

Gender Analysis in Sports Litigation Give Her What She is Worth

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INTRODUCTION

How much value should be placed on a girl's lost limb compared with that of a boy? Which gender is worth more dead than alive? Do women receive higher emotional distress awards in sports injury cases? If there is a disproportionality between gender based awards, could that disparity stem from men traditionally playing more potentially injurious sports such as football or simply because men are still considered the primary breadwinners by many juries? These represent some key questions which have been raised concerning the current state of our judicial system and the manner in which damages are awarded in personal injury cases. One key concern associated with damages awards has been pain-and-suffering, a form of damages which represents real damages, but is impossible to accurately quantify (Gifis, 1984). The Department of Justice's Tort Policy Working Group recommended in 1986 that caps be placed on pain-and-suffering awards as they are subjective, unpredictable, and substantial (Geistfeld, 1995). Pain-and-suffering has gained significant attention as it covers a wide range of intangible injuries such as fright, grief, anxiety, indignity and nervousness (Geistfeld, 1995). However, the questions still remain: do women suffer more than men? And if women suffer more grief, why aren't they compensated more than men?

The following study was undertaken to analyze whether damages awards in sports litigation cases are proportionally equal between genders. This article first examines past research concerning jury awards and gender. Next, survey results will be compared to past research to

determine if women are undercompensated in the sports litigation process. Lastly, the article concludes with an analysis of the implication the research data has toward possible future areas of inquiry.

Past Research

A study was undertaken to analyze the sports law case opinions from appellate courts which were officially published in 1995 (Fried, 1996). Of the 233 cases which were officially reported, 55% of those cases involved tort based claims such as negligent supervision, failure to properly maintain a facility and related claims (Fried, 1996). The next largest category, representing 11.2% of the claims, was employment related disputes (Fried, 1996). Based on the fact that tort cases represent a significant portion of all sports related litigation. No additional research was uncovered analyzing jury verdicts in sports related claims. However, a significant amount of research has been published on nonvehicular injury cases which would likely have included some sports related claims.

a) Cases going to trial

A common misconception exists among the general population that a large percentage of cases are tried. This opinion might be fostered by the court room maneuverings as seen in fictional and non-fictional television and movie portrayals. In fact, in one study, only 2.9% of all cases filed in state and federal court go to trial and half of these cases are brought before a judge sitting without a jury (Gross & Syverud, 1996, Galanter & Cahill, 1994). Another analysis of 1649 federal and state court cases in five locations concluded that seven percent of cases were finally disposed of through trials. How-

ever, another 24% were resolved through some other adjudication form such as arbitration, mediation, summary adjudication, dismissals on the merits, or similar pre-trial motion which helped lead to settlement or early final adjudication (Kritzer, 1986).

b) Types of cases going to trial

A significant study was undertaken by Gross and Syverud analyzing California state jury verdicts in 1985-86 and then again in 1990-91. Over 3190 cases went to trial in 1985-86 and California courts tried 3,644 cases in 1990-91 (Gross & Syverud, 1996). Over 70 percent of all analyzed cases in the study represented personal injury claims (Gross & Syverud, 1996). Gross and Syverud critically examined a portion of these cases. In 1985-86, 63.3% of the 523 cases researched involved physical injury and 9.4% involved death. In 1990-91, 70.5% of the 359 cases analyzed involved physical injuries and 8.4% involved death (Gross & Syverud, 1996).

c) Defendant type

Gross and Syverud also examined defendant classification. The defendant type in nonvehicular personal injury in 1985-85 was broken down as follows: large business (53%), individuals (13%), small business (12%) and the government (21%) (Gross & Syverud, 1996). By contrast, in 1990-91 the number of cases against small business and government entities significantly increased. The defendant type in nonvehicular personal injury in 1990-91 is broken down as follows: large business (37%), individuals (14%), small business (20%), government (29%) (Gross & Syverud, 1996). While Gross and Syverud were not able to pinpoint the exact cause behind large businesses facing significantly less suits, it could be that developing stronger risk management awareness is helping to reduce claims.

d) Pre-trial settlement

Insurance carriers often try to resolve disputes before trial through techniques such as summary adjudication, alternative dispute resolution techniques or settlement. Settlement represents an attractive alternative to trials as it potentially reduces legal fees and avoids the uncertainty of letting a jury determine guilt and consequential damages. Once cases went to

trial, Gross and Syverud's research showed that the parties were often polarized in their positions. The large void between offers and demands highlights why many cases went to trial. Overall, plaintiffs in 1985-86 asked for a mean \$280,000 and \$494,000 in 1990-91. Defendants only offered, on average, \$44,000 in 1985-86 and \$73,000 in 1990-91 (Gross & Syverud, 1996). The mean difference between the demand and offer in nonvehicular negligence cases was \$210,000 in 1985-86 and \$442,000 in 1990-91 (Gross & Syverud, 1996). This large chasm was often a block to settlement options which made mediation and other alternative dispute resolution techniques less effective options. If the chasm between the parties could not be reduced and finally resolved, the sole option for the parties was a trial.

f) Trial results

Gross and Syverud's research showed that plaintiffs who went to trial usually would have been better off settling if they did not have an air tight case. Plaintiffs are less likely to prevail in negligence claims compared with all claims or just commercial claims. In nonvehicular negligence cases in 1985-86, the plaintiff won only 43% of the time, compared with plaintiffs winning 87% of analyzed commercial cases and 51% of all examined cases (Gross & Syverud, 1996). The numbers for plaintiffs looked even more bleak in 1990-91 where they only prevailed in 37% of their nonvehicular cases, 61% of their commercial cases and 50% of all cases (Gross & Syverud, 1996). The 6% decline in nonvehicular negligence cases could be the result of plaintiffs trying weaker cases or juries being less sympathetic to marginal cases.

g) Damage awards

Jury verdicts showed significant increases in damages awarded by juries. The nonvehicular negligence cases in the Gross study resulted in a mean damages award of \$127,000 in 1985-86 and \$541,000 in 1990-91 (Gross & Syverud, 1996). These results include averaging both plaintiff victories and defeats. These numbers increased dramatically when only the plaintiff jury victories were averaged. Of the 519 jury verdicts in 1985-86, only 266 cases were resolved in the plaintiffs' favor. Similarly, in 1990-

91, 179 of the 357 analyzed cases resulted in plaintiff verdicts. The mean "plaintiff only" jury verdict was \$299,000 in 1985-86 and increased to \$1,475,000 in 1990-91 (Gross & Syverud, 1996). The Gross & Syverud statistics have been replicated in other studies where mean increases in jury awards were also noted (Galanter, 1996). The median jury award for three major litigation areas has significantly increased between 1995 and 1996. In a recent report from Jury Verdict Research, the median jury awards for product liability cases increased 44% during the one year period from \$536,149 to \$773,500 (Stat, 1997). Median wrongful death awards rose 28% from \$737,500 in 1995 to \$941,000 in 1996 (Stat, 1997).

Extremely large awards can significantly affect the manner in which damages awards are examined. The mean value of male jury awards could be significantly increased by one or two paralysis cases. However, if these exceptionally large awards are removed from the analysis, the resulting mean value could be significantly reduced. The Gross and Syverud research showed that a few cases comprise the largest percentage of jury awards. In 1985-86, half the damages were awarded in 3% of the cases. By 1990-91, 50% of the damages were awarded in one percent of the cases (Gross & Syverud, 1996). In fact, the two largest cases in 1990-91 accounted for 46% of all damages. If these two cases are removed from the mean analysis, the mean verdict in 1990-91 drops from \$490,000 to \$266,000 (Gross & Syverud, 1996). The largest damages awards were handed down in commercial cases. Only one of the top ten awards in 1985-86 involved a personal injury matter (Gross & Syverud, 1996).

Significant research has been undertaken to analyze jury award trends. While significant research has been published, numerous studies in this area are over seven years old. The Rand Corporation Institute for Civil Justice conducted a major research project analyzing jury verdicts from Cook County, Illinois and San Francisco, California between 1980 and 1984. The research results suggested that low-stakes suits such as auto accidents and intentional torts increased slightly during this four year period and most

plaintiff only received modest awards (Greene, 1991). Additionally, the research demonstrated that while jury awards increased substantially in some cases, the median award did not increase. (Greene, 1991). The Rand research also concluded that less than six percent (3.5% in Cook County) of all damages awards exceeded one million dollars. While the overall number of cases resulting in million dollar verdicts is relatively small, the public tends to think the number of million dollar cases is much greater (Greene, 1991). In a 1986 limited study, potential jurors in Washington were asked how often plaintiffs were awarded more than one million dollars. The mean response was that 15% of all plaintiff cases resulted in a verdict in excess of one million dollars. The median response was five percent. Eleven percent of the jurors estimated that over 50 percent of awards are in excess of one million dollars. Additionally, 40 percent thought that seven to forty-nine percent of claims resulted in million dollar plus verdicts (Greene, 1991).

While jury verdicts as a whole have increased over the past several decades, another constant has also developed in jury awards. Plaintiffs with smaller injuries or losses tend to be awarded more than their economic losses while individuals with serious injuries are often awarded less than their economic losses (Galanter, 1996). Economic losses refer to specific quantifiable losses such as lost wages or medical bills. Galanter analyzed a 1977 survey of 53,164 automobile personal injury claims paid by various insurers. Plaintiffs with economic losses up to \$2,500 received payment of over \$2 for every \$1 of economic loss. However, the more serious injuries which produced economic losses over \$25,000 only received \$.79 for every \$1 (Galanter, 1996). In a subsequent 1985 study, the results indicated that prevailing plaintiffs received \$1.36 in tax-free payments for every dollar of past and estimated future economic losses. After taking out the traditional one-third of an award to compensate attorneys, plaintiffs' net returns were somewhat less than their economic losses (Galanter, 1996). These statistics help show that while average awards are increasing, plaintiffs with serious injuries either receive significant awards from sympathetic juries or are

unable to cover all their expenses after receiving smaller awards from conservative juries. As highlighted above, very few cases have extremely large awards. Thus, most cases involving more serious injuries are receiving awards which might not cover actual expenses. In contrast, relatively smaller injuries receive a greater percentage of their expenses covered possibly due to sympathetic juries thinking that they are not significantly punishing defendants with small awards or that they are not hurting anyone since wealthy insurance companies will pay the awards.

Declining injury awards have been fostered by insurance companies who overcompensate small injuries as they are willing to provide appropriate compensation for pain-and-suffering to help avoid administrative and litigation oriented costs. On the flip side, insurers tend to undercompensate larger losses (Viscusi, 1989). Nonetheless, injury severity directly influences the level of noneconomic damages and the more severe an injury, the larger the expected recovery. (Galanter, 1996). With exceptionally severe cases involving egregious conduct, courts can award punitive damages to punish the guilty defendant.

The primary conclusion reached through reviewing past research was that most of the money awarded is concentrated in several large cases, plaintiffs often lose at personal injury trials and plaintiffs are much better off settling cases and jury verdicts are rarely compromises. Jury verdicts are not compromises as there is always a clear winner and loser after a jury decision (Gross, 1996). These conclusions can have a profound effect on women as many consider gender and age as two of the most important variables of all the variables affecting jury decisions (Leebron, 1989).

Negative Impact on Women

Jury biases based on gender have been well documented. Women traditionally receive less from juries for lost wages, but receive larger jury awards for facial disfigurement, injuries that affect physical attractiveness and injuries that affect a woman's marriage potential. In comparison, men-the traditional bread winner in many jurors' eyes-receive larger lost wages awards and

larger awards for injuries that affect their strength or ability to perform manual labor. These juror biases have been identified by at least seven state appointed task forces analyzing gender bias in courts (Swent, 1996; Report, 1997; Commission, 1996; Chamallas, 1994).

Further research has highlighted that nearly half of all punitive damages awards for women stemmed from injuries caused by household consumer products and dangerously defective drugs or medical devices (Koenig and Rustad, 1995). In contrast, male plaintiffs received punitive damages awards primarily from accidents involving industrial and farm machinery, asbestos, chemical containers and vehicle cases (Koenig and Rustad, 1995). While it is not unusual to see differences between jury awards based on the plaintiff's gender, men are not always prevailing over women in all award categories. In one study from the late 1980s, a regression analysis demonstrated that male victims receive less in damages than females (Leebron, 1989). However, different results were reached in a study by Jury Verdicts Research, Inc., which showed that women in all age categories received significantly lower mean and median awards than men except for female plaintiffs between the age of 60 to 64 and women over age 80 (Chamallas, 1994). Disparities were noted in all other age categories. Thus, a 20-29 year-old woman received an average award of \$76,117 while men in the same age group were awarded over 300% more with awards averaging \$236,869 (Chamallas, 1994).

Jurors cannot bear total blame for the traditionally lower awards given to women. Rules and laws that are apparently gender neutral might have burdened women (Ruda, 1993). Ruda highlights an example of this potential bias in the formation of such legal standards as the "reasonable person" standard which started as the "reasonable man" standard (Ruda, 1993). Ruda also highlights the fact that women traditionally received low monetary compensation for the loss of their "homemaking" services compared with the priority the law places on the wage-earner (Ruda, 1993). However, this bias also represents a problem for men as it reduces the value of a wrongful death claim as a wife's

service could be significantly undervalued (Ruda, 1993). This fact was reinforced by a study in Washington of wrongful death cases between 1984 and 1988 (Chamallas, 1994). The real difference in valuing earnings between men and women was demonstrated by the mean damage award for a male decedent being \$332,166 versus a mean award of \$214,923 for a female decedent (Chamallas, 1994).

While jury and trial statistics represent a strong indication as to where the legal system is currently headed, they do not provide a complete picture. For example, one concern identified in past research relates to the negative impact tort reform might have on women, a group historically burdened by the tort system (Ruda, 1993). This is especially true in relation to emotional injuries, which have resulted in a marginalization of women's claims (Ruda, 1993). Traditionally, the tort system valued property more than emotional security, and since men were the traditional property owners, they were provided greater protection than women who were considered the traditional assignees of emotional work (Chamallas & Kerber, 1990). This represents a significant concern if tort reform limits certain damages. Women would tend to be the group that would suffer the greatest disparity from a cap on emotional distress damages as women bring a greater percentage of emotional injury claims as compared with men (Ruda, 1993).

Additionally, juries could be confused by the requirement to make a plaintiff "whole" which means different things to different people. Thus, as women are working and living longer, it takes more money to make them whole (Galanter, 1996). Furthermore, additional increased medical and rehabilitation services have helped increase the costs for making one whole. This concept was verified in a three decade analysis where awards were found to have increased due to a combination of factors including inflation, increases in real income, real medical costs, and life expectancy (Galanter, 1996). Therefore, award disparity between men and women can occur from non-discriminatory conditions such as the different value jurors could place on any given injury or economic loss, regardless of the

plaintiff's gender.

Jury Decision Making

Greene's research in Washington helped highlight potential juror misconceptions concerning what might be an appropriate jury award. Jury awards are often influenced by a "sympathetic moral hazard that juries face when making awards on an ad hoc basis and spending money that is not their own" (Bovbjerg, 1989). A 1984 study of jurors after deciding a product liability case indicated they used a method of "guesstimation" to determine pain-and-suffering damages (Geistfeld, 1995). Juries might also try to apportion damages on a percentage basis. Thus, one study concluded that the injury severity explains about forty percent of the variation in pain-and-suffering awards (Bovbjerg, 1989). The remaining portion might be comprised of such subjective components as race, gender, socioeconomic status, physical appearance and other non-suit-related factors (Geistfeld, 1995). The unpredictability associated with jury decisions was highlighted in one study which concluded that appellate judges were three times as likely as lower level judges to find damages awarded by juries to be excessive (Leebron, 1989). In the same study, Leebron concluded that when appellate judges find an award excessive, they normally reduce the award by fifty percent (Leebron, 1989).

One approach which has been effectively utilized as a settlement tool in determining pain and suffering damages is to multiply special or economic damages (medical expenses, lost wages, future wages, etc...) by a specific number. Various research has indicated that a "rule of thumb," to be used during the settlement process is two to five times, two to ten times, and three to seven times special damages (Geistfeld, 1995). While juries often use guesstimation and multipliers together with their bias and predisposition, there is little proof that pain-and-suffering is significantly out of control. This conclusion is supported by Galanter's research, discussed above. Furthermore, a prominent actuarial firm has analyzed the pain-and-suffering returns in relation to actual economic losses in 1987, 1991 and 1994. Instead of finding a two, three, five, seven or ten to one ratio,

the research showed that in 1987 the ratio of pain-and-suffering damages to economic damages was one to one (Galanter, 1996). The numbers became bleaker for plaintiffs in the 1990s. The 1991 survey concluded that pain-and-suffering had dropped to \$0.95 for each dollar received for economic loss. The 1994 survey showed an additional three cent drop to \$0.92 for each \$1 in economic loss (Galanter, 1996). Thus, it appears that pain and suffering damages have corrected themselves without legislative intervention. While the research above did not focus on gender, guesstimation rather than prejudice or discrimination could be shaping jury awards. Nonetheless, efforts to help reduce guesstimation can also result in lower jury awards for women.

Judge Jack Weinstein, a very respected jurist from the Eastern District of New York, recently proposed a statistical model to help determine if a jury award for non-economic damages is excessive (Higgins, 1997). The approach requires judges to examine similar cases grouped together in a pool and then reduce any award that strays more than two standard deviations away from the mean (Higgins, 1997). Judge Weinstein utilized this method when facing a trial for repetitive-stress injuries from computer keyboards. The jury awarded \$1.8 million in economic damages and another \$3.5 million for pain and suffering. The judge found 27 cases with similar injuries and the pain and suffering awards that fell within two standard deviations from the mean were around \$2 million. Thus, the judge concluded that if he did not send the case back down to the lower court for other reasons, he would have reduced the pain and suffering damages by \$1.5 million so the damages would fall within the two standard deviations guideline (Higgins, 1997).

Even with all the faults attributed to juries and their final damages awards, most legal scholars have concluded that juries are highly regarded decision makers who make decisions in line with the decisions most judges would make under the same factual predicates (Galanter, 1996). The following survey was undertaken to determine if in fact juries are awarding lower damages awards to female plaintiffs or if female

plaintiffs were receiving lower settlements than men in sports and fitness litigation cases.

METHOD

The data for the survey was derived from reading From the Gym to the Jury, (Barron & Appenzeller, Ed., 1989-1997) which is published by nationally recognized sports law experts Ron Barron, Esq. and Dr. Herb Appenzeller. The newsletter has been published for over eight years. Material contained within the newsletter is culled from a national press clipping service which scans major newspapers and the authors receive all cases highlighting sports related litigation. All cases in the newsletter were read to determine if a jury verdict for a plaintiff was reached or if a settlement was reached between the parties. In an eight year span, approximately 281 settlements, trials, arbitrations, and related cases with exact awards or settlements were republished in the newsletter. Some cases were reported several times based upon one party appealing a decision or the parties reaching a settlement to avoid an appeal. In such cases, only the last article addressing the case was included in the survey. Numerous additional cases which involved defense verdicts or cases overturned on appeal were not included in the sample.

Positive Aspects of Data Source

The positive aspects of the data source, derived from 1989 through 1997 issues of the publication From the Gym to the Jury, include:

- the newsletter is highly regarded in the industry with a subscription base of approximately 2,000 subscribers,
- the newsletter is the only regularly published sports litigation-only newsletter throughout the eight year period,
- the reported cases represent a national sample population, and
- the newsletter's authors tried to provide as much factual information as possible with the case summaries.

Limitations Inherent in Data Source

Even though scientific validity was a key concern, it became impossible to quantify statistical relevance for the analyzed data and to

develop a margin of error appropriate for the study. Too many variables exist in the litigation process including: whether the plaintiff or defendant(s) make compelling witnesses, the judge, the jury, the attorneys, the specific facts, how well a treating physician handled a case, the juxtaposition of various state and/or federal laws, and a host of other variables. The data source was sent to one sports insurance industry executive for analysis concerning its significance and value as an analytical tool. That industry expert responded as follows:

- [I]’m very pleased with your use of Appenzeller’s anecdotes...In my opinion,
- the anecdotes he and Ron (Baron) assemble are indeed representative of the
- issues being faced in sports and recreation. Whether they are statistically
- representative of the cost and frequency of occurrences is not known....The
- vagaries and “multivariate environment” associated with a given case simply
- do not respond to generalizations and statistical inferences (K. Clarke, personal communication, September 23, 1997).

The primary concern with the analyzed data relates to the limited number of cases which are ever published, reported or otherwise disseminated. Limited distribution is often the result of confidentiality clauses incorporated into settlement agreements or releases which prohibit any party from commenting on the final settlement amount. Other cases might be too small, in dollar value, to warrant media attention as they are not newsworthy (Stier, 1994). The newsclipping service might have inadvertently excluded cases thinking they were not sports law cases. Such exclusions could include employee termination for a teacher/coach, crime in a stadium parking lot or business law disputes involving a sports franchise copyright as possible concerns which might have been excluded from the potential sample population. Other cases might have been reported, but are later overturned on appeal. Likewise, some cases might have an established jury award, but the plaintiff is willing to reduce the awarded amount in exchange for immediate payment and/or a promise not to appeal the case which could tie-up

the funds for several more years.

An additional concern relates to partial information being provided in certain cases. Since there was no standardized reporting form, some cases might not have identified a plaintiff’s age, gender, injury type, whether contributory negligence was involved, whether punitive damages were included in the reported awards, whether insurance coverage was available for the defendants, etc....

Furthermore, it could be assumed that male athletes are more likely to be covered by the media if they are a star local athlete or professional athlete compared with female athletes who might sue after an injury. This assumption could possibly be based on the amount of media coverage traditionally afforded to major male sports versus major female sports. However, this assumption is impossible to test with this data as the survey found very few cases involving specifically identified college or professional athletes.

Another possible limitation inherent in the data was the failure to distinguish between spectator and participant liability concerns. It could be assumed that participant awards are higher due to the significant opportunity for greater injuries such as paraplegia, brain injury and death. In contrast, these injuries are rarely seen in spectator related cases.

Award Analysis

The 281 analyzed cases came from 40 different states and the District of Columbia. However, only 27 states had more than three (3) cases in the sample population. New York had the highest number of cases with 35 cases, followed by California and Florida each with 28 cases.

The research highlighted 64 cases with awards over \$1 million. This represents 22.77% of all cases analyzed. California had the highest number of large cases with 10 cases receiving awards or settlements over \$1 million. California was followed by Texas with six cases, Pennsylvania and New York each with five cases and both New Jersey and Illinois with three cases each. The 64 million dollar cases included 21 settlements and 42 jury awards. The million dollar cases were primarily concentrated in three injury categories. Those categories include 21

paralysis cases, 18 wrongful death cases and 6 brain injury cases. The highest award of \$24 million was in 1995 for a brain injury caused during a drowning accident in Pennsylvania. The highest settlement, at \$15 million, was reached in 1992 for emotional injuries received from a fall at a playground in North Carolina.

The million dollar cases were dominated by men and boys. Males comprised 54 of the plaintiffs in the 64 million dollar cases-representing 27.7% of all male cases. Women lagged significantly behind men in this group as only ten cases (13% of all female cases) involved million dollar verdicts. Thus, men were five as likely to receive million dollar verdicts compared with women. However, the average difference evened out when verdicts over \$5 million were analyzed.

Within the 64 million dollar cases were 18 cases with verdicts or settlement amount over \$5 million. This represents 6.4% of all 281 analyzed cases. Only two of these awards were obtained through settlement while the remaining 16 awards were handed down by juries. Pennsylvania and New York had the highest number of cases with awards over \$5 million, with each state having three such awards in the survey. Five women had verdicts or settlements over \$5 million which represented 6.5% of all female cases. Men were only slightly higher with 13 cases representing 6.6% of all male cases.

Only three million dollar cases were reported in 1989. In 1990, seven cases were reported, five cases in 1991, six cases in 1992, 10 cases in 1993, 18 cases in 1994, 10 cases in 1995 and only four cases in 1996. The most common cause of injuries that received over \$1 million in awards included swimming, diving and football. Drowning cases produced 17 million dollar awards involving 13 deaths and 4 brain injuries. Diving cases represented the next major injury category with 11 cases. These 11 cases were all associated with divers hitting the bottom of a pool or lake. These dives resulted in one death and 10 paralysis victims. In diving and swimming cases with verdicts over \$1 million, women had four drowning deaths, four paralysis cases and three brain injury cases. The last major injury category raking in million dol-

lar verdicts involved tackling during football games which represents six of the seven football cases and all these cases involved male plaintiffs..

While over 22% of the analyzed cases had million dollar awards, 192 (68.3%) cases involved awards equal to or less than \$500,000. Furthermore, 125 cases (44.5%) had awards equal to or less than \$100,000. Over 43% of all male cases (84 cases) involved awards or settlements equal to or less than \$100,000. In contrast, over 53% of all female cases (41 cases) reported awards or settlements equal to or less than \$100,000. Thus, women had a higher proportion of lower verdicts and settlements compared with men in this study. This result supports Ruda's contention that women receive lower recoveries than men.

Injury award comparison

The survey produced 272 cases which specifically identified the plaintiff's gender. Approximately 72% of the cases involved male plaintiffs (195 cases) while females were only involved in 77 cases. The average award/settlement in the 272 cases was \$1,159,573 as highlighted in Table "A". The average male award was \$1,278,513 while the average female award was only \$858,362. Thus, women on average were awarded or settled for \$420,151 less than men.

Injury type represents a significant comparison criterion analyzed through the survey data. As might be anticipated, both men and women received relatively similar awards for minor injuries such as injuries to ankles, hands and the head. Significantly larger awards were provided for significant injuries such as brain, emotional, and wrongful death injuries. Table "B" highlights the average value accorded to certain injuries and the number of cases in which such an injury was reported. Five cases were reported involving injured fingers which received the lowest (settlement or verdict) award at \$9,200 per case. The highest awards were found in the 16 brain injury cases that averaged over \$4 million each. Paralysis was close behind brain injuries with 31 cases averaging over \$3.9 million each. The survey results demonstrated that a person is worth more alive than dead as the 40 wrongful death cases averaged only \$1,264,051-which

is only the sixth highest damages category. Brain damage, paralysis, emotional distress, and amputations all garnered larger amounts compared with death cases.

With the most severe injuries, there exists a significant difference between awards for men and women. Men on average were awarded \$2,345,634 for the nine brain injury cases analyzed. Women who received brain injuries in five cases were only awarded \$169,893—representing a disparity of over \$2 million. A similar disparity existed for wrongful death cases. Male victims were involved in 35 death cases and their heirs recovered on average \$1,270,265. Only three female victims were the subject of wrongful death cases and their heirs were only awarded on average \$111,714. The remaining wrongful death cases (2 cases) did not identify the plaintiff's gender. These figures are set forth in Table "C." Similar to the disparity with wrongful death verdicts, emotional and shoulder injuries varied significantly between Table "B" and "C" based on several large cases which did not identify plaintiff's gender.

Not all gender differences have a negative impact on women. The largest disparity between male and female plaintiffs was evidenced in the emotional injury cases which included Title IX, abuse, and sexual harassment cases. Five cases involving female plaintiffs each averaged approximately \$2.8 million. The six male victims claiming emotional distress only averaged \$125,166 which is over \$2.6 million less than what the females were awarded for the same injuries.

The greatest disparity evidenced by the research data focused on female awards involving minors and adults. On average, a female minor's average recovery was \$1,885,431. However, female adults only received a fraction of this amount—averaging only \$392,789. The disparity between adult and minor males was less than \$100,000 and was not significant in comparison with the numbers for female plaintiffs. Table "D" compares minor and adult awards between males and females. The research data did not establish a reason why such a disparity exists between females. The difference is especially acute when adult women have received

significant awards in emotional distress cases, but not in physical injury cases. Thus, an adult female's physical injury claims would even be lower than the \$392,789 average.

The survey results showed that while a significant disparity exists between male and female awards and settlements, the past several years have demonstrated a shift toward higher awards for women. The 24 cases involving men in 1990, averaged \$1,457,766. By 1996, the 11 cases involving men only averaged \$705,560. This represents a decline of over 52 percent. Conversely, females have seen their average award skyrocket by over 380 percent. The average female award in 9 cases during 1990 was \$355,972. By 1996, 5 cases involving women averaged \$1,358,886. While the average female award has increased, Table "E" shows that awards can vary in any given year and it is hard to establish a clear trend which cannot be reversed in any given year by several large verdicts or settlements. Furthermore, any yearly increase could be significantly affected by several major injury cases which might occur in one year and not another.

Cases involving contributory negligence were reported in 44 analyzed cases. The amount of contributory negligence established by juries ranged from only 4 % to over 90%. The mode percentage for contributory negligence was 50 percent. Women had their awards reduced 11 times by contributory negligence producing a 14% rate for contributory negligence being applied to all female cases. In contrast, 33 of the men's awards (17% of the men's cases) were reduced by contributory negligence. The small percentage difference could be viewed as a sign that jurors feel that men and women can equally foresee risks in sports participation. Furthermore, the results could show that juries are not imposing on men a higher standard of care simply because men have historically had greater opportunities to participate in sports.

To help more accurately analyze the data, men and women were divided by age categories to highlight any potential trends. The age categories were developed to highlight several sports-specific milestones such as pre-high school, high school, college and post college age

Table F

Average Awards/Settlements Based on Gender

Gender	Age Group	Jury Awards	Settlements
M	1-12	\$750,136 (10)	\$2,097,708 (12)
F	5-12	\$3,701,550 (9)	\$350,318 (6)
M	13-19	\$1,871,802 (26)	\$1,700,264 (11)
F	14-18	\$199,224 (5)	\$1,090,667 (3)
M	20-25	\$586,115 (8)	\$2,109,333 (3)
F	20-25	\$1,1385,510 (4)	\$150,000 (1)
M	26-35	\$1,933,409 (9)	\$170,375 (4)
F	26-35	\$263,049 (5)	\$196,500 (2)
M	37-54	\$687,358 (9)	\$925,000 (1)
F	38-48	\$487,000 (1)	\$25,000 (1)
M	59-71	\$2,156,410 (5)	\$62,000 (1)
F	57-67	\$63,140 (2)	\$50,000 (2)

involved swimming, with six swimming accidents resulting in five drownings (3 deaths and 2 brain injuries). Young girls also suffered several falls which helped produce five injured arms.

Nine jury verdicts produced an average award of \$3,701,560. This figure is significantly inflated by a \$24 million verdict. If the \$24 million verdict is removed from the analysis, the average award drops to

categories.

The average awards and settlements for both genders and all age categories are highlighted below.

These figures can be broken down even further to analyze the average award versus settlement between the genders. The average jury award for the 67 male jury verdicts analyzed (highlighted above by their age categories) was \$1,421,285 which was over \$250,000 less than the average award for the 25 verdicts for women which averaged \$1,671,225. Settlements represented a completely different picture. Men had 32 settlements which averaged \$1,620,996 while the 15 cases with female plaintiffs only settled on average for \$402,794. This represents a difference greater than \$1.2 million. The settlements involving men primarily involved children as 23 of the 32 settled cases involved male plaintiffs under age 20.

Women

5-12 Age Group

Fifteen cases were reported for girls between the age of five through 12. None of the cases had a jury verdict reduced by a contributory negligence finding. The most frequently cited age for cases within this group were 5-year-olds and 10-year-olds who were each involved in four cases. Landowners were the most frequently cited defendants (6 cases) followed by government entities (4) and schools (3). The primary activity in which the girls were injured

\$1,034,893. The average settlement for the six cases which settled was only \$350,318.

14-18 Age Group

Eight cases were identified in the 14-18-year-old age group. Only one of these cases involved a paralysis claim and another case involved a brain injury. No deaths were reported in this age group. Four cases were brought against schools. Three of the five jury awards in this age category involved successful contributory negligence defenses.

20-25 Age Group

Only five cases fell into this category with four of those cases being decided by juries. One jury decided that a plaintiff was contributorily negligent. The jury verdict average in this age group is significantly distorted by a \$5.1 million brain injury case. Without this case, the average jury verdict dropped by about \$1 million.

26-35 Age Group

Seven cases fell into this age grouping. Five of the cases were decided by juries and these juries found contributory negligence in three of these cases. The most common injury identified in this age group were leg injuries that were reported in four cases, with four falls also being reported.

57-67 Age Group

The 38-48 age group is not analyzed as it only had three cases, one each involving a jury, settlement and arbitration decisions. Four cases were reported in the 57-67 age group. All four

cases were trip and/or slip and fall cases. Due to the relative minor injuries associated with these trip and fall cases, the average jury award or settlement averaged less than \$65,000. The two jury cases each applied contributory negligence to reduce the awards.

Miscellaneous

Another 36 cases identified the plaintiff as being female, but did not mention the plaintiff's age. Five of these cases involved emotional distress claims that averaged over \$3.6 million for four jury awards, and one settlement was resolved for only \$160,750. The highest jury verdict was for \$7.65 million. The cases included four universities and one school as defendants.

The miscellaneous female cases included the following activity related accidents: skiing (6 cases), facility (5), swimming (4), skating (3), baseball (2), and basketball (2). Cases involved falls, six cases involved accidents and four cases entailed collisions. The 36 cases included one death, one brain injury case and three paralysis cases. There was an almost equal number of cases decided by a jury (16) and settlement (17), followed by two bench decisions and one arbitration.

Men

1-12 Age Group

Boys under 12 were involved in 23 reported cases. A major killer for young boys is swimming. Boys between 1 and 6 years of age were identified in five cases with four cases involving death and in three cases the death occurred in swimming related cases. In total, 10 cases in this age group involved swimming. In total, the age group included nine deaths as well as, four head, one brain and one paralysis injury claim. The most frequently named defendants were landowners (7 cases), government (5), schools (4), and associations (3). Ten cases went to juries (two juries found contributory negligence), 12 cases were settled and one case went to arbitration. The average jury award was \$750,000. The average settlement was just over \$2 million, but this figure was significantly inflated by a \$15 million settlement. With the \$15 million settlement deleted from the average, the remaining 11 settlements only averaged \$924,772.

13-19 Age Group

The high school age group for men had 37 cases broken down by the following ages:

- 14-year-olds (9 cases)
- 16-year-olds (8 cases)
- 13-year-olds (5 cases)
- 18-year-olds (4 cases)
- 17-year-olds (4 cases)
- 15-year-olds (4 cases)

The 13 to 19-year-old age group included 10 swimming, nine football and three facility cases as the most common activity in which the injuries occurred. The injuries included six deaths, six paralysis and four brain injury cases. Schools were the most frequently sued defendant (18 cases), followed by government (6 cases) and manufacturers (3 cases).

Eleven cases were settled for an average settlement of over \$1.7 million. Included within this average were three cases each over \$4 million. Similarly, the 26 jury verdicts which averaged over \$1.8 million each were influenced by three jury verdicts over \$10 million and eight cases where damages were reduced by contributory negligence. If the three \$10 million verdicts are removed from the analysis, the average jury award drops to \$546,590.

20-25 Age Group

There were 12 cases in the 20-25 age group. Three deaths, one paralysis and one brain injury were reported in this group. As would be expected with university-aged males, the most frequently named defendants were universities (four cases), followed by individuals (3), and manufacturers (2). Eight cases were decided by juries, with contributory negligence being applied in three cases.

26-35 Age Group

This age group contained 13 cases included three swimming related cases and two baseball cases. Three paralysis, two eye and two ankle cases were reported for this age group. The most frequently named defendants were individuals (3 cases), followed by government (2) and landowners (2). Four cases were settled and nine cases went to juries, with juries finding contributory negligence in three cases.

37-54 Age Group

The most frequently occurring activity

Table G
Defendant/Gender Comparison

Women Cases	Perct.	Defendant Type	Men Cases	Perct.
2	3%	Associations	6	3%
1	1	Companies	14	7
13	17	Government	18	9
1	1	Health Clubs	8	4
10	13	Individuals	30	15
3	30	Landowners	23	12
1	1	Manufacturers	16	8
3	4	Pro Teams	7	4
2	3	Resorts	10	5
12	16	Schools	44	23
<u>9</u>	<u>12</u>	Universities	<u>19</u>	<u>10</u>
77	100%		195	100%

which caused injuries in the ten cases in this age group were three facility-related cases. Falls (6) were the most common injuries followed by deaths (3) and paralysis (2). The most frequently named defendants were schools (3), followed by health clubs (2) and companies (2). While nine cases in this age group went to juries, only one case was reduced through contributory negligence.

59-71 Age Group

The most common activity which caused an injury in the six cases within this age group were three golf cases. Three plaintiffs were injured in accidents, two from being battered and one plaintiff fell. The five jury verdicts included four cases wherein contributory negligence was applied. The jury verdicts included an award of over \$10 million in a paralysis case. If that case was removed, the average jury verdict was reduced from \$2,156,410 to only \$132,012. An additional 92 cases identified men as the plaintiff.

Defendants and Gender Classification

The 77 cases with female plaintiffs and 195 cases with male

plaintiffs (which included both those which identified a plaintiff's age and those which did not) identified 11 primary defendants. The most frequently named defendants for cases with female plaintiffs were landowners named 23 times (30% of all women cases) and schools (12 cases). The most frequently named defendants for cases with male defendants involved schools (44 cases-23% of all men cases) followed by individuals (30 cases). The complete listing of defendants and percentage of all cases for that gender are highlighted below.

Gender Difference Based on Activity

While swimming was highlighted earlier in this article as the most frequent activity in which plaintiffs were injured, swimming was also the number one injury-causing activity for both genders. This might be due to the fact that swimming-related injuries often result in paralysis, brain injury or deaths, and plaintiffs are traditionally more inclined to bring suits that produce fairly large settlements or jury verdicts. The gender breakdown for the activity which caused the most frequent injuries and the percentages of cases within each gender category are identi-

Table H
Gender/Activity Analysis

Women Cases	Perct.	Activity Type	Men Cases	Perct.
5	6%	Administration	15	8%
4	5	Baseball	9	5
3	4	Basketball	9	5
3	4	Boating	8	4
11	14	Facility	20	10
1	1	Football	25	13
5	6	Golf	4	2
2	3	Gymnastics	2	1
8	10	Skating	2	1
6	8	Skiing	4	2
13	17	Swimming	39	20
<u>1</u>	<u>1</u>	Soccer	<u>8</u>	<u>4</u>
62	79%		145	75%

fied below. Activities which had fewer than two cases for either men or women were not analyzed in Table H.

Some activities have very similar percentages between men and women. There were almost equal percentages for administration, baseball, basketball and boating cases. The injuries suffered in each activity were also somewhat similar. In facility related injuries, women suffered 9 falls while men suffered 13 falls. The major differences involved primarily male or female sports such as football for men and skating for women.

The five administration cases for women involved Title IX claims. In contrast, men had three times the number of administration claims. However, these claims primarily involved breach of contract claims raised by male coaches (10 cases) and five discrimination claims raised by

Table J
Gender/Year Analysis

Women			Year	Men		
<u>Cases</u>	<u>Perct.</u>	<u>High</u>		<u>Cases</u>	<u>Perct.</u>	<u>High</u>
1	1	\$105,000	1989	8	4	\$6,000,000
8	10	\$2,100,000	1990	24	12	\$10,254,000
7	9	\$92,000	1991	11	6	\$11,000,000
12	16	\$688,000	1992	22	11	\$15,000,000
14	18	\$3,600,000	1993	33	17	\$8,500,000
12	16	\$2,150,000	1994	53	27	\$15,067,200
20	26	\$24,000,000	1995	29	15	\$5,500,000
4	5	\$5,100,000	1996	11	6	\$4,000,000

male coaches of women's teams.

Gender and State Comparison

Some states produced a significant number of cases in the study. California, Florida, New York and Texas are just four of the states which generated a larger number of cases in the survey population. The number of cases in each state was analyzed to determine if certain states produced a greater likelihood of cases being filed by one gender over another. The results of this analysis are set forth below for each state with at least three cases decided or finalized in that jurisdiction.

Most states were relatively similar in the total percentage of male and female cases decided or settled in that jurisdiction. The only major differences, in such states as Texas, Wisconsin and Florida, were only a maximum of four percentage points from one another. Based on the number of cases in the sample, such a difference should be considered negligible.

Gender and Year Comparison

A comparison between a plaintiff's gender and the year the case was decided or settled was utilized to determine if any trends were available concerning any increases in the number of cases brought by women. The following graph highlights the number and percentages of cases finalized each year plus the highest award or settlement for that gender during that year.

Unfortunately, based on several peaks and valleys during the eight years analyzed for both

Table I
Gender/State Analysis

Women		State	Men	
<u>Cases</u>	<u>Perct.</u>		<u>Cases</u>	<u>Perct.</u>
3	4%	AL	1	1%
7	9	CA	21	11
10	13	FL	18	9
1	1	GA	5	3
4	5	IL	9	5
2	3	LA	9	5
1	1	MA	6	3
3	4	MI	5	3
2	3	MO	7	4
2	3	NC	4	2
1	1	NH	3	2
5	6	NJ	6	3
11	14	NY	24	12
1	1	OH	3	2
1	1	OR	3	2
3	4	PA	11	6
2	3	TX	13	7
4	5	WI	2	1
63	81%		150	81%

genders, it is very difficult to generate any trend analysis. The primary point that can be developed is that in the first several years of the survey, the highest men's award or settlement in a given year was significantly higher than for women. However, since 1993 the highest women's award or settlement has been fairly close to the men's highest with each gender having one extraordinarily high award during that four year period.

Another trend which might be developing is the increased number of cases filed by women. The number of female cases during the key years analyzed (1990 through 1995) rose from eight cases in 1990 to 20 cases by 1995. In comparison, during the same period, the number of men's cases only increased from 24 to 29.

DATA COMPARISON WITH INDUSTRY RESEARCH

The survey results discussed above were compared with the various research studies addressed at the beginning of this paper. Most of the cases reported by Gross and Syverud involved nonvehicular negligence claims culled from court records. Most of the sports law cases culled from newspaper articles also involved personal injuries (259 of 281, 92%) with several breach of contract claims and federal statutes cases such as Title IX cases constituting the remaining cases. The excessively high percentage of personal injury cases could possibly be attributed to emphasis on newspapers reporting personal injury cases rather than business law cases. Death cases in Gross and Syverud research represented 9.4 and 8.4 percent of cases in 1985-86 and 1990-91 respectively. In this survey, 40 death cases were reported which represents 14.2% of all cases. This difference could possibly be the result of sports death cases receiving significant media attention. Five death cases were reported for women in the survey versus 33 for men. Converting these numbers to a percentage of all cases, 11.7% of all women cases and 16.9% of all men cases were wrong-

ful death cases. Thus, the survey results presented a higher proportion of death cases which could inflate the final average award amounts higher than those reached by Gross & Syverud.

Similar to the Greene and Gross & Syverud research, a large percentage of money awarded is concentrated in several large cases. If the highest seven verdicts in this survey, all over \$10 million, are removed from the survey, the average award (for cases involving men and women, not business or government plaintiffs) declines from \$1,159,573 to \$831,002. This represents a 29% decline. Similarly, the average award or settlement for women would decline 72% (from \$1,195,563 to \$337,427) if the three highest awards over \$5 million are removed from the analysis. The men's average also declined 56 percent to \$676,350 from \$1,485,838 average award and settlement if the eight highest awards or settlements over \$5 million are removed from the analysis. Thus, proportionately, the average sport award or settlement was dramatically boosted by the 12 cases over \$5 million. Furthermore the percentage declines highlighted above are fairly consistent with the 46 percent decline found by Gross & Syverud.

The fear raised by Ruda that women might suffer if emotional damages caps passed seemed to be negated in the sports arena by the apparent increase in average awards received by women. However, comparisons between adult and minor females, as well as males and females generally, still tend to show that adult women fare reasonably poorly when compared with similar male injuries or juvenile injuries. Furthermore, while juries appear to award women higher average awards than in past years, insurance companies and defendants appear to dramatically undercompensate women in settlements. Thus, women, both minors and adults, appear to be better positioned for larger recoveries if they pursue a case through a jury rather than settling. Unfortunately, a more thorough analysis concerning whether pain and suffering awards are lower for women was not obtained as the data did not distinguish between economic damages and pain and suffering damages.

Comparison of average awards between

genders represents a significant concern which was not foreseen when the initial hypothesis was formulated. It was assumed that awards would be fairly equally distributed between gender based on the average severity of sports related injuries. However, the data clearly indicates that women are paid on average 32.8 percent less than men for all injuries, including pain and suffering. Furthermore, women receive a significant greater percentage of smaller recoveries than men, which further reinforces Ruda's contention that female plaintiffs on average are undercompensated and their injuries are undervalued.

FUTURE HINTS CONCERNING STUDY RESULTS

Significant benefit can be derived from the study's results. A key concern for both plaintiffs and defendants is to properly educate jurors as to what reasonable pain-and-suffering damages might entail. Even with guesstimation, the cases showed a wide range of disparity for similar injuries. This difference could possibly be attributed to the jurisdiction, year, juror's sympathy, a defendant's negative image, an individual attorney's persuasion skills or a host of other variables. Even if it is impossible to finally determine what a jury might award, plaintiffs need to be educated so they do not develop some pie-in-the-sky expectations of potential damages (Thompson, 1997).

The study results can be utilized for more appropriate posturing by parties. A litigant can examine some similar injuries and determine a more appropriate bargaining position depending on whether or not the parties are interested in pursuing settlement or further litigation. By referencing the survey results, parties can hopefully be brought closer to a more reasonable bargaining position.

For future research, a survey could be designed to analyze jurors' perceptions as to the value of male versus female plaintiffs' injuries and whether the plaintiff's gender played any role in the damages that were awarded. In addition, cases which the plaintiffs lost should be analyzed

to determine whether the plaintiffs' gender played any part in the juries' decisions. Lastly contributory negligence should be analyzed between the genders to determine if jurors attribute a higher knowledge level of sports related risks to men rather than women. Such an analysis might be difficult because cases are so fact-dependent that it might be impossible to clearly analyze contributory negligence with enough cases that have multiple similar variables.

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