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The Effects of Seeking Punitive Damages on the Processing of Tort Claims[1]

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ABSTRACT

Punitive damages are one of the most controversial aspects of tort litigation and have been the subject of various theoretical, empirical, and experimental studies. One criticism of punitive damages refers to the effect that they have on civil litigation processes. In particular, Polinsky (1997) argues that the uncertainty and unpredictability that punitive damage claims inject into a case may increase both the rate and amount of settlements, thus implying that punitive damages carry systemic consequences for the general processing of tort claims. This paper represents the first, empirical examination of this implication.

With one of the largest and most comprehensive data sets of tort litigation (over 25,000 cases filed from 1994 through 1997 in several counties in Georgia), we analyze both 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 for type of case and plaintiff, defendant, and case characteristics, we find that seeking punitive damages has no statistically significant effect on most phases of the tort litigation process.

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1. INTRODUCTION

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-informed and poorly equipped to perform rational risk assessment. These criticisms are echoed in recent Supreme Court decisions imposing constitutional limits on the size of punitive damage awards.[2] Other scholars find these criticisms to be vastly exaggerated. They assert that punitive damage awards are rare, are made in appropriate cases, and the size of such awards relates strongly to compensatory damages.

Virtually all of the empirical and experimental research addressing 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% of civil cases filed result in trials (Eaton et al., 2000; Smith et al. 1995); plaintiffs prevail in approximately half of the tort cases that go to trial (DeFrances and Litras, 1999; Eaton et al., 2000; Moller, 1996)[3]; and punitive damages are awarded in only 2-5% of the tort cases in which the plaintiff prevails (DeFrances and Litras, 1999; Lubin, 1998). Thus, for every 1000 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

[2]E.g., State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408, 417 (2003) (punitive damages pose an "acute danger" of arbitrary deprivation of property; instructions leave the jury with "wide discretion" in choosing amounts; and "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).

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

of punitive damages is based on the examination of fewer than two of every thousand 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 asserts that the uncertainty and unpredictability that a punitive damage claim injects into a case is likely to coerce defendants to settle a greater number of cases for higher amounts than they would if no punitive damage claim were involved (Polinsky, 1997). Similarly, Priest claims that punitive damage "claims affect the settlement process by increasing the litigation rate and, necessarily, the ultimate magnitude of settlements, even in cases settled out of court." (Priest, 1996). While it is theoretically plausible that a claim for punitive damages would affect the settlement process, this proposition has yet to be tested empirically.

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 first paper that directly measures the impact of seeking punitive damages on the actual processing of tort claims. Second, we distinguish between cases where a statutory cap on the amount of punitive damages is likely to apply and cases where the cap is probably not applicable.[4]

[4] Georgia places a general limit of $250,000 on punitive damage awards. O.C.G.A. 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. O.C.G.A. 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% of the award "shall be paid into the treasury of the state…" O.C.G.A. sec. 51-12-5.1(e).

Thus, we offer some insights regarding the different effects of 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 (e.g., Litras and DeFrances, 1999) or data from state courts of general jurisdiction in major urban areas (e.g., DeFrances and Litras, 1999; Eisenberg, LaFountain, Ostrom, Rottman, and Wells, 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 Court) and trial courts of limited jurisdiction (State Court). Unlike most states, however, there is no amount in controversy limitation on State Court jurisdiction to hear tort cases.[5] Finally, many empirical studies of tort litigation rely on case records from one year (e.g., Smith, et al., 1995; DeFrances and Litras, 1999; Eisenberg, LaFountain, Ostrom, Rottman, and Wells, 2002). Our data, however, consist of case records for four years.

We measured the impact of punitive damages on the processing of tort cases by looking at major decision points in the litigation process. 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 (e.g., voluntary dismissal with prejudice); (4) whether a case disposed without trial was more

[5] O.C.G.A. sec. 15-7-4(a).

likely to be disposed by a voluntary dismissal without prejudice so that it could be re-filed; [6](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 to not be subject to this limit.

The subsequent sections of this paper are organized as follows. The second section reviews research about punitive damages, while the third section offers methodological information related to the data set, hypotheses, variable measurement, and statistical tests. The fourth and fifth sections 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 advances an alternative rationale for punitive damages, and argues that punitive damages serve a beneficial role to compensate for "societal damages," i.e., damages to others directly harmed but not before the court (Shockley, 2003). One body of scholarship maintains that current practices do

[6] Under Georgia law, a suit that has been dismissed without prejudice can be re-filed within six months of the dismissal. O.C.G.A. sec. 9-2-61. Thus, this type of dismissal does not necessarily result in a final resolution of the underlying dispute. A previous study found that voluntary dismissals without prejudice account for approximately 20% of all dispositions of Georgia tort cases. (Eaton et al, 2000).

not advance either of these goals. For example, Polinsky and Shavell (1998) argued 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 the punishment goal of such awards. Others maintain that the deterrence goal is undermined by the unpredictable nature of such awards. Karpoff and Lott (2000) found that only 1-2% of the variation in punitive damage awards can be explained and concluded that such awards are highly variable and unpredictable. Sunstein, Kahneman, and Schkade (1998) reached similar conclusions based on a controlled study of mock jurors. Sustein, Kahneman, Schkade, and Ritov (2002) evoked 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 (Haistie and Viscusi, 1998). Jurors, it is said, are "given unlimited discretion but only limited guidance in deciding an amount of punitive damages" (Schkade, 2002). More specifically, jurors may be subject to a "hindsight bias," meaning that they are more likely to view conduct as reckless and egregious after the fact of an injury (Hastie, Schkade, and Payne, 1999). 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, 2001 and 2002). Some studies suggest that juries tend to overestimate the risk of low probability-large loss events (Hastie and Viscusi, 1998;

Viscusi, 2001), will punish corporations for engaging in risk-cost analysis (Viscusi, 2001, 2002), and are influenced by other legally inappropriate factors, such as the identities of the parties (Hastie et al., 1999). 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 et al., 2000; Sunstein et al., 1998; Sunstein, Kahneman, Schkade, and Ritov, 2002).

In contrast, another body of scholarship maintains that these criticisms are exaggerated. A number of empirical studies have found that punitive damages are rarely awarded (Eaton, et al. 2000; Eisenberg et al., 1997; Luban, 1998; Merrit and Berry, 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, et al., 2000; Eisenberg et al., 1997; Merritt and Berry, 1999); tend to be awarded in cases involving intentional misconduct (Rustad, 1997); and correlate strongly with compensatory damages in magnitude (Eisenberg et al., 1997; Eisenberg and Wells, 1999; Moller et al., 1999; Vidmar and Rose, 2001). Moreover, the largest punitive damage awards are often reduced by post-verdict or appellate review (Koenig, 1998; Moller, 1996; Moller et al., 1999, Peterson, 1987; Rustad, 1998). Eisenberg, LaFountain, Ostrom, Rottman, and Wells, (2002) explained 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).

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) hypothesized 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 argued, "the 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." Priest asserts "[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" (Priest, 1996). Moller et al. (1999) suggested 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 offers data on the percentage of tort cases in which punitive damages were sought in three Alabama counties in a two-year period (Priest, 1996). 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) offered a preliminary analysis with data that were collected for other studies and reported that insurance adjusters give little weight to a claim for punitive damages during settlement negotiations. Kritzer and Zemans (1998) reviewed the existing literature and concluded "with perhaps one exception, what little *systemic* 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) in their study of punitive damages in Florida concluded that "despite frequent claims by tort reform proponents in Florida, and around the county, that punitive damages claims produces an *in terrorem* effect on corporate defendants, there is not systematically documented evidence that this is so." Vidmar and Rose characterized 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 1994-1997 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 only be collected for 1995-1997. In this data set, punitive damages were sought in a substantial portion of Superior Court cases (20%) and State Court cases (13%).[7]

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

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 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 (O.C.G.A. §15-7-4(a)(2) (1999)). Complex tort cases involving 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 they 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 four-year time period, consists of the universe of related cases, is based on date of filing and not disposition, and that it 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 et al. 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 et al. 2000). 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 we highlighted earlier (Eaton et al. 2000).

In addition to information on the decision to seek punitive damages, each tort case lists the number of attorneys, the number of litigants and defendants, the types of litigants and defendants, type of claim, and whether there was an allegation of a wrongful death. There is also information about how each case was disposed, pre-trial hearings, and the 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. The other categories are type of case, case information, plaintiff and defendant information, the county and the year the case was filed.

In this research, 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 graphically 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 non-missing 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% (20,514 cases) of the cases had been disposed and 19.1% (4,834 cases) were still pending. The vast majority (95.2%) of disposed cases were resolved without a trial. Of cases dismissed without a trial over half (54.9%) were settled. Of cases disposed by a trial, 20.2% were bench trials and 79.3% were jury trials.[8] Cases with bench and jury trials accounted for only 0.8% and 3.1% of all cases, respectively.

Table 2 compares cases in which punitive damages were sought to cases in which no request was made. Punitive damages were sought in only 3,729 cases, or 14.7% of the total. The raw averages show that cases seeking punitive damages were slightly less likely to be disposed (78.3% vs. 81.4%), disposed at trial (3.6% vs. 4.0%), disposed without a trial (74.6% vs. 77.4%), disposed with a jury trial (2.8% vs. 3.1%), and disposed by settlement (39.4% vs. 42.8%). Both types of cases were equally likely to be disposed with a bench trial (0.8%) and disposed with an option to relitigate (0.2%).

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 in the data set. First, court records typically included information on date of filing, but were frequently incomplete with respect to date of disposition. Although able to identify

[8] The remaining 0.5% was directed verdicts.

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 that seek punitive damages take longer to be disposed. Second, data on settlement amounts are not available, and 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:

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

There are six dependent variables, y_{it}, for case i in year t: (1) whether a case filed was disposed or pending;[9] (2) whether a case that was disposed was done so by trial or by some other procedure, including settlement;[10] (3) whether a case was more likely to be disposed by settlement (e.g., 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 re-filed; (5) whether a case disposed by trial involved a jury and bench trial; and (6) whether punitive damages were awarded in trials with outcomes in favor of the plaintiff. Each of these outcomes is binary, and we will estimate the likelihood of their occurrences with a logit regression.

[9] 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.

[10] Polinsky (1997) argued 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.

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.[11] $TYPE_i$ indicates the type of case, which is different for the two specifications.[12] The first reported specification in each table 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),[13] 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 use of alcohol or drugs. The second specification in each table contains a regression for the cases that would likely not have punitive damage caps, which include intentional torts, libel-slander, and defective products.[14] 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 rise to intentional tort and libel-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

[11] 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.

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

[13] The Federal Employers' Liability Act, 45 U.S.C. § 51 creates a federal cause of action for railroad workers injured by the negligence of their employers. FELA claims can be brought in either federal or state courts.

[14] As mentioned in footnote 4, there is a statutorily imposed general limit of $250,000 on punitive damage awards. This ceiling does not apply in cases where the defendant acted with a specific intent to cause harm, acted under the influence of drugs or alcohol or in products liability claims. O.C.G.A. § 51-12-5.1.

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, Georgia has trial courts of general jurisdiction (Superior Court) and trial courts of limited jurisdiction (State Court). Unlike most states, however, the trial court of limited jurisdiction in Georgia can preside over tort cases without any limit on the amount in controversy. Therefore, 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.

$LITIG_i$ 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.[15] These variables will allow us to estimate whether outcomes are affected by the composition of litigants.

$COUNTY_i$ designates the location of the case, and controls for systematic differences across jurisdictions. The six counties are Bibb, Cobb, Fulton, Gwinnett, Irwin, and Oconee.[16] The last variable, $YEAR_t$, is a set of year fixed effects that controls for systematic changes over time.[17]

[15] Individuals comprise the largest group of plaintiffs (85.4%) and defendants (76.7%), and are the omitted categories in the regressions.

[16] In the regression Fulton County, which contains 53.9% of all cases is the omitted county.

[17] The largest share of cases (28.9%) was from 1997, which is omitted in the regressions.

4. RESULTS

A. Likelihood of the Case Being Disposed

Our first step is to understand what 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 we obtained the data. Figure 1 shows that 19.1% of the cases were still pending, and 80.9% 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 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 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 cases filed in 1997, the last year of the data, to be least likely to be disposed.

Table 3 displays the results of the logit regression that predicts the likelihood of a case being disposed. Column 1 includes cases that are likely to be capped while Column 2 includes the cases that are likely to be uncapped. 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 effects[18] implied by the point estimates in Table 3 imply that controlling for all the other factors, cases that are likely to be capped and are in Superior Court are 1.9% less likely to be disposed while cases that are unlikely to be capped and are in Superior Court are 3.0% less likely to be disposed.

Other statistically significant results for cases likely to be capped (Column 1) show decreases in the probability of a disposition—a FELA case (4.3%) and having insurance (1.1%) or medical companies (6.0%) as defendants. An additional defendant decreases the likelihood of disposition by 0.7%. In contrast, cases are more likely to be disposed when the claim is categorized as "Other" (3.6%), the plaintiff is an insurance company (5.2%), and the defendant is a business (1.1%). An additional plaintiff increases the probability of disposition by 0.8%.

In cases likely to be uncapped (Column 2), the likelihood of disposition is decreased by 1.0% for an additional plaintiff and 2.0% for an additional defendant. Libel-slander cases are 5.6% more likely and defective product cases are 8.2% more likely to be disposed than intentional torts. Cases are more likely to be disposed when the plaintiff is an insurance firm (10.3%), or the defendant is a financial institution (11.1%) or the government (6.8%). A financial institution as a plaintiff reduces the likelihood of disposing cases likely to be uncapped by 37.2%.

[18] 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.

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% of them 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. An additional plaintiff reduces the likelihood of a trial by -0.6%. In Column 2, the coefficient 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% 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 where 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 0, thereby suggesting 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 an additional plaintiff (4.9%) and an additional percentage increase in the fraction of pro se plaintiffs (0.2%). An additional defendant increases the likelihood of settling by 1.2%.

Column 2 of Table 5 is notable because it is the only time in the 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 Polinksy (1997) contention that cases that seek punitive damages disproportionately settle, this evidence indicates that in cases likely to be uncapped, the decision to seek punitive damages actually *reduces* the likelihood to settle. 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 rather than 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 §9-2-61 (1999), the state gives the plaintiff the right to voluntarily dismiss his or her case and re-file it within six 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 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. The fraction of pro se plaintiffs reduces the likelihood of the outcome for both types of cases. Column 1 indicates that wrongful death cases are 3.4% less likely to be voluntarily dismissed without prejudice. Also, an additional plaintiff increases the probability of this option being exercised by 4.2%. This is not surprising as litigants in cases with multiple plaintiffs may discover that the plaintiffs have separate and perhaps divergent interests.

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 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 vs. bench trials. Jury and bench trials are rare phenomena, as they comprise 3.1% and 0.8% of all cases filed, respectively. In Column 1, the result for cases that seek punitive damages 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 (Column 2) the coefficient estimate on the request for punitive damages is positive, which is more consistent with the contention that plaintiffs seeking 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.

Pro se plaintiffs (in Column 1) and defendants (in both specifications) are less likely to have jury trials. In Column 2, Superior Court cases are 40.6% more likely to have a jury trial, and an additional defendant decreases by 11.4% 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 0.1% of the entire sample. Table 7 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 regression

are statistically significant. The first column shows that cases that 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 that made a request for punitives was given an award.

Both specifications indicate that there is a statistically significant greater chance of a punitive damage award in Superior than State court. The coefficient estimate in Column 2 implies that a bench trial increases the likelihood of being awarded punitive damages by 8.4%, consistent with Eisenberg, LaFountain, Ostrom, Rottman, and Wells (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 (e.g., 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 re-filed. 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.

Seeking punitive damages only affected 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 seeking punitive damages claims 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 as

compared to jury trials, at least in certain types of torts (Clermont and Eisenberg, 1992; Eaton and Talarico, 1996; Eaton et al., 2000; DeFrances and Litras, 1999). With regard to punitive damages in particular, Eaton et al., (2000) found that punitive damages were awarded in a higher percentage of Georgia bench trials than jury trials. Eisenberg, LaFountain, Ostrom, Rottman, and Wells (2002) reported similar findings using a national data set, but noted that the differences were not statistically significant. This study concluded 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 Vicusi (2002), employing a different methodology on the same data used by Eisenberg, LaFountain, Ostrom, Rottman, and Wells (2002), concluded that juries are more likely to make punitive damage awards and make larger awards than judges.

Regardless of how similar or different 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 involving uncapped punitive damages claims. As a general matter, bench trials occur 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 involving 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 as compared to 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 as to 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, et al. 2000).

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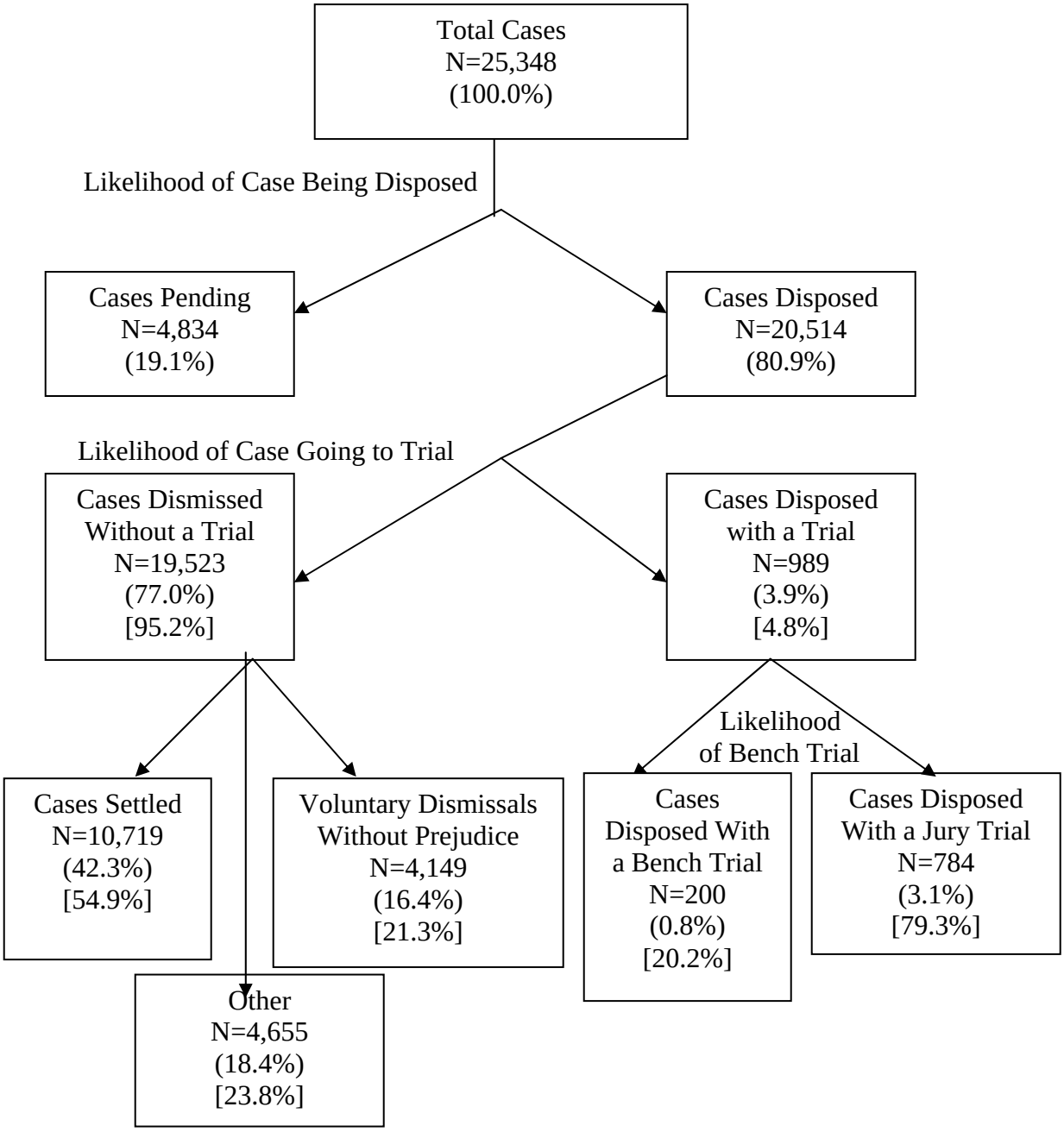
Figure 1
Processing of Tort Claims



Notes: 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.

Table 1
Summary Statistics

Variable	Number	Mean	Std. Dev.	Minimum	Maximum
Type of Disposition					
Pending	25,348	0.191	0.393	0	1
Disposed	25,348	0.809	0.393	0	1
Disposed Without a Trial	25,348	0.770	0.421	0	1
Disposed by Settlement	25,348	0.423	0.494	0	1
Disposed with the option to Relitigate	25,348	0.164	0.370	0	1
Disposed With a Trial	25,348	0.039	0.194	0	1
Disposed With a Bench Trial	25,348	0.008	0.088	0	1
Disposed With a Jury Trial	25,348	0.031	0.173	0	1
Type of Case					
Intentional Tort	25,348	0.093	0.290	0	1
Libel-Slander	25,348	0.010	0.100	0	1
Defective Product	25,348	0.027	0.162	0	1
Automobile	25,348	0.670	0.470	0	1
Premise Liability	25,348	0.107	0.309	0	1
Professional Malpractice	25,348	0.039	0.194	0	1
FELA	25,348	0.023	0.151	0	1
Dangerous Animal	25,348	0.004	0.064	0	1
Other	25,348	0.027	0.162	0	1
Case Information					
Superior Court	25,348	0.309	0.462	0	1
State Court	25,348	0.691	0.462	0	1
Request for Punitive Damages	25,348	0.147	0.354	0	1
Wrongful Death	25,348	0.025	0.157	0	1
Number of Plaintiffs	25,348	1.352	0.988	1	64
Number of Defendants	25,348	1.657	1.389	1	42
Percent of Plaintiffs Pro Se	25,348	1.698	13.850	0	100
Percent of Defendants Pro Se	25,348	2.656	23.901	0	100
Plaintiff Type					
Individual	25,348	0.859	0.348	0	1
Insurance	25,348	0.121	0.326	0	1
Business	25,348	0.024	0.155	0	1
Finance	25,348	0.00047	0.022	0	1
Medical	25,348	0.00063	0.025	0	1
Government	25,348	0.001	0.034	0	1
Other	25,348	0.002	0.043	0	1
Defendant Type					
Individual	25,348	0.767	0.423	0	1
Insurance	25,348	0.074	0.262	0	1
Business	25,348	0.324	0.468	0	1

Variable	Number	Mean	Std. Dev.	Minimum	Maximum
Finance	25,348	0.005	0.070	0	1
Medical	25,348	0.030	0.169	0	1
Government	25,348	0.028	0.164	0	1
Other	25,348	0.002	0.045	0	1
County					
Bibb	25,348	0.037	0.189	0	1
Cobb	25,348	0.232	0.422	0	1
Fulton	25,348	0.537	0.499	0	1
Gwinnet	25,348	0.187	0.390	0	1
Irwin	25,348	0.002	0.043	0	1
Oconee	25,348	0.005	0.071	0	1
Year					
1994	25,348	0.150	0.357	0	1
1995	25,348	0.279	0.448	0	1
1996	25,348	0.282	0.450	0	1
1997	25,348	0.290	0.454	0	1

Table 2
Comparing Cases in Which Punitive Damages are Sought with
Cases in Which No Punitive Damages are Sought

	Punitive Damages Sought	Punitive Damages Not Sought
Number of Filings	3,729	21,619
Percent of Filings	14.7	85.3
Percent Disposed	78.3	81.4
Percent Disposed at Trial	3.6	4.0
Percent Disposed Without a Trial	74.6	77.4
Percent Disposed With a Jury Trial	2.8	3.1
Percent Disposed With a Bench Trial	0.8	0.8
Percent Disposed by Settlement	39.4	42.8
Percent Disposed with Option to Relitigate	0.2	0.2

Note: There were 3,729 cases that sought punitive damages and 21,619 cases that did not seek punitive damages.

Table 3
Likelihood of a Case Being Disposed
Logit Regression

	(1) Cases Likely to Be Capped		(2) Cases Likely to Be Uncapped	
Variable	Coefficient Estimate	Standard Error	Variable	Coefficient Estimate
Case Information				
Request for Punitive Damages	-0.072	0.063	0.060	0.101
Superior Court	-0.166***	0.047	-0.178*	0.104
Wrongful Death	0.035	0.123	-0.199	0.270
Number of Plaintiffs	0.072***	0.025	-0.060*	0.032
Number of Defendants	-0.063***	0.017	-0.123***	0.023
Percent of Plaintiffs Pro Se	0.002	0.002	0.002	0.002
Percent of Defendants Pro Se	-0.001	0.001	0.001	0.002
Type of Case				
Libel-Slander	n/a	n/a	0.375**	0.181
Defective Product	n/a	n/a	0.544***	0.129
Premise Liability	-0.010	0.071	n/a	N/a
Professional Malpractice	-0.099	0.119	n/a	N/a
FELA	-0.348***	0.131	n/a	N/a
Dangerous Animal	-0.299	0.259	n/a	N/a
Other	0.367***	0.123	n/a	N/a
Plaintiff Type – individual omitted				
Insurance	0.542***	0.068	0.771***	0.265
Business	-0.019	0.148	-0.133	0.179
Finance	.	.	-1.656**	0.821
Medical	0.440	1.141	-0.129	1.084
Government	0.329	0.758	-0.555	1.676
Other	-0.297	0.569	-0.084	0.745
Defendant Type – individual omitted				
Insurance	-0.370***	0.072	-0.010	0.369
Business	0.097*	0.057	-0.159	0.114
Finance	-0.122	0.401	0.867**	0.389
Medical	-0.457***	0.144	0.364	0.352
Government	0.125	0.134	0.471*	0.282
Other	-0.380	0.380	.	.
Year				
1994	3.300***	0.118	2.945***	0.226
1995	2.189***	0.059	2.168***	0.134
1996	0.998***	0.043	1.178***	0.112
Intercept	0.572***	0.054	0.514***	0.147
County Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	22,054		3,280	

Notes: ***, **, and * designate significant at 0.01, 0.05 and .10 levels, respectively.

Automobile cases are omitted for cases likely to be capped. Intentional tort cases are omitted for cases likely to be uncapped.

n/a indicates that this variable was not used in the regression.

"." indicates that no estimate was made because this variable could be predicted by other variables.

Table 4
Likelihood of a Case Being Disposed With a Trial,
Conditioned on Being Disposed
Logit Regression

Variable	(1) Cases Likely to Be Capped Coefficient Estimate	Standard Error	(2) Cases Likely to Be Uncapped Coefficient Estimate	Standard Error
Case Information				
Request for Punitive Damages	-0.125	0.130	0.339	0.229
Superior Court	-0.036	0.087	-0.042	0.237
Wrongful Death	-0.493	0.348	-0.198	0.749
Number of Plaintiffs	-0.154**	0.063	-0.007	0.058
Number of Defendants	-0.087	0.053	-0.097	0.084
Percent of Plaintiffs Pro Se	0.001	0.003	0.003	0.004
Percent of Defendants Pro Se	0.001	0.001	0.002	0.002
Intercept	-2.960***	0.147	-2.674***	0.357
Type of Case Fixed Effects	Yes	Yes	Yes	Yes
Plaintiff Type Fixed Effects	Yes	Yes	Yes	Yes
Defendant Type Fixed Effects	Yes	Yes	Yes	Yes
County Fixed Effects	Yes	Yes	Yes	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	18,058		2,361	

Notes: See Notes to Table 3.

Table 5
Likelihood of a Case Being Settled,
Conditioned on Being Dismissed without a Trial
Logit Regression

Variable	(1) Cases Likely to Be Capped Coefficient Estimate	Standard Error	(2) Cases Likely to Be Uncapped Coefficient Estimate	Standard Error
Case Information				
Request for Punitive Damages	-0.014	0.055	-0.275***	0.095
Superior Court	-0.012	0.041	-0.289***	0.105
Wrongful Death	-0.130	0.108	-0.658**	0.269
Number of Plaintiffs	-0.202***	0.022	-0.013	0.039
Number of Defendants	0.048***	0.018	-0.035	0.026
Percent of Plaintiffs Pro Se	-0.009***	0.001	-0.016***	0.003
Percent of Defendants Pro Se	-0.001	0.001	-0.009**	0.004
Intercept	0.721***	0.055	-0.213***	0.159
Type of Case Fixed Effects	Yes	Yes	Yes	Yes
Plaintiff Type Fixed Effects	Yes	Yes	Yes	Yes
Defendant Type Fixed Effects	Yes	Yes	Yes	Yes
County Fixed Effects	Yes	Yes	Yes	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	17,219		2,296	

Notes: See Notes to Table 3.

Table 6
Likelihood of a Case Being Voluntarily Dismissed without Prejudice,
Conditioned on Being Dismissed without a Trial
Logit Regression

Variable	(1) Cases Likely to Be Capped Coefficient Estimate	Standard Error	(2) Cases Likely to Be Uncapped Variable	Coefficient Estimate
Case Information				
Request for Punitive Damages	-0.064	0.068	0.061	0.112
Superior Court	0.018	0.049	0.164	0.121
Wrongful Death	-0.223*	0.130	0.218	0.278
Number of Plaintiffs	0.260***	0.023	0.051	0.044
Number of Defendants	-0.014	0.021	0.052	0.026
Percent of Plaintiffs Pro Se	-0.005**	0.002	-0.006**	0.003
Percent of Defendants Pro Se	-0.002*	0.001	0.002	0.001
Intercept	-1.845***	0.065	-1.394***	0.179
Type of Case Fixed Effects	Yes	Yes	Yes	Yes
Plaintiff Type Fixed Effects	Yes	Yes	Yes	Yes
Defendant Type Fixed Effects	Yes	Yes	Yes	Yes
County Fixed Effects	Yes	Yes	Yes	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	17,215		2,301	

Notes: See Notes to Table 3.

Table 7
Likelihood of a Jury Trial,
Conditioned on Having a Trial
Logit Regression

Variable	(1) Cases Likely to Be Capped Coefficient Estimate	Standard Error	(2) Cases Likely to Be Uncapped Coefficient Estimate	Standard Error
Case Information				
Request for Punitive Damages	-0.703	0.471	0.474	0.663
Superior Court	0.608	0.443	1.839**	0.750
Wrongful Death	.	.	.	.
Number of Plaintiffs	0.146	0.334	0.234	0.379
Number of Defendants	-0.120	0.226	-0.471*	0.267
Percent of Plaintiffs Pro Se	-0.032***	0.009	-0.010	0.020
Percent of Defendants Pro Se	-0.038***	0.011	-0.038***	0.013
Intercept	3.213***	0.713	-0.010	0.936
Type of Case Fixed Effects	Yes	Yes	Yes	Yes
Plaintiff Type Fixed Effects	Yes	Yes	Yes	Yes
Defendant Type Fixed Effects	Yes	Yes	Yes	Yes
County Fixed Effects	Yes	Yes	Yes	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	857		102	

Notes: See Notes to Table 3.

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

Variable	(1) Cases Likely to Be Capped Coefficient Estimate	Standard Error	(2) Cases Likely to Be Uncapped Coefficient Estimate	Standard Error
Case Information				
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	-0.590	1.006
Percent of Plaintiffs Pro Se	.	.	0.056	.
Percent of Defendants Pro Se	.	.	.	.
Intercept	-50.401	.	-88.400***	5.380
Type of Case Fixed Effects	Yes	Yes	Yes	Yes
Plaintiff Type Fixed Effects	Yes	Yes	Yes	Yes
Defendant Type Fixed Effects	Yes	Yes	Yes	Yes
County Fixed Effects	Yes	Yes	Yes	Yes
Time Fixed Effects	Yes	Yes	Yes	Yes
Sample Size	329		25	

Notes: See Notes to Table 3.