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PUNITIVE DAMAGES AND CORPORATE LIABILITY ANALYSIS IN SPORTS LITIGATION

Gil B. Fried*

I. INTRODUCTION

Is our legal system awarding millions to individuals with superfluous injuries? Are juries getting out of hand with ridiculous judgments costing average consumers millions or billions in higher consumer or insurance costs? Are punitive damage awards still devastating the sports consumer products industry? Are some defendants paying significantly higher awards compared with other defendants who are being “let off the hook?” These represent some key questions which have been raised concerning the current state of our judicial system and the manner in which damages are awarded in personal injury cases. One key concern associated with damage awards has been pain-and-suffering, a form of damages which represents real damages, but are impossible to accurately quantify. The Department of Justice’s Tort Policy Working Group recommended in 1986 that caps be placed on pain-and-suffering awards as they are subjective, unpredictable, and substantial. Pain-and-suffering has gained significant attention as it covers a wide range of intangible injuries such as fright, grief, anxiety, indignity, and nervousness.

The unpredictability associated with pain-and-suffering damages has helped fuel the fire associated with the tort reform debate. The tort reform movement, spearheaded in the 1980s, has continued to foster new legislation designed to reduce damage awards and enhance the business and legal environment faced by countless businesses. The relevant literature has often focused on the value tort reform might provide, especially in the sports industry. In fact, there is no guarantee that tort

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3. See id. at 781 (citation omitted).
reform or an "improved" legal system would in some manner reduce the
eighty to three hundred billion dollar estimates on annual legal related
spending and costs. While high profile cases such as the 1995, McDon-
ald's coffee spill case generate national media attention and outrage, no
research has been conducted to determine if the public really under-
stands key issues associated with tort reform or the degree to which tort
reform is needed. The questions surrounding the need for tort reform
are often fueled by bias, innuendoes, and misrepresentations. These
misrepresentations were highlighted in a recent major case.

The issues surrounding the McDonald's case pinpoint how either side
of the tort reform debate can manipulate data to such an extent that no
one really knows the true story. The case involved a seventy-nine year
old female car passenger who bought a cup of coffee at a McDonald's
Restaurant take-out window in Albuquerque, New Mexico. While the
car was stopped, and with the cup between her legs, she pried the lid off
the cup. The coffee spilled resulting in third degree burns. She sued
McDonald's and recovered $160,000.00 in compensatory damages and
$2.7 million in punitive damages. Instantly, the case generated interna-
tional headlines attacking the decision. Some headlines read as follows:
"Coffee Case Burns Common Sense," "No Grounds For Hot Coffee
Award," "Coffee and $2.9 Million To Go," "Some Use Crying Over Spilt
Coffee," and "Ronald McDonald Better Have A Really Good Law-
ner." However, once the smoke cleared, the case appeared to be a
reasonable decision. The plaintiff was hospitalized for eight days and
she had to undergo several skin graft operations. McDonald's inten-
tionally heated its coffee 15-20 degrees hotter than their competition,
and McDonald's knew their coffee was too hot, as they had received
over 700 complaints in a five year period from people who suffered

A Window of Opportunity for Liability Tort Reform, ATHLmrIc Bus., June 1987, at 33; Larry
Weisman, Risk: All in the Game, But Costly, USA TODAY, July 28, 1987, at 1C [hereinafter
Weisman 1]; Larry Weisman, Liability Lawsuits Mount Since Skier's 1974 Mishap, USA To-
day, July 28, 1987, at 12C [hereinafter Weisman 2].
6. See Marc Galanter, News from Nowhere: The Debased Debate About Civil Justice, 71
18, 1994).
8. See Samuel R. Gross & Kent D. Syverud, Don't Try: Civil Jury Verdicts in a System
9. See id. at 4-5.
10. See id. at 5.
11. See id.
12. Id. at 5 n.15.
13. See Gross & Syverud, supra note 8, at 5.
burns, including serious burns.\textsuperscript{14} Even with all the complaints and a definite industry standard, McDonald's refused to lower the coffee temperature.\textsuperscript{15} The punitive damage award appeared justified as $2.7 million represents just two days of revenue generated by McDonald's from coffee sales.\textsuperscript{16} It is possible that as a result of the damages, which were later reduced to $640,000, McDonald's lowered their coffee's temperature.\textsuperscript{17} Thus, punitive damages and the legal system had their intended affect, punishing and curing aberrant behavior.

The McDonald's case highlights how the missing information can distort the public view concerning trends in the legal system. This distorted view has been utilized in the past by national tort reform movements focusing on such consumer products as trampolines, lawn darts and football helmets.\textsuperscript{18} Significant national attention has focused on several multi-million dollar jury awards in sports related cases where individuals have suffered major injuries or death.

The sports liability scare was spawned in 1974 after a skier allegedly stumbled on some undergrowth, hit his head on a rock and was rendered paralyzed from the neck down.\textsuperscript{19} In 1977, a court awarded the injured skier $1.5 million.\textsuperscript{20} Vermont was forced to change its laws to require skiers to assume risks normally inherent in skiing and this spawned a dark era for the sports and insurance industry.\textsuperscript{21} Between 1980 and 1988, Rawlings Sporting Goods Co., a large football helmet manufacturer was assessed over thirty-nine million dollars by various juries.\textsuperscript{22} The devastating combination of increased insurance premiums and significant jury awards/settlements led to the number of football helmet manufacturers dropping from eighteen in the 1960s to only two by the end of the 1980s.\textsuperscript{23}

In a 1982 case from Seattle, a fifteen year-old football player was injured on a running play.\textsuperscript{24} The player suffered a broken neck and was

\begin{itemize}
\item \textsuperscript{14} See id.
\item \textsuperscript{15} See id. at 5.
\item \textsuperscript{16} See id.
\item \textsuperscript{17} See id.
\item \textsuperscript{18} See Weisman \textit{supra} note 5, at 1C; Weisman \textit{supra} note 5, at 12C; Brown, \textit{supra} note 5, at 1A.
\item \textsuperscript{19} See Weisman \textit{supra} note 5, at 12C.
\item \textsuperscript{20} See id.
\item \textsuperscript{21} See id.
\item \textsuperscript{22} See Brown, \textit{supra} note 5, at 1A.
\item \textsuperscript{23} See Weisman \textit{supra} note 5, at 1C; Weisman \textit{supra} note 5, at 12C; Savage, \textit{supra} note 5, at D1.
\item \textsuperscript{24} See Savage, \textit{supra} note 5, at D1.
\end{itemize}
rendered a quadriplegic. The player’s parents sued the Seattle Public
School District claiming the coach failed to warn their son about the
dangers inherent in playing football. The school district had to pay
$6.4 million as a result of the suit. In another football case, a thirteen
year-old Pop Warner player was rendered a paraplegic after a head-on
collision. The player’s parents sued the football helmet manufacturer
and recovered fourteen million dollars through a settlement. Lastly, a
1983 jury awarded another paralyzed high school football player $6.5
million.

Football injuries represent only one segment of the litigation boom
which hit the sports industry in the 1980s. Other areas which were af-
fected included skiing, trampolines, diving boards and golf carts. For
example, a 1979 skiing case involving a defective boot binding resulted in
a $5 million verdict. The number of lawsuits involving sports and rec-
reational activities has increased 150% from 1977 to 1987.

The following study was undertaken to analyze the hypothesis that
damage awards and settlement awards affecting the sports industry are
on the rise and are helping to reduce corporate involvement in sports
unless more affordable insurance or tort reform succeeds. Any increases
in damage awards and settlement amounts would possibly justify in-
creased emphasis on promoting legislation limiting damages and/or
claims in certain cases. Furthermore, if the hypothesis is proven, then
significant validity would be accorded to the perceived increased premi-
ums associated with liability insurance which would be needed to help
pay increased jury awards or settlements. If, in fact, the hypothesis is
incorrect, then other reasons have to be developed to explain perceived
increased insurance premiums or other perceived changes in the risk
management environment. This article first examines the current tort
reform movement and then examines past research concerning jury
awards and whether they support the current legislative thrust for tort
reform. Next, survey results including data analysis for the survey and

25. See id.
26. See id.
27. See id.
28. See id.
29. See Savage, supra note 5, at D1.
30. See id.
31. See Betty van der Smissen, Legal Liability and Risk Management for Pub-
lic and Private Entities Vol. 1 (1990); Herb Appenzeller & Thomas Appenzeller,
Sports and the Courts (1980).
33. See Weisman 1 supra note 5, at 1C.
data comparison to past research are analyzed. The primary focus of the data analysis will be on the types of defendants being sued and the damage awards being faced by the various defendant groups studied. Lastly, the article concludes with an analysis of the implication the research data has toward possible future trends in the tort reform effort and risk management strategies.

II. TORT REFORM MOVEMENT

Federal tort reform has been promoted by organizations such as the Coalition of Americans to Protect Sports (CAPS) and supported by the Sporting Goods Manufacturing Association since the 1980s. At various times in the 1980s and 1990s, significant efforts were made to pass sweeping tort reform legislation. However, such efforts have failed including The Product Liability Reform Act of 1989. These efforts, while not producing sweeping legislative reform, have produced some success. The federal legislature has passed several laws to date limiting compensatory and punitive damages including a provision in the Civil Rights Act of 1991 and the Americans with Disabilities Act. Even though tort reform seems to be making some progress, tort reform efforts have failed to produce the final legislation which would drastically alter the nation’s litigation landscape. The current version of the tort reform legislation is designed to develop a federal product liability law to replace existing laws which differ in each state. Additionally, the current version states that alcohol/drug use and product alteration will affect liability, punitive damages would be awarded only upon demonstrating “clear and convincing evidence” of defendant’s “conscious, flagrant indifference to the safety of others,” and defendants would only be liable for noneconomic damages in direct proportion to the defendant’s adjudicated liability. While some legal reformers push for larger damage caps and a loser pays attorney fees system, such concepts have failed to make any inroads through the legislature.

Reducing jury awards or available remedies represents a major societal challenge. The federal legislature is trying to establish the most appropriate approach that preserves plaintiffs’ rights, but also limits

34. See Brown, supra note 5, at 1A.
35. See A Window of Opportunity, supra note 5, at 33.
36. See Murphy, supra note 4, at 346; Thomas D. Schneid, THE AMERICANS WITH DISABILITIES ACT: A PRACTICAL GUIDE FOR MANAGERS 72 (1992).
damage awards. Several different approaches have been proposed to resolve the tort reform dilemma. These approaches include: damages caps or ceilings, utilizing schedules which demonstrate what pain-and-suffering damages were awarded in prior cases, and abolishing pain-and-suffering damages in certain cases.\(^{39}\)

Tort reform legislation has not limited itself to sporting goods and other product categories. In 1997, the Senate passed a volunteer immunity bill which will provide immunity for volunteers who do not engage in a gross, willful, or wanton manner. Liability under the bill could still be sought from the nonprofit organization for which the volunteer was working.\(^{40}\) While earlier efforts at similar legislation had failed, this time the legislature tied the bill to the President's national volunteer initiative which gave the legislation significant weight throughout the legislative process.\(^{41}\) The volunteer immunity protection, along with curbs on security litigation and suits against airplane manufacturers when the planes had been used for over eighteen years, have passed in recent years while President Clinton has rejected all product liability reform legislation.\(^{42}\)

In addition to the national tort reform efforts, states have also jumped on the bandwagon to benefit businesses within their states. In the past two years alone, twenty-two states have adopted new restrictions on tort suits.\(^{43}\) Through 1996, thirty-four states had modified or eliminated joint liability, twenty-one states had modified or enacted rules prohibiting the jury from learning about a defendant's insurance coverage, and ten states have capped noneconomic damages.\(^{44}\) Additionally, thirty-one states had capped punitive damages or made the required showing of proof more difficult. In fact, through 1996, five states (Louisiana, Massachusetts, Nebraska, New Hampshire, and Washington) have prohibited punitive damages in tort suits.\(^{45}\)

These reforms have not come without strong opposition. Michigan has undergone some tort reform since 1995 when the legislature eliminated joint and several liability which previously could be used to force a large company to pay a greater share of an award because they had

\(^{39}\) See Geistfeld, supra note 2, at 789-794.
\(^{40}\) See Marianne Lavalle, Volunteers Now have Tort Shield, NAT'L L. J., July 14, 1997, at A10.
\(^{41}\) See id.
\(^{42}\) See id.
\(^{43}\) See Mark Thompson, Letting the Air Out of Tort Reform, 83 A.B.A.J. 64, 65 (May 1997).
\(^{44}\) See id.
\(^{45}\) See id.
money while the primarily negligent party could pay little or no money.\textsuperscript{46} However, in a very critical article targeting Michigan’s plaintiff lawyers, former United States Attorney General, Dick Thornburgh, attacked the Michigan Trial Lawyers Association’s Political Action Committee for collecting more than $3.6 million from 1990 to 1994 to attack tort reform efforts.\textsuperscript{47} While legislatures have overcome some strong opposition from plaintiff attorney groups, legislatures have not been able to fend off the judicial system which is churning out numerous decisions limiting or striking down these tort reform efforts. Through 1996, the highest courts in twenty-four states had utilized sixty-one different decisions to strike down or severely limit various tort reform laws.\textsuperscript{48} The most often cited reason for striking down the laws relate to a plaintiff’s constitutional right for a jury trial and to receive compensation for their civil damages.\textsuperscript{49}

While the tort reform system is going through a retrenchment, scholars are examining the reason why the public is not pushing for stronger tort reform measures. Marc Thompson reported that several legal scholars had opined that tort reform was falling to the wayside because the public had not been fully convinced that tort reform is necessary or that related legislation would provide the public with clear benefits, such as lower product costs.\textsuperscript{50}

This skepticism has manifested itself in the sports insurance area. Significant outrage was generated in the 1980s when few athletic programs and equipment manufacturers had insurance programs available at any cost. In fact, the United States Olympic Committee had to develop its own captive (self insurance) insurance program just to have any insurance to cover its programs.\textsuperscript{51} The 1980s represented a “hard” insurance market with very few competitors.\textsuperscript{52} Tort reform efforts would have been the most successful for the sports industry during that time period. However, the 1990s represents a different market. The sports insurance market is now a “soft” insurance market with numerous com-

\textsuperscript{47} See id.
\textsuperscript{48} See Thompson, supra note 43, at 65.
\textsuperscript{49} See id.
\textsuperscript{50} See Mark Thompson, Applying the Brakes to Punitives, 83 A.B.A.J. 68 (Sept. 1997).
\textsuperscript{51} Memorandum from Kenneth S. Clarke to Gil Fried (Sept. 23, 1997) (on file with author).
\textsuperscript{52} See id.
petitioners. Thus, the price for sports insurance has declined due to new competition trying to gain entry into the market.53

The lack of public conviction can be traced to the limited number of tort claims that are actually filed. The Rand Institute for Civil Justice estimates that tort claims represent only four percent of all civil litigation matters.54 While the general number of tort cases is small, the relative number of tort cases in the sports industry is rather significant. A study was undertaken to analyze the sports law case opinions from appellate courts which were officially published in 1995.55 Of the 233 cases which were officially reported, 55% of those cases involved tort based claims such as negligent supervision, failure to properly maintain a facility, and related claims.56 The next largest category, representing 11.15% of the claims, were employment related disputes.57 Based on the fact that tort cases represent a significant portion of all sports related litigation, understanding tort reform and jury trend verdicts in the sports industry is a critical concern for all sports administrators, lawyers, and insurance companies.

III. Past Research

A. Types of Cases Going To Trial

A significant study was undertaken by Samuel R. Gross and Kent D. Syverud analyzing California state jury verdicts in 1985-86 and then again in 1990-91.58 Over 3,190 cases went to trial in 1985-86 and California courts tried 3,644 cases in 1990-91.59 Over 70% of all analyzed cases represented personal injury claims.60 Gross and Syverud critically analyzed a portion of these cases. In 1985-86, 63.3% of the 523 cases analyzed involved physical injury and 9.4% involved death.61 In 1990-91, 70.5% of the 359 cases analyzed involved physical injuries and 8.4% involved death.62

53. See id.
54. See Thompson, supra note 50, at 68.
56. See id.
57. See id.
58. See Gross & Syverud, supra note 8, at 9.
59. See id. at 8.
60. See id. at 11.
61. See id. at 14.
62. See id.
B. Defendant Type

Gross and Syverud also analyzed the types of defendants involved in the analyzed cases.\textsuperscript{63} The defendant type in nonvehicular personal injury in 1985-86 was broken down as follows: large business (53%), individuals (13%), small business (12%) and the government (21%).\textsuperscript{64} By contrast, in 1990-91, the number of cases against small businesses and government entities significantly increased.\textsuperscript{65} The defendant type in nonvehicular personal injury in 1990-91 is broken down as follows: large business (37%), individuals (14%), small business (20%), and government (29%).\textsuperscript{66} While Gross and Syverud were not able to pinpoint the exact cause behind large businesses facing significantly less suits, it could be opined that developing a stronger risk management mindset is helping to reduce claims. The type of defendant involved in litigation is critical for analyzing a defendant’s ability to pay. Larger businesses, smaller businesses and government entities often have significant resources or insurance coverage which individuals might not possess, or do not possess in the same magnitude or protection level.

C. Insurance Coverage

In the 1990-91 sample, 54% of large business had complete insurance coverage while 21% of the large business defendants had no insurance coverage.\textsuperscript{67} Individual defendants had complete insurance coverage in 72% of the 1990-91 cases and 71% of the small businesses also had complete coverage.\textsuperscript{68} Those individual or small business defendants who did not have complete insurance coverage primarily had partial insurance coverage.\textsuperscript{69} Thus, most businesses and individuals feel that insurance coverage represents a significant shield. Insurance companies are often perceived as the ultimate payer which might encourage a juror to “stick-it” to the insurance company. To avoid such bias, state courts can prohibit an attorney from mentioning that defendants have insurance coverage.\textsuperscript{70}

Insurance coverage also varied by the type of claim raised. Nonvehicular negligence claims were covered 57% of the time by com-

\textsuperscript{63} See Gross & Syverud, \textit{supra} note 8, at 19.
\textsuperscript{64} See id.
\textsuperscript{65} See id.
\textsuperscript{66} See id. at 20.
\textsuperscript{67} See id. at 21.
\textsuperscript{68} See Gross & Syverud, \textit{supra} note 8, at 21.
\textsuperscript{69} See id.
\textsuperscript{70} See \textsc{Cal. Evid. Code} § 1155 (West 1994).
plete insurance coverage. In addition, 18% of the analyzed cases received partial insurance coverage and 24% of the cases had no insurance coverage. These figures demonstrate that 75% of all claims were covered by some insurance coverage. Without such coverage, plaintiffs might not be able to recover owed damages while defendants can be pushed into bankruptcy. A large percentage of the defendants without any insurance coverage involved government entities.

When defendants in nonvehicular negligence cases were sued, of those with insurance coverage, the insurance company paid the legal fees and costs in 61% of those cases. Legal fees and costs were paid by insurance companies in 95% of the individual defendant’s cases and 89% of the small business cases. Insurance coverage for legal fees and costs is critical as the average litigation costs for a wrongful termination case is estimated at over one hundred thousand dollars if a case goes to trial. Only 17% of legal fees and costs were paid for insured large business defendants who often have custom tailored insurance policies where legal fees are sometime split.

While insurance coverage represents a significant concern, it is beyond the scope of this article to analyze insurance coverage in the survey group as only a handful of the analyzed cases mentioned insurance coverage. However, increased insurance premiums threatened many programs with extinction. In 1984, the liability policy premiums for coaches and teachers in the San Diego School District was $355,000.00 for $20 million in coverage. By 1987, the coverage was reduced to only $10 million while the premiums were increased to $1 million. Furthermore, one sporting goods equipment manufacturer in the 1980s reported only five percent of their sales from gymnastic equipment, yet eliminating the gymnastic equipment resulted in a six-figure insurance savings. Little League baseball paid seventy-five dollars per league for insurance coverage in 1982. The same coverage cost each league between four hun-

71. See Gross & Syverud, supra note 8, at 22.
72. See id.
73. See id.
74. See id. at 24.
75. See id. at 25.
77. See Gross & Syverud, supra note 8, at 25.
78. See Savage, supra note 5, at D1.
79. See id.
80. See Weisman 1, supra note 5, at 2C.
81. See id.
dred and eight hundred dollars in 1987.\textsuperscript{82} Such increases were supposedly justified in the sports context by an Insurance Information Institute analysis that stated that general liability insurers paid out $1.08 for every $1.00 received.\textsuperscript{83} Such losses forced insurance premiums to such heights in the 1980s that 50\% of a football helmet's price covers liability insurance.\textsuperscript{84} However, as mentioned above, the "hard" insurance market of the 1980s has been replaced with a "soft" market providing more affordable insurance premiums.

The insurance crises of the late 1980s started dissipating as soon as it materialized. By 1988, the insurance premiums for ski resorts, which typically represented eight to twelve percent of a facility's operating budget, were in a state of decline partially due to a softening property/casualty insurance market.\textsuperscript{85} In addition, premium rates declined by implementing improved safety measures, utilizing better equipment, and implementing improved greater educational and training opportunities at the facilities.\textsuperscript{86}

The insurance industry has its own unique culture which entails unique concepts which need to be clarified to provide the greatest insight into insurance trends. Most insurance premiums are established through "experience rating." Experience rated policies have their premiums established by analyzing past claims and trying to establish a premium rate which covers all claims paid in the prior period with a certain percentage set aside to cover unusually large claims and insurance company administrative and profit related needs. While insurance companies maintain significant data on certain industries such as automotive or manufacturing, sports does not represent a separate category with its own data. Thus, insurance companies who insure sports and recreational activities are required to develop their own databases, experience ratings, and loss ratios. Loss ratios are significant as it helps identify if a given insurance coverage is profitable for an insurance company. If an insurance company is unable to maintain a low loss ratio, they are more likely to leave that insurance market for more profitable pastures in other industries. Loss ratio is calculated by dividing claims paid (by the insurer) by the premiums collected (by the insurer). If an insurance

\begin{itemize}
  \item \textsuperscript{82} See id.
  \item \textsuperscript{83} See id.
  \item \textsuperscript{84} See Brown, supra note 5, at 1A.
  \item \textsuperscript{85} See Laura Riley Borda, Ski Resort Insurance Costs Head Downhill, J. Com., Dec. 12, 1988, at 1A.
  \item \textsuperscript{86} See id.
\end{itemize}
company has pure losses over 60% then they are not making a profit and are forced to increase insurance premiums. 87

D. Trial Results

Gross and Syverud’s research showed that plaintiffs who went to trial were normally better off settling rather than taking the case to trial if they did not have an air tight case. In nonvehicular negligence cases tried in 1985-86, plaintiffs won only 43% of the time, compared with plaintiffs winning 87% of commercial cases and 51% of all cases. 88 The numbers for plaintiffs looked even more bleak in 1990-91 when plaintiffs only prevailed in 37% of their nonvehicular cases, 61% of their commercial cases and 50% of all cases. 89 Commercial cases might be more successful for plaintiffs compared with other cases because commercial cases might involve better facts, better case development by the attorneys, and/or involve contract claims which are typically fairly clear when a contract is breached. The 5% decline in nonvehicular negligence cases could be the result of plaintiffs trying weaker cases or juries being less sympathetic to marginal plaintiff cases.

One interesting point analyzed by Gross and Syverud was the number of expert witnesses needed for each trial. 90 While expert witnesses are not necessarily needed, the mean number of experts was 3.3 per case in 1985-86 which increased to 4.1 in 1990-91. 91 Thus, with the increased dollars being demanded by plaintiffs, additional experts have been utilized to help determine the true value of a given incident or injury. These additional experts were utilized by both sides to help support or weaken their respective cases. Experts can provide the jury with an explanation of proper industry practices through explaining why a plaintiff should or should not be awarded a certain amount of damages. 92

E. Damage Awards

Jury verdicts showed significant increases in damages awarded by juries. The mean nonvehicular negligence cases in the Gross and Syverud study resulted in a jury verdict of $127,000.00 in 1985-86 and $541,000.00

88. See Gross & Syverud, supra note 8, at 40.
89. See id.
90. See id. at 31.
91. See id. at 31-32.
These results included averaging both jury victories and defeats. These numbers increased dramatically when only the plaintiff jury victories were averaged. Of the 519 jury verdicts in 1985-86, only 266 cases were resolved in the plaintiffs' favor. Similarly, in 1990-91, 179 of the 357 analyzed cases resulted in plaintiff verdicts. The mean "plaintiff only" jury verdict was $299,000.00 in 1985-86 and shot-up to $1,475,000 in 1990-91. The Gross and Syverud statistics have been replicated in other studies where mean increases in jury awards were also noted. The median jury award for three major litigation areas has significantly increased between 1995 and 1996. In a recent report from Jury Verdict Research, the median jury award for product liability cases increased 44% during the one year period from $536,149.00 to $773,500.00. Median wrongful termination cases rose 38% during the year from $149,385.00 to $205,794.00 while median wrongful death cases rose 28% from $737,500.00 in 1995 to $941,000.00 in 1996.

The Gross and Syverud research showed that a few cases comprise the largest percentage of jury awards. In 1985-86, half the damages were awarded in 3% of the cases. By 1990-91, half the damages were awarded in 1% of the cases. In fact, the two largest cases in 1990-91 accounted for 46% of all damages. If these two cases are removed from the mean analysis, the mean verdict in 1990-91 drops from $490,000.00 to $266,000.00. The largest damages awards were handed down in commercial cases. Only one of the top ten awards in 1985-86 involved a personal injury matter.

Significant research has been undertaken to analyze jury trends. The Rand Corporation Institute for Civil Justice conducted a major research project analyzing jury verdicts from Cook County, Illinois and San Francisco, California between 1980 and 1984. The research results suggested that low-stake suits such as auto accidents and intentional torts increased
slightly during this four year period and most plaintiffs only received modest awards. Additionally, the research demonstrated that while jury awards increased substantially in some cases, the median award did not increase. The Rand research also concluded that less than six percent (3.5% in Cook County) of all damage awards exceeded one million dollars. While the overall number of cases resulting in million dollar verdicts is relatively small, the public tends to think the number of million dollar cases is much greater. In a 1986 limited study, potential jurors in Washington were asked how often plaintiffs were awarded more than one million dollars. The mean response was that 15% of all plaintiff cases resulted in a verdict in excess of one million dollars. The median response was five percent. Eleven percent of the jurors estimated that over 50% of awards are in excess of one million dollars. Additionally, 40% of the jurors thought that seven to forty-nine percent of claims resulted in million dollar plus verdicts.

While jury verdicts as a whole have increased over the past several decades, another constant has also developed in jury awards. Plaintiffs with smaller injuries or losses tend to be awarded more than their economic losses while individuals with serious injuries are often awarded less than their economic losses. Economic losses refer to specific quantifiable losses such as lost wages or medical bills. Marc Galanter analyzed a 1977 survey of 53,164 automobile personal injury claims paid by various insurers. Plaintiffs with economic losses up to $2,500.00 received payment of over $2.00 for every $1.00 of economic loss. Plaintiffs with losses between $2,501.00 and $10,000.00 received about $1.00 for every $1.00 of losses. Those plaintiffs with damages between $10,001.00 and $25,000.00 received less than $1.00 for every $1.00 in economic losses. Lastly, those with losses over $25,000.00 only received $0.79 for every $1.00 of economic loss. In a subsequent 1985 study, the results indicated that prevailing plaintiffs received $1.36 in tax-free payments for every dollar of past and estimated future economic losses.

107. See id.
108. See id. at 812-813.
109. See id. at 812.
110. See id. at 812.
111. See Galanter, supra note 97, at 1116-1118.
112. See id. at 1117.
113. See id. at 1117-18.
114. See id. at 1118.
115. See id.
losses. After taking out the traditional one-third of an award to compensate attorneys, plaintiffs’ net returns were somewhat less than their economic losses. These statistics help show that while average awards are increasing, plaintiffs with significant injuries either receive significant awards or are unable to cover all their expenses. There does not appear to be a happy medium with a large number of median awards. However, relatively smaller injuries receive a greater percentage of their expenses covered possibly due to sympathetic juries thinking that they are not significantly punishing defendants with small awards or that insurance companies will pay the award.

Declining injury awards identified by Galanter have been fostered by insurance companies who overcompensate small injuries as they are willing to provide appropriate compensation for pain-and-suffering to help avoid administrative and litigation oriented costs. On the flip side, insurers tend to under-compensate larger losses. Nonetheless, injury severity directly influences the level of noneconomic damages, and the more severe an injury, the larger the expected recovery. With exceptionally severe cases involving egregious conduct, courts can award punitive damages to punish the guilty defendant.

F. Punitive Damages

Contrary to popular belief, punitive damages were awarded in very few personal injury cases. Only 1.9% of the nonvehicular negligence cases in 1985-86 resulted in an award of punitive damages. No cases in 1990-91 involved an award of punitive damages. Additional research has quantified that only 1.5% of personal injury awards contain any punitive damages. Punitive damages, as with other categories of damages, are often very sensitive to the state or jurisdiction in which a matter is being tried. Some traditionally liberal jurisdictions are considered “jury friendly” jurisdictions where a plaintiff is more likely to recover punitive damages. For example, plaintiff lawyers often utilize forum shopping to bring a case in Alabama where juries have a history

116. See id. at 1118.
117. See id.
119. See Galanter, supra note 97, at 1120.
120. See Gross & Syverud, supra note 8, at 41 n.58.
121. See id. at 41.
122. See Galanter, supra note 97, at 1127.
of inflicting large punitive damages awards against out-of-state corporations.\textsuperscript{123} The sensitivity of punitive damages based on the jurisdiction where the matter is tried was highlighted in some research in the 1980s and 1990s. The research showed that several New York counties had no punitive damages awards, while six to seven percent of cases in Missouri, California, and Texas counties had punitive damages awards.\textsuperscript{124} These statistics show that while sports tort reform has been backed by sporting goods manufacturers claiming that punitive damages are driving them out of business, there are very few punitive awards in product liability cases.\textsuperscript{125}

The Gross and Syverud research concerning punitive damages has been replicated by other researchers. In a survey of the nation's seventy-five largest counties, only three punitive damages cases were included in the sample and the mean punitive award was only twelve thousand dollars.\textsuperscript{126} In those three cases, while punitive damages totaled forty thousand dollars, compensatory damages in the cases amounted to over eighty-five thousand dollars.\textsuperscript{127} A more recent study completed by the Rand Institute for Civil Justice concluded that punitive damages awards have increased to an average of $7.6 million, but that most of these awards are relegated to financial injury cases ten times more often than any other cases.\textsuperscript{128}

A 1996 study analyzed 6,000 cases from forty-five large counties.\textsuperscript{129} The researcher, Theodore Eisenberg from Cornell Law School, found that 2,849 (47\%) of the cases had plaintiff verdicts, but only 177 (6\%) of plaintiff cases had punitive damages.\textsuperscript{130} The statistical mean punitive award was $534,000.00 which was just 38\% higher than the study's mean compensatory award of $386,000.00.\textsuperscript{131}

While some jury awards such as the $262.5 million award ($250 million in punitive damages) against Chrysler Corporation shock most legal

\begin{itemize}
\item \textsuperscript{123} See Thompson, \textit{supra} note 50, at 68.
\item \textsuperscript{124} See Galanter, \textit{supra} note 97, at 1128.
\item \textsuperscript{125} See id. at 1130; \textit{A Window of Opportunity}, \textit{supra} note 5, at 33.
\item \textsuperscript{126} See CAROL J. DEFRANCES \textit{ET AL.}, \textit{BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, CIVIL JURY CASES AND VERDICTS IN LARGE COUNTIES} 8 (July, 1995).
\item \textsuperscript{127} See id. at 10.
\item \textsuperscript{128} See Saundra Torry, \textit{Juries Rarely Award Punitive Damages; They're Likeliest in Business Cases - Study}, \textit{HOUSTON CHRON.}, June 17, 1997, at 7A.
\item \textsuperscript{129} See Thompson, \textit{supra} note 50, at 69.
\item \textsuperscript{130} See id.
\item \textsuperscript{131} See id.
\end{itemize}
PUNITIVE DAMAGES

observes, plaintiffs rarely, if ever, see such large sums. Such awards are normally appealed and eventually overturned, reduced, or settled by the parties out of court. The Rand Institute research concluded that final punitive damages payouts averaged 57% of the original awards. While some businesses can significantly reduce the eventual punitive damages payout, the resulting negative publicity can dramatically affect a business. Companies such as Johns-Manville Corp. (asbestos injuries) and A.H. Robins Co. (Dalkon Shield) had to seek bankruptcy protection and established multi-billion dollar trust funds to handle consumer claims.

Lower punitive damages awards are often misunderstood. Insurance industry representatives claim that the punitive damages claims represent a disproportionate share of defense costs as insurance companies spend more money at trial to help prevent punitive damages awards. An insurance industry supported think tank, Pacific Research Institute, attempted to quantify the harm punitive damage awards produce. The study of one thousand cases in San Francisco, California concluded that one third of all suits faced by government or businesses contain a claim for punitive damages. While non-punitive damages cases took on average fifteen months to resolve, cases in which punitive damages were sought took on average twenty-one months to resolve, a 40% increase in time and increased litigation expenses.

An additional study conducted by the Rand Institute for Civil Justice concluded that when other characteristics of cases are roughly equal, the fact that punitive damages were awarded is a fairly substantial factor in the cases receiving newspaper coverage.

While the statistics appear to show that few cases involve punitive damages, there are still reported cases involving large punitive damages awards. However, courts are willing to review the adequacy of such awards to determine if they violate a defendant's rights. In 1996, the United States Supreme Court struck down a $2 million punitive damages award against BMW for a touch-up paint job on a new car. The Court

132. See John Hughes, Big Damage Awards Rarely Remain Intact; But Publicity Can Hurt Corporate Defendant, HOUSTON CHRON., Oct. 12, 1997, at 4E.
133. See id.
134. See id.
135. See id.
136. See id.
137. See Thompson, supra note 50, at 70.
138. See id.
139. See id. at 70-71.
concluded that the damages were "grossly excessive" and as such unconstitutional.\textsuperscript{141} The case, which came to the Supreme Court from a rural county in Alabama, initially included a punitive damage award of $4 million, over one thousand times the actual damages of four thousand dollars.\textsuperscript{142} The \textit{BMW} case has created a ripple effect in other courts as judges have relied on the \textit{BMW} ruling to slash over twenty multi-million dollar punitive damages awards since the \textit{BMW} decision was published.\textsuperscript{143} Even though punitive damages might not always be a big monetary winner, it represents a significant bargaining chip as plaintiffs are sometimes willing to barter away any punitive damages claim in exchange for defendants' agreement not to contest liability.\textsuperscript{144}

The primary conclusion reached through the research highlighted above was that most of the money awarded is concentrated in several large cases; plaintiffs often lose at personal injury trials and are much better off settling cases; corporations are more likely to lose commercial litigation trials; and jury verdicts are rarely compromises, that is, there is always a clear winner and loser after a jury decision.\textsuperscript{145}

While tort reform has been proposed as a means to possibly limit various damages awards, there are downsides to such efforts. Downsides could include potential impingement on a plaintiff's right to recover monetary damages. Furthermore, some groups could suffer more than others. Women have traditionally recovered lower awards than men and any attempts to limit damages could more severely affect women.\textsuperscript{146} In addition to the negative impact on women, caps on pain-and-suffering would have the greatest harmful impact on para/quadriplegia, brain damage and cancer cases. Caps would be less relevant to the smaller injuries where pain-and-suffering awards would not reach a several hundred thousand dollar cap. This fact combined with the statistics outlined above concerning adequate compensation based on an injury severity, demonstrates that the most seriously injured are the ones who traditionally are the least adequately compensated. Thus, damages caps not only frustrate the compensation goal required by a system designed to make

\begin{flushleft}
141. See Thornburgh, \textit{supra} note 46, at B7.
142. See Thompson, \textit{supra} note 50, at 71.
143. See id.
145. See Gross & Syverud, \textit{supra} note 8, at 7.
\end{flushleft}
someone whole, but prevents the system’s equity goal. Equity is lost by the jurors not knowing what they are required to do which is to actually make a plaintiff whole.

Juries could be confused by the requirement to make a plaintiff “whole,” which means different things to different people. Thus, as people live longer and earn more money, it takes more money to make someone whole. Furthermore, increased medical and rehabilitation services have helped increase the costs for making one whole. This concept was verified in a three decade analysis where awards were found to have increased, attributed to a combination of factors including inflation, increases in real income, real medical costs, and life expectancy.

One approach which has been effectively utilized as a settlement tool is to multiply special or economic damages (medical expenses, lost wages, future wages, etc.) by a specific number. Various research has indicated that a “rule of thumb” to be used during the settlement process is two to five times, two to ten times, and three to seven times special damages. While juries often use “guesstimation” and multipliers together with their bias and predisposition, there is little proof that pain-and-suffering is significantly out of control or needs to be reigned in. This conclusion is supported by Galanter’s research, discussed above. Furthermore, a prominent actuarial firm has analyzed the pain-and-suffering returns in relation to actual economic losses in 1987, 1991 and 1994. Instead of finding a two, three, five, seven or ten to one ratio, the research showed that in 1987 the ratio of pain-and-suffering damages to economic damages was one-to-one.

The number became bleaker for plaintiffs in the 1990s. The 1991 survey concluded that pain-and-suffering had dropped to $0.95 for each dollar received for economic loss. The 1994 survey showed an additional three cent drop to $0.92 for each $1.00 in economic loss. Thus, it appears that pain and suffering damages have corrected themselves without legislative intervention.

Judge Jack Weinstein, a very respected jurist from the Eastern District of New York, recently proposed a statistical model to help determine if a jury award for non-economic damages is excessive. The approach requires judges to examine similar cases grouped together in a

147. See Geistfeld, supra note 2, at 790.
148. See Galanter, supra note 97, at 1114.
149. See id. at 1115.
150. See Geistfeld, supra note 2, at 787 n.55.
151. See Galanter, supra note 97, at 1125.
152. See id.
pool and then reduce any award that strays more than two standard deviations away from the mean. Judge Weinstein utilized this method when facing a trial for repetitive-stress injuries from computer keyboards. The jury awarded $1.8 million in economic damages and another $3.5 million for pain and suffering. The judge found twenty-seven cases with similar injuries and the pain and suffering awards that fell within two standard deviations from the mean were around $2 million. Thus, the judge concluded that if he did not send the case back down to the lower court for other reasons, he would have reduced the pain and suffering damages by $1.5 million so the damages would fall within his two standard deviations guideline.

Edith Greene's research in Washington helped highlight potential juror misconceptions concerning what might be an appropriate jury award. Jury awards are often influenced by a "sympathetic moral hazard that juries face when making awards on an ad hoc basis and spending money that is not their own." A 1984 study of jurors who decided a product liability case indicated they used a method of "guesstimation" to determine pain-and-suffering damages. Juries might also try to apportion damages on a percentage basis. Thus, one study concluded that the injury severity explains about 40% of the variation in pain-and-suffering awards. The remaining portion might be comprised of such subjective components as race, gender, socioeconomic status, physical appearance, and related non-suit factors. The unpredictability associated with jury decisions was highlighted in one study which concluded that appellate judges were three times as likely to find damages awarded by juries to be excessive. In the same study, David Leebron concluded that when appellate judges find an award excessive, they normally reduce the award by fifty percent.

Even with all the faults attributed to juries and their final damages awards, most legal scholars have concluded that juries are highly re-

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154. See id.
155. See id.
156. See id.
157. See id.
159. See Geistfeld, supra note 2, at 784.
160. See Bovbjerg, supra note 158, at 923.
161. See Geistfeld, supra note 2, at 785.
163. See id.
garded decision makers who make decisions in line with the decisions most judges would make under the same factual predicates.164

G. Impact on Insurance

One side effect of the perceived arbitrary nature associated with jury awards relates to the impact on insurance premiums. In a perfect world, the premiums for an insurance policy would be directly related to the conduct of the policyholder. If a policyholder implements a comprehensive risk management program costing one thousand dollars, such a move would occur if their premiums accordingly would be reduced by one thousand dollars. If no reduction was forthcoming, there would be little incentive to incur the one thousand dollar cost. Thus, arbitrary jury awards have made the “experience rating” less valuable as a tool for determining insurance premiums.165 Insurance premiums and their variability is not just a hypothetical fear. This concern provided a major push for the tort reform movement and for the passage of the tort-reform bill in the United States House of Representatives in 1995.166

While tort reform legislation such as caps have reduced total payments to plaintiffs in some studies by as much as 23% and 39%, the key benefit has been to reduce insurance underwriting risks and to improve insurer’s profitability.167 The benefits derived by insurers have not necessarily benefited the general public as several studies have found no impact on premiums from tort reform legislation. Some premiums have been reduced and some premiums have not increased as much as they might have been without tort reform’s assistance.168 The Center for Economic Justice has claimed that Texans have been overcharged $1 billion in 1996 by failing to pass along costs savings from a 1995 law that capped civil damages and limited frivolous law suits.169

Insurance premiums were impossible to analyze in this study. Insurance premiums are based on numerous factors such as past claim history, risk management practices, number of individuals covered, what insurance policies are available on the market, and a host of related concerns. Increased competition in a soft market also appears to help reduce insurance costs as more insurance companies enter the market and less effi-

164. See Galanter, supra note 97, at 1109.
165. See Geistfeld, supra note 2, at 787.
166. See id. at 789.
167. See Galanter, supra note 97, at 1149 (citations omitted).
168. See id. at 1150 (citations omitted).
cient companies leave the market. However, no matter what analysis is utilized to examine insurance premiums, it is impossible to examine premiums in a one year vacuum. Claims take time to file and process. Thus, it is hard to show what will be the direct benefit associated with any premium changes until the insurance company can perform a loss ratio analysis several years into a given insurance program.

Another insurance factor which bears consideration, especially in relation to sports coverage, involves tiered insurance coverage. Often times, individuals can be covered by several insurance companies so it becomes impossible to determine which insurance company paid a claim without seeing the checks actually written by the insurance companies. Thus, while an injured athlete might recover $2 million, several insurance companies could contribute to that sum. If the athlete had a health/accident insurance policy which covered treatment costs and rehabilitation, other "secondary" insurance coverage can kick-in to pay additional pain-and-suffering damages. A third policy, such as an "excess coverage" policy, could cover any damages over $1 million. Thus, several different insurance companies could be responsible for ultimate payout based on the specific coverage terms.

The research highlighted above presents some encouraging information for the sports industry. A soft insurance market has lowered insurance premiums for sports events and facilities. Plaintiffs face a 50/50 chance of prevailing, but when they prevail, they normally only recover about double their actual damages. However, jury verdicts are also on the rise and the bargaining positions between plaintiffs and defendants is widening to a point where settlements are less likely in disputed cases. The paradoxical benefits and determinants evidenced in the general negligence field are also evidenced in the sports industry and the following data analysis was undertaken to see if certain defendants are experiencing a more favorable litigation environment.

IV. DATA ANALYSIS

To help prove the hypothesis, this paper examines the leading industry newsletter, From the Gym to the Jury, which is published by nationally recognized sports law experts, Ron Baron, Esq. and Dr. Herb Appenzeller. The newsletter has been published for over eight years. Material contained within the newsletter is culled from a national press clipping service which scans major newspapers and subscribers receive all cases highlighting sports related litigation. In an eight year span, approximately 281 settlements, trials, arbitrations, and related cases with exact awards were republished in the newsletter. Numerous additional
cases which involved defense verdicts or cases overturned on appeal were not included in the sample.

A. Positive Components of Sample Population

The positive components of the sample population derived from 1989 through 1997 issues of the publication *From the Gym to the Jury* include:

1) the newsletter being highly regarded in the industry with a subscription base of approximately 2,000 subscribers,
2) the newsletter being the only regularly published (bi-monthly) exclusive (sports litigation) newsletter throughout the eight year period,
3) the reported cases represent a national sample population, and
4) the newsletter's authors tried to provide as much factual information as possible with the case summaries.

Even though scientific validity was a key concern, it became impossible to quantify statistical relevance for the analyzed data and to develop a margin of error appropriate for the study. Too many variables exist in the litigation process including: whether the plaintiff or defendant(s) make compelling witnesses, the judge, the jury, the attorneys, the specific facts, how well a treating physician handled a case, the juxtaposition of various state and/or federal laws, and a host of other variables. The survey results were sent to one sports insurance industry executive for analysis concerning their significance and value as an analytical tool. That industry expert responded as follows:

I'm very pleased with your use of Appenzeller's anecdotes .... In my opinion, the anecdotes he and Ron (Baron) assemble are indeed representative of the issues being faced in sport and recreation. Whether they are statistically representative of the costs and frequency of occurrence is not known .... The vagaries and "multivariate environment" associated with a given case simply do not respond to generalizations and statistical inference.170

B. Limitations Inherent in Sample Population

The primary concern with the analyzed data relates to the limited number of cases which are ever republished, reported, or otherwise disseminated. Limited distribution is often the result of confidentiality clauses often incorporated into settlement agreements or releases which prohibit any party from commenting on the final settlement amount.

Other cases might be too small, in dollar value, to warrant media attention as they are not newsworthy. The news-clipping service might have inadvertently excluded cases thinking they were not sports law cases. Such exclusions could include employee termination for a teacher/coach, crime in a stadium parking lot or business law disputes involving sports franchise copyrights as possible concerns which might have been excluded from the potential sample population. Other cases might have been reported, but are later overturned on appeal. Likewise, some cases might have an established jury award, but the plaintiff is willing to reduce the awarded amount in exchange for immediate payment and/or a promise not to appeal the case which could tie-up the funds for several more years.

An additional concern relates to the partial information provided in certain cases. Since there was no standardized reporting form, some cases might not have identified a plaintiff’s age, sex, injury type, whether contributory negligence was involved, whether punitive damages were awarded, whether insurance coverage was available for the defendants, and similar missing information.

Another limitation inherent in the data was the failure to distinguish between spectator and participant liability concerns. It would be assumed that participant awards are higher due to the significant opportunity for greater injuries such as paraplegia, brain injury and death. These injuries are rarely seen in spectator related cases.

C. Award Analysis

The 281 analyzed cases came from forty different states and the District of Columbia. However, only twenty-seven states had more than three cases in the sample population. New York had the highest number of cases with thirty-five, followed by California and Florida each with twenty-eight cases. Cases were reported from 1989 through 1996.

The research highlighted sixty-four cases with awards over $1 million. This represents 22.77% of all cases analyzed. California had the highest number of jackpot cases with ten cases receiving awards or settlements over $1 million. California was followed by Texas with six cases, Pennsylvania and New York each with five cases and both New Jersey and Illinois with three cases each. The sixty-four million dollar cases included twenty-one settlements and forty-two jury awards. The million dollar cases were primarily concentrated in three injury categories.

Those categories include twenty-one paralysis cases, eighteen wrongful
death cases and six brain injury cases. The highest award of $24 million
was in a 1995 brain injury case caused during a Pennsylvania drowning
accident. The highest settlement at $15 million was received in 1992 for
emotional injuries received from a fall at a playground in North
Carolina.

Within the sixty-four million dollar cases were eighteen cases with
verdicts or settlement amounts over $5 million. This represents 6.4% of
all 281 analyzed cases. Only two of these awards were obtained through
settlement while the remaining sixteen awards were handed down by ju-
ries. Pennsylvania and New York had the highest number of cases with
awards over $5 million with each state having three such awards in the
survey.

Only three million dollar cases were reported in 1989. In 1990, seven
cases were reported, five cases in 1991, six cases in 1992, ten cases in
1993, eighteen cases in 1994, ten cases in 1995 and only four cases in
1996. The most common cause of injuries that received over $1 million
in awards included swimming, diving and football. Drowning cases pro-
duced seventeen million dollar awards involving thirteen deaths and four
brain injuries. Diving cases represented the next major injury category
with eleven cases. These eleven cases were all associated with divers
hitting the bottom of a pool or lake. These dives resulted in one death
and ten paralysis victims. The last major injury category raking in mil-
lion dollar verdicts involved tackling during football games which repre-
sents six of the seven football cases.

While over 22% of the analyzed cases had million dollar awards, 192
(68.3%) cases involved awards equal to or less than $500,000.00. Fur-
thermore, 125 (44.5%) of the cases had awards equal to or less than
$100,000.00.

The survey analyzed the activity in which the injury occurred and the
injury suffered. Swimming represented the single most frequent activity
in which someone was injured. The survey results showed that fifty-six
sports participants were injured while swimming. The next most fre-
quent activity in which injury occurred were facility related injuries total-
ing thirty-two, which included trip and falls, slip and falls, and other
injuries that occurred while individuals are using sports related facilities.
The remaining activities with more than two cases each are highlighted
below:
While the twenty-three categories listed above represent a diverse array of sports and activities, an equally diverse array of actions occurred within these sports and activities that resulted in the plaintiff's injuries. The most common incident which resulted in an injury involved falls. Falls were reported fifty-five times. In addition, another two slips and three trips were also reported in the analyzed cases. The remaining fifteen most common incidents are highlighted below:

<table>
<thead>
<tr>
<th>Incident</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidents</td>
<td>41</td>
</tr>
<tr>
<td>Drownings</td>
<td>28</td>
</tr>
<tr>
<td>Collisions</td>
<td>26</td>
</tr>
<tr>
<td>Battery</td>
<td>21</td>
</tr>
<tr>
<td>Breach of Contract</td>
<td>19</td>
</tr>
<tr>
<td>Diving</td>
<td>18</td>
</tr>
<tr>
<td>Discrimination</td>
<td>9</td>
</tr>
<tr>
<td>Broken Equipment</td>
<td>7</td>
</tr>
<tr>
<td>Tackling</td>
<td>7</td>
</tr>
<tr>
<td>Medical Malpractice</td>
<td>5</td>
</tr>
<tr>
<td>Equipment</td>
<td>4</td>
</tr>
<tr>
<td>Heart Attacks</td>
<td>4</td>
</tr>
<tr>
<td>Sliding</td>
<td>3</td>
</tr>
<tr>
<td>Stepping</td>
<td>3</td>
</tr>
<tr>
<td>Foul Balls/Pucks</td>
<td>3</td>
</tr>
</tbody>
</table>

Some incidents such as equipment related incidents can overlap and cover collisions, broken equipment, and other incidents in addition to the equipment and broken equipment category.
The actions highlighted above resulted in several significant injuries. Forty deaths were reported followed by twenty-nine paralysis cases. The average age for the deceased in wrongful death cases was 15.8 years old. Similarly, 15.8 years old was the average age for the fourteen cases which highlighted brain injuries. In contrast the average age for the paralysis cases was 25.5 years old.

The following analysis represents some of the critical survey results. The following several sections represent a more specific breakdown of yearly trend analysis, state award comparison, settlement versus jury award comparison, and defendant comparison.

**D. Yearly Trend Analysis**

The research results helped show that over the eight year period studied, the average sports award, in fact, decreased. The nine cases analyzed in 1989 averaged approximately $1.5 million. The sixteen cases analyzed in 1996 averaged approximately $1 million. Overall, the average award throughout the studied period was approximately $1.2 million. The highest average awards were garnered by the eighteen cases in 1991 which averaged approximately $1.8 million per case. The lowest average awards were realized during 1993 in forty-eight cases which only averaged approximately $1 million. Figure 1 highlights the year-to-year award differential.

As mentioned in the general analysis section, 1994 had the largest number of million dollar cases (eighteen). However, 1994 also had twenty-four cases with awards less than $50,001.00. In contrast, 1991 only had five cases with million dollar verdicts, yet 1991 had the highest average award because only ten cases that year had awards less than $150,001.00. Besides the million dollar cases in 1991, there were two additional awards of $500,000.00 and $925,000.00.

No appreciable trend could be inferred from the yearly data. The proverbial luck of the draw could dictate when certain cases were finally settled or when a party's appeals had been exhausted. The one definite trend raised by the data was that women are starting to receive higher awards then men, but still lag considerably behind men regarding average award amounts. Figure 2 highlights this comparison.

**E. State Awards Comparison**

While many researchers might claim that awards are higher in traditionally jury friendly states such as California, New York, or Texas, the research showed the highest average award emanated from Oregon. The national average award or settlement was $1,146,041.00. In states
Figure 1. Average Award Amounts By Year
Figure 2. A Gender Comparison of Average Award Amounts By Year

*Number of Cases Shown in ()
with three or more reported cases, the three lowest states with less than fifty thousand dollar average awards were Nebraska, West Virginia, and Utah. Ten states averaged more than the national average. Included within these states are Texas, New York, New Jersey, California, Georgia, Washington, Hawaii, Pennsylvania, North Carolina, and Oregon. Figure 3 highlights Oregon as the state with the highest average award. The four cases in Oregon averaged approximately $5.6 million. If the two largest cases are extracted ($11 and $11.1 million), the average award in Oregon for the remaining two cases ($1,500.00 and $292,000.00) drops to $146,750.00. Pennsylvania, with fourteen cases, represents a more accurate average award of $3,125,008.00.

F. Settlement Versus Jury Award Comparison

To help determine which adjudication technique produced the greatest returns, the results reached in nine states were compared. The states analyzed included California, Delaware, Florida, New Jersey, New Mexico, New York, North Carolina, Ohio, and Pennsylvania. The lowest awards from these states involved five arbitration awards which only averaged $52,773.00 per dispute. Six cases were heard exclusively in front of a judge, without a jury. The average bench trial award was $79,915.00. Significantly greater numbers of jury awards and settlements exist from these states. Settlements were reported in thirty-nine cases with an average settlement of $1,111,196.00. Jury awards were about half a million dollars higher. The eighty jury awards from the nine states averaged $1,631,004.00. Figure 4 highlights these results.

Settlements can range from minimal amounts to millions depending on the underlying claim. The same conclusion holds true for jury awards. However, significant differences exist between average settlement amounts and average jury verdicts. The data was analyzed by examining the six states with the highest number of overall cases analyzed. Texas had fifteen cases in the study. Of these fifteen cases, 33.3% were won with jury verdicts while 66.6% of the cases were resolved through a monetary settlement to the plaintiff. The majority of other key states had jury awards between 41.7% and 62.5% of all cases. New York had the highest number of cases resolved through a jury verdict with 75% of the cases being resolved by a jury as shown in Figure 5.

The disparity between settlement amounts and jury awards can be seen in Figure 6. New York had twenty-five jury awards which averaged $1,665,782.00. In addition, nine settlements were reported in New York and these cases were settled on average for only $235,101.00. The greatest disparity between settlements and awards were found in Penn-
### Figure 3. Comparison of Average State Awards

<table>
<thead>
<tr>
<th>State</th>
<th>Average Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>NE (3)</td>
<td>$27,780</td>
</tr>
<tr>
<td>WV (4)</td>
<td>$29,250</td>
</tr>
<tr>
<td>UT (3)</td>
<td>$47,967</td>
</tr>
<tr>
<td>WI (6)</td>
<td>$67,442</td>
</tr>
<tr>
<td>NH (4)</td>
<td>$134,561</td>
</tr>
<tr>
<td>OH (4)</td>
<td>$162,875</td>
</tr>
<tr>
<td>MI (8)</td>
<td>$304,438</td>
</tr>
<tr>
<td>FL (28)</td>
<td>$437,592</td>
</tr>
<tr>
<td>MA (7)</td>
<td>$453,507</td>
</tr>
<tr>
<td>SC (3)</td>
<td>$507,333</td>
</tr>
<tr>
<td>VA (3)</td>
<td>$571,667</td>
</tr>
<tr>
<td>AL (4)</td>
<td>$573,750</td>
</tr>
<tr>
<td>CT (3)</td>
<td>$611,758</td>
</tr>
<tr>
<td>LA (11)</td>
<td>$617,351</td>
</tr>
<tr>
<td>ME (3)</td>
<td>$921,494</td>
</tr>
<tr>
<td>MO (10)</td>
<td>$947,929</td>
</tr>
<tr>
<td>IL (14)</td>
<td>$1,036,519</td>
</tr>
<tr>
<td>National Average</td>
<td>$1,146,041</td>
</tr>
<tr>
<td>TX (17)</td>
<td>$1,202,519</td>
</tr>
<tr>
<td>NY (35)</td>
<td>$1,252,727</td>
</tr>
<tr>
<td>NJ (12)</td>
<td>$1,325,521</td>
</tr>
<tr>
<td>CA (28)</td>
<td>$1,341,429</td>
</tr>
<tr>
<td>GA (6)</td>
<td>$1,344,167</td>
</tr>
<tr>
<td>WA (3)</td>
<td>$2,454,000</td>
</tr>
<tr>
<td>HI (6)</td>
<td>$2,611,386</td>
</tr>
<tr>
<td>PA (14)</td>
<td>$3,125,008</td>
</tr>
<tr>
<td>NC (6)</td>
<td>$3,216,725</td>
</tr>
<tr>
<td>OR (4)</td>
<td>$5,598,375</td>
</tr>
</tbody>
</table>

* Number of cases in (), minimum 3
Figure 4. A Comparison of Average Awards by Method of Resolution

- Arbitration: $52,773 (5 cases)
- Judge: $79,915 (6 cases)
- Jury: $1,631,004 (80 cases)
- Settlement: $1,111,196 (39 cases)

* Number of cases shown in ()
Figure 5. Comparing Verdicts to Settlements in the Top Five States for Each Category

<table>
<thead>
<tr>
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Figure 6. A Comparison of Settlements to Jury Decisions

* Number of cases considered shown in ()

- Texas (15)
- Illinois (12)
- California (24)
- New Jersey (8)
- Missouri (8)
- New York (32)

Legend:
- Settlement
- Jury
PUNITIVE DAMAGES

Pennsylvania and Texas. Pennsylvania had nine jury verdicts averaging $4,781,458.00. Settlements in Pennsylvania (three cases) fared significantly worse than jury verdicts as the average settlement was only $232,500.00. Texas represented the exact opposite side of the equation. Texas had eleven settlements which averaged $1,626,864.00. Only six jury verdicts were reported in Texas and these averaged only $424,555.00. While some states showed significant disparities, several states such as California, Florida, and Illinois had settlements and awards which were on average not significantly disparate.

G. Defendant Comparison

While professional teams would presumably have significant monetary reserves or insurance coverage to cover large awards, the professional teams paid the lowest average awards of all defendants with the average award in ten cases being only $144,866.00. The next lowest defendant category were health clubs which paid out an average of $193,135.00 in ten cases.

While individuals traditionally do not have the same financial resources as larger corporations or governments, individual defendants had to pay significant verdicts. Approximately forty cases involving individual defendants were reported with the average award surpassing over $580,000.00. The survey was unable to determine how many of these defendants had insurance coverage that paid a portion or all of the awards and associated legal fees.

Defendants with more than nine cases naming them as primary defendants are highlighted below. The defendants who had more than nine cases in the study include associations, companies, government, health clubs, individuals, landowners, manufacturers, professional sports, resorts, schools, and universities.

1. Associations

Nine cases listed associations as the primary defendant. Plaintiffs primarily brought claims relating to swimming (four cases) or soccer (three cases) related injuries which included two deaths and one paralysis case. In addition to the swimming cases, three cases sprung from soccer injuries from being battered or from a goal tipping on a plaintiff.

Six association cases were settled with three jury verdicts and one case was resolved by a state judicial board. Four of the five association cases that listed plaintiff ages highlighted claims raised by minors averaging twelve 12 years of age.
2. Company

Companies were named in sixteen cases. Companies could include a sports promoter, a sporting goods retailer, or a sports facility that do not fit within any other category. The most common injuries highlighted by this group include: death (three cases all from drownings), leg (two), monetary (two), and shoulder (two). The most common activity which generated a claim against a company involved three boating related claims.

Companies appeared more willing to take cases to trial in comparison with any other defendant group. Of the sixteen cases, thirteen went to juries, two settled and one went to arbitration. The two settlements were for only fifteen thousand dollars and sixty-two thousand dollars. The average age of plaintiffs bringing claims against companies was relatively high with seven of the eight highlighted cases involving individuals over twenty-five, but under seventy-one years of age.

3. Government

Plaintiffs sued government entities thirty-one times which included ten wrongful death claims, all from swimming related accidents. The other most frequent injuries after wrongful deaths include six paralysis claims (four from diving accidents), four leg injuries and three cuts. In total, seventeen cases evolved from swimming related claims with fourteen cases going to jury verdicts and three cases settling.

Similar to companies, government defendants are also more willing to go to juries with twenty-four cases going to juries and only four cases being settled. Government defendants were primarily sued by younger plaintiffs with seventeen of the twenty-three age-identified plaintiffs being under the age of nineteen.

4. Health Clubs

Ten health club claims were included in the survey sample. The most frequent claims raised against health clubs involved three knee injury cases. All three knee injuries arose from trip and fall cases. One death case was reported when a six-year-old fell on a negligently installed balanced beam and recovered $250,000.00 from a Missouri jury. The minor's injuries were unique as three of the five age-identified plaintiffs were between thirty-four and forty-two years of age. Settlements were reached in 60% of the cases with the remaining cases being resolved by juries.
5. Individuals

Forty cases were filed against individuals primarily for the negligent behavior of the individual or hazardous conditions on an individual’s real and/or personal property. Two death cases were reported including a fall from a balloon’s gondola and a medical malpractice case associated with a football injury. Six knee injuries were reported along with four eye, three cuts, and three miscellaneous injuries.

Sixteen cases against individuals specifically identified the plaintiffs’ ages. Seven cases identified minors and six cases identified plaintiffs between twenty and twenty-nine years of age. Individual defendants favored bringing studied cases to juries with twenty-four decisions being reached by juries, fourteen cases were settled and two cases went to arbitration.

Boating and football were the two most common activities which fostered claims against individual plaintiffs. These six claims in each category respectively claimed negligent boat operation and negligent tackling which resulted in battery claims. Four of the five football cases went to juries with an average award of $45,987.00 while the one case that went to arbitration garnered a judgment of over $200,000.00. Similarly in the boating cases, the three jury awards only averaged $64,900.00 while the three settlements averaged $294,333.00. Individual defendants such as doctors were named in four medical malpractice cases with each case going to a jury and each plaintiff being a professional athlete. Four cases were also brought against individual skiers who collided with other skiers. Three of the skiing cases involved water skiing injuries and the average jury verdict in these cases was only $3,342.00.

6. Landowners

Landowners such as sports facility owners, pool operators, and golf course owners were the second most frequently named defendants in forty-eight cases. Miscellaneous injuries were the most common injury with five cases followed by four cases involving ankle injuries and deaths. Arm, brain, eye, foot, hip, and paralysis cases were injuries reported in three cases each. The three paralysis cases all came from diving accidents while three of the four deaths were also swimming related.

An almost equal number of cases were settled or went to juries (twenty-one and twenty-four respectively). Ten of the settlements involved minors. In total, of the age identified plaintiffs, seventeen of the twenty-nine cases involved minors with four cases highlighting seniors over the age of fifty-nine.
Landowners were most frequently sued for swimming, skating or golf related injuries. The twelve swimming cases were equally split with six jury verdicts and six settlements. The six jury verdicts averaged $5,893,057.00 and ranged from $25,000.00 to $24 million. The six settlements averaged $1,261,666.00 and ranged from $12,000.00 to over $4.3 million. The eight skating cases included five roller skating and three ice skating cases. The average skating case resolved by a jury garnered $77,500.00 while the average settlement was only for $15,750.00. One case went to arbitration and resulted in a judgment of twelve thousand dollars.

The seven golf cases included two incidents involving golf carts. Both golf cart cases went to juries where contributory negligence was applied in both cases. The average jury award in the two golf cart cases was just over $203,000.00. The remaining five cases involved three settlement and two jury verdicts and resulted in an average award of $50,288.00.

Five cases involving landowners and facility negligence claims all involved slip and trip and fall cases. Three of these cases went to juries who on average awarded $62,166.00. The two settled cases averaged over $590,000.00, but this number is especially enlarged by a settlement over $1 million.

7. Manufacturers

Due to the fact manufacturers face the greatest liability threat for punitive damages claims, the manufacturers group is exceptionally important. However, manufacturers were only named as primary defendants in eighteen suits, less than 6.5% of all claims analyzed. The primary claim raised against manufacturers involved paralysis cases. Five of the paralysis cases arose from diving injuries. The remaining paralysis cases arose from a football tackling incident and an auto racing accident. Only one death case and one brain injury case were reported.

Swimming cases raised significant jury awards against manufacturers. All three swimming verdicts were over $2.7 million and averaged $6.4 million. Three swimming cases settled for an average settlement of just over $1 million and ranged from seventy thousand dollars to $2.4 million. While the swimming verdicts represented a high verdict average, the highest verdict average in the study entailed the three football related jury verdicts that averaged over $8.5 million and ranged from $3.5 to $11.1 million. In total, ten manufacturer cases went to juries and seven cases settled out-of-court.
8. Professional Sports

Professional teams, athletes, and leagues were named in eleven claims. The primary cause for the various injuries occurring at professional sports events were caused by attacks that resulted in battery claims. The five battery claims involved attacks by both athletes and spectators. Two battery cases arose during basketball games and one arose during a baseball game. One baseball case also involved a foul ball hitting a child in the head and resulting in an award of $67,500.00 by an Illinois jury. Interestingly enough, the most common activity resulting in liability involved administrative misconduct. Three cases involving emotional injuries and lost wages associated with age discrimination cases were settled for an average of $133,333.00.

All professional sports cases involved plaintiffs over the age of sixteen with the oldest age-identified plaintiff being sixty-eight years old. Professional cases were equally divided by decision methods including five settlements, four jury verdicts, and two bench decisions.

9. Resorts

Resorts were highlighted in thirteen cases. A disproportionate number of these cases, seven, involved wrongful death claims. Six of the death claims involved swimming related injuries including four drowning, one diving, and one water electrocution case. The last death cases involved a fall incident while a decedent was exercising. Two paralysis cases were also successfully brought against resort owners. Seven cases were sent to juries while six cases were resolved through settlements. Four of the six settlements involved drowning deaths.

The swimming cases presented the highest damages awards for resorts. Two swimming verdicts averaged just over $6.2 million which included a $10.25 million verdict. Five settlements averaged $2.62 million and ranged from $300,000.00 to $4.6 million.

10. Schools

Schools were the most frequently named defendant and were named in fifty-seven cases. These cases included the following most frequent injuries: death (six cases), paralysis (six), cuts (five), leg (five), hand (four), head (four), knee (four), and two each of the following injuries—brain, elbow, foot, and teeth injuries. The most common cause of death cases against schools involved four football cases where deaths occurred due to tackling, working-out, blocking and a heart attack. The other two
death cases involved a soccer and a swimming related death. Two of the paralysis cases also involved tackling during football games.

As would be expected, most plaintiffs in cases against schools were minors. Of the thirty-three cases which identified plaintiff ages in suits against schools, twenty-nine were minors. The four remaining cases involved individuals between thirty-five and fifty-four years of age who were primarily injured from accidents or slip and fall cases. Schools were more inclined to take a case to a jury as thirty-three cases went to juries and twenty-four cases were settled.

While swimming is the most common cause for children deaths in the study, only three swimming cases were brought against schools. Thus, schools are probably utilizing strong risk management techniques to minimize swimming related injuries in their programs. The fifteen football cases represented the most common claims raised against schools. Ten of these cases went to juries that returned verdicts ranging from $24,168.00 to $850,000.00. Four juries applied contributory negligence to reduce awards by 33% or 60%. The average jury award was for $269,337.00. Five cases were settled with an average settlement being $1.732 million from a range of $10,000.00 to $4.45 million. Two football cases were settled for more than $3.9 million.

Ten facility cases involved five slip/trip and fall cases and two cases involving broken equipment. The seven jury verdicts averaged $232,259.00 while the three settlements averaged $273,333.00. The next most common activity resulting in suits against schools involved five soccer cases. Four cases went to juries resulting in average verdicts of $347,400.00 with one case settling for only $18,500.00.

Three baseball cases against schools resulted in jury verdicts which averaged $148,333.00. The one baseball case that settled was settled for $500,000.00. The same number of basketball cases also resulted in jury verdicts, but the average verdict was $436,666.00 based on one case generating a $1.2 million verdict. The one basketball case that was settled only earned the plaintiff twenty thousand dollars.

11. Universities

Universities were highlighted in twenty-eight cases which included six emotional distress, six monetary, three death, three various, and two paralysis injury cases. All the monetary and emotional distress claims were based on administrative conduct of university officials. Five administrative claims were resolved by juries each averaging $1,121,600.00 and ranging from $116,000.00 to $3.6 million. In contrast, the eight settlements involving the same injuries only averaged $308,625.00 and ranged
from $30,000.00 to $1 million, over $800,000.00 lower than the average jury verdicts.

All the cases which identified plaintiff ages identified individuals between eighteen and twenty-two years old. Universities settled twelve cases and took fifteen cases to the jury.

In summary, the following chart provides the easiest manner to analyze the average jury verdicts or settlements between the different defendant groups.

V. Data Comparison With Industry Research

The survey results discussed above were compared with the various research studies addressed at the beginning of this paper. In addition, the survey results were also compared with insurance industry data to determine if the survey results accurately represented the "real world" sports liability concerns rather than just providing a snapshot based on the most sensational cases making the newspapers.

A. Defendant Type

Defendant types appears to mirror the results reached by Gross and Syverud with a significant distribution between small corporations, large corporations, individuals and the government.

Large businesses (including associations, companies, manufacturers, and professional teams) represented only 18.6% of all known defendants compared with 37% for Gross and Syverud's 1990-91 sample. Smaller business (including health clubs, resorts and landowners) represent 25.8% versus 20%; 14.3% for individuals versus 14%; and 41.2% for government (including schools and universities) versus 29% for government in the Gross and Syverud 1990-91 sample. Thus, the major difference in the sports realm involved significantly more government defendants and fewer large businesses as defendants.

B. Pre-Trial Settlement

As demonstrated by the Gross and Syverud research, parties are often at extremes in the settlement process with highly divergent demands and offers. Parties at different ends in the settlement posturing have to be careful as in some states such as New York, Florida, Louisiana, and Pennsylvania, where jury awards are significantly higher then settlement awards. Thus, if a defendant wishes to take their chances in such states, they have to calculate the risk that if they do not sway a jury they would be facing an award significantly higher then what they might
have been able to purchase through a settlement. Conversely, defendants in states such as Texas would be better served taking some cases to trial as the average trial award is less than the average settlement.

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C. Damage Awards

Awards within the study were not analyzed based on economic injuries versus pain-and-suffering. However, large awards in paralysis and brain injury cases strongly implies significant medical expenses with lower pain-and-suffering awards.

Similar to the Greene and Gross research, a large percentage of money awarded is concentrated in several large cases. If the highest seven verdicts, all over $10 million, are removed from the survey, the average award (for cases involving men and women, not business or government plaintiffs) declines from $1,159,573.00 to $831,002.00. This represents a 29% decline. The seven highest awards were equally distributed between governments, schools, manufacturers, resorts and landowners.

Damage awards were reduced in forty-four cases based on various defenses raised before juries. Cases involving contributory negligence were reported in forty-four cases. The amount of contributory negligence established by juries ranged from only 4% to over 90%. The mode percentage for contributory negligence was 50%.

While the survey did not shed light on punitive damages awards against manufacturers based on poorly reported case results, manufacturers had the highest average award/settlements and the highest average jury awards of all the defendant types. However, based on settlements, manufacturers represented only the fourth highest average settlement group. Resorts should not be considered the highest average settlement group as one settlement case was over $10 million. However,
schools and government defendants both had higher average settlement amounts compared with manufacturers.

Most defendant groups showed a significant disparity between average jury and settlement amounts. Resorts, health clubs and professional sports were the closest together with schools, governments, professional sports and health clubs averaging higher settlements. The greatest disparity involved associations where jury verdicts averaged 1000% more than settlement.

Only one case specifically mentioned a tort reform measure affecting the final award. The case was a 1994 case in New Hampshire where a soccer goal tipped over killing a young child. The court awarded damages, but reduced the final verdict to $150,000.00 based in part on an awards cap in the state.

In comparison with the sports insurance industry numbers, the survey results appeared grossly disproportionate. The insurance industry information represented claims filed with one youth league sports organization with the same insurance carrier between 1994 and 1996. The average property damage claim raised in the youth sports league study only garnered an award or settlement of approximately $1,100.00. Spectator and player injury claims averaged between $30,000.00 and $34,000.00, which is significantly less than the national average award of $1,146,041.00 in this study. However, these survey results included numerous wrongful death and para/quadriplegia cases along with numerous product related claims versus the simple injury related claims raised by the youth sports participants or spectators. Nonetheless, it appears that controlled population data (youth sports league) is significantly lower than industry wide cases spanning the spectrum of defendant types, injuries, and related attributes.

D. Punitive Damages

Punitive damages were impossible to analyze as they were not separated from other damage amounts, but presumably punitive damages awards were included within some of the larger or more severe cases. One case specifically mentioned punitive damages, but only referenced $10,000.00 in punitive damages and the case was resolved through arbitration.

173. See id.
174. See id.
Alabama is known for its significant punitive awards. Since the BMW case, Alabama has garnered national attention with its large jury verdicts. Alabama juries awarded $767 million in punitive damages from 1989 to 1996 in more than two hundred cases, none of which involved any wrongful death claims. The average statewide verdict in Alabama is $3.3 million while the average punitive damage awards from the 1995 Justice Department study only averaged $760,000.00.

Only four cases were resolved in Alabama. The fear associated with litigating cases in Alabama possibly impacted the survey results as all four cases were settled for amounts between twenty thousand dollars and $2.1 million with no indication that punitive damages were discussed.

V. Future Hints Concerning Tort Reform and Sports

The public will embrace tort reform if they understand the need and will derive specific benefits from the legislation. The survey results show that jury awards are neither on the decline nor rising. Rather, the sports law cases seem to go through peaks and valleys. At the present time, it appears that awards over the past five years have averaged between $1.2 and $1.5 million. No clear-cut trend can be gathered for the overall award and settlement averages. The average jury awards have declined in 1989-1990, 1991-1992, 1993-1994, and 1995-1996. Such lower awards could be construed as possibly lowering liability insurance premiums, however, the research cited above clearly indicates that liability savings from lower jury verdicts and other damages caps do not necessarily produce lower insurance premiums. This is especially true when no single government insurance agency regulates sports insurance carriers or insurance market factors help reduce insurance premium costs. Currently, insurance companies have to report to fifty different state insurance commissioners which makes monitoring and compliance a difficult task for large multi-state insurance companies. Thus, the study was unable to positively answer the stated hypothesis.

In order to more fully address the hypothesis, more emphasis might need to be placed on researching punitive damages awards in sports; analyzing yearly income and expense filings for publicly traded insurance companies and compare losses with any increased premiums; and researching actual court records (jury awards, settlement agreements filed

175. See Bob Hohler, Alabama's Legal System is Blamed for Huge Awards in Civil Damages, HOUSTON CHRON., Nov. 16, 1997, at 14A.
176. See id.
with courts, and associated court filings) to hopefully obtain a clearer picture. Additional future research might also analyze yearly trends in insurance claim filings and pay-outs, track sports product litigation solely in states who have enacted tort reform, and to possibly study jurors reactions to various sports injuries and their perceived case valuation process.

While the hypothesis was not sufficiently addressed by the study results, significant benefit can be derived from the study's results. A key concern for both plaintiffs and defendants is to properly educate jurors as to what reasonable pain-and-suffering damages might entail. Even with guesstimation, the cases show a wide range of disparity for similar injuries. This difference could possibly be attributed to the jurisdiction, year litigated, juror sympathy, a defendant's negative image, an individual attorney's acting skills, or a host of other variables. Even if it is impossible to finally determine what a jury might award, plaintiffs need to be educated so they do not develop some pie-in-the-sky expectations of potential damages.177 Similarly, with courts reducing punitive damages awards, the study results can help a judge establish what might be a reasonable versus an unreasonable award.

The study results can also be utilized for more appropriate posturing by parties. A litigant can examine some similar injuries and determine a more appropriate bargaining position depending on whether the parties are interested in pursuing settlement or further litigation. By referencing the survey results, parties can hopefully be brought closer to a more reasonable bargaining position.

The study results also shed significant light concerning risk management programs and the sports which have the greatest potential for injuries. The results demonstrate that football and swimming are producing the greatest number of significant jury awards or settlements. Furthermore, standard risk management concerns which face all businesses, such as trip and fall and slip and fall cases, are very common in the analyzed cases. Thus, risk management programs should continue focusing on supervision and equipment related concerns, but at the same time, also emphasize general cleanliness.

177. See Thompson, supra note 50, at 72.