

# JURY AWARDS IN IDAHO

## A SURVEY STUDY OF PUNITIVE AND NON-ECONOMIC DAMAGE AWARDS IN IDAHO COURTS

By John A. Fiedler, M.B.A., M.P.S., Kurt Holzer, J.D., and Bryan C. Storer, D.C.

*Editor's note: Mr. Fiedler is president of Oreon, Inc., an Idaho-based marketing science and consulting firm. He served as Director of Media and Communications Research for the 1984 Reagan-Bush presidential campaign. His M.B.A. degree is from the University of Chicago. Mr. Holzer is a lawyer with the firm of Murphy, Holzer & Vaughan, LLC. Mr. Holzer is a member of the Idaho Trial Lawyers Association. Dr. Storer is a second-year student at the University of Idaho College of Law and native of Idaho Falls. He has been a practicing chiropractic physician since 1986. Although he has never been sued, he regularly pays medical negligence insurance premiums and has seen his premiums increase. In 2002, he served a legal externship in the offices of St. Luke's Regional Medical Center. He has studied tort reform and other litigation issues. He intends to expand this initial summary report into an article to be submitted to the Idaho Law Review.*

In the summer of 2002, several interest groups began discussing whether they should convince legislators to place additional limitations on tort damage awards available in Idaho courts. Idaho had already adopted a sweeping program of tort law changes in 1987. The interest groups reported no data that suggested additional changes were needed or that jurors in Idaho courtrooms were irresponsibly awarding punitive or non-economic damages. During the preparation of this report, a formal proposal regarding tort law modification for Idaho was

submitted to the Idaho Legislature. It was designated House Bill 92.

The authors of this report decided to query Idaho judges to determine if problems with jury awards given in Idaho courtrooms justified the imposition of caps on damage awards. Thus, we constructed a survey designed to obtain objective, quantitative data regarding what actually takes place in Idaho courtrooms.

This paper reports the results of that survey. The data show us that punitive and large non-economic damages awards are very rare in Idaho courtrooms. The data further show that Idaho judges do not perceive any problems with Idaho juries being overly generous to claimants.

### I. Study Background and Survey Methodology

The administrators of the Idaho judicial system do not spend state resources collecting data about the outcome of private cases. Thus, a data collection methodology was required. Four approaches were considered: (1) A county-by-county review of all case files; (2) Interviews with courtroom lawyers across the state; (3) Interviews with judges across the state; (4) An attempt to gather anecdotal summaries from various sources.

District courts are Idaho's courts of general jurisdiction. Magistrate courts handle family law, probate and smaller civil matters. Given that there were more than 6,000 civil cases filed in Idaho district courts in 2001, the first approach was impractical. The number of lawyers in the state likewise made the second approach

impractical. The uncertainty of the quality of anecdotal information made the last option ill-advised.

By process of elimination we concluded that the only practical way to obtain the information was to survey Idaho's sitting district court judges. Thirty-nine district court judges preside over courtrooms in the 44 Idaho counties that are divided into seven judicial districts.

Commencing in December of 2002 and continuing through late January 2003, law student Bryan Storer made personal contact with the chambers of every currently sitting Idaho District Court Judge. The questionnaire used in the survey of the judiciary is included at the end of this article.

Of the 39 judges, 32 responded to the survey, a response rate of 82%. Twenty-six were surveyed by personal interviews. Six completed the questionnaire and submitted their responses by facsimile. The 32 responding judges have a combined total of about 235 years of experience on the District Court bench. They average more than seven years of experience each.

The response rate is substantially higher than the rates encountered in ordinary commercial survey research. We believe that the high level of participation was both a function of the judges' interest in the subject matter and their generalized desire to help law students further their legal education. The non-participating jurists were from various districts with a wide range of experience on the bench. We do not identify any substantial difference between the non-participating and participating jurists.

The length of the personal interviews ranged from 15 to 40 minutes. During the interviews the jurists were told their specific identities and responses would remain confidential but that the data were being collected for publication. The form and order of each question was consistent from interview to interview. Included at the end of this article as Chart 2 is a summary of the responses to the quantitative questions on the questionnaire.

Qualitative commentary beyond the survey questions was allowed and when offered was encouraged; it was not specifically requested. The quotations reported below arose in that context. The commentary was notable in that it was consistent from jurists in all areas of the state and consistent with the quantitative findings of the survey. The judicial commentary reported below was made with the specific understanding that no quotes would be publicly attributed.

## II. The Results of the Judicial Survey Show a Wide Difference Between Reality and Public Perception

The survey results show a remarkable contrast between what actually transpires in Idaho courtrooms and the anecdotal public perceptions of litigation and jury awards. The authors have seen opinion pieces and news reports of a so-called "litigation explosion" fueled by "frivolous lawsuits" resulting in "jackpot justice." This quantitative assessment shows that, in contrast, large awards are rare and the few frivolous cases filed are well handled by the system.

The Idaho Supreme Court does keep data on overall caseloads. Caseload data reported by the Idaho Supreme Court for the years 1991 to 2001 is available upon request from the ITLA office. While the time frames measured in this study do not directly correspond with reported caseload data, it is important to fit

this study's findings into the larger statewide context using the available data.

We believe the data support a number of conclusions pertinent to the current proposed bill and any future similar legislation.

### A. Punitive Damage Awards are Uncommon in Idaho Courtrooms

One of the bill's proposed changes to Idaho's legal system is a cap on punitive damages. Among the items we researched was the frequency of punitive damage awards in Idaho. The data indicate that punitive damage awards in Idaho are very uncommon.

The responses to our survey question indicated in all the cases they have presided over in their 235 years of combined experience there were a total of 20 cases in which punitive damages were awarded. After adjusting for the data missing from the seven judges who did not participate in the survey, the most current data would indicate that over the past two years punitive damages were awarded in less than one case in a thousand. That is less than one-tenth of one percent ( $<0.000993$ ) of the estimated 13,500 civil cases filed in Idaho in 2001-2002. That would mean less than a total of seven such awards a year across the state. When looking at punitive damage awards as a percentage of cases that went to trial, the number would be about 2%

having punitive damage awards of any kind.

Another way to look at the data is that each Idaho judge could expect a case in which punitive damages were awarded about once every six years. Only three multi-million dollar awards were identified in the survey by sitting jurists. (The authors are aware of two other multi-million dollar punitive damage verdicts in the past decade that have been reported, both of which were against insurance companies. See *Walston v. Monumental Life Ins. Co.*, 923 P.2d 456 (1996); *Robinson v. State Farm Mutual Auto Ins. Co.*, 45 P.3d 829 (Idaho 2002).) These were verdicts against the Aryan Nations, against an insurance company for improperly failing to pay the medical bills of an 84-year-old insured, and against the owner of a strip-club who knowingly and intentionally got a customer drunk resulting in the death of an elderly couple.

It is worth noting that not one of these judges has ever seen a case involving medical negligence in which a jury awarded punitive damages. Moreover, current procedural limitations in Idaho require that prior to trial the judge decide whether a jury should even have the opportunity to consider a punitive damages award. The majority of judges who stated that they had allowed a jury to consider whether punitive damages should be

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awarded also stated that, after weighing the facts, juries have usually declined to award them.

When compared with national studies about punitive damages, it appears that Idaho juries are less likely to award punitive damages. For example, an August 2000 study by the Bureau of Justice Statistics of the U.S. Department of Justice reported that of all tort trials in the 75 largest counties in the United States there were awards of punitive damages in 3.3% of those cases. For discussion of the report see *A Study's Verdict: Jury Awards Are Not Out of Control*, Mon., 6 Aug 2001, by William Glaberson.

## B. Large Non-Economic Damages Are Even More Rare In Idaho Than Punitive Damage Awards

Another of the proposed changes to Idaho law is to reduce Idaho's cap on non-economic damages. That cap, set in 1986 at \$400,000, has been subject to annual increases that are based on the increase in the average wage rates in Idaho. Like only six

other states, Idaho's current cap applies to all cases. A number of states have such caps but apply them only to medical malpractice cases.

We studied whether Idaho juries made damage awards of amounts in excess of the cap. We found that the incidence of large non-economic damage awards was even lower than the incidence of punitive damages awards.

The judges reported only three cases in the past two years, and eight during their cumulative time on the bench, as having non-economic damages over the statutory cap. We also explored how many cases in the past two years had non-economic damage awards of over \$250,000. This is because that is the proposed new limit. The judges reported there were a total of eight cases in that category.

This survey reflects 235 years of judging experience. In 2001, Idaho judges averaged 173 new civil cases each a year. At this rate, an Idaho judge can expect a case in which an award of non-economic damages exceeds the current statutory cap once every 19 to 20 years they serve on the bench. It also means that, across the entire state, about five cases a year have non-economic damages that

exceed the proposed \$250,000. Thus, five litigants a year with substantial non-economic losses would see their claims limited by the proposed legislation.

No judge reported that they thought any of the damage awards exceeding the current or proposed cap were inappropriate or inaccurate assessments by the trial juries. We should note that Idaho law does empower the judges to reduce any inappropriate verdict that they might see.

In short, nothing in the frequency data we have uncovered indicates that there is any problem in Idaho courts with non-economic damage awards being randomly, freely or inappropriately granted by Idaho juries.

## C. Medical Negligence Cases are Limited in Number and Have Limited Awards by Juries

Media reports have indicated that medical professionals are one of the driving forces behind the current effort to revise tort liability statutes. It has been reported that one of the prime motivators behind the proposed legislation is an increase in medical negligence insurance premiums in

Idaho. The proposed caps would only impact medical negligence insurance premiums if there were evidence that either non-economic damage awards or punitive damage awards were being inappropriately awarded in such cases. That is, for the proposed "solution" to have any effect, there has to be a causal relationship between damage awards and increasing premiums.

Thus, we questioned judges about what was happening in medical negligence cases. During these jurists' time on the bench, of the 53 medical negligence trials identified in this survey, 14, or 26%, resulted in verdicts for the plaintiffs. This is roughly consistent with the ratio reported by the Bureau of Justice Statistics in its August 2000 report that on a nationwide basis 23.4% of medical negligence trials had plaintiff verdicts.

Moreover, in the past two years, a total of three cases against medical providers in Idaho had non-economic damage awards of over \$500,000.

The Bureau of Justice Statistics report found that nationwide 20.2% of all malpractice cases studied had verdicts in excess of \$1 million. Again, comparing actual results in Idaho courtrooms to this national data indicates that Idaho juries are very controlled in their assessments of damages.

It is also important to highlight that no jurist could remember a single case against a medical provider that resulted in a punitive damages award against the provider.

Hence, the punitive damages cap would have no effect whatsoever on medical negligence insurance premiums because there have been no verdicts in Idaho that could have impacted the physicians' premiums. Likewise, large non-economic damages awards are exceedingly rare. Again, not a single judge reported that they thought any of the damage awards exceeding the current or proposed cap were inappropriate or inaccurate assessments by the trial juries.

#### D. Frivolous Cases Do Not Go to Trial in Idaho

One of the cultural complaints about the civil justice system is the concept of plaintiffs receiving awards from frivolous lawsuits. Thus, we decided to explore whether the judges in Idaho had seen frivolous lawsuits being tried in Idaho courtrooms.

One judge's commentary describes well the reality of this issue: "Scarcely any out of thousands of cases are frivolous." The same judge described how weaker cases are winnowed out of the system: "The jury ashcans them."

Only three judges in the survey group stated they had ever had a frivolous case tried in their courtroom. Each of those judges reported that the jury found for the defendant in every case actually tried.

Twenty-eight of the judges reported that they had seen frivolous cases. The total reported number of

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frivolous cases that they had seen was 44. These were cases the judges themselves had dismissed prior to trial. Thus, with their years of experience and assuming current annual filing rates, the surveyed judges would have seen a total of around 40,000 cases. In contrast to what we believe is the public perception of frivolous case filings, the reported numbers are startlingly low.

### III. The Qualitative Commentary of the Trial Judges Reaffirms the Quantitative Findings: Idaho Juries Are Very Responsible and Do Not Award Undeserved Damages

Many of the jurists interviewed made the effort to discuss the various issues raised by the survey. Although these comments were not for attribution, they reinforce the quantitative findings of the study. These judicial observations strongly refute some public commentary and anecdotal information often seen in media reports. The following are examples of jurist comments gleaned from the interviews.

The judges describe Idaho juries as responsible. In fact some judges believe juries are "stingy."

- Juries in this district tend to be very conservative. Plaintiff attorneys don't make much money taking cases to a jury verdict in this district.
- Juries always recognize weak cases and the verdicts reflect that.
- Idaho juries are stingy—in several years on the bench I have had only two jury awards approaching three times the medical bills; the rest were less.
- Idaho juries are too conservative; the plaintiffs already don't get a fair shake.
- How much the juries award is often the result of where the court is housed, i.e., the Taj Mahal [this was a reference to the newly opened Ada County courthouse] in Boise. Even there they are still too conservative.
- Juries often have an unrealistic value of the dollar—they think ten thousand dollars is a fortune. It isn't.
- PI cases settle most of the time because everyone knows the juries give so little. Juries are more sophisticated in Idaho.

- Juries in Idaho tend to award very little.

Likewise, the judges' comments on punitive damage awards reflect the fact that such awards are rare and only given in appropriate circumstances.

- I have had one jury case with punitive damages awarded in many years—stingy juries.
- Punitive damage awards in Idaho are few and far between, almost non-existent.
- Juries are not eager to award large sums.
- Punitive damages are generally not favored by the law. They are reserved for special facts—shocking cases.
- I have intentionally discouraged punitive damage awards.
- ... usually common sense results and awards—usually predictably low.
- Idaho jury verdicts are unusually small.

Other comments from the judges reflected a viewpoint that the system currently works well.

- I do not believe frivolous lawsuits are a problem in the

judicial system of Idaho. The media have seriously overblown this subject and created a belief in many persons that lawyers and frivolous lawsuits abound.

- "Suing like mad" is not a reality. Frivolous malpractice cases do not go to trial. The cases that go to trial need to go to trial. The rest settle.

- ... some weak cases with predictable results—the jury recognizes them.

- There are no frivolous malpractice cases that go to trial. Huge damages are needed with clear causation.

- Very, very few frivolous cases ... generally disposed of in motion practice.

- I would be hesitant to suggest limits on punitive damage awards because of the especially egregious nature of the cases where they are awarded.

- People who think there are runaway verdicts in Idaho are badly mistaken.

except that there is not a crisis of excessive verdicts in Idaho courts. From the perspective of the jurists, neither punitive nor non-economic damage verdicts are out of control. To the contrary, the general view of the judiciary (well-supported by this survey) is that Idaho juries have a reliable, perceptive ability to identify cases where punitive damages are appropriate.

In addition, Idaho juries are very careful, perhaps overly so, in making large non-economic damage awards. Likewise, although frivolous cases rarely do get filed, the jurists weed out such cases without trial.

### CONCLUSIONS

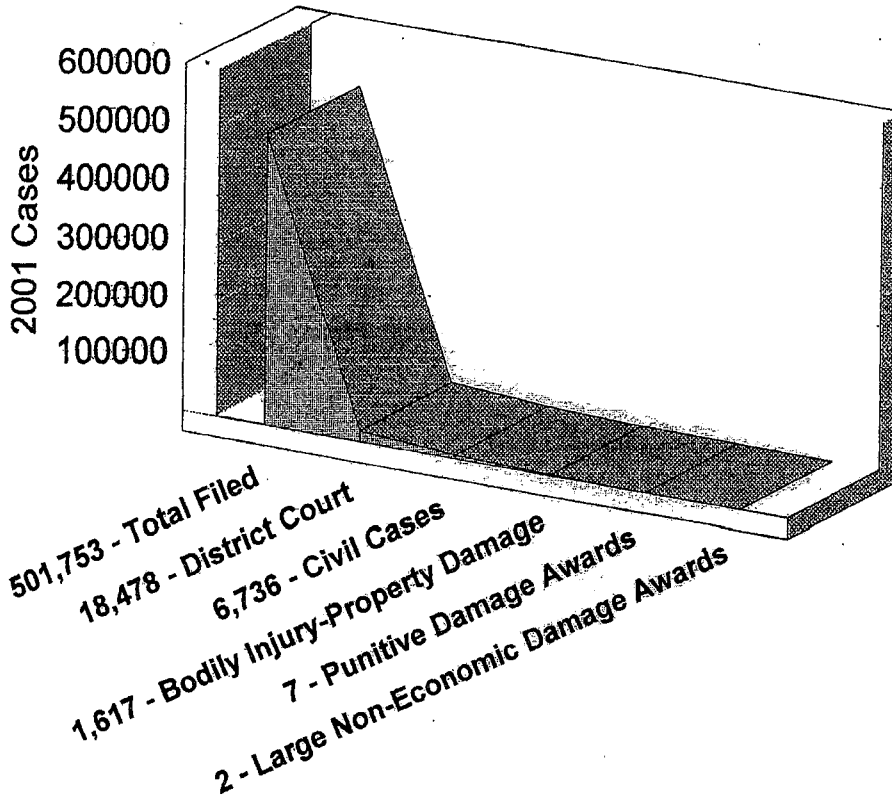
In reviewing these quantitative and qualitative data, it would be very difficult to reach any conclusion

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## Chart 1

Chart one shows our research conclusion that there are two cases annually out of more than 500,000 disputes before Idaho courts in which non-economic damages in excess of the statutory cap are awarded. Likewise, there are only seven cases in the state on an annual basis in which punitive damages are awarded. There are even fewer that the cap on damages would impact.

# Idaho Courts Data



*Jury Awards in Idaho*  
**Questionnaire for Idaho State District Judges**

1. Judge \_\_\_\_\_ On District Court Bench since \_\_\_\_\_
2. How many civil trials to verdict in 2001 – 2002? Bench and jury?
3. How many or what percentage were personal injury cases?
4. How many or what percentage were business disputes?
5. How many or what percentage were other types? What were those other types?
6. How many personal injury cases had awards of non-economic damages over the statutory non-economic damages cap?
7. How many personal injury cases had awards of non-economic damages in excess of \$250,000?
8. How many personal injury cases since you've been on the bench with a jury award of non-economic damages over the cap?
9. How many cases had punitive damages awards in the past two years?
10. Do you remember the lawyers involved—What were their names?
11. How many cases have had punitive damage awards in your time on the bench. Largest/smallest?
12. Have you ever had any personal injury cases that you would call Frivolous lawsuits that have gone to trial? How many? What did the jury do?
13. Do you recall dismissing any cases without trial that you found to be frivolous?-how many? how many were personal injury cases with a lawyer involved for the plaintiff?
14. How many medical malpractice cases to trial in past 2 years?
15. How many medical malpractice cases on your docket today?
16. How many medical malpractice cases with non-economic damage awards of more than \$500,000? Any in that past 2 years?
17. How many medical malpractice cases to trial since you've been on bench? How many did the plaintiff prevail?
18. Have you ever had a medical malpractice case with punitive damages awarded by a jury?

Chart 2

**Partial Data Summary**

Question	Per Judge Range	Comments
Number of civil trials to verdict in 2001 – 2002?	0 to 88	The judges average between 7 and 8 civil trials per year.
Number of personal injury cases with awards of non-economic damages over the statutory non-economic damages cap in the past two years?	0 to 1	The average was less than 1 with only 3 cases in this category.
Number of personal injury cases that had awards of non-economic damages in excess of \$250,000?	0 to 1	Again, they averaged less than 1 per judge and only 5 judges had ever seen these types of awards.
Number of personal injury cases since you've been on the bench with a jury award of non-economic damages over the cap in your entire time on the bench?	0 to 2	Less than 1 per judge and only 3 judges have ever seen this.
Number of cases that had punitive damages awards in the past two years?	0 to 1	Eight judges have had such awards in the past 2 years.
Number of cases that have had punitive damage awards during your time on the bench.	0 to 3	Less than 1 per judge and only 10 judges have seen this.
Range of awards	"small" to 5 Million	The \$4 million was against an insurance company. The \$5 million against the Aryan Nations.
Number of personal injury cases that you would call frivolous lawsuits that have gone to trial?	0-3	29 judges had never seen this; 1 judge identified 3; 1 judge identified 1.
Number of medical malpractice cases with non-economic damage awards of more than \$500,000?	0-1	A total of 3 for all the judges.
Have you ever had a medical malpractice case with punitive damages awarded by a jury?	0	No judge had ever seen or heard of this happening.