The Adequate Award

*Melvin M. Belli*

JUSTICE SHINN, dissenting in an appeal reversing a $12,000 death award as insufficient, said:1

... There is a wide diversity of view among individuals as to the value of money and the uses that should be made of it. That is why we have Tiffany’s on one side of the street and Woolworth’s on the other.

This judicial criticism by a California appellate justice of the mutations in the standard used by plaintiff lawyers in achieving what is sometimes sarcastically called “the money judgment” by defendants’ counsel, is not the entire explanation for the wide diversity in awards for almost identical injuries among the several states and indeed within the same state.

True, pain is not a readily measurable commodity. Trial juries and judges may never be able to return verdicts for seemingly identical injuries with the precision that a cigarette machine vends an identical package for an identical coin. The “threshold of pain” may vary between individuals. A disabling injury to the wage earner may be more financially catastrophic than the same injury to a non-working housewife. Pain likewise may depend upon counsel’s imagination and vividness of portrayal by demonstrative evidence. However, a verdict in a personal injury case cannot fail because of “speculation” or “uncertainty” of damage.2 Too many decided cases awarding specific damages for the intangibles of pain and suffering have surmounted the problem of measurability.3 Insurance companies and plaintiffs’ lawyers settle cases daily. They employ some standard of measurement or compensability.

Some states have arbitrarily limited the amounts allowable for personal injury and death verdicts either by statute or by comparing employer’s liability awards.4 Thus, if plaintiff, flying from Chicago to California, were

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3 "The best criterion of the reasonableness of a verdict is its conformity to the average amount awarded by juries in cases where there were injuries of like nature and extent." Buswell v. San Francisco, 89 Cal. App. 2d 123, 127, 200 P.2d 115, 117 (1948).
4 See Appendix A for limitations on death actions in the various jurisdictions.

Compensation acts obviously are no criterion. They are liability without fault statutes. Further, as said in Ruso v. Omaha & C. B. St. Ry., 98 Neb. 436, 441, 153 N.W. 510, 512 (1915), where the court refused to consider analogous compensation awards: "The Employers' Liability
killed in an accident in Colorado, the most his estate could recover, by statute, would be $5,000; if in California, no limit ($100,000 has recently been awarded). In other states, the appellate justices have, themselves, arbitrarily refused to affirm jury verdicts repeatedly awarded and commensurate with injuries and costs of living. Thus, in the contiguous state of Oregon, where bread, milk and wages are as high as in California, and, certainly, pain, suffering, humiliation and hunger can be as acute, while much higher verdicts have time and again been returned in the trial courts, no judgment higher than $34,538 has ever been sustained by the appellate courts.

In 1945, the author was counsel for plaintiff in a case where a verdict of $50,000 was returned. Plaintiff, a young Negro boy, suffered a traumatic amputation of his leg. The judgment upon this verdict was paid in full, yet, research indicates that in numerous Southern states, including the boy's home state of Arkansas, even today a verdict over $15,000 to $20,000 for such an injury would be set aside as excessive.

Every reason of similarity of industry, conditions of labor, and costs of living persuades that judgments of California juries and trial judges should be affirmed at commensurate awards with the adequate verdict states. The standards of California unions, wages, commerce and working conditions have always been among the highest in the nation. California judgments for capital losses, damage to machinery, and fire losses have

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Act sets an arbitrary standard of recovery fixed by the Legislature. The amounts provided for therein may be in part predicated upon the assumption that prompt payment of a smaller sum made without the delays, costs and expenses of prolonged litigation is better for all parties than fuller compensation subject to such contingencies. In Arizona Cottonseed Oil Co. v. Thompson, 30 Ariz. 204, 245 Pac. 673 (1926), the Arizona Supreme Court announced a rule that the amounts of compensation fixed by the Workmen's Compensation Law could be considered in determining whether recovery fixed by a jury in a suit under the prior employer's liability was excessive.

5 Gall v. Union Ice Company, Super. Ct., Santa Clara County, Cal., No. 68801.
8 Until recently $50,000 was the highest verdict ever returned in Oklahoma. Verdict for $103,475 returned in Dies v. Fox Rig and Lumber Company, Okla. County, Okla. Dist. Ct., No. 121781 (1950).
9 In actions under the Jones Act, 41 Stat. 1007 (1920), 46 U. S. C. A. § 688 et seq., daily allowances for maintenance and cure have shown a decided increase. In this respect, too, courts are willing to recognize inflated times. However, the daily allowances approved by the courts vary with the locality. Where in the past, allowances up to $3.50 per day for an ordinary or A.B. seaman were considered adequate, the judges of the United States District Court in San Francisco are awarding no less than $4.00 and, in many instances, more. Stipe v. Pacific Tankers, Inc., U. S. Dist. Ct., So. Div., N. D. Cal., No. 23779-A (1948). Massachusetts allows $5.25 per day. Warren v. United States, 75 F. Supp. 836 (D. Mass. 1948), rev'd on other grounds, 179 F. 2d 919 (2d Cir. 1949), cert. granted, 71 S. Ct. 42 (1950). New York gives $5.00 to $6.00 per day. United States v. Robinson, 170 F. 2d 578 (5th Cir. 1948), cert. denied, 339 U. S. 923 (1950) (War Shipping Administration had no power arbitrarily to fix a sum of $3.50 per day as being sufficient for maintenance and cure); Proctor v. Sword Line, 83 N.Y.S. 2d 288 (1948), Koistinen v. American Export Lines, 83 N.Y.S. 2d 297 (1948). But perhaps the most reliable criterion of the increased cost of living is to be found in the agreements entered into between the maritime unions and the operators. On the Pacific Coast, the standard agreement in effect between all operators and maritime unions, at the time of writing, provides for $6.00 per day maintenance for all unlicensed personnel.
been paid dollar for dollar. If there is a standard of wages and hours and commodities between the several states, why should there not be one for personal injury verdicts?\textsuperscript{10}

It is the working man who is generally the personal injury plaintiff. It is he who is now one of the most expensive and important units of our economy. Why should not he and his family now be restored with the dignity of an award that is only justifiable if it is commensurate with the personal injury loss, and adequate only if it is restorative by today’s economic standards?\textsuperscript{11}

Awards Have Not Risen Proportionately to the Cost of Living

Before examining what juries and courts in the several states have awarded and sustained in comparable injuries, one should consider the reasons for the lag of the personal injury verdict behind the rise of the cost of living and other commodities. The result of a personal injury must be treated and measured as any other commodity. It is “money damages.” Some trial juries and appellate courts are startled at the bald possibility of a $200,000 verdict. However, if it were not a personal injury case, no hesitation is expressed in awarding dollar for dollar lost.

Verdicts have not kept pace or risen with other economic values. Unions have lobbied for higher wages and lower hours. There has never been a plaintiffs’ lobby. Prices in general have risen at the caprice of capital, sometimes at government’s assistance. The farmer has even had his prices raised and subsidized by his government. Yet the injured worker, when not covered by the wholly inadequate awards of a compensation act, time and again has had to pay inflated commodity prices and hospital bills with a diminished verdict reduced by an economically unappreciative appellate court.

Mr. Justice Black in Chambers v. Florida wrote that man’s political freedom was wrested from “the rack, the thumbscrew, the wheel, solitary

\textsuperscript{10} It took 84 claimants to reach the highest award ever given by the Massachusetts Industrial Accident Commission: $205,000. This award was made December, 1950, to 84 silicosis victims, the highest individual award being $10,650. (Sam Horovitz, Esq., Boston, Mass.)

\textsuperscript{11} In Huggans v. Southern Pacific Company, 92 Cal. App. 2d 599, 207 P. 2d 864 (1949), the court sustained a verdict for $91,000 for the loss of the left leg below the knee and a portion of the right foot by a twelve year old boy. Said the court: “The award of $91,000 is attacked as excessive. The plaintiff suffered frightful and seriously crippling and disfiguring injuries. These are to be measured against a normal life expectancy of nearly 54 years.... By limiting the special damages to $11,000 and arbitrarily taking $10,000 as the measure for past and future pain and suffering appellants arrived at a figure of $70,000 for general damages. Then by a series of calculations they seek to prove that amortizing $70,000 over 54 years the income to plaintiff will be extravagant. The question of what may be reasonable compensation in cases of this kind is a matter on which there legitimately may be a wide difference of opinion.... The trial judge's denial of a motion for a new trial is to be weighed in determining whether the judgment is excessive.... The award for past and future pain and suffering including the mental anguish and humiliation to be reasonably expected cannot be arbitrarily limited to $10,000 for a period of 54 years.... On the whole case unless we can find that the award shocks one's sense of justice and raises the presumption that it was the result of passion and prejudice our duty is to affirm the award.... Applying that rule we cannot find the award excessive.” 92 Cal. App. 2d at 615-616, 207 P. 2d at 873.

This verdict was finally paid in full plus $7,000 interest.
confinement... [These] and other ingenious forms of entrapment of the helpless or unpopular had left their wake of mutilated bodies and shattered minds along the way to the cross, the guillotine, the stake and the hangman's noose. And they who have suffered most... have always been the poor, the ignorant, the numerically weak, the friendless and the powerless. Such likewise has been man's travail in gaining his economic freedom.

The vistas of economic guarantees envisioned at the dawn of the industrial revolution were only mirages for years to come. Freedom from hurt and poverty and want and hunger was not a grant that flowed from man's inventive genius as he conquered metal and steam and electricity. Man had to wrest, here too, from the machine, from the factory, from capital, an economic freedom. His recently achieved dignity of life and mind and limb as interpreted in adequate appellate standards for his personal injuries left too in its wake "mutilated bodies and shattered minds" with their inadequate verdicts. Thus at a time where property awards paid dollar for dollar the destruction of a capital asset, i.e., a machine, a fire in a factory, a workingman's award for $4,000 for the loss of his limbs, his only capital asset, was being cut to $2,000! Two thousand dollars, even interpreted by today's dollar, is far short of the now awards of over $100,000 for the same injury. In Harrison v. Sutter St. R. R. (1897), $8,000 was too large a monetary award for a human life.

Nothing is more personal, more acute, more important to man than a personal injury, yet in 1938, we find a California court cutting an award for permanently disabling injuries on the ground that a child of tender years does not feel as much pain and forgets more rapidly!

A baseball player demands and gets, with public approval, $100,000 a season; race horses have sold at $300,000, paintings and violins for half a million. The purpose here is not necessarily to urge a change in the values of these things, but only to indicate that these "prices" are twice the amount of any reported personal injury verdict in a number of states, regardless of the (1) wages lost, (2) wages to be lost, (3) age of the wage earner, (4) number in the family to support, (5) amount of hospital and doctor bills, (6) magnitude of injury, (7) amount of pain suffered, (8) "social" position of the injured. The highest personal injury verdict in the United States ever awarded was $260,000. It was reversed for excessiveness. A baseball player's salary for only one year is twice the amount of money ever allowed to stand in a personal injury award in half our states, regardless of the severity of the catastrophe.

14 Fifty years later in Peterson v. General Geophysical Co., 185 P. 2d 56 (Cal. Dist. Ct. App. 1947), hearing granted, appeal dismissed (1947), five times that amount or $40,000 for the death of a man at almost the same age and station in life was approved.
16 Watson v. Florida Power & Light Co., Cir. Ct. Dade County, Fla., No. 22079, cert. denied, 43 So. 2d 723 (Fla. S. Ct. 1949), judgment reversed for new trial on damages only, rehearing granted, no decision to date.
The “dignity of man” has long since been written in the arts, literature, painting and music. Appellate courts throughout the United States have now belatedly begun to recognize and acclaim in law the dignity of man with adequate awards for personal injury losses to those with humble as well as with gifted hands.

Appallingly Inadequate Verdicts in Old Cases No Longer Controlling

Verdicts for comparable injuries in the old cases are no longer authoritative or controlling. The brutality in the inadequacy of some of these awards is appalling.

In a 1902 Canadian case, $4,000 was held to be excessive for the loss of a right leg. Similarly, Tennessee in 1895, held a $4,250 verdict excessive for a broken, permanently shortened leg.

In 1870, a verdict of $18,000 was held excessive for the loss of a brakeman’s two legs. In Indiana, 1896, a verdict of $1,100 was held adequate for the loss of a right leg to a seven year old girl!

In the 1911 Arkansas case, a verdict of $10,000 was ordered reduced to $5,000; both legs amputated!

In The Wm. Branfoot (1892), the plaintiff stevedore, 30 years of age, suffered a comminuted fracture of his leg which necessitated amputation below the knee. The trial judge allowed $500 for his suffering and $1,786 for his loss of future earning capacity. The judge said, “We can compensate him for his pain. Following Mr. Justice Bradley in Miller v. The W. G. Hewes, I allow him $500.00! His disability is for life, but for life only.”

In 1902, the Federal District Court of the Northern Division of California allowed $3,000 for a 20 year old able seaman for the loss of his right leg below the knee and two fractured ribs.

In 1897, a verdict returned in the amount of $6,000 for the wrongful death of a four and a half year old boy was reversed as excessive. But in 1936, a verdict for $6,000 was upheld for the wrongful death of a 12 day old baby!

In 1898, defendants appealed a $2,000 verdict on the ground that it was excessive, motivated by passion and prejudice. The verdict was upheld. The injuries: total loss of hearing in one ear, permanent impairment of the sight of one eye,

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18 Cherokee Packet Co. v. Hilson, 95 Tenn. 1, 31 S.W. 737.
20 Berry v. Lake Erie Co., 72 Fed. 488 (C.C.D. Ind.). Compare Jeppers v. City and County, S.F. Super. Ct., Cal., No. 343965 (1947), $100,000, same injury—almost 100 times as much!
22 48 Fed. 914 (D. C. Cir. 1892).
23 1 Woods 363 (5th Cir. 1870).
24 The Iroquois, 113 Fed. 964, aff’d, 194 U.S. 240 (1904). See also 8 CAL. JUR. 842. In 1949, $100,000 was awarded for the same type of injury. Guthrie v. Southern Pacific Co., U.S. Dist. Ct., N.D. Calif., No. 28156G.
25 Fox v. Oakland Ry., 118 Cal. 55, 50 Pac. 25.
26 Criss v. Angelus Hospital, 13 Cal. App. 2d 412, 56 P. 2d 1274. In 1938 (Babb v. Murphy, 26 Cal. App. 2d 153, 79 P. 2d 159) a $7,500 verdict was reduced to $4,000 for a three and a half month old child who suffered fracture of both femurs and was possibly permanently short-legged. In 1947, $15,000 was allowed for the death of a ten month old child, (Couch v. P. G. & E., 80 Cal. App. 2d 857, 183 P. 2d 91—reduced from $27,500 by trial court).
nervous system so permanently shocked as to limit seriously the plaintiff's power to transact business.\textsuperscript{27}

To recount these various verdicts and injuries, calls at once to mind the other California reported decisions where verdicts have recently been sustained for over ten times and twenty times these amounts in absolute dollars.\textsuperscript{28}

The complete answer is not entirely in the decrease in value of the dollar. It is further to be found in the trend of decisions appreciating man's dignity of mind, members and life, and a tendency to allow a jury to perform its function, controlled by the sound judicial review exercised on motion for a new trial before the trial judge, who, like the jury, has heard all the evidence and seen all the witnesses.

**Decrease in Value of Dollar**

*Zibbell v. Southern Pacific* was the first case in California jurisprudence to present a $100,000 verdict to the appellate courts.\textsuperscript{29} The $100,000 was cut to $70,000. This was 1911. A verdict of $100,000 was affirmed, in *McDonald v. Standard Gas Engine*, the next time this figure was presented to the California appellate courts in 1935.\textsuperscript{30}

Between the date of 1911 and 1950 prices of commodities and the cost of living became more than "adequate." Verdicts did not. Their rise was not proportionate. The portrayal of price rises in economic charts sometimes seem more academic than actual. A practical approach is necessary:

Mr. Maxwell, Secretary of the Butcher's Union of San Francisco for over 30 years, advises that in 1911 a butcher received $21.00 for a 54 hour week. In 1933, he got twice as much, $41.00 for a 54 hour week, but in 1949, he again was getting more than twice as much, $83.00, yet he works a shorter week—40 hours. Coming to the commodity he vends, there is an even more amazing depreciation of money. In 1911, porterhouse steaks were 20\$ to 25\$ a pound, in 1933, they were 30\$. But in 1949, they were 92\$ a pound at the corner butcher shop.

Mr. Zibbell got a haircut for 35\$, neck trim 5\$, shave 15\$, manicure 50\$.\textsuperscript{31} Officer McDonald paid for a haircut 65\$, for a shave 35\$ and 50\$ for a manicure. Today a haircut is $1.25, shave $1.00, manicure $1.00.\textsuperscript{32}

In the field of libation compare the price of "Harper's Best," a satisfactory brand if the advertising claims may be believed. These figures are from the Verdier Cellars, City of Paris, San Francisco: The City of Paris will sell a fifth bottle of Harper's Best today for $6.50. Officer McDonald bought it for $4.78, but Mr. Zibbell, were he so inclined, could have bought the same brand for $1.10 a bottle or a whole gallon for $5.50, and the quality, it is said, was better in Mr. Zibbell's time.

\textsuperscript{27} Clare v. Sacramento Power Co., 122 Cal. 504, 55 Pac. 326 (1898); see Bach v. Swanton, 105 Cal. App. 72, 286 Pac. 1097 (1930).
\textsuperscript{28} See p. 14 infra.
\textsuperscript{29} 160 Cal. 237, 116 Pac. 513 (1911) (loss of both arms and one leg).
\textsuperscript{30} 8 Cal. App. 2d 464, 47 P. 2d 777 (brain injury, no specials, $100 a month pension for life, Navy paid all medicals, plaintiff able to do light work).
\textsuperscript{31} According to Barber's Union, Local 148, San Francisco.
\textsuperscript{32} Not only have tips risen proportionately to the services rendered, but the custom itself of tipping, which increases the purchase price of the service or commodity, has become more wide-spread and must be recognized even among those of the legal fraternity who would generally keep verdicts down.
A four room house cost Mr. Zibbell $1,400 in 1911, Officer McDonald, $3,000 in 1933, and today the value is $7,500. A modest room for a secretary today is $35.00 a month. In 1933, it was $12.00 a month. (As a matter of fact, Mr. Zibbell could have hired a secretary for a whole month for $48.00.)

The following advertisements are typical of the period, although the reader may wish to go to the actual newspaper files to verify them, so unbelievable do they sound today:

In 1911:

$1,400.00. New house, 4 rooms, bath, attic, loft, inclosed veranda; well built, lot 25 x 120 feet. $500.00 cash. 666 27th ave. (San Francisco Examiner, Jan. 15, 1911, p. 51).

A new flat, 4 large sunny rooms, bath, pantry, 3 closets, fireplace, etc.; $10.00 per month, water free; no objection to children. Apply 4217 Army St. (San Francisco Examiner, Jan. 8, 1911, p. 63).

In 1933:


$3,250.00 5 rooms, 2 years old; furnace, water heater; $250.00 down, $30.00 a month. (San Francisco Examiner, Mar. 27, 1933, p. C).

Mr. Zibbell could have seen the Oscar Straus-Bernard Shaw "Chocolate Soldier" which played in San Francisco in 1911 at the old Savoy, McAllister near Market, with a company of 125, orchestra of 35, for one-third what it costs to see Olson & Johnson today. The Examiner of January 22, that year, advertised seats for 50¢. 83

In 1911, carpenters were getting $2.00 a day. In 1933 they were offering their services for 25¢ an hour:

Carpenter, contractor, A-1; best references; 25c hour. MA. 5271. (San Francisco Examiner, Mar. 26, 1933, p. C.)

Today a carpenter gets $2.16 per hour!

Tuition per quarter at Stanford University for the year 1911 was $15.00; in 1933, $114.00, in 1949, $200.00 per quarter. These figures must be multiplied by the three quarters each student normally attended. The result:

<table>
<thead>
<tr>
<th>Year</th>
<th>Tuition Per Quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>1911</td>
<td>$45.00</td>
</tr>
<tr>
<td>1933</td>
<td>$342.00</td>
</tr>
<tr>
<td>1949</td>
<td>$600.00</td>
</tr>
</tbody>
</table>

According to the business manager of St. Francis Hospital, in 1933, Mr. McDonald could have received the same food, the same room and

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83 San Francisco has always been a "baseball town." The records are not available for 1911, but it is amazing to learn, as the writer did from Damon Miller of the Seals, that in 1933 Joe DiMaggio, then in his second year with that club, the year he made his consecutive hit record for the Coast League of hitting safely in 63 consecutive games, a record believed still to stand, was being paid the then coveted sum of $225 per month. The following year, no doubt in appreciation of his services, the club raised him to $450 per month. He recently signed a contract for $100,000 per year.
much more nursing attention in that hospital for $5.00 a day than one can get today for $12.50 ("and up").

1911 was one of those halcyon years as completely forgotten as is the fact of the large schooner of beer for 5¢. With it went a free lunch, the only limit being that you were welcome to no more than you could eat. In 1933, one could get a full dinner anywhere in San Francisco for $1.00. Today, John’s Rendezvous charges $5.00 for a steak dinner. (Hollow hors d’oeuvres now front for the former substantial steak that has diminished likewise in size with the years.)

Mr. Zibbell might have purchased a Cadillac for $1,100. Cadillacs now cost $4,800.34

The only service rendered, and certainly not because of any depreciation in its quality, that hasn’t risen in proportionate worth, measured by salary, is the pay of judges. It’s only twice as much today as it was in 1911. A California Supreme Court justice in 1911 was paid $8,000; in 1933, $11,000, today $15,000. Perhaps one of the reasons for the failure of judicial salaries to remain consonant with economic condition is the logic of those who feel that what was enough in 1911 for Mr. Zibbell should per se be enough for Mr. McDonald in 1933, and for an injured working man today, consequently, what was enough for the judges in 1911 is enough for them now. New York at least is one state that has raised the pay of its judges to meet the cost of living. A justice of the New York Court of Appeals gets $25,000 a year plus $3,000 for expenses.

Verdicts and judges’ salaries not only have not kept pace with price rises, but even the price of law books has not risen proportionately. Each volume of the California Reports costs $2.30 in 1911, by 1933 they were $2.85, and today the lawyer is charged $3.75 per volume.35

34 In 1911, parking lots were, if not unknown, unnecessary. In 1933, for 25¢ one could park any place. Today the cost is between 50¢ and $1, depending on whether you choose to park 12 blocks from your downtown destination, or only four blocks.

35 Further to show that money is not an immutable yardstick we refer to the days of ’49 in San Francisco and Alaska where porterhouse steaks sold for $50 and the laundry of a shirt was $12. A plate of beans was $10, and a loaf of bread $12, and a newspaper $5. However, the standard is now recognized to be the purchasing power of money at the time of the rendition of the verdict. See page 10 infra. The following extracts from a table published by the U. S. Dept. of Labor, Bureau of Labor Statistics, indicates the tremendous decrease in the worth of the dollar:

<table>
<thead>
<tr>
<th>Date</th>
<th>All Items</th>
<th>Food</th>
<th>Apparel</th>
<th>Rent</th>
<th>Fuel, Electric and Ice</th>
<th>House Furnishings</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan. 15</td>
<td>153.3</td>
<td>183.8</td>
<td>179.0</td>
<td>108.8</td>
<td>117.3</td>
<td>179.1</td>
<td>137.1</td>
</tr>
<tr>
<td>July 15</td>
<td>158.4</td>
<td>193.1</td>
<td>184.7</td>
<td>110.0</td>
<td>119.5</td>
<td>184.3</td>
<td>139.5</td>
</tr>
<tr>
<td>1948</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan. 15</td>
<td>168.8</td>
<td>209.7</td>
<td>192.1</td>
<td>115.9</td>
<td>129.5</td>
<td>192.3</td>
<td>146.4</td>
</tr>
<tr>
<td>July 15</td>
<td>173.7</td>
<td>216.8</td>
<td>197.1</td>
<td>117.3</td>
<td>134.8</td>
<td>195.9</td>
<td>150.8</td>
</tr>
<tr>
<td>1949</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jan. 15</td>
<td>170.9</td>
<td>204.8</td>
<td>196.5</td>
<td>119.7</td>
<td>138.2</td>
<td>196.5</td>
<td>154.1</td>
</tr>
<tr>
<td>July 15</td>
<td>168.5</td>
<td>201.7</td>
<td>188.5</td>
<td>120.7</td>
<td>135.6</td>
<td>186.8</td>
<td>154.3</td>
</tr>
</tbody>
</table>
The following figures are from the November 1948 issue of the *Monthly Labor Review*:

<table>
<thead>
<tr>
<th>Year and Month</th>
<th>Food</th>
<th>Apparel</th>
<th>Rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1913—Average</td>
<td>79.9</td>
<td>69.3</td>
<td>92.2</td>
</tr>
<tr>
<td>1933—Average</td>
<td>95.2</td>
<td>100.5</td>
<td>104.3</td>
</tr>
<tr>
<td>1945—Average</td>
<td>139.1</td>
<td>145.9</td>
<td>108.5</td>
</tr>
<tr>
<td>1948—Jan. 15th—Average</td>
<td>209.7</td>
<td>192.1</td>
<td>115.9</td>
</tr>
<tr>
<td>1948—Sept. 15th—Average</td>
<td>215.2</td>
<td>201.0</td>
<td>118.5</td>
</tr>
</tbody>
</table>

From the above figures, it will be seen that the cost of food alone has increased 110% between 1939 and September 15, 1948. Comparable figures from a few large cities are:

<table>
<thead>
<tr>
<th>City</th>
<th>Sept. 15, 1948</th>
<th>Aug. 15, 1939</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baltimore, Maryland</td>
<td>228.7</td>
<td>94.7</td>
</tr>
<tr>
<td>San Francisco, California</td>
<td>224.2</td>
<td>93.8</td>
</tr>
<tr>
<td>Chicago, Illinois</td>
<td>221.4</td>
<td>92.3</td>
</tr>
<tr>
<td>New York, N.Y.</td>
<td>216.2</td>
<td>95.8</td>
</tr>
<tr>
<td>Los Angeles, California</td>
<td>212.1</td>
<td>95.6</td>
</tr>
</tbody>
</table>

The value of the dollar according to the *Monthly Labor Review* shows a dollar in 1913 almost 23½ times more valuable than today: 1913 — 70.7 and February 1948, 167.5. The University of California’s Heller Committee for Research in Social Economics (Jan. 5, 1949), shows that a woman had to expend 100% more in 1948 than in 1941 to maintain a “wholesome standard of living.” The *Los Angeles Examiner* reports for December 15, 1950: “Los Angeles prices reached an all time peak of 173.2 in mid-November based on a 1935-39 consumers price index equalling 100, the U.S. Bureau of Labor disclosed yesterday.”

**Judicial Notice of Dollar Depreciation**

In *Couch v. Pacific Gas & Electric Co.*, the court said, after holding that $15,000 was not excessive for the death of a child aged 10 months:

> The remedy for [excessive] verdicts is practically committed to the judge who presides in the Court below, who is authorized to weight the evidence

#1950

<table>
<thead>
<tr>
<th>Month</th>
<th>155.1</th>
<th>156.2</th>
<th>157.6</th>
<th>158.8</th>
<th>159.5</th>
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<tr>
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<tr>
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<td>125.4</td>
<td>143.7</td>
<td>202.3</td>
<td>160.5</td>
<td></td>
</tr>
</tbody>
</table>

Thus in San Francisco between August 15, 1939, and September 15, 1948, the cost of food has increased 140%. These figures also indicate that San Francisco is the second highest city in the United States as far as the cost of food is concerned, being exceeded only by Baltimore, Maryland.

Recently this writer was in Italy. This dramatic demonstration of the mutable character of money and inflation was presented: to buy a modest lunch today in Milan, one must pay *one thousand lire*, yet several years ago, *five hundred lire* was enough money to support a whole family, rent, food, clothing and incidentals for a whole month!

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36 Thus in San Francisco between August 15, 1939, and September 15, 1948, the cost of food has increased 140%. These figures also indicate that San Francisco is the second highest city in the United States as far as the cost of food is concerned, being exceeded only by Baltimore, Maryland.

and who it is presumed, will not allow a verdict for the full amount to stand if he believes it gives more than the pecuniary loss that plaintiffs may be reasonably supposed to suffer . . . the value of the dollar has materially decreased in recent years, and that fact has been recognized by appellate courts in refusing to reduce verdicts which formerly might have been considered excessive. 88

In Kircher v. A. T. & S. F. Ry., Justice Carter said:
It is a matter of common knowledge, and of which judicial notice may be taken, that the purchasing power of the dollar has decreased to approximately one-half what it was prior to the present inflationary spiral [citing cases] and the trier of fact should take this factor into consideration in determining the amount of damages necessary to compensate an injured person for the loss sustained as the result of the injury suffered. 89

In P. Lorrillard Co. v. Clay:
In many respects [the cost of living] has more than doubled [1920]. 40

In Sherrill v. Olympic Ice Cream:
The old cases are only of relative value because economic conditions today are not the same as they were ten or fifteen or more years ago. 41

In Hurst v. Chicago, B. & Q. R. Co., the court said:
Compensation means compensation in value. It will not do to say that the same amount of money affords the same compensation when money is cheap as when money is dear. The value of money lies not in what it is, but in what it will buy . . . That money today [1920] has much less purchasing power than it had 20, or even 10, years ago, admits of no dispute, and we are not justified in disclaiming judicial knowledge of a world wide condition, seen and known of all men everywhere. If that be true, then if we to-day allow the same amounts in money that we allowed in like instance 10 or 20 years ago [1910-1900!], we are following our decisions of that day in letter, but departing from them in spirit. We are warned, upon excellent authority, that “The letter killeth, but the spirit giveth life.” 2 Cor., iii, 6. 42

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88 38 80 Cal. App. 2d 857, 867, 183 P. 2d 91, 97 (1947); see Autry v. Republic Productions, 36 Cal. 2d 144, 180 P. 2d 888 (1947), and House v. Pacific Greyhound Lines, 35 Cal. App. 2d 336, 95 P. 2d 465 (1939). In Estrada v. Orwitz, 75 Cal. App. 2d 54, 60, 170 P. 2d 43, 47 (1946), the court by Justice Peters, said: “It must be remembered that the purchasing power of the dollar is much less than it was a few years ago, so that a verdict that might have been considered very high, or even excessive then, would, today, be within the realm of reason.”
40 127 Va. 734, 760, 104 S. E. 384, 392 (1920). If it had doubled in 1920 it has certainly doubled again in 1951.
41 135 Wash. 99, 104, 237 Pac. 14, 16 (1925). In Holder v. Key System, 88 Cal. App. 2d 925, 940, 200 P. 2d 98, 106 (1948), the court said: “Analysis of awards made in other similar cases, while of assistance, is by no means conclusive, particularly when the cited cases are not of recent origin.”
42 "The decreased purchasing power of the dollar renders unpersuasive the cases cited by appellants from the 1930s and earlier, and still less persuasive are the cases in which relatively small awards for serious injuries were affirmed on appeal. As this Court said in Foster v. Pestana [77 Cal. App. 2d 885, 891, 177 P. 2d 54, 58]: ‘It does not follow that because a plaintiff 36 years ago received a none too generous verdict, the award here was too generous”': Pederson v. Carrier, 91 Cal. App. 2d 84, 87, 204 P. 2d 417, 418 (1949); see Butler v. Allen, 73 Cal. App. 2d 866, 167 P. 2d 488 (1946).
43 280 Mo. 566, 573, 219 S.W. 566, 568 (1920).
In *Quinn v. Chicago, Milwaukee & St. Paul R. R.*, the $21,000 verdict was reduced to $16,000 by the trial court and the latter figure upheld where plaintiff lost the use of his left hand and arm, with more impairment than if amputated. Said the Minnesota court in 1925, *twenty-six years ago*:

\[\text{In recent years there has been a noticeable increase in the size of verdicts in personal injury cases. The Courts approve of verdicts today [1925] which would have been unhesitatingly set aside as excessive 10 or 15 years ago. Measured in money, the earning capacity of most men has increased; measured by its purchasing power, the value of a dollar has decreased. No immediate change in the situation is in sight [sic!]}. \text{It is only right that these well-known facts should be taken into consideration.}^{43}\]

The court then says that although the verdict "seems large to us, we cannot say that it is... excessive." In the very recent case of *Naylor v. Isthmian Steamship Company*, the court in upholding a $115,000 verdict likewise commented on the purchasing power of the dollar.\(^{45}\)

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\(^{43}\) 162 Minn. 87, 90, 202 N.W. 275, 276 (1925).

\(^{45}\) U.S. Dist. Ct., S.D. N.Y., Civ. No. 53-341 (Aug. 18, 1950): "This then is the standard. I can find neither intemperance, passion, partiality, nor corruption on the part of the jury. It worked earnestly and intently on the case. It had the right to consider the present purchasing power of the dollar. It had no yardstick save its own collective conscience.

"This is a Court created by a free people for the equal protection of all. It is in truth the people's court. The jury are the country. It is not a Court set up under a tyrant or a dictator; a Court slyly designated as a 'People's Court'. It is not a Court whose judges will lose their heads if a case is not decided as the tyrant wills. It is a Court that is neither subservient to the state nor to the individual or corporation. It is a Court dedicated to pass on the right or wrong of contentions between individuals.

"The pain inflicted on an individual which is caused by the wrong doing of another is no less to a poor man than to a millionaire. It is most difficult to assess. In the absence of intemperance, passion, partiality or corruption—and there is none evident in this case—I am not one to say that terrific pain inflicted on a seaman for ten hours is not worth $40,000—when a jury of free men and women calmly, carefully and deliberately so decide."
If the Zibbell and McDonald verdicts were sound at $70,000 and $100,000 respectively, the California courts should recognize that verdicts of $400,000 for comparable injuries today are not excessive!

**Review of Adequacy of Verdict by Trial Judge**

Upon review of the verdict, upon complaint of excessive damages, the trial judge sits as a thirteenth juror.

Where the verdict appears to the trial court to be against the weight of the evidence, it is not only within its discretion but it is its duty to set aside the verdict on motion for new trial.\(^{46}\)

The appellate courts affirm that the trial judges are in a better position to determine whether the facts will fairly portray the verdict.\(^{47}\) They now decidedly limit their power in passing upon the claim of excessive verdicts. In *Estate of Phillipi* it was said:

> On hearing a motion for new trial the trial judge sits as a thirteenth juror ... He may weigh the evidence, resolve conflicts in it, judge the credibility of the witnesses and reject the testimony of any witness whose testimony he doubts, or accept that of a witness he believes.\(^{48}\)

And in *Britting v. Dewes*, the court said:

> The authority to fix the amount of damages that shall be allowed in a case of this kind is committed almost entirely to the sound discretion of the jury; and in order to safeguard against the danger of excessive verdicts, the judge of the trial court ... may ... set aside the verdict ... if ... awarded ... under the influence of passion or prejudice.\(^{49}\)

The appellate court is bound by the rule of "substantial conflict." The trial court is not so bound and may grant a new trial if it is satisfied the verdict is against the weight of the evidence.\(^{50}\) Indeed, it is the trial judge's duty to review the evidence and grant a new trial if he discerns a justice miscarriage.\(^{51}\)

**Review of Adequacy of Verdict by Appellate Judge**

The corollary to the wide discretion allowable in the trial courts is that the appellate court will not exercise such discretion. Although defendants' counsel appreciate this rule, many appeals are taken. Delay in payment of the justiciable award often forces an inadequate settlement upon the financially and physically bankrupt plaintiff.

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\(^{47}\) Estate of Phillipi, 14 Cal. App. 2d 73, 58 P.2d 473 (1936).


\(^{51}\) "A trial court [may grant a new trial] ... even if it does not appear to the trial Court that the verdict was given under the influence of passion or prejudice, but, when a trial Court has denied a motion for a new trial on the ground of the excessiveness of the verdict, on appeal the reviewing court may not reverse the order or reduce the verdict except upon a showing that it is so grossly disproportionate to any reasonable view of the evidence as to raise a strong presumption that it is based upon prejudice or passion." Koyer v. McComber, 12 Cal. 2d 175, 182, 82 P.2d 841, 944-945 (1938).
After surmounting all of the practical and legal difficulties known to a lawyer and cast in his path by an astute defense counsel, a jury (usually demanded by defendant's counsel in modern practice—if plaintiff does not demand one) finally resolves the controversy. Plaintiff may still be met with the routine complaint that the jury did not know what it was all about; the trial court, in denying a motion for new trial was grossly in error; the appellate court should hold the verdict to be excessive. However, the trial court's denial of a motion for a new trial constitutes judicial review, and is almost final.62

The language of Chancellor Kent in Colman v. Southwick has frequently been quoted or paraphrased with approval in passing upon objections to verdicts as being excessive:

The damages, therefore, must be so excessive as to strike mankind, at first blush, as being beyond all measure, unreasonable and outrageous, and such as manifestly show the jury to have been actuated by passion, partiality, prejudice, or corruption. In short, the damages must be flagrantly outrageous and extravagant, or the court cannot undertake to draw the line; for they have no standard by which to ascertain the excess.53

In Bond v. United R. R., the court said:

The remedy [for excessive verdicts] is practically committed entirely to the judge who presides at the trial in the court below . . . . The trial Court should be vigilant to set aside verdicts where there is reason to believe . . . that passion, prejudice, or sympathy has influenced the jury to give more than the facts reasonably warrant. We have cause to feel that the trial courts sometimes act on the theory that they can shift the responsibility . . . . to the appellate Court, and that an excessive verdict can be corrected on appeal. This is a mistake. Our power over excessive damages exists only when the facts are such that the excess appears as a matter of law, or is such as to suggest at first blush, passion, prejudice, or corruption on the part of the jury . . . . Practically, the trial court must bear the whole responsibility in every case.54

53 9 Johns 45, 52 (N.Y. 1812).
54 In Holmes v. Southern Cal. Edison Co., 78 Cal. App. 2d 43, 51, 177 P.2d 329 (1947), the court said of a second "judicial review" by an appellate court: "The powers and duties of the trial judge in ruling on a motion for a new trial and of an appellate court on an appeal from a judgment are very different when the question of an excessive award of damages arises. The trial judge sits as a thirteenth juror with the power to weigh the evidence and judge the credibility of the witnesses. If he believes the damages awarded by the jury to be excessive, and the question is presented, it becomes his duty to reduce them . . . . When the question is raised his denial of a motion for a new trial is an indication that he approves the amount of the award. An Appellate Court has no such powers. It cannot weigh the evidence and pass on the credibility of the witnesses as a juror does. To hold an award excessive it must be so large as to indicate passion or prejudice on the part of the jurors. Generally speaking, in cases of this kind, when damages are recovered for destruction of property, if there is substantial evidence in the record supporting the damages awarded by the jury and it is inferentially approved by the trial judge by his denial of the motion for a new trial, without reducing the damages, we are powerless to reduce them or to hold the award excessive."
54 159 Cal. 270, 285-286, 113 Pac. 366, 373 (1911).
Similar strong language is used by not only the courts of this state, but all the states. The test appears to be whether the verdict was "outrageous," whether it shows manifest "corruption," whether "beyond all measure it is unreasonable," and we find the California courts saying that "practically the trial court must bear the whole responsibility in every case." "The remedy for excessive verdict is practically committed entirely to the judge who presides at the trial in the Court below" and once judicial review has been given by the trial judge in denying the motion for a new trial, the appellate court "is powerless to reduce them or to hold the award excessive!"66

In *Scott v. Baltimore & Ohio R. R. Co.*, the court stated:

The third point urged by the defendant is that the damages as fixed by the jury at $35,000.00 are excessive. *The members of the Court think the verdict is too high. But they also feel very clear that there is nothing the Court can do about it.*68

In *Western & Atlantic R. R. v. Burnett*, the appellate court affirmed a judgment for $65,000 for loss of the right leg below the knee. Counsel for the defendant argued that the largest verdict theretofore sustained in that state was in the amount of $37,500, and that a $65,000 verdict was excessive because that amount, if invested at the legal rate of interest in that state, would produce an annual return greater than the annual earnings of the plaintiff throughout his life and would leave the principal intact at plaintiff's death. Judge Parker's answer to this contention was:

The argument that the verdict is excessive because the amount, if invested at the legal rate of interest in this state, would produce an annual return greater than the earnings of plaintiff throughout his life does not appeal to us as being sound because of the element of pain and suffering and the rule as to damages for that type of injury.67

*California Reported Cases of Awards Tending to Be Adequate*

In *Zibbell v. Southern Pacific*, the California Supreme Court said of the $100,000 verdict:

The verdict is twice the amount of the largest judgment ever rendered in

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66 That the verdict is higher than an appellate court would have awarded is not reason to reduce it. Bennett v. Hardy, 108 Cal. App. 473, 291 Pac. 903 (1930).

Federal courts will not review a claim of excessive damages on appeal. "The Supreme Court has repeatedly said that we may not review the action of a federal trial court in denying a motion for a new trial on the ground that the damages awarded by the jury were excessive." Larsen v. Chicago N.W. R. R., 171 F. 2d 841, 845 (7th Cir. 1949); see Fairmount Glass Works v. Fork Coal Co., 287 U.S. 474, 481, 485 (1933); Scott v. B. & O. R. R., 151 F. 2d 61, 64, 65 (2d Cir. 1945); Southern Pac. R. R. v. Guthrie, 180 F. 2d 295 (9th Cir. 1950). *But see Affolder v. N.Y.C. & St. L.R.R., 339 U.S. 96 (1949)* (loss of leg—$80,000). The court, in denying an excessive damage claim, might have inferentially indicated its power was not absolute: "We agree . . . that the amount . . . is not monstrous." 339 U.S. at 101.


68 151 F. 2d 61, 64 (2d Cir. 1945). The same court said: The damages were fixed by the jury and the verdict was reviewed, so far as the judge has control over the jury's action, by the District Court, upon the motion for new trial. Judicial control of the jury's verdict in this kind of case is primarily for the trial court." Id. at 65. See also Buswell v. San Francisco, 89 Cal. App. 2d 123, 200 P. 2d 115 (1948).
THE ADEQUATE AWARD

the state of California in a similar case, and is the largest verdict ever presented to an appellate court for review.

The verdict was cut to $70,000 in absolute dollars, but, in purchasing power, that verdict stands today for the affirmance of an award, with commensurate injuries and loss, of over $300,000.

It was not until 22 years later, in 1933, that another $100,000 award reached our California appellate courts. An award of $100,000 was affirmed in McDonald v. Standard Gas Engine. That verdict likewise stands today for an absolute dollar award of over $300,000.

There have been no California reported cases awarding in absolute dollar figures the amount voted by the jury in the Reckenbiel v. Taylor Walcott case, $225,000. In Zibbell v. Southern Pacific, the injuries were the loss of two arms and one leg, the age of the plaintiff 27 years. A conditional order of the trial court reduced this from $100,000 to $70,000. The $70,000 was sustained on appeal.

Certainly, only a philosophical discussion could result in any attempt to compare the severity of the Zibbell injuries with the injuries to Fred Reckenbiel, who had been bereft of his reason, incapacitated from forevermore working and confined to an asylum. Zibbell was left with his mind but without his body. Zibbell was free to go but physical handicaps incarcerated him. Reckenbiel was left with a strong, unblemished body, but without a mind and must be restrained forcibly. Are the cases parallel; whose misfortune the greater? Zibbell was unmarried, had no children.

In the Zibbell case, the California Supreme Court cited no other cases of similar amounts, but did quote from the Wisconsin case of Heddles v. Chicago & N. W. Ry. that: “Though this supreme court room were filled with gold there is no rational human being . . . who would change places with this [injured] boy . . . Yet no one . . . would contend that such is the legal measure of damages.”

What then is the measure? Said the supreme court:

No fixed amount may be recovered—no exact proof of any fixed amount can, from the nature of the case and of the elements which enter into the

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56 $225,000. At the time it was awarded it was the largest personal injury verdict ever voted in the United States. Since then $260,000 and $250,000 have been returned. Florida Power and Light Co. v. Watson, supra note 16; McCullough v. Pennsylvania R. R., Dist. Ct. N. Y., settled for $225,000; and Reckenbiel v. Taylor Walcott, settled while on appeal June 26, 1950, at $187,500. The following are several of the California adequate award cases:

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<th>Case</th>
<th>Accident Date</th>
<th>Verdict</th>
<th>Equivalent Verdict Now</th>
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</thead>
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<tr>
<td>Zibbell v. S. P. Co., 160 Cal. 237, 116 Pac. 513 (1911)</td>
<td>1911</td>
<td>$70,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>McDonald v. Standard Gas Engine Co., 8 Cal. App. 2d 464, 47 P. 2d 777 (1933)</td>
<td>1932</td>
<td>100,000</td>
<td>300,000</td>
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<tr>
<td>Johnston v. Long, 30 Cal. 2d 54, 181 P. 2d 427 (1947)</td>
<td>1940</td>
<td>87,575</td>
<td>140,000</td>
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<tr>
<td>Kircher v. A.T. &amp; S.F. Ry., 32 Cal. 2d 176, 195 P. 2d 427 (1948)</td>
<td>1943</td>
<td>60,000</td>
<td>90,000</td>
</tr>
</tbody>
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50 74 Wis. 239, 259, 42 N.W. 237, 243 (1889). (Emphasis added).
award of damage ever be made. The principal elements of damage for which compensation may be awarded are the physical and mental suffering caused and which will be caused by the injury, and the partial or total impairment of earning capacity likewise caused by the injury. To the latter the law may apply a measure—a rude and inexact measure it is true, but still a measure. The extent of the partial loss of earning capacity, the duration of that partial loss of earning capacity, the total loss of earning capacity, and the earning capacity of the plaintiff himself, may all be approximated with reasonable exactness. But to put a monetary value upon the elements of physical pain and mental suffering, their nature, extent, and continuance, is a much more delicate and difficult matter.  

In *Kircher v. A. T. & S. F. Ry.*, there was a close case of liability. The $60,000 award was also attacked as being excessive in amount. The sole injury was the loss of plaintiff’s hand. Said Justice Carter:

> The jury was also entitled to take into consideration plaintiff’s youth, background, and all other relevant circumstances... including the fact that this admission into the branch of military service into which he had been inducted, indicated an excellent physical condition preceding the accident. An allowance of damages is primarily a factual matter,... and it is well settled that even though the award may seem large to a reviewing court, it will not interfere unless the allowance is so grossly disproportionate to a sum reasonably warranted by the facts as to shock the sense of justice and raise a presumption that it was the result of passion and prejudice.

In *Karberg v. Southern Pacific Co.* (accident in 1934, $42,500 award, head injuries, plaintiff 43 years of age, plaintiff not institutionalized), appellant set forth by adroit mathematical gymnastics its contentions of verdict excessiveness showing life expectancy, a fund, 6% interest, etc. Said the court of appellant’s argument against this verdict of $42,500 (which would now be worth over $100,000):

> This first calculation, of course, is based simply upon the cash value of the plaintiff’s prospective earnings, and does not take into consideration the pain, suffering, and continuing disability of the plaintiff, which at least presented to the jury a very serious question as to what would compensate an injured person for a lifetime disability. As has been said in many cases, the jury is as well qualified to estimate such damages as is an appellate court... Just a plain argument that the extent of the injuries are not sufficient to justify the amount of the award. Were there no financial losses incurred by the plaintiff, the fact that his whole life is ruined; that his mental capacities are so lessened as to render his incapable of engaging in any gainful undertakings; and that his whole life, if it extends through the period of normal expectancy, must be one not only clouded, but practically a continued hopelessness, presents a condition that can scarcely be compensated by any monetary consideration.  

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50a Supra note 58, at 254-255, 116 Pac. at 520.

60 32 Cal. 2d 176, 186-187, 195 P.2d 427, 434 (accident 1943) (emphasis added). There were no special damages for doctors or hospital bills, plaintiff having life-long free medical expenses accorded him by the United States. Kircher had returned to work at the time of trial. He will likewise have a government pension.

Lindemann v. San Joaquin Cotton Oil Co. (accident 1933) is the last case wherein a California appellate court usurped the trial court’s function and pared a verdict. The award of $62,500 was reduced by the supreme court to $50,000. Said the court:

There is no doubt but that the plaintiff was very seriously injured, but it would seem to a layman that the prognosis is fairly good for a restoration to fairly good health.6

In Kirschbaum v. McCarthy (1936) a $50,000 verdict (now worth over $100,000) was recovered.3 Mrs. Kirschbaum had a 28.9 year life expectancy. She was earning $140 a month, her medical expenses would run to $9,000.

In Mudrick v. Market St. Ry. Co. (1938), said the court, after holding that $42,500 (another verdict now worth over $100,000) was not excessive for the loss of two legs (but no special damages whatsoever indicated):

This contention presents a most difficult question, made so principally by reason of the fact that the law furnishes no yardstick by which to measure damages for personal injuries. As a result there is no unanimity in the decisions of the various courts of this and other jurisdictions.4

Verdicts have now been awarded in other states as high as $225,000 for the loss of two legs, $250,000 for a total paralysis, and $260,000 for impotency and crushed pelvis. With the advances in medicine, amputees, even

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63 5 Cal. 2d 480, 509, 55 P. 2d 870, 885 (1936) (emphasis added). Lindemann was confined in a hospital for the period of one month. There is no indication in the record that there were any special damages for loss of wages nor were there any special damages for hospital and doctor bills.

62 5 Cal. 2d 191, 47 P. 2d 345, 54 P. 2d 8. It will be noted that the district court of appeals cut the verdict to $25,000. However the $50,000 was reinstated, since the district court pointed out that defendant-appellant had filed no petition and had raised no point of excessive damages on his motion for a new trial. Said the court: “The inference is quite persuasive that had the amount of damages been so glaringly excessive...such an infirmity in the verdict would have immediately occurred to appellant upon its rendition.” See Huggins v. Southern Pacific R.R., supra note 11.

61 Cal. 2d 724, 735-736, 81 P. 2d 950, 955-956 (1938). After stating the rule on appellate review, the supreme court considered numerous other serious injury cases that had been passed upon at that time: “By reference to our decisions, we find that verdicts have been sustained in the following cases: $20,000 for the loss of one foot, Rogers v. Interstate Transit Co., 212 Cal. 36, 43, [297 Pac. 884]; $20,000 for serious injury to one foot, Kraft v. Acme Stevedore Co., 112 Cal. App. 653, [297 Pac. 585], hearing denied by this court; $28,191 for fracture to one leg and crushing of one foot, Bisinger v. Sacramento Lodge No. 6, 187 Cal. 578, [203 Pac. 768]; $25,000 [for] loss of one leg slightly below the knee, Jacques v. Southern Pacific Co., 8 Cal. App. 2d 738, 741, [48 Pac. 2d 63]...$50,000 [for] serious injury to brain, Kirschbaum v. P. H. McCarthy, Jr., 5 Cal. (2d) 191, [54 Pac. (2d) 8]; $70,000 reduced from $100,000 for loss of both legs and one arm, Zibbell v. Southern Pacific Co., 160 Cal. 237, [116 Pac. 513]; $100,000 for serious brain injury to officer in navy with life expectancy of 32 1/2 years, McDonald v. Standard Gas Engine Co., 8 C. A. (2d) 464, 473, [47 Pac. (2d) 777]. To these might be added others of a similar character... It will be noted that in one case a verdict of $20,000 for a loss of one foot was sustained and in another case a verdict of $25,000 for loss of one leg slightly below the knee, and in still another, a verdict of $20,000 for serious injury to one foot was sustained. In the other cited cases, the verdicts are still larger. In comparison with these amounts, it cannot be said that the present judgment for $42,500, in favor of a boy, thirteen years of age, in good health, for the loss of both legs below the knees is out of line with the former amounts sustained by us in actions of this character.”
with amputations near the thighs walk about, dance, drive automobiles, and play golf almost unnoticed. As yet, however, medicine has evolved no substitute for a mind that is gone.

In *Olden v. Babicora Development Co.* (injury 1928), a verdict for $47,500 (now worth over $125,000) was held not excessive.65 The evidence showed that the plaintiff had been a healthy man of 43 years, earning $175 a month before the accident, was earning only $15 a month at the time of trial, had expended (only) $1,093 for doctors and hospital bills. (For some time he had been partially paralyzed, was however, able to do light work, but had to wear a leather collar round his neck, his condition was not improving and would probably be permanent.)

In *McDonald v. Standard Gas Engine Co.* ($100,000 sustained for the first time in California), McDonald’s pay was $273 a month and it was estimated his loss of pay was $89,700. He had a life expectancy of 32.5 years. There were no other special damages. Being a naval officer, all his hospital and medical expenses, present and future, were provided in addition to a pension! McDonald had a severe brain injury but needed no confinement.

In *Johnston v. Long* (accident 1940) the court, by Justice Traynor, stated:

> Defendant contends that the jury’s verdict awarding plaintiff $87,575 is plainly excessive in view of the fact that about $73,000 of that sum constituted general damages. The verdict is undoubtedly high. Nevertheless, it is not the function of a reviewing Court to interfere with a jury’s award of damages unless it is so grossly disproportionate to any reasonable limit of compensation warranted by the facts that it shocks the Court’s sense of justice and raises a presumption that it was the result of passion and prejudice [citing *Zibbell v. Southern Pacific Co.*] .... The trial court, in denying a motion for new trial, found that the verdict was not excessive. This decision lends weight to the jury’s award .... There is considerable support in the evidence for the trial Court’s approval of the amount awarded .... A reviewing Court does not ordinarily substitute its judgment for that of the jury and trial Court, which have evaluated in terms of damages the pain, humiliation, disfigurement, and loss of earning capacity suffered by a plaintiff.66

Thus it will seem that in *Johnston v. Long* there were only $14,575 special damages. $73,000 were general damages. Plaintiff was still able to work, the only injury complained of was a nose disfigurement.67

On August 19, 1949, the case of *Gluckstein v. Lipsett*, a malpractice verdict in the amount of $115,000 was affirmed by a district court of appeal for the full amount of the verdict. Defendant had appealed this case on the ground, among others, of excessiveness of verdict.68

The following year in *Sullivan v. City & County of S. F.*, the court held that an award of $125,000, including $25,000 special damages, was not ex-

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65 107 Cal. App. 399, 290 Pac. 1062 (1930).
cessive where plaintiff, 21 years old with a life expectancy of 44 years, had been healthy, was earning $260 a month, was married, suffered a crushed pelvic ring, was afflicted with developing psychoneurosis, arthritis, prostatitis and impotency and would be unable to do hard work the rest of his life. $141,003 was paid by the defendant City & County of San Francisco after remittitur May 1, 1950.

In McNulty v. Southern Pacific, plaintiff was 42 years old with life expectancy of 26 years and earned $365 per month. An award of $100,000 for loss of both legs, one above the knee and the other below, was held not excessive, even though plaintiff continued work after recuperating, but had to be assisted to and from work and would be limited in activity for the rest of his life. The award must be interpreted as one solely for pain and suffering!

In Duvall v. T.W.A., a $120,000 verdict for husband and wife was affirmed. The 28 year old wife with life expectancy of 38 years, earned $120 a month, suffered a crushed pelvis, and the 35 year old husband with life expectancy of 24 years, earning $332 per month, suffered a fractured skull. Award of $85,000 to wife and $35,000 to husband held not excessive.

In Southern Pacific Co. v. Guthrie, an award of $100,000 to a 61 year old railroad engineer, who had lost his leg in a train accident, was finally affirmed three years after the injury by the Federal Circuit Court in January, 1951. The court after rehearing split four to three, Justice Pope announcing the rule that a federal appellate court has no right to reduce damages if both sides had a fair trial on the merits. This ruling appears to bring this circuit in line with the other circuit courts passing on the question. (There were no medical or other special damages than loss of wages.)

In Huggans v. Southern Pacific, an award of $91,000 was held not excessive for loss by a 12 year old boy, with life expectancy of nearly 54 years, of one leg below the knee.

In Sanguinetti v. Moore Dry Dock Co., an award of $75,000 was held not excessive where plaintiff, a captain of a tug boat, suffered a very badly crushed left leg.

In Germ v. City and County of San Francisco, an award of $63,044 was held not excessive for injuries to a 56 year old man resulting in permanent shortening of one leg and restricted motion of arm, even though he was unemployed at the time of the accident.

In Johnson v. Marquis, an award of $50,000 to one plaintiff and $60,000 to the other, was held not excessive. (Report of case does not indicate nature of injuries, age of parties, etc.)

In Sandoval v. So. Calif. Enterprises, Inc., an award of $25,000 held not excessive.
excessive where a singer and musician was bruised, beaten, lost two teeth and was severely emotionally upset and mentally shocked.77

In Butcher v. Queen City Iron & Metal Co., an award of $15,000 was held not excessive for loss of great toe and damage to circulation of foot.78 (Report of cases does not indicate age of plaintiff, earning capacity, etc.)

Reported Cases of Awards From Other Jurisdictions Tending to Be Adequate

The following cases from comparable, progressive states indicate justification for personal injury awards up to $260,000:

$225,000: Bartlebaugh v. Pennsylvania R. R. Co.79 Plaintiff, an employee of defendant railroad, received a verdict of $225,000 from a jury in Ohio. A court of appeals affirmed the verdict. Plaintiff suffered the loss of both legs. An appeal to the Supreme Court of Ohio was dismissed. However, it later granted a remittitur in the amount of $175,000 and the case was settled for $150,000.

$203,167: Jones v. Penn. R. R. Plaintiff, an 18 year old brakeman, lost his right leg and thumb and also developed severe generalized osteomyelitis:

First verdict, $175,000. New trial granted.

Second verdict, $203,176. New trial granted.80 It seems the Missouri judges trust precedent more than economic reality.

$175,000: Sullivan v. Southern Pacific Co.81 Plaintiff, a double amputee, received a verdict of $175,000. The details of the case are unrecorded. Although the verdict was undisputed by the trial court, counsel for plaintiff stipulated to a settlement of $150,000 before the motion for new trial was heard.

$165,000: Delaney v. N. Y. C. R. R. Co.82 District court for the southern dis-

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79 150 Ohio St. 387, 82 N.E. 2d 853 (1948).
80 353 Mo. 163, 182 S.W. 2d 157 (1944).
82 68 F. Supp. 70, 72-74 (S. D. N. Y. 1946). Defendant moved to set aside the verdict as grossly excessive. The decision of the trial court in denying defendant's motion is singularly significant, for we are permitted to share the judge's thoughts occurring to him during the trial. Judge Conger stated: "At the end of the trial I think we all agreed that plaintiff should receive a large and substantial verdict. As far as I was concerned, after I charged the jury I fixed in my mind a certain sum beyond which I felt the verdict should not go. If it approximated that amount, I turned over in my mind just what I would do. Would I set it aside or would I allow it to stand? This sum was beyond that brought in by the jury. When the jury returned a verdict for $165,000 for the plaintiff, my first impression was that it was a large verdict, but one which the jury might return and still not be out of line with the evidence in the case . . . . According to the annuity tables, plaintiff has a 35 year life expectancy. Using the wage figure of $4000 a year, this would amount to $140,000 . . . . If this sum is commuted upon the discount tables at an interest rate of 2%, the award for future loss of earnings would amount to $99,992. Add to this amount $4,000, the loss of earnings of plaintiff from the date of the accident to the date of the trial, and the total amount would be $103,992, leaving about $61,000 for all other damage . . . . I left it to the jury to use the interest rate which they felt was the proper one . . . . From the evidence it might very well have been fixed by them at a sum beyond $100,000 which would leave a balance of something less than $65,000 to pay plaintiff for his other damage, to wit: The actual wages lost, $4,000; the pain and suffering he has endured to the present time and the pain and suffering that he will endure in the future; the loss of his legs; the resultant disability, inconvenience and the loss of his right to go about on his own legs, and to enjoy a normal life; the damage to plaintiff's nerves and his nervous system; the loss caused by plaintiff's inability to perform the sexual act; the mental anguish
District of New York held $165,000 verdict *not excessive* for loss of both legs four inches below buttocks, impotency, and other injuries. Plaintiff was 30 years old at time of trial, married, one child. He was injured March 3, 1945. From the time he entered the employ of the defendant on May 27, 1944, until his injury, he had earned $3,608.78, or approximately $360 per month.

$160,000: *Virginia Ry. Co. v. Armentrout.*83 This was the second appeal in the distressing, tragic case of a four year old infant whose hands and portions of whose arms were cut off by a backing locomotive. The tragedy of such an injury to a young child was, perhaps, only equalled by the litigation. On the first trial of the case, the jury failed to agree on a verdict. On the second trial, the jury returned a verdict in the amount of $100,000. The circuit court of appeals reversed the case and remanded it for a new trial, without considering the question of excessiveness of verdict. Upon the new trial, the jury awarded a verdict of $160,000 which the trial judge sustained in denying a motion to set it aside as excessive. The circuit court of appeals, in this second appeal, found error in the trial procedure and based its reversal primarily on this point.84

plaintiff has endured up to the present time and the mental anguish he will endure in the future; the fact that plaintiff may be required to hire an attendant to care for him . . . the loss by way of damage for the shame and humiliation plaintiff has suffered and will suffer in the future." (Emphasis added).

83 158 F. 2d 358 (4th Cir. 1946); 166 F. 2d 400 (4th Cir. 1948).
84 In sustaining the verdict, the trial Court said, 72 F. Supp. 997, 1001 (1947): "The attention of the jury was not specifically directed to the low purchasing power of money, although in my opinion such a suggestion by the Court would have been proper, and certainly the jury were entitled to take that circumstance into consideration. It may be argued that ordinary fluctuations in the purchasing power of money may not properly be considered by a jury in awarding damages. Perhaps not, as to the future; but the jury have the right, and it is their duty, to be realistic. They need not close their eyes to the economic facts of life . . . . No one can say now whether a verdict of $160,000 rendered today may be equivalent to one of $300,000 or to one of $80,000 rendered five years hence. We can be guided only by the conditions of the present; and under those conditions, we learn from economic statistics that $160,000 now represents a value of approximately $100,000 in 1939 . . . ."

The circuit court, in the ultimate appeal, 166 F. 2d 400, 407-408 (4th Cir. 1948), influenced by consideration of its inability to determine the potential loss of earning power of their four year old plaintiff-respondent, concluded this loss could not be computed with "any degree of accuracy." The court hastened to admit "the little child has been terribly injured," but felt the jury could consider whether "one who has suffered the deprivation of a member in infancy is likely to feel the same sense of humiliation from it as does one who sustains the loss later in life." It looked approvingly at the "mechanical aids, which science has brought to a high state of development . . . . for the benefit of soldiers wounded in the late war . . . . All of these matters should be taken into account . . . ." Whether the circuit could have itself, "taken into account" the district court's high regard for the well informed jury and the type of men who sat on it will not be known; but it does seem fair to state that the considerations which the circuit court now directs to the attention of still another jury might well have been before the first one. Of that jury the district court said: "It may be stated here that to the Court's personal knowledge, there were some men on this jury who, from long experience, would be naturally expected to weigh and scrutinize figures and calculations, and to see that no imaginative or speculative considerations were permitted to influence the verdict. R. E. Plott, the foreman, has been for years an executive of one of the largest trust companies in the State. Walter H. Beckner is an officer of West Virginia's largest local life insurance company . . . . John K. Robison is a veteran employee of a large public utility company . . . ." 72 F. Supp. 997, 1012.

The culmination of this extensive litigation is contained in a letter from Lilly & Lilly, Charleston, W. Virginia, counsel for plaintiff, dated May 21, 1949: "The circuit court of appeals in the above case [166 F. 2d 400], after finding alleged error in the trial procedure, which was used as a basis for reversal, undertook an extensive discussion of the question of damages and in such discussion indicated the verdict should not exceed $60,000 to $85,000. In view of such opinion and the limitations as to amount, we finally settled the case for $75,000."
$150,000: *St. Louis etc. Ry. Co. v. Ferguson.* Verdict held not excessive where plaintiff, 49 year old switchman, suffered the loss of the right hand, the lower left leg and three fingers of the left hand.

$137,566.74: *Neddo v. State of New York.* Plaintiff's decedent, aged 29 years, earning $15,000 per year, survived by wife whose life expectancy was 36 years, no children. On appeal the verdict was upheld in full. The appellate court said:

It is a large verdict, the largest which has come to our attention in a death case, but after carefully scrutinizing the evidence . . . we feel that the amount was justified . . . *Where the evidence fairly sustains the verdict courts are not empowered to declare it excessive upon some economic theory that there must be a limit to a verdict in a death case.*

$130,000: *McKinney v. Pittsburg etc. R. Co.* Plaintiff, a 43 year old workman, earning $2,805.44 for the year of the accident, suffered the loss of both feet midway between ankle and knee and other injuries. The verdict was reduced by the trial court to $100,000. Plaintiff had a life expectancy of 26 years. His entire estimated loss of wages and future medicals was $60,000.

$125,000: *Avance v. Thompson.* This was an action by a 22 year old brake-man to recover for amputation of both legs, one above and one below the knee. Plaintiff was awarded a verdict of $125,000. On motion for new trial, plaintiff assented to remittitur of $25,000 and judgment for $100,000 was entered. The appellate court felt that it could not reduce the amount of a verdict in a personal injury case to a matter of mathematical computation or compute earning capacity of an amount awarded to a plaintiff at a given rate of interest. It realistically stated that the depreciation of the dollar must be recognized and that earlier decisions could be of no assistance. The judgment was sustained.

$100,000: *McAllister v. Cosmopolitan Shipping Co.* Plaintiff was a second assistant engineer employed by the United States aboard a government-owned vessel operated by the War Shipping Administration. Defendants were general agents of the United States under a general agency service agreement. Plaintiff alleged that he was negligently exposed to and contracted poliomyelitis. His action was under the Jones Act against the general agent. The jury returned a general verdict for $100,000, but found for the defendant on the second cause of action for maintenance and cure. Both parties appealed. Judgment was affirmed as to both appeals. The verdict was not directly attacked as excessive. Defendants were primarily concerned with their alleged non-liability as general agents. This court followed *Hust v. Moore-McCormack Lines.* Certiorari was granted by the Supreme Court, and its decision rendered June, 1949, reversed the *Hust* case.

$100,000: *O'Connell v. Westinghouse X-Ray Co.* The verdict was upheld. A 44 year old physician suffered x-ray burns necessitating amputation.

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85 182 F. 2d 949 (8th Cir. 1950), affirming E. D. Mo. #13936, 1948.
87 320 Ill. App. 406, 51 N. E. 2d 334 (1944). In 387 Ill. 77, 55 N. E. 2d 57 (1944), a new trial was ordered because of error in instructions re use of mortality tables.
89 328 U.S. 707 (1946).
90 16 N.Y.S. 2d 54 (1939). In 261 App. Div. 8, 24 N.Y.S. 2d 268 (1940), the judgment was reversed and the complaint dismissed on the ground that contributory negligence was established as a matter of law and no negligence of defendants had been established. However, plaintiff appealed this decision to the court of appeals, which reversed the judgment of the appellate court and ordered a new trial. 288 N.Y. 486, 41 N. E. 2d 177 (1942).
$100,000: Morris v. E. I. DuPont etc. Co. Plaintiff suffered loss of sight of both eyes, ruptured eardrum, painful injuries of the head, chest and arms. The case had been before the courts for eight years, tried twice, two appeals effected and one had gone to a federal circuit court. The first jury refused to find the defendants guilty of any negligence. The second jury returned a verdict for $100,000. On this appeal, the judgment was reversed and a new trial ordered.

$100,000: Grinnell v. Chemical Company. Plaintiff, 38 years of age, suffered permanent disability of the left leg because of stiffness of the knee and some adhesion to the bone, a scar on the other leg, and some numbness and loss of sensation in the foot.

Numerous other cases justifying adequate personal injury awards could be cited. A partial list of awards of less than $100,000 is set forth in the following table:

<table>
<thead>
<tr>
<th>Award</th>
<th>Jurisdiction and Date</th>
<th>Essential Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$90,000</td>
<td>Pennsylvania (1947)</td>
<td>Claimant suffered injuries resulting in amputation of left hand just above wrist. Separate actions brought against U.S. and a third party. On certiorari to U.S. Supreme Court.</td>
</tr>
<tr>
<td>$85,000</td>
<td>South Carolina (1949)</td>
<td>Deceased, 56 years of age at time of death, had life expectancy of 16.2 years, earned $2475 per year, and was survived by widow and 2 children, ages 14 and 20. Motion for new trial denied. Verdict affirmed on appeal.</td>
</tr>
<tr>
<td>$85,000</td>
<td>New Jersey (1946)</td>
<td>Plaintiffs were husband and wife. Wife 55 years old, with 17+ years life expectancy, suffered loss of both legs below the knees. $50,000 to wife; $35,000 to husband. New trial denied and verdict sustained on appeal.</td>
</tr>
</tbody>
</table>

92 346 Mo. 126, 139 S.W. 2d 984 (1940).
93 Cf. Jones v. Penn. R. R. Co., supra note 80, another Missouri case. Verdicts up to $100,000 for fractures of the skull have been sustained as not excessive. 15 A.S. Jur. § 211; Note, 46 A. L. R. 1268 (1927), as supplemented in Note, 102 A. L. R. 1210 (1936); Walters v. C. M. & Puget Sound Ry., 47 Mont. 501, 133 Pac. 357 (1913).
95 Shields v. United States, 73 F. Supp. 862, (E.D. Pa.). Abraham Freedman, Esq. of Freedman, Landy & Lorry, attorneys of Philadelphia, Pa., appearing for plaintiff, writes (June 17, 1949): “After we rested our case in the suit against the third party, a settlement in the express understanding set forth in the release that it was not in full satisfaction, but a compromise and it was without prejudice to any claims against other parties for the same injuries. We prosecuted the suit against the United States in admiralty before a judge without a jury ... he (further) found that the plaintiff was guilty of contributory negligence and cut the verdict in half and specified that the plaintiff should receive the sum of $45,000 .... We are now preparing a petition for certiorari to the Supreme Court.”
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<tr>
<td>$79,530</td>
<td>New York (1950)</td>
<td>Ship’s radio operator with life expectancy of 33 years, recovered $12,050 for past wage losses, $37,500 for reduction of earnings, and $30,000 general damages including “pain, suffering, humiliation, permanent disfigurement, inconvenience and physical incapacity in daily living and the mental and physical results of the injury.”</td>
</tr>
<tr>
<td>$76,112</td>
<td>Montana (1934)</td>
<td>61 year old plaintiff, suffered severe injuries rendering his legs practically useless; destined to wear steel braces from hips to heels; could move slowly on crutches; earning $16,000 to $18,000 per year. Award for full amount of prayer. (This verdict now worth approximately $175,000.) Affirmed on appeal.</td>
</tr>
<tr>
<td>$75,000</td>
<td>Ohio (1923)</td>
<td>Loss of both legs. Trial court denied new trial but ordered remittitur of all in excess of $45,000; trial court affirmed on appeal. Supreme court reversed and remanded. Second trial resulted in verdict for $75,000. Affirmed on appeal.</td>
</tr>
<tr>
<td>$75,000</td>
<td>Ohio (1945)</td>
<td>Plaintiff, a brakeman, lost both legs below the knees. Life expectancy 25 years. Earned $280 per month prior to injury. Affirmed on appeal.</td>
</tr>
<tr>
<td>$75,000</td>
<td>New York (1950)</td>
<td>Damages to longshoreman for loss of one leg were reduced 10% to $67,500 for contributory negligence.</td>
</tr>
<tr>
<td>$70,000</td>
<td>Michigan (1947)</td>
<td>Child of about 5 years sustained grievous burns to the head, body and extremities. Affirmed.</td>
</tr>
<tr>
<td>$67,000</td>
<td>Missouri (1946)</td>
<td>Plaintiff, a switchman, was acting as a pin puller on Jan. 1, 1945. His right arm and leg were caught under the cars and he was shoved forward until he cleared himself. (Comparison with Quinn v. Chicago Milwaukee etc. R.R. Co. is startling.) Affirmed.</td>
</tr>
</tbody>
</table>

Cases dealing with the amount of verdicts are never satisfactory. Economic and social conditions existing in other parts of the country result in a difference in juridical points of view.

98 Petition of United States, 92 F. Supp. 495 (S.D. N.Y.)
99 Fulton v. Chouteau County Farmers’ Co., 98 Mont. 48, 37 P. 2d 1025.
100 Toledo R. R. v. Miller, 108 Ohio St. 388, 140 N. E. 617. See Jeffers v. City and County of San Francisco, supra note 20, where the first verdict of $65,000 was set aside by the trial judge as “excessive,” and the second trial verdict of $100,000 stood!
103 Consumers Power Co. v. Nash., 164 F. 2d 657 (6th Cir.)
104 Henwood v. Chaney, 155 F. 2d 392 (8th Cir.)
105 162 Minn. 87, 90, 202 N.W. 275, 276 (1925). Here plaintiff, a railroad worker, was severely and permanently injured. After a verdict for $21,000, the plaintiff consented to a reduction of $5,000. Judgment was entered for $16,000 and defendants appealed it as excessive. Twenty-six years ago, in 1925, the Minnesota Supreme Court, holding the verdict not excessive, recognized that: “In recent years there has been a noticeable increase in the size of verdicts in personal injury cases. The courts approve the verdicts today which would have been unhesitatingly set aside as excessive 10 or 15 years ago. [1910] Measured in money, the earning capacity of most men has increased; measured by its purchasing power, the value of a dollar has de-
THE ADEQUATE AWARD

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<tbody>
<tr>
<td>$65,170</td>
<td>New York (1949)</td>
<td>Decedent killed in 1945 during fire aboard ship. Jury awarded widow $65,170; reduced to $59,670 for payment under war risk insurance policy and court struck provision for 6% interest from date of death. Affirmed.</td>
</tr>
<tr>
<td>$65,000</td>
<td>Georgia (1949)</td>
<td>50 year old switchman suffered loss of right leg below knee, broken shoulder and ribs and back injury. Verdict sustained in full.</td>
</tr>
<tr>
<td>$65,000</td>
<td>Michigan (1931)</td>
<td>21 year old brakeman lost a leg below the knee and suffered some burns to the body and arms. All medical expenses were paid by railroad. Affirmed.</td>
</tr>
<tr>
<td>$62,500</td>
<td>Wisconsin (1941)</td>
<td>Complete paralysis from the waist down. Court indicated that plaintiff's damages would exceed $62,500 if he lived only 8 years after trial. As a matter of fact, plaintiff died early in 1949, some 8 years after trial and 12 years after the injury. Affirmed.</td>
</tr>
<tr>
<td>$60,000</td>
<td>New York (1944)</td>
<td>39 year old auto mechanic suffered injuries resulting in amputation of left arm and impairment of other organs of his body. Affirmed.</td>
</tr>
<tr>
<td>$55,000</td>
<td>Arizona (1949)</td>
<td>26 year old plaintiff, earning $380 per month, suffered cuts and bruises over all of body, left foot crushed and mangled and subsequently amputated. Affirmed.</td>
</tr>
<tr>
<td>$53,889.27</td>
<td>New York (1950)</td>
<td>$80 a week machinist suffered fractures of leg, skull, jaw and nose, injury to ulna nerve, extensive facial disfigurement and chronic osteomyelitis. Could not do work requiring continued standing or involving danger of fall or blow to leg.</td>
</tr>
</tbody>
</table>

creased . . . Although the reduced verdict seems large to us, we cannot say that the learned trial judge failed to exercise sound judicial discretion in refusing to set it aside . . .." (Emphasis added.)

106 Casey v. American Export Lines, 173 F. 2d 324. Judgment was affirmed subject to the action of the court in McAllister v. Cosmopolitan Shipping Company, 169 F. 2d 4 (2d Cir. 1948), then pending before the Supreme Court on certiorari. In June, 1949, that Court held, in the latter case, that general agents operating under war shipping administration agency agreement in behalf of the United States were not suable. 337 U. S. 783.

107 Western & Atl. R. R. v. Burnett, 79 Ga. App. 530, 54 S. E. 2d 357. The court stated that to set aside a verdict on appeal because of excessiveness, such verdict: "... must carry its death warrant on its face ... the existence of prejudice or bias cannot rest upon suspicion. That the verdict was the result of prejudice and bias must be shown." 54 S. E. 2d at 357.

108 Grand Trunk Western Ry. v. White, 48 F. 2d 759 (6th Cir.). In this same case a death action was involved in which another plaintiff recovered $45,000. This verdict was later cut to $42,000. (Verified by letter dated January 17, 1951, from Elmer H. Groefsema, Esq., attorney for plaintiff, Detroit, Michigan.)


111 Alabam Freight Lines v. Thevenot, 68 Ariz. 260, 204 P. 2d 1050.

CALIFORNIA LAW REVIEW

AWARD  JURISDICTION AND DATE  ESSENTIAL FACTS

$53,750118  West Virginia  (1926)  Death of 42 year old railroad engineer, in good health at time of accident, earning $300 to $400 per month. Survived by wife and 2 infant children, aged 2 and 4 years. Affirmed.

$52,000114  New York  (1946)  35 year old stevedore, with life expectancy of 31.78 years suffered severe cerebral concussion, fracture of jaw, left hip and shaft of femur, could no longer work as longshoreman. Hospital and medical expenses more than $4,000. Affirmed.

$51,436.40115  Arizona  (1941)  Multiple and serious injuries to plaintiff housewife. Supreme court held there was no loss of earning capacity. Trial court reduced to $46,436.40; supreme court reduced to $25,000.

$50,000116  Florida  (1948)  43 year old lineman suffered injuries resulting in loss of right hand and skin grafts on leg. Affirmed.

$50,000117  West Virginia  (1936)  6 year old child lost arm and leg while hopping freight train.

$45,000118  Arizona  (1925)  Plaintiff sustained fractured spine, broken nose and injuries to kidneys. Reduced to $25,000 and affirmed by supreme court.

$44,212119  Utah  (1948)  61 year old plaintiff suffered serious but not disabling fractures of right leg bones. Affirmed.

$40,000120  West Virginia  (1948)  Plaintiff, 61 years of age, suffered serious but not disabling fractures of right leg bones. Affirmed.


Unreported Cases (California)—Awards Approaching Adequacy

Proportionately very few personal injury cases are actually tried compared to those settled, and fewer still reach the appellate courts in proportion to those tried. Yet, probably, seventy percent of all cases tried before California courts are personal injury cases! If we had a system of law wherein an automatic appeal prevailed, as in our death penalty cases, then our law being more tried would be more certain and awards, long before now, might have become more adequate. It is usually the wage earner of the family who is taken from the home by the tragedy of industrial or per-

116 Florida Power and Light Co. v. Hargrove, 160 Fla. 405, 35 So. 2d 1.
118 Arizona Hercules Copper Co. v. Kronich, 27 Ariz. 524, 234 Pac. 562.
119 Schlatter v. McCarthy et al., Utah, 196 P. 2d 968.
120 Humphrey v. Virginian Ry., 54 S. E. 2d 204 (W. Va.).
sonal injury. No one is left to feed the family, to pay the hospital and doctor bills, or to keep the home. Medical and hospital bills mount, life savings disappear. The family is distraught.

It is no secret that in 95% of the personal injury cases that are fought in the trial courts, the policy of trial and appeal is dictated by an insurance company. With its unlimited resources, such an antagonist may "fight" one of these cases for two or three years, risking the 7% interest as long as the chance of depletion of the plaintiff's assets increases in proportion to the passage of time.\textsuperscript{121} At any point along the long trial and appellate road, the plaintiff may forego the luxury of an appeal and "reported case"—if, indeed, he has not succumbed by economic necessity to the financial blandishments of minimal yet "cash" settlement long before decision even in the trial court.

The author has written to a number of the leading personal injury lawyers throughout the United States, asking for information upon unreported cases. The replies indicate that universally, the trend is toward much more adequate awards. A number of the references follow.\textsuperscript{122}

If all these cases actually went to appeal, in at least some of them there would be awards higher than any in appellate courts today. Consider for example the case of \textit{Kincaid v. Stanford Hospital}, settled on June 29, 1949 for $128,000.\textsuperscript{124} Plaintiff, a young married woman was rendered paraplegic from the umbilicus down by an ineptly administered caudal anesthesia.

The standard of living in San Francisco is comparable to or higher than any place in the United States at this time. San Francisco juries have justly given a better index to this than any economic guide.

The first six of the following Superior Court jury cases (all of San Francisco City and County, except \textit{Treonowski), Jeffers, Treonowski, Recknabel, Pon, Jordan and Kincaid, in the four years between July, 1945, and July, 1949, are within the personal knowledge of the writer, as all were presented to juries by him. Four were settled at substantial figures of the judgment, three were appealed, one, \textit{Kincaid v. Stanford Hospital}, was settled at $128,000 before trial, on June 29, 1949.

\textbf{John Jordan v. Thomas Drayage Co.} A young colored boy, a common laborer, suffered the traumatic amputation of one lower limb. The verdict of $50,000 was promptly paid in full after motion for new trial was denied.

\textbf{Catherine Jeffers v. City and County of San Francisco.} A $65,000 verdict for the loss of one leg was first set aside as being excessive. The case was then tried before another judge and jury. The second verdict was for $100,000, September 27, 1946. This woman was a housewife who had no loss of earnings, and no medical or special damages because she was treated by the navy. The second judgment of $100,000 was allowed to stand as not excessive.

\textsuperscript{121} It takes over one year to get to jury trial in San Francisco (five years in New York, until recently, Iowa, two to three months).

\textsuperscript{122} All of the cases referred to may be verified by reference to docket number, etc.

\textsuperscript{123} Super. Ct., S.F., Cal., No. 381001. Settled by this writer.

\textsuperscript{124} Super. Ct., S.F., Cal., No. 332814.

\textsuperscript{125} Super. Ct., S.F., Cal., No. 343965.
Treowski v. Smith. While this verdict of $200,000 was for more than one plaintiff, the Superior Court of Solano County allowed it to stand as the largest verdict rendered in that county, recognizing appreciation of living costs in non-industrial counties.

Urrere-Pon v. City and County of San Francisco. A verdict of $80,000 was awarded for a broken but usable leg. The case was later settled at $65,000. Plaintiff was an accountant.

Reckenbiel v. Taylor-Walcott Co. $225,000 verdict August 11, 1948, with motion for new trial denied. Plaintiff, a fireman earning $220 per month, 41 years of age, suffered complete and permanent traumatic psychosis, and was in an asylum at time of trial. The case was appealed to an appellate court and finally settled for $187,500.

Macey v. Southern Pacific Co. Verdict returned in the amount of $165,000. Plaintiff, a 35 year old laborer, earning $300 per month at the time of the accident, suffered double amputation just above knees and no other injuries. He had no dependents and was unmarried. On motion for new trial (heard September 15, 1949) the trial court upheld the verdict in toto.

Copos v. W. A. Bechtol Co. The trial judge, on motion for a new trial, reduced this verdict to $150,000. Plaintiff was paralyzed from the waist down. Liability was very doubtful; the case was settled at $140,000.

Christie v. City and County of San Francisco. The 30 year old plaintiff, a graduate of Harvard Law School, was injured in a collision with a bus owned and operated by the municipal railway of San Francisco. Plaintiff suffered grievous injuries to his vertebrae so that he could not turn his head from side to side and had a brain stem involvement, which may result in paralysis, blindness, or even sudden death. In addition, plaintiff suffered injuries to both knees and is unable to concentrate for any period of time, thus greatly reducing both his earning capacity and fitness and ability to obtain employment. The verdict was for $146,500, with the case finally settled at $80,000.

Clarke v. Winter. A verdict was returned in the amount of $125,000 in favor of a 30 year old highway patrol officer, who suffered a spinal injury which causes him to "throw" his right leg as he walks. There is sensory debility in the right extremity. Plaintiff is able to do light work and uses neither crutches nor cane. Clarke earned $341 per month; has a dependent wife and two children, but will receive a disability pension in the amount of $120 per month for life from the state.

Glenn Fuller v. James M. Gonzales, et al. In January, 1951, one of the most adequate awards to be returned in California was given by a San Jose jury: $105,000 for the loss of toes of one foot, to a 34 year old carpenter, who was earning more money at the time of trial than at the injury date. There had been an eleven

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129 Super. Ct., S.F., Cal., No. 366575.
131 On March 4, 1949, this writer settled before trial eighteen death cases resulting from the Port Chicago explosions, at $385,000, a figure which likewise would have been "excessive" several years ago.
132 Super. Ct., S.F., Cal., No. 321073 (March 10, 1948).
133 Super. Ct., S.F., Cal., No. 382,793.
135 Super. Ct., Santa Clara County, Cal., No. 72154.
months loss of wages. Counsel for plaintiff, James Boccardo, had employed the technique at trial of using the blackboard to portray mathematically the damages demanded. After putting down the actual damages, he placed on the board the measure of damages to be instructed upon, humiliation, embarrassment, mortification, pain and suffering and asked $1 per day for each through the man's life, then multiplied each $1 per day times plaintiff's life expectancy. A life expectancy instruction was requested of the court and given. (The highest offer of settlement before trial was $15,000.)

The following is a table of other unreported California cases:

<table>
<thead>
<tr>
<th>AWARD</th>
<th>COUNTY AND DATE</th>
<th>ESSENTIAL FACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>$110,000</td>
<td>San Francisco</td>
<td>Plaintiff received brain injuries, injuries to bladder and fractures of leg and pelvis. New trial denied.</td>
</tr>
<tr>
<td>$109,000</td>
<td>San Francisco</td>
<td>15 year old school girl suffered loss of both legs. Paid in full. No appeal.</td>
</tr>
<tr>
<td>$100,000</td>
<td>Santa Clara</td>
<td>This case involved death from an explosion.</td>
</tr>
<tr>
<td>$95,000</td>
<td>Alameda</td>
<td>30 year old plaintiff suffered fractured vertebrae of upper back, spinal nerve involvement. New trial denied. Settled $85,000 before appeal.</td>
</tr>
<tr>
<td>$92,150</td>
<td>El Dorado</td>
<td>27 year old unmarried woman, no dependents; fractured left knee, comminuted fracture upper left leg necessitating bone graft. Probable permanent stiffness, but leg usable. New trial denied.</td>
</tr>
<tr>
<td>$85,000</td>
<td>San Francisco</td>
<td>Plaintiff suffered amputated right leg and other injuries. Judgment set aside notwithstanding verdict. Emergency vehicle held to have right of way as matter of law.</td>
</tr>
<tr>
<td>$84,548</td>
<td>San Francisco</td>
<td>Plaintiff 42 years old, earning $250 per month, lost one leg below knee. New trial denied.</td>
</tr>
<tr>
<td>$75,000</td>
<td>San Francisco</td>
<td>Widow and 14 year old child brought suit for wrongful death.</td>
</tr>
<tr>
<td>$75,000</td>
<td>Los Angeles</td>
<td>50 year old plaintiff had little and ring finger of left hand amputated after hand was mashed. He also developed an anxiety neurosis. Reduced to $50,000 after motion for new trial.</td>
</tr>
</tbody>
</table>

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130 Miller v. City and County of S.F., Super Ct., S.F., Cal., No. 259481.
137 Jo Ann Jackson v. City and County of S.F., Super. Ct., S.F., Cal., No. 339912.
142 Ruth May v. City and County of San Francisco, Super. Ct., S.F., Cal., No. 341603.
Awards

<table>
<thead>
<tr>
<th>Award</th>
<th>County and Date</th>
<th>Essential Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$72,500</td>
<td>Alameda (1949)</td>
<td>15 year old plaintiff suffered severe burns about face and body. Medical expense $2,000; future medical $10,000. Injury cosmetic; no limitations of action; good surgical results anticipated. Settled before trial.</td>
</tr>
<tr>
<td>$72,500</td>
<td>San Francisco (1948)</td>
<td>41 year old plaintiff sustained head injury and less serious bodily injuries. Later developed traumatic psychosis. Settled before trial.</td>
</tr>
<tr>
<td>$70,000</td>
<td>San Francisco (1949)</td>
<td>28 year old switchman suffered loss of one hand. New trial denied.</td>
</tr>
<tr>
<td>$70,000</td>
<td>San Francisco (1949)</td>
<td>Plaintiff sustained fractured tibia and fibula into knee joint, and fractured heel.</td>
</tr>
<tr>
<td>$65,000</td>
<td>Contra Costa (1950)</td>
<td>Plaintiff sustained two ruptured intervertebral discs; laminectomy was performed, but no fusion. Compromised before argument on new trial.</td>
</tr>
<tr>
<td>$60,000</td>
<td>San Francisco (1950)</td>
<td>Car inspector for defendant railroad was knocked under moving train while performing duties and suffered amputation of right leg below knee. Settled.</td>
</tr>
<tr>
<td>$50,000</td>
<td>San Francisco (1949)</td>
<td>32 year old brakeman suffered a ruptured intervertebral disc. New trial denied.</td>
</tr>
</tbody>
</table>

**Unreported Cases (Other Jurisdictions)—Awards Approaching Adequacy**


Plaintiff was 36 years old, earning about $400 per month, married only six weeks. A crane collapsed on Watson crushing his pelvis and severing his urethra, which rendered him impotent. The pelvis healed in malposition, and Watson is a semi-invalid. Watson must be repeatedly catheterized with the largest sound available if he is to live. (Injuries almost identical to those suffered by plaintiff in *Sullivan v. City and County of San Francisco*.)

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151 Farley v. Southern Pacific Co., Super. Ct., S.F., Cal., No. 391855. This case settled for $60,000 on first afternoon of trial and is the highest settlement made to date by that railroad for such an injury. Verified by Ryan and Ryan, San Francisco, Cal., attorneys for plaintiff.
153 Supra note 16.
$250,000, 1949, New York: McCullough v. Penn. R. Co. On May 4, 1949, a federal jury for that district awarded a $250,000 verdict to William T. McCullough, Jr., a 28 year old war veteran who was paralyzed from the shoulders down when he fell twenty feet while crossing the Pennsylvania railroad tracks at the North Philadelphia Station on May 27, 1947. Plaintiff was married and the father of a 5 year old child. Motion for new trial and to reduce verdict was denied. This case was settled for $225,000, the most adequate settlement that has come to our attention in a personal injury case.

$185,000, 1948, Illinois: Marion Smith v. Illinois Central R. R. The verdict was rendered December 18, 1949, for the loss of both legs and motion for new trial denied.

$180,000, Indiana: This case represents the largest out of court settlement in this state. A four year old boy was severely burned while playing near a heap of smouldering ashes. The boy was wearing a "Gene Autry" cowboy suit made of highly inflammable spun rayon. As he ran through the ashes, from which there was no visible smoke or fire, a spark ignited the material and within seconds he was engulfed in flames. The boy suffered third degree burns extending through the subcutaneous tissue over nearly all the surface of both legs. In addition, the lad by scratching newly healed areas developed an infection which he carried by his hands to his eyes. This resulted in total loss of sight of both eyes. The case was settled before trial for $180,000 with the Travelers Insurance Co., whose assured manufactured the suit.

Further unreported cases from other jurisdictions are set forth in the following table:

<table>
<thead>
<tr>
<th>Award</th>
<th>Jurisdiction and Date</th>
<th>Essential Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$175,000</td>
<td>Illinois (1947)</td>
<td>56 year old plaintiff earning $300 per month had both legs amputated. Settled at $152,000 after new trial denied.</td>
</tr>
<tr>
<td>$162,500</td>
<td>Illinois (1945)</td>
<td>Loss of left leg and left arm. Verdict of $200,000 reduced.</td>
</tr>
<tr>
<td>$150,000</td>
<td>New York (1948)</td>
<td>Plaintiff suffered amputation of both legs. Settled for $150,000 before argument on motion for new trial.</td>
</tr>
<tr>
<td>$150,000</td>
<td>Florida (1950)</td>
<td>Claimant struck on head by 23 pound slab of glass causing grievous head injuries. Settled for $135,000 before motion for new trial presented.</td>
</tr>
</tbody>
</table>


156 Super. Ct., Cook County, Ill., No. 48 S 6299.

158 Howard Young Esq., one of plaintiff's attorneys. The case has no name. Reported by letter of James L. Tuohy, Esq., attorney, Indianapolis, Ind., in letter dated January 27, 1941, without reporting the name of the client.


<table>
<thead>
<tr>
<th>Award</th>
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</thead>
<tbody>
<tr>
<td>$146,000</td>
<td>Illinois (1949)</td>
<td>45 year old plaintiff earning $5000 a year lost one leg, one arm and suffered back injury. Settled at $146,000 plus hospital and medical bills.</td>
</tr>
<tr>
<td>$145,000</td>
<td>New York (1949)</td>
<td>Plaintiff, in his early twenties, suffered amputation of one leg, complete loss of use of other leg and one arm. Settled before trial.</td>
</tr>
<tr>
<td>$135,000</td>
<td>New York (1949)</td>
<td>Plaintiff earning $3000 per year and helping to support mother, suffered double leg amputation. Settled before trial.</td>
</tr>
<tr>
<td>$134,000</td>
<td>Illinois (1949)</td>
<td>53 year old car inspector thrown under car and lost both arms. Settled.</td>
</tr>
<tr>
<td>$132,000</td>
<td>Illinois (1949)</td>
<td>33 year old housewife lost left leg below knee and little finger of left hand. Settled before trial.</td>
</tr>
<tr>
<td>$123,749</td>
<td>Iowa (1950)</td>
<td>32 year old packing house worker suffered severe injuries in a collision. Settled at $94,000 while motion to set aside and for new trial pending.</td>
</tr>
<tr>
<td>$120,000</td>
<td>Ohio (1949)</td>
<td>40 year old plaintiff earning $2800 a year lost both legs above the knee. Settled before trial.</td>
</tr>
<tr>
<td>$115,000</td>
<td>New York (1950)</td>
<td>36 year old seaman lived 10 hours. $40,000 for terrific pain and suffering, $15,000 to 35 year old widow, $15,000 to 15 year old daughter, $45,000 to sickly 14 year old son.</td>
</tr>
<tr>
<td>$110,000</td>
<td>New Jersey (1930)</td>
<td>45 year old bachelor earning $25 a week suffered several fractures of hip and pelvic region. Doctors testified he had been rendered sterile. Settled before appeal for $75,000.</td>
</tr>
</tbody>
</table>

164 Howard G. Skinner v. Chicago, Burlington & Quincy R.R., Super. Ct., Cook County, Ill., No. 48s11588.  
166 Fred Wright v. Rock Island etc. Railway Company. Verified by letter dated January, 1951, from Fred A. Ossana, Minneapolis, Minn., attorney. Prior to this award, previous high verdict in Iowa was $57,000. It is interesting to note that in Iowa a trial judge may recall a jury after verdict and examine them upon their reasons and motives in achieving their verdict.  
Adequate Award

### Essential Facts

<table>
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<tr>
<th>Award</th>
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</tr>
</thead>
<tbody>
<tr>
<td>$106,560(^{170})</td>
<td>Minnesota (1948)</td>
<td>46 year old switchman lost both legs. Verdict collected in full.</td>
</tr>
<tr>
<td>$103,475(^{171})</td>
<td>Oklahoma (1950)</td>
<td>44 year old oil field driller, married with 3 minor children, earning $500 a month, suffered a fractured skull and burns over about 65% of his body.</td>
</tr>
<tr>
<td>$103,000(^{172})</td>
<td>Minnesota (1949)</td>
<td>60 year old carman suffered loss of both legs and one arm. Settled before trial.</td>
</tr>
<tr>
<td>$100,000(^{173})</td>
<td>New York (1950)</td>
<td>34 year old plaintiff earning $50 a week, sustained multiple fractures of both legs and pelvis, spent 3 months in hospital and was totally disabled at time of trial.</td>
</tr>
<tr>
<td>$100,000(^{174})</td>
<td>Ohio (1950)</td>
<td>Plaintiff suffered loss of use of left leg, loss of sense of smell, comminuted fractures of forehead, nose, and upper left cheek bones, loss of brain tissue, impairment of brain function, disfigurement and change of personality.</td>
</tr>
<tr>
<td>$100,000(^{175})</td>
<td>Ohio (1948)</td>
<td>Railroad yard conductor survived by widow and 3 children killed instantly when crushed between two cars.</td>
</tr>
<tr>
<td>$100,000(^{176})</td>
<td>Minnesota (1948)</td>
<td>Brakeman had both legs mangled in fall under defendant's train; legs amputated one above and one just below the knee. Settled before trial.</td>
</tr>
<tr>
<td>$98,800(^{177})</td>
<td>Missouri (1949)</td>
<td>38 year old plaintiff suffered fractured skull, fractured shoulder and partial amputation of a foot.</td>
</tr>
<tr>
<td>$90,000(^{178})</td>
<td>Utah (1950)</td>
<td>6 year old plaintiff lost left leg at hip and right leg below the knee. Settled.</td>
</tr>
</tbody>
</table>

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\(^{170}\) Fed. Ct., Duluth, Minn. Davis, Michel, Yaeger & McGinley, Regional counsel for Brotherhood for Railroad Trainmen.


\(^{172}\) Vergil D. Brannock v. Spokane, Portland and Seattle Railway Company. Davis, Michel, Yeager & McGinley, Minneapolis, Minn., advised by letter dated June 16, 1949, they have settled within the previous year and a half, before trial, four double amputation cases under the Federal Employers' Liability Act for sums ranging from $90,000 to $105,000. Had liability been contested and a verdict awarded, under present standards these sums might have run upward of $200,000. However, it would have been a year to two years before finality of judgment was attained.

\(^{173}\) Tonjes v. Long Island Railroad. This accident on Feb. 17, 1950, was the first of two notorious collisions during 1950 on this commuter railroad.


<table>
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<tr>
<td>$90,000&lt;sup&gt;179&lt;/sup&gt;</td>
<td>Alabama (1950)</td>
<td>3 plaintiffs. Widow in Pressley suit received settlement of $50,000; 2 others, also death cases, settled for total of $40,000. Settled.</td>
</tr>
<tr>
<td>$88,500&lt;sup&gt;180&lt;/sup&gt;</td>
<td>Illinois (1949)</td>
<td>41 year old plaintiff sustained a ruptured intervertebral disc. Settled at $61,000.</td>
</tr>
<tr>
<td>$86,500&lt;sup&gt;181&lt;/sup&gt;</td>
<td>New York (1949)</td>
<td>56 year old plaintiff lost right leg below knee and right hand above wrist.</td>
</tr>
<tr>
<td>$85,450&lt;sup&gt;182&lt;/sup&gt;</td>
<td>New Jersey (1949)</td>
<td>Decedent was 29 years old, earning $5,000 per year. Now on appeal.</td>
</tr>
<tr>
<td>$85,000&lt;sup&gt;183&lt;/sup&gt;</td>
<td>Illinois (1949)</td>
<td>36 year old plaintiff suffered fractures of both legs, limitation of motion in both knees. Settled at $42,500.</td>
</tr>
<tr>
<td>$85,000&lt;sup&gt;184&lt;/sup&gt;</td>
<td>Massachusetts (1950)</td>
<td>36 year old plaintiff had spinal cord severed by fall on narrow, icy path; permanently crippled.</td>
</tr>
<tr>
<td>$85,000&lt;sup&gt;185&lt;/sup&gt;</td>
<td>New York (1950)</td>
<td>Plaintiff, 31 years old, suffered loss of leg above knee.</td>
</tr>
<tr>
<td>$82,069.10&lt;sup&gt;186&lt;/sup&gt;</td>
<td>Minnesota (1949)</td>
<td>Plaintiff, 32 year old housewife, mother of 3 children; husband killed in accident in which she was injured; suffered fractured humerus and left femur, non-union of femur at time of trial. Settled for $70,000 which included $10,000 statutory maximum for the death case.</td>
</tr>
<tr>
<td>$80,000&lt;sup&gt;187&lt;/sup&gt;</td>
<td>Texas (1950)</td>
<td>Plaintiff, 22 years old, suffered loss of both legs below the knee. Settled for $80,000.</td>
</tr>
<tr>
<td>$79,474.48&lt;sup&gt;188&lt;/sup&gt;</td>
<td>Oregon (1947)</td>
<td>Plaintiff, in twenties, suffered multiple fractures of pelvic region and fractured right hip. Verdict $80,974, plaintiff accepted remititur of $1500. Case settled before appeal.</td>
</tr>
</tbody>
</table>


<sup>183</sup>Zych v. Edelweiss Brewing Co., Super. Ct., Cook County, Ill., No. 47s4507.


<sup>188</sup>Cacida v. Southern Pacific Co. et al., Cir. Ct. Multnomah County, Portland, Oregon. Verified by letter, dated Oct. 21, 1949, from J. S. Middleton, Esq., attorney, Portland, Oregon. This verdict and settlement should be compared with the Oregon case of Martin v. Oregon Stages, 129 Ore. 435, 277 Pac. 291 (1929), where the court discusses a verdict of $77,202 which the supreme court of Oregon reduced to $30,000.
<table>
<thead>
<tr>
<th>Award</th>
<th>Jurisdiction and Date</th>
<th>Essential Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$79,375\textsuperscript{180}</td>
<td>Oklahoma (1950)</td>
<td>Action by administrator on behalf of widow and 3 minor children; decedent 37 year old farmer earning $3000 per year.</td>
</tr>
<tr>
<td>$78,370\textsuperscript{180}</td>
<td>Utah (1945)</td>
<td>Decedent 30 years old at time of death. Settled while on appeal for $67,000.</td>
</tr>
<tr>
<td>$75,000\textsuperscript{191}</td>
<td>Utah (1949)</td>
<td>Wrongful death. Decedent survived by 30 year old widow and 2 minor children. Trial court reduced verdict by $25,000. Appealed for reinstatement of $75,000.</td>
</tr>
<tr>
<td>$75,000\textsuperscript{192}</td>
<td>Illinois (1949)</td>
<td>Plaintiff, 57 years of age, suffered ruptured intervertebral disc. Settled for $48,000.</td>
</tr>
<tr>
<td>$71,824\textsuperscript{193}</td>
<td>Texas (1950)</td>
<td>Decedent 22 year old truck driver earning $300-$400 per month. Widow, 2 children and parents recovered $64,960, intervenors $5,864 for property damage.</td>
</tr>
<tr>
<td>$71,800\textsuperscript{194}</td>
<td>Texas (1950)</td>
<td>36 year old pipefitter, earning capacity $500 per month, fatally injured when evicted from nightclub by bouncer. Survived by second wife, 22 years of age, 2 year old child, and 2 children, aged 14 and 15, by previous marriage.</td>
</tr>
<tr>
<td>$68,300\textsuperscript{195}</td>
<td>Oregon</td>
<td>21 year old truck driver income about $3000 a year, widow 23 years old at time of trial.</td>
</tr>
<tr>
<td>$67,500\textsuperscript{196}</td>
<td>Minnesota (1950)</td>
<td>Plaintiff, 21 years old, suffered severe burns partially destroying left hand and comminuted fractures of left lower leg. Settled.</td>
</tr>
</tbody>
</table>

\textsuperscript{180} Duvall, Adm. v. Hazelrigg Trucking Company et al., Super. Ct., Seminole County, Okla., No. 7127. Verified by letter from Frank Seay, Seminole, Okla., attorney for plaintiff. Simultaneously with this jury award in Oklahoma, a U.S. Fed. Dist. court, Judge Harris of S.F. sitting without jury, awarded $40,000 to Rina Vatnone, 29, for wrongful death of her husband, 44, in a suit against the United States. 


\textsuperscript{192} Gross v. A. T. & S. F. Ry., Super. Ct., Cook County, Ill., No. 47s13725. 

\textsuperscript{193} Stewart et al. v. T. & N. R. R., Dist Ct., Robertson County, Texas, No. 8409. 

\textsuperscript{194} Permenter et al. v. Miller et al., Galveston Ct. of Civ. App., Texas, No. 12226. Trial judge set verdict aside, but restored on widow’s appeal. 

\textsuperscript{195} Hutchens v. C. D. Johnson Lumber Co., U.S. Dist. Ct., Oregon, No. 5087. In this case the trial judge directed that the plaintiff either submit to new trial or remit about $21,000 of the verdict. At the present time, upon motion of plaintiff, the trial judge is reconsidering the remittitur. Verified by letter dated January 20, 1951, from Harry George, Jr., Esq. (by Graham Walker), attorney, Portland, Oregon. 

CALIFORNIA LAW REVIEW

Essential Facts

Award  Jurisdiction and Date  Essential Facts

$ 65,000\textsuperscript{197} Oklahoma (1949)  Plaintiff 40 years old, life expectancy 31 years, earning $6000 a year, suffered grievous facial injury, could not raise or lower eyelids or move eyeballs, totally and permanently industrially blind, badly disfigured, will be in constant pain for life because of sand and oil driven into eyeballs, muscles and cheeks. On appeal to Oklahoma Supreme Court.

$ 64,000\textsuperscript{188} Illinois (1950)  49 year old plaintiff, suffered basal skull fracture necessitating surgery. Settled.

$ 62,500\textsuperscript{199} Illinois (1949)  Decedent, 31 years old, left 25 year old widow and 2 minor children. Severe burns suffered from being pinned under overturned locomotive. Settled.

$ 60,750\textsuperscript{200} Texas (1950)  32 year old plaintiff, father of 6 minor children, earning $400 a month; suffered fractured left arm, broken back and spine and ruptured intervertebral disc. Fusion operation but nerve supply to legs affected, developed severe thrombophlebitis in left leg. No appeal.

$ 58,240\textsuperscript{201} Texas (1949)  Plaintiff, 43 years old, suffered traumatic amputation of right leg 7 inches below knee. Settled for $34,000.

$ 56,500\textsuperscript{202} Illinois (1949)  25 year old plaintiff suffered loss of one leg above knee. Settled. Settlement included permanent job.

$ 56,250\textsuperscript{203} Utah (1949)  Wrongful death action.

$ 56,000\textsuperscript{204} Wyoming (1939)  Plaintiff, 45 years old, sustained broken leg. Settled before appeal perfected.

$ 55,000\textsuperscript{205} Illinois (1950)  47 year old plaintiff, left leg amputated below knee. Settled.

$ 53,800\textsuperscript{206} Illinois (1950)  Plaintiff, 39 years old, suffered injury to right arm necessitating amputation below elbow. Settled.

\textsuperscript{197} Price v. Independent Eastern Torpedo Co., Dist. Ct., Pottawatomie County, Okla., No. 34522.

\textsuperscript{198} Smith v. A. T. & S. F. Ry., Super. Ct., Cook County, Ill., No. 48s588.

\textsuperscript{199} Horrighs, Adm. v. Belt & C. B. Q. R. R., Super. Ct., Cook County, Ill., No. 47s10316.


\textsuperscript{201} Parker v. Texas and Pacific Ry., U. S. Dist. Ct., N. D. Tex., Ft. Worth Div., No. 1432. Because of contributory negligence on part of plaintiff, jury reduced verdict $14,560, leaving a balance of $43,680, which was in turn reduced by trial court to $35,000.

\textsuperscript{202} Driscoll v. Illinois Central R. R., Super. Ct., Cook County, Ill., No. 48s7415.

\textsuperscript{203} Rodgers v. Union Pacific R. Co. Plaintiff received a verdict of $56,250 for death of her decedent. The jury found decedent guilty of contributory negligence. The verdict is, therefore, measured at $112,500 as an ordinary wrongful death recovery.


\textsuperscript{205} Moore v. Rock Island R. R., Cir. Ct., Cook County, Ill., No. 50C2431.

\textsuperscript{206} Ramsey v. A. T. & S. F. Ry., Super. Ct., Cook County, Ill., No. 49s3233.
**THE ADEQUATE AWARD**

<table>
<thead>
<tr>
<th>Award</th>
<th>Jurisdiction and Date</th>
<th>Essential Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 52,500207</td>
<td>Texas (1949)</td>
<td>Plaintiff, 42 years of age, lost both legs above knees. Settled.</td>
</tr>
<tr>
<td>$ 50,000208</td>
<td>Utah (1949)</td>
<td>Plaintiff suffered loss of right arm. Jury found plaintiff guilty of contributory negligence (statute allowed partial recovery) and reduced verdict to $50,000. $75,000 supported by trial court. Appeal on contributory negligence and petition for reinstatement of original verdict.</td>
</tr>
</tbody>
</table>

**Conclusion**

There are several obvious conclusions to be drawn from a study of jury awards and appellate decisions in personal injury and death cases throughout the United States:

1. Verdicts have risen over the past fifty years but they have not risen proportionately to the cost of living. Where wages and prices have multiplied ten and twelve fold, verdict values lag far behind in their expansion.

2. Some states are notoriously "low verdict states." Some are "adequate verdict states," but some appellate courts refuse to sustain awards, even though the cost of living is fairly uniform throughout the United States.

3. Far too low a standard is placed upon man's life, his mind and limbs by lawyers, juries and appellate courts. There is no justification for law putting such a low price on man himself when the things he creates for his own use or pleasure bring such higher values. The highest award ever given in a personal injury case, $260,000, regardless of man's age, his injury, dependents, earning capacity, special damages and suffering, is an incongruity when race horses, violins and mechanical contrivances sell far in excess of that. Men insure their lives for $500,000—twice the amount of any verdict heretofore given and $495,000 more than the highest allowable death award in some states!

4. No reason prevails for restrictions upon the amounts of death awards between the several states.

5. The liability without fault statutes (compensation acts), being extended into the personal injury field, should be liberalized in amounts awarded.

Lawyers and judges should not be appalled at the absolute figures presented in an adequate verdict. The "personal injury" is the most catastrophic event that can befall a human being. All man does is live. Judges and lawyers should dignify by new standards with justiciable awards infringements upon man's right to live out his life free from pain and suffering, with his mind and body intact. The only award permissible in a personal injury or death action is "dollars," the "money judgment." It should be adequate.

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### Limitations on Death Actions in the Various Jurisdictions

<table>
<thead>
<tr>
<th>State</th>
<th>Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>No limit</td>
</tr>
<tr>
<td>Alaska</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Arizona</td>
<td>No limit</td>
</tr>
<tr>
<td>Arkansas</td>
<td>No limit</td>
</tr>
<tr>
<td>California</td>
<td>No limit</td>
</tr>
<tr>
<td>Canal Zone</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Colorado</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Connecticut</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Delaware</td>
<td>No limit</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>No limit</td>
</tr>
<tr>
<td>Florida</td>
<td>No limit</td>
</tr>
<tr>
<td>Georgia</td>
<td>No limit</td>
</tr>
<tr>
<td>Idaho</td>
<td>No limit</td>
</tr>
<tr>
<td>Illinois</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Indiana</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Iowa</td>
<td>No limit</td>
</tr>
<tr>
<td>Kansas</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Kentucky</td>
<td>No limit; CONST. § 54.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>No limit</td>
</tr>
<tr>
<td>Maine</td>
<td>$10,000.00, plus medical, hospital and funeral expenses.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Amount of recovery for funeral limited to $300.00. No other limitation.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>No less than $2,000.00; no more than $15,000.00.</td>
</tr>
<tr>
<td>Michigan</td>
<td>No limit</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Mississippi</td>
<td>No limit</td>
</tr>
<tr>
<td>Missouri</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Montana</td>
<td>No limit</td>
</tr>
<tr>
<td>Nebraska</td>
<td>No limit</td>
</tr>
<tr>
<td>Nevada</td>
<td>No limit</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$7,500.00 unless survived by husband, wife, child or dependent father or mother, in which case the maximum allowed is $15,000.00</td>
</tr>
<tr>
<td>New Jersey</td>
<td>No limit</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$10,000.00 against common carrier; no limitation in other cases.</td>
</tr>
<tr>
<td>New York</td>
<td>Amount of recovery cannot be limited by statute. CONSTR. ART. I, § 16.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>No limit</td>
</tr>
<tr>
<td>North Dakota</td>
<td>No limit</td>
</tr>
<tr>
<td>Ohio</td>
<td>Amount of recovery may not be limited by statute. CONSTR. ART. I, § 19-A.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Amount of recovery may not be limited by statute. CONSTR. ART. XXIII, § 7.</td>
</tr>
<tr>
<td>Oregon</td>
<td>$15,000.00</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>No limit</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>No limit</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Minimum recovery $2,500.00; no maximum</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$5,000.00 in action against a county for defective highway; $4,000.00 in an action against state highway; $4,000.00 against a county or municipality for negligent operation of motor vehicle; other actions no limit.</td>
</tr>
<tr>
<td>South Dakota</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Tennessee</td>
<td>No limit</td>
</tr>
<tr>
<td>Texas</td>
<td>No limit</td>
</tr>
<tr>
<td>Utah</td>
<td>Amount of recovery may not be limited by statute. CONSTR. ART. XVI, § 5.</td>
</tr>
<tr>
<td>Vermont</td>
<td>No limit</td>
</tr>
</tbody>
</table>
Virginia $15,000.00
Virgin Islands $10,000.00
Washington No limit
West Virginia $10,000.00
Wisconsin $12,500.00 plus an additional $2,500.00 to parent, husband or wife for the loss of society; widow may recover an additional $1,000.00 for each dependent child over two (in number) but not exceeding a total additional of $5,000.00
Wyoming No limit

APPENDIX B

The incongruity expressed in the statutory dissimilarities in death awards is matched by the arbitrariness and apparent caprice of judges and juries between the several states. Chicago, New York, San Francisco, Miami, are adequate verdict centers. New Jersey, Milwaukee, Oregon, Louisiana, Arizona, Nevada, Massachusetts, New Hampshire, the New England states, are inadequate verdict centers. There is no apparent reason. Some highly industrial areas return and sustain low verdicts, as witness Milwaukee and Massachusetts.

The state of Wisconsin has a statute that an insurance company can be named directly as a defendant. It also has a comparative negligence statute; even so, the verdicts in that state are the lowest in the country.

The writer has recently completed a lecture tour throughout some of the leading cities of the United States, and to a number of the leading law schools, as president of NACCA. He spoke upon the subject “The adequate award.” No satisfactory reason was advanced for the dissimilarity of verdicts and awards. Some professors and lawyers would reason that “o-tr people are from conservative German stock,” i.e., Milwaukee. “Oregon law is similar to Wisconsin law—a number of people migrated from Wisconsin to Oregon. That is why verdicts are low in Oregon as well as Wisconsin.”

The highest verdict sustained by the Wisconsin supreme court was one for $62,500 in Zamecnik v. Royal Transit, Inc.¹ This decision was handed down in the August term, 1941. The injuries in this case were appalling: Plaintiff had a complete severance of the spinal cord resulting in a complete motory and sensory paralysis below the point of break; no control of bowels or bladder, he has to be catheterized four times a day and given castor oil every second day to sustain life; it was testified hospitalization would be permanent for the rest of his life, earning capacity permanently destroyed, hospitalization up to the time of trial $21,000, loss of wages over $2000 annually, future hospitalization $3600 annually, life expectancy 23 years. The court commented that $62,500 was not excessive and would be totally expended if plaintiff lived as little as 8 years from the time of hearing. This verdict, the highest reported in Wisconsin, by any standard is utterly inadequate.²

$34,538 is the largest verdict ever affirmed by the Oregon Supreme Court, in McKay v. Pacific Bldg. & Materials Co., decided in 1937.³ No other verdict for a higher amount has ever been affirmed, although the juries have given higher awards. In Martin v. Oregon Stages, Inc., $75,000 was awarded by the jury for injuries that were incredible. The court recognized and itemized the terrible injuries and also found that the present value of earnings, considering the life expectancy would have been $42,000.⁴ The court then reduced the verdict to $30,000!

The largest settlement to have been made in Oregon was obtained by Mr. Paul Harris of Portland, Oregon, in a case where the verdict was $79,474. It was settled for $64,000. In 1948, Mr. Harris also obtained a judgment for $48,000 against the Portland Traction Company. After a new trial was ordered by the trial court, the matter was settled for $16,000. In the Oregon federal district court, a verdict for $68,377.20 was awarded. The trial judge ordered a remittitur of $21,877.20. In 1949, a settlement under the Oregon Employers’ Liability Act was made for $46,500 in a partial paralysis case.⁵ Recently in Oregon a verdict of $75,000 was awarded against a dentist for malpractice. Infection spread throughout the entire body of plaintiff.

¹ 239 Wis. 175, 300 N. W. 227.
² Wisconsin considers the depleted value of the dollar and “lessened” purchasing power. See Dabareiner v. Weisflog, 253 Wis. 23, 33 N. W. 2d 220 (1948).
³ 156 Ore. 578, 68 P. 2d 127.
⁴ 129 Ore. 435, 277 Pac. 291 (1929).
⁵ Letter from B. A. Green, of Green, Landye & Richardson, attorneys, Portland, Oregon, dated January 19, 1951; also Harry George, Jr., of Portland, Oregon.
Another anomaly is that within the same state, state courts will reduce verdicts to an arbitrary limit, whereas the federal courts not only will not cut but encourage more adequate awards. Toledo, Ohio, appears to be one of the most inadequate federal court jurisdictions in the country. The Missouri state courts will not affirm awards over $100,000—though many have been returned; the federal courts do.

Verdicts in the Territory of Hawaii, where living expenses are even higher than on the mainland, have not gone over $30,000.

Apparently, in New Mexico there is no award higher than $32,000. This was a Federal Tort Act claim. However, $60,000 was awarded recently in a wrongful death action, now on appeal, involving a young child.

The $123,749 returned in an Iowa verdict as the largest verdict in that state, was recently settled for $94,000, after the trial court cut the judgment to $98,794. Plaintiff was permanently disabled both physically and mentally. Several other cases have been settled recently in Iowa at $50,000 which settlements elsewhere would have approached $150,000 at least because of the injuries.

Apparently the largest award in Minnesota is $102,000. $100,000 was the settlement figure in Clark v. Chicago-Rock Island.

Michigan is a "low verdict state." The largest reported verdict in the state is Grinnell v. Chemical Company. A 38 year old plaintiff suffered permanent disability of one leg, loss of sensation in the foot; verdict of $100,000 was reduced by the supreme court to $72,500. Prior to that verdict the most adequate verdict was White v. Grand Truck Western Railroad, where for loss of a leg and burns a verdict of $65,000 was affirmed. In the same case $45,000 was awarded for a death. This was cut to $42,000 and is the largest death award in Michigan. In Nash v. Consumers Power Company, $70,000 was affirmed for a young child of five, for severe burns.

Oklahoma is a jurisdiction in which verdicts recently have risen more than in any other state. Where $40,000 and $50,000 were previous limits, now $103,000 stands as an award in a malpractice case (spinal anesthesia), $79,375 in a wrongful death, and there are a number of other verdicts in the $70,000 class.

The largest sustained verdict in Indiana is $42,000, in Chicago I. & L. Ry. v. Stierwalt, for the amputation of both legs. However, an out of court settlement was recently made for $180,000, a young child losing the sight of both eyes and receiving bad scars.

In the West Virginia case of Looney v. Norfolk & Western Ry., $33,750 was awarded and affirmed in a death action. It is to be noted that had this case happened in the state courts, judgment would have been limited to $10,000. The largest personal injury recovery in West Virginia and affirmed was Vest v. C. & O. Ry., for the loss of arm and leg by a 6 year old child who received $50,000. $40,000 was affirmed in 1948 in Humphrey v. Virginian Ry. for the loss of both legs.

Verdicts and awards in New Jersey are among the lowest in the nation. Recently a verdict for $800 was awarded in Passaic County to a pedestrian who sustained a fractured pelvis. The writer has personally heard trial judges actually instruct juries in a manner warning against an adequate verdict in that jurisdiction.
The highest award ever made in New Hampshire is $35,000, a prior award having been made of some $27,500.\textsuperscript{19}

The largest personal injury verdict in the District of Columbia was for $60,000, for a compressed fracture of the cervical vertebrae.\textsuperscript{20} The largest death award was for $75,000, settled for $35,000 while on appeal.\textsuperscript{21}

David Tucker, a barrister of Middle Temple, Hamilton, Bermuda, advises that a study by him indicates that Bermuda is the "lowest verdict center in the world . . . . There is no unemployment insurance, no social security, no employees' liability or compensation acts, no equivalent to the Jones Act in Bermuda."\textsuperscript{22}

Ben Hogan, the golfer, is reputed to have settled his personal injury action at a figure in excess of any above reported. However, factual data has not been made available for comment. The New York Times reports\textsuperscript{23} a verdict of $400,000 for personal injuries in one of the Long Island Railway collision cases. Further data is presently unavailable.

\begin{footnotes}
\item[19] According to Judge Chretien, Manchester, New Hampshire.
\item[20] According to Newmyer and Bress, attorneys.
\item[22] Letter, January 27, 1950.
\item[23] February 18, 1951.
\end{footnotes}