

The Effects of Seeking Punitive Damages on the Processing of Tort Claims

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ABSTRACT

q1 Punitive damages are a controversial aspect of tort litigation and have been the subject of numerous theoretical, empirical, and experimental studies. Critics have argued that the uncertainty and unpredictability that punitive damage claims inject into a case may increase the rate and amount of settlements and carry systemic consequences for the general processing of tort claims. This paper represents the first empirical examination of this hypothesis. With one of the most comprehensive data sets of tort litigation, we analyze cases that are likely to have caps on punitive damage awards and cases that are likely to be uncapped. We examine the effect of the decision to seek punitive damages on several major decision points in the tort litigation process in a series of logit regression models. With extensive control variables, we find that seeking punitive damages has no statistically significant effect on most phases of the tort litigation process.

1. INTRODUCTION

q2 Punitive damages are one of the most controversial aspects of tort litigation and have been the subject of various theoretical, empirical, and experimental studies. Critics maintain that punitive damage awards are highly unpredictable, with large variations in size, and that juries are ill

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informed and poorly equipped to perform rational risk assessment. These criticisms are echoed in recent Supreme Court decisions that imposed constitutional limits on the size of punitive damage awards.¹ Other scholars find these criticisms to be vastly exaggerated. They assert that punitive damage awards are rare, that they are made in appropriate cases, and that the size of such awards relates strongly to compensatory damages.

Virtually all of the empirical and experimental research that addresses these issues has focused on the outcome of trials, especially jury verdicts. Trials, however, are only the tip of the civil litigation iceberg. Fewer than 5 percent of civil cases filed result in trials (Eaton, Talarico, and Dunn 2000; Smith et al. 1995), plaintiffs prevail in approximately half of the tort cases that go to trial (DeFrances and Litras 1999; Eaton, Talarico, and Dunn 2000; Moller 1996),² and punitive damages are awarded in only 2–5 percent of the tort cases in which the plaintiff prevails (DeFrances and Litras 1999; Luban 1998). Thus, for every 1,000 tort claims filed, typically only 50 are resolved by trial, only 25 produce trial outcomes favorable to the plaintiff, and only 1.25 have a punitive damage award. Consequently, our knowledge of punitive damages is based on the examination of fewer than two of every 1,000 tort cases filed.

The impact of trial outcomes on cases that are settled or not resolved by trial is often referred to as the “shadow effect” (Koenig 1998; Kritzer and Zemans 1998). Critics argue that the shadow effect of punitive damage awards creates social disutility. For example, Polinsky (1997) asserts that the uncertainty and unpredictability that a punitive damage claim injects into a case are likely to coerce defendants to settle a greater number of cases for higher amounts than they would if no punitive damages claim were involved. Similarly, Priest (1996, p. 827) claims that punitive damages “claims affect the settlement process by increasing the litigation rate and, necessarily, the ultimate magnitude of settlements,

1. For example, *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 417 (2003), which discusses how punitive damages pose an “acute danger” of arbitrary deprivation of property, that instructions leave the jury with “wide discretion” in choosing amounts, and that “presentation of evidence of a defendant’s net worth creates the potential that juries will use their verdicts to express biases against big business” (quoting *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 [1994]).

2. In all tort cases, the plaintiff prevails 50 percent of the time. There are significant differences in win rates for different types of tort claims. The plaintiff prevails in fewer than 40 percent of products liability trials (DeFrances and Litras 1999; Eaton, Talarico, and Dunn 2000), a type of claim for which punitive damages are a major concern.

even in cases that are settled out of court.” While it is theoretically plausible that a claim for punitive damages would affect the settlement process, this proposition has yet to be tested empirically.

q3 Our paper brings an empirical perspective to the policy debate regarding the shadow effect of punitive damage awards on tort cases. By utilizing one of the most comprehensive and unique data sets on state tort litigation, our analysis contributes to the burgeoning literature on punitive damages in several ways. First, it is the only paper that directly measures the impact of seeking punitive damages on the actual processing of tort claims. Second, we distinguish between cases in which a statutory cap on the amount of punitive damages is likely to apply and cases in which the cap is probably not applicable.³ Thus, we offer some insights regarding the different effects that capped and uncapped punitive damages might have on case processing. Third, in contrast to studies that rely on a small set of observations, we have over 25,000 cases from six Georgia counties, making it one of the largest and most diverse data sets of its kind. This large size allows us to control for important variables and to test alternative hypotheses that are often not considered. Fourth, most of the empirical research on tort litigation has relied on federal court data (for example, Litras and DeFrances 1999) or data from state courts of general jurisdiction in major urban areas (for example, DeFrances and Litras 1999; Eisenberg et al. 2002; Smith et al. 1995). By contrast, our data were derived from two levels of trial courts in six geographic locations. Like most states, Georgia has trial courts of general jurisdiction (superior courts) and trial courts of limited jurisdiction (state courts). Unlike most states, however, there is no amount-in-controversy limitation on state court jurisdiction to hear tort cases (Official Code of Georgia Annotated, sec. 15-7-4[a]). Finally, many empirical studies of tort litigation rely on case records from 1 year (for example, Smith et al. 1995; DeFrances and Litras 1999; Eisenberg et al. 2002). Our data, however, consist of case records for 4 years.

We measured the impact of punitive damages on the processing of tort cases by looking at major decision points in the litigation process.

3. Georgia places a general limit of \$250,000 on punitive damage awards (Official Code of Georgia Annotated, sec. 51-12-5.1[g]). The cap does not apply if the defendant acted or failed to act with “the specific intent to cause harm” or under the influence of alcohol or drugs (sec. 51-12-5.1[f]). There is also no cap on punitive damages in products liability cases, but there can be only one punitive damage award “regardless of the number of causes of action which may arise from such act or omission,” and 75 percent of the award “shall be paid into the treasury of the state” (sec. 51-12-5.1[e]).

These decision points include (1) whether a case filed in any given year was disposed or pending, (2) whether a disposed case was resolved by trial or by some other procedure, including settlement, (3) whether a case disposed without trial was more likely to be disposed by settlement (for example, voluntary dismissal with prejudice), (4) whether a case disposed without trial was more likely to be disposed by a voluntary dismissal without prejudice so that it could be refiled,⁴ (5) whether a case disposed by trial involved a jury or bench trial, and (6) whether punitive damages were awarded in trials in which the plaintiff prevailed. For each of these decision points, we measured whether there were any statistically significant differences between cases in which punitive damages were sought and those without such a claim. We also measured whether there were significant differences between cases in which the punitive damage claim was likely to be subject to the statutory limit on punitive damages and those likely not to be subject to this limit.

The subsequent sections of this paper are organized as follows. Section 2 reviews research about punitive damages, while Section 3 offers methodological information related to the data set, hypotheses, variable measurement, and statistical tests. Sections 4 and 5 deal, respectively, with the results and their implications.

2. LITERATURE REVIEW

The issue of punitive damages has sparked a large volume of theoretical, empirical, and experimental literature. The theoretical purposes of punitive damages are to punish and deter wrongdoing (Dobbs 2000). Sharkey (2003) advances an alternative rationale for punitive damages and argues that punitive damages serve a beneficial role to compensate for “societal damages,” that is, damages to others directly harmed but not before the court. One body of scholarship maintains that current practices do not advance either of these goals. For example, Polinsky and Shavell (1998) argue that punitive damages awarded against a corporation (instead of the individuals within the corporation) often unfairly punish innocent shareholders and customers and thus fail to promote

4. Under Georgia law, a suit that has been dismissed without prejudice can be refiled within 6 months of the dismissal (Official Code of Georgia Annotated, sec. 9-2-61). Thus, this type of dismissal does not necessarily result in a final resolution of the underlying dispute. A previous study finds that voluntary dismissals without prejudice account for approximately 20 percent of all dispositions of Georgia tort cases (Eaton, Talarico, and Dunn 2000).

the punishment goal of such awards. Others maintain that the deterrence goal is undermined by the unpredictable nature of such awards. Karpoff and Lott (1999) find that only 1–2 percent of the variation in punitive damage awards can be explained and conclude that such awards are highly variable and unpredictable. Sunstein, Kahneman, and Schkade (1998) reached similar conclusions on the basis of a controlled study of mock jurors. Sunstein et al. (2002b) evoke principles of cognitive psychology to explain why jurors are unable to translate qualitative moral judgments into quantitative numeric scales.

The jury is the focus of much criticism leveled against punitive damages. The general thrust of this body of scholarship is that jurors are “ill-informed and poorly equipped” to assess risk (Hastie and Viscusi 1998, p. 902). Jurors, it is said, are “given unlimited discretion but only limited guidance in deciding an amount of punitive damages” (Schkade 2002, p. 122). More specifically, jurors may be subject to a “hindsight bias,” which means that they are more likely to view conduct as reckless and egregious after the fact of an injury (Hastie, Schkade, and Payne 1999b). Jurors are also thought to be disinclined to base the size of a punitive damage award on achieving optimal deterrence (Sunstein, Schkade, and Kahneman 2000) and cannot accurately calculate a punitive damage award using formulas (in the form of jury instructions) designed to achieve such deterrence (Viscusi 2001a, 2002). Some studies suggest that juries tend to overestimate the risk of low-probability/large-
q4 loss events (Hastie and Viscusi 1998; Viscusi 2001a, 2001b), will punish
q5 corporations for engaging in risk-cost analysis (Viscusi 2001a, 2001b, 2002), and are influenced by other legally inappropriate factors, such as the identities of the parties (Hastie, Schkade, and Payne 1999a). These criticisms have led to suggestions that judges rather than juries should decide whether punitive damages should be awarded and, if so, in what amount (Hastie and Viscusi 1998; Mogin 1998; Schkade, Sunstein, and Kahneman 2000; Sunstein, Kahneman, and Schkade 1998; Sunstein et al. 2002b).

In contrast, another body of scholarship maintains that these criticisms are exaggerated. A number of empirical studies find that punitive damages are rarely awarded (Eaton, Talarico, and Dunn 2000; Eisenberg et al. 1997; Luban 1998; Merritt and Barry 1999; Rustad 1992; Vidmar and Rose 2001), are especially rare in the areas that have captured the most attention—products liability and medical malpractice (Eaton, Talarico, and Dunn 2000; Eisenberg et al. 1997; Merritt and Barry 1999), tend to be awarded in cases that involve intentional misconduct (Rustad

1997), and correlate strongly in magnitude with compensatory damages (Eisenberg et al. 1997; Eisenberg and Wells 1998; Moller, Pace, and Carroll 1999; Vidmar and Rose 2001). Moreover, the largest punitive damage awards are often reduced by postverdict or appellate review (Koenig 1998; Moller 1996; Moller, Pace, and Carroll 1999; Peterson, Sarma, and Shanley 1987; Rustad 1998). Eisenberg, Rachlinski, and Wells (2002) explain how real-world features of the legal system reduce the theoretical incoherence or effects of incoherence on punitive damages awards. One recent survey of the literature concludes that “lay decision-making is much more orderly in many respects than is suggested by the reform rhetoric” (Robbennolt 2002, p. ●●).

The robust body of scholarship summarized in the preceding paragraphs concerns the actual awards of punitive damages at trial but does not address the shadow effect that such awards have on the processing of other claims. Here the literature is quite sparse. Polinsky (1997) hypothesizes that the threat of punitive damages may carry greater consequences than actual verdicts, especially to the extent that the threat may give unfair bargaining power against corporate defendants and inflate both the rate and amount of settlements. He argues, “[T]he cases in which punitive damages are likely to be of greatest potential importance at trial are also cases that may be disproportionately likely to settle. . . . Thus, there could be very few judgments at trial in which punitive damages are awarded, yet settlement amounts might reflect a substantial component of punitive damages” (Polinsky 1997, p. 666). Priest (1996, p. 830) asserts that “[i]t is obvious and indisputable that a punitive damages claim increases the magnitude of the ultimate settlement and, indeed, affects the entire settlement process, increasing the likelihood of litigation.” Moller, Pace, and Carroll (1999) suggest that a claim for punitive damages might attract adverse publicity, thereby creating an incentive for some defendants to settle cases.

Despite the potential importance of this shadow effect, there has been virtually no empirical research on the topic. Priest (1996) offers data on the percentage of tort cases in which punitive damages were sought in three Alabama counties in a 2-year period. He presents no data, however, to substantiate his claim that asserting a punitive damages claim will affect the settlement process and increase the magnitude of settlement payments. Koenig (1998) offers a preliminary analysis with data that were collected for other studies and reports that insurance adjusters give little weight to a claim for punitive damages during settlement negotiations. Kritzer and Zemans (1998, p. 160) review the existing literature

and conclude that “with perhaps one exception, what little *systematic* evidence we could find does not support the notion that the threat of punitive damages casts a large shadow.” More recently, Vidmar and Rose (2001, p. 511) in their study of punitive damages in Florida conclude that “despite frequent claims by tort reform proponents in Florida, and around the country, that punitive damages claims awards produce an *in terrorem* effect on corporate defendants, there is no systematically documented evidence that this is so.” Vidmar and Rose (2001, p. 511) characterize such a shadow effect in products liability cases as “extremely improbable” given the exceedingly low number of such cases (other than those involving asbestos) in which punitive damages were awarded.

The one proposition on which all researchers seem to agree is that more data are needed to determine what impact, if any, a claim for punitive damages has on the processing of tort cases. We now turn to this question.

3. METHODOLOGY

A. Data

To examine the effect of the decision to seek punitive damages on key decision points in tort litigation, we use a unique data set of more than 25,000 tort cases filed in the state and superior courts in Georgia. The data, collected in 1998 and 1999, include every tort case filed between 1994 and 1997 in six counties in Georgia and nine different courts (superior courts in Bibb, Cobb, Fulton, Gwinnett, Irwin, and Oconee Counties and state courts in Cobb, Fulton, and Gwinnett Counties). However, Fulton state court data could be collected only for 1995–97. In this data set, punitive damages were sought in a substantial portion of superior court cases (20 percent) and state court cases (13 percent).⁵

There are several distinct features of this data set. First, our six county sites were not randomly selected. Because there is no state agency or office that maintains any statewide record of civil court cases, we were not able to draw a random sample of cases from all the state’s superior and state courts. Therefore, we decided to collect tort litigation data in metropolitan Atlanta (Cobb, Fulton, and Gwinnett Counties), where the

5. The percentage of tort claims seeking punitive damages in our data set is dramatically lower than the 65–95.6 percent reported by Priest (1996) in his three-county Alabama study.

state's population is concentrated. We added Bibb County to represent an urban area outside of Atlanta, Irwin County as a decidedly rural jurisdiction, and Oconee County as an historically rural county in the midst of substantial population growth.

Second, we studied every tort case in the aforementioned jurisdictions and identified them by filing date and not date of disposition. It was not possible to identify all tort cases between 1994 and 1997 and draw a random sample because in most counties research staff had to examine all civil litigation records simply to identify tort cases. Therefore, including the universe of tort cases identified in this process made the most sense. Similarly, it was not possible to identify a sampling frame on date of disposition or even examine civil case records in this fashion for the years in question, so we were left with date of filing as the basis of case selection.

Third, our data set includes cases from both superior and state courts. In Georgia, state courts are courts of limited jurisdiction created by the General Assembly pursuant to local legislation. All major urban counties and many smaller counties have state courts. In contrast to courts of limited jurisdiction in many states, state court jurisdiction in Georgia is not limited by the amount in controversy (Official Code of Georgia Annotated, sec. 15-7-4[a] [2] [1999]). Complex tort cases that involve the highest potential awards may be tried in state as well as superior court. Given the scope of state court jurisdiction and the sheer volume of tort cases that state courts handle, one cannot get a complete picture of tort litigation in Georgia without accounting for state as well as superior courts.

That our data set consists of several different counties in one state, covers a 4-year time period, consists of the universe of related cases, is based on date of filing and not date of disposition, and includes both state and superior court records makes our study unique. The degree to which our descriptive findings are consistent with other large-scale studies of civil litigation (Eaton, Talarico, and Dunn 2000), however, helps to put these unique attributes in perspective. Of particular interest is the study conducted by the Bureau of Justice Statistics and the National Center for State Courts (Litras and DeFrances 1999). This research examines 15,000 tort trials selected from the nation's 75 largest counties and disposed of in 1996. The general pattern of findings reported is remarkably similar to those highlighted earlier (Eaton, Talarico, and Dunn 2000).

In addition to information on the decision to seek punitive damages,

each tort case lists the number of attorneys, number of litigants and defendants, types of litigants and defendants, type of claim, and whether there was an allegation of a wrongful death. There is also information about the disposition of each case, pretrial hearings, and amounts and types of damages. Table 1 provides the summary statistics for the data. The first section, which lists the type of disposition, contains the dependent variables in the analysis.

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In this paper, we examine whether the decision to seek punitive damages affects many aspects of the processing of tort claims. In doing so, we offer an initial test of the proposition offered by Polinsky (1997) that punitive damages affect not only case outcome but also case processing. Also, we examine how the effects of seeking punitive damages compare with other important factors that affect both case disposition and case processing. Figure 1 illustrates key decision points in the resolution of tort cases. There were 25,562 cases filed in the six counties between 1994 and 1997. We analyze only data with nonmissing observations for all the variables of interest, which leaves 25,348 cases, as shown in the top box of Figure 1. At the time of our collection, 80.9 percent (20,514 cases) of the cases had been disposed, and 19.1 percent (4,834 cases) were still pending. The vast majority (95.2 percent) of disposed cases were resolved without a trial. Of cases dismissed without a trial, over half (54.9 percent) were settled. Of cases disposed by a trial, 20.2 percent were bench trials and 79.3 percent were jury trials.⁶ Cases with bench and jury trials accounted for only .8 percent and 3.1 percent of all cases, respectively.

Table 2 compares cases in which punitive damages were sought with cases in which no request was made. Punitive damages were sought in only 3,729 cases, or 14.7 percent of the total. The raw averages show that cases in which punitive damages were sought were slightly less likely to be disposed (78.3 versus 81.4 percent), disposed at trial (3.6 versus 4.0 percent), disposed without a trial (74.6 versus 77.4 percent), disposed with a jury trial (2.8 versus 3.1 percent), and disposed by settlement (39.4 versus 42.8 percent). Both types of cases were equally likely to be disposed with a bench trial (.8 percent) and disposed with an option to relitigate (.2 percent).

Although our data are very rich compared to what has been used in previous studies on tort law, two items are missing that we would have liked to have had in the data set. First, court records typically included

6. The remaining .5 percent of the cases were directed verdicts.

Table 1. Summary Statistics

Variable	Mean	Standard Deviation	Min.	Max.
Type of disposition:				
Pending	.191	.393	0	1
Disposed	.809	.393	0	1
Disposed without a trial	.770	.421	0	1
Disposed by settlement	.423	.494	0	1
Disposed with the option to relitigate	.164	.370	0	1
Disposed with a trial	.039	.194	0	1
Disposed with a bench trial	.008	.088	0	1
Disposed with a jury trial	.031	.173	0	1
Type of case:				
Intentional tort	.093	.290	0	1
Libel or slander	.010	.100	0	1
Defective product	.027	.162	0	1
Automobile	.670	.470	0	1
Premise liability	.107	.309	0	1
Professional malpractice	.039	.194	0	1
Federal Employers' Liability Act	.023	.151	0	1
Dangerous animal	.004	.064	0	1
Other	.027	.162	0	1
Case information:				
Superior court	.309	.462	0	1
State court	.691	.462	0	1
Request for punitive damages	.147	.354	0	1
Wrongful death	.025	.157	0	1
Number of plaintiffs	1.352	.988	1	64
Number of defendants	1.657	1.389	1	42
Percentage of plaintiffs pro se	1.698	13.850	0	100
Percentage of defendants pro se	2.656	23.901	0	100
Plaintiff type:				
Individual	.859	.348	0	1
Insurance	.121	.326	0	1
Business	.024	.155	0	1
Finance	.00047	.022	0	1
Medical	.00063	.025	0	1
Government	.001	.034	0	1
Other	.002	.043	0	1
Defendant type:				
Individual	.767	.423	0	1
Insurance	.074	.262	0	1
Business	.324	.468	0	1
Finance	.005	.070	0	1
Medical	.030	.169	0	1
Government	.028	.164	0	1
Other	.002	.045	0	1

Table 1. *continued*

Variable	Mean	Standard Deviation	Min.	Max.
County:				
Bibb	.037	.189	0	1
Cobb	.232	.422	0	1
Fulton	.537	.499	0	1
Gwinnett	.187	.390	0	1
Irwin	.002	.043	0	1
Oconee	.005	.071	0	1
Year:				
1994	.150	.357	0	1
1995	.279	.448	0	1
1996	.282	.450	0	1
1997	.290	.454	0	1

Note. $N = 25,348$.

information on date of filing but were frequently incomplete with respect to date of disposition. Although able to identify disposed cases, we often could not identify the exact date of disposition. Consequently, we can test whether a filed case was disposed or pending but cannot test whether cases in which punitive damages are sought take longer to be disposed. Second, data on settlement amounts are not available; therefore, we cannot test whether the decision to seek punitive damages affects the settlement amount. Parties to a settlement are not required to disclose amounts, and sometimes the settlement explicitly prohibits parties from disclosing the amount.

B. Estimation

Equation (1) outlines our basic empirical strategy:

$$\begin{aligned} \Pr(y_{it}) = & \alpha + \beta_1 PD_i + \beta_2 INFO_i + \beta_3 TYPE_i \\ & + \beta_4 LITIG_i + \beta_5 COUNTY_i + \beta_6 YEAR_t + \varepsilon_{it}. \end{aligned} \quad (1)$$

There are six dependent variables, y_{it} , for case i in year t : (1) whether a case filed was disposed or pending,⁷ (2) whether a case that was disposed was done so by trial or by some other procedure, including set-

7. It would also be very interesting to examine whether seeking punitive damages affects the length of time for a case to be disposed. Unfortunately, the data include only whether a case was disposed and not length of time between initial filing and final disposition.

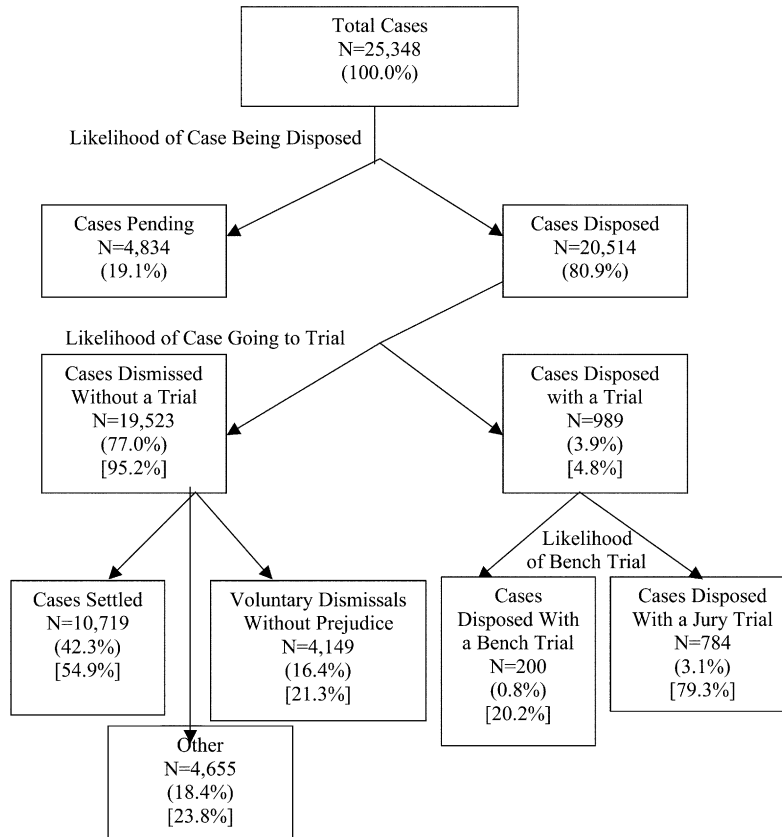


Figure 1. Processing of tort claims. The number in parentheses is the fraction of total cases (25,348). The number in brackets is the fraction of cases from the previous cell.

tlement,⁸ (3) whether a case was more likely to be disposed by settlement (for example, voluntary dismissal with prejudice), (4) whether a case was more likely to be disposed by a voluntary dismissal without prejudice so that it could be refiled, (5) whether a case disposed by trial involved a jury or bench trial, and (6) whether punitive damages were awarded in trials with outcomes favoring the plaintiff. Each of these outcomes is

8. Polinsky (1997) argues that seeking punitive damages may also affect the amount of a settlement. This proposition cannot be tested with these data, which do not include information about the amount of the settlement.

Table 2. Comparison of Cases in Which Punitive Damages Are and Are Not Sought

	Punitive Damages Sought	Punitive Damages Not Sought
Number of filings	3,729	21,619
Percentage of filings	14.7	85.3
Percent disposed	78.3	81.4
Percent disposed:		
At trial	3.6	4.0
Without a trial	74.6	77.4
With a jury trial	2.8	3.1
With a bench trial	.8	.8
By settlement	39.4	42.8
With option to relitigate	.2	.2

binary, and we will estimate the likelihood of their occurrences with a logit regression.

For each of these six outcomes we present two regression specifications—one for cases likely to have capped punitive damages and one for cases unlikely to have caps.⁹ The term TYPE_{*i*} indicates the type of case, which is different for the two specifications.¹⁰ Specification (1) in Tables 4–8 contains a regression for the six types of cases that would be likely to have punitive damage caps of \$250,000—automobile, premise liability, professional malpractice, Federal Employers’ Liability Act (FELA),¹¹ dangerous animal, and “other.” We classify them as likely to be capped because they rarely involve intent to injure and, other than some automobile accident claims, rarely are brought about by the use of alcohol or drugs. Specification (2) contains a regression for the cases that would likely not have punitive damage caps, which include intentional torts, libel or slander, and defective products.¹² We classify these claims as likely to be uncapped because product liability claims are expressly exempted from the statutory cap and the conduct that gives

9. For each decision point we also tested, but did not report, regressions of the entire sample and an interaction term between whether punitive damages were sought and whether the case was likely to have uncapped punitive damages. The results of these regressions were qualitatively similar to those reported here.

10. Automobile cases constitute the largest fraction of total claims (67.0 percent) and are the omitted category in the first specification. Intentional torts, the most common type of case that is likely to be uncapped, are omitted from the second specification.

11. The Federal Employers’ Liability Act (FELA) (45 U.S. Code, sec. 51) creates a federal cause of action for railroad workers injured by the negligence of their employers. Claims under FELA can be brought in either federal or state courts.

12. See note 3 for an explanation of circumstances in which cases would likely be uncapped.

rise to intentional tort and libel or slander claims is often characterized as involving intent to injure.

All the other control variables are included in both specifications. The next set of regressors, INFO_{*i*}, contains many variables about case characteristics, including whether it was heard in state or superior court, whether the case involved a wrongful death, the numbers of plaintiffs and defendants, and the fraction of plaintiffs and defendants that appear *pro se*. As noted earlier, tort actions for any amount may be filed in either the trial court of general jurisdiction (superior court) or the trial court of more limited jurisdiction (state court). Because cases with more litigants are typically more complex, the numbers of plaintiffs and defendants may proxy case complexity, which may affect how the case proceeds through the legal system. Because litigants who represent themselves will have less information and knowledge than attorneys, *pro se* litigants will have greater uncertainty than other litigants.

The term LITIG_{*i*} describes the type of litigants—both plaintiffs and defendants—who are categorized into the following groups: individuals, insurance companies, businesses, financial institutions, medical institutions, and governmental agencies.¹³ These variables will allow us to estimate whether outcomes are affected by the composition of litigants.

The term COUNTY_{*i*} designates the location of the case and controls for systematic differences across jurisdictions. The six counties are Bibb, Cobb, Fulton, Gwinnett, Irwin, and Oconee.¹⁴ The last variable, YEAR_{*t*}, is a set of year fixed effects that controls for systematic changes over time.¹⁵

4. RESULTS

A. Likelihood of the Case Being Disposed

Our first step is to understand which types of cases are quickly resolved and which remain pending. To accomplish this, we run a logit regression of whether the case was disposed by the time that we obtained the data. Figure 1 shows that 19.1 percent of the cases were still pending and

13. Individuals constitute the largest group of plaintiffs (85.4 percent) and defendants (76.7 percent) and are the omitted categories in the regressions.

14. In the regression, Fulton County, which contains 53.9 percent of all cases, is the omitted county.

15. The largest share of cases (28.9 percent) was from 1997, which is omitted in the regressions.

80.9 percent were disposed. We expect the least complicated cases to be disposed more quickly. Although we have no direct measure of case complexity, we proxy it with a variable for the number of participants in the case. Products liability and malpractice cases also tend to be legally and factually more complex. We also expect that cases are less likely to be disposed in superior than in state courts. This anticipated difference is a function of the mandatory jurisdiction of superior courts in Georgia. All divorce cases and criminal felonies must be filed in superior court, with the latter taking precedence over civil cases. Many plaintiffs' attorneys believe they can get a trial date more quickly in state than in superior court. Last, controlling for other factors, we expect that cases filed earlier will be more likely to be resolved. Therefore, we anticipate that cases filed in 1994 will be most likely to be disposed and that cases filed in 1997, the last year of the data, to be least likely to be disposed.

q11 Table 3 displays the results of the logit regression that predicts the
 q12 likelihood of a case being disposed. Contrary to the claim that seeking punitive damages would delay the processing of the case, both specifications show that the decision to seek punitive damages has no statistical effect on the likelihood of case disposal.

As expected, cases in superior courts are much less likely to be disposed. The marginal effects¹⁶ implied by the point estimates in Table 3 imply that controlling for all the other factors, cases in superior court that are likely to be capped are 1.9 percent less likely to be disposed,
 q13 while cases in superior court that are unlikely to be capped are 3.0
 q14 percent less likely to be disposed.

Other statistically significant results for cases likely to be capped show decreases in the probability of a disposition—being a FELA case (4.3 percent) and having insurance (1.1 percent) or medical companies (6.0 percent) as defendants. Having an additional defendant decreases the likelihood of disposition by .7 percent. In contrast, cases are more likely to be disposed when the claim is categorized as other (3.6 percent), the plaintiff is an insurance company (5.2 percent), or the defendant is a business (1.1 percent). Having an additional plaintiff increases the probability of disposition by .8 percent.

In cases likely to be uncapped, the likelihood of disposition decreases by 1.0 percent for an additional plaintiff and 2.0 percent for an addi-

16. The tables report point estimates from the logit regressions. Although these estimates provide the correct qualitative sign, they do not directly imply a quantitative magnitude. Therefore, in the text we also report the marginal effects of the statistically significant results.

Table 3. Logit Regressions for the Likelihood of a Case Being Disposed

Variable	Cases Likely to Be Capped (<i>N</i> = 22,054) (1)		Cases Likely to Be Uncapped (<i>N</i> = 3,280) (2)	
	Coefficient Estimate	Standard Error	Coefficient Estimate	Standard Error
Case information:				
Request for punitive damages	-.072	.063	.060	.101
Superior court	-.166**	.047	-.178 ⁺	.104
Wrongful death	.035	.123	-.199	.270
Number of plaintiffs	.072**	.025	-.060 ⁺	.032
Number of defendants	-.063**	.017	-.123**	.023
Percentage of plaintiffs pro se	.002	.002	.002	.002
Percentage of defendants pro se	-.001	.001	.001	.002
Type of case:				
Libel or slander	N.A.	N.A.	.375*	.181
Defective product	N.A.	N.A.	.544**	.129
Premise liability	-.010	.071	N.A.	N.A.
Professional malpractice	-.099	.119	N.A.	N.A.
Federal Employers' Liability Act	-.348**	.131	N.A.	N.A.
Dangerous animal	-.299	.259	N.A.	N.A.
Other	.367**	.123	N.A.	N.A.
Plaintiff type (individual omitted):				
Insurance	.542**	.068	.771**	.265
Business	-.019	.148	-.133	.179
Finance	. . .	. . .	-1.656*	.821
Medical	.440	1.141	-.129	1.084
Government	.329	.758	-.555	1.676
Other	-.297	.569	-.084	.745
Defendant type (individual omitted):				
Insurance	-.370**	.072	-.010	.369
Business	.097 ⁺	.057	-.159	.114
Finance	-.122	.401	.867*	.389
Medical	-.457**	.144	.364	.352
Government	.125	.134	.471 ⁺	.282
Other	-.380	.380	. . .	. . .
Year:				
1994	3.300**	.118	2.945**	.226
1995	2.189**	.059	2.168**	.134
1996	.998**	.043	1.178**	.112
Intercept	.572**	.054	.514**	.147

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. Country fixed effects are included for all regressions. N.A. indicates that this variable was not used in the regression. Ellipses indicate that no estimate was made because the variable could be predicted by other variables.

⁺ Significant at the .10 level.

* Significant at the .05 level.

** Significant at the .01 level.

Table 4. Logit Regressions for the Likelihood of a Case Being Disposed with a Trial, Conditioned on Being Disposed

Case Information	Cases Likely to Be Capped (<i>N</i> = 18,058) (1)		Cases Likely to Be Uncapped (<i>N</i> = 2,361) (2)	
	Coefficient Estimate	Standard Error	Coefficient Estimate	Standard Error
Request for punitive damages	-.125	.130	.339	.229
Superior court	-.036	.087	-.042	.237
Wrongful death	-.493	.348	-.198	.749
Number of plaintiffs	-.154*	.063	-.007	.058
Number of defendants	-.087	.053	-.097	.084
Percentage of plaintiffs pro se	.001	.003	.003	.004
Percentage of defendants pro se	.001	.001	.002	.002
Intercept	-2.960**	.147	-2.674**	.357

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. All regressions include type-of-case, plaintiff-type, defendant-type, county, and time fixed effects.

* Significant at the .05 level.

** Significant at the .01 level.

tional defendant. Libel and slander cases are 5.6 percent more likely and defective product cases are 8.2 percent more likely to be disposed than are intentional torts. Cases are more likely to be disposed when the plaintiff is an insurance firm (10.3 percent) or the defendant is a financial institution (11.1 percent) or the government (6.8 percent). Having a financial institution as a plaintiff reduces the likelihood of disposing cases likely to be uncapped by 37.2 percent.

In both columns, the results for the years are exactly as predicted. Cases filed in 1994 are most likely to be disposed, followed by those filed in 1995 and 1996, while cases filed in 1997 are least likely to be resolved.

B. Likelihood of a Case Being Disposed with a Trial

Studies have consistently shown that the vast majority of cases are not resolved in the trial court, and our data confirm this. Of disposed cases in our sample, 95.2 percent are resolved without a trial. Table 4 evaluates the likelihood of a case being disposed with a trial. The coefficient estimate on whether to seek punitive damages in column 1 is close to zero and not statistically significant. Having an additional plaintiff reduces the likelihood of a trial by $-.6$ percent. In column 2, the coefficient

Table 5. Logit Regressions for the Likelihood of a Case Being Settled, Conditioned on Being Dismissed without a Trial

Case Information	Cases Likely to Be Capped (<i>N</i> = 17,219) (1)		Cases Likely to Be Uncapped (<i>N</i> = 2,296) (2)	
	Coefficient Estimate	Standard Error	Coefficient Estimate	Standard Error
Request for punitive damages	-.014	.055	-.275**	.095
Superior court	-.012	.041	-.289**	.105
Wrongful death	-.130	.108	-.658*	.269
Number of plaintiffs	-.202**	.022	-.013	.039
Number of defendants	.048**	.018	-.035	.026
Percentage of plaintiffs pro se	-.009**	.001	-.016**	.003
Percentage of defendants pro se	-.001	.001	-.009*	.004
Intercept	.721**	.055	-.213**	.159

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. All regressions include type-of-case, plaintiff-type, defendant-type, county, and time fixed effects.

* Significant at the .05 level.

** Significant at the .01 level.

estimate on requesting punitive damages is not statistically significant at the .10 level. However, it would be significant at the .15 level, thus providing some weak evidence that cases likely to be uncapped that request punitive damages may be slightly more likely to be resolved by a trial.

C. Likelihood of a Case Being Settled

The most likely resolution of a case is settlement, which accounts for 52.2 percent of the disposed cases in our sample. Theory suggests that greater uncertainty about the outcome decreases the likelihood of a settlement (Mnookin, Peppet, and Tulumello 2000). Because all parties involved must pay large fixed costs to go to trial, cases in which the plaintiffs and defendants have significantly different expectations about the outcome are more likely to go to trial. If both parties agree on the range of probable outcomes before the trial, then the litigants can make themselves better off by settling and avoiding the trial costs. Because the outcome of these simple cases is relatively clear, they are more likely to be settled, while more complex cases are less likely to be settled.

Table 5 examines the likelihood of a case being settled. The estimate of the effect of seeking punitive damages reported in column 1 is negative

and not distinguishable from zero, which suggests that the threat of punitive damages is not being used to force settlements in cases likely to be capped. Also, the likelihood of settling is reduced by the presence of an additional plaintiff (4.9 percent) and by a 1-percentage-point increase in the fraction of pro se plaintiffs (.2 percent). Having an additional defendant increases the likelihood of settling by 1.2 percent.

Column 2 of Table 5 is notable because it is the only instance in this paper (with the exception of whether punitive damages are actually awarded) that the estimate for a request for punitive damages has a statistically significant result. In contrast to the Polinsky (1997) contention that cases in which punitive damages are sought disproportionately settle, this evidence indicates that in cases likely to be uncapped, the decision to seek punitive damages actually reduces the likelihood of settling. Also, cases that are likely to be uncapped are less likely to be settled if they have a wrongful death claim and if they are heard in superior court instead of in state court.

D. Likelihood of the Case Being Voluntarily Dismissed without Prejudice

Over one-fifth of the cases that are dismissed without a trial are voluntarily dismissed without prejudice. Under Georgia Code, section 9-2-61 (1999), the state gives the plaintiff the right to voluntarily dismiss his or her case and refile it within 6 months, subject to any relevant statutes of limitations. In practice, this law allows plaintiffs to start a case and obtain a temporary delay if problems should arise. One might predict that this option would be exercised more frequently in complex cases that are more likely to have unexpected twists. Consequently, we anticipate that the estimated coefficient on most types of cases will be positive and significant as compared to automobile accident claims.

Table 6 shows the likelihood that a case will be voluntarily dismissed without prejudice. Like most of the other results, the decision to seek punitive damages does not affect this outcome in either specification. An increase in the fraction of pro se plaintiffs reduces the likelihood for both types of cases. Column 1 indicates that wrongful death cases are 3.4 percent less likely to be voluntarily dismissed without prejudice. Also, having an additional plaintiff increases the probability of this option being exercised by 4.2 percent. This is not surprising, as litigants in cases with multiple plaintiffs may discover that the plaintiffs have separate and perhaps divergent interests.

Table 6. Logit Regressions for the Likelihood of a Case Being Voluntarily Dismissed without Prejudice, Conditioned on Being Dismissed without a Trial

Case Information	Cases Likely to Be Capped (N = 17,215) (1)		Cases Likely to Be Uncapped (N = 2,301) (2)	
	Coefficient Estimate	Standard Error	Variable	Coefficient Estimate
Request for punitive damages	-.064	.068	.061	.112
Superior court	.018	.049	.164	.121
Wrongful death	-.223 ⁺	.130	.218	.278
Number of plaintiffs	.260**	.023	.051	.044
Number of defendants	-.014	.021	.052	.026
Percentage of plaintiffs pro se	-.005*	.002	-.006*	.003
Percentage of defendants pro se	-.002 ⁺	.001	.002	.001
Intercept	-1.845**	.065	-1.394**	.179

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. All regressions include type-of-case, plaintiff-type, defendant-type, county, and time fixed effects.

⁺ Significant at the .10 level.

* Significant at the .05 level.

** Significant at the .01 level.

E. Likelihood of a Jury Trial

As noted previously, much of the criticism of tort litigation has been directed to the role and function of the jury. Critics of punitive damages maintain that juries are more likely to award punitive damages with greater frequency and for larger sums than are judges. Since juries are thought to favor the plaintiff and since the plaintiff is entitled to a jury trial absent an explicit waiver, one might expect that a punitive damage claim would increase the likelihood of a jury trial.

Table 7 examines the determinants of jury trials versus bench trials. Jury and bench trials are rare phenomena, as they compose 3.1 percent and .8 percent of all cases filed, respectively. In column 1, the result for cases in which punitive damages are sought is not statistically significant, and its coefficient estimate is negative, the opposite of what would be expected if plaintiffs preferred to present their case before juries. For cases likely to be uncapped, the coefficient estimate on the request for punitive damages is positive, which is more consistent with the contention that plaintiffs who seek punitive damages would prefer to have a jury trial. However, its coefficient estimate is much less than its standard error and, therefore, is nowhere close to being statistically significant.

Table 7. Logit Regressions for the Likelihood of a Jury Trial, Conditioned on Having a Trial

Case Information	Cases Likely to Be Capped (N = 857) (1)		Cases Likely to Be Uncapped (N = 102) (2)	
	Coefficient Estimate	Standard Error	Coefficient Estimate	Standard Error
Request for punitive damages	-.703	.471	.474	.663
Superior court	.608	.443	1.839*	.750
Wrongful death	. . .	. . .	. . .	. . .
Number of plaintiffs	.146	.334	.234	.379
Number of defendants	-.120	.226	-.471 ⁺	.267
Percentage of plaintiffs pro se	-.032**	.009	-.010	.020
Percentage of defendants pro se	-.038**	.011	-.038**	.013
Intercept	3.213**	.713	-.010	.936

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. All regressions include type-of-case, plaintiff-type, defendant-type, county, and time fixed effects. Ellipses indicate that no estimate was made because the variable could be predicted by other variables.

⁺ Significant at the .10 level.

* Significant at the .05 level.

** Significant at the .01 level.

Pro se plaintiffs in cases likely to be capped and defendants (in both types of cases) are less likely to have jury trials. In cases likely to be uncapped, superior court cases are 40.6 percent more likely to have a jury trial, and the presence of an additional defendant decreases by 11.4 percent the likelihood of having a jury trial.

F. Likelihood of Being Awarded Punitive Damages

There have been many criticisms of punitive damages. Some of the most frequently articulated concerns focus on the lack of jury competency in assigning such awards and assume that juries are much more likely than judges to award punitive damages. Critics contend that juries exhibit hindsight bias, are unable to evaluate risk rationally, and are biased against corporations, particularly very large and prosperous ones.

Contrary to popular belief, punitive damages are awarded very rarely. This Georgia sample contains only 15 punitive damage awards, or less than .1 percent of the entire sample. Table 8 evaluates the likelihood of being awarded punitive damages conditioned on winning a trial. Because there are so few observations and so few punitive damage awards, the standard errors are quite high, and very few variables in the entire re-

Table 8. Logit Regressions for the Likelihood of a Being Awarded Punitive Damages, Conditioned on Winning the Case

Case Information	Cases Likely to Be Capped (N = 329) (1)		Cases Likely to Be Uncapped (N = 25) (2)	
	Coefficient Estimate	Standard Error	Coefficient Estimate	Standard Error
Request for punitive damages	6.035*	2.545	...	...
Bench trial	-1.733	2.571	14.862**	2.346
Superior court	28.845**	5.902	20.169**	...
Wrongful death	...	...	...	...
Number of plaintiffs	1.615	2.310	1.504	2.258
Number of defendants	-19.001**	2.323	-.590	1.006
Percentage of plaintiffs pro se	...	...	.056	...
Percentage of defendants pro se	...	...	...	...
Intercept	-50.401	...	-88.400**	5.380

Note. Automobile cases are omitted in column 1. Intentional tort cases are omitted in column 2. All regressions include type-of-case, plaintiff-type, defendant-type, county, and time fixed effects. Ellipses indicate that no estimate was made because the variable could be predicted by other variables.

* Significant at the .05 level.

** Significant at the .01 level.

q19 gression are statistically significant. The first column shows that plaintiffs who seek punitive damages are more likely to receive a punitive award, a result that would be astonishing if it were not true. There is no reported estimate for the request for punitive damages in column 2, because there are only 25 observations and every case in which a request was made for punitive damages was given an award.

Both specifications indicate that there is a statistically significant greater chance of a punitive damage award in superior than in state court. The coefficient estimate in column 2 implies that a bench trial increases the likelihood of being awarded punitive damages by 8.4 percent, consistent with Eisenberg et al. (2002). After controlling for other factors, juries in Georgia are not more likely than judges to award punitive damages.

5. CONCLUSION

Many critics of tort law and litigation have alleged that allowing plaintiffs to seek punitive damages significantly increases the costs imposed

throughout the judicial system, as many file claims in hopes of forcing large settlements or winning exorbitant punitive damages. Most studies confine their attention to a very narrow range of issues when investigating punitive damages; specifically, they evaluate what occurs at trial. Although this question is important, trials account for only a small fraction of cases filed, and therefore, such studies essentially ignore effects that could occur throughout the rest of the system. This unique data set that includes all cases filed allows us to provide one of the first analyses of the impact of punitive damages throughout the entire tort litigation process.

The results show that, contrary to the expectation of many critics (for example, Polinsky 1997; Priest 1996), the decision to seek punitive damages has no statistically significant impact on most phases of the litigation process. Specifically, we found that the decision to seek punitive damages had no effect on (1) whether a case filed in any given year was disposed or pending, (2) whether a case that was disposed was done so by trial or by some other procedure, including settlement, (3) whether a case that was disposed by means other than a trial was more likely to have been settled, and (4) whether a case that was disposed by means other than a trial was more likely to have been disposed by a voluntary dismissal without prejudice so that it could be refiled. These findings are consistent with those reported by Koenig (1998) that the inclusion of a claim for punitive damages does not have much effect on the processing of tort claims. They also lend additional support to the observations of Kritzer and Zemans (1998) and Vidmar and Rose (2001) that there is little systemic evidence that the threat of punitive damages casts a large shadow.

The decision to seek punitive damages affected only two of the outcome variables. Cases in which punitive damages are sought were more likely to have punitive damages awarded, an obvious and expected result. However, the second result was unexpected. In cases that are resolved by trial, those in which punitive damages claims are sought are more likely to be tried by a judge. This finding may be of some interest to those who study differences between bench and jury trials. Conventional wisdom posits that juries have a pro-plaintiff bias and are more likely to find liability when a judge would not. This conventional wisdom has been challenged by a number of studies. Although related empirical evidence is limited, several studies have found that plaintiffs actually enjoy a higher success rate in bench than in jury trials, at least in certain types of torts (Clermont and Eisenberg 1992; Eaton and Talarico 1996;

Eaton, Talarico, and Dunn 2000; DeFrances and Litras 1999). With regard to punitive damages in particular, Eaton, Talarico, and Dunn (2000) find that punitive damages were awarded in a higher percentage of Georgia bench trials than jury trials. Eisenberg et al. (2002, p. 779) report similar findings using a national data set but noted that the differences were not statistically significant. The study concludes that “[j]uries and judges award punitive damages at about the same rate, and their punitive awards bear about the same relation to their compensatory awards.” Hersch and Viscusi (2004), employing a different methodology on the same data used by Eisenberg et al. (2002), conclude that juries are more likely to make punitive damage awards and make larger awards than do judges.

Regardless of how similarly or differently judges perform as compared to juries in awarding punitive damages, it is interesting that the parties are more likely to select a bench trial in cases that involve uncapped punitive damages claims. As a general matter, bench trials occur
q20 only when both parties agree to waive their right to a trial by jury. Further research is needed to better understand what set of circumstances might lead both parties to agree to a bench trial in cases that involve uncapped punitive damages.

We did find some differences in the effects of capped and uncapped punitive damages on case processing. Tort suits with uncapped punitive damage claims were more likely to be disposed by trial than suits with capped punitive damage claims. Furthermore, tort suits with uncapped punitive damage claims were less likely to be disposed by settlement than suits with capped punitive damage claims. These findings are inconsistent with Polinsky’s (1997) hypothesis that the threat of punitive damages will coerce more settlements. In fact, our data tend to suggest just the opposite—a claim for uncapped punitive damages impedes rather than coerces settlement. Perhaps this is because an uncapped punitive damage claim creates greater uncertainty about the value of the suit. The greater the disparity between the parties’ valuation of the case, the less likely a suit is to settle (Mnookin, Peppet, and Tulumello 2000).

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