ARTICLE

PUNITIVE DAMAGES BY JURIES IN FLORIDA: IN TERROREM AND IN REALITY*

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In recent years there have been numerous proposals for punitive damage reform. Proponents of such reform have often asserted that punitive damages are both common and exorbitant. In this Article, Professor Vidmar and Dr. Rose examine the validity of these and other empirical claims about punitive damages. They do so by studying punitive damage awards reported in the Florida Jury Verdict Reporter. Ultimately, they conclude that there is no empirical support for the claims made by proponents of tort reform in Florida.

Tort reforms, particularly proposed changes to punitive damages, are on legislative agendas in a number of jurisdictions.1 The calls for reform rest upon a multitude of empirical claims about the nature of awards and the risks of punitive damages that businesses currently bear. In this Article we examine more than a decade of actual punitive damage awards rendered by juries in Florida state courts. We closely examine such variables as the causes of action and the defendants against whom the punitive damages were assessed. We conclude that in Florida: (1) the frequency of punitive damages was strikingly low; (2) with the exception of asbestos cases, punitive damages were almost never given in products liability cases; (3) the relative amounts of punitive awards did not increase over the last decade; and (4) there is no evidence that juries award punitive damages capriciously and for minor forms of misconduct. These

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1 This Should Be the Year for Product Liability Reform, LANCaster New Era (Pa.), Feb. 19, 2001, at A6; Dan Morgan & Kathleen Day, Early Wins Embolden Lobbyists for Business, Wash. Post, Mar. 11, 2001, at A10; Bipin Avashiva, Another Take on Medical Malpractice Reform, CHARLeSTon Gazette (W.V.), Mar. 17, 2001, at 5A.
findings challenge the rhetoric that accompanies much of the debate concerning the need for tort reform

I. Justifying Reforms

Both the title and substance of this year’s Journal on Legislation symposium reflect the fact that the attention of Congress and many states is once again focused on tort reform. Punitive damages play a central role in the debate. The reasons for attention to tort reform generally, and punitive damages in particular, are complex, but typically they are associated with concerted lobbying efforts by interested parties or with media attention to particular cases, such as the now notorious McDonald’s coffee burn case and the $5 billion award against Exxon following the Exxon Valdez oil spill in Alaska. Advocates of reform call for drastic changes in the current tort system, including statutory caps on the amounts that can be awarded or removal of punitive award decisions from juries.

The need for reform is typically premised upon claims about the widespread nature of the “problem” and its prevalence in the legislature’s jurisdiction. For example, the legislative history of House Bill 775, a tort reform bill passed by the Florida Legislature in 1999, includes testimony and position papers that made the following claims about punitive damages in Florida:

- Punitive damages were being awarded frequently, particularly in products liability cases;
- Punitive damages in the latter part of the 1990s were awarded with greater frequency and in proportionately greater amounts than at the beginning of the 1990s;

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7 H.B. 775, 1999 Leg. (Fla. 1999).
8 February 3, 1999 Hearing Before Florida Senate Judiciary Committee, 1999 Leg. (Fla. 1999); February 2, 1999 Hearing Before Florida House Judiciary Committee, 1999 Leg. (Fla. 1999); Floor Debate on Conference Report on H.B. 775, Apr. 30, 1999 (transcript on file with authors); Senate Floor Debate on Conference Report on H.B. 775, Mar. 9, 1999 (transcript on file with authors).
• Punitive damages were awarded in amounts that are both large at an absolute level and "disproportionate" when compared to compensatory awards, especially in products liability cases;

• Punitive damages repeatedly were being awarded against defendants for the same isolated and atypical course of conduct;

• Florida employers frequently were held vicariously liable for punitive damages for egregious acts of their employees or for criminal acts by third parties that occurred on business premises, even if the business owners had taken reasonable precautions;

• Florida juries were biased against "deep pocket" corporate defendants; and

• The "punitive damages crisis" put Florida businesses at a comparative disadvantage to their competitors in other states and stifled "innovation and economic development."

This last assertion involves an in terrorem claim; it is a claim that the very threat of punitive damages has led to negative economic consequences.\(^9\)

The 1999 Florida tort reform legislation was declared unconstitutional on the grounds that the state constitution bans laws that embrace more than one subject, but efforts to save the reform continue.\(^10\) In the meantime, tort reform has arisen anew with Florida nursing home interests asserting the need for reform. The claims in this latest debate again involve punitive as well as compensatory damages and in terrorem

\(^9\) See February 3, 1999 Hearing Before Florida Senate Judiciary Committee, 1999 Leg. (Fla. 1999).

The fact that juries award punitive damages relatively infrequently is of no consequence. The mere threat of punitive damages inflates the cost of settlement and undermines notions of fairness and judicial efficiency. Even worse, the imposition of excessive [punitive damages] awards threatens to remove safe products from the market and to deter innovation in the market place.


claims.\textsuperscript{11} Although our research is centered on Florida, we note that similar claims about the terror punitive damages allegedly create in businesses have been made elsewhere.\textsuperscript{12}

The central question is whether these claims have an empirical foundation. If the claims are valid in whole, or even in part, there is serious cause for concern and remedial measures would seem to be in order. However, if the claims are without foundation, there would seem to be no rational basis for change. Even the alleged threat of punitive damages perceived by businesses must be reevaluated if data do not support these fears because the proper remedy would be education of businesses about the actual risks.

We now turn directly to the task of providing data from Florida that reflect on the claims made regarding punitive damages. Later, we will place our findings in the context of other empirical studies of punitive damages and discuss the broader implications of our findings.

II. The Data

Our data set was obtained from the Florida Jury Verdict Reporter archived on Westlaw. For each case there is a basic summary of the claims involved at trial. In all but a few instances, the reports provide a breakdown of the award into its compensatory and punitive components, and, if there was more than one defendant, the amounts assessed against each defendant. Verdict reporters may exclude some cases. Research on other jury verdict reporters, however, indicates that to the extent that cases are omitted by reporter compilers, the missing cases tend to be those in which the defendant prevails or in which the plaintiff's award is small.\textsuperscript{13} Thus, if there is a bias in the data, it is not likely to be one of omission of large punitive awards.

To draw our sample we searched the data base using the search cues "punitive" and "verdict" for the years 1988 through June 2000. The case summaries in the 1988 reports were more truncated than in subsequent

\begin{footnotesize}
\begin{itemize}
\end{footnotesize}
years, suggesting that the reporting system was in the process of development and raised concerns that the compilation of cases may not have been as comprehensive as later years. Additionally, there were fewer cases for 1999 and 2000, which may indicate incomplete data for those years at the time of our search. Below, we report verdicts for all years (1988 through 2000) when the data are aggregated across years; however, any longitudinal analyses—i.e., examinations of change over time—are restricted only to years 1989 through 1998. In this way, we do not inadvertently report fewer punitive awards per year than actually may have occurred.

The search produced a substantial number of cases that we eliminated from the analysis after a careful reading of the summaries. Some cases were removed because they were decided in federal courts, and the present study focuses on cases adjudicated in state courts. In some instances, the plaintiff asked for punitive damages in the pleadings, but the verdict on liability was for the defendant. In other instances, the plaintiff asked for punitive damages, but the judge concluded that punitive damages were inappropriate at the beginning of trial or at the conclusion of the evidence. Our data set includes only those cases in which the issue of punitive damages was put to the jury—that is, cases in which the jury either awarded or denied punitive damages.

Both authors read each case summary and independently developed classification systems for the cases, examining the main basis on which punitive damages were awarded. There was substantial agreement as to which categories were reflected in the cases; classification disagreements were resolved through discussion.\footnote{In the total data set there were twenty-two cases in Florida’s federal courts. Fourteen of these cases involved civil rights claims related to employment; three involved suits against law enforcement for violations of civil rights; two concerned charges of slander or defamation that involved federal laws; one was a premises liability case at an amusement park; one was a legal malpractice claim involving diversity jurisdiction; and one consisted of a suit against the Cuban government. The median total award for federal cases was $913,078; the median punitive award was $346,806. The median ratio of punitive to compensatory award (discussed below for the state data) was 0.82:1.}

\footnote{Each author initially developed his or her own classification scheme and coded the cases into categories. The separate coding schemes were, in fact, remarkably similar. For example, the first author had only two major categories that the second author had not considered; likewise the second author had only one category not considered by the other. In addition, we developed slightly different sub-categories (e.g., one had a separate sub-category for sexual harassment under employment, whereas the other coded these cases into a general discrimination sub-category). As there are often multiple causes of action and multiple defendants, categorization was focused upon the basis for which the jury awarded, or was to consider awarding, punitive damages. Thus, a case might involve an assault, as well as a premises liability claim; however, if punitive damages were not assessed against the owner of the premises, the case was categorized as an assault case. The final classification system was developed through discussion of the two systems, considering cases in the light of: (1) the injury involved in the case (e.g., financial damage, violations of privacy); (2) a unique setting or legal issue shared by the cases (e.g., employment-related disputes); and (3) the claims made in the legislative history of House Bill 775 (e.g.,
III. RESULTS: A PROFILE OF PUNITIVE DAMAGES IN FLORIDA

The Florida data set does not provide support for the claims made by tort reformers. In fact, the data indicate that punitive damages were rarely awarded, punitive damages were almost never given in product liability cases, punitive awards are not on the rise, and cases involving punitive awards report instances of serious misconduct.

**Table 1. Number of Punitive Damage Cases Involving Juries, by Year (1989–1998)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
<th>Number with Non-Zero Awards</th>
<th>Median Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>32</td>
<td>27 (84%)</td>
<td>0.46:1</td>
</tr>
<tr>
<td>1990</td>
<td>27</td>
<td>26 (96%)</td>
<td>0.17:1</td>
</tr>
<tr>
<td>1991</td>
<td>28</td>
<td>25 (89%)</td>
<td>0.83:1</td>
</tr>
<tr>
<td>1992</td>
<td>22</td>
<td>19 (86%)</td>
<td>0.52:1</td>
</tr>
<tr>
<td>1993</td>
<td>21</td>
<td>19 (90%)</td>
<td>0.55:1</td>
</tr>
<tr>
<td>1994</td>
<td>27</td>
<td>26 (96%)</td>
<td>0.93:1</td>
</tr>
<tr>
<td>1995</td>
<td>15</td>
<td>13 (87%)</td>
<td>0.92:1</td>
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<tr>
<td>1996</td>
<td>17</td>
<td>17 (100%)</td>
<td>1.13:1</td>
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<tr>
<td>1997</td>
<td>21</td>
<td>17 (81%)</td>
<td>0.40:1</td>
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<tr>
<td>1998</td>
<td>22</td>
<td>19 (86%)</td>
<td>0.90:1</td>
</tr>
<tr>
<td>As of 1998</td>
<td>23.2/year</td>
<td>20.8/year</td>
<td>0.67:1</td>
</tr>
</tbody>
</table>

**A. Per Annum Overview**

Table 1 reports by year the total number of punitive damage claims between 1989 and 1998 that were put to a jury (Column 1), the number

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we ensured that there was a distinct category for products and premises liability), see supra note 8. A third person, a lawyer, also examined a sample of the cases and arrived at classifications that were highly similar to those of the authors. Because we developed categories while simultaneously coding cases into these categories, traditional estimates of coding reliability (e.g., kappa) are not applicable. However, in all only about 20% of the cases were shifted around following our resolution of the two coding systems, a remarkably low number given our independent approach to the cases. We retain a list of the cases in the data set on file so that our classifications can be checked by other interested parties.

* As is discussed below, the only cases involving a non-zero punitive award involved asbestos or tobacco.
and percentage of times that the jury returned a punitive award (Column 2), and the median ratio of punitive to compensatory damages (Column 3).\(^7\)

Given the rhetoric contained in the legislative history of Florida House Bill 775, Table 1 shows a number of surprising things. First, whether we consider the total number of cases allowing punitive damages or just the number in which the jury actually awarded damages, the average (or mean) number of punitive awards annually was very low: on average there were 23.2 cases per year in which punitive damage claims were put to the jury and 20.8 cases per year in which the jury rendered a punitive award. Between 1989 and 1998, there was a significant downward trend in the number of punitive damage cases per year that were put to juries.\(^8\) Considering the data another way, there were fewer punitive awards during the three years from 1996 through 1998 (an average of twenty cases per year) than for the three years from 1989 through 1991 (an average of twenty-nine cases per year). These figures are striking when we consider that the Florida Legislature’s Office of Economic and Demographic Research reports that Florida’s population rose 13.7\% between the years 1989 to 1991 and the years 1996 to 1998.\(^9\) Thus, the number of punitive awards per capita in the 1989 to 1991 period was 2.0 per 100,000 persons, whereas the per capita number of punitive awards in the 1996 to 1998 period was only 1.1 per 100,000 persons.

Column 3 shows the median ratio of punitive to compensatory damages. Over the period from 1989 through 1998, the median for this ratio was 0.67:1, meaning that the punitive damage component was two thirds of the compensatory award. Because it is the median value, half the awards in the data set had smaller ratios—i.e., the punitive portion was a smaller percentage of the compensatory portion. The table indicates that this median ratio varied substantially from year to year, with no clear pattern of increase. A closer examination of the cases suggests that this variability in the median across years is best explained by the fact that the small numbers of punitive damage cases per year differ markedly in their distributions of case-type. As we discuss in the next section, the

\(^7\) It bears repeating that Table 1 represents only cases with verdicts for the plaintiff. For instance, in 1989 juries returned with a non-zero punitive award in 84\% of cases in which the defendant was liable for damages, not in 84\% of all punitive damage cases, which would include verdicts for the defense.

\(^8\) A regression model examined whether the year of the case predicted the count of cases per year. The parameter reflecting a decline in the frequency of cases across years was statistically significant, \(b = -1.22, t = -2.82, p < .05\). This result should be treated with caution however, because it is sensitive to the exclusion of the year 1988. If the years 1988 through 1998 are considered, the downward trend does not achieve conventional levels of statistical significance, \(p < .07\).

\(^9\) In the 1989 to 1991 period the average population was estimated at 12,893,333 and in the 1996 to 1998 period it was estimated to be 14,708,300. See Fl. Legislature Office of Econ. & Demographic Research, State Population By Age, Race, Sex (on file with authors).
ratio of punitive to compensatory awards differs across our categorization of cases; for example, it is very low for motor vehicle accidents and comparatively high for cases involving financial fraud or employment discrimination. To the extent that many of the cases in a given year involve motor vehicle accidents, the median ratio will likewise be low. For example, in 1990 44% of cases were motor vehicle accidents and the median ratio was 0.17:1. The reverse is true of a year such as 1996, in which 47% of the cases concerned discrimination claims and the median ratio was at its highest, 1.13:1. Thus, a perceived change in the ratio of punitive damages to compensatory damages most likely does not reflect a change in jury behavior but rather a change in the types of cases juries hear.20

In short, the data in Table 1 lend no support to the claim that the frequency of punitive damages by juries was high at an absolute level or that juries became more likely to award punitive damages. To the contrary, the data indicate that levels were low—indeed, strikingly so when we make a per capita comparison—and the trend was in the opposite direction. Additionally the data on median punitive award ratios lend no support to the claim of an increase in the ratios of punitive to compensatory damages over the years. Indeed, the median punitive damage award was a modest two-thirds of the median compensatory damage award.

B. Case Types by Causes of Action

Table 2 analyzes the total set of data (1988 through June 2000), considering our categories for the main causes of action in which punitive damages were awarded.21 We developed eleven different types of case categories, and Table 2 orders them in terms of their frequency. The most frequent case type is motor vehicle accidents caused by impaired or reckless drivers and accounts for 23.3% of all punitive damage award cases. The second most frequent type involves fraud or financial loss (17.4%), which is a broad category involving breach of contract cases (e.g., with respect to business transactions or insurance coverage), fraud and deceptive trade practices, tortious interference, trademark infringement, and property damage. Third is a category involving sexual and physical assaults, including civil suits related to homicides (15.9%). Almost 57% of punitive damage awards result from these three case types, with the remaining awards distributed over the other eight categories.

20 Vidmar, supra note 13, at 1213–16.
21 See supra note 15.
Although product liability and premises liability cases were the subject of much discussion in the legislative history of House Bill 775, there were just twenty products liability cases and seventeen premises liability cases between 1988 and 2000. Taken together these cases account for less than 14% of the total (7.4% + 6.3% = 13.7%). We discuss these two categories in more detail in the next section. Two other categories, information violations and false arrest/imprisonment, each had twenty cases. The information violations category reflects both harms to privacy through improper releases of confidential information, as well as slander, defamation, or libel. The false imprisonment/false arrest category covers, for example, cases in which a person was wrongfully detained on suspicion of shoplifting or other thefts; accusations that someone maliciously pursued wrongful criminal charges against the plaintiff; police misconduct; and in one instance, a case in which a South American airline responded to disgruntled passengers by removing them from the plane during a stop-over, detaining and strip-searching them, and leaving them stranded in a foreign country.

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Herrera v. Zuliana de Aviacion, No. 94-15999-CA-01, 1998 WL 1059885 (Fla. Cir. Cir.
The remaining categories described in Table 2 each represent less than five percent of the cases in the data set. The discrimination/harassment category involves thirteen cases of employment discrimination or harassment (4.8%). The professional negligence category includes three cases concerning professional negligence in the provision of medical care, which encompasses a small number of medical malpractice claims, one case of negligent and abusive care at a drug treatment facility, and eight nursing home negligence cases (two of which resulted in no punitive damage award). There were eleven cases of workplace injuries or failure to pay benefits following work-related accidents.

Finally, a small number of cases necessitated the creation of the "improper treatment of dead persons" category. All of these cases involved emotional distress claims brought by families of people whose bodies were mishandled after death. In two instances, a crematorium was found to have mixed together the ashes of several people, along with dirt from the ground, and then to have represented the motley concoction as a single deceased person's ashes. In another case, a husband discovered that a funeral home misplaced his wife's amputated legs which were to be kept in cold storage until she died so that her entire body could be buried in accordance with Orthodox Jewish tradition. Lastly, the parents of a deceased Haitian boy claimed that a hospital harvested his organs without their consent.

C. Products and Premises Liability Cases

As the above review makes clear, punitive damage cases before juries in Florida involved a wide variety of misconduct allegations, most often concerning drunk driving, financial improprieties, or assaults. However, the Florida legislature focused much of its justification for punitive damage reforms on harms to businesses, especially burdens associated with products or premises liability. Because of this focus, these cases deserve further examination and elaboration.

Punitive damages were awarded in only sixteen of the twenty products liability cases in which the jury was allowed to consider punitive damages. More interestingly, however, is the paucity of cases that do not involve asbestos. All but one of the product liability cases with a punitive

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24 There were six sexual harassment cases in state courts. All but one were against a single doctor accused of mistreating several employees over many years.
award involved asbestos injury claims, with the remaining case involving manufacturers' liability for cigarettes. The jury granted no punitive award in three asbestos cases; the remaining case involving no punitive award was a suit against General Motors after a child died from the explosion of a car in an accident. Given all of the claims concerning the role of punitive damages in product liability cases in Florida and elsewhere, these low frequencies are surprising yet apparently correct.

Next, consider premises liability, a category that includes instances of employers being held accountable for the acts of their employees. Our categorization scheme resulted in seventeen premises liability cases, fourteen of which resulted in a punitive award. The details of plaintiffs' allegations provided in the case summaries from the Florida Jury Verdict Reporter provide some context for the awards.

In one case, the plaintiffs alleged that a manufacturing plant had been illegally dumping toxic chemicals into the trash dumpster on their property, which was located near a residential neighborhood. The company had been cited previously for this behavior and claimed to have ceased such activities. When a nine-year-old boy and his friend entered the property and climbed in the dumpster to play, he and the friend were overcome by toxic fumes and died. In another case involving exposure to toxins, the captain of a cargo ship created a dangerous situation by ignoring warnings about using a pump in an unventilated area. When his own crewmen were overcome by carbon monoxide, the captain called the Coast Guard for help but did not inform them that highly toxic materials were involved. The fumes killed one of the rescuers as he tried to help the injured crewmen.

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28 Even this latter case was not a straightforward victory. In *Maddox v. Brown & Williamson Tobacco Corp.*, No. 97-03522-CA, 1998 WL 933419 (Fla. Cir. Ct. June 10, 1998), an appellate court ruled that the trial court abused its discretion by failing to change venue.

29 We returned to Westlaw and searched the Florida Jury Verdict Reporter for all jury verdicts involving products liability for the years 1989 through 1998. On average Florida had thirty-nine cases per year that reached the level of litigation necessary to be included in the verdict reporter. This figure may underestimate the actual number of filed cases since some may disappear through settlement or dismissal early in the litigation process. There was an average of thirty-four cases per year that went to trial during the period we investigated. There was a trend toward fewer cases near the end of the decade as compared to the beginning. As with rates of punitive damages, these figures should be considered in light of the fact that Florida's population increased substantially over this period, leading to the conclusion that on a per capita basis product liability lawsuits actually declined. Our search for products cases produced no other awards for punitive damages, apart from the asbestos and cigarette cases reported above.


31 *Id.*

32 *Id.*


34 *Id.*

35 *Id.*
In *Montalvo v. Rancho El Nuevo Mundo, Inc.*, defendants allowed a group of minors to throw a "rage party" on their horse ranch. Alcohol was served during the event, and one attendee was attacked and killed during the party by another group of youths. The jury in *Palank v. CSX Transportation, Inc.* found the CSX railway system liable for a fatal train derailment and assessed punitive damages for failing to maintain the railroad tracks. Although the company claimed in written reports to have inspected the tracks twice a week, physical evidence suggested they had not been examined in as long as a year. A furniture company faced punitive damages in *Harrison v. Tallahassee Furniture Co., Inc.* when one of its deliverymen stabbed a female customer multiple times. The delivery man had a long criminal record as well as a history of drug abuse and hospitalizations for paranoid schizophrenia. In *Kinder v. International Union of Operating Engineers, Local 765*, a union local was held responsible for an attack on a man who refused to organize his non-union company.

A plaintiff was awarded punitive damages against an apartment complex owner in *Clavel v. E.G. Goldsmith*. The plaintiff was raped in her apartment after having made repeated requests that the apartment managers fix broken window locks. In another sexual assault case, a church was assessed punitive damages when its pastor induced a mentally retarded teenage boy to smoke crack with him, then sexually assaulted the teen and worked with a deacon in the church to have the young man publicly recant accusations of the multiple episodes.

Three premises liability cases involved dog bites, one of which was to a babysitter in a private home while the other two involved customers being attacked at a place of business. In *Lycans v. Moore*, the defendant, the business's owner, told the customer that the dog was secure and to ignore the "Bad Dog" sign on the property. The customer was then attacked by a German Shepherd.

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37 Id.
39 Id.
41 Id.
44 Id. The jury awarded punitive damages although it also found the plaintiff 30% responsible for the injury. Id.
49 Id.
Two premises liability cases involved the consumption or presence of alcohol. In *Niesen v. McNally*, a bouncer and other employees allegedly battered and ejected a female patron after she screamed about unwanted sexual advances from another customer; this customer, also ejected, then physically assaulted the woman in the bar’s parking lot. Last, in *Estate of Fields v. Mills*, jurors awarded punitive damages against a company when its employee drank excessively at a business function in the presence of company executives, and where the company paid for and expensed the drinks. That same night, the employee killed someone while driving under the influence of alcohol.

In sum, although punitive damage awards are indeed assessed against businesses, the circumstances typically suggest serious misconduct on the part of defendants or their employees. The Florida legislature was concerned that businesses are held responsible even when they have taken reasonable precautions. Notably, however, cases with non-zero punitive damage awards against businesses all tended to involve allegations of either a knowing and active disregard for the law—e.g., illegal toxic dumping, allowing minors to have alcohol, falsely reporting inspections—or misconduct by people in senior positions—e.g., a ship’s captain, a business owner, corporate executives. In short, these cases rarely involved businesses engaging in commonly accepted practices or those having taken normal precautions for safety.

Additionally, it bears mentioning that businesses are not the most frequent targets of punitive damage awards. Juries awarded punitive damages against businesses in 129 cases, which is 48% of all cases. This is likely due to the fact that for two of the three most frequent punitive damage categories in our classification—impaired/reckless driving and assaults—individual offenders predominate. Further, when a business and an individual are jointly named in a lawsuit, it does not follow that the business will necessarily be liable for the punitive portion of the award. Of the 78 cases in which both an individual and a business were named as being responsible for an injury, 28 cases (36%) resulted in individuals being solely responsible for the punitive portion of the award. There are several reasons why a business may not be exposed to punitive damages in such cases: as a matter of law the business’s conduct may not rise to a level warranting punitive damages; the jury may find no liabili-

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51 Id.
53 Id.
54 See supra notes 10–11 and accompanying text.
55 It is, however, 74% of those in which businesses were named
56 Mercury Motors Express, Inc v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that while "an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment even if the employer is without fault," vicarious liability for punitive damages requires "some fault")
ity on the part of the business; or the jury may find the business liable for compensatory damages but decide not to hold them responsible for punitive damages. In short, a claim against a business for punitive damages does not automatically mean the business will be liable for punitive damages.

D. Variability of Awards by Causes of Action

Table 3 presents information, disaggregated by type of case, on the median total award, the median punitive awards, and the median ratio of punitive to compensatory damages. All these measures differed markedly across categories. The lowest median punitive award, along with the lowest ratio of punitive to compensatory damages, appeared in the motor vehicles category, suggesting that punitive damages function as a sort of civil fine levied by the jury as a punishment, but not an unduly harsh one. In contrast, both in absolute terms and relative to compensatory awards, punitive damages were highest in the four cases involving improper treatment of dead persons (6.3:1). This result should not be surprising given that American law has long recognized that important cultural and religious values are associated with mistreatment of the dead.

For the majority of categories, the median ratio of punitive damages to compensatory awards was at or below 1:1, indicating that punitive damages did not exceed compensatory damages. This majority includes both product and premises liability—two areas often invoked as proof of the need for reform. In four of the categories, compensatory damages were approximately twice the punitive damages.

Discrimination/harassment and professional negligence cases yielded median ratios of 2.3:1 and 2.5:1, respectively, which means that punitive damages were, on average, slightly more than twice compensatory damages. In addition, these categories, both of which represent violations of professional norms, had total awards in excess of $1 million, which was well above the overall median of $612,028.

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57 With few exceptions, median and mean ratios across categories did not differ substantially.
58 See, e.g., Restatement (Second) of Torts § 868 (1977); Arnold v. Spears, 63 So. 2d 850 (Fla. 1953).
<table>
<thead>
<tr>
<th>Type of case</th>
<th>N cases</th>
<th>Median Total Award</th>
<th>Median Punitive Award</th>
<th>Pun:Comp Ratio (median)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicle accidents</td>
<td>63</td>
<td>284,736</td>
<td>21,579</td>
<td>0.1:1</td>
</tr>
<tr>
<td>Fraud, contract violation, and other financial damage cases</td>
<td>47</td>
<td>392,158</td>
<td>318,055</td>
<td>1.0:1</td>
</tr>
<tr>
<td>Assaults</td>
<td>43</td>
<td>221,461</td>
<td>59,832</td>
<td>0.4:1</td>
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<tr>
<td>Products liability</td>
<td>20</td>
<td>2,245,635</td>
<td>666,936</td>
<td>0.8:1</td>
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<tr>
<td>Information violations (privacy, slander, defamation, libel)</td>
<td>20</td>
<td>191,264</td>
<td>108,530</td>
<td>1.1:1</td>
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<tr>
<td>False imprisonment/ false arrest</td>
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<td>234,752</td>
<td>139,814</td>
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<td>Premises liability</td>
<td>17</td>
<td>933,660</td>
<td>200,081</td>
<td>0.5:1</td>
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<tr>
<td>Discrimination/ harassment</td>
<td>13</td>
<td>1,344,841</td>
<td>1,030,530</td>
<td>2.3:1</td>
</tr>
<tr>
<td>Professional negligence</td>
<td>12</td>
<td>3,078,133</td>
<td>1,006,172</td>
<td>2.5:1</td>
</tr>
<tr>
<td>Workplace injuries/ failure to pay benefits</td>
<td>11</td>
<td>317,260</td>
<td>71,820</td>
<td>0.5:1</td>
</tr>
<tr>
<td>Other: Improper treatment of dead persons</td>
<td>4</td>
<td>3,434,572</td>
<td>3,052,075</td>
<td>6.3:1</td>
</tr>
<tr>
<td>Overall</td>
<td>270</td>
<td>612,028</td>
<td>151,871</td>
<td>0.7:1</td>
</tr>
</tbody>
</table>

Note: Awards adjusted to 1999 dollars.
We looked more closely at the professional negligence category of cases in light of the most recent debate in Florida regarding nursing home business concerns about their liability exposure and about punitive damages. There were only six professional negligence cases in our sample that involved jury awards of punitive damages. In *Estate of Collins v. Beverly Enterprises-Florida, Inc.*, a $10 million punitive damage award was assessed against a nursing home, resulting in a punitive to compensatory ratio of 4.9:1. The patient's family claimed that their mother had been physically assaulted once by a demented patient who was permitted to roam the halls; that she had been sexually assaulted on two separate occasions; that there were other injuries that were consistent with physical assaults; and that her treating physician did not properly treat a massive infection that ultimately led to her death.

There were two 1998 cases. In *Canady v. Manor Healthcare, Inc.*, a case involving a resident who suffered serious infections, punitive damages were assessed in the amount of $567,000. The punitive to compensatory ratio was 2.7:1. In the second case, *Estate of Barnes v. First Healthcare Corp.*, a patient with dementia and a history of wandering away left the facility, fell into a pond and drowned. This resulted in a punitive award of $4,500,000, which represents a 2.4:1 punitive to compensatory ratio.

There were two 1993 cases. In *Estate of Spilman v. Beverly Enterprises-Florida, Inc.*, $2 million in punitive damages were assessed against a nursing home that left the plaintiff, a former resident, unattended and in his own waste for extended periods of time, resulting in bedsores and malnutrition. This award represented a 2.8:1 ratio. In the other case, *Jones ex rel. Clark v. Clearwater Convalescent Center, Inc.* the resident suffered pressure ulcers, a hip fracture, and amputation of a leg below the knee. The punitive award was $300,000, representing a 1:1 punitive to compensatory ratio.

Finally, *Wanderon v. Unicare Healthcare Facilities, Inc.* involved a resident who suffered ulcers, scabies, infections, and fractures which led to amputation of a leg. There were also accusations that leaving the patient to lie in her own waste contributed to her medical problems.

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59 *See supra* note 11.
60 No. 98-433-CA, 2000 WL 1203896 (Fla. Cir. Ct. Mar. 31, 2000). The dollar figures presented for this case and those that follow are in actual dollars.
61 *Id.*
64 *See id.*
66 *See id.*
68 *See id.*
70 *Id.*
punitive award was $1,250,000, representing a punitive to compensatory ratio of 0.9:1.\textsuperscript{71}

These summaries are not a substitute for the evidence heard by the juries, but they present a prima facie case that the awards could have been reasonable. In any event it is worth reiterating that over a period of twelve and a half years there were only six punitive damage awards in medical negligence cases.

E. "Mega" Awards

Although the ratio between the punitive and compensatory awards is probably the best yardstick to gauge the excessiveness of punitive damage awards, or lack thereof, it can obscure some large awards and variability within award categories. Despite the average punitive award being a modest sixty-eight percent of the compensatory award, there are some very large punitive awards in Florida. We identified the twenty largest of these awards (converted to 1999 dollars), and these are reported in Table 4, which provides the case citations, the total award, the punitive award, and a description of the cause of action.

In six of the cases (listed in Table 4 with a superscripted "a"), there is some indication that the defendant was not represented by a lawyer at trial.\textsuperscript{72} In a seventh case the over $300 million award was against a company that had filed for bankruptcy and was facing criminal charges.\textsuperscript{73} Thus, for these seven cases, it would appear that the chances of a plaintiff recovering the punitive award were nil or nearly so.

\textsuperscript{71} See id. Another case related to elder care was coded in the employment category. In \textit{Carr v. Orlando Regional Healthcare System, Inc.}, No. CI 95-142, 1996 WL 901962 (Fla. Cir. Ct. Nov. 13, 1996), an employee was terminated from a home health care business after filing a report of elder abuse. The case resulted in a punitive award of $40,000 to the employee, representing a 0.6:1 punitive to compensatory ratio.

\textsuperscript{72} In four cases, the verdict reporter explicitly stated that the defendant either defaulted or was unrepresented at trial; in two others, the reporter put "n/a" in the space for defense counsel’s name.

### Table 4. Highest 20 Punitive Awards in Florida Sample

<table>
<thead>
<tr>
<th>Plaintiff</th>
<th>Total Award</th>
<th>Punitive Award</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perez⁴⁴</td>
<td>542,650,919</td>
<td>325,590,551</td>
<td>Illegal disposal of toxic chemicals; child died</td>
</tr>
<tr>
<td>Chipps⁵⁵</td>
<td>77,097,948</td>
<td>76,018,150</td>
<td>Insurance coverage breach disabling child</td>
</tr>
<tr>
<td>Palank⁷⁶</td>
<td>57,855,300</td>
<td>51,526,480</td>
<td>Train accident/ tracks not maintained</td>
</tr>
<tr>
<td>Intl. Ship Repair⁷⁷</td>
<td>43,676,246</td>
<td>41,221,184</td>
<td>Insurance coverage breach, floating dry dock sunk</td>
</tr>
<tr>
<td>Ballard⁷⁸</td>
<td>33,847,745</td>
<td>31,946,417</td>
<td>Asbestos</td>
</tr>
<tr>
<td>Read⁷⁹</td>
<td>33,993,252</td>
<td>30,441,718</td>
<td>Crematorium gave back mix of ashes⁸</td>
</tr>
<tr>
<td>Scheller⁸⁰</td>
<td>25,621,292</td>
<td>25,489,506</td>
<td>Interference with a doctor's medical practice</td>
</tr>
<tr>
<td>Van Dyk⁸¹</td>
<td>28,615,917</td>
<td>22,892,734</td>
<td>Escaped convict shot patron in bar (award is against shooter only)⁹</td>
</tr>
<tr>
<td>Rawson Food⁸²</td>
<td>32,996,112</td>
<td>22,370,245</td>
<td>Investment banking negligence</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Montenegro(^{83})</th>
<th>23,073,421</th>
<th>18,215,859</th>
<th>Civil suit following a murder conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dudley(^{84})</td>
<td>21,495,304</td>
<td>16,740,891</td>
<td>Asbestos(^{b})</td>
</tr>
<tr>
<td>Ferguson(^{85})</td>
<td>17,683,535</td>
<td>16,150,962</td>
<td>Tortious interference in a van line business(^{e})</td>
</tr>
<tr>
<td>Goldberg(^{86})</td>
<td>12,509,680</td>
<td>12,123,008</td>
<td>A doctor sexually harassed an employee(^{a})</td>
</tr>
<tr>
<td>Caron(^{87})</td>
<td>13,596,320</td>
<td>11,789,024</td>
<td>Employee fell to his death during roof installation</td>
</tr>
<tr>
<td>Wheeland(^{88})</td>
<td>20,603,460</td>
<td>11,446,367</td>
<td>A woman infected her husband with HIV(^{a})</td>
</tr>
<tr>
<td>Lowell(^{89})</td>
<td>13,129,242</td>
<td>10,123,948</td>
<td>Asbestos</td>
</tr>
<tr>
<td>Collins(^{90})</td>
<td>11,641,556</td>
<td>9,683,841</td>
<td>Patient-on-patient assault/sexual abuse in a nursing home(^{e})</td>
</tr>
<tr>
<td>Anderson(^{91})</td>
<td>7,719,510</td>
<td>7,592,961</td>
<td>Maritime accident/exposure to toxic gas.</td>
</tr>
<tr>
<td>Montalvo(^{92})</td>
<td>13,244,682</td>
<td>6,595,706</td>
<td>Horse ranch agreed to party in which minors were served alcohol; plaintiff beaten/died(^{a})</td>
</tr>
<tr>
<td>Cruz(^{93})</td>
<td>12,950,431</td>
<td>6,475,216</td>
<td>Civil suit following a murder conviction(^{a})</td>
</tr>
</tbody>
</table>

Notes to Table IV: Awards adjusted to 1999 dollars. a Defendant apparently not represented by counsel. b Punitive portion reduced or overturned on appeal. c Case settled for an undisclosed amount.

Another set of cases were subject to post-verdict reviews. On appeal of Ferguson Transportation, Inc., the punitive damage award for tortious breach of contract was denied as a matter of law. 64 In one case the punitive award was reduced on remittitur from $15 million to slightly over $5 million, 65 and in another case the dispute was settled following the verdict. 66 In Scheller 67 the award for tortious interference was upheld on appeal. 68 The Florida Supreme Court denied review of a District Court of Appeals decision upholding the punitive damage award in Palank. 69 Other cases had motions pending following the award or the intermediate appellate court decision.

In summary, the mega awards look quite different when we consider the cases more closely. It seems likely that about half of the twenty awards resulted in either no payment or a reduced payment. In two of the remaining cases, the large punitive awards were upheld by appellate courts, but we have no information as to whether the money was paid or how much was paid. Similarly, in the other cases we have no information about the ultimate outcome. We now consider these mega-awards in the light of other findings.

In recent research we have examined post-trial adjustments of awards in samples of medical malpractice cases. 70 The data set included samples of Florida cases as well as samples from New York and California. One of our central conclusions was that a substantial number of high-end, or outlier, awards—even when they exclusively involve only compensatory damages—are reduced downwards because of apportionment of comparative negligence to the plaintiff, remittitur by the judge, or post-verdict negotiations by the parties.

Viscusiti reached a similar conclusion in his book on products liability reform. 71 He concluded that in products liability cases involving punitive damages "plaintiffs received only 29% of the original punitive award. Courts often reduce punitive damages on appeal, and defendants may

64 639 So. 2d 32 (Fla. Dist. Ct. App. 1994), aff'd 687 So. 2d. 821 (Fla. 1997).
negotiate a reduction in this amount in return for prompt payment of the damages amount. 102

The RAND Corporation’s Institute for Civil Justice also studied punitive damage awards in Cook County (Chicago, Illinois) and San Francisco that were awarded between 1979 and 1983. 103 The author of the RAND report concluded: “Jury verdicts are not the last word in cases involving punitive damages. Remittitur, post trial motions, appeals and even settlements may reduce the award amount.” 104 Roughly one out of two punitive awards were reversed or reduced in the post-verdict period, with the largest awards having the highest rates of downward adjustment. 105

Rustad and Koenig also conducted research on the aftermath of punitive damage awards. 106 In a nationwide sample of punitive damages awarded in non-asbestos products liability cases, 25% of the time the award was upheld and 23% of the time the award was reversed or reduced by an appellate court. 107 In a sample of all products liability cases, 36% of the time the case settled after the verdict; in 10% of cases, the award was not collectible; and in 6% of cases, an appeal was still pending. 108 The largest punitive awards were the least likely to survive intact. 109 When awards exceeded $10 million, on average only 11% of the initial punitive damage award was collected. 110

Thus, while jury awards are occasionally high, these outlier awards must be viewed in the context of the other mechanisms that the legal system has developed to control for excesses. These mechanisms are utilized with regularity and play an important role in bringing litigation to an end, preventing a prolonged appeals process.

IV. COMPARISON WITH OTHER STUDIES

A. Infrequency of Punitive Awards

The data from Florida present a very different picture of punitive damages than the claims made by proponents of tort reform in Florida.

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102 Id. at 94.
104 Id. at 26.
105 Id. at 27–28.
106 Id. at 27–28.
107 Id. at 77, tbl.14.
108 Id. at 39–60.
109 Id.
They are, however, quite consistent with the findings of other empirical studies.

Two studies of civil trials were conducted during the 1990s by the Bureau of Justice Statistics ("BJS") of the United States Department of Justice in conjunction with the National Center for State Courts.111 In 1992 and again in 1996, the BJS studied the seventy-five largest state court jurisdictions in the United States.112 The data included the Florida counties of Dade, Orange, and Palm Beach. In 1992 there were 367 cases in which plaintiffs prevailed in these three counties.113 Punitive damages were awarded in just seven of the 367 cases.114 In 1996 the BJS researchers found 420 cases in which plaintiffs prevailed in Dade, Orange, and Palm Beach counties.115 Once again, however, punitive damages were awarded in just a small fraction of these cases, that is, in just fifteen of the 420 successful lawsuits.116

The first BJS Study found that, nationwide, in 1992 successful plaintiffs in tort cases were awarded punitive damages 4% of the time.117 By contrast, in contract cases prevailing plaintiffs received punitive awards 12.2% of the time.118 The figures for 1996 were comparable with punitive damages awarded in 4% of successful tort cases and 12.7% of successful contract cases.119 The BJS studies did not distinguish between tort and contract cases when they reported punitive damages by county. However, the combined percentages of punitive awards to plaintiffs who won their jury trials in the three Florida counties in 1992 and 1996, as described above, were 2% and 3.6% respectively.120 In short, in both 1992 and 1996 Florida fell below the national average in percentages of cases in which punitive damages were awarded to plaintiff winners.

The second BJS Study indicated that in 1996 the median punitive damage award for all jury trial cases nationwide was $50,000.121 The comparison figure for Dade County, which had thirteen of the fifteen pu-

113 1995 BJS Study, supra note 111, at 713 app. tbl.2.
114 Id.
115 1999 BJS Study, supra note 111, at 21 app. C.
116 Id. at 22 app. D. In 1996 there were a total of 649 civil jury trials of all types in the three counties (including cases in which civil plaintiffs lost). Thus, using the total of all cases tried to juries in 1996 as the denominator and the 15 punitive awards as the numerator, we may conclude that punitive damages were awarded in 2.3% of all civil lawsuits tried by juries.
118 Id.
120 See supra notes 113–116 and accompanying text.
121 1999 BJS Study, supra note 111, at 10.
nitive damage award cases in 1996, was $57,000.122 Dade County appears to have been within close range of the national median. Palm Beach, however, had a much higher median award—$225,000123—but this is based on only two cases.

Eisenberg and his colleagues analyzed the data from the 1992 BJS Study as well as twenty-five years of awards from Cook County, Illinois and California.124 They applied sophisticated statistical analyses to these data sets and arrived at several conclusions. There was no evidence that punitive damage awards were more likely when individuals sued businesses than when individuals sued individuals.125 Juries rarely awarded punitive damages and appeared to be “especially reluctant” to do so in medical malpractice and products liability cases.126 Punitive damages were most likely to result in business/contract cases and intentional tort cases.127 The authors went so far as to state: “Unless the case involves an intentional tort or a business related tort (such as employment claims) punitive damages will almost never be awarded.”128

The most recent report from the RAND Institute for Civil Justice examines fifteen state courts of general jurisdiction in a period from 1985 to 1994, fourteen of which allow for punitive damages under state law.129 Researchers in that organization observed: “Perhaps the most striking finding that emerges from the jury verdict data in this study is that punitive damages are awarded very rarely.”130 The report also concluded: “The discussion about punitive damages focuses primarily on products liability, but in jurisdictions we examined, most punitive damages were awarded in intentional tort and business cases . . . . In contrast, products liability was the underlying cause of action in only 4.4 percent of the punitive damage awards made.”131

A recent article arising out of RAND data by Moller identified and examined a large sample of cases involving what were identified as financial injury cases involving punitive damages.132 He concluded that fifty percent of all punitive damage awards are made in cases in which

122 Id. at 22.
123 Id.
124 See Theodore Eisenberg et al., The Predictability of Punitive Damages, 26 J. LEGAL STUD. 623 (1997).
125 Id.
126 Id. at 623, 634–37.
127 Id. at 634–37.
128 Id. at 659. Daniels and Martin also analyzed punitive damages from a large sample of cases from jurisdictions around the nation for the years 1988 through 1990 and reached a similar conclusion. Daniels & Martin, supra note 2, at 217.
130 Id. at 33.
131 Id. at 34.
the plaintiff alleges a financial injury. 133 Moller specifically examined a set of data from Alabama because of the widespread belief that Alabama juries are excessively generous in awarding damages. 134 Contrary to this belief, however, the data indicated that Alabama juries generally award smaller punitive damage awards than other jurisdictions. 135 Alabama juries, however, did render punitive awards that were larger relative to the compensatory awards than other jurisdictions. 136 There is no clear explanation for this difference, which could be due to peculiarities of Alabama law on punitive damages or the tendencies of Alabama jurors or some other reason. 137

Finally, Eisenberg and his colleagues compared judge versus jury trial outcomes in 1996 in forty-five of the nation’s largest counties. 138 After controlling for differences in the types of cases heard by each set of decision-makers, the authors concluded that there was no substantial evidence that judges and juries differed in the rate at which they awarded punitive damages nor in the basic ratio of punitive to compensatory damages. Jury trials did have a greater range of punitive damages for a given level of compensatory damages but in the end, the authors concluded, there were only a “trivially” few cases in which the jury award would have exceeded what a judge might have awarded.

B. Pretrial Effects of Punitive Damages on Settlements

Despite the fact that our data and that reviewed from other studies strongly contradict the claim that there is a tort crisis in Florida with regard to products liability cases, or a crisis regarding awards of punitive damages in any other type of tort claim, proponents of tort reform argue that claims for punitive damages are as bad as actual awards of punitive damages. 139 Such claims can be summarized as follows: because insurance is not available for punitive awards, fears of irrational jury awards drive corporate defendants to settle claims instead of going to trial and to settle for amounts larger than they would otherwise offer. While our data from the Florida verdict reporter do not allow us to assess this issue directly, other researchers have addressed it. Koenig conducted an extensive review of pre-verdict settlements and found no evidence of the alleged phenomenon. 140

133 Id. at 332.
134 Id. at 327.
135 Id. at 330.
136 Id. at 331.
137 Id. at 332.
139 See, e.g., Meros & Hundle, supra note 9.
Koenig's review of pre-verdict settlement practices in other jurisdictions yields a similar conclusion. Claims adjusters settle cases around predicted compensatory damages rather than around punitive damages.\textsuperscript{141} This conclusion does not necessarily contradict the notion that claims for punitive damages affect the litigation process in complex ways that are not well understood.\textsuperscript{142} The hypothesis that punitive damage awards (or the prospect of such awards) may have some effect on the settlement process, including an inflationary effect, is not inherently implausible. Nevertheless, the important point is that despite frequent claims by tort reform proponents in Florida, and around the country, that punitive damages claims and punitive damages awards produce an \textit{in terrorem} effect on corporate defendants, there is no systematically documented evidence that this is so. Indeed, there is evidence that such predicted effects are minimal or non-existent. In particular, inasmuch as the Florida jury verdict data yielded almost no products liability cases other than those involving asbestos in which punitive damages were awarded, it seems extremely improbable that punitive damages or the fears of punitive damages would have a significant effect on settlement rates in products liability cases other than possibly asbestos and cigarette cases. If corporate defendants are, as was claimed in the legislative history of Florida House Bill 775, "scared to death" of punitive damages awards because they believe that punitive damages awards are "skyrocketing," "exploding," and otherwise "running wild,"\textsuperscript{143} there is no empirical evidence to support their fear.\textsuperscript{144}

\section*{V. Conclusion}

Our study joins a substantial literature showing that punitive damage awards by juries are infrequent. In addition, the present study goes beyond existing work to provide a highly detailed portrait of the types of cases in which punitive damages are awarded. Both through our account of the categories of cases involving punitive damage awards, as well as the closer inspection of large awards, this study provides a greater context for understanding the circumstances in which juries are asked to consider punitive damage awards.

\textsuperscript{141} Id.
\textsuperscript{142} It is noteworthy, for instance, that studies of claims adjusters, e.g., \textit{id.}, may fail to find attention to punitive damages in settlement decisions because insurance companies are not generally financially responsible for these awards.
\textsuperscript{143} Meros & Hundley, supra note 9, at 477–78.
\textsuperscript{144} Of note, the BJS data do show a slight increase in punitive awards between 1992 and 1996, from 2% to 3.5%, in the three largest Florida counties. See supra note 120. It is possible that an increase in large counties helped to create an impression that punitive damages were on the rise in Florida as a whole; however, our data dispute the notion that this increase was a statewide phenomenon.
This systematic examination of actual jury awards of punitive damages in Florida gives no indication of a crisis regarding punitive damages, either in their frequency or in their amounts as assessed by the ratio of punitive damages to compensatory damages. Drunken or reckless driving cases, assaults, and financial fraud constituted approximately fifty-seven percent of all cases. Individuals, not businesses, were quite often the defendants in these cases.

In particular, there is no support for the claim that punitive damages are frequent in product liability cases. Except for asbestos cases, punitive damages simply were not given in product liability cases. Similarly, punitive damages were rare in premises liability and respondeat superior cases. The factual conditions involved in the few premises liability cases present claims of very serious misconduct, including criminal actions.

There were some mega awards in the data, albeit many fewer than would be expected from the rhetoric involved in the tort reform debate. But closer examination of these cases also revealed that it was highly unlikely that the plaintiff would ever collect any punitive damages; in fact, in some cases even compensatory damages were unlikely to be collected. Additional research uncovered the fact that in two of the mega award cases appellate courts concluded that the amounts awarded by the jury were appropriate under the law. These findings are consistent with our previous research indicating that apparently excessive awards, even though infrequent, need to be viewed in the context of remedial mechanisms and processes of the legal system, such as remittitur, appellate review, and settlement.\(^{145}\)

Finally, we turn to the implication of these data for the claims of \textit{in terrorem} effects of punitive damages. The data indicate that in Florida there is no basis for fears of punitive damages from legitimate business practices. Of course, \textit{in terrorem} effects involve subjective perceptions, and the argument has been made that fear is more important than actual threat. Combined with experimental research that has focused on jury variability in setting punitive awards,\(^ {146}\) the argument is that juries are to be feared and, therefore, reforms are necessary. There are some striking ironies here. First, proponents of tort reform accuse jurors of awarding extreme remedies based on an exaggerated sense of risk and a focus on atypical events.\(^ {147}\) The Florida data suggest that tort reform advocates themselves are engaging in the same type of exaggeration by asking for drastic change without clear evidence of a system-wide problem. Second,

\(^{145}\) Vidmar, Gross & Rose, supra note 100, at 298.


\(^{147}\) See Hastie & Viscusi, supra note 6; Reid Hastie, David Schkade & John Payne, Juror Judgments in Civil Cases: Hindsight Effects on Judgments of Liability for Punitive Damages, 23 LAW & HUM. BEHAV. 597, 612 (1999).
courts have sometimes looked askance at social scientists who argue for changes in the legal system on the basis of results of experimental studies that tend to ignore real-world dynamics and contexts. Here we, both social scientists, suggest that the legal literature should consider the recent spate of experimental studies of punitive damages in light of real-world dynamics and contexts before jumping to policy generalizations.

Being properly cautious, we limit our conclusions to the state of Florida, although, as we have noted, research involving other states seems consistent with the Florida findings. A decade ago, Sanders and Joyce wrote an insightful article about the tort reforms that were enacted in many states in the 1980s following the insurance crisis that caused concern about rates and even the availability of insurance. Those authors observed that in Texas and elsewhere the problems perceived and cited by legislatures, specifically growth in size and uncertainties within the tort law system, were not well understood and that the reforms that were passed did not address the perceived problems. To a very substantial extent, attention to anecdote and unsupported assertions characterized reform legislation passed in Illinois and subsequently overturned by the Illinois Supreme Court. When contrasted with data about actual punitive damage awards, the portion of Florida’s House Bill 775 dealing with punitive damages appears to fall within this same genre of legislative decision-making. We do not take a position on whether tort reform is needed in Florida or elsewhere—there may be problems. However, our research indicates rather convincingly that, in Florida at least, current justifications for reforming punitive damages lack empirical support.

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146 See Hastie & Viscusi, supra note 6; Hastie, Schkade & Payne, supra note 147; Schkade, Sunstein & Kahne, supra note 149.
150 This is a particularly important consideration given that funding for many of these studies comes from parties highly interested in reforms, see Elizabeth Amon, Exxon Bankrolls Critics of Punitive: Then It Cites the Research in Appeal of $5.3 B Valdez Award, Nat’l L.J., May 17, 1999, at A1, and that some of the studies have been heavily criticized as containing major conceptual and methodological flaws, see Neil Vidmar, Juries Don’t Make Legal Decisions! And Other Problems: A Critique of Hastie et al. on Punitive Damages, 23 LAW & HUM. BEHAV. 705 (1999); Richard Lempert, Juries, Hindsight, and Punitive Damage Awards: Failures of a Social Science Case for Change, 48 DePaul L. Rev. 867 (1999); Robert J. MacCoun, Epistemological Dilemmas in the Assessment of Legal Decision Making, 23 LAW & HUM. BEHAV. 723 (1999).