Punitive Damages, Extra Contractual Obligations, and Losses In Excess of Policy Limits

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In Summary

This paper presents an overview of punitive damages, extra-contractual obligations (ECOs) and losses in excess of policy limits (XPLs): what they are, how they (adversely) impact loss experience, and how underwriters can seek to mitigate the exposure.

Introduction

Punitive damages awards often make headlines in civil liability litigation, yet they are not always fully understood. Similarly, Extra Contractual Obligations (ECOs) and Excess of Policy Limits (XPLs) are inextricably linked and equally important, because they also impact insurer behavior, claim negotiations, and final settlements. We offer an analysis of the rationale and impact of all three, as we seek to determine whether they are a key contributor to the recent deterioration witnessed in the casualty market (2015-2019 underwriting years).

Although punitive damages do exist in some other jurisdictions, they are generally only in limited circumstances and for modest amounts, and therefore this paper focuses on the U.S. market.

Punitive Damages

In civil litigation, compensatory damages seek to restore the plaintiff to pre-injury conditions. Punitive damages may also be awarded, but always in addition to compensatory awards, never alone. Punitive damages are designed to punish the defendant, send a message to society at large and act as a deterrent to others who may consider similar courses of action. Punitive damages are an exception to a key principle of the civil tort system, that tort damages are intended to restore the victim back to pre-injury conditions. Punitive damage awards allow the victim to be compensated beyond their pre-injury condition, which is why some jurisdictions take issue with the concept.

Within the U.S., different rules apply in each state – some do not recognize punitive damages at all, while others prohibit their insurability, to reinforce the punishment aspect and to deter repeat behavior. As a brief comparison (full details are in the Appendix):

State	Allowable?	Insurable?	Beneficiary
Alabama	Yes	Yes	Claimant – no portion payable to State
Arizona	Yes	Yes	Claimant (other than Environment Impairment liability which is paid to the State)
California	Yes	No	State – not recoverable by the Claimant
Colorado	Yes	No	Claimant
Nebraska	No	N/A	N/A
Utah	Yes	No	50% of any award in excess of $20,000 is paid to the State

To ensure some stability, if not predictability, even when punitive damages are allowed, many states apply limitations as to how much can be awarded. The monetary amount of these "caps" varies by state. The most common caps are a fixed dollar amount or a multiple of the total compensatory damages award. Damage caps are an attempt by state legislatures to manage the high costs of doing business within a particular state and to prevent a drag on the overall economy.[1] Capping punitive damages prevents the increased costs of doing business from being ultimately passed on to the consumer. Additionally, they are meant to discourage plaintiffs from filing frivolous lawsuits with the hopes of a financial windfall.

Insuring Punitive Damages

Affirmative Cover

Explicit wording avoids any ambiguity, but affirmative wording cannot override state law – if punitive damages are not insurable in the state, then the policy will not respond.

Most Favorable Jurisdiction

Intended to circumvent state prohibitions, this clause allows insured and insurer to choose a favorable jurisdiction to govern the policy, but only if the parties have some connection to the selected jurisdiction. The jurisdiction must be one of the following:

- where the wrongdoing occurred
- the location where the insured is incorporated
- where the original policy was issued

Punitive Wrap

Puni-wrap policies are separate, standalone indemnity covers providing difference in conditions coverage for punitive damages in states where punitive damages are not insurable. Such policies are issued outside the U.S. (often Bermuda) to avoid coverage gaps in states which prohibit punitive damage coverage. The controlling policy covers compensatory damages while the puni-wrap policy covers any punitive damages. Puni-wrap policies come with some standard conditions:

- compensatory damages must be awarded
- the limit is shared between the companion policy and the puni-wrap policy. The amount of coverage available for punitive damages under the puni-wrap policy is reduced by the amount of the compensatory damages award covered by the companion policy.
- both damages must be from the same incident
- the insured must have paid the punitive damages
- punitive damages would have been covered under the companion policy, but for state law.
- if the standard policy doesn't cover a claim, the puni-wrap won't provide coverage

In addition, puni-wraps are only triggered by 'final judgments', not for out of court settlements. Since final judgement means the exhaustion of any possible appeal (up to the highest state or federal court), in practice puni-wrap policies are almost never triggered.

Defending Punitive Damages

The plaintiffs' bar is adept in advocating for punitive damages. The most popular tactic is utilizing the Reptile Theory: by tapping into the 'reptilian' part of jurors' brains, the part which is biologically sensitive to danger, lawyers can elicit a reaction that a societal wrong must be corrected regardless of whether the plaintiff was injured. This approach encourages jurors to award damages to punish current defendants and deter other presumed 'bad actors' who are not defendants in the case at issue. Plaintiff attorneys often suggest that without a proper verdict featuring an "appropriate" deterrent, an already existing danger may become worse.[2]

A recent Gallup poll found that Americans' faith in their institutions (including big business, large technology companies, and banks) has fallen to new lows since the survey began in 1979.[3] Such distrust of corporations has made its way into the jury box and the courtroom. Research conducted by Magna Legal Services found that 76% of jurors believe that corporate executives lie and cover up.[4]

Covid lockdowns affected jurors in many states. Dealing with personal tragedy and financial challenges, many jurors have seen local businesses struggle but large corporations report record profits. Many jurors are more vulnerable (health and/or wealth wise) than they were pre-pandemic. All of this makes jurors more plaintiff friendly. The recent Magna polling indicated 71% of potential jurors surveyed do not believe there should be a cap on jury awards, while 30% believe that it takes "billions" to send a message to corporations.

A recent study from Marathon Strategies highlights similar insights. The median 'nuclear' (over $10 million) verdict against corporate defendants increased 55% in the decade from 2009-2019. Pandemic shutdowns in 2020 paused the nuclear verdict trend, but the study concluded that once courts began to return to normal levels of activity, so too did the trend. In fact, the total cost of corporate nuclear verdicts almost quadrupled (from $4.9 billion in 2020 to $18.3 billion in 2022), the number of verdicts doubled, and the country's median nuclear verdict against corporate defendants increased from $21.5 million in 2020 to $41.1 million in 2022.[5]

Punitive damages are awarded after verdict while most (95%) of claims settle pre-verdict.[6] Defendants are reluctant to litigate their wrong-doing and are mindful of the potential for a nuclear verdict. Plaintiffs are also incentivized to settle because, unlike compensatory damages, punitive damage awards are taxable. When claims that include punitive damages or bad faith (ECO) allegations settle, there is no allocation and one (tax free) compensatory amount is paid. These allegations are putting pressure on insurance companies to settle and to settle for larger amounts that may give rise to payments in excess of policy limits (XPL).

Punitive Damages – A Case Study[7]

Insured: Brinton Tower Realty

The insured, Brinton Tower Realty, owned an apartment complex that offered affordable housing to low income residents. Charles Hart, had been a resident of the complex since 2012 and lived alone. On July 6th 2017, Mr. Hart was discovered deceased in his unit. It was alleged that the air conditioning in his apartment was not functioning and contributed to his death. Mr. Hart's family filed a wrongful death lawsuit against the insured.

The insured had problems with its air conditioning system and in May 2017 engaged a contractor to perform repairs on the overall systems. Some tenants had complained about their apartments being too warm, but the insured had no record of the deceased ever complaining. The insured had retained appellate counsel prior to the start of the trial and they were confident the plaintiff's counsel did not meet the requisite burden of proof under Georgia law. Since there were no witnesses and no autopsy, there was no evidence to support a conscious pain and suffering award. Without conscious pain and suffering, there can be no punitive damages award.

In the state of Georgia, there is a cap of $250K on punitive damages unless there is evidence of willful intent to cause the harm. There was no evidence presented of a willful intent, yet the jury found willful intent which allowed them to negate the cap. Claimant's counsel successfully focused the case on the maintenance of the building, rather than whether the insured caused the death of the claimant. $50M in punitive damages was awarded by the jury.

Location: Georgia

Punitive Damages Allowed?: Yes

Punitive Damages Cap?: $250,000 (uncapped if willful intent to cause the harm is proven)

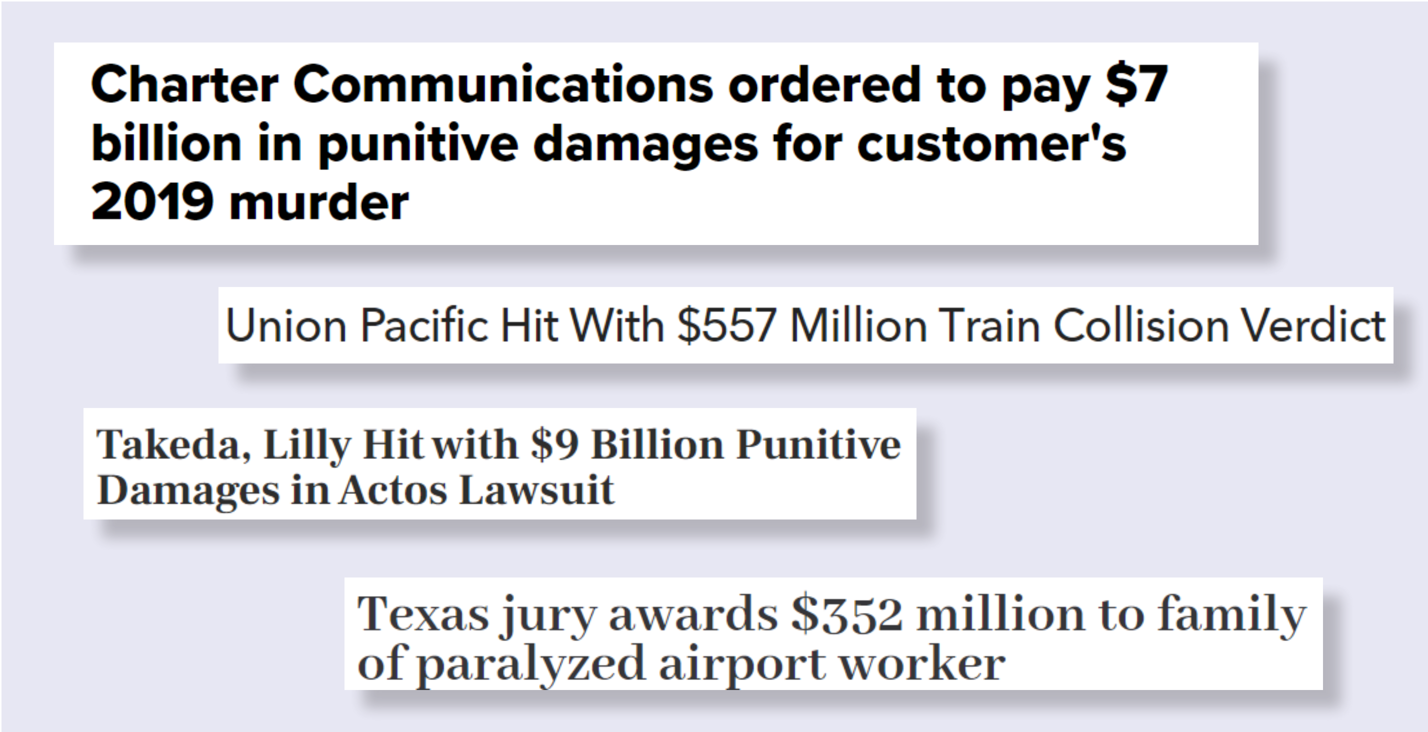
Beneficiaries: 25% to injured party, 75% to the state

Award

$35 million Wrongful Death
$15 million Pain & Suffering
$50 million Punitive Damages
$25 million Attorney's Fees
$125 million

Lesson

While Georgia caps punitive damages at $250,000, a notable exception allows the recovery of additional punitive damages if there is evidence a defendant willfully intended to cause harm. Never underestimate the animosity of jurors towards a particular insured (the landlords) nor the impact of skilled advocacy to craft the damages discussion toward willful conduct to overcome punitive damages caps.



Charter Communications ordered to pay $7 billion in punitive damages for customer's 2019 murder

Union Pacific Hit With $557 Million Train Collision Verdict

Takeda, Lilly Hit with $9 Billion Punitive Damages in Actos Lawsuit

Texas jury awards $352 million to family of paralyzed airport worker

A Look Beyond the Headlines. It’s not all bad news!

Nuclear verdicts such as Brinton Tower Realty should concern every re/insurer, but the headlines focus on ‘breaking news’ of an initial award, not on post-verdict mediations, post-verdict settlements and the appeal process; all of which can dramatically lower such awards. After the jurors leave the court room, the judicial process continues. For example:

A $5 billion punitive damages award in Texas could be capped at $200,000 or 2x the economic damages awarded (plus non-economic damages up to $750,000) on the basis that the Texas Penal Code has not been violated.[8]

Extra Contractual Obligations and Losses In Excess Of Policy Limits

Extra Contractual Obligations (ECO) claims lie outside the coverage of the underlying insurance policy, while Excess of Policy Limits (XPL) would have been covered by the terms of the policy but exceed the limits.[9] It is common practice for reinsurers to cover ECO and XPL claims, but not typically for 100% – some risk sharing is normally required of the cedent.

ECO losses are caused by insurer actions that adversely impact the insured while punitive damages are awarded due to egregious behavior by the insured. ECO awards are not related to the underlying claim, but are a result of the bad faith handling of that claim by the insurer/cedent.[10] Bad faith is the failure of an insurance carrier to fulfill the obligations of the insurance contract to its policyholder in a fair and prudent way. Examples of bad faith include:[11]

- failure to properly defend the underlying action
- failure to properly investigate the underlying claim
- failure to affirm or deny coverage in a reasonable timeframe after completing an investigation
- failure to settle a claim promptly, fairly, and equitably once liability has become reasonably clear

ECO claims are rising due to the coordinated efforts by the plaintiffs' bar to 'set up' the insurer with conditional time element policy limit demand letters.

XPL damages can arise for a variety of reasons. The most common cause is an insurer's failure to settle the underlying claim within the policy limits. XPL clauses provide reinsurance coverage for losses brought against the insured by a third party for acts that would be covered by the underlying policy but for the limits of the original policy.

Historically, the main cause of an XPL claim was an adverse verdict in excess of the available policy limits. In an adverse verdict situation, the XPL exposure is usually known and quantifiable (verdict – limits = XPL exposure). There are instances where unquantifiable damages are alleged in conjunction with the XPL exposure and, depending on the individual state, recoverable damages could include punitive damages, statutory damages, treble damages, and/or business harm to reputation. More recently, we are seeing an increase in compromise settlements beyond the original policy limit due to allegations of bad faith or punitive damages without a verdict. Such compromise settlements are paid as compensatory damages.

Market Impact of ECO/XPL

The plaintiff bar is using bad faith to put insurers in an untenable position.[12] The threat of bad faith litigation is real, as is the rise of nuclear verdicts, which cause insurers to worry about their public reputation/brand. Similar to punitive damages, plaintiff attorneys attempt to "set up" insurers to force them to choose between paying a larger amount to settle the underlying claim or rolling the dice on a bad faith trial. As a result, many insurers choose to settle, but the settlements are being done against the threat of bad faith litigation rather than the insurer's evaluation of the underlying case.[13] Such behavior may allow fraud to seep into the equation – by encouraging inflated claims with the hope of getting either a nuisance value settlement or other recoveries from bad faith[14]. Bad faith allegations also may lead to:

- premature settlements (which should have been litigated) resulting in excessive claim payments;[15]
- increased loss adjustment expenses to defend the bad faith action and the underlying claim;[16]
- increased premiums (passed on to consumers) due to the increased payments noted above which results in some consumers choosing to forego purchasing insurance;[17]
- difficulty in charging an appropriate premium due to the inability to price the subjective potential liability resulting from ECO/XPL damages;[18] and
- insurers choosing not to underwrite or insure policies in certain states due to the judicial climate.[19]

Having recognized this problem, Florida recently passed a property insurance reform bill to make it harder for policyholders to pursue bad faith claims under insurance policies.[20] Florida also passed a tort reform bill that modifies third-party bad faith law to the benefit of insurers: mere negligence is not sufficient to prove bad faith. The claimant, insured and any representatives have their own duty to act in good faith with regard to providing information about the claim, demanding settlement, setting deadlines, and attempting to settle the claim.[21] Other states continue to enact legislation and issue judicial opinions that expand insurers' potential exposure to bad faith claims (See Bad Faith Law Trending in the Wrong Direction Appendix).

Bad Faith – A Case Study[22]

Bonnie Winslett struck a cyclist while driving the insured's car (with permission). The SUV owner's auto policy limit was $30,000. The insurer was notified, accepted the driver was responsible and notified the driver they would handle the injury directly with the cyclist's attorney.

The claimant's attorney sent a letter to the insurer, demanding the insurer tender the $30,000 policy limit, noting the claimant's medical expenses already exceeded $10,000, and that additional treatment would be necessary. The insurer rejected the demand and counteroffered $12,000. Despite several attempts by the insurer's claim professional to reach them, the claimant's attorney did not respond to the counteroffer. There is no indication that the driver was contacted by the claim professional.

The claimant filed suit directly against the driver in Georgia state court but did not inform the insurer. The driver also failed to inform the insurer and discarded the papers. The driver did not answer the complaint or appear in court.

Following a hearing, a default judgment was entered against the driver in the amount of $2.9 million. One week later, the claimant's counsel informed the insurer of the judgment. The insurer retained counsel on the driver's behalf. A motion to set aside the judgment was denied. The claimant pursued the judgment, the driver was forced to declare bankruptcy and a court-appointed bankruptcy trustee filed suit against the insurer in federal court in Georgia. The allegation was the insurer failed to settle the claim in bad faith, resulting in a judgment in excess of policy limits. The insurer argued the driver's failure to provide notice of the suit relieved it of any liability to pay the judgment. The insurer further argued that the default judgment was not the correct measure of damages because they did not have an opportunity to contest the damages in the underlying case.

Georgia's Supreme Court found the driver was not the named insured, did not have a copy of the policy, was unstable (no driver's license, apartment had no electricity or furniture) and was not told by the insurer to forward any lawsuits, contrary to the insurer's claim manual.

The court further found that the driver's failure to give the required notice of the suit did not prevent the driver from recovering against the insurer for failure to settle a covered claim.

The court further used the default judgment as the appropriate measure of damages.

The jury found that the insurer was 70% liable for the default judgment and the driver was 30% liable.

Insured: Karen Griffis (car owner), Bonnie Winslett (car driver)

Claimant: Terry Guthrie (cyclist)

Insurer: GEICO

Location: Georgia

Award

The final judgment against GEICO, including interest, exceeded $2.7M

Lesson

This decision is part of a trend that expands insurers' potential exposure to bad faith claims. The decision places a burden on insurers to evaluate their insureds to predict if they may breach the notice provisions of the insurance policy. The court believes an insurer should be able to foresee a potential breach and then monitor dockets to see if lawsuits are eventually filed. In this case the court was clearly sympathetic to the individual insured.

Underwriting Considerations

Punitive Damages

It would be contrary to market practice to provide reinsurance coverage for punitive wrap policies in isolation without covering the companion policy. If providing punitive wrap coverage, it would be preferable to provide support on a quota share basis since the exposure is one of severity rather than frequency and the subject premium is modest. Given the increased awareness and threat of punitive damage awards, past performance is not necessarily indicative of future results.

Steps insurers can take to avoid bad faith

Claims professionals should work with coverage counsel to understand the different laws in each state the insurer provides coverage, to ensure compliance with time and policy limit demands and to be able to assess the potential for bad faith if the demand is not accepted. Insurers should have a list of coverage counsel in each jurisdiction, and work with attorneys familiar with local laws, regulations, and players.[23]

Steps reinsurers can take to mitigate the impact of bad faith

Excess Of Loss

- Ensure that the Ultimate Net Loss (UNL) clause of the reinsurance contract provides the intended coverage and that the Limit and Retention of the contract refer to the same, thereby not inadvertently covering "unlimited ECO/XPL".
- Consider only covering policies that expose the treaty by virtue of original policy limit alone.
- Costs breakout – the underwriter should consider whether costs breakout should be covered and appropriately charged for. On occasions, there may be a request to widen this to include ECO and XPL, if agreed, it should be given due consideration in terms of coverage and charge.
- Clash - standard clash covers should include a two-risk warranty and cover clash of insured and/or class. In the softer market cycle some wordings have been widened and care should be taken that these do not inadvertently cover ECO and XPL.

Pro Rata and Excess of Loss:

- Wherever possible and to ensure genuine risk alignment, it is advisable to cover a set percentage of any ECO/XPL award rather than cover 100% and apply a cap to the potential exposure (e.g. one multiple of policy limit).
- Confirm whether there is insurance available to the insurer to cover any ECO/XPL loss. If so, it should inure to the benefit of the reinsurer, and be deducted from the total amount of the ECO/XPL claim for purposes of determining loss under the treaty.
- Request statistics on bad faith awards and XPL payments in order to monitor the frequency and severity of such payment and include this in any peer review analysis.

Conclusion

Both the frequency and severity of punitive damage, ECO, and XPL awards have risen in recent years and all three are now routinely sought in civil litigations.[24]

As a result, the sum of all nuclear verdicts (above $10 million) has almost quadrupled between 2020 and 2022. [See 2022 Nuclear and punitive jury verdicts appendix]

Of most concern is the unpredictability this brings for insurers and reinsurers. Regardless of whether a plaintiff ultimately prevails, the allegations are a challenge for insurers, and can ultimately drive up settlement values for case where such damages are sought. As stated by the American Tort Reform Association, “The difficulty of predicting whether punitive damages will be awarded by a jury in any particular case, and the marked trend toward astronomically large amounts when they are awarded, have seriously distorted settlement and litigation processes and have led to wildly inconsistent outcomes in similar cases”.[25] Many consider the Securitas “Champlain Towers” settlement in Florida to be one such settlement.

The main concern is not an upsurge in payments via a specific punitive wrap policy. Rather, it is the gradual costs creep from the increased threat of punitive damages and bad faith awards. Such cost escalation is not as easy to identify as a specific punitive wrap payment and can be masked within standard inflationary increases.

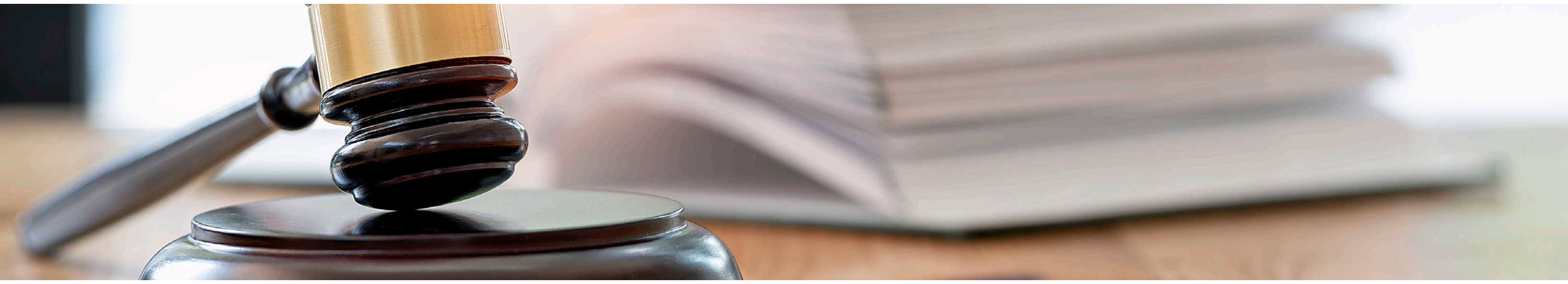
Our belief remains that punitive damage awards and bad faith allegations are key contributors to the deterioration seen in 2015-2019 underwriting year results, and they are on the rise. It is prudent to tackle the issue proactively rather than await the future reported evidence of what we are witnessing today.

U.S.

Reinsurers cannot simply exclude and wash our hands of such exposures from our U.S. clients. We must therefore ensure there is genuine risk alignment and that we are not left holding an unfair percentage of the ultimate claim, particularly when providing excess of loss coverage (policies that do not expose, costs breakout and/or wide clash coverage).

Rest of the World

We have highlighted the difficulties associated with the successful defense of a civil liability claim. Insurers elsewhere should exclude/restrict their U.S. exposures as far as possible. If they do provide cover, they must be well versed in local procedures or apply sensible restrictions (for example by excluding punitive damages and issuing costs inclusive policies). Further, a reduced limit of liability for the U.S. domiciled exposures of entities headquartered outside of the U.S. would be a sensible underwriting discipline.



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Appendix 1: State-By-State Punitive Damages Status

State	Punitive Damages allowed?	Award cap?	Punitive Damages insurable?	Beneficiaries
Alabama	Yes	Capped at $500k or 3x CA or $1.5m (If there's physical injury)	Yes	Claimant only
Alaska	Yes	Capped at $500k or 3x CA, or [$7m or 4x CA (Financial gain motivation)]	Yes	50% to claimant, 50% to the State
Arizona	Yes	No cap	Yes	Injured party (except for EIL where 100% to the State)
Arkansas	Yes	No cap (in most cases)	Yes	Generally awarded to claimant
California	Yes	No cap	No	Generally awarded to claimant
Colorado	Yes	Cannot exceed CA, may be increased if certain conduct is proved	No	Awarded to injured party only
Connecticut	Yes	Capped at cost of litigation (including fees)	No	Generally awarded to claimant, may be awarded to spouse in a loss of consortium claim
Delaware	Yes	No cap (award must be reasonable and proportionate)	Yes	Awarded to injured party only
District of Columbia	Yes	No cap	Undecided	Generally awarded to claimant
Florida	Yes	Capped at $500k or 3x CA, or [$2m or 4x CA (Financial gain motivation)]	No	Awarded to injured party only
Georgia	Yes	Capped at $250k (no cap for product liability)	Yes	25% awarded to injured party, 75% awarded to State Treasury
Hawaii	Yes	No cap (cannot be excessive or outrageous)	Yes	Generally awarded to claimant
Idaho	Yes	Capped at $250k or 3x CA	Yes	Generally awarded to claimant
Illinois	Yes	No cap	No	Awarded to claimant, claimant's attorney and Illinois Department of Human Services
Indiana	Yes	Capped at $50k or 3x CA	Probably no	25% awarded to claimant, 75% awarded to State Treasury
Iowa	Yes	No cap (except for EIL, 3x cost of the state's clean up)	Yes	100% to claimant if singled out by defendant, if not, 25% to claimant and 75% to civil reparations trust fund
Kansas	Yes	Capped at $5m or defendant's gross income (whichever is smaller)	No	Generally awarded to claimant
Kentucky	Yes	No cap	Yes	Generally awarded to claimant
Louisiana	Yes, only by statute	No cap	Yes	Generally awarded to claimant
Maine	Yes	Capped at $250k	No	Generally awarded to claimant
Maryland	Yes	No cap	Yes	Generally awarded to claimant
Massachusetts	Yes	$100k or no cap on certain claims (retaliation)	No	Generally awarded to claimant
Michigan	No	N/A	N/A	N/A
Minnesota	Yes	No cap	No	Generally awarded to claimant
Mississippi	Yes	Capped based on net worth	Yes	Generally awarded to claimant
Missouri	Yes	No cap	No	50% awarded to claimant, 50% awarded to State

State	Punitive Damages allowed?	Award cap?	Punitive Damages insurable?	Beneficiaries
Montana	Yes	Capped at 3% of net worth (up to $10m)	Yes	Generally awarded to claimant
Nebraska	No	N/A	N/A	N/A
Nevada	Yes	If CA <$100k then capped at $300k, if >, then capped at $100k or 3x CA	Yes	Generally awarded to claimant
New Hampshire	Only if specifically authorized by statute	No cap but punitive damages are only authorized specifically by statute	Yes	As defined by relevant statute
New Jersey	Yes	Capped at $350k or 5x CA	No	Generally awarded to claimant
New Mexico	Yes	No cap (except in medical malpractice)	Yes	Generally awarded to claimant
New York	Yes	No cap (award must not be excessive or 'actuated by passion')	No	Generally awarded to claimant
North Carolina	Yes	Capped at $250k or 3x CA	Yes	Generally awarded to claimant
North Dakota	Yes	Capped at $250k or 2x CA	Undetermined	Generally awarded to claimant
Ohio	Yes	Capped at 2x CA, unless small business, capped a 10% of net worth up to $350k	No	Generally awarded to claimant
Oklahoma	Yes	Capped at $100k or 1x CA (reckless act) or, 500k or 2x CA (Intentional act)	No	Generally awarded to claimant
Oregon	Yes	Capped at 4x CA (economic loss)	Yes	Plaintiff (30%), Criminal Injuries Compensation Account (60%) and State Facilities and Security Account (10%)
Pennsylvania	Yes	No cap (cannot be excessive or unreasonable)	No	Generally awarded to claimant (for med mal, 75% awarded to claimant and 25% awarded to MCARE fund)
Rhode Island	Yes	No cap, N/A in wrongful death actions	No	Generally awarded to claimant, State may subrogate its authority to pursue cost recovery
South Carolina	Yes	Award amount is at the discretion of the jury and judge	Yes	Awarded to injured party only
South Dakota	Yes, only by statute	No cap ($500k cap for med mal)	Probably no	Generally awarded to claimant
Tennessee	Yes	Capped at $500k or 2x CA	Yes	Generally awarded to claimant
Texas	Yes	$200k or 2x economic damages plus non-economic damages up to $750k	Possibly	Generally awarded to claimant and also payable to estate's representative
Utah	Yes	Capped at 3x CA	No	50% of any PUNI award >$25k goes to State Treasurer, rest to claimant
Vermont	Yes	Capped at 3x CA	Yes	Generally awarded to claimant
Virginia	Yes	Capped at $350k	Yes	Generally awarded to claimant
Washington	No	N/A	N/A	N/A
West Virginia	Yes	No cap	Yes	Awarded to claimant alone
Wisconsin	Yes	Capped at $200k or 2x CA	Yes	Generally awarded to claimant
Wyoming	Yes	No cap	Yes	Generally awarded to claimant

Appendix 2: Recent Bad Faith Law Developments

State	Law/Decision	Effect
New Jersey	New Jersey Insurance Fair Conduct Act (2022)	First party Uninsured Motorists and Underinsured Motorist claimants may directly sue their insurance carriers for unreasonable delays or denials or any violation of the Unfair Claims Settlement Practices Act; Provides a private right of action and decreases the threshold for a violation of UCSPA; Does not require "reckless disregard" by the insurer; Awards damages up to 3X the policy limit. *Beyond Bad Faith: Expanding Bad Faith Damages Fraud-Fighting. Jeffrey G. Rapattoni & Michael Sweeney (2022).*
Oregon	Moody v. Oregon Community Credit Union (2022)	Found that a policyholder could allege a tort, rather than a breach of contract claim, when an insurer violates the Oregon Unfair Claim Settlement Practices law ("OUCSP"); Exposes insurers of third-party claims, who fail to provide a defense under OUCSP, to potential tort liability under OUCS and non-economic damages plus the cost of defense; Exposes insurers of first-party claims who violate OUCSP to potential liability for economic and non-economic damages. *A New Era? Interpreting the Impact of Moody. Samantha Javier (2022).*
Washington	Security Nat. Ins. Co. v. Construction Associates of Spokane, Inc. (2022)	Found bad faith against an insurer because the adjuster's coverage determination was based on an inadequate investigation and questionable interpretation of Washington law. The Court found the adjuster failed to look for case law directly on point. The decision puts the onus on insurance companies to make sure their adjusters are up to date on legal decisions. The Court suggests insurers can teach their adjusters how to search for relevant caselaw and provide them with subscriptions to relevant legal newsletters. *Notable Developments in Insurance Bad Faith and What It Means for Insurers. Robert Luskin, Anthony Renaldo, Brian Searls (2022).*
Georgia	GEICO Indemnity Co. v. Whiteside (2021)	The GA supreme court found that an insurer could be liable for an excess verdict without ever receiving notice of the lawsuit being filed. GEICO had rejected a pre-suit policy limit demand. They were notified of the lawsuit after a default judgment in excess of the policy limits was obtained. The decision imposes a burden on insurers to foresee a potential breach by the insured of the policy's notice provisions and therefore monitor dockets to see if a lawsuit has been filed. *Claims Against Insurers on the Rise; How they Can Remain in Good Graces. Michael L. Zigelman and Kevin Yombor (2022).*

Appendix 3: 2022 Nuclear Verdicts

Case	Venue	Type of Loss	Verdict Amount	Punitive Component of Verdict Where Known
Andrade v. Climatec Mechanical	Los Angeles County, CA	Auto	$36.25M	
Beal v. 3M	District Court, FL	Product Liability	$77.5M	$72.5M
Blasingame v. Fulton County, GA et al	Fulton County, GA	Public Entity	$100M	
Carusillo v. Metro Atlanta Recovery Residencies, Inc	DeKalb County, GA	Professional / GL	$77M	
Case Kamuda v. Sterigenics	Cook County, IL	General Liability	$363M	$325M
Criales v. Georgetown Partnership	Dade County, FL	Dram Shop	$95M	
Cruz v. Signify North America Corp	Hartford County, CT	General Liability	$100M	
Estate of Ynoa & Diaz v. Sony Music holdings	Dekalb County, GA	General Liability	$160M	
Goff v. Holden (Charter Communications)	Dallas County, TX	General Liability	$7.375B	$7B
Harris v. ContiTech North America	Ramsey County, MN	General Liability	$35.7M	
Hill v. Ford Motor Company	Gwinnett County, GA	Product	$16M Compensatory	$1.7B
Jane Doe v. Hyatt	St. Louis County, MO	General Liability	$177M	$149M
Jane Doe v. Union School District	Santa Clara County, CA	Sexual Abuse	$102.5M	
Justad v. Northwest Tower Crane Service	Kings County, WA	General Liability	$150M	
Martinez v. Southern California Edison	Los Angeles County, CA	EPLI	$464.6M	$440M
Monson v. Morsette	District Court, ND	Auto	$175M	
Nelson v. Diversified Logistic	Newton County, IN	Auto	$30M	

Case	Venue	Type of Loss	Verdict Amount	Punitive Component of Verdict Where Known
O'Malley vs. Diamond Resorts Management	Orange County, CA	Hospitality	$60M	
Phounsy v. County of San Diego, CA	San Diego County, CA	Public Entity / Wrongful Act	$85M	
Razo v. Black Label Media	Santa Fe County, New Mexico	General Liability	$66M	$27M
Rita-Ann Chapman et al. v. Aroducts Inc. et al.	Los Angeles County, CA	Products	$50M	$11.3M
Sanchez v. Helmerich & Payne Drilling	Reagan County, TX	Auto	$120M	
Scott v. Dyno Nobel	St. Louis County, MO	General Liability	$47M	
Sloan & Wayman v. 3M	District Court, FL	Product Liability	$110M	$40M
Tarbox v. Mercy Hospital	Johnson County, IA	Medical Malpractice	$97.4M	
Thapa v. St. Cloud Orthopedic	District Court of Minnesota	Medical Malpractice	$111M	
Threat v. Gamble-Webb	Gwinnett County, GA	Medical Malpractice	$30M	
Various v. Alex Jones	Fairfield County, CT; Travis County, TX	General Liability; Media Liability	$1B	$473M
Vilsmeyer v. 3M	N. District of FL	Product Liability	$50M	

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