

After the go-go '90s, numbers don't look all that big

'VERDICTS' FROM PAGE A1
ists who believe that jury awards are skyrocketing because jurors have become numb to the numbers—and they want to sock it to big business.

They argue that big verdicts beget bigger verdicts, and sometimes bigger verdicts mean bigger settlements.

"I think, number one, [jurors] are angry. And, number two, the numbers don't seem as big as they used to," says Michael Hotra, director of legislation and communications for the American Tort Reform Association. "We've just come through the Internet bubble that made millionaires billionaires. The only way that jurors feel they can have an effect is to return an equally large verdict."

Juror justice?

Juries should hit businesses with multimillion-dollar fines if they want corporate America to pay for mistakes, argue plaintiffs' attorneys, who believe jurors are not out of line in granting jackpot verdicts.

California attorney Joseph Carcione Jr. of the Law Offices of Joseph Carcione in Redwood City, Calif., who is representing the plaintiffs in the \$290 million Ford case, strongly opposes any move to strip jurors of their right to punish companies with hefty fines.

'There's never been a greater need for tort reform than now.'

—Theodore Boutros, Ford defense counsel

"There's not a bunch of crazy juries suddenly giving large awards out there for no reason," Carcione says. "What's happening is there is evidence out there that corporations are acting in a criminal way. One of the things that we can't do to corporations is we can't put them in jail...but we have one thing that we can do, and that's to take some of their dog-gone money."

Gary Johnson of Pikeville, Ky.'s Gary C. Johnson, recently helped a Kentucky burn victim win a \$271 million suit against a gas company—the state's largest-ever jury award. *Johnson v. Equitable Resources Inc.*, No. 01-CI-00130 (Knott Co., Ky. Cir. Ct.). He also maintains that jurors know best when it comes to seeking justice against big business.

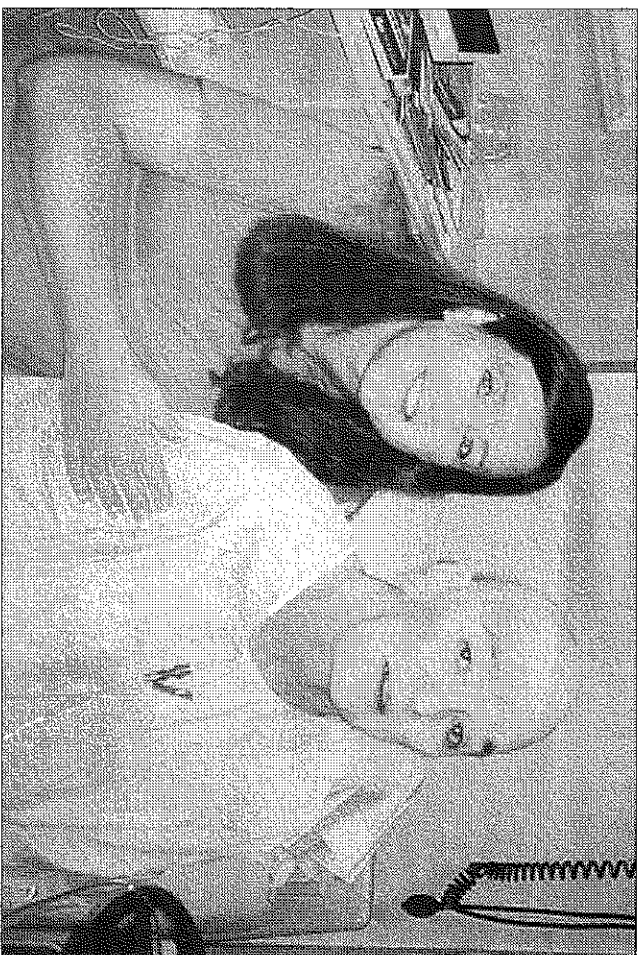
"These juries are saying, 'Enough is enough, corporate America, it's time to be accountable,'" says Johnson. "If you don't let a jury of 12 decent people make these decisions, and leave it up to the government, it's not going to happen."

An unavoidable issue

In legal, business and political circles you can't talk about jury awards without getting into tort reform.

Business lobbyists argue that huge awards are exactly why changes to injury law are long overdue, especially in the areas of asbestos lawsuits, medical malpractice and class actions.

"There's never been a greater need



\$28 BILLION Betty Bullock, right, and her daughter Jodie Goldstein. A Los Angeles jury awarded Bullock \$28 billion against Philip Morris Inc.

for tort reform than now," argues Boutros, who is appealing the Ford case to the U.S. Supreme Court.

The Ford case involved a 1993 automobile crash in which a husband, wife and son were killed when the 1978 Ford Bronco they were in rolled over. The survivors, three other children, sued Ford, alleging that the Bronco was defectively designed because it had a fiberglass roof and no roll bar.

Boutros said there was no evidence that any other person had ever been injured by a Bronco roof. He said the roof exceeded and passed the federal safety standards at the time it was built, and later passed new standards for roof designs in the 1990s.

Boutros said his case is a classic example of why state legislatures should set new limits on the amount a jury can award in punitive damages.

According to the American Tort Reform Association, 15 states have punitive caps ranging from \$50,000 to \$7 million. During the past decade, dozens of tort reform laws have been passed across the country, but courts in 32 states have held portions of those laws unconstitutional. Boutros says that when it comes to punitive-damage cases, he would like to

see legislatures establish a range of penalties, like they do in the criminal justice system.

That way, he asserts, jurors would have some guidance as to what an appropriate penalty would be in liability cases.

"Juries who sit for one particular case simply aren't equipped to make those kinds of decisions," he says. "The lack of standards and limits from the legislature creates a huge problem in terms of getting fair verdicts."

Boston attorney Marc Breakstone—who this year helped a Massachusetts family win a \$10 million settlement from an ambulance company—strongly disagrees. He argues that a schedule of fines in punitive cases akin to sentencing guidelines in criminal cases is not possible.

"There cannot be an objective schedule of penalties because the very foundation for punitive damages is to make a penalty proportional to the offense rather than to have a standard penalty across the board," says Breakstone of Breakstone, White-Leif and Gluck in Boston. "The importance of punitive damage is it's a way for the public to draw a line and say, 'You step over this line, you're going to be punished for your conduct.'"

Breakstone says the only area of punitive damages where he would consider some reform is in the distribution of a large jury award that affects a large number of people. A debatable issue, he said, is whether one individual plaintiff should receive the entire award when the conduct being punished may have resulted in harm to many.

"I think there can be a legitimate argument over how the money should be distributed," Breakstone says. "It's a dangerous, slippery slope to suggest that anyone other than the plaintiff should receive that money. However, from a public relations standpoint, if an enormous sum of money is obtained in a punitive damage award, that money should be returned to the public which may have been victimized by the conduct."

Corporate America strikes

The U.S. Chamber of Commerce says the country's tort system is wreaking havoc on the nation's economy, with litigation costs rising four times faster than the economy's growth since 1930.

According to the chamber, the cost of the civil legal system last year eclipsed the \$165-billion-a-year mark; federal class action filings have increased by 300% over the past 10 years; and similar filings in state courts increased by more

'These juries are saying, 'Enough is enough, corporate America.'

—Gary Johnson, who won a \$271 million suit

than 1,000% for that same time period.

"The business community is waking up to this problem. In fact, we think all of our society is waking up to this problem. Every day, in some way, shape or form, we hear about it," says Matt Webb, director of legal reform policy for the U.S. Chamber Institute for Legal Reform, an affiliate of the U.S. Chamber of Commerce.

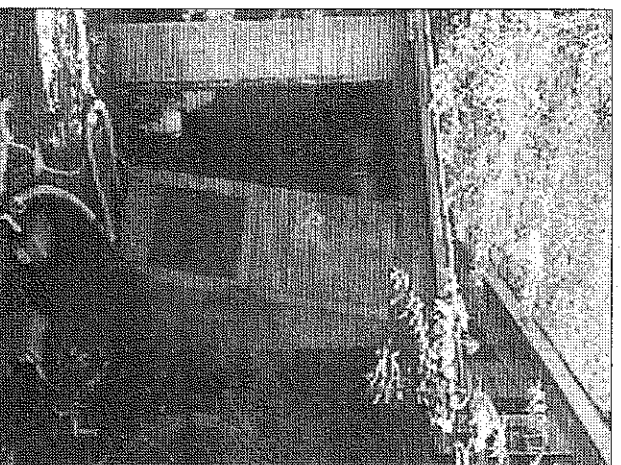
Currently, the U.S. Chamber of Commerce is trying to push a Class Action Fairness Act through Congress. The bill, which cleared the House and is pending in the Senate, would make it easier to move large, multistate class actions from state to federal court, preventing widespread venue-shopping by trial lawyers.

Class action attorney Eric Kennedy of Cleveland's Weisman, Goldberg and Weisman—who is currently handling the \$1 billion hip-and-knee prosthetic class action involving 30,000 people—believes the class action system should be left alone. *In re Diet Drug Litigation*, No. MDL-1203 (E.D. Pa.).

"We have a system in place with good checks and balances. I would not tamper with it," Kennedy says.

Those checks and balances, Kennedy says, are in the hands of judges, who decide attorney fees in class actions, as well as the distribution of civil suit awards, which are divided up according to a judge's discretion. ■

Baldas' e-mail address is baldas9@yahoo.com.



\$271 MILLION Burn victim Faron Johnson, left. He was injured from an explosion, right, of the pump house. A Kentucky jury awarded him a record \$271 million. The ruling went against Kentucky Wester Virginia Gas and Equitable Resources Inc.