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Juries Aren't Just Emotional Pushovers

■ **Lawsuits:** Look not to jurors, but to the egregious behavior of defendants, to see what leads to large punitive judgments.

By JOHN DENOVE

Score one for the people. Juries are not made up of wide-eyed innocents who are ready to hand out big damage awards at the drop of a hat, according to a new study of the nation's busiest civil state courts.

New U.S. Department of Justice research shows that judges are far more disposed than juries, by a ratio greater than 3 to 1, to award punitive damages. Judges also are more inclined toward plaintiffs' pleas and more generous. The median jury-mandated punitive damage award was \$27,000; the bench's was \$75,000.

"Tort reform" advocates have long tried to denigrate juries made up of ordinary people in efforts to enact limits on damage awards. The new findings nullify their assumptions of pushover jurors, overwhelmed by emotion and confused by complex facts, readily handing out outrageous punitive-damages jackpots against corporate wrongdoers. In fact, the Bureau of Justice Statistics quantifies the rarity of punitive awards. Most of them are below \$40,000.

This latest affirmation of the civil justice system demonstrates that juries are usually clear thinking and appropriate when assigning punitive damages. It is the egregious behavior of defendant corporations that leads to punitive judgments—such as deliberately placing profit over people by ignoring faulty Ford Pinto gas tanks or concealing evidence about dangerous Dalkon Shield IUDs.

By law, civil juries can't pass jail sentences, so they hit offenders in the

pocketbook as the only means to enforce a corporate conscience and prevent intolerable acts from being repeated. Certainly, emotion is invoked in civil liability trials. However, it is the emotion of shock and outrage felt by both judges and juries when faced with the reprehensible conduct of certain corporations.

For example, who could not be moved when hearing of the horrific injuries that befell 5-year-old Valerie Lakey? As she sat in the bottom of a toddler wading pool in which another child had removed the drain cover, a powerful force created by the open drain sucked out most of her in-

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testines. Valerie will be on a feeding tube 11 hours a day, for the rest of her life, and she faces the prospect of organ transplants.

The North Carolina girl's suffering is tragically compounded by the fact, unearthed during trial, that it was preventable. Similar incidents of open drain injuries were previously reported but ignored by the pool-industry defendants. A \$25-million compensatory damage award by the jury so clearly relayed its disgust at the manufacturers' wanton neglect that the prospect of punitive damages prompted a \$30.9-million settlement, paid cash in full.

The impact of the 1997 Lakey jury de-

cision accomplished what juries are meant to do. The pool industry upgraded safety standards. The North Carolina Legislature went even further by passing regulations mandating multiple pool drains. As one juror explained, "I hope that this will make a difference, that something like this will never happen to another child."

Yet a jury's ability to make a difference and protect the well-being of the people in their community is in jeopardy.

The message sent by a San Antonio jury's \$42.5-million punitive damage verdict against Ultramar Diamond Shamrock was clear. The long, lingering burning death of employee Charles Hall resulted from the refinery company's refusal to spend a small amount of money in re-opening buried safety valves. Such deliberate corporate penny-pinching at workers' expense was repugnant to the jury. But Texas tort reform legislation enabled the judge to smother the jury's will. When the judge reduced the penalty to \$200,000, the judge let the jury know that its decision didn't count. The refinery was let off with a punishment that amounted to "pocket change," one juror said.

Tort reforms, like the capped damages enacted in Texas, not only usurp meaningful punitive awards but ultimately attack the right to find redress for grievances in courts. If punitive damages are capped, and corporations know how much a life or a limb will cost them, what's to prevent them from factoring that in as part of their financial planning rather than making the necessary safety changes?

The good news is that justice prevails for now. In case after case, it's not juries or their decisions that are bad. It's the all-consuming profit chase at the cost of human lives.

John Denove is president of the Consumer Attorneys Assn. of Los Angeles.