the behavior of the tort litigation system is untrue, unknown, or unknowable Our current understanding of the tort litigation system is constructed of inferences built upon evidence that is surprisingly incomplete and inadequate." *Id.* at 1149. In Professor Saks' estimation, "[a] comprehensive picture, based on the best available evidence, suggests a system that behaves quite differently from what is widely assumed." *Id.* at 1287.

Other researchers have said that they "do not find empirical evidence of a system run amok with skyrocketing awards." STEPHEN DANIELS & JOANNE MARTIN, *CIVIL JURIES AND THE POLITICS OF REFORM IX-X* (1995). Depictions of jury activity that suggest that plaintiffs regularly win large amounts across all types of cases "are naive at best and cavalier at worst." *Id.* at 87. An analysis of jury verdicts published in 1993 showed that, contrary to the fear that they were escalating out of control, jury awards had remained remarkably stable during the prior five years. See Linda Himelstein, *Should Business Be Afraid of Juries?*, BUS. WK., Nov. 18, 1993, at 100 (citing results of a study by Jury Verdict Publications).

6. See, e.g., Bruce Cadwallader, *\$550,000 Verdict May Bankrupt ACTV Station*, COLUMBUS DISPATCH, Aug. 28, 1998, at 1B; Bruce Cadwallader, *Doctor, Hospital Erred, Jury Finds: A Woman Whose Arm Was Amputated Was Awarded \$3.1 Million in Medical Malpractice Trial*, Co-

The popular press is not alone in this underreporting practice. Legal periodicals also generally limit their reporting to large verdicts.⁷ Commercial jury verdict reporting services cover more cases than the popular press but still report on a minority of the trials.⁸

The truth is that civil jury verdicts, when studied and analyzed in a comprehensive fashion, are fair and reasonable. They are rational. They are based on the evidence and demonstrate the jury's understanding of the court's instructions of law. Juries are not inordinately swayed by sympathy. Widows and orphans walk away from the courthouse empty-handed.⁹ At the same time, where liability and serious injuries are established, juries award millions of dollars to deserving plaintiffs.¹⁰

LUMBUS DISPATCH, Aug. 22, 1998, at 4D; *\$51.5 Million Verdict Could Lead to More Anti-Tobacco Lawsuits*, COLUMBUS DISPATCH, Feb. 12, 1999, at 5A; Milo Gyelin, *Older Victims Win Big in Damage Suits*, DAILY REPORTER, Jan. 5, 1995, at 5; *Iowa Jury Awards \$80.7 Million to UPS Worker Poked in Breast*, COLUMBUS DISPATCH, Feb. 13, 1998, at 6A; *Jury Awards Family \$262.5 Million in Chrysler Minivan Latch Lawsuit*, COLUMBUS DISPATCH, Oct. 9, 1997, at 3A; *Violinist Dragged by Train Gets \$30 Million from Suit*, COLUMBUS DISPATCH, Mar. 2, 1999; *Woman Awarded \$450,000 for Customs Ordeal*, COLUMBUS DISPATCH, Feb. 26, 1998, at 5A.

7. See, e.g., Dawn Connor, *Where Are They Now? Top Ten Verdicts of 1998*, LAW. WEEKLY USA (Jan. 11, 1999) <<http://www.lweekly.com>>; Kathryn K. Koehler, *Ohio's Largest Jury Verdicts of 1998*, OHIO LAW. WEEKLY (Feb. 8, 1999) <<http://www.lweekly.com>>; *Verdicts: The Big Numbers of 1998*, NATIONAL L.J., Feb. 22, 1999, at C3; Natalie White, *Pier-Diving Brothers Win \$104 Million from New York City*, LAW. WEEKLY USA, Feb. 8, 1999, at B7.

8. Compare THE OHIO CTS. SUMMARY, at 39E (1997) (showing 1,741 civil jury trials in the Ohio Courts of Common Pleas—General Division in 1997), with THE OHIO TRIAL REP. (1997) (reporting on 470 Ohio civil jury trials in 1997, 27 percent of the actual trials).

9. See *Keller v. Evans*, No. 95CVA-06-4144 (Franklin County, Ohio Ct. C.P. Nov. 5, 1997) (LEXIS, VERDCT Library, OHJURY File) (finding for defense in medical malpractice claim by family of a 24 year old man who died after an alleged delay in diagnosing a brain tumor); *Williams v. Gemma*, No. 95CVA-01-291 (Franklin County, Ohio Ct. C.P. Jan. 22, 1997) (LEXIS, VERDCT Library, OHJURY File) (finding for defense in medical malpractice claim by family of a 46 year old man who died after receiving general anesthesia for outpatient treatment of sleep apnea); *Hufford v. Sosnowski*, No. 94CVA-11-8373 (Franklin County, Ohio Ct. C.P. Dec. 18, 1997) (LEXIS, VERDCT Library, OHJURY File) (finding for defense in medical malpractice claim by family of a 63 year old man who died after alleged failure to discover and control post-operative bleeding following a simple prostatectomy); *Easter v. Manns*, No. 93CVC-11-8085 (Franklin County, Ohio Ct. C.P. Feb. 13, 1995) (LEXIS, VERDCT Library, OHJURY File) (finding for defense where a child was killed after being hit by a car); *Campbell v. Daimler Group, Inc.*, No. 93CVC-04-2787 (Franklin County, Ohio Ct. C.P. Feb. 7, 1996) (LEXIS, VERDCT Library, OHJURY File), *aff'd in relevant part*, 686 N.E.2d 337, 344 (Ohio Ct. App. 1996) (finding for defense in family's negligence claim against construction companies where a 26 year-old steelworker was killed when two steel columns began to lean, and the structure crashed to the ground).

10. See *Spangler v. Meijer, Inc.*, No. 90CVC-12-9818 (Franklin County, Ohio Ct. C.P. Dec. 23, 1991) (LEXIS, VERDCT Library, OHJURY File) (awarding \$12,520,960 to a 55 year-old man who was rendered a quadriplegic after a security guard lifted him off the ground, swung his feet out behind him, and slammed his head into the floor); *Shockley v. Crawford*, No. 89CV-01-487 (Franklin County, Ohio Ct. C.P. Nov. 14, 1990) (LEXIS, VERDCT Library, OHJURY File) (awarding \$3,000,000 to the family of a 26 year-old woman who died in the hospital while choking on her vomit); *Jeanne v. The Hawkes Hosp. of Mt. Carmel*, 598 N.E.2d 1174, 1176-77, 1182 (Ohio Ct. App. 1991) (affirming trial court award

In short, every day in courthouses across the country, juries do exactly what lawyers and judges and the general public want them to do; they listen attentively to the evidence and the arguments of the lawyers, make determinations of witness credibility, follow the law as presented by the trial judge, and apply their common sense from their own experiences to decide issues of liability and damages. The American jury system is alive and well.

From 1985 through 1997, I studied every civil jury trial in the Franklin County Court of Common Pleas in Columbus, Ohio. I read the court files and talked with the trial lawyers, judges, bailiffs, and law clerks. I wrote summaries of each of the trials, and these summaries were published in *BARbriefs*, the magazine of the Columbus Bar Association.¹¹ I then compiled data from these case summaries into books published by the Columbus Bar Association. This article is the culmination of my study of some 1,200 cases.

My perspectives are drawn from my analysis of these cases tried in Columbus, Ohio, as well as from my own experiences. I have practiced law for over twenty years with a medium-sized law firm in Columbus, Ohio where my practice is and has been devoted to civil litigation. I have handled a wide variety of cases, and my practice is about evenly divided between representing plaintiffs and defendants.

I have lectured extensively on numerous trial advocacy topics and on the evaluation of cases for settlement. I gained additional perspectives as a frequent mediator in both state and federal court, as an arbitrator in the Franklin County Court of Common Pleas, as the President of the 4,500 member Columbus Bar Association, and as the President of the Franklin Chapter of the American Inns of Court, where I hold the "master lawyer" designation.

This Article discusses findings from my thirteen year study of Franklin County civil jury trials. Part I examines the mechanics of jury trials in one mid-western community. First, this Part introduces the players involved in jury trials. Next, this Part outlines the frequency of jury trials and the types of cases that tend to be tried before a jury. Finally, this Part describes the typical time-frame of a jury trial.

Part II describes the outcomes of jury trials. Part II first discusses an average jury verdict in different types of cases. Next, this Part explores which types of cases are likely to obtain high jury verdicts,

of \$8,150,000 to a woman who tested positive for AIDS after receiving a tainted blood transfusion following cosmetic surgery; original jury verdict was in the amount of \$12,000,000).

11. See generally Stephen E. Chappellear, *Courthouse Beat*, *BARBRIEFS* (Columbus B. Ass'n), 1985-1998.

which are likely to obtain low jury verdicts, and which are likely to return verdicts for the defense. Finally, this Part describes the settlement discussions of the parties and suggests how these discussions relate to jury verdicts.

Part III highlights the impact that juries have had in certain high-profile cases. This Part first examines wrongful death claims and describes the role that juries have played in these cases. Next, this Part discusses punitive damage awards and the impact that juries have had in these cases.

This Article concludes that trial by jury results in justice. Although it is not a commonly used mechanism for dispute resolution, it works when it is employed. Juries return verdicts that make sense, based on liability issues and the nature and extent of the damages.

I. JURY TRIALS IN FRANKLIN COUNTY

A. *The Players*

1. *The Community*—The court under examination is the Franklin County Court of Common Pleas, located in Columbus, Ohio, a city of approximately one million residents.¹² Franklin County is a representative urban county. According to 1990 Census figures, 81.5 percent of the population is White, 15.9 percent is African American, and 2.6 percent is Asian, Hispanic, American Indian or other. Per capita income is \$14,907.00. For adults 25 years and older, 29 percent are high school graduates, 20 percent have some college, 12 percent have a bachelor's degree, and 14 percent left high school without graduating.¹³ Columbus is popularly known as a "test market" city where new consumer products are often introduced, because its citizens represent a cross-section of America.¹⁴

12. See U.S. Census Bureau, *1990 U.S. Census Data: Franklin County* (visited April 11, 1999) <<http://www.census.gov/geo/www/index.html>> (on file with the *University of Michigan Journal of Law Reform*) (reporting 961,437 residents in Columbus); see also Greater Columbus Chamber of Commerce, *Economic Profile*, June 1998 (estimating the population at 1,017,274 in 1997).

13. See U.S. Census Bureau, *1990 U.S. Census Data: Franklin County* (visited April 11, 1999) <<http://www.census.gov/geo/www/index.html>> (on file with the *University of Michigan Journal of Law Reform*).

14. See Greater Columbus Chamber of Commerce, *Columbus on the Move!*, Mar. 1997, at 1. Columbus has been ranked in the top twenty "typically American metropolitan areas," by a cumulative index of dissimilarity with population, cumulative index, housing value

2. *The Court*—The Franklin County Court of Common Pleas is a court of general jurisdiction.¹⁵ It is one of the busiest courts in Ohio.¹⁶ For many years, this court has had the highest case load per judge in the state.¹⁷ There are currently sixteen judges on the court. Jury trials also may be heard by judges who are assigned by the Ohio Supreme Court to help with overload¹⁸ (“visiting judges”) and by court appointed magistrates, with the consent of the parties.¹⁹ There are currently two regularly assigned visiting judges and seven full-time magistrates.²⁰

3. *The Juries*—Ohio civil juries consist of eight members.²¹ Generally, two alternates participate and are dismissed before deliberations begin.²² Jurors are drawn from the rolls of registered voters.²³ Verdicts must be agreed upon by three-fourths or more of the jurors.²⁴

B. When Do We See Jury Trials?

1. *Infrequency of Jury Trials*—Resolution of a dispute by jury trial is the rare exception rather than the rule. Nationwide, settlement is the prevalent mode of disposition.²⁵ In 1997, only 1.34 percent of the Franklin County civil cases were disposed of by jury trials. The court disposed of a total of 11,613 cases either by settlement, dispositive motion, trial to the bench, or jury trial, and only 156 of those dispositions were jury trials.²⁶ This minute percentage of jury

index, age distribution index, and race distribution index. See Judith Waldrop, *All-American Markets*, AM. DEMOGRAPHICS, Jan. 1992, at 24.

15. See OHIO REV. CODE ANN. § 2305.01 (Anderson 1998).

16. See THE OHIO CTS. SUMMARY, *supra* note 8, at 8E.

17. See *Annual Report 12* (Franklin County, Ohio Ct. C.P.) (1997) [hereinafter *1997 Annual Report*].

18. OHIO CONST. art. IV, § 6(C).

19. See OHIO R. CIV. P. 53(C)(1)(a)(iii) (Supp. 1997).

20. See *1997 Annual Report*, *supra* note 17, at 3.

21. See OHIO R. CIV. P. 38(B) (1994).

22. See *id.* 47(C).

23. See OHIO REV. CODE ANN. § 2313.06 (Anderson 1998); see also *1997 Annual Report*, *supra* note 17, at 25.

24. See OHIO R. CIV. P. 48 (1994).

25. See Marc Galanter, *Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society*, 31 UCLA L. REV. 4, 27-28 (1983).

26. See *1997 Annual Report*, *supra* note 17, at 3, 16. These figures are also consistent with those determined by the National Center for State Courts and in California Superior Courts. See Samuel R. Gross & Kent D. Syverud, *Don't Try: Civil Jury Verdicts in a System Geared to Settlement*, 44 UCLA L. REV. 1, 2 n.2 (1996).

trial dispositions has been relatively consistent for a number of years.²⁷ The average wait for a case to come to trial ranges from fifteen to eighteen months.²⁸ During that time, litigants may reasonably assume that 99 percent of all cases filed in the general division of the court will be resolved in some manner other than a jury trial.

2. *What Kind of Cases Get Tried?*—For ease of analysis, I have broken down the civil jury trials into eighteen different categories, based on the predominant claim asserted by the plaintiff. The biggest single category of cases that regularly goes to a jury trial is motor vehicle crashes. From 1995 through 1997, 46 percent of jury trials involved car crashes.²⁹ Another 4.5 percent involved cars hitting pedestrians or bicycle riders, thus giving a total of 50.5 percent of cases which involved a personal injury resulting from a motor vehicle.³⁰

The figures in Table 1 are separated to show ten-year percentages and percentages for the three most recent years. They indicate a substantial increase in the number of car crash cases going to trial. The overwhelming majority of cases which reach a jury trial are tort claims for personal injury. For the most recent three-year period, 72.7 percent of jury trials came from car crashes, car-pedestrian crashes, medical malpractice claims, intentional tort claims, negligent-personal injury claims, slips and falls, premises liability claims, and product liability claims.³¹ After tort-personal injury claims, the next biggest category of jury trials is employment claims at 7.7 percent.³²

27. In 1995, 1.43 percent of all civil cases, 97 of 10,116, were disposed of by jury trial. See *1995 Annual Report* 16, 18 (Franklin County, Ohio Ct. C.P.) (1995). In 1996, 1.11 percent of all civil cases, 114 out of 10,248, were disposed of by jury trial. See *1996 Annual Report* 3, 16 (Franklin County, Ohio Ct. C.P.) (1996).

28. Cases are scheduled for trial on the day they are filed, and a twelve month time track is the primary, standard track for trial of nearly all cases. See LOCAL RULES OF PRAC. FRANKLIN COUNTY, OHIO CT. C.P. GEN. DIV. R. 37.02, in OHIO JUR. 3D, *Ohio Court Rules 1999* (1998) [hereinafter FRANKLIN COUNTY CT. C.P. RULES OF PRAC.]. There is a twenty-four month time track for professional tort (malpractice) and product liability cases. See 37.03. Scheduling conflicts and other delays result in most cases coming to trial fifteen to eighteen months after they are filed.

29. See tbl. 1. In their analysis of state court jury verdicts over a three year period in 82 sites covering over 100 counties in 16 states, Stephen Daniels and Joanne Martin found that automobile jury verdicts constituted 31.5 percent of the trials, and product liability verdicts accounted for 4.2 percent of the trials. See DANIELS & MARTIN, *supra* note 5, at 68, 78, 81-82.

30. See tbl. 1.

31. See *id.*

32. See *id.*

TABLE 1
PERCENTAGE OF JURY TRIALS BY CATEGORY

TYPE OF CASE	1985-1994 TRIALS (N=845)	1995-1997 TRIALS (N=352)
Motor Vehicle Crashes	36.4 percent	46.0 percent
Medical Malpractice	10.4	9.7
Motor Vehicle— Pedestrian Crashes	5.3	4.5
Employment	5.0	7.7
Insurance	4.8	2.8
Intentional Torts	4.7	2.8
Business Disputes	4.5	5.1
Real Estate	4.0	3.4
Sale of Goods and Services	4.0	1.4
Product Liability	3.8	2.6
Negligence—Personal Injury	3.5	3.4
Slips and Falls	3.4	2.0
Premises Liability	3.3	1.7
Fraud	2.5	1.1
False Arrest	1.5	.6
Construction	1.3	3.7
Fire	.7	0.0
Legal Malpractice	.6	1.4

C. Length of Civil Jury Trials

While the American public may assume that all jury trials last many months like the televised criminal trial of O. J. Simpson, an average civil jury trial lasts about four days. By category of case, where there were at least three trials in a category, the longest trials were in the areas of medical malpractice (6.4 days) and intentional tort (6.4 days).³³ Car crash cases, which make up the largest category of cases, lasted an average of 2.9 days.³⁴

33. See tbl. 2.

34. See *id.*

TABLE 2
LENGTH OF TRIAL BY CATEGORY OF CASE

CATEGORY	TRIAL DAYS (MEAN) (1997)(N=160)
Motor Vehicle Crashes	2.9
Medical Malpractice	6.4
Motor Vehicle Pedestrian Crashes	3
Employment	5
Insurance	1.5
Intentional Tort	6.4
Business Disputes	3.5
Real Estate	5
Sale of Goods & Services	7
Product Liability	—
Neg. Personal Injury	6
Slips & Falls	2
Premises Liability	—
Fraud	3.5
False Arrest	0
Construction	4.3
Fire	—
Legal Malpractice	8

The longest trial in 1997 was in the negligence-personal injury area and lasted seventeen days.³⁵ The case was a dram shop action for serious injuries suffered by three pedestrians who were hit by a drunk driver.³⁶ The jury returned a verdict for the defendant.³⁷ The next longest trial was an intentional tort case lasting thirteen days.³⁸ The defendant was an off-duty police officer who knocked one man out and then shot a second man.³⁹ The jury returned a verdict of \$1,000,000 for the two plaintiffs.⁴⁰ The longest civil jury trial in the thirteen years of this study was a 1988 case which lasted fifteen

35. See *Elwing v. Multicon Inv. Co.*, No. 95CVC-07-4774 (Franklin County, Ohio Ct. C.P. Oct. 16, 1997) (LEXIS, VERDCT Library, OHJURY File).

36. See *id.*

37. See *id.*

38. See *Miller v. Leesburg*, Nos. 90CVC-07-5439, 90CVC-07-5541, 90CVC-07-5542, 92AP 1637, 92AP 1641 (Franklin County, Ohio Ct. C.P. Mar. 16, 1997), *aff'd in part and rev'd in part*, Nos. 97APE10-1379, 97APE10-1380, 1998 WL 831404, at *14-15 (Ohio Ct. App. 1998).

39. See *Miller*, 1998 WL 831404, at *1.

40. See *id.* at *5. Following the verdict, the trial court reduced the verdict to \$850,000, *see id.*, and the appeals court affirmed the reduction. *See id.* at *14-15.

weeks.⁴¹ This was an accounting malpractice trial which ended with a verdict of \$15,845,607.62, reduced on appeal to \$8,771,000 plus post-judgment interest.⁴²

The length of trial has a direct economic impact on the plaintiff's lawyer. As will be seen, the median verdict in a car crash case from 1997 was \$6,450.⁴³ Assuming a one-third fee, the lawyer earns \$2,150, or about \$100 per hour for a three day trial, not including witness interviews, investigations, discovery, pleadings and other trial preparations.

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Intentional Tort	6.4
Business Disputes	3.5
Real Estate	5
Sale of Goods & Services	7
Product Liability	—
Neg. Personal Injury	6
Slips & Falls	2
Premises Liability	—
Fraud	3.5
False Arrest	0
Construction	4.3
Fire	—
Legal Malpractice	8

41. See *Scioto Mem'l Hosp. Ass'n v. Price Waterhouse & Co.*, No. 85CV-08-4513 (Franklin County, Ohio Ct. C.P. Apr. 4, 1988) (LEXIS, VERDCT Library, OHJURY File), modified, No. 90AP-1124, 1993 WL 532198, at *32 (Ohio Ct. App. Dec. 21, 1993), *aff'd in relevant part*, 659 N.E.2d 1268, 1273 (Ohio 1996).

42. See *Scioto Mem'l Hosp. Ass'n*, 659 N.E.2d at 1273-74.

43. See tbl. 3.

II. JURY TRIAL OUTCOMES

A. *Average Jury Verdicts—Means and Medians*

Both the practitioner and the scholar benefit from an understanding of average jury verdicts in different kinds of cases. The trial lawyer wants to know the size of a jury verdict typically returned in a case in order to make the initial decision whether to accept representation; to intelligently advise the client on the likely outcome if the case goes to trial; to evaluate the case and determine its settlement value; and to use the information as a negotiating tool with opposing counsel. The scholar is interested in assessing how closely average verdicts mirror the image given by the media; comparing average verdicts in different types of cases and across jurisdictions; and noting patterns or trends over time, particularly as they correspond to changes in the law or culture.

There are several methods by which an "average" verdict may be determined in each category of case. One approach is simply to add up all of the verdict amounts in a given category, divide by the number of verdicts, and arrive at the arithmetic "mean." A variation of that approach is to remove from consideration the cases where the award was "zero" because there was a directed verdict for the defendant, a defense verdict, or a finding of no damages. This produces a figure which represents the arithmetic mean in just those cases where the jury returned a verdict in favor of the plaintiff. Thus, to evaluate a case where liability has been stipulated, a truer picture of the "average" verdict would only include those cases where the plaintiff received an award of some amount.

Table 3 sets forth the mean verdicts in each of the eighteen categories of cases. The mean verdict has been determined two ways: first, including all of the jury trials, even the zero verdicts; and second, with just the verdicts where there was an award of at least one dollar. Table 3 also compares the mean verdicts over time by looking first at all of the verdicts in a ten-year period from 1985 through 1994, and then looking at the verdicts three years later in the single year of 1997.

TABLE 3
AVERAGE (MEAN) VERDICT BY CATEGORY OF CASE

CATEGORY	MEAN VERDICT (W/ ZEROS)		MEAN VERDICT (W/O ZEROS)	
	1985-94	1997	1985-94	1997
Motor Vehicle Crashes	\$44,905	58,613	63,154	74,844
Medical Malpractice	289,631	85,055	1,108,155	306,200
Motor Vehicle Pedestrian Crashes	70,693	64,666	127,248	194,000
Employment	28,384	183,611	47,686	428,426
Insurance	94,757	8,575	168,916	17,151
Intentional Tort	416,190	293,750	1,040,477	587,500
Business Disputes	593,970	39,923	752,362	45,626
Real Estate	34,979	9,914	47,571	17,349
Sale of Goods & Services	12,794	33,500	24,167	33,500
Product Liability	183,494	44,099	978,656	176,396
Neg.—Personal Injury	69,125	64,482	129,610	255,687
Slips & Falls	10,914	10,000	39,563	20,000
Premises Liability	51,772	—	978,636	—
Fraud	190,505	118,150	168,916	118,150
False Arrest	18,436	—	59,919	—
Construction	108,378	7,245	119,216	7,245
Fire	64,127	—	128,255	—
Legal Malpractice	6,000	—	15,000	—

Looking at all verdicts from 1985 through 1994, including defense verdicts, the highest mean jury verdict is found in the area of business disputes.⁴⁴ This result illustrates the skewing effect of a single large verdict,⁴⁵ because this category of cases includes a ver-

44. See *id.*

45. Because the mean takes into account the exact value of each score in a distribution, it is highly sensitive to extreme scores. One astronomical award in an otherwise unchanging distribution will pull the mean higher, creating the impression that the whole distribution has changed. See Saks, *supra* note 5, at 1250.

dict of nearly \$16,000,000.⁴⁶ Similarly, the mean verdicts in the areas of medical malpractice and intentional torts are skewed as a result of a few substantial verdicts.⁴⁷

A second mechanism for determining a representative verdict is to calculate the "median" verdict in each category.⁴⁸ The median is computed by placing all of the verdicts in rank order and finding the one which falls in the middle of the order. For example, if there are nine verdicts in the category, the median verdict is verdict number five; there is an equal number of verdicts (four) above and below that verdict. The median has the advantage of being less subject than the mean to skewed results due to a small number of wildly high or low verdicts. Thus, in small sample sizes, the median may be a better measure of central tendencies than the mean.

Just as with the computation of the mean verdict, the median has been calculated first on the basis of all of the cases in a category and then after removing all of the cases with a "zero" award.⁴⁹ From 1985 to 1994, the median verdict for trials involving motor vehicle crashes, the single largest category of jury trials, was under \$6,000.⁵⁰ In 1997, the median award rose to \$6,450.⁵¹

TABLE 4
AVERAGE (MEDIAN) VERDICT BY CATEGORY OF CASE

CATEGORY	MEDIAN VERDICT WITH ZEROS		MEDIAN VERDICT WITHOUT ZEROS	
	1985-94	1997	1985-94	1997
Motor Vehicle Crashes	5,807	6,450	12,000	10,000
Medical Malpractice	0	0	198,000	300,000

46. See *Scioto Mem'l Hosp. Ass'n*, No. 85CV-08-4513, *modified*, 1993 WL 532198, at *32, *aff'd in relevant part*, 659 N.E.2d at 1273 (awarding verdict of \$15,845,607.62 which was reduced on appeal to \$8,771,000 plus post-judgment interest).

47. See tbl. 5; see also *Spangler v. Meijer*, No. 90CVC-12-9818 (Franklin County, Ohio Ct. C.P. Dec. 23, 1991) (LEXIS, VERDCT Library, OHJURY File) (\$12,520,960 intentional tort verdict); *Jeanne v. The Hawkes Hosp. of Mt. Carmel*, 598 N.E.2d 1174, 1176-77 (Ohio Ct. App. 1991) (\$12,000,000 medical malpractice verdict which the trial court reduced to \$8,150,000); *Huff v. Anesthesia Assoc. of Columbus*, No. 87 CV-12-7793 (Franklin County, Ohio Ct. C.P. February 9, 1990) (\$3,412,518 medical malpractice verdict).

48. "The median is the value that divides a distribution into two equal halves; it is the 50th percentile." Saks, *supra* note 5, at 1249 n.372.

49. See tbl. 4.

50. See *id.* Including all such verdicts, whether they involved a soft tissue injury, a broken knee, a quadriplegic, or a death, the median verdict was \$5,807. See *id.*

51. See *id.*

TABLE 4 (CONTINUED)

CATEGORY	MEDIAN VERDICT WITH ZEROS		MEDIAN VERDICT WITHOUT ZEROS	
	Motor Vehicle Pedestrian Crashes	2,225	0	16,978
Employment	8,375	0	25,000	42,983
Insurance	3,677	8,575	23,225	17,151
Intentional Tort	0	87,500	58,500	587,500
Business Disputes	46,315	13,482	110,689	14,965
Real Estate	11,750	120	20,000	18,154
Sale of Goods & Services	567	33,500	10,075	33,500
Product Liability	0	0	276,909	176,396
Neg. Personal Injury	1,892	0	13,706	225,687
Slips & Falls	0	10,000	20,350	20,000
Premises Liability	0	0	36,875	0
Fraud	7,000	118,150	70,000	236,300
False Arrest	0	—	6,989	—
Construction	52,281	6,701	78,103	6,701
Fire	24,661	—	104,931	—
Legal Malpractice	0	0	15,000	0

Throwing out the cases that resulted in defense verdicts, and just looking at verdicts of at least one dollar, the median verdict in ten years worth of car crash trials was \$12,000.⁵² For 1997 alone, the median plaintiff's verdict was \$10,000.⁵³ The median verdict in several categories was zero, reflecting the reality of a greater number of verdicts for the defense than for the plaintiff in that category of case, such as medical malpractice.⁵⁴

From 1985 to 1994, the highest median jury awards for tort cases were in the medical malpractice and product liability areas.⁵⁵ Medical malpractice verdicts are a lightning rod for controversy.⁵⁶ Where there was a finding that a doctor or other medical profes-

52. See *id.*

53. See *id.*

54. See tbl. 9.

55. See tbl. 4.

56. See W. John Thomas, *The Medical Malpractice 'Crisis': A Critical Examination of a Public Debate*, 65 *TEMPLE L. REV.* 459, 460 (1992) ("Medical malpractice is perhaps the most controversial tort in the American legal system."); Neil Vidmar, *Empirical Evidence on the Deep Pockets Hypothesis: Jury Awards for Pain and Suffering in Medical Malpractice Cases*, 43 *DUKE L.J.* 217, 218 (1993) ("The role of the jury in medical negligence cases ranks among the most contentious issues in contemporary debate about the merits of the tort system.").

sional was legally responsible for someone's injury, the median award was just under \$200,000 from 1985 through 1994,⁵⁷ and \$300,000 in 1997.⁵⁸ Typically, these cases involve very serious injuries, such as quadriplegia, paralysis, or death. There were five medical malpractice awards exceeding \$1,000,000,⁵⁹ about 4 percent of the medical malpractice cases. Two of those five verdicts were reduced post-trial.⁶⁰ The highest award was for \$12,000,000 to a young woman who tested positive for HIV after a blood transfusion.⁶¹ That verdict was reduced to \$8,150,000.⁶² An award of \$3,000,000 to the family of a young woman who lost a five-and-a-half month old fetus and died while choking on her vomit while hospitalized was reduced by half to \$1,500,000.⁶³ Only one of the medical malpractice awards over \$1,000,000 was rendered since 1991, in a 1994 trial awarding \$1,200,000.⁶⁴

The highest median verdict from 1985 through 1994 is in the area of product liability, at nearly \$277,000.⁶⁵ This, however, requires further explanation. In Franklin County and nationally, product liability personal injury cases make up less than 1 percent of all of the civil cases filed in a given year.⁶⁶ There were three such trials in Franklin County in 1995,⁶⁷ two in 1996,⁶⁸ and three in

57. See tbl. 4.

58. See *id.*

59. See *Jeanne v. The Hawkes Hosp. of Mt. Carmel*, 598 N.E.2d 1174 (Ohio Ct. App. 1991); *Huff v. Anesthesia Assoc. of Columbus*, No. 87CV-12-7793 (Franklin County, Ohio Ct. C.P. Feb. 9, 1990); *Shockley v. Crawford*, No. 89CV-01-487 (Franklin County, Ohio Ct. C.P. Nov. 1990) (LEXIS, VERDCT Library, OHJURY File); *Lambert v. Shearer*, No. 89CV-09-6724 (Franklin County, Ohio Ct. C.P. Sept. 27, 1991) (LEXIS, VERDCT Library, OHJURY File), *rev'd*, 616 N.E.2d 965, 978 (Ohio Ct. App. 1992) (remanding with instructions for a new trial); *Roberts v. Children's Hosp.*, No. 92CVA-12-9541 (Franklin County, Ohio Ct. C.P. Dec. 16, 1994) (LEXIS, VERDCT Library, OHJURY File).

60. See *Jeanne*, 598 N.E.2d at 1176-77 (noting that the trial court reduced the award to \$8,150,000); *Shockley*, No. 89CV-01-487.

61. See *Jeanne*, 589 N.E.2d at 1176.

62. See *id.* 1176-77.

63. See *Shockley*, No. 89CV-01-487.

64. See *Roberts*, No. 92CVA-12-9541.

65. See tbl. 4.

66. In 1997, there were 1,006 product liability complaints filed in Ohio's common pleas courts, out of 110,290 civil complaints (0.9 percent). Seventy-four of those product liability complaints were filed in the Franklin County Court of Common Pleas, out of 11,459 civil complaints (0.6 percent). The case filings predominated in urban areas. Seventy-eight of Ohio's 88 counties had ten or fewer product liability complaints filed in 1997. See THE OHIO CTS. SUMMARY, at 7E-9E (1997).

67. See *Flesher v. U-Haul*, No. 94CVC-11-7765 (Franklin County, Ohio Ct. C.P. Oct. 13, 1995) (LEXIS, VERDCT Library, OHJURY File), *aff'd in part and rev'd in part*, No. 95 APE11-1420, 1996 WL 362034, at *2 (Ohio Ct. App. June 28, 1996); *Jenkins v. James B. Day and Co.*, No. 91CVB-01-492 (Franklin County, Ohio Ct. C.P. Jan. 10, 1995) (LEXIS, VERDCT Library, OHJURY File); *Westfield Ins. Co. v. Kern Products, Inc.*, No. 92CVB-06-4846 (Franklin County, Ohio Ct. C.P. March 21, 1995) (LEXIS, VERDCT Library, OHJURY File).

68. See *May v. Hyatt on Capital Square*, No. 93CVC-06-3803 (Franklin County, Ohio Ct. C.P. Dec. 23, 1996) (LEXIS, VERDCT Library, OHJURY File); *Lipps v. Cruisers, Inc.*, No.

1997.⁶⁹ Of these eight cases, all resulted in defense verdicts. Despite the high median from 1985 through 1994, there has not been an award to a plaintiff in a product liability, personal injury case since 1991. Moreover, in the thirteen years of this study, punitive damages have never been awarded in a product liability case.⁷⁰

There have been six awards to plaintiffs in product liability, personal injury cases.⁷¹ In two of them, an individual was killed because of a product,⁷² and in another, a 17 year-old boy was rendered quadriplegic.⁷³

B. High Jury Awards

Franklin County juries have not been reluctant to award substantial verdicts, although they are not frequent. There have been twenty-one verdicts of \$1,000,000 or more from 1985 through 1997. These verdicts make up 1.8 percent of all civil jury verdicts.⁷⁴ The twelve highest verdicts are depicted in Table 5.

91CVC-03-2402 (Franklin County, Ohio Ct. C.P. March 7, 1996) (LEXIS, VERDCT Library, OHJURY File).

69. See *Walker v. Blackwood Sheet Metal, Inc.*, No. 95CVB-10-7349 (Franklin County, Ohio Ct. C.P. Nov. 4, 1997) (LEXIS, VERDCT Library, OHJURY File); *Streb v. AMF Bowling Ctrs., Inc.*, No. 94CVH-05-3329 (Franklin County, Ohio Ct. C.P. April 4, 1997) (LEXIS, VERDCT Library, OHJURY File), *aff'd*, No. 97 APE06-752, 1998 WL 212619, at *10 (Ohio Ct. App. April 30, 1998); *Hinte v. ECHO, Inc.*, No. 95CVB-06-3980 (Franklin County, Ohio Ct. C.P. Oct. 2, 1997) (LEXIS, VERDCT Library, OHJURY File), *rev'd*, No. 98AP-105, 1998 WL 869551, at *6 (Ohio Ct. App. Dec. 10, 1998).

70. Cf. Michael Rustad, *In Defense of Punitive Damages in Products Liability: Testing Tort Anecdotes with Empirical Data*, 78 IOWA L. REV. 1, 39, 54 (1992) (finding that punitive damage awards are rare in product liability cases, and that in a majority of the cases where there was such an award, it was thrown out or reduced by the presiding judge or by an appeals court).

71. See *Hagele v. National Seating Co.*, No. 88CV-01-714 (Franklin County, Ohio Ct. C.P. Jan. 17, 1991) (LEXIS, VERDCT Library, OHJURY File) (awarding \$180,000 for injury sustained from truck seat); *Sedgwick v. Kawasaki Cycleworks, Inc.*, No. 82CV-08-5055 (Franklin County, Ohio Ct. C.P. Nov. 4, 1988) (LEXIS, VERDCT Library, OHJURY File), *aff'd*, 593 N.E.2d 69 (Ohio Ct. App. 1991) (awarding \$783,000 for incident involving motorcycle); *Moersch v. SREPCO Elecs. Div. of Pioneer-Standard Elecs., Inc.*, No. 83CV-08-4824 (Franklin County, Ohio Ct. C.P. June 9, 1986) (LEXIS, VERDCT Library, OHJURY File), *aff'd*, No. 86AP-787, 1988 WL 27462, at *6 (Ohio Ct. App. 1988) (awarding \$325,000 for accidental death in fall from television tower); *Ward v. Delta Indus., Inc.*, No. 83CV-11-6839 (Franklin County, Ohio Ct. C.P. Aug. 13, 1986) (LEXIS, VERDCT Library, OHJURY File) (awarding \$4,350,000 for incident involving swimming pool); *Tincher v. A-Best Prods. Co.*, No. 88CV-08-5414 (Franklin County, Ohio Ct. C.P. Oct. 9, 1990) (LEXIS, VERDCT Library, OHJURY File) (awarding \$228,819 for incident involving asbestos).

72. See *Moersch*, No. 83CV-08-4824; *Tincher*, No. 88CV-08-5414.

73. See *Ward*, No. 83CV-11-6839.

74. From 1985 through 1994, there were 1,197 jury trials. See tbl. 1.

TABLE 5
TWELVE HIGHEST JURY AWARDS 1985-1997

VERDICT	TYPE OF CASE	YEAR
\$15,845,607	Business Dispute	1988
12,941,627	Intentional Tort	1991
12,000,000	Medical Malpractice	1990
7,125,309	Employment	1993
4,350,000	Product Liability	1985
3,412,518	Medical Malpractice	1990
3,000,000	Medical Malpractice	1990
2,762,205	Insurance	1992
2,720,000	Fraud	1991
2,500,000	Business Dispute	1989
2,400,000	Medical Malpractice	1991
1,957,688	Employment	1997

The highest verdict, \$15,845,607, was awarded in an accounting malpractice trial which lasted fifteen weeks, the longest civil jury trial in county history.⁷⁵ The court of appeals affirmed the judgment on liability but found the damages to be excessive and ordered a remittitur to \$8,771,000 plus post-judgment interest.⁷⁶ This judgment was affirmed by the Ohio Supreme Court eight years after the trial.⁷⁷

The next highest verdict involved a quadriplegia injury.⁷⁸ The plaintiff was a 55 year-old, 5'6", 150 pound man.⁷⁹ Two store security guards confronted the plaintiff on suspicion of shoplifting after seeing him put a package of batteries in his pocket.⁸⁰ The plaintiff claimed that he had taken the batteries into the store with him.⁸¹ The store had a "loss prevention restraint matrix" consisting of eight steps security guards were to take in restraining a suspect.⁸² The policy allowed guards to handcuff anyone who offered verbal

75. See *Scioto Mem'l Hosp. Ass'n v. Price Waterhouse & Co.*, No. 85CV-08-4513 (Franklin County, Ohio Ct. C.P. Apr. 4, 1988) (LEXIS, VERDCT Library, OHJURY File), *modified*, No. 90AP-1124, 1993 WL 532198, at *32 (Ohio Ct. App. Dec. 21, 1993), *aff'd in relevant part*, 659 N.E.2d 1268, 1273 (Ohio 1996).

76. See *Scioto Mem'l Hosp. Ass'n*, 1993 WL 531298, at *32.

77. See *Scioto Mem'l Hosp. Ass'n*, 659 N.E.2d at 1273-74.

78. See *Spangler v. Meijer, Inc.*, No. 90CVC-12-9818 (Franklin County, Ohio Ct. C.P. Dec. 23, 1991) (LEXIS, VERDCT Library, OHJURY File).

79. See *id.*

80. See *id.*

81. See *id.*

82. See *id.*

resistance and permitted "pain compliance" if the suspect tried to pull away.⁸³ One security guard used a bar hammer-lock takedown, lifted the plaintiff off the ground and swung his feet out from behind him, and slammed his head into the floor, resulting in quadriplegia.⁸⁴ In addition to the jury award, the court later awarded punitive damages in the amount of \$525,000 and another \$337,500 for attorney fees.⁸⁵

The third highest award was in a medical malpractice case.⁸⁶ The plaintiff was admitted to the hospital for cosmetic surgery and was given a blood transfusion the day after her surgery.⁸⁷ Her blood later tested positive for HIV.⁸⁸ She alleged medical malpractice, negligence, strict liability, and negligent infliction of emotional distress.⁸⁹ A jury verdict was returned for the plaintiff in the amount of \$12,000,000.⁹⁰ The court later reduced the verdict to \$8,150,000.⁹¹

The employment verdict for \$7,125,309 was awarded to two high level executives who were fired, allegedly based on their age.⁹² One plaintiff was 53 years old and the other was 64 years old.⁹³ This award was reversed on appeal.⁹⁴

The \$4,350,000 award came in a product liability case in 1995.⁹⁵ This case involved a 17 year-old boy who dove into an above-ground swimming pool and ended up a quadriplegic.⁹⁶

83. See *id.*

84. See *id.*

85. See *id.*

86. See *Jeanne v. The Hawkes Hosp. of Mt. Carmel*, 598 N.E.2d 1174 (Ohio Ct. App. 1991).

87. See *id.* at 1175-76.

88. See *id.* at 1176.

89. See *id.*

90. See *id.*

91. See *id.* at 1177.

92. See *Byrnes v. LCI Communication Holdings Co.*, No. 91CVH06-5143 (Franklin County, Ohio Ct. C.P. Oct. 27, 1993) (LEXIS, VERDCT Library, OHJURY File), *modified*, Nos. 94APE09-1372, 94APE09-1396, 1995 WL 259037, at *8 (Ohio Ct. App. May 2, 1995), *rev'd*, 672 N.E.2d 145 (Ohio 1996).

93. See *id.*

94. See *Byrnes*, 672 N.E.2d at 149.

95. See *Ward v. Delta Indus., Inc.*, No. 83CV-11-6839 (Franklin County, Ohio Ct. C.P. Aug. 13, 1986) (LEXIS, VERDCT Library, OHJURY File).

96. See *id.*

C. Low Jury Awards

Juries also are not reluctant to award minimal damages. One should not assume that all juries have a "lottery" mentality once they make a determination of liability in favor of the plaintiff. For example, in 1997, Franklin County juries awarded \$45 to a plaintiff who claimed soft tissue injuries from a car crash,⁹⁷ \$120 in a landlord-tenant case,⁹⁸ and \$655 in a car crash case.⁹⁹ From 1995 through 1997, juries returned verdicts under \$2,000 in twenty cases and under \$1,000 in twelve cases.¹⁰⁰ The lowest plaintiff's verdict was for \$33 in a 1996 car crash trial.¹⁰¹

TABLE 6
JURY AWARDS UNDER \$2,000 (1995-1997)

VERDICT	TYPE OF CASE	CAPTION
\$33.00	Car crash	Imes v. Reyman, Case Nos. 95CVC-02-768, 96APE10-1322.
45.00	Car crash	Clark v. Bolinger, Case Nos. 94CVC-12-8934, 96CVC-03-1711.
120.00	Real estate	Blades v. Carson, Case Nos. 96CVH-09-7145, 93CVC-09-725.
157.65	Car crash	Hibler v. Neal, Case Nos. 93CVC-09-725
180.00	Car crash	Seredensky v. Miller, Case No. 90CVC-04-2573.
234.90	Car crash	Everett v. Flynn, Case Nos. 93CVC-05-3306, 95APE09-1216.
255.00	Car crash	Barney v. A-1 Auto Parts, Case No. 95CVC-01-354.
543.00	Car crash	Lewis v. Acme Enterprises, Case No. 94CVC-08-5724.
655.00	Car crash	Brunner v. Cunningham, Case No. 96CVC-03-2257.
709.00	Car crash	Hamilton v. Saltz, Case No. 95CVC-08-6001.
811.00	Car-Pedestrian crash	Jerow v. Salyers, Case No. 94CVC-10-7141.

97. See Clark v. Bolinger, No. 96CVC-03-1711 (Franklin County, Ohio Ct. C.P. Mar. 20 1997) (LEXIS, VERDCT Library, OHJURY File).

98. See Blades v. Carson, No. 96CVH-09-7145 (Franklin County, Ohio Ct. C.P. May 9, 1997) (LEXIS, VERDCT Library, OHJURY File).

99. See Brunner v. Cunningham, No. 96CVC-03-2257 (Franklin County, Ohio Ct. C.P. July 10, 1997) (LEXIS, VERDCT Library, OHJURY File).

100. See tbl. 6.

101. See Imes v. Reymann, No. 95CVC-02-768 (Franklin County, Ohio Ct. C.P. Aug. 14, 1996) (LEXIS, VERDCT Library, OHJURY File), *appeal dismissed*, 684 N.E.2d 704 (1997).

TABLE 6 (CONTINUED)

VERDICT	TYPE OF CASE	CAPTION
905.61	Car crash	Glover v. Sanders, Case No. 96CVC-01-600.
1014.00	Car Crash	Jones v. Shriner, Case No. 96CVC-07-5124.
1016.10	Car Crash	Thompson v. Curtin, Case Nos. 95CVC-08-5215, 96APE09-1187.
1152.43	Car-Pedestrian Crash	Madison v. Jones, Case Nos. 95CVC-07-4729, 96 APE11-1512.
1250.00	CPA Negligence	Universal Electronics, Inc. v. English, Case No. 94CVH-06-4102.
1317.50	Car Crash	Johnson Caterers v. Easley, Case No. 95CVH-07-5806.
1482.75	Car Crash	Ellis v. Harris, Case No. 96CVC-06-4195.
1500.00	Car Crash	Hairston v. Beatty, Case No. 96CVC-04-2669.
1750.00	Business Dispute	Fisher v. Sullivan, Case No. 96CVH-04-2581.

D. Prevalence of Defense Verdicts

Juries regularly find for the defense. In fact, in some categories of cases, the defense wins most of the time.¹⁰² For example, false arrest cases, though a small sample of two cases, had a 100 percent defense record.¹⁰³ A truer picture is shown in the area of medical malpractice cases, where 74 percent of 34 cases from 1995 through 1997 resulted in defense verdicts.¹⁰⁴ That is, only one plaintiff in four successfully convinced a jury to award damages in a medical malpractice trial.

Greater than 50 percent odds for a defense verdict are also found in the areas of slips and falls (71.4 percent); product liability (66.7 percent); premises liability (66.7 percent); negligence-personal injury (66.7 percent); legal malpractice (60 percent); and motor vehicle-pedestrian crashes (56 percent).¹⁰⁵ Overall, juries found for the defense in 38.6 percent of all trials from 1995 to 1997.¹⁰⁶

102. See tbl. 7.

103. See *id.*

104. See *id.*

105. See *id.*

106. See *id.*

TABLE 7
DEFENSE VERDICTS BY CATEGORY OF CASES

CATEGORY	DEFENSE VERDICTS (1995-97) (N=352)
Motor Vehicle Crashes	19.1 percent
Medical Malpractice	74
Motor Vehicle Pedestrian Crashes	56
Employment	48
Insurance	40
Intentional Tort	40
Business Disputes	33.3
Real Estate	50
Sale of Goods & Services	0
Product Liability	66.7
Neg. Personal Injury	66.7
Slips & Falls	71.4
Premises Liability	66.7
Fraud	50
False Arrest	100
Construction	46
Fire	---
Legal Malpractice	60
Total	38.6

E. Settlement Demands and Offers

All of the cases in this study resulted in jury trials. If the parties engaged in pretrial settlement negotiations, they were unsuccessful. Where settlement negotiation information could be obtained, I collected data on the lowest settlement position asserted by the plaintiff before the trial and the highest pretrial offer made by the defendant. The court files only sometimes recite settlement demands and offers, usually in an agreed pretrial order or in a post-trial motion for prejudgment interest based on an alleged failure to negotiate a tort case in good faith. In addition to court files, a great deal of this information was collected from interviews with trial lawyers.

There appeared to be no pattern to the cases where attorneys did not provide settlement information when asked. That is, there was no more incidence of refusing to provide information in the

case of high verdicts, low verdicts, defense verdicts, high offers, high demands, low offers, or low demands.¹⁰⁷ One might have expected some reluctance to report on the part of plaintiff attorneys who made a high demand, turned down an offer, and received a verdict below the offer—or defense attorneys who made a low offer, rejected a demand, and received a verdict above the demand. Those attorneys might have been uncomfortable acknowledging that they had seemingly guessed wrong or misevaluated the case. This was not the case. While sometimes rueful about the result, many attorneys freely provided information about their settlement positions which turned out, in retrospect, to have been bad decisions.¹⁰⁸ There is enough data to draw some conclusions about the settlement negotiation process and how plaintiffs and defendants negotiate in cases where the negotiations break down and a trial is necessary.

A logical assumption might be that a rational evaluation and negotiation process leads to verdicts falling somewhere between the lowest demand and the highest offer. However, in a year of trials of car crash cases, this circumstance occurred only 39 percent of the time.¹⁰⁹ In 61 percent of the cases, one of the parties made a mistake and received a jury verdict that was worse than a settlement position available on the negotiating table.¹¹⁰ Of these cases, plaintiffs fared slightly worse than defendants at trial. In 35 percent of the cases, the jury verdict was lower than the defendant's final settlement offer.¹¹¹ In each of these cases, the plaintiff could have settled the case at a figure higher than the jury verdict.

For example, in one case the plaintiff's final settlement demand was \$40,000, and the defendant's final settlement offer was \$15,000.¹¹² The \$25,000 gap could not be bridged and the case proceeded to trial, resulting in a jury verdict of \$7,750.¹¹³ The plaintiff lost out to the tune of \$7,250.

In a more painful example for a plaintiff, there was a final settlement demand of \$375,000 and a final settlement offer of

107. In fact, the median verdicts in both the motor vehicle crash cases (\$6,450) and the medical malpractice cases (\$0) where settlement negotiation information is available are identical to the median verdicts in those categories for all cases. See tbls. 4, 7, 8.

108. Of course, attorneys can only advise and counsel their clients about settlement positions. An attorney may very well have evaluated a case properly, but the client insisted on a negotiation strategy that was not advantageous.

109. See tbl. 10.

110. See *id.*

111. See *id.*

112. See *id.*

113. See *id.*

\$110,000.¹¹⁴ At trial, the jury returned a verdict of \$33,750.¹¹⁵ This plaintiff went to trial in hopes of bettering the return and walked away from an additional \$76,250.

Defendants also pay the price for not accepting what turn out to be favorable demands. Twenty-six percent of the cases resulted in verdicts higher than the plaintiff's final settlement demand.¹¹⁶ In the highest car crash jury verdict in 1997, the plaintiff's final settlement demand was \$350,000 and the defendant's offer was \$10,000.¹¹⁷ The jury returned a verdict of \$625,906,¹¹⁸ leaving the defendant \$225,906 worse off than would have been the case with acceptance of the plaintiff's demand.

In another example, the plaintiff's final settlement demand was \$30,000, the defendant's final settlement offer was \$22,500, and the jury verdict was \$110,000.¹¹⁹ The parties went to trial over a \$7,500 gap in negotiations, and the result was a verdict \$80,000 higher than the plaintiff would have been willing to accept.¹²⁰

Looking at individual cases, the defendant's final settlement offers were closer to the ultimate verdicts in 71 percent of the cases, while the plaintiff's final settlement demands were closer to the verdicts in 29 percent of the cases.¹²¹ One of the parties demanded or offered the number that turned out to be the verdict in 7.7 percent of the cases.¹²² For example, the plaintiff demanded \$20,000, and the verdict came in at \$20,000; the defendant offered \$3,000, \$0, and \$0 in cases that came in with like verdicts.¹²³

In car crash cases, where the median jury verdict was \$6,450, the median final settlement demand was \$20,000, and the median final settlement offer by the defense was \$5,000.¹²⁴ The plaintiffs' lowest pretrial demands, on average, were four times higher than the verdict, while the defendants were much closer to the mark.¹²⁵

114. *See id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

120. *See id.*

121. *See* tbl. 10.

122. *See* tbl. 8.

123. *See* tbl. 10.

124. *See id.*

125. *See id.*

TABLE 8
CAR CRASH SETTLEMENT NEGOTIATIONS (1997)

VERDICT	DEMAND	OFFER	POSITION†	DIFFERENCE VERDICT/DEMAND	DIFFERENCE VERDICT/OFFER	CLOSEST PARTY
\$625,906	\$350,000	\$10,000	↑	\$275,906	\$615,906	Plaintiff
619,830	250,000	100,000	↑	369,830	519,830	Plaintiff
110,000	30,000	22,500	↑	80,000	87,500	Plaintiff
100,000	90,000	45,000	↑	10,000	55,000	Plaintiff
99,120	125,000	10,000	-	25,880	89,120	Defendant
65,000	25,000	10,000	↑	40,000	55,000	Plaintiff
59,808	30,000	10,000	↑	29,808	49,808	Plaintiff
50,000	20,000	10,000	↑	30,000	40,000	Plaintiff
33,750	375,000	110,000	↓	-341,250	-76,250	Defendant
30,000	100,000	17,000	-	-70,000	13,000	Defendant
29,982	62,000	25,000	-	-32,018	4,982	Defendant
25,945	50,000	18,000	-	-24,055	7,945	Defendant
25,000	18,000	7,600	↑	7,000	17,400	Plaintiff
20,000	20,000	10,000	-	0	10,000	Plaintiff
20,000	15,000	3,000	↑	5,000	17,000	Plaintiff

↑ = Verdict higher than demand

↓ = Verdict lower than offer

- = Verdict between demand and offer

TABLE 8 (CONTINUED)

VERDICT	DEMAND	OFFER	POSITION	DIFFERENCE VERDICT/DEMAND	DIFFERENCE VERDICT/OFFER	CLOSEST PARTY
16,250	12,500	750	↑	3,750	15,500	Plaintiff
13,600	40,000	5,000	-	-26,400	8,600	Defendant
13,193	4,000	2,000	↑	9,193	11,193	Plaintiff
12,000	25,000	0	-	-13,000	12,000	Defendant
10,000	3,250	0	↑	6,750	10,000	Plaintiff
10,000	2,500	0	↑	7,500	10,000	Plaintiff
10,000	363,000	2,500	-	-353,000	7,500	Defendant
8,000	16,000	5,000	-	-8,000	3,000	Defendant
7,750	40,000	15,000	↓	-32,250	-7,250	Defendant
7,500	9,000	3,000	-	-1,500	4,500	Defendant
7,500	7,500	4,500	-	0	3,000	Plaintiff
6,450	8,000	6,000	-	-1,550	450	Defendant
5,181	17,500	3,500	-	-12,319	1,681	Defendant
4,835	7,500	0	-	-2,665	4,835	Defendant
4,785	25,000	5,000	↓	-20,215	-214	Defendant
4,285	10,000	0	-	5,715	4,285	Defendant
4,100	8,000	2,900	-	-3,900	1,200	Defendant
4,000	25,153	3,789	-	-21,153	211	Defendant
3,166	21,000	8,000	↓	-17,834	-4,833	Defendant

TABLE 8 (CONTINUED)

VERDICT	DEMAND	OFFER	POSITION	DIFFERENCE VERDICT/DEMAND	DIFFERENCE VERDICT/OFFER	CLOSEST PARTY
3,000	40,000	3,000	-	-37,000	0	Defendant
2,000	20,000	10,000	↓	-18,000	-8,000	Defendant
1,500	4,000	2,200	↓	-2,500	-700	Defendant
1,014	7,500	3,000	↓	-6,486	-1,986	Defendant
45	100,000	15,000	↓	-99,855	-14,955	Defendant
0	7,500	2,500	↓	-7,500	-2,500	Defendant
0	13,000	3,500	↓	-13,000	-3,500	Defendant
0	85,000	3,000	↓	-85,000	-3,000	Defendant
0	27,000	0	-	-27,000	0	Defendant
0	261,357	10,000	↓	-261,357	-10,000	Defendant
0	9,000	5,000	↓	-9,000	-5,000	Defendant
0	16,000	6,500	↓	-16,000	-6,500	Defendant
0	6,500	500	↓	-6,500	-500	Defendant
0	35,000	0	-	-35,000	0	Defendant
0	6,000	4,500	↓	-6,000	-4,500	Defendant

The situation is different in medical malpractice case settlement negotiations. In 75 percent of those cases, the verdict came in between the lowest settlement demand and the highest offer (contrasted with 39 percent of the car crash cases).¹²⁶ Of course, the statistic includes six cases (50 percent of the sample) where the defense refused to make any settlement offer at all, and the jury vindicated this position by returning a defense verdict.¹²⁷ In only those cases where defendants offered to pay some money in settlement negotiations, the verdict came in between the lowest demand and the highest offer in 40 percent of the cases. The plaintiffs fared worse by going to trial 40 percent of the time; the defendants fared worse by going to trial 20 percent of the time.¹²⁸

One plaintiff made a final settlement demand of \$175,000, received an offer of \$50,000, chose to go to trial, and the jury returned a defense verdict.¹²⁹ In another case, the plaintiff made a final demand of \$600,000 and the defendant offered \$550,000, leaving the parties \$50,000 apart and unable or unwilling to compromise.¹³⁰ The jury verdict was \$375,000, leaving the plaintiff \$175,000 poorer than he would have been had he accepted the defendant's offer.¹³¹ A defendant who offered a \$25,000 settlement could have settled the case by meeting the plaintiff's \$400,000 demand, but went to trial and the jury returned a verdict of \$433,000.¹³²

In reviewing individual cases, the defendants' final settlement offers were closer to the ultimate verdicts in 83 percent of the medical malpractice cases, while the plaintiffs' final settlement demands were closer to the verdicts in 17 percent of the cases.¹³³ In medical malpractice cases where the median jury verdict was \$0, the median final settlement demand was \$400,000, and the median final settlement offer was \$0.¹³⁴ Just as with car crash cases, the defendants in medical malpractice cases asserted settlement positions closer to ultimate verdicts than did the plaintiffs.¹³⁵

126. See tbl. 10.

127. See tbl. 9.

128. See tbl. 10.

129. See tbl. 9.

130. See *id.*

131. See *id.*

132. See *id.*

133. See tbl. 12.

134. See *id.*

135. See *id.* The defendants' final settlement offers, including the times when they refused to make any offer at all, were closer to the verdict than the plaintiffs' final settlement demands 83 percent of the time.

TABLE 9
MEDICAL MALPRACTICE SETTLEMENT NEGOTIATIONS (1997)

VERDICT	DEMAND	OFFER	POSITION†	DIFFERENCE VERDICT/DEMAND	DIFFERENCE VERDICT/OFFER	CLOSEST PARTY
\$433,000	\$400,000	\$25,000	↑	\$33,000	\$408,000	Plaintiff
375,000	600,000	550,000	↓	-225,000	-175,000	Defendant
300,000	300,000	0	-	0	-300,000	Plaintiff
273,000	400,000	25,000	-	-127,000	248,000	Defendant
150,000	650,000	100,000	-	-500,000	50,000	Defendant
0	25,000	0	-	-25,000	0	Defendant
0	1,000,000	0	-	-1,000,000	0	Defendant
0	175,000	50,000	↓	-175,000	-50,000	Defendant
0	400,000	0	-	-400,000	0	Defendant
0	2,500,000	0	-	-2,500,000	0	Defendant
0	20,000	0	-	-20,000	0	Defendant
0	-250,000	0	-	-250,000	0	Defendant

† ↑ = Verdict higher than demand

↓ = Verdict lower than offer

- = Verdict between demand and offer

TABLE 10
 COMPARISONS OF SETTLEMENT NEGOTIATIONS
 CAR CRASH AND MEDICAL
 MALPRACTICE CASES (1997)

	CAR CRASH	MEDICAL MALPRACTICE	MEDICAL MALPRACTICE (Where \$ Offer Made)
Median Verdict	\$ 6,450	\$0	\$0
Median Demand	20,000	400,000	400,000
Median Offer	5,000	0	50,000
Verdict Between Demand and Offer	39 percent	75 percent	40 percent
Verdict Above Demand	26 percent	8 percent	40 percent
Verdict Below Offer	35 percent	17 percent	20 percent
Party Closest to Verdict	Defendant—71 percent	Defendant—83 percent	Defendant—80 percent

III. THE IMPACT OF JURIES IN WRONGFUL DEATH AND PUNITIVE DAMAGE CASES

In wrongful death cases, juries are given wide latitude to exercise their sound judgment and good sense, aided by proper instructions from the court.¹³⁶ The jury is not bound by any fixed or precise mathematical rules in estimating the amount of damages.¹³⁷ Similarly, when juries consider punitive damage claims, “[n]o simple mathematical formula can be applied as to either a minimum or a maximum, and there is a wide range between those figures.”¹³⁸ Therefore, this Part examines how juries have actually exercised their discretion in these two areas where they might be thought to award huge sums, unfettered by any controls or restrictions.

136. See STUART M. SPEISER ET AL., RECOVERY FOR WRONGFUL DEATH AND INJURY § 9.2 (3d ed. 1992).

137. See *id.*

138. *Moskovitz v. Mt. Sinai Med. Ctr.*, 635 N.E.2d 331, 344 (Ohio 1994) (quoting *Shoemaker v. Crawford*, 603 N.E.2d 1114, 1121 (Ohio Ct. App. 1991)).

A. Wrongful Death Claims

What is human life worth? How does one assign a dollar value to the loss of spousal companionship or to a grieving parent's anguish over the loss of a child? Juries struggle to make fair and just awards where one person has been found legally responsible for the death of another.

1. *The Law*—Ohio Revised Code section 2125.02(B) identifies five categories that the jury may consider in determining wrongful death compensatory damages:

1. Loss of support from the reasonably expected earning capacity of the decedent;
2. Loss of services of the decedent;
3. Loss of society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the decedent;
4. Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death; [and]
5. The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.¹³⁹

The jury also may make an award for reasonable funeral and burial expenses.¹⁴⁰ The jury "may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death."¹⁴¹ An action for wrongful death is:

brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of

139. OHIO REV. CODE ANN. § 2125.02(B) (Anderson 1998).

140. *See id.* § 2125.02(A)(2).

141. *Id.* § 2125.02(A)(3)(b)(I).

the wrongful death, and for the exclusive benefit of the other next of kin of the decedent.¹⁴²

2. *Wrongful Death Verdicts*—From 1995 through 1997, plaintiffs asserting wrongful death claims established liability in nine jury trials in Franklin County Court of Common Pleas.¹⁴³ The jury verdicts ranged from \$125,000 to \$1,347,500.¹⁴⁴ The larger verdicts also included awards for survivorship claims.¹⁴⁵

Six of the wrongful death awards were in cases involving car crashes.¹⁴⁶ In *Bender v. Westfield Ins. Co.*,¹⁴⁷ the decedent was a six-year-old girl who was killed on a family vacation when her mother's leased van left the road and hit a guardrail. She was survived by her parents and younger twin brothers.¹⁴⁸ The jury awarded wrongful death damages of \$300,000.¹⁴⁹

In *Vaught v. White*,¹⁵⁰ the decedent swerved her vehicle to avoid a car that had run a stop sign and was then struck broadside by an oncoming semi-tractor trailer. The decedent was a 60 year-old woman who died of head trauma the day after the crash.¹⁵¹ The defendant did not participate in the trial, lacking both insurance and the ability to satisfy any judgment.¹⁵² The jury awarded \$250,000 to each of the decedent's four adult children, and \$25,000 to each of the decedent's seven grandchildren, for a total wrongful death award of \$1,175,000.¹⁵³ The jury also awarded survivorship damages of \$500,000 and funeral bills of \$5,087.¹⁵⁴

142. *Id.* § 2125.02(A)(1).

143. *See* tbl. 13.

144. *See id.*

145. *See* *Vaught v. White*, No. 95CVC-02-0777 (Franklin County, Ohio Ct. C.P. Oct. 1, 1996) (LEXIS, VERDCT Library, OHJURY File) (awarding \$500,000 for survivorship and \$1,175,000 for wrongful death); *Shoe v. Schrader*, No. 94CVC-10-7408 (Franklin County, Ohio Ct. C.P. Nov. 20, 1995) (LEXIS, VERDCT Library, OHJURY File) (awarding \$250,000 for pain and suffering and \$750,000 for wrongful death); *Moulton v. Graham*, No. 92CVA-12-9593 (Franklin County, Ohio Ct. C.P. Feb. 10, 1995) (LEXIS, VERDCT Library, OHJURY File) (awarding \$600,000 for pain and suffering and \$125,000 for wrongful death); *May v. Minton*, No. 92CVA-04-3107 (Franklin County, Ohio Ct. C.P. Feb. 27, 1995) (LEXIS, VERDCT Library, OHJURY File) (awarding \$200,000 for survivorship and \$300,000 for wrongful death).

146. *See* tbl. 13.

147. No. 95CVH-10-7281 (Franklin County, Ohio Ct. C.P. Nov. 8, 1996) (LEXIS, VERDCT Library, OHJURY File).

148. *See id.*

149. *See id.*

150. No. 95CVC-02-0777.

151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

The family of a 14 year-old girl was awarded \$750,000 in wrongful death damages in *Shoe v. Schrader*.¹⁵⁵ The decedent was a passenger in a schoolmate's car.¹⁵⁶ The driver negligently attempted to pass a car in front of him, lost control of the car, and drove off into a ditch.¹⁵⁷ The car turned over and struck a utility pole.¹⁵⁸ The decedent died fifteen minutes later.¹⁵⁹ The jury awarded \$250,000 on the survivorship claim.¹⁶⁰

Another teen-age girl died in a car crash in *Wells v. Allstate Ins. Co.*¹⁶¹ This 16 year-old girl was a passenger in a car that went out of control as it was evading a car full of drunk young men which was cutting in and out in front of her car.¹⁶² The decedent's car went across the median and crashed head-on into a third car.¹⁶³ The jury awarded wrongful death damages of \$585,928.38 and funeral bills of \$3,209.49.¹⁶⁴

The decedent in *Bunthoff v. Morgan*¹⁶⁵ was a 28 year-old woman survived by her husband and two daughters, ages five and eight. The defendant's dump truck ran into the decedent's car, killing her instantly. The wrongful death award was for \$1,347,500.¹⁶⁶

Another truck-car collision resulted in the death of a young mother in *Saunders v. Frederick*,¹⁶⁷ where the defendant's semi-truck forced the decedent's car off the freeway and down a ravine in the median. The decedent was a 33 year-old woman survived by her husband and three young children, her parents, and her five brothers.¹⁶⁸ The jury awarded wrongful death damages of \$1,110,000, which were reduced as a result of the decedent's 32 percent comparative negligence.¹⁶⁹

155. No. 94CVC-10-7408 (Franklin County, Ohio Ct. C.P. Nov. 1995) (LEXIS, VERDCT Library, OHJURY File).

156. *See id.*

157. *See id.*

158. *See id.*

159. *See id.*

160. *See id.*

161. No. 94CVC-06-4306 (Franklin County, Ohio Ct. C.P. Dec. 5, 1995) (LEXIS, VERDCT Library, OHJURY File).

162. *See id.*

163. *See id.*

164. *See id.*

165. No. 94CVC-04-3007 (Franklin County, Ohio Ct. C.P. Sept. 24, 1997) (LEXIS, VERDCT Library, OHJURY File).

166. *See id.*

167. No. 96CVC-02-1078 (Franklin County, Ohio Ct. C.P. June 4, 1997) (LEXIS, VERDCT Library, OHJURY File).

168. *See id.*

169. *See id.*

The other three wrongful death verdicts came in cases alleging medical malpractice.¹⁷⁰ In *McMunn v. Mt. Carmel Health*,¹⁷¹ the decedent was a 39 year-old man who was admitted to the hospital with a diagnosis of kidney stones. He was found dead in his hospital bed, and his estate alleged negligence in failing to properly monitor his respiration.¹⁷² He was unmarried, survived by two adult daughters, five brothers, and his mother.¹⁷³ The jury awarded wrongful death damages of \$433,415.¹⁷⁴

The decedent in *Moulton v. Graham*¹⁷⁵ was a 71 year-old woman who died of ovarian cancer. This was a "failure to diagnose" claim.¹⁷⁶ The decedent was survived by her husband and one adult child.¹⁷⁷ The jury awarded wrongful death damages of \$125,000 and \$600,000 on the survivorship claim.¹⁷⁸

In *May v. Minton*,¹⁷⁹ the plaintiff's claim was that the defendant doctor failed to diagnose a pancreatic-type cancer.¹⁸⁰ The decedent was a 78 year-old man. The jury awarded wrongful death damages of \$300,000 and survivorship damages of \$200,000.¹⁸¹

The median wrongful death award in three years was \$585,928.38. Only two of the verdicts (22 percent) exceeded one million dollars, and none were greater than \$1,500,000.¹⁸² While juries have wide discretion in awarding wrongful death damages, they do not, as a matter of course, make multi-million dollar awards to the surviving family members.

170. See tbl. 11.

171. No. 94CVA-09-6736 (Franklin County, Ohio Ct. C.P. Feb. 26, 1997) (LEXIS, VERDCT Library, OHJURY File), *appeal dismissed*, 699 N.E.2d 946 (Ohio 1998).

172. See *id.*

173. See *id.*

174. See *id.*

175. No. 92CVA-12-9593 (Franklin County, Ohio Ct. C.P. Feb. 10, 1995) (LEXIS, VERDCT Library, OHJURY File).

176. See *id.*

177. See *id.*

178. See *id.*

179. No. 92CVA-04-3107 Franklin County, Ohio Ct. C.P. Feb. 27, 1995) (LEXIS, VERDCT Library, OHJURY File).

180. See *id.*

181. See *id.*

182. See tbl. 11.

TABLE 11
SUMMARY OF WRONGFUL DEATH VERDICTS (1995-97)

TYPE OF CASE	DECEDENT'S AGE AND GENDER	DEATH AWARD
Car Crash	29, Female	\$1,347,500.00
Car Crash	60, Female	1,175,000.00
Car Crash	14, Female	750,000.00
Car Crash	33, Female	686,800.00
Car Crash	16, Female	585,928.38
Medical Malpractice	39, Male	433,000.00
Car Crash	6, Female	300,000.00
Medical Malpractice	78, Male	300,000.00
Medical Malpractice	71, Female	125,000.00

B. Punitive Damage Awards

Juries do not freely dole out millions of dollars in punitive damage awards. Punitive damages were awarded in only 3 percent of all of the cases tried.¹⁸³ The awards over 13 years ranged from \$1 to \$2,100,000.¹⁸⁴ Table 12 sets forth all 38 of the punitive damage awards and identifies the type of case involved and the corresponding compensatory damage award.

Punitive damages may be awarded under Ohio law in addition to compensatory damages, as a means of punishment to the offender and as an example to deter others from offending in a like manner.¹⁸⁵ Punitive damages may only be awarded where compensatory damages are also awarded¹⁸⁶ and where the actions or omissions of the defendant demonstrate malice, aggravated or egregious fraud, or insult.¹⁸⁷ The person bringing the suit has a higher burden than the normal burden to establish liability; to

183. Punitive damages were awarded in only 38 out of 1,197 cases tried to a Franklin County jury from 1985 through 1997 (3.2 percent). See tbls. 1, 12; see also BUREAU OF JUSTICE STATISTICS, CIVIL JUSTICE SURVEY OF STATE COURTS, 1992: CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES 6 (July 1995) (noting that punitive damages were awarded in only 6 percent of cases which plaintiffs won); Theodore Eisenberg et al., *The Predictability of Punitive Damages*, 26 J. LEGAL STUD. 623, 633 (1997) (finding that juries awarded punitive damages just 6 percent of the time).

184. See tbl. 14.

185. See *Calmes v. Goodyear Tire & Rubber Co.*, 575 N.E.2d 416, 419 (Ohio 1991).

186. See OHIO REV. CODE ANN. § 2315.21(B)(1)(b) (Anderson 1998).

187. See *id.* § 2315.21(C)(1); see also *Malone v. Courtyard by Marriott*, 659 N.E.2d 1242, 1247 (Ohio 1996) (discussing definition of malice with regard to punitive damages).

recover punitive damages, the plaintiff's burden of proof is clear and convincing evidence.¹⁸⁸

The most frequently given award was for \$5,000, granted in five cases (13 percent).¹⁸⁹ The median punitive damage award was \$60,000.¹⁹⁰ Forty-seven percent of the awards were for \$30,000 or less.¹⁹¹ Major punitive damage verdicts were awarded in some employment discrimination claims. Half of the top ten punitive damage awards were made in discrimination cases, and the two highest awards were in discrimination cases.¹⁹²

The highest punitive damage award was given in an age discrimination case, *Byrnes v. LCI Communication Holdings Co.*¹⁹³ One plaintiff was the defendant company's former president and chief operating officer and was 53 years old; the other plaintiff was a 64 year-old former consultant and vice-president of the company.¹⁹⁴ The jury awarded compensatory damages of \$4,861,941 and punitive damages of \$2,100,000 to the former president.¹⁹⁵ The jury awarded compensatory damages of \$163,368 and punitive damages of \$100,000 to the former vice-president.¹⁹⁶

The second highest punitive damage award was also given in an age discrimination claim, *Swiggum v. Ameritech Corp.*¹⁹⁷ There, the plaintiff had worked as the general manager of network operations for the defendant company.¹⁹⁸ He was fired at the age of 50 after twenty-six years of service and was replaced by a 42 year-old man.¹⁹⁹ The jury awarded \$957,688 in compensatory damages and \$1,000,000 in punitive damages.²⁰⁰

188. See § 2315.21(C)(2).

189. See tbl. 14.

190. See *id.*

191. See *id.*

192. See *id.*

193. No. 91CVH06-5143 (Franklin County, Ohio Ct. C.P. Oct. 27, 1993) (LEXIS, VERDCT Library, OHJURY File), *modified*, Nos. 94APE09-1372, 94APE09-1396, 1995 WL 259037, at *8 (Ohio Ct. App. May 2, 1995), *rev'd*, 672 N.E.2d 145 (Ohio 1996).

194. See *id.*

195. See *id.*

196. This judgment was reversed by the Ohio Supreme Court on the basis of insufficient evidence to establish liability. See *Byrnes*, 672 N.E.2d at 149.

197. No. 95CVH-07-5163 (Franklin County, Ohio Ct. C.P. Sept. 24, 1997) (LEXIS, VERDCT Library, OHJURY File).

198. See *id.*

199. See *id.*

200. See *id.*

TABLE 12
PUNITIVE DAMAGE AWARDS (1985-1997)

PUNITIVE DAMAGES	COMPENSATORY DAMAGES	CATEGORY
\$2,100,000.00	\$5,025,309.00	Employment
1,000,000.00	957,658.00	Employment
800,000.00	1,700,000.00	Business Disputes
525,000.00	12,941,627.00	Intentional Torts
500,000.00	150,000.00	Employment
500,000.00	846,000.00	Intentional Torts
250,000.00	220,316.00	Employment
238,225.00	680,800.00	Business Disputes
200,000.00	100,000.00	Employment
200,000.00	141,000.00	Fraud
200,000.00	20,000.00	False Arrest
150,000.00	125,000.00	Fraud
110,000.00	285,000.00	Business Disputes
100,000.00	75,000.00	Intentional Torts—Arson
100,000.00	730,000.00	Business Disputes
100,000.00	50,000.00	Employment
85,000.00	100,000.00	Intentional Torts
77,000.00	38,500.00	Fraud
75,000.00	12,001.86	Intentional Torts-Conversion
45,000.00	10,151.00	Sale of Goods & Services
30,000.00	189,000.00	Motor Vehicle Crashes
25,000.00	46,500.00	Insurance
25,000.00	3,947.00	Intentional Torts-Conversion
10,000.00	7,550.00	Employment
5,000.00	6,295.00	Motor Vehicle Crashes
5,000.00	39,907.50	Business Disputes
5,000.00	1,600.00	False Arrest
5,000.00	17,300.00	Fraud
5,000.00	6,000.00	Real Estate
3,000.00	850.00	Business Disputes
2,500.00	7,628.15	False Arrest
1,500.00	25,000.00	Intentional Torts
1,000.00	18,000.00	Intentional Torts
900.00	1.00	Intentional Torts
500.00	1,715.00	Intentional Torts
500.00	1,500.00	False Arrest
1.00	2,400.00	Intentional Torts
1.00	86,000.00	Fraud

CONCLUSION

There has been a paucity of empirical data concerning civil jury trials. At the same time, a popular belief has emerged that juries are modern day Robin Hoods who gleefully redistribute money from wealthy corporate defendants to poor plaintiffs with marginal claims. However, the reality does not fit this perception.

Most civil disputes are settled. A very, very small percentage of cases, approximately 1 percent of all filed lawsuits, progress through a jury trial. The court docket is primarily made up of tort cases, and car crashes represent the single largest category of cases. Car crash jury trials generally take about four days to complete and result in a defense verdict 19 percent of the time. When a plaintiff's verdict is returned, the median verdict is in the range of \$10,000 to \$12,000.

Juries return verdicts of \$1,000,000 or greater in fewer than 2 percent of all jury trials. Statistically, juries are more likely to return a verdict lower than \$1,000 (3.4 percent of jury trials) than to award \$1,000,000. Wrongful death awards are largely dependent upon the age, gender, and occupation of the decedent. The median wrongful death award is \$585,928.38. Punitive damage awards are rare, occurring in 3 percent of all jury trials. The median punitive damage award is \$60,000. Generally, the jury verdict falls somewhere between the plaintiff's final settlement demand and the defendant's final settlement offer, but in a number of instances one party erred by not accepting the settlement position offered by the opponent.

The biggest news about civil jury trials in the latter part of the millennium may be that there is no news. Jury trials are proceeding very much as they have for many years, dealing with issues that cannot otherwise be resolved by the parties and rendering just and true verdicts.

