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MYTHBUSTER!

PUNITIVE DAMAGES: RARE, REASONABLE AND LIMITED

“Punitive damages are not awarded for the purpose of compensating injured plaintiffs, but are almost exclusively reserved for civil claims in which the defendant’s conduct was considered grossly negligent or intentional. Punitive damages are intended to serve as a means for punishing the defendant and deterring others from committing similar actions.”¹

Contrary to popular myth, punitive damages are rarely awarded.

- In 2005, the most recent year studied by the U.S. Department of Justice (DOJ), punitive damages were awarded in only 5 percent of civil cases where plaintiffs prevailed at trial.²
- Punitive damages were awarded in only 3 percent of tort cases with plaintiff winners³; for contract cases, it was 8 percent.⁴
- **Medical Malpractice:** In 2005, punitive damages were awarded in only 1 percent of cases where medical malpractice victims established liability at trial.⁵
- **Product Liability:** In 2005, punitive damages were awarded in only 1 percent of product liability cases with a successful plaintiff.⁶ This includes asbestos and other product liability trials.
- **Trends:** After examining long-term data from state trials in the nation’s 75 most populous counties, the DOJ found that the incidence of punitive damages has not increased:
 1. The percentage of plaintiff winners receiving punitive damages before civil juries is consistently low — 6 percent in 1992, 4 percent in 1996, 6 percent in 2001 and 5 percent in 2005⁷;
 2. The percentage of prevailing plaintiffs awarded punitive damages in all tort trials is consistently low — 3.3 percent in 1996, 5.3 percent in 2001 and 3.6 percent in 2005⁸;
 3. The percentage of successful medical malpractice plaintiffs receiving punitive damages is consistently low — 1.1 percent in 1996, 4.9 percent in 2001 and 2.6 percent in 2005⁹;
 4. The percentage of plaintiff winners awarded punitive damages in product liability trials is consistently low — 7.7 percent in 1996, 4.2 percent in 2001 and 1.3 percent in 2005¹⁰; and
 5. The percentage of winning plaintiffs receiving punitive damages in contract cases was no greater in 2005 than in 1996, with plaintiffs’ success rate totaling 8 percent both years.¹¹

Punitive damages have decreased in frequency.

Long-term DOJ data from state tort trials in the nation's 75 most populous counties show that:

- **Tort Trials Overall:** The percentage of successful plaintiffs awarded punitive damages in tort trials declined by 33.3 percent between 2001 and 2005.¹²
- **Medical Malpractice:** From 2001 to 2005, the percentage of prevailing plaintiffs awarded punitive damages decreased by 46.1 percent.¹³
- **Product Liability:** The percentage of plaintiff winners receiving punitive damages dropped by 70.4 percent between 2001 and 2005.¹⁴

Most punitive damage awards are modest in amount.

- In 2005, the median overall punitive damage amount awarded to plaintiff winners in civil cases was \$64,000.¹⁵ The median punitive damage award for all tort cases was \$55,000.¹⁶
- In 76 percent of the 632 civil trials with both punitive and compensatory awards, the ratio of punitive to compensatory damages was 3 to 1 or less.¹⁷

Juries and judges use similar reasoning when making punitive damage award decisions in tort cases.

- There was no detectible difference in the percentage of litigants awarded punitive damages when comparing tort bench and jury trials in 2005.¹⁸
- The median punitive damage awards in tort jury (\$100,000) and bench (\$54,000) trials were not statistically different.¹⁹

There are some arbitrary limits on the amount of punitive damages that can now be awarded in a case.

- **Supreme Court:** In *State v Farm Mut. Auto Ins. Co. v. Campbell* (and in the earlier case, *BMW of N. Am., Inc. v. Gore*)²⁰ the court, while hesitating to say too much about the appropriateness of specific punitive damages awards, said that “the degree of reprehensibility of the defendant’s conduct” is the most important criteria, followed by the relationship between compensatory and punitive damages (the Court mentioned a single digit ratio) and relationship between the punitive damages and civil penalties. However, in the recent case *Philip Morris USA v. Williams, 07-1216*, the Court let stand a \$79.5 million award against a tobacco company with a much higher ratio, where it was argued that the defendant’s misconduct was particularly reprehensible and the harm was physical, as opposed to economic in nature.
- **States.** Of the 45 states that allow punitive damages in this country, at least one-third have enacted some form of cap, or limit, on the ability of judges and juries to award punitive damages. Over 30 state legislatures have made it more difficult for injured consumers to prove punitive damages by raising the standard of proof required for awarding them. Several states order victims to pay a portion of punitive damages into state-designated funds. Other states require or permit bifurcated trials where the injured person is forced to essentially try a case twice, first

proving liability and second, arguing the size of the award. And in some states, juries are prevented from deciding the amount of a punitive damages award -- only the judge is permitted do that.²¹

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NOTES

¹ U.S. Department of Justice, Bureau of Justice Statistics, "Punitive Damage Awards in State Courts, 2005," NCJ 233094 (March 2011) at 1 (citing *Black's Law Dictionary*, 1990), found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pdasc05.pdf>.

² *Id.* at 1, 4 (Table 5).

³ *Id.* at 4 (Table 5).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ U.S. Department of Justice, Bureau of Justice Statistics, "Civil Bench and Jury Trials in State Courts, 2005," NCJ 223851 (October 2008)(revised April 9, 2009) at 10, found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cbjtsc05.pdf>.

⁸ U.S. Department of Justice, Bureau of Justice Statistics, "Tort Bench and Jury Trials in State Courts, 2005," NCJ 228129 (November 2009) at 12 (Table 12), 13, found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/tbjtsc05.pdf>.

⁹ *Id.* at 12 (Table 12).

¹⁰ *Ibid.*

¹¹ U.S. Department of Justice, Bureau of Justice Statistics, "Contract Bench and Jury Trials in State Courts, 2005," NCJ 225634 (September 2009) at 6, found at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cbajtsc05.pdf>.

¹² "Tort Bench and Jury Trials in State Courts, 2005," *supra* n.8, at 12 (Table 12).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ "Punitive Damage Awards in State Courts, 2005," *supra* n.1, at 1, 5 (Table 8).

¹⁶ *Id.* at 5 (Table 8).

¹⁷ *Id.* at 1, 5 (Table 8).

¹⁸ *Id.* at 1, 6 (Table 10).

¹⁹ "Tort Bench and Jury Trials in State Courts, 2005," *supra* n.8, at 6, 7 (Table 6).

²⁰ *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 581 (1996).

²¹ This is based on the Center for Justice & Democracy White Paper, *What You Need to Know About Punitive Damages* (2001); <http://centerjd.org/archives/issues-facts/punitives.pdf>. Today, there are likely more state punitive damages limits on the books.