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Plaintiff entities, awards, and decision justifications in a toxic tort case

Catchings, Billy Wayne, Ph.D.
The University of Arizona, 1992
PLAINTIFF ENTITIES, AWARDS, AND DECISION
JUSTIFICATIONS IN A TOXIC TORT CASE

by

Billy Wayne Catchings

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A Dissertation Submitted to the Faculty of the
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As members of the Final Examination Committee, we certify that we have read the dissertation prepared by Billy Wayne Catchings entitled PLAINTIFF ENTITIES, AWARDS, AND DECISION JUSTIFICATIONS IN A TOXIC TORT CASE and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

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Final approval and acceptance of this dissertation is contingent upon the candidate's submission of the final copy of the dissertation to the Graduate College.

I hereby certify that I have read this dissertation prepared under my direction and recommend that it be accepted as fulfilling the dissertation requirement.

Dissertation Director
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STATEMENT BY AUTHOR

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PREFACE

The idea for this study began in the summer of 1983. The Department of Speech Communication at the University of Arizona was the host for the conference, Communication Strategies in the Practice of Lawyering. The purpose of the conference was to unite legal practitioners and behavioral researchers in a forum of mutual information exchange and to suggest the direction for future research.

One evening, quite by accident, I sat beside Francis McGovern, who had been commissioned to develop a case management plan for asbestos litigation in the State of Ohio. Specifically, he had been appointed as one of two Special Masters for the Northern District of Ohio to propose a plan for the management of the pretrial and trial phases of asbestos cases. During our conversation McGovern asked, "What research exists in the field of speech communication that would be helpful in determining how juries respond to multiple parties in toxic substance litigation?" At the time, I knew very little about multiple parties in toxic substance litigation. I learned from the conversation, however, that the foundations of the legal community were being shaken by the severe problems associated with this type of legal action. The basis for the uproar among lawyers, parties, and courts was what McGovern described as a tacit movement toward alternative methods to the
traditional management of toxic substance cases such as those involving victims of exposure to asbestos.
"Traditional management" refers to trying single cases before a judge or jury so that each individual has his or her day in court.

As McGovern further explained and subsequent research corroborated, the enormous number of toxic exposure cases pending and destined to be filed in the courts, both staggers the mind and places a seemingly insurmountable burden on the judicial process. Among the alternatives to traditional litigation which interested McGovern was the centralization or "consolidation" of parties for trial. His concern was with the effect that consolidated parties would have on jury decisions. Would parties suffer or benefit as a result of having their actions joined? Would compensatory awards differ according to the number and nature of parties consolidated?

The questions stimulated my interest and aroused my curiosity regarding what body of literature might contribute to answering them. The inquiry that ensued ultimately formed the beginning of this study. What is reported here represents only a small portion of the many concerns of a vast industry. The industry is the toxic tort litigation industry which already has begun and will continue to face perhaps the biggest crisis in the history of the judicial system.
ACKNOWLEDGMENTS

I would like to thank a group of special people who have enriched my life and without whose encouragement I might never have completed this dissertation. First of all I thank Vincent Waldron, Cindy Meier, Shirley Gish, Russ Hoover and Jane Rossi. They were my friends and classmates during those wonderful years in Tucson who continued to offer support as we moved from Arizona to various parts of the country.

A mere expression of thanks seems insufficient to those longstanding significant others, Tamara and Vivian Lindsey, Don Reynolds, Anne and Mike Skipper, Donna and Robert DeLuca, Holly Hughes, and to those with whom I have more recently had the joy of establishing friendships, Jan Sparrow, Ron Matlon, Pat Jefferson, and Alice Brown.

I must express my gratitude to family members who have patiently waited and wondered why this has taken so long: my sister, Gwen Griggs; my brother and sister-in-law, Jim and Betty Catchings; my nieces, Pat Griggs, Donna Morgenstern, Rebecca Mitchell, and my nephew, Mike Catchings.

Finally, I wish to acknowledge my colleagues at the University of Indianapolis and Indiana University for the invaluable parts they have played in our professional and personal relationships. I am, of course, indebted to the following people at the University of Arizona: Martha Gilliland and the members of my committee, Henry Ewbank, Patricia Van Metre, David Williams, Scott Jacobs, and special member from Indiana University, Gary Cronkhite.
DEDICATION

I dedicate this work to the memory of my parents:

Lucy Olivia Catchings, the consummate mother, whose love and acceptance remains for me the greatest of gifts

and

James Frank Catchings, the laboring father, whose perseverance rendered him provider and likely victim himself of toxic substance exposure
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of Tables</td>
<td>xi</td>
</tr>
<tr>
<td>Abstract</td>
<td>xii</td>
</tr>
<tr>
<td>1. Introduction: The Research Question</td>
<td>1</td>
</tr>
<tr>
<td>Purpose of the Study</td>
<td>1</td>
</tr>
<tr>
<td>Limitations and Rationale</td>
<td>2</td>
</tr>
<tr>
<td>Significance</td>
<td>3</td>
</tr>
<tr>
<td>Overview</td>
<td>4</td>
</tr>
<tr>
<td>2. Background of the study</td>
<td>5</td>
</tr>
<tr>
<td>The Toxic Tort</td>
<td>6</td>
</tr>
<tr>
<td>Historical Development of Multiparty</td>
<td>10</td>
</tr>
<tr>
<td>Practice</td>
<td></td>
</tr>
<tr>
<td>Applications of Multiparty Practice</td>
<td>18</td>
</tr>
<tr>
<td>to Toxic Torts</td>
<td></td>
</tr>
<tr>
<td>Considerations in the Decision to</td>
<td>23</td>
</tr>
<tr>
<td>Consolidate</td>
<td></td>
</tr>
<tr>
<td>3. Review of the Literature</td>
<td>31</td>
</tr>
<tr>
<td>Consolidation and Damages</td>
<td>32</td>
</tr>
<tr>
<td>Social Perception of Groups</td>
<td>39</td>
</tr>
<tr>
<td>Observer Perception of Groups Versus</td>
<td>40</td>
</tr>
<tr>
<td>Individuals</td>
<td></td>
</tr>
<tr>
<td>The Presentation of Multiple Messages</td>
<td>45</td>
</tr>
<tr>
<td>Processes Inherent in Multiple Decision</td>
<td>48</td>
</tr>
<tr>
<td>Making</td>
<td></td>
</tr>
<tr>
<td>Factors Affecting Jury Decision</td>
<td>50</td>
</tr>
<tr>
<td>Making</td>
<td></td>
</tr>
<tr>
<td>vii</td>
<td></td>
</tr>
</tbody>
</table>
4. Methodology and Design

Subjects

Procedures

Variation of the Description of the Plaintiffs

Analysis of the Data

Application of Toulmin's Model

Determination of Categories

5. Results of the Study

Population One

Descriptive Statistics

Summary of Open Ended Responses on Basis of Decision

Conceptualization and Creation of Categories

Company Attribution (CA)

Employee Attribution (EA)

Attribution to Both the Company and the Employee (BA)

Evaluation Pro-Plaintiff (EPP)

Evaluation Pro-Defendant (EPD)

Sufficient Compensation (SC)

Company Attribution/Sufficient Compensation (CASC)

Employee Attribution/Sufficient Compensation (EASC)
Implications of the Study for Case Management ........................................... 143
Evaluation of the Study and Recommendations for Future Research.............. 146
Appendix A - Cover Page of Case Study: Population One................................ 151
Appendix B - Cover Page of Case Study: Population Two................................. 153
Appendix C - Manipulated Case: Situation 1, Single Plaintiff......................... 155
Appendix D - Manipulated Case: Situation 1, Single Plaintiff......................... 158
Appendix E - Manipulated Case: Situation 3, Small Group.............................. 161
Appendix F - Manipulated Case: Situation 4, Large Aggregate......................... 164
Appendix G - Manipulated Case: Situation 5, Large Group.............................. 167
Appendix H - Questionnaire............................................................................ 170
Appendix I - Manipulation Check................................................................... 173
Appendix J - Compendium of Responses of Subjects..................................... 175
Appendix K - Diagrams of Responses.............................................................. 190
List of References............................................................................................. 205
# LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Descriptive Statistics.</td>
<td>80</td>
</tr>
<tr>
<td>2. Scattergram of Amount of Each Situation</td>
<td>81</td>
</tr>
<tr>
<td>3. Frequency of Responses in Each Category by Open-Ended Questions</td>
<td>82</td>
</tr>
<tr>
<td>4. Primary Issues Within Each Category of Open-Ended Responses</td>
<td>89</td>
</tr>
<tr>
<td>5. Combined Percentages of Subjects Giving Pro-Plaintiff and Pro-Defendant Responses</td>
<td>105</td>
</tr>
<tr>
<td>6. Descriptive Statistics</td>
<td>107</td>
</tr>
<tr>
<td>7. Scattergram of Amount of Each Situation</td>
<td>108</td>
</tr>
<tr>
<td>8. Frequency of Responses in Each Category by Open-Ended Responses</td>
<td>110</td>
</tr>
<tr>
<td>9. Primary Issues Within Each Category of Open-Ended Responses</td>
<td>111</td>
</tr>
<tr>
<td>10. Combined Percentages of Subjects Giving Pro-Plaintiff and Pro-Defendant Responses</td>
<td>123</td>
</tr>
<tr>
<td>11. Differences in Frequencies of Awards Within Each Plaintiff Situation</td>
<td>125</td>
</tr>
<tr>
<td>12. Frequencies of Categorized Justifications Within Each Plaintiff Situation</td>
<td>129</td>
</tr>
</tbody>
</table>
ABSTRACT

The ecological composition of plaintiff entities may vary in size and sociographics in toxic tort litigation. The amount of awards and the justifications for those awards in the various plaintiff situations are unknown. Consolidation which is procedurally distinct from class action is an alternative litigation strategy for mass torts. While it is well-grounded in English common law, jury decision making in consolidated actions has not been extensively examined by social scientific, legal, or communication researchers.

In light of the limited research in this area, awards and decision justifications were gathered from two populations of surrogate jurors. Subjects were asked to decide on the amount of money to award a single plaintiff or a small aggregate, small group, large aggregate or large group of plaintiffs in a written summary of a hypothetical toxic substance case. In addition, respondents were asked to explain the reason(s) for their award decisions.

The average award in each situation was in the midpoint area of a range from zero to one million dollars. The amount implies that on average respondents were inclined to give all plaintiff entities approximately $500,000. The
justifications for the awards were organized into the following nine categories determined by the application of Toulmin's model of argument: (1) Company Attribution - CA; (2) Employee Attribution - EA; (3) Attribution to Both Employee and Company - BA; (4) Evaluation Pro-Plaintiff - EPP; (5) Evaluation Pro-Defendant - EPD; (6) Sufficient Compensation - SC; (7) Company Attribution/Sufficient Compensation - CASC; (8) Employee Attribution/Sufficient Compensation - EASC; and (9) Both Attribution/Sufficient Compensation - BASC. The underlying warrants(s) in the responses served as the label for each category. The classifications revealed a categorical advantage for the plaintiff(s). Respondents provided justifications beyond strict attributions of responsibility to the parties involved. Need for compensation and a positive regard for plaintiffs, for example, were issues which emerged in the justifications. Attribution of responsibility to the employee was a consistent basis for monetary decisions for subjects who decided not to award any compensation. Respondents who were maximum award givers, however, deviated from attributions in the small aggregate, small group, and large aggregate situations.
CHAPTER I

Introduction: The Research Question

The mystery of jury decision making is perhaps one of the most intriguing elements of the law. The issue which Frances McGovern raised regarding knowledge about jury decisions in multiple party litigation was introduced in the Preface. It typifies curiosity about jury decision making in general. According to Matlon (1988), "There is considerable mystique about the way juries reach decisions. No one can eavesdrop on what they are doing ... nor are members of a jury required to justify their verdicts or explain how their process of deliberation unfolded" (p. 310). Yet, it would seem that the process of decision making and the substance of decision justification would be valuable information for legal scholars and practitioners. McGovern's concern about decisions in multiple party litigation directed inquisitiveness specifically toward toxic substance litigation and provided stimulus for this examination.

Purpose of the Study

It is the intention of this study to identify juror response in multiple party toxic tort litigation. Guided by
McGovern’s interest, this project addresses two specific questions: First, how much money will jurors award various plaintiff entities? Second, what justifications will they give for their decisions? The investigation pursuant to these two questions concentrates on three elements. The first is plaintiff entity, the composition of the person or persons constituting the complaint. In addition, the research considers two aspects of decision making which includes both amount of award and the justifications, the reasons for the award.

The term "jurors" is necessarily a misnomer in this research. Because observing the deliberation of real juries is expressly prohibited by law (18 U.S.C. Section 1508), most knowledge about juries is based on mock or surrogate jury studies (Matlon, 1988). Thus more accurately stated, this study seeks answers to questions about how much money surrogate jurors award plaintiffs and the justifications which surrogate jurors provide for their award decisions.

Limitations and Rationale

It is important to narrow the scope of a study, to set reasonable limits. To establish a manageable parameter, this examination is confined to determining awards and decision justifications in toxic substance cases that differ in terms of one dimension: the composition of plaintiff
entities. The composition variable includes a size and social entity factor. The size dimension refers to the number of plaintiffs while social entity pertains to the relationship among the plaintiffs in the case.

The genesis of the study reflects uncertainty in the legal community about issues related to jury decision making in cases involving various plaintiff entities. These issues warrant investigation. For instance, decision justifications in toxic tort litigation merit consideration regarding case management and, heretofore, have not been identified (Kakalik and Pace, 1986; Horowitz and Bordens, 1989). Since the basis for awards or the reasons for deciding to award or not to award compensation appear to be unknown, it is reasonable to pursue a study, the result of which, could provide information for both practitioners and scholars in the study of toxic torts.

Significance

Considering the apparent paucity of information regarding the subject under consideration and the opportunity to contribute to knowledge in an area as significant as toxic tort litigation, there is a need for this study. The study is specifically pertinent to the development of research in legal communication. As Taylor, Buchanan, and Strawn (1979) point out, extensive social
scientific research has been directed toward juries and the factors that influence decision making. Since this study addresses jury decisions in a specific context (toxic torts) and examines specific factors (plaintiff entities, awards, decision justifications) in that process, it will contribute to the body of literature in legal communication and research.

**Overview**

In order to answer the research questions regarding how much money surrogate jurors will award plaintiff entities and what justifications they will give for their decisions in a toxic tort case, this report will proceed by first examining the background of toxic torts. Particular attention will be given to the historical development of consolidation within the larger context of multiparty practice and its application to toxic torts. Second, relevant literature pertaining to consolidation and jury decision making is reviewed. Third, the research methodology and design for the study is extensively delineated. Fourth, the results of the study are explained and, fifth, the report concludes with a discussion of the results including implications and recommendations for future research.
CHAPTER II

BACKGROUND OF THE STUDY

Human beings throughout history have subjected themselves to the perils of their environment. Natural catastrophes have occurred and taken their toll in injury and destruction. Primitive victims and their survivors had only the consolation of spiritual compensation for the damages caused by fire, wind, or water. Such events were natural episodes in the human struggle for survival. Individuals became well-acquainted with, and even resigned to the intermittent threats to their safety and security.

The advent of industry and technology, however, brought with it a new kind of danger, one that was not immediately discernible. The manifestation of this new threat to the safety of the environment, and more particularly the work place, was in the form of disease and death. The occupational hazard was the potential consequence of exposure to the manufacture and use of chemical substances. The substances were harmful enough to produce deadly diseases such as mesothelioma, asbestosis, and cancer. Yet, because of the long latency period of some chemical-related illnesses, many individuals were unaware of their fate or even the relationship of their condition to toxic exposure.
The evidence soon began to materialize. The World Health Organization and other prominent institutions and individual experts concluded that 60 to 90 percent of all human cancers were caused by exposure to chemical substances, not just in food and water, but also in the workplace (Doniger, 1978). The perils of the environment were no longer restricted to occasional natural disasters. The product of human consumption, manufactured and used by human industry, now posed a menacing risk to society. The perils of industry also kindled desires for material compensation. Victims with legal resources at their disposal and the potential for financial recovery would no longer respond to disaster with stoic acceptance and resignation.

The Toxic Tort

Reported accounts of the harms caused by toxic substances have increased significantly in recent years. The first occupational disease product liability case was Borel v. Fibreboard Paper Products Corporation in 1973 (Steinhart, 1983). Since then, the public has become more informed of the potential dangers associated with such materials as vinyl chloride, dioxin, Agent Orange, and asbestos. The plethora of victims exposed to these substances has generated a staggering number of lawsuits referred to as toxic substance or mass exposure torts.
According to Black (1979), "a mass exposure tort" is the legal term for an event which causes injury to a large number of people and in turn stimulates a significant number of legal actions. The impact of these actions on the courts and the entire legal system is immense. Sheridan (1983) illustrates the impact graphically:

Almost 1,500 plaintiffs filed product liability cases against 26 chemical manufacturers. The nightmare begins: If 1,500 plaintiffs' depositions are taken, averaging two days a piece, each of the 26 defendants' lawyers will spend 3,000 deposition days - more than 12 years, if depositions are taken consecutively - five days a week. Twenty six lawyers, each charging $1,000 a day for 3,000 days a piece, produce a total defense bill of $78 million, or $3 million for each named defendant with its own lawyers. The cases are known as the Hammond-Joyce, Anderson-Azzerello, and Acosta matters in the New Jersey Superior Court. (p. 29)

If options of pre-trial settlement and negotiation fail to satisfy the parties involved, the scenario laid out by Sheridan could become a routine occurrence, challenging the viability of conventional litigation procedures.

The enormity of the toxic tort problem cannot be understood fully without recognizing that hundreds of chemicals used in our society are toxic, thereby creating potential health problems and causes of legal action (Note, 1983). A revealing news article ("Toxic Time Bombs," 1982) reported, "The Occupational Safety and Health Administration has developed a list of 200 toxic chemicals that may pose problems" (p. 57). Asbestos, used by many industries as an
aid in fire prevention, has surfaced as one, if not the leading, problem-causing substance. The legal action surrounding asbestos exposure cases serves as a point of reference for toxic substance litigation in general.

The proliferation of asbestos lawsuits also lends further credence to the dilemma illustrated by Sheridan earlier. By 1984, 26,000 asbestos lawsuits had been filed in the United States courts (Stravo, 1984). According to Kakalik, Ebener, Felstiner, and Shanley (1983), "The investment firm of Conning and Company has estimated that the total number of asbestos-related claims filed by year 2010 will be in the range of 83,000 to 178,000" (p. 10). The firm also estimated that the insurance industry's ultimate liability for asbestos claims will be in the four to ten billion dollar range. Kakalik et al. cite a Yale University School of Organization and Management report which estimates that approximately 200,000 deaths will result in future lawsuits with compensation between $8 and $87 billion. The overwhelming expense of settlements and compensation awards to victims has forced Johns-Manville, one of the primary defendants in asbestos cases, into bankruptcy.

In an address before the American Bar Association, McGovern (1983, p. 2) emphasized the need for concern among scientific, industrial, financial, and legal communities to
deal with the problems raised by toxic substance litigation. His address summarized the three primary problems: "(1) the exceptionally large number of cases; (2) the incurrence of substantial transaction costs; and (3) the operation of unique problems of case management."

In response to these problems, the organizational systems affected by toxic torts are proposing a wide range of solutions. Congress has considered a bill to ensure that the ever-increasing asbestos-related lawsuits are settled more quickly through a process of adjudication which would eliminate the need for attorneys (Stravo, 1984). Johns-Manville has called on the Federal Government to share its cost of asbestos-related lawsuits through its proposal of the Asbestos Claimants Compensation Act in June of 1983 (Reaves, 1983). Additional proposals suggested by various people and organizations include increased coordination and efficiencies within the existing tort system, mediation, arbitration, and forms of dispute resolution as well as various new government-mandated compensation systems (Kakalik, 1983).

Asbestos litigation occupies a central position in determining how all toxic substance cases will be managed. Its importance is due to the fact that asbestos-related actions constitute the largest, and potentially most costly, block of product liability claims ever to confront American
industry (Mark, 1983). What, then, will be the trend for the successful and effective management of asbestos and other toxic substance cases?

"It has been suggested," says McGovern (1983), "that the model of a decentralized free market of common law adjudication should be transferred to a model of centralized decision-making process dominated by rule-making" (p. 7). McGovern is suggesting that instead of concentrating upon each individual's right to have a full-blown trial, the court should group actions into collective procedures, authorized by the existing rules of civil procedure. These actions could be centralized under any one of three procedural mechanisms: class action, multi-district litigation (MDL), or consolidation, the latter generally within one court. The judiciary has applied these methods to complex litigation arising from mass exposure in a variety of manner (Chesley & Kolodgy, 1983). Each procedure may be distinguished within the historical development of multiparty practice.

**Historical Development of Multiparty Practice**

The development of multiparty practice in the United States can be traced to 17th century England and the courts of chancery (Homburger, 1971; Yeazell, 1980). Courts of chancery, according to Black (1979), were autonomous courts
concerned with matters of equity (fairness in particular situations) rather than strict application of common law. Group litigation evolved when these equity courts were confronted with many disputes between agrarian tenants and their landlords (Chesley & Kolodgy, 1985). English common law had dictated procedure in such matters, holding that, "it was necessary to join as parties only those persons whose direct and immediate legal rights would be affected by judgment" (Newberg, 1985, p. 16). Realizing that interested parties could number in the hundreds, the chancery courts, notes Newberg, resorted to representative actions known as Bills of Peace. The Bills of Peace permitted a group of claimants to be joined against an adversary for the sole purpose of avoiding multiple suits (Chafee, 1932). Common law pleading, however, prohibited the joinder of parties for claims arising out of a mass tort. "A careful survey of the 17th and 18th century English cases has found no instance of group litigation consisting of a series of common law damage actions aggregated together" (Trangsrud, 1985, p. 816). According to Chesley and Kolodgy (1985), the court developed class action in order to bypass the limitation of a bill of peace. They identify three situations in which class action was used: "(1) where the number of parties was too great; (2) where joinder of parties was impossible due to the death of one of the parties or abatement of their action; or (3)
where effective joinder would be impossible due to limited jurisdiction of the court" (p. 469). Class action was, therefore, a procedure born of convenience whereby one person could bring suit on behalf of others similarly situated which would be binding on the entire class (Newberg, 1985).

Multiparty practice was established in the United States under the legislative act of July 22, 1813 "allowing federal courts to order consolidation of 'causes of like nature relative to the question'" (Chesley & Kolodgy, 1985, p. 470). Although the term "consolidation" appears here, the procedure envisioned by the court was actually "class action" involving matters of equity in the same manner as action under the English bill of peace (Newberg, 1985). The English equity tradition has been maintained in the United States and was codified in 1842 by Federal Equity Rule 48 which provided:

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the Court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interest of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties. (Newberg, 1985, p. 17)

Federal Equity Rule 48 established class action in federal courts and in 1848, the New York Field Code provided

Rule 23 governed class actions for damages brought in federal court and provided "a procedure whereby a Federal District Court has jurisdiction over the various individual claims in a single proceeding" (Groger, 1982, p. 475). Sullivan and Fuchsberg (1973, p. 1) summarize the prerequisites for a class action under Rule 23: "(1) The class must be so numerous that joinder is impracticable; (2) Claims of the representative parties must be typical of those of the class; (3) The representative parties must fairly and adequately represent the interests of the class; and (4) There must be questions of law or fact common to the class."

While Federal Rule 23 certified class action as a device for multiparty practice, it was the adoption of Rule 42(a) which distinguished the concept of consolidation. It was neither unique in its provision for maximizing efficiency and minimizing litigation redundancy nor in empowering the court with broad interpretative discretion. Rule 42(a)'s distinction lay in its ability to offer class action treatment along with the retention of individual
party identity. As Wright and Miller (1972, pp. 253-255) describe it, "Federal Rule 42 permits the consolidation of actions into a single trial none of which lose their separate identity because of the consolidation." Under the liberal interpretation of this rule, "federal courts," as Friedenthal, Kane, and Miller (1985) explain, "have virtually unfettered discretion regarding consolidation. The court can exercise the power to consolidate actions without the consent of the parties, for purposes of trial or merely for pretrial activity [such as discovery and deposition], and without the parties being identical in all the actions" (p. 315). Rule 42(a) reads as follows:

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (Kraut, 1986, p. 240)

Federal Rule of Civil Procedure 42(a) grants the courts wide discretion in the grouping of separate actions. A cursory reading of the rule reveals that whenever there are numerous actions before a federal district court which involve common questions of law or fact, the court may order a joint hearing, consolidate all actions, or make any order to expedite the actions. The implied privilege of Rule 42(a) gives courts "broad power to determine how best to handle numerous actions pending before them economically and
judiciously" (Chesley & Kolodgy, 1985, p. 499). There are, according to Trangsrud (1985), two criteria for the application of Rule 42(a): First of all, the combined actions must involve a common question of law or fact. Second, joinder of cases should occur "only if the related cases were filed in or transferred to a single federal district" (p. 802). In other words, Rule 42(a) is to be applied only to cases already filed in a federal district court. The Court may not require the joinder of federal cases with state actions.

The importance of Rule 42(a) is that it establishes consolidation as a procedural mechanism distinct from class action. Specifically, it grants the courts the power to consolidate individual claims that involve personal injury. Unlike class action in which hundreds of claims may be litigated by a representative action, judgment of which is binding for the entire class, consolidation utilizes a procedural theory wherein separate, individual suits may be tried together with each action retaining its own identity during and after trial. Although the rule does not stipulate, logic dictates that there must be a reasonable limit to the number of actions that can be consolidated. The maximum number of cases that can be litigated in this manner without jeopardizing the individual identity of each has yet to be determined.
The establishment of Rules 23 and 42(a) and the passing of the Multidistrict Litigation Act (MDL) in 1968, created what Chesley and Kolodgy (1985) refer to as the modern era of multiparty litigation. The MDL was a result of an increase in the number of class actions filed and successfully disposed of in the federal courts (McDermott, 1973). Under the act, a judicial panel was created to serve as the administrative agency for multiparty litigation at the federal level. The legislature empowered the MDL Panel with the authority to make decisions regarding pretrial and trial proceedings. Specifically, the MDL Act allows the Judicial Panel "to transfer civil actions which are pending in different districts and involve common factual questions to one district for consolidated pretrial [italics added] proceedings" (Note, Harvard, 1974, p. 1001). The courts, however, have taken a very liberal view of transfer and have interpreted the act to imply jurisdiction over trial proceedings as well. While the rule does not technically allow the court to consolidate cases from different districts, a case may be transferred to another district whereupon it is subject to consolidation with others that were either pending in or transferred to that district. As Trangsrud (1985) explains, "the district court in which the action is filed may transfer the case in its entirety to another district for the convenience of the parties and the
witnesses, or in the interest of justice. . . the MDL Panel may order transfer even though the transferred actions involve different parties and issues. . . "even if all the parties are opposed to it" (p. 802). The MDL thus provides the court with broad discretionary powers regarding the management of multiparty litigation.

In summary, the historical development of the three procedural methods of multiparty practice, may be viewed as follows:

1. Multiparty litigation has a historical foundation grounded in English equity law.
2. Consolidation has a historical relationship with class action treatment but is procedurally distinct as defined by Rule 42(a).
3. Consolidation may be broadly applied at the federal level to geographically diverse cases under the authority of the Judicial Panel on Multidistrict Litigation.
4. An undefined number of cases may be consolidated in one trial.

The technology exists within the current system for managing the enormous volume of toxic substance cases which challenge the capability of traditional litigation. Yet, no clear theory has evolved regarding the application of multiparty practice to toxic tort litigation.
Applications of Multiparty Practice to Toxic Torts

The landmark case for the application of multiparty practice to toxic tort litigation is generally considered to be the MER/29 case (Rheingold, 1982; Epstein, 1984). In the 1960's, Richardson-Merrell brought onto the market the drug MER/29, designed to control excessive levels of cholesterol in the bloodstream. Due to the serious side effects of the product, some 1,500 claims ensued. The eruption of litigation was managed by the creation of a product litigation group established to coordinate the activities of lawyers who were representing plaintiffs injured by the drug. The process set a precedent for the management of mass torts. Subsequent instances of mass litigation have occurred, such as those arising from aircraft accidents (In re Rely, 1982; In re Upjohn Co. Antibiotic, 1978), product consumption (In re Asbestos & Asbestos Insulation, 1977). Despite the proliferation of mass torts including those involving exposure to toxic substances and the success attributed to the MER/29 cases, no consistent policy regarding multiparty practice has emerged. Levy (1981, p. 746) insists that "court after court has rejected the class action in product liability cases because of the predominance of individual issues over the common facts shared by the class. The court's denial of class action is
consistent with the intent of Federal Rule 23, requiring the existence of commonality.

The Advisory Committee to the 1966 amendment of Rule 23 opposed the use of class actions in mass accidents and the federal courts have used this mandate as a basis for refusing to apply Rule 23 to actions arising from mass exposure torts (Chesley & Kolodgy, 1985). "In the statement of the Advisory Committee and in other sources, a general attitude is expressed that class action cannot work well in injury cases, because any common issues are said to be outweighed by individualizing factors, such as the time and place of injury, the type of injury. . .and even reliance and damage issues" (Rheingold, 1977, p. 21).

In contrast to its antipathy toward class actions for litigating mass injury cases, the court has demonstrated a more favorable predisposition toward multidistrict litigation and consolidation. McGovern (1983) comments: "Multidistrict litigation has found significantly more favor by courts and attorneys in toxic substance cases" (p. 14). Levy (1981) echoes this positive view, pointing to the possibility of multidistrict litigation as a favorable alternative to class action.

In enacting multidistrict litigation, Congress authorized the mandatory consolidation of similar actions filed in different federal district courts for pretrial
handling. Three examples of its application in toxic tort cases are *In re* Agent Orange, 1980; *In re* Swine Flu, 1979; and *In re* A. H. Robins Co., 1975. Yet, as mentioned earlier, cases combined under MDL are rarely remanded to the transferor court for trial. For example, in one case (*In re* Upjohn Co. Antibiotic, 1981), the transferee judge vacated protective orders previously issued by the transferor courts (Wiegel, 1977). The transferee court, as illustrated by this example, assumed key decision-making authority and litigated the case even though parties had initially made a different choice of forum.

Toxic substance cases involving similar or identical products and injuries from different geographic areas may ostensibly be consolidated for purposes of litigation (*Drake v. Johns-Manville*, 1978). Consolidation is possible because asbestos cases filed in federal courts ultimately fall under the decision-making authority of the MDL Panel. Once those cases are transferred into one district court, they are tried under Rule 42(a) as consolidated actions, just as though they had originally been filed in that district. According to Maedgen and McCall (1982), a substantial number of cases now managed through multidistrict litigation involved mass torts and product liability cases but "the judicial panel has refused to transfer asbestos cases to multidistrict litigation because the only questions of fact
common to all asbestos actions relate to the state of scientific and medical knowledge at different times concerning the risks of exposure to asbestos, many factual questions unique to each action or group of actions in a single district clearly predominate, and many of the asbestos cases are well-advanced" (p. 124).

The simple joinder of claims and consolidation of separate suits filed in the same court appear to be more useful procedures especially for regional mishaps (Rheingold, 1977). According to Rheingold, this procedure has been used in cases on behalf of workers from the same plant who suffer from asbestosis. Examples of such cases consolidated under Rule 42(a) include White v. Johns-Manville (1981), and Beshada v. Johns-Manville (1982). The plaintiffs in both of these cases were individuals or survivors of individuals who were suffering from asbestosis as a result of occupational exposure to asbestos dust and fibers. Following the joinder of claims for pretrial activity, the cases were consolidated for trial.

Why the use of MDL and, particularly for asbestos plaintiffs, consolidation to litigate toxic substance cases? McGovern (1983) attributes the increasing use of Rule 42(a) to the tendency of federal jurisdiction to promote more centralized management in all areas of the litigation process. Such disposition is clearly impossible in class
action due to the large numbers. Given a reasonable number of cases, however, collective handling through MDL or consolidation creates potential for greater cooperation among all parties involved before and during trial. Chesley and Kolodgy (1985) contend that consolidation has been ordered in a wide variety of situations demonstrating how flexible consolidation is and how it provides an ample basis for urging its continued growth and acceptance as a viable method of adjudicating multiparty actions. Likewise, Levy (1981) suggests that as more industrial and toxic torts head for trial, procedural torts such as consolidation will become increasingly attractive.

While the court may be favorably disposed toward consolidation to litigate toxic torts, reactions from attorneys and parties have been mixed. In part, the lack of universal support is due to the absence of strict guidelines regarding its application. There is also the concern for protecting the rights of litigants. Consolidation may be perceived as loss of control which attorneys and parties often experience in consolidated actions. "Consolidation has also been criticized because it can result in a situation where the jury treats all the plaintiffs alike despite differences in their conduct, injuries and damages" (McGovern, 1983, p. 26). Anderson (1983) argues, however, that if all agents involved reflect on the severity of the
toxic tort problem including the estimated number of future plaintiffs and the cost to the government and taxpayer, they will realize that there cannot be thousands upon thousands of full-blown single trials particularly for asbestos litigants.

Considerations In The Decision To Consolidate

Necessity of efficiency and the economy alone cannot guide the courts in making decisions to consolidate toxic substance cases. Numerous factors must be considered, factors that pertain to the proper administration of justice as well as the need for expedition and efficiency. Despite its longevity as procedural mechanism, consolidation in toxic tort cases is a modern phenomenon, innovative and procedurally unfamiliar to many practitioners. For this reason, McGovern (1983) raises what are, most likely, commonly asked questions: "What are the logical ramifications that may inevitably result from the case management mechanisms used to accommodate this new vision of litigation? How many of these procedural changes affect the fairness and ultimately the legitimacy of the legal system? If plaintiffs are to be tried. . . in order to fulfill societal goals of efficiency and deterrence, how will the assets of traditional decision-making process be altered?" (pp. 3-4).
From McGovern's questions it is possible to distill two basic factors or issues involved in the decision to consolidate: fairness and decision making. First, at the center of the fairness issue is the critical concern regarding the individual's right to have a day in court. By "day in court," reference is to a single, full-blown trial adjudicated by a judge or jury. The concern hints at a general perception that "right" and "procedure" are virtually interlaced. Phillips (1985), arguing that such a notion is a misconception, insists that "... so long as the plaintiff's basic right can be asserted fairly, the legal institution may dictate the procedural means for that right's assertion" (p. 109). If Phillips is correct, and the court decides that individual rights can be asserted in a multiple party trial, the fairness of consolidation ought not be in question. The burden of ensuring justice for all, lies in a sound, thoughtful decision by the court. Buckley (1985) offers an optimistic generalization by stating that the issues in toxic tort cases are most often the same for all plaintiffs. Individual trials would result in numerous instances of duplicate litigation, straining the resources of the legal system. Ideally, consolidation born of careful consideration and discretion by the court offers both efficiency and fairness.
"Complexity" appears to be a key consideration regarding the jury. According to Kirst (1982), in complex cases such as multiparty toxic tort litigation, the jury may be expected to do too much. What is the jury expected to do? Kakalik, Ebener, Felstiner, and Shanley (1983) report that, "personal injury suits brought by workers and others exposed to asbestos are almost always based on the legal theory of strict liability" (p. 2). In such cases, the jury is charged with rendering a decision based on a successful demonstration by plaintiffs that they "were exposed to the asbestos or a product containing asbestos that was manufactured or provided by the defendant, and that they have suffered from a disease caused by such exposure. In most jurisdictions, plaintiffs must be prepared to show that the defendant knew or should have known that the exposure to asbestos subjected them to a health risk. They must show that the defendant either failed to warn them of the risk or that the warnings were inadequate and that the failure to provide an adequate warning was responsible for their injuries" (Kakalik, 1983, p. 2). In some cases, the jury may have to decide negligence. According to Wade (1973), negligence is conduct-oriented, asking whether the parties involved engaged in reasonable conduct. Strict liability, on the other hand, is product-oriented, asking whether the
product was reasonably safe for its foreseeable purposes (Ruzicka, 1982).

The degree of complexity extends into additional areas. Numerous articles appearing in legal journals outline the major issues involved in toxic substance cases (Glass, 1983; Schenck, 1985; Comment, "An examination," 1982). The issues confronting the trier, according to Glass (1983), may be summarized as the medical problem, statute of limitation (involving either time of exposure or discovery of injury) and liability. While such an outline may suggest a list of manageable issues, consider that in some trials each of these issues may be magnified by the claims of several or many plaintiffs. Jarusewicz v. Johns-Manville involved, respectively, 12 and 6 plaintiffs (cited in Ruzicka, 1982).

Finally, the jury must decide damages. The initial consideration is whether or not to award compensation for the losses incurred due to injury. Compensation involves remuneration for lost income, medical expenses, disability, and, in some instances, loss of life. Damage awards may also cover psychological losses, such as pain, suffering, and anguish. In consolidated toxic tort trials, the jury may be required to resolve not only the liability and/or negligence issues but to determine the amount of damages suffered by each plaintiff. If a specific amount is not
sought, then the triers are confronted with the difficult task of calculating a financial value for injury, illness, death, or suffering. In some instances, the jury may also determine punitive damages. These damages are assessed as punishment to the defendant above and beyond compensatory damages. Allen (1986) identifies three factors linked to determination and calculation of punitive damages: "(1) The character of the defendant's act, (2) The nature and extent of the harm of the plaintiff that the defendant caused or intended to cause, and (3) The wealth of the defendant" (p. 576). Allen further states that jury verdicts with large punitive damage components have been assessed against Johns-Manville, and appellate division of the Superior Court of New Jersey recently affirmed a lower court verdict that included a $300,000 punitive damage award" (p. 582).

References to isolated cases could continue ad infinitum. Results have yet to be synthesized into a comprehensive report or theory. What legal practitioners are dealing with, in regard to consolidation of asbestos or other toxic tort cases, is the unknown. The "unknown" most likely accounts for their skepticism regarding the outcome of litigation. With this uncertainty, the stimulus for the questions posed by McGovern becomes more clear. Given the enormous potential for complexity created by consolidation, the legal practitioner's ultimate concern is with the
prospects of winning a favorable verdict. The impact of multiple plaintiffs on the amount of compensation is a major consideration, according to Slobodin (1983), who goes so far as to say a toxic tort case "should not be taken unless there is a good likelihood of success and substantial damages" (p. 201). McGovern's concerns regarding the jury's perception of multiple plaintiffs can thus be viewed in light of economic consequences. Because the plaintiffs are part of a collective group, will the jury perceive them differently than they would individual litigants in separate trials?" Will their perceptions, if affected, influence the amount of money awarded? Certainly, the picture created by one individual suffering from and seeking compensation for a toxic substance related illness is different from that of the same illness and amount of compensation sought by five, ten, or twenty individuals in one trial.

The number of plaintiffs consolidated is not the only factor to consider. What about the identity, degree of similarity in background and interests among the parties involved? Should the court consolidate only those plaintiffs from the same place of employment or might victims from diverse geographic locations be joined for litigation? In addition, should the plaintiffs appear as a united front against the defendant or as a mere assembly of individuals united only by the commonality of their
situations. Peters (1981) has remarked that consolidation conjures up a marshalling of resources to support attack. If Peters is correct in his estimation, what effect will this perceived military front have on the jury? All of these questions, McGovern feels, are crucial in determining case management. Once a decision to consolidate is made, there are, of course, many other factors to consider regarding the management of the trial. Adequate treatment of strategies, case plan, trial argument, and defendants are beyond the scope of this study. It is important, however, to consider one additional factor invoked by consolidation which necessarily affects a jury: the potential confounding of information, i.e., evidence that may likely occur in a complex trial. Quite clearly, numerous detailed facts for each individual case in multiparty litigation cannot be presented at trial. Decision makers must therefore accept the limitations and constraints placed on information dissemination if cases are to be consolidated. In other words, the jury will have to try the cases based on limited, perhaps summarized evidence, especially as numbers of parties increase. "It is not unusual," states McGovern (1983), "for the judge to limit voir dire, arguments, and the presentation of evidence" (p. 16).

Despite the number of critical factors involved in consolidation, the procedure appears to have the blessing of
the courts. The administration of this form of multiparty practice continues, even in the absence of historic legal theories, particularistic evidence, and definitive study regarding the effects of consolidation (McGovern, 1983; Trangsrud, 1985). Without theory guided and supported by research, the legal community may depend on hunches, intuition, and speculative lore to assist in their decision making. This study seeks to answer questions based on data which lead to the identification and interpretation of judgments in single and consolidated plaintiff cases.
CHAPTER III

REVIEW OF THE LITERATURE

The subject of multiparty practice in toxic tort litigation has not been extensively examined. Relevant literature exists in three topic areas: consolidation and damages, social perception of groups, and factors affecting jury decision making. Very little research has been directed toward studying decisions in consolidated actions. The current literature in the legal field is primarily historical, descriptive, and speculative. It is restricted to notes, comments, and essays in law reviews, journals, and magazines. Such literature reveals an interest among legal practitioners in the effects of consolidation on damage awards. There appears to be little behavioral research in determining the effects of consolidation on jury verdicts in toxic tort litigation. Relevant research in social science has been done in the area of social perception of groups. Thus, the review of behavioral research will draw from marginally related studies. A portion of the behavioral research literature has focused on legal and non-legal variables which affect jury decision making. Unfortunately, much of this literature is irrelevant to this study, concentrating primarily on such factors as presented evidence, trial argument, attorneys, and judges instructions. As mentioned above, the relevant research
falls into the three sections pertaining to damages, social perception, and specific factors affecting jury decision making.

Consolidation and Damages

The literature which addresses the relationship of consolidation to damage awards yields a number of impressions regarding the perceived effects of consolidated trials. McGovern (1983) refers to the effects as "substantial" but fails to provide a substantiated account. Weinstein (1961) offers a more specific opinion, arguing that the joinder of many parties may result in complexity which will add length and confusion to the trial. Trangsrud (1985) supports this view, stating that jury confusion will be the inevitable result of consolidation, particularly if the courts allow scores of individual plaintiffs to introduce evidence concerning each of their cases. Trangsrud also indicts consolidation as a violation of policy and the individual's right to choice of forum. Steinhart (1983) suggests that consolidation may lead to big awards for plaintiffs. Chesley and Kolodgy (1985), citing Baker v. Waterman, 1951, note that total consolidation may be improper in cases involving a multitude of parties and claims. In Baker v. Waterman, the court stated that the possibility existed that the jury may be influenced by more
serious injuries of one plaintiff in reaching a verdict for another.

A portion of the descriptive literature devoted to consolidation and/or toxic tort litigation focuses on damage awards by juries. In an earlier report before release of the landmark study by Kalven and Zeisel (1966), Kalven (1958) offered pertinent insight regarding juries and the awarding of damages. He states that "...the reason the law of damages escapes ready conceptualization is because it is so pre-eminently jury law. Damages even more than negligence itself is law written by the jury" (p. 159). Kalven continues by suggesting that the absence of data regarding jury behavior on damages places this important topic generally out of reach. In addition, Kalven suggests that the jury does not use an "accountant" approach to damages but searches instead for a single sum that is felt to be appropriate (p. 161). This sum, he states, will be close to the original pre-deliberation averages for the group and will be the result of a natural tendency for the extremes to come toward the middle as the range of positions is disclosed (p. 177). Epstein (1984) relates Kalven’s view to the decision to consolidate by noting that "permissive joinder by multiple plaintiffs facilitates block settlements in which recoveries of strong and weak cases are pushed toward the mean" (p. 486). In this regard, Epstein is
suggesting that strong cases suffer while weak cases benefit from consolidation. McGovern (1983) summarizes what is likely the consensual fear among attorneys in that consolidation will result in a tendency for jurors to average out damages so that there probably will be an overall lower award for plaintiffs.

Much of the literature on damages in toxic tort litigation reports the economics of such actions, without distinguishing the procedural disposition of cases. The reports typically neither separate tried and settled claims nor single or multiparty cases. West (1984), for example, indicates that product cases are generally seen as accounting for more million-dollar verdicts than any other category of litigation. According to the product injury data, reported by West, the average verdict in such cases rose from $220,000 in 1972 to slightly over $800,000 in 1981. This is a substantial increase over the one-year figures reported by Kakalik et al (1983). They refer to a 1976 survey of approximately 3,000 product liability lawsuits by the Insurance Services Office which indicated average compensation of $48,000 paid between July 1976 and March 1977. McDermott (1985) notes the economic impact of jury verdicts in product cases by suggesting that the determination of damages will benefit those plaintiffs who are first to execute their judgments since the combined
totals of the awards may exceed the worth of defendant corporations by billions of dollars (p. 439).

Barth (1981) conducted a study of compensation paid for asbestos-associated disease in 2,271 asbestos insulation workers who died between 1967 and 1976. Data were collected on 195 deaths that resulted in product liability lawsuits with the average court award for the eight tried cases being $75,750. However, Barth estimated that the range of awards in the future would be $100,000 to $350,000 per claim with the most likely estimate being $233,000 per claim. Conning and Company (cited in Kakalik, 1983) estimated a lower figure than Barth’s, identifying the average compensation to be $35,000 per claim from 1980-1981. A study commissioned by the Manville Corporation in 1982 (cited in Kakalik, 1983) determined the average compensation per asbestos-related ailments. The results of the study revealed that future disposition costs would be $75,000 in compensation per mesothelioma case, $45,000 per lung cancer case, and $25,000 per asbestosis case. Mark (1983) reported that asbestos cases, the most costly type of liability claims, resulted in average awards of $80,000.

The report issued by Kakalik et al. in 1983 was the first comprehensive study on the efforts of toxic substance litigation. Their work was funded by the Rand Corporation for the systematic documentation of asbestos-related costs.
According to the researchers there exists much speculation about the future exchange of billions of dollars, but few data are in the public domain. The Rand study reported net compensation, that is money awarded plaintiffs minus litigation expenses. The data were obtained from 27 of 104 plaintiffs' lawyers approached. The compilation is an extensive survey of asbestos litigation from the early 1970s through the end of 1982. The study separated tried claims from all others and found that the average claim in cases in which a trial began produced approximately $220,000 in total compensation, of which approximately $30,000 was for punitive damages. The study also indicated that 30 percent of the trials resulted in no award to the plaintiff. While some practitioners and analysts portray jury awards as constituting an urgent situation for the insurance industry, data reported by Daniels and Martin (1986) do not provide evidence that jury awards represent a crisis for insurance. Their findings suggest that while juries appear to be pro-plaintiff, the success rates in terms of jury awards tend to fall within moderate ranges with some indication of these ranges drifting upward.

In 1984, a second phase of the Rand report was issued by Kakalik, Ebener, Felstiner, Haggstrom, and Shanley. This report delineated compensation awarded to individual and multiple plaintiffs. According to this part of the project,
of all the claims closed in the sample period (from January, 1980 to August, 1982), 21 percent of the claims tried and 43 percent of the claims closed before trial involved more than one plaintiff. These multiple plaintiff lawsuits had a substantially lower average total compensation per claim - $34,000 - than the individual plaintiff lawsuits which average $88,000. Thus, the combined claims received about half or less of the average compensation per claim paid on individual claims in both claims tried and those closed before trial. The authors of this report point out, however, that much of this apparent difference is due to other factors, such as the type of injury suffered by the plaintiffs. In other words, individual claims reported in the study could have involved plaintiffs who were more severely ill than plaintiffs in the multiple party lawsuits.

Recent research by Horowitz and Bordens (1989) appears to be the first to address factors most relevant to this study. Their work revealed that verdict awards were increased significantly by the presence of an outlier (a plaintiff whose injuries were substantially more severe than other plaintiffs) and by an increase in the plaintiff population. While the punitive awards were higher in the outlier condition, Horowitz and Bordens also found a tendency for jurors to find the company not liable.
In summary, the limited literature on consolidation and its association to toxic torts does not provide a comprehensive base from which to draw sound conclusions. In general, it suggests that in certain cases:

1. Consolidation may complicate and lengthen the trial, thereby, adding confusion to the task of the jury and causing the condition of one plaintiff to influence verdicts for the others.
2. Damages awarded by juries, in general, tend to reflect an amount in which extreme positions are pushed toward the mean.
3. The amount of money awarded to individual claimants from 1967 to 1981 averaged between $48,000 to $80,000 with a predicted figure for the future of $233,000.
4. Thirty percent of the trials resulted in no award to the plaintiff.
5. From 1980 to 1982 multiple plaintiff lawsuits had an average compensation of $34,000 per claim while individual plaintiff lawsuits averaged $88,000.
6. An increase in plaintiff population may increase the amount of the award.

No clear conclusions emerge regarding damage awards. The difficulty in formulating general conclusions is attributable to the "pocket" research nature of this
literature, as well as the absence of documentation to support assertions from the legal practitioner. While the reported data on damages represent a fine collection of facts and figures, they do not appear to reflect a consistent sample of toxic tort cases. Thus, the unique and individual circumstances of each case preclude establishing a difference between individual and multiple plaintiff awards in the specific context of toxic torts.

Social Perception of Groups

If parties, juries, and tasks are viewed as collective entities, behavioral research relevant to the effects of multiparty practice can be schematized as concentrating on the following areas: (1) Observer perception of groups versus perception of individuals, (2) The presentation of multiple messages, and (3) The process inherent in multiple decision tasks. Each of these areas has been studied from a behavioral perspective.

Observer Perception of Groups Versus Individuals

The presentation of multiple litigants to a jury generates basic research questions pertaining to social perception. Are groups (multiple parties) perceived and adjudicated differently than individuals by a group of observers (jurors)? What variables are operative in the judgments? The literature is somewhat remote at times in
its proximity to these questions; yet, it does provide some theoretical point of reference. For example, social science research has considered the significance of the categorization of collected individuals. The results have yielded certain information regarding intergroup attitudes and behavior. Wilder (1978) found that the mere classification of people into groups evoked a negative bias in observers for no apparent reason. The study further determined that when a group was presented without member individuation, it became the object of discrimination and negatively biased judgments. Whenever individuals were identified separately, however, discrimination and negative bias were significantly reduced.

The classification of individuals into groups appears to have an effect on the attribution of responsibility. While Wilder's study treated perception of groups generally, attribution studies focus on the assignment of responsibility. Slovic, Fischoff, and Lichenstein (cited in Feldman and Rosen, 1978) suggested that individuals acting alone were held more responsible for their actions than those acting in groups. Such attribution appeared consistently across lines of both legal and non-legal expertise. Feldman and Rosen (1978) noted greater attribution of responsibility to individuals acting alone than to those acting conjointly with one or more. The
research focused, in part, on a correlation between conjoint criminal behavior and the length of sentences. As a corollary to their research, Feldman and Rosen cite a survey of court records in one state which revealed that judges consistently assigned longer sentences to defendants acting alone than to those acting in groups of two or more. A later study by Wilder (1978) found a difference in the perception of individuals and perception of groups. The results indicated that observers assumed a similarity among individuals who were simply characterized as a group. The perception of similarity remained, despite observer knowledge that the group had no prior interaction. A determining factor in the concept of similarity was the designation of behavior as either common to all members or unique to an individual member. Kelley (1967) noted that common behavior among persons is attributed to situational causes while unique behavior is attributed to the properties of the agent performing the behavior. Wilder (1978) confirmed Kelley's position experimentally by demonstrating the tendency of observers to attribute responsibility for common behavior in a group to the situation. The tendency was less pronounced for members of an aggregate who were not identified as a group. Observers attributed unique behavior to the individual performing the act.
Additional criteria investigated by researchers to assess observer attitude toward groups relate to group composition. The term composition includes size and diversity factors. Size refers to the number of individuals who constitute the group, while diversity includes a range of characteristics which contribute to the impressions observers may have of group members. The range of impressions allows observers to identify individuals as maximally, moderately, or minimally influencing the group's image.

Most of the literature on group size appears to focus on an intra-group perspective (Hare, 1976). Rothbart, Fulero, Jenson, Howard and Birrel (1978), however, examined the effects of increased group size on the perception of outside observers. When observers were exposed to more group members and more information about each, they were less able to distinguish the group members as individuals. Regardless of heterogeneous composition, increased size tended to move a group toward perceived homogeneity. Larger groups in the Rothbart et al. study were composed of sixty-four members while smaller groups consisted of sixteen. While the question regarding at what point a smaller group became a larger one was not addressed, the study did attempt to contrast perceptions of group size and to study the terms by which observers characterize each.
Observers tended to define the larger group by: (1) The members most frequently presented, (2) The traits most frequently used for description, (3) The attractiveness of members, and (4) The traits or individuals which are most extreme. Smaller groups remained differentiated by individual members and group composition was more accurately perceived.

Impression formation has long been of interest to social scientists. In contexts of multiplicity, the means by which observers form impressions has directed inquiry toward investigation of the cognitive process. The system used by human beings to cluster data and to identify a generalized image has been termed cognitive averaging. Rosnow and Arms (1968) reported the group impression formation was a function of cognitive averaging. Observers averaged both positive and negative characteristics in order to establish a middle ground. Individual characteristics were displaced by a cognitive mean. Additional studies underscored the concept of cognitive averaging and extended the argument regarding the significance of extremity. Leon, Oden, and Anderson (1973) found that observer impressions of a group were influenced by the worst member. The cognitive average was weighted more heavily in the direction of the member most negatively perceived. Less extreme members were
virtually ignored. When observers did not average, they used the most negative member as the sole basis for judgment.

The social perception literature thus offers a perspective comparing observers’ perceptions of groups to their perceptions of individuals. Findings may be summarized as follows:

1. The mere categorization of individuals as group members may invoke negative judgments from observers unless individuals are identified.
2. The classification of individuals into groups results in less attribution of responsibility for their behavior by observers than for individuals who act alone.
3. The identification of individuals as members of an aggregate results in greater diffusion in the attribution of responsibility for their behavior by observers than for individuals identified as a group.
4. The identification of behavior as common to all members of a group elicits attribution to situational factors by observers while behavior identified as unique is attributed to the individual performing the act.
5. The presentation of a large group produces less accuracy in individual differentiation by observers than does the presence of a small group.
6. The impressions observers have of a group are either the result of cognitive averaging or the influence of the member most negatively perceived.

The Presentation of Multiple Message

Litigation involving multiple parties may result in an increase in the number of jury-directed messages. Whether or not jurors are capable of processing the numerous arguments and witness testimonies inherent in this type of trial is a question that has been addressed, albeit indirectly, by social science researchers. The research includes investigations of (1) information processing, (2) the effects of multiple message on decision making, and (3) the effects of multiple arguments on persuasion.

The limited capacity of the human mind to process and recall data has long been of interest to those studying cognition. Miller (1956) provided support for the notion that individuals can retain only seven discreet information inputs in short-term memory. This principle seems applicable to the processing of messages and arguments. Studies investigating decision making tend to support a theory of limited information processing.

What seems clear is that group decision making is enhanced by increased information until data input reaches an upper cognitive limit. Dorris, Sadosky, and Connally
(1977) found increased decision accuracy as data inputs were varied upward from one to five. When faced with more than five information segments, groups experienced decreased decision accuracy. Other researchers suggested a higher group cognitive limit. Studies by Struefert (1970) and Struefert and Schroder (1965) reported improved decision making as informative messages were increased from two up to ten. Beyond ten, decision making was depressed.

Concern for the effects of multiple messages on decision making has prompted similar research in persuasion. Studies have generally treated the testimony of individual witnesses as a separate argument. Researchers have varied the number of arguments while measuring change in mock juror beliefs. Calder, Insko, and Yandell (1974) undertook a series of studies to measure the significance of increased arguments in the legal process. Their findings indicated that persuasion increased to an upper limit of ten. After ten persuasive appeals by either defense of prosecution, mock juror beliefs remained unchanged. The study demonstrated that mock jurors were persuaded by the adversarial position which presented more arguments witnesses than the opposition within the ten argument limit. Argument quantity had no influence when arguments witnesses were presented in equal numbers. Thus, ten witnesses for
the prosecution and ten for the defense produced a balancing effect.

In addition to simple considerations of argument quantity, several authors have studied the variable in relation to qualitative and temporal factors. The advantage of presenting more arguments than the opponent was supported by Insko, Lind, and LaTour (1976) and Chaiken (1980). Chaiken determined that among highly involved audiences, argument quantity was more influential than argument credibility. Chaiken defined high involvement in terms of the audience's concern for the consequences of their decision and placed juries in these categories.

Credibility is a consideration in determining which of many messages will influence the jury. In a review of research drawn almost entirely from persuasion studies, Whobrey, Sales, and Elwork (1981) noted its importance as a quantity may be of less importance than quality. Reyes, Thompson, and Bowers (1980) suggested the importance of argument vividness in this regard. When subjects in their study were presented with eighteen arguments, they were most likely to recall and to be influenced by those that were vivid.

A final consideration in research investigating the effects of multiple messages is that of time elapsed between arguments. Insko, Lind and LaTour (1976) included in their
study a measure of this variable. They found that mock jurors experienced a recency effect as time between arguments was increased from one to fourteen days.

In summary, research on the presentation of multiple message suggests the following: (1) group decision making may be enhanced by increased information up to a cognitive limit of ten, (2) information that is vivid and recent is likely to be recalled.

Processes Inherent in Multiple Decision Tasks

The type of trial which requires the jury to consider multiple parties and multiple arguments may also involve a third condition of multiplicity. Efforts to expedite the trial process have resulted in the introduction of multiple decision tasks to juries. That is, jurors may be asked to render verdicts on several separate complaints in the same trial. In such cases, researchers and practitioners are interested in the jurors' ability to separate cognitively the issues and pass judgment on each independently.

Writers offering practical advice to litigators contend that this type of decisional independence is unlikely in jurors. Cipes (1965) suggested that the likelihood of a defendant's conviction increases with the number of charges tried in one trial. While the law assumes
otherwise, the social science literature supports the contention that jurors are unable to separate verdicts.

Horowitz, Bordens, and Feldman (1980) reported that when two charges against one and the same defendant were decided in one trial by the same jury, the first charge was evaluated differently from the second. Their comparison of severed versus joined trials was consistent with the similar findings of Kerr and Saywers (1979). These authors found that when evidence for the first of multiple charges was strong, the probability of convictions on subsequent charges decreased.

The process apparent in these studies was the jury's ability to "anchor" on the first decision. Anchoring in this context refers to a securely made decision which will be unaffected by subsequent evidence. Currently, the law requires the jury to hear evidence for the first charge, hold it in abeyance, and attend to evidence for the second charge (Horowitz et al., 1980). In reality, the first charge appears subject to change as jurors consider the supposedly unrelated evidences of the second charge. Further support for this belief is provided by Pepitone and DeNubile (1976) regarding the contrasted magnitude of multiple charges. Jurors were inclined to judge a murder more severely when it followed the presentation of an assault charge than when it followed a previous murder
charge. Thus, the seriousness and order of presentation of charges appear to impinge on decision independence.

The current research in the area of multiple decision tasks yields a general conclusion regarding the ability of individuals to process cognitively multiple sets of information. It appears that human beings may not be able to separate issues that are presented in concert. Thus, the independence of a single decision task may actually be impossible in the midst of multiple decisions.

Factors Affecting Jury Decision Making

The study of factors which influence the decision-making task of the jury reflects an examination of such extra legal factors as the physical, vocal, and personality characteristics of the participants, juror attitudes, and/or the socioeconomic and demographic status of the parties in litigation (See for example Adler, 1973; Mitchell & Byrne 1973; Bray et al., 1978; Bridgeman & Marlowe, 1979; Field, 1979; Frazier, Bock & Henretta, 1980; Cohen & Peterson, 1981). Many of these studies frequently have chosen one particular variable or factor to investigate. As Matlon et al., (1986) suggest, a mere glance at Psychological Abstracts and Sociological Abstracts reveals the immense attention researchers have given to the "attractiveness" variable. The degree of attractiveness of
the attorneys, the victim, the defendant, the plaintiff, and the witness has been extensively examined.

Landy and Aronson (1969) determined that a crime is viewed as more serious if the victim is a good, attractive person. In their study attractiveness was given a rather extreme bipolar definition consisting of personality traits, social desirability of behavior, physical appearance, and attitude similarity or dissimilarity to jurors. Landy and Aronson determined that judgments for unattractive defendants were more harsh than those for attractive defendants. The attractiveness variable appeared to be more significant in judging the defendants than the victims who were likewise treated more leniently if they were attractive. Friend and Vinson (1974) also found that attractive defendants got better treatment than unattractive ones until jurors were admonished to be impartial. Jurors then tried to compensate for the unattractiveness bias by giving more lenient judgments to unattractive defendants. Part of lessening the impact of the attractiveness variable is attributable to group discussion as Izzett and Legenski (1974) determined in a similar study to Landy and Aronson’s.

The previously cited studies concentrate on criminal cases. Utilizing a civil case, Kulka and Kessler (1978) found that jurors awarded more money to an attractive plaintiff in cases involving an unattractive defendant than
to an unattractive plaintiff seeking damages from an attractive defendant. These results corroborate earlier findings by Stephan and Tully (1977) and Walster (1966) who also found the more serious the accident, the greater the tendency for subjects to assign responsibility for the accident to someone who could possibly be held responsible for it.

Additional studies involving criminal rape cases have examined the attractiveness variable. Jacobson (1981) discovered that an alibi from an attractive defendant was perceived as more highly credible than when given by an unattractive defendant. A study by Feild and Bienen (1980) revealed that assaults on attractive women resulted in more harsh sentences than attacks on unattractive women. Attractiveness was also found to benefit rape defendants in a study by Sannito and Arnolds (1982). Additional studies cited by Matlon (1988) report on the effect of attractiveness on perceptions of children (Dion, 1972) and recommended punishment (Efran, 1974; Leventhal & Krate, 1977; McFatter, 1978; Nemeth & Sosis, 1973; Reynolds & Sanders, 1975; Sigall & Landy, 1972; Sigall & Ostrove, 1975).

Other variables outside the scope of this study, but marginally related, have been the subject of decision-making research. Broeder (1966) found that jurors gave greater
awards to parties who were perceived as more honest. Race of the litigant has been found to influence decisions. Black defendants were more often found guilty (McGlynn, et al., 1976), received longer sentences (Bullock, 1961; Thornberry, 1973; Hindelang, 1969) and are stereotyped as perpetrators of violent crime (Sunnafrank & Fontes, 1983). Bray et al. (1978) found that while social status did not affect verdicts, jurors tended to give longer sentences to higher status defendants. Status, language, and emotional states of litigants are all variables that have been examined, but only in relationship to defendants (Matlon, 1988). With few exceptions, the plaintiff has been largely ignored in the behavioral science literature.

Recently, some studies have focused on the relationship of plaintiff/defendant variables and jury decisions. Hans and Ermann (1989) found that jurors may apply a higher standard of responsibility to the corporate actor. Subjects in their research judged the corporation as more reckless and more morally wrong than the individual and thus recommended higher civil and criminal penalties against the corporation. In the continuing Rand research, Hensler, Vaiana, Kakalik, and Peterson (1986) synthesized extensive data regarding the size of jury awards, as well as explanations for jury behavior. They found that juries award more money when the defendants are institutions or
organizations rather than individuals. These results are consistent with the theoretical view posited by Black (1987), which notes the greater willingness of citizens to seek compensation from organizations for harm. Casper, Benedict, and Perry (1989) determined attitudes and outcome knowledge exercise influence on the damage award decision by means of their impact on an interpretation of testimony. They note that this information is useful in studying decision making in tort cases in which jurors are expected to pay attention to what a litigant ought to have known or done prior to a harmful outcome. Horowitz and Bordens (1989) have conducted the most recent research relevant to this study. Their work examines civil jury decisions and the effects of plaintiff variables such as outliers, size, and aggregation. Verdict awards were increased significantly by the presence of an outlier (a plaintiff whose injuries were substantially more severe than other plaintiffs) and by an increase in the plaintiff population. While the punitive awards were higher in the outlier condition, there was also a tendency for jurors to find the company not liable.

All of these recent findings show promise regarding the evolution of relevant research. However, the reasons for jury decisions appear unknown. No study to date has pursued decision justifications by jurors in toxic substance
cases. Scholarly literature pertaining to this subject appears to be limited to research conducted up to the late eighties. The work of Horowitz and Bordens (1989) review much of the literature reviewed in this study suggesting no specific work, for example, in social perception of groups has been published recently. A cursory survey of the popular literature indicates that in the late eighties and nineties, litigation in asbestos has begun to shift toward clean-up rather than exposure cases. Perhaps, this is due to the incredible back log of cases. Recently, in Baltimore, approximately 8500 asbestos cases were "consolidated" into what is in reality a class action.

The review of literature has included a broad survey of examined variables that pertain to decision making. The results have demonstrated a lack of extensive literature on the subject under consideration. Material from a broad array of marginally related research has been distilled. The statements below pull together the behavioral research which is pertinent to this study. Based on the literature jurors may be perceived as the observers and the consolidated parties as the collective entities. Within the collectivism, it is possible to perceive the parties as groups or aggregates, that is, mere individuals brought together by the court's decision to consolidate.
The second area of relevant study is the limited research in toxic tort damage awards. At present, there is very little definitive literature. Current reports provide a rather rudimentary basis for prediction of amounts of compensation in trials involving individual or multiple parties.

The two research questions in this study are: (1) How much money will surrogate jurors award various plaintiff entities? (2) What justifications will surrogate jurors give for their decisions? There are several specific questions that emerge regarding the plaintiff entity in toxic substance litigation. First, will justifications for damage awards reflect perceptions of the size and ecology of collectivized parties? In other words, will there be identifiable trends in awards and reason giving when a juror adjudicates an individual case, a small group or aggregate of plaintiffs, or a large group or aggregate of plaintiffs? Finally, if a juror chooses either to award or not to award compensation, what is the basis or the justification for the decision?
CHAPTER IV

METHODOLOGY AND DESIGN

The present research examines the composition of plaintiff entity and decisions regarding compensatory awards in a toxic tort case. The study seeks to identify the justifications for awards and thereby determine potential pre-deliberation issues in the case. In this study, the multiple plaintiffs who do not constitute a group are identified as members of an aggregate. Five types of plaintiff entities are considered: an individual plaintiff, a small aggregate, a small group, a large aggregate, and a large group.

The investigation of legal processes and jury decision making is constrained by numerous social, economic, and methodological difficulties (Landy & Aronson, 1969). The law prohibits the direct observation of jury deliberation. Such constraints make the treatment of some variables within the context of an actual trial impossible. This study examines a frequent task facing jurors, which is deciding on compensatory awards. The methodological approach utilizes a convention which Landy and Aronson (1969) term the "juridical analog". This procedure involves presenting subjects with a written summary of a hypothetical case. The use of the juridical analog allows the researcher to ask subjects to assume the roles of jurors and to award
the plaintiff what they feel is an appropriate amount of money. This approach also allows for control of the circumstances of the case so that they are identical for all subjects independent of the composition of the plaintiff entity.

The design for this study is hybrid in nature. While it draws from the protocols of quantitative laboratory study, its primary approach is qualitative, in the manner of a case study. The units of analysis are messages constructed via survey in a quasi laboratory setting, which are in turn viewed rhetorically. The approach is atheoretical and it is intended to provide a starting point from which questions and theoretical distinctions may be derived.

The rationale for this approach is grounded in the research question regarding the effect of composition of plaintiff entity, amount of awards and decision justifications in toxic tort cases. Since researchers have limited access to real jurors, an ostensible avenue for answering the question would be to convene subjects in the manner of a laboratory study, subject them to a hypothetical case varying the composition of plaintiffs, ask them to make a decision, and to analyze the content of discourse justifying their decisions. The data generated by the analysis could provide insight into potential arguments
generated during deliberation. This procedure is similar to methods used in certain types of discourse analysis.

In studies by McLaughlin, Cody, and O’Hair (1983) and McLaughlin, Cody, and Rosenstein (1983), participants’ responses were collected in a laboratory setting and subjected to qualitative and quantitative analysis. More recently, Tracy (1991) has described the combination of quantitative and qualitative approaches as the laboratory case study. This method allows individuals to construct discourse in response to specific stimuli. The research reported here reflects a methodological approach similar to the laboratory case study. Available subjects from two different populations were used as test cases. While concern exists regarding the use of intact groups for research, Tucker, Weaver, and Berryman-Fink (1981), state that subjects in these groups can be formed into acceptable samples. All that is necessary is that subjects be assigned to treatment groups through randomization. In such cases, Campbell and Stanley (1963) indicate that "randomization is handled in the mixed ordering of materials for distribution" (p. 26).

**Subjects**

**Population 1.** Subjects were students in an introductory communication course at the University of Texas at Arlington
who agreed to participate in a study on jury decisions. Two sessions were held in a university lecture hall on two consecutive days each at the beginning of the class period. Subjects were told that while participation was appreciated it was strictly optional.

Population 2. Subjects were employees in the Human Resources Department of Texas Instruments, Incorporated who agreed to participate in a study on jury decisions. The session was held in a corporation conference room at the beginning of a department meeting. Subjects were told that while participation was appreciated, it was strictly optional.

Procedure

At the start of each session the instructor at the university and the department manager at the corporation introduced the researcher who greeted the subjects and made the following statement: "I am interested in studying juror reactions to certain types of cases. I am going to distribute a booklet which contains a brief account of a case. Please read the case and follow the instructions provided in the booklet." The researcher then distributed copies of the booklets, which had been randomly ordered, to the subjects. Each case in the booklet was identical for all subjects except for the number and social entity of the
plaintiffs. The description of each case in each situation is included in Appendix A. The following five situations were distributed:

Situation 1. a single plaintiff.
Situation 2. a small aggregate of plaintiffs.
Situation 3. a small group of plaintiffs.
Situation 4. a large aggregate of plaintiffs.
Situation 5. a large group of plaintiffs.

The first page of each booklet asked subjects to respond to basic demographic questions. For population one, these questions asked for age, sex, and academic classification. For population two, the questions on page one asked for age, sex, years of service, and position in the corporation. This information was sought in order to provide a basic description of subjects in the two populations being studied. The last item on page one was an instruction to turn to the next page.

The second page contained the case summary. It began with directions for the subjects by explaining that the following information was a brief summary of a current court trial and by indicating that the information should be read carefully in order to answer some questions regarding the case. All of the booklets were identical in describing the defendant and the toxic substance which was identified as a key factor in the case. The description is presented below:
A key factor in this case is a chemical substance known as panthenol sybiliate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to the chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybiliate for several years have died from a cancer that has been linked to the inhalation of the chemical's toxic fumes.

The court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybiliate. The corporation is the defendant in the case.

The chemical substance, "panthenol sybiliate", was fabricated for the study and was intended to serve as a generic toxic substance. It was felt that a hypothetical substance would illicit a reaction from the subjects and control for bias associated with such real substances as asbestos. The term "National Industries" was also felt to suggest a generic corporation of the size and scope of organizations that typically use, manufacture, or distribute toxic chemicals. Since the focus of the study is on multiple plaintiffs, the defendant variable was limited to a single entity and identified as the employer of each plaintiff. The remaining paragraphs in the case account contained descriptions of the plaintiffs which varied for subjects in each of the five situations.
Variation of the Description of the Plaintiffs

**Situation 1.** The case was described as a suit brought against the corporation by a single plaintiff, John, a medically discharged employee.

**Situation 2.** The case was described as a suit brought against the corporation by four different medically discharged employees. In order to emphasize individual identities each employee was given a distinct name, job and different geographical location. These plaintiffs were intended to serve as a small aggregate for the study.

**Situation 3.** The case was described as a suit brought against the corporation by a group of four medically discharged employees. While each employee was given a distinct name and job within the same local plant, a prior relationship was emphasized. These plaintiffs were intended to serve as a small group for the study.

**Situation 4.** The case and plaintiffs were described identically to those in Situation 2 except that the number of plaintiffs was 16. These plaintiffs were intended to serve as a large aggregate for the study.

**Situation 5.** The case and plaintiffs were described identically to those in Situation 3 except that the number of plaintiffs was 16. These plaintiffs were intended to serve as a large group for the study.
The decision to present two sizes of aggregates and groups was based on two factors. First, since there is no legally determined figure for the number of cases that can be consolidated, the numbers 4 and 16 were felt to be representative of a general contrast of small and large collectives as well as the number of plaintiffs in actual cases such as those cited in Chapter Three of this study. Second, the initial question which stimulated this study was concerned not only with size but with the relational dimension of plaintiff collectives. The use of both the group and the aggregate collective provided the study with two types of plaintiff entities with relational differences.

The distinguishing factors for the aggregate and the group were based on the work of Campbell (1958) who determined that the factors of similarity, proximity and common fate indicate group status while aggregates are perceived as collections of individuals who maintain separate identities. In the case summary for this study, the group and aggregate status was determined by five descriptive factors. Plaintiffs comprising groups were given salient similarity, proximity, and commonality characteristics. They were described as a group of plaintiffs, who had worked together in the same local manufacturing plant area for eight years, were well-acquainted, had interacted socially, and organized
prior to trial. The plaintiffs in the aggregate entity were described merely as different employees who worked in separate plants, had no prior social interaction, and had not organized prior to trial. Both type of collective plaintiffs were described as having had their cases combined for trial by the court. Generic job titles were selected randomly from the Dictionary of Occupational Titles (1984).

The remaining paragraphs in the case account described the plaintiff(s) as very ill with a type of cancer caused by inhaling the fumes from panthenol sybiliate. The decision to give hypothetical plaintiffs cancer linked with the inhalation of fumes is consistent with the actual events associated with many toxic substance-related illnesses particularly those involving asbestos. Each plaintiff in the summary was described as seeking one million dollars in order to provide subjects in the study a monetary guideline for reaching a decision. While the figure was chosen primarily to provide a limited range for the study, it also is within the range of awards received by plaintiffs in toxic substance cases. As cited earlier in Kakalik (1983), asbestos compensation is less than $1 million in most cases but Kakalik also identified awards exceeding $1 million.

The final two paragraphs of the hypothetical case gave a brief account of the primary arguments presented by plaintiff and defendant. Both sides were characterized as
placing responsibility on the other. The corporation argued that the employees were responsible because they failed to heed warnings and follow safety precautions including wearing safety masks at all times. In addition, the defense contended that there are other known causes for the plaintiff’s illnesses. The section of the case account was designed to synthesize very briefly common issues in a toxic tort trial. The term "responsibility" was used to convey a more generalized argument rather than choosing a specific case strategy such as strict liability, product liability or negligence. This choice allowed the subjects to suggest later the specific issues themselves in an open-ended question regarding the basis for their decisions. Also, limited and summarized evidence was cited earlier as a common occurrence in toxic substance trials.

Following the case account, subjects were instructed in the following manner:

You are asked to act as juror in this trial. Based on what you have read in the case summary, please answer the following questions. For some questions you are asked to write an answer in the blank provided. For others you are asked to place an X over the response that best represents your agreement with the statement. Answer each question in the order in which it appears and please do not turn back to previous pages.

Subjects were then asked "How much money should each plaintiff received? (Please write a dollar amount within a range of $0 to $1 million)." A blank was provided for the
answer followed by a directive to turn to the next page. The fourth page contained the open-ended question: "In your own words, please explain the reason(s) for your decision regarding the amount of money you indicated in the previous question." The objective of this question was to identify the basis or justification for individual juror awards which ostensibly would constitute what Kalven (1958) identified as the pre-deliberation issues for the members of each population. The last page of the booklet contained questions designed to serve as a manipulation check for the study.

As subjects completed the questionnaire, they turned them over to indicate that they were finished. When all the respondents had completed answering the questions, the researcher collected the booklets, explained the nature of the study, and thanked the subjects for their participation.

**Analysis of the Data**

The data from the booklet were prepared for coding and analysis. The manipulation check for each case was examined to determine whether subjects had accurately perceived the information presented in each case summary. Whenever a subject appeared to misperceive these factors, the data for the subject were removed from the study.
The demographic data and the amount of money awarded by the subjects were coded into columns for entry into the TRUE EPISTAT STATISTICAL PACKAGE for the personal computer. This software is a product of EPISTAT SERVICES, Richardson, Texas. The data consisted of case number, condition number, population number (1 = students, 2 = professionals), age, sex (1 = female, 2 = male), class (1 = freshman, 2 = sophomore, 3 = junior, 4 = senior, 5 = graduate, 6 = other), amount of award, months of service for professionals, and position (1 = branch manager, 2 = supervisor, 3 = individual contributor, 4 = other). Professional positions were determined by the job titles within the corporate departments.

Demographic data were summarized by using descriptive statistics to note the mean age, the number of males and females, the number of students in each class, the number of months of service for each employee, and the number of employees in each position. These calculations were made for each population separately.

The award amounts were plotted in a scatter diagram in order to provide a pictorial representation of the data. The scatter diagram allows for identification of the proximity of each award to the mean and the mid-range amount.
The data generated by the open-ended question were analyzed in terms of content and frequency in order to conceptualize and create categories for the responses from subjects. The analysis followed the guidelines provided by Babbie (1986) regarding the recording and interpretation of responses on questionnaires containing open-ended questions. According to Babbie, answers should not be summarized, paraphrased, or corrected for bad grammar. Yet, maintaining the exactness of responses creates a task of "reducing a wide variety of idiosyncratic items of information to a more limited set of attributes composing a variable" (p. 332). Since the variables represented among the subjects of the study are unknown, preliminary anticipation of categories could not include the full range of variation in responses. Thus, the method used in coding the responses followed the approach outlined by Babbie. All of the actual responses to the open-ended question were first listed exactly as they had been written (See Appendix J). Each answer was then reviewed in order to determine the different dimensions reflected in the responses. Each dimension was labeled so that a coding scheme could be formulated. Once the coding scheme was developed, each of the listed responses was identified and placed fittingly into one of the code categories. The frequency of responses was tabulated in order to identify the percentages of subjects who gave
responses in each category. Once the frequencies and percentage were determined, the salient issues in each category were identified and summarized in question form to determine potential pre-deliberation issues for each situation.

The procedure for reviewing each answer and determining the dimensions for coding employed the analytical model formulated by Stephen Toulmin (1958) in his explication of the lay-out of argument. Each response was diagrammed according to the structural components introduced by Toulmin as a practical model of assessing argument. He described the framework as emanating from jurisprudence rather than mathematics. Traditionally, argument had been analyzed in terms of formal logic, relying on mathematical principles to assess its logical form. Toulmin challenged the relevance to practical disputes of the formal logicians results and presented the layout of arguments, noting that "an argument is like an organism. It has both a gross, anatomical structure and a finer, as-it-were physiological one. . .one can distinguish the main phases marking the progress of the argument from the initial statement of an unsettled problem to the final presentation of a conclusion" (p. 94).

Toulmin's model identifies six essential pieces in the structure of argument. The claim (C) is the conclusion
whose merits are at issue. It begs to be made good or to be justified. While claims are typically assertions to which a speaker may be committed, Toulmin acknowledges that "not every argument is set out on formal defense of an outright assertion" (p. 12). Nonetheless, it does appear that Toulmin views the claim as a conclusion which, if challenged, may be justified. Toulmin illustrated his concept of a claim by referring to conclusions such as the decision of a jury. A verdict in a legal case which declares, "the defendant is guilty," or "the plaintiff should receive one million dollars," may be perceived as a conclusion or claim asserted by individual jurors. Cronkhite (1976) used the alternative terms "belief" and "claim" to indicate what is believed by a speaker. He contended that people store "reasons" for their beliefs or claims.

The process of justification necessitates an appeal to certain supportive facts or information which Toulmin characterized as data (D). The relationship between data and claim may be clarified by considering data as the material which answers the question, "What have you got to go on?" In a legal case, the material supporting a conclusion of guilt might be eyewitness observation of a defendant's violation of a law or the results of a sobriety test.
The most crucial component of the Toulmin model is the **warrant** (W). Warrants are hypothetical statements which act as bridges between the data and the claim. Toulmin illustrates with the following: "Harry's hair is not black. Our personal knowledge is that it is in fact red: that is our datum, the ground which we produce as support for the original assertion. . . . The knowledge that Harry's hair is red entitles us to set aside any suggestion that it is black, on account of the warrant, 'If anything is red, it will not also be black'" (pp. 97-98). To present any particular fact or information as the justification for a specific conclusion, according to Toulmin, is to commit to a step. The justification for the step is invoked, perhaps tacitly, by rules, principles, inferences, and the like, which answer the question, "How do you get there?" Toulmin's idea of "getting there" refers to arriving at a conclusion and the basis for arriving at the conclusion (claim) supported by factual information (data) is the warrant.

In addition to the three basic components described above, Toulmin's model includes three additional potential elements in the process of argument. "Standing behind our warrants," states Toulmin, "there will normally be other assurances" which he refers to as **backing** (B) of the warrants (p. 103). Backing strengthens the warrant by establishing its authority. In the previous example, the
warrant, "If anything is red, it will not also be black," may be authorized by the applicable law of physics. The backing answers the question pertaining to the warrant, "Why do you think that?"

The last two aspects of argument presented by Toulmin pertain to elements of qualification. A qualifier (Q) is a word such as "necessarily," "probably," or "presumably" inserted in the conclusion to express the degree of force which confer on the claim in light of the warrant. A rebuttal (R) is a condition of exception noted by a word such as "unless" which might be capable of defeating or rebutting the warranted conclusion " (p. 101). Toulmin explicated his system diagrammatically:

```
D——So,Q,———C
   |      
   Since  Unless
   
W
On account of  R
   
B
```

Application of Toulmin's Model

The decision to employ a theoretical model of argument in the analysis of subject responses assumed the responses to be content for which rhetorical analysis was appropriate. Characterization of these responses as rhetorical discourse
is consistent with traditional perspectives which delineate rhetoric as the development of reason-giving. Fisher (1978) noted the time-honored view of perceiving rhetoric as the articulation of "good reasons." Wallace (1963) earlier argued, "one could do worse than characterize rhetoric as the art of finding and effectively presenting good reason." (p. 248). A good reason, according to Wallace, is "a statement offered in support of an ought proposition or of a value-judgment" (p. 247).

The subjects in this study were asked to render a judgment and to provide supporting statements in the form of reasons for their decisions. Toulmin's model provides a means of representing those reasons and as Cronkhite (1976) suggests, thus, "representing adequately the pragmatic structure of discourse." (p. 175) In every instance the claim was assumed to be the amount of money awarded. Toulmin perceived a jury decision as a claim. Since this project employed a simulated civil case, the claim is understood to be, "The plaintiff(s) should receive X amount of money." Thus, throughout the analysis of the responses, the claims are the same in form but varied in terms of the specific amount of the money awarded.

The data were determined by identifying content in each response which expressed or implied factual material used as support for the claim. Expressed data, for
instance, included reference to information presented in the case summary such as the condition of the plaintiff(s), the company’s warning, the availability of safety masks, and the use of a toxic chemical. Implied data were extrapolated from responses that were brief or extended value judgments. For example, a response such as "the plaintiffs deserve some compensation for their medical expense" was perceived as implying that the plaintiffs were sufficiently ill to necessitate medical treatment, a fact that was part of the case summary.

Identification of the warrants was a central process in the analysis. The warrants served as the basis for each category into which reason-giving was classified. The rationale for this decision lies in Toulmin’s portrayal of the warrant as a justification. Toulmin delineates the warrant as the critical component in assessing argument. Likewise, subsequent study by Hart (1973) contended that "in this approach to the analysis of rhetoric the most crucial part of the argument is the warrant--the element that makes the data-claim movement plausible" (p. 78). The centrality of the warrant renders it a logical determinant of the key dimension(s) in each decision justification and thus a feasible basis for constructing categories for each response.
Determination of Categories

No a priori taxonomy was used to label the categories determined by the warrants in each subject’s response. Instead, Toulmin’s reference to the intensity of justification served as the rationale for naming categories. According to Toulmin, "warrants are of different kinds and may confer different degrees of force in the conclusions they justify" (p. 100). For example, subjects in this study arrived at varied conclusions (from zero to one million dollars). It is logical to assume that the decision justifications would vary as well. As Hart (1973) contended "usually several different statements could connect a piece of data to a major claim." Thus, the critic’s job is to step away from the message and speculate on the range of warrants necessary to connect the data and the claim.

All of the reasons given by the subjects in this study were read as a preliminary step in noting a general field of justifications varying in how they linked the data and the claim. For example, some responses provided strong attributions while others merely advanced positive or negative perceptions. In each instance, an attempt was made to extrapolate the essence of the direct or implied warrant in terms of its force. Was it attributive, evaluative, or descriptive? What or who was the object of the warrant’s
force? To illustrate, in the sample response mentioned earlier, the claim is assumed to be "the plaintiff(s) should receive $1,000,000" and the reason, "the plaintiffs deserve some compensation for their medical expenses." The response is diagrammed as follows:

(D) The plaintiffs have medical expenses
Since
(W) Employees who incur medical expenses deserve sufficient compensation

(C) The plaintiffs should receive $1,000,000

The warrant in the example is implied. Its force is evaluative rather than attributive. That is, it does not attribute responsibility but implies a value held by the sender which connects the data to the claim. A warrant such as the one above was labeled "sufficient compensation" and other warrants justifying the claim on grounds of adequate compensation were placed in the same category. While the process involved subjectivity, every attempt was made to lay out each response according to the Toulmin schema, including the secondary elements (backing, qualifier, rebuttal), and then to label the warrant (See Appendix K). The emergence of each category and the assigned labels are described in the next chapter.
CHAPTER V

RESULTS OF THE STUDY

The data for the study were collected from two different populations. Each population was analyzed and the data are reported separately.

Population One

Descriptive Statistics

Population one consisted of 116 student subjects. The descriptive statistics for this population are presented below:

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age</strong> (n = 115)</td>
<td></td>
</tr>
<tr>
<td>Mean age:</td>
<td>22</td>
</tr>
<tr>
<td><strong>Sex</strong> (n = 116)</td>
<td></td>
</tr>
<tr>
<td>Number of females:</td>
<td>61</td>
</tr>
<tr>
<td>Number of males:</td>
<td>55</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Class</strong> (n = 116)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of freshmen:</td>
</tr>
<tr>
<td>Number of sophomores:</td>
</tr>
<tr>
<td>Number of juniors:</td>
</tr>
<tr>
<td>Number of seniors:</td>
</tr>
<tr>
<td>Number of graduate students:</td>
</tr>
<tr>
<td>Number of others:</td>
</tr>
</tbody>
</table>
In addition, the mean amount of compensation awarded for each situation, the median, variance and standard deviation are shown in Table 1. A scatter diagram depicting a pictorial representation of each award in each of the five situations is presented in Table 2.

**Summary of Open Ended Responses on Basis of Decision**

The analysis of the answers to the open-ended question, "In your own words, please explain the reason(s) for your decision regarding the amount of money you indicated in the previous question," yielded nine general thematic categories for classification of subjects' specific responses. Each of these major categories, including the number and percentage of responses in each category in each situation is presented in Table 3.

The nine categories that evolved from the response analysis are (1) Company Attribution - CA; (2) Employee Attribution - EA; (3) Attribution to Both Employee and Company - BA; (4) Evaluation Pro-Plaintiff - EPP; (5) Evaluation Pro-Defendant - EPD; (6) Sufficient Compensation - SC; (7) Company Attribution/Sufficient Compensation - CASC; (8) Employee Attribution/Sufficient Compensation -
Table 1. DESCRIPTIVE STATISTICS*

<table>
<thead>
<tr>
<th>Sample/Variable</th>
<th>Subjects</th>
<th>Mean</th>
<th>Median</th>
<th>Variance</th>
<th>Std. Dev.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Single Plaintiff (n=28)</td>
<td>3146.4286</td>
<td>1500.0000</td>
<td>1.359e+07</td>
<td>3686.3595</td>
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</tr>
<tr>
<td>2. Small Aggregate (n=25)</td>
<td>3656.0000</td>
<td>2000.0000</td>
<td>1.504e+07</td>
<td>3878.3674</td>
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</tr>
<tr>
<td>3. Small Group (n=21)</td>
<td>3476.1905</td>
<td>3000.0000</td>
<td>9.187e+06</td>
<td>3030.9907</td>
<td></td>
</tr>
<tr>
<td>4. Large Aggregate (n=18)</td>
<td>5444.5000</td>
<td>5000.0000</td>
<td>1.900e+07</td>
<td>4358.4506</td>
<td></td>
</tr>
<tr>
<td>5. Large Group (n=20)</td>
<td>2886.2500</td>
<td>2000.0000</td>
<td>1.687e+07</td>
<td>4107.7388</td>
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</tr>
</tbody>
</table>

*amounts are in hundreds of dollars
Table 2. SCATTERGRAM OF AMOUNT FOR EACH SITUATION

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000,000</td>
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<tr>
<td>200,000</td>
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<tr>
<td>100,000</td>
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<tr>
<td>0</td>
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</table>

\[
\bar{x} = \text{Mean}
\]

<table>
<thead>
<tr>
<th>Situation</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>
Table 3. FREQUENCY OF RESPONSES IN EACH CATEGORY BY OPEN-ENDED QUESTIONS

<table>
<thead>
<tr>
<th>Category</th>
<th>Single Category Plaintiff</th>
<th>Small Aggregate</th>
<th>Small Category Group</th>
<th>Large Aggregate</th>
<th>Large Category Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>5 18%</td>
<td>2 8%</td>
<td>2 9%</td>
<td>3 15%</td>
<td></td>
</tr>
<tr>
<td>EA</td>
<td>7 25%</td>
<td>5 20%</td>
<td>2 9%</td>
<td>4 24%</td>
<td>7 35%</td>
</tr>
<tr>
<td>BA</td>
<td>6 21%</td>
<td>4 16%</td>
<td>5 24%</td>
<td>3 18%</td>
<td>2 10%</td>
</tr>
<tr>
<td>EPP</td>
<td>3 11%</td>
<td>2 8%</td>
<td>4 19%</td>
<td>2 11%</td>
<td>2 10%</td>
</tr>
<tr>
<td>EPD</td>
<td>0</td>
<td>2 8%</td>
<td>1 5%</td>
<td>0</td>
<td>2 10%</td>
</tr>
<tr>
<td>SC</td>
<td>2 7%</td>
<td>2 8%</td>
<td>1 5%</td>
<td>3 18%</td>
<td>2 10%</td>
</tr>
<tr>
<td>CASC</td>
<td>0</td>
<td>1 4%</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>EASC</td>
<td>5 18%</td>
<td>5 20%</td>
<td>2 9%</td>
<td>2 10%</td>
<td></td>
</tr>
<tr>
<td>BASC</td>
<td>0</td>
<td>2 8%</td>
<td>4 20%</td>
<td>3 18%</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>28 100%</strong></td>
<td><strong>25 100%</strong></td>
<td><strong>21 100%</strong></td>
<td><strong>17 100%</strong></td>
<td><strong>20 100%</strong></td>
</tr>
</tbody>
</table>
EASC; and (9) Both Attribution/Sufficient Compensation - BASC. The rationale for identification of each category is presented below.

**Conceptualization and Creation of Categories**

**Company Attribution (CA)**

The CA category emerged from the body of responses which primarily attributed award decisions to the corporation’s breach of responsibility. The scope of these responses was limited to statements identifying specific accountabilities and obligations associated with the company. Throughout the CA category, warrants were either asserted directly by the respondents ("It is the responsibility of the corporation to . . .") or cited indirectly by identifying the corporation as having committed an act which violated its obligation to workers ("The company failed . . ."). Whether through direct or indirect identification, subjects’ responses in the CA category linked the corporation’s performance or failure of action to the condition of the plaintiffs.

**Employee Attribution (EA)**

The EA category evolved as the logical antithesis of the CA classification. The responses in the EA class attributed the award decisions to the behaviors of the
employees. There were three dimensions to the behaviors cited by the respondents. One type of behavior was seen as a specific act committed by the employee ("He disregarded. . .he ignored...etc."). Another behavior was characterized as lack of response to the possession of a general or abstract quality such as "awareness" or "knowledge". The third identified behavior was a recalcitrant response on the part of the worker to the specific circumstances of the situation and/or actions of the corporation ("He was warned but continued to . . ."'). The latter behavior differs slightly from the specific action dimension in that a specific factor is identified which appeared to precipitate either defiant or negligent behavior from the employee. All behaviors in this category were either implicitly or explicitly linked to their consequences and deemed to be the cause of the illness and, thereby, the basis for the award decision.

Attribution to Both the Company and the Employee (BA)

The responses in the BA category indicated that the award decision was attributed to dispositions and behaviors of both the corporation and the actions of the employees. There were two methods of making this attribution. The first method was a brief statement simply identifying opposing parties (plaintiff/defendant, managers/workers, corporation/employee) as mutually accountable for the
misfortune of the workers. No detail outlining the specific responsibilities was given. The second means of mutual attribution was, however, more extensive in presenting the shared responsibility. Each of these types of responses was akin to the balanced sentence (e.g. "Bad men excuse their faults; good men will leave them"). The statements generally consisted of at least two parts with corresponding attributions to both parties. The responses consistently maintained an attributional equilibrium by providing a balanced proportion of issues. Almost without exception, if the more detailed responses in the BA category identified x number of objects of attribution for one side, an equal number was presented for the opposing side (e.g. "The plaintiffs knew... and continued to... but the company should have... as well as..."). The amount of money awarded by subjects who gave responses in this category was usually described as a form of compromise, that is as a sum commensurate with the breached responsibilities of both parties.

**Evaluation Pro-Plaintiff (EPP)**

The EPP category was identified as a class of responses that expressed certain values and attitudes held by the respondents in the form of specific or general judgments favoring the plaintiff. The objects of these
evaluative statements ranged from precise circumstances to unusual conditions which impinge on the welfare of the worker. While such objects of judgment might be within the responsibility of either party, the responses in the EFP category primarily concentrated on tangential issues encompassing environmental, social, and philosophical concerns. For instance, this category includes statements which indicate that decisions were based on factors such as working conditions, the status of the employees, or the posture of contemporary society.

Evaluation Pro-Defendant (EPD)

The category identified as EPD emerged from statements which expressed judgment favoring the corporation. The focus of these evaluative statements was the case itself particularly in the areas of presumption and burden of proof. Almost without exception, this group of statements identified certain criteria which must be or have not been met in order to make a decision for the plaintiff. Thus, these responses favor the defendant in the case and formed the basis of the respondents’ decisions.

Sufficient Compensation (SC)

A number of responses indicated the presence of the SC category. This class of responses provided a cost accounting for the amount of money awarded to the
plaintiffs. The statements in the SC category expressed pragmatic concern for the employee by identifying the existence of emotional and concrete expenses for which compensation should be paid. Specific responsibility was not assessed. An accountable party was not designated. The key words in this category of responses identified incurred costs as a result of the condition of the plaintiff. The amount of money awarded was characterized as remuneration for these costs regardless of cause.

Company Attribution/Sufficient Compensation (CASC)

The CASC category appeared in the form of responses which combined the CA and SC categories. Subjects whose responses fell into this class designated both the disposition of the corporation and the incurred costs to the employees as the basis for the award. Generally, the responses in the CASC class identified the types of infringements noted in the CA category and deemed the amount of money as remuneration for the emotional and financial expenses associated with illness.

Employee Attribution/Sufficient Compensation (EASC)

The EASC category included those responses which combined statements in the EA and SC categories. While attribution was made to the behavior of the employees, the
incurred expenses were also noted as the basis for the decision.

Both Attribution/Sufficient Compensation (BASC)

Subjects whose responses were classified in the BASC category engaged in the balancing process described earlier in the BA category. In tandem with the equalization of attribution, was the notation of the incurred expenses as described in the SC category.

Delineation of Issues Within Each Category
For Each Plaintiff Situation

Each of the major categories evolved from analysis of the cumulative responses of every subject on the open-ended question. The following section is a delineation of both the percentages of subjects responding in each category (See Table 3) and the primary issues which compromise each major category. The results are discussed in descending order of frequency, that is, each section begins with the category in which the highest number of subjects responded. The issues are summarized for population one in Table 4 and for population two in Table 9.
Table 4. PRIMARY ISSUES WITHIN EACH CATEGORY OF OPEN-ENDED RESPONSES

<table>
<thead>
<tr>
<th>Category</th>
<th>Single Plaintiff</th>
<th>Small Aggregate</th>
<th>Small Group</th>
<th>Large Aggregate</th>
<th>Large Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Enforcement</td>
<td>Safety</td>
<td>Knowledge</td>
<td>Protection</td>
<td>Hazard</td>
</tr>
<tr>
<td></td>
<td>of rules</td>
<td>procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>working conditions</td>
<td>Occupational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Safety</td>
<td>hazard</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Precautions</td>
<td></td>
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<tr>
<td>EA</td>
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<td></td>
<td>Careless</td>
<td>Compli-</td>
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<td>ness</td>
<td>ance</td>
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</tr>
<tr>
<td></td>
<td>choice</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Knowledge</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>BA</td>
<td>Enforcement</td>
<td>Production</td>
<td>Enforce-</td>
<td>Awareness</td>
<td></td>
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<td>of/</td>
<td>tion/</td>
<td>ment/</td>
<td>Attrition</td>
<td></td>
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<tr>
<td></td>
<td>Compliance</td>
<td>Compliance</td>
<td>Safety</td>
<td>Prohibition</td>
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<td></td>
<td>Warning/</td>
<td>Protection</td>
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<tr>
<td></td>
<td>equal</td>
<td>hazard/</td>
<td></td>
<td>enforcement</td>
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<td>negligence</td>
<td>Compli-</td>
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<td>equal</td>
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</tr>
<tr>
<td></td>
<td>Equal</td>
<td>bility</td>
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<tr>
<td></td>
<td>fault</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>EPP</td>
<td>Equipment</td>
<td>Corporate</td>
<td>Unaware-</td>
<td>Value of</td>
<td>Capitalist</td>
</tr>
<tr>
<td></td>
<td>effectiveness</td>
<td></td>
<td>ness</td>
<td>life</td>
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</tr>
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<td>punishment</td>
<td></td>
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<td>Nature of</td>
<td></td>
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<tr>
<td></td>
<td>chemical</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>circumstances</td>
<td></td>
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<td>Integrity of</td>
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<tr>
<td></td>
<td>company</td>
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Table 4. PRIMARY ISSUES WITHIN EACH CATEGORY OF OPEN-ENDED RESPONSES (Continued)

<table>
<thead>
<tr>
<th>Category</th>
<th>Situation</th>
<th>Evidence</th>
<th>Negligence</th>
<th>Motives</th>
</tr>
</thead>
<tbody>
<tr>
<td>EPD</td>
<td>Proof of negligence</td>
<td>Cause of cancer</td>
<td>Medical costs</td>
<td>Medical costs</td>
</tr>
<tr>
<td>SC</td>
<td>Medical costs</td>
<td>Suffering</td>
<td>Medical costs</td>
<td>Medical costs</td>
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<tr>
<td></td>
<td>Survivor benefits</td>
<td>Family benefits</td>
<td>Funeral, Lost salary,</td>
<td>Degree of illness</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASC</td>
<td>Warning-Suffering</td>
<td></td>
<td>Compli-</td>
<td>Compli-</td>
</tr>
<tr>
<td>EASC</td>
<td>Knowledge-Medical</td>
<td>Compli-</td>
<td>Medical</td>
<td>Medical</td>
</tr>
<tr>
<td></td>
<td>Medical costs</td>
<td>ance</td>
<td>costs</td>
<td>costs,</td>
</tr>
<tr>
<td></td>
<td>Compliance</td>
<td>Medical</td>
<td>costs</td>
<td>suffering,</td>
</tr>
<tr>
<td></td>
<td>Knowledge-</td>
<td>Risk</td>
<td></td>
<td>death,</td>
</tr>
<tr>
<td></td>
<td>suffering</td>
<td></td>
<td></td>
<td>survivors</td>
</tr>
<tr>
<td></td>
<td>and death</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BASC</td>
<td>Warning/Enforcement</td>
<td>Chemical/Occupational</td>
<td>Equal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Medical costs</td>
<td>Occupational disease/</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Knowledge/Enforce-</td>
<td>Compliance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>ment Family</td>
<td>Medical</td>
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<tr>
<td></td>
<td></td>
<td>costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Enforcement</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Family</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alternative/</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Warning</td>
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<td>Adequate</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>amount</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Situation 1: Single Plaintiff

Twenty-five percent of the subjects in situation one indicated that the basis of their decision was the behavior of the employee. Their responses fell into the EA category. The primary issue was the employee's failure to comply with the safety rules and regulations particularly regarding the wearing of the safety mask. However, other responses in EA category indicated the free choice of the worker. That is to say, workers were described as in control of their own destiny, having knowledge of the risks involved, and taking the risk of their own accord.

Twenty-one percent of the subjects in the single plaintiff situation based their decisions on factors they attributed to both the employee and the company, thereby, placing them in the BA category. The statements made by these subjects balanced the objects of attribution. For example, the enforcement/compliance counterpoint indicated that the failure of the corporation to correct disobedient employees, and to provide an effective warning was taken in tandem with the individual's responsibility for his own health and the informed risk he willingly accepted.

Eighteen percent of the subjects in this group gave responses that were classified in the CA category. This category contained a number of specific issues regarding the
corporation's responsibility to enforce rules, to accept responsibility for the hazardous working conditions, to search for alternative substances and to ensure the comfort of equipment.

These responses attributed the condition of the employees to their own knowledge of the hazard and failure to comply with rules but acknowledged the need to compensate for medical expenses, family loss, illness, and for employee loyalty to the corporation.

Eleven percent of the respondents' answers were in the EPP category. The issues delineated in this category questioned the effectiveness of the safety mask citing, for instance, the possibility that the toxic chemical might enter the body through some alternate route. The employee was identified as the underdog and a general suspicion of large corporations which use hazardous chemicals was expressed.

Seven percent of the subjects based their decision on the need for compensation. These responses were placed in the SC category. The specific issues within this category included the financial security of the survivors and the medical expenses associated with the contracted illness.

In summary, the highest percentage of subjects in the single plaintiff situation indicated that the basis of their decision lay in attributing responsibility to either the
plaintiff, the corporation, or both. There was no clear majority in any one major category. Assuming that the written responses indicated the salient issues in the minds of the respondents, the following key questions could preface the deliberation:

1. To what extent did the employee comply with safety rules and regulations?
2. To what extent did the company enforce the safety procedures?
3. Did the employee exercise free choice in working in an environment he knew to be hazardous?
4. Were safety procedures adequate or effective?
5. Did the company knowingly operate under dangerous conditions without seeking alternative methods?
6. Did both parties contribute equally to the conditions of the plaintiffs?
7. Despite his knowledge and failure to follow rules, should the employee be compensated for medical expenses, loss of life and losses incurred by family?

The questions above indicate that justification in the individual plaintiff situation tended to contain attributions of responsibility to both the behaviors of the employees and the company. Thus, the basis for awards to a single plaintiff primarily rests on determining who was at
fault and considering whether compensation was merited despite responsibility.

The clearest attributions were made by those who decided on a zero amount. All of the respondents who chose not to award the plaintiffs money gave justifications in the Employee Attribution category. At the other extreme, however, the justifications for a maximum award of one million dollars varied. As one might expect, there were clear attributions of responsibility made toward the corporation. Yet, there were also justifications noting shared responsibility of both plaintiff and the company and sympathy for the plaintiff as a reason for giving the maximum award.

**Situation 2: Small Aggregate**

Twenty percent of the subjects in the small aggregate situation gave responses in the EA category. The statements in this group concentrated on the employees' awareness of the health hazard, citing the neglect of the workers' own health and the taking of a known risk.

Another twenty percent of the respondents gave reasons in the EASC category. Again, the employees were described as responsible for their own health, aware of the risk, and negligent for not complying with safety regulations.
Compensation was seen, however, as necessary for medical attention, funeral expense, and for the risk involved.

Sixteen percent of the subjects responded in the BA category. The equalization of responsibility consisted of the company’s production and use of the chemical balanced against the employees failure to wear the safety mask. The remaining forty-four percent of the subjects provided responses that were evenly distributed among the EPP, EPD, SC and BASC categories.

The subjects in the small aggregate situation did not focus as much on pure attribution to the employees, the corporation, or both as those in the previous single plaintiff condition did. For instance, the corporation was viewed as solely responsible by only eight percent of these subjects. The highest percentages identified the employee as the significant contributor to the circumstance. There was no majority in any of the major categories. The central issues for deliberation emerging from the responses are:

1. Why did the employees continue to work in an environment they knew was hazardous?

2. Does the production and use of the chemical by the company along with the failure of compliance on the part of the employees constitute equal negligence?
3. Despite the negligence of the employees should they be compensated for the risk taken and for medical and funeral expenses?

The justifications for the decision in the small aggregate situation appear to factor into the reason giving a significant degree of consideration for the risk taken by the plaintiffs as well as the incurred costs of their conditions. There was an equal distribution of responses among categories of attribution (EA and CA) and the category which combined attributing responsibility to the employee and considering the need for compensation (EASC).

Again, respondents in the small aggregate situation who chose not to award any money to the plaintiffs cited reasons warranted primarily by the attribution of responsibility to the employee. In addition, they made pro-defendant statements. The maximum award givers provided reasons which were distributed over several categories. If there was a notable trend at all, it was in the emergence of the necessity of compensation regardless of responsibility which justified the awarding of one million dollars.

**Situation 3: Small Group**

Twenty-four percent of the subjects in this context presented responses in the BA category. A number of different attributions to either side were cited. The
company was designated as responsible for safety procedures, enforcement, and the discovery of an alternative chemical while employees were noted for their failure to heed warnings and comply with safety regulations. Twenty-four percent of the subjects noted the shared responsibility of both parties but also the need to compensate the workers for health care and family. These responses fell into the BASC category.

Nineteen percent of the subjects indicated a basis for decision in the EPP category. This was the highest number of responses in this category. The issues cited in the responses included the unawareness of workers of the hazard, the necessity of setting a strong example for all big business, the effectiveness of the masks, and the disability of the plaintiffs. The remainder of the responses were evenly distributed among the CA, EA, EPD, SC and EASC categories.

The highest percentages of subjects in the small group condition either attributed responsibility to both parties or to external factors favoring the plaintiff. There was no majority in any one of the major categories. Responses suggest the following primary questions in the decision:

1. Does the corporation's responsibility for safety enforcement, and alternative methods weighed against
the plaintiff's failure to heed warnings and follow rules constitute equal responsibility?

2. Should compensation be paid to the plaintiffs in light of shared responsibility?

3. Does the presence of a harmful chemical regardless of unused safety masks warrant compensation?

4. Are there unforeseen circumstances which should be considered in the plaintiff's failure to follow rules?

Respondents in the small group situation appeared to be more situationally oriented. The statements made in support of the decisions appear to demonstrate a strong sentiment for external conditions which mitigate unilateral attribution of responsibility. The fact that justifications were primarily in the BA, BASC and EPD categories suggests that responses to the small group of plaintiffs minimized the responsibility of the employees.

Interestingly, there were fewer extreme awards in this situation. Three respondents gave $1,000,000 and only one chose the zero amount. All three of the maximum award givers justified their decisions with statements that were classified in the EPP category. The Evaluation Pro Plaintiff classification is a non-attributional category. The basis for the decision was articulated in terms which expressed a positive sentiment for the plaintiff such as, "The plaintiffs were obviously unaware of the dangers in
this chemical." The lone zero award attributed responsibility to the employee.

**Situation 4: Large Aggregate**

Twenty-four percent of the subjects gave responses in the EA category, citing the employee's failure to follow rules in the presence of a warning as well as the responsibility for their own lives. Eighteen percent of the subjects' responses were in the BA category identifying the previous balancing effects of enforcement and compliance as constituting equal responsibility. Eighteen percent of the respondents indicated reasons in the SC division. These responses singled out medical, and funeral expenses as well as lost salary, seriousness of the illness, and the loss of life as the basis for the award decision. Eighteen percent also cited reasons in the BASC category noting equal guilt but also the presence of medical expenses, illness, and damage to life. The remaining percentages were evenly distributed between CA and EPP categories.

The highest percentage of subjects gave reasons in the EA category noting the importance of compliance to warnings and rules. The next highest percentage of respondents attributed their decisions to shared responsibility or the existence of factors meriting compensation. The key issues
in the respondents' statements generate the following questions:

1. Did the workers fail to take responsibility for their own lives by disregarding rules and ignoring warnings?
2. Does the balancing of the corporation's responsibility of enforcement, adequate warnings, and alternative methods with the plaintiffs' responsibility for their own health, compliance, and risk-taking merit some compensation?
3. Should plaintiffs be compensated for medical and funeral expenses as well as the loss of salary and life due to serious illness?
4. Should plaintiffs be compensated for medical expense and damage to life despite a shared responsibility?

The respondents in the large aggregate situation seemed to stress attribution of responsibility in their justifications. The attributions are directed primarily toward the employees and a shared responsibility between the workers and the company. Also, the need for compensation characterized the justifications in this situation.

There were several extreme awards given by the respondents in this situation. The three zero awards were based on the attribution of responsibility to the employee.
The decisions to award the maximum amounts of one million dollars were based on a variety of reasons. There is some attributional justification but the bulk of the justifications reflect a positive regard for the employees and the need for compensation.

**Situation 5: Large Group**

Thirty-five percent of the subjects in condition five indicated reasons in the EA category constituting by far the highest number of responses in that group. The principal issues emerging from these responses included the failure of employees to wear safety masks, their exercise of free choice, the existence of a warning, and employee knowledge of the toxic chemical.

Fifteen percent of the subjects' responses were in the CA category. Specific issues in the answers included the corporation's endangerment of the employees, particularly the exposure of workers to a toxic substance and its production of a hazardous product. Each of the remaining categories contained ten percent of the subjects' responses. Issues were distributed over such factors as the balancing of employee disregard for rules and the corporation's lack of enforcement and failure to rectify the hazard; capitalistic exploitation and ineffectiveness of the mask; the lack of evidence regarding the cause of the cancer; the
motivation of the plaintiffs to litigate; medical costs; and failed compliance, yet, the need for medical and death benefits.

In summary, the highest percentage of subjects' responses in the large group condition was in the EA category. There was no clear majority in any of the major divisions. The following questions identify the key issues for the subjects in this condition:

1. To what extent did employees comply with regulations or exercise free choice in light of their knowledge of a hazard?
2. How liable is the corporation because of the hazard?
3. Do the balance issues of awareness, warning, enforcement and compliance merit compensation?
4. Did the corporation care about its employees?
5. Is there sufficient evidence to show corporate negligence?
6. Does the existence of medical costs, pain, suffering and death warrant compensation?

The large group of plaintiffs appeared to have generated justifications that were primarily attributional in nature. The employee was particularly the object of attribution in their justifications.
Nine respondents chose not to award the plaintiff any money. All but two of these decisions were based on attribution of responsibility to the employees. The maximum awards were tied to attribution of responsibility to the company. The respondents in the large group situation appeared to be polarized in assigning extreme awards based on attributional justification.

The analysis of the responses on the open-ended question revealed that in none of the plaintiff cases was there a majority of responses in any of the major categories. The distribution of responses did, however, reveal an interesting categorical advantage for the plaintiff. Of the nine categories identified, seven are clearly pro-plaintiff. Only the Company Attribution and the Evaluation Pro-Defendant categories emerged as classes of responses which favor the corporation. Even the categories involving balanced attributions (BA and BASC) revealed that subjects used balancing as a rationale merely for an award lower than the full one million dollars. Combined percentages in the pro-plaintiff categories revealed that a majority of the subjects in each situation gave responses that strongly favor the employee. The combined percentages with major categories collapsed into pro-plaintiff and pro-defendant divisions are presented below in Table 5.
The advantage for the plaintiff continued in terms of the award decisions. Generally, the respondents chose to award the plaintiffs some monetary compensation. There were relatively few zero awards perhaps with the exception of responses in the large group situation. In each of the plaintiff entity situations, zero awards were justified almost entirely by a strict attribution of responsibility to the employee. This was not the case, however, among the justifications for one million dollars awards.

Reason giving for the maximum amount in the single plaintiff case did invoke joint attributions combined with an expressed belief that compensation for injury and expense was merited. The tendency to articulate attribution of responsibility did not appear as clearly in the small aggregate, small group, or large aggregate situations. The respondents in the large group were strongly attributional in their justifications for awarding one million dollars.
Table 5. COMBINED PERCENTAGES OF SUBJECTS GIVING PRO-PLAINTIFF AND PRO-DEFENDANT RESPONSES

<table>
<thead>
<tr>
<th>Situation</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
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</thead>
<tbody>
<tr>
<td>Favored Party (Categories)</td>
<td></td>
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</tr>
<tr>
<td>Defendant (EA, EPD)</td>
<td>25%</td>
<td>28%</td>
<td>14%</td>
<td>24%</td>
<td>45%</td>
</tr>
<tr>
<td>Plaintiff (CA, BA, EPP, SC, CASC, BASC)</td>
<td>75%</td>
<td>72%</td>
<td>86%</td>
<td>76%</td>
<td>55%</td>
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</tbody>
</table>


Population Two

Descriptive Statistics

Population two consisted of 44 employees of a major corporation. The descriptive statistics for the population are presented below:

**Age (n = 42)**
Mean age: 35

**Sex (n = 44)**
Number of females: 23
Number of males: 21

**Length of Employment (n = 44)**
Mean number of months: 42 (3.5 years)

**Position**
Number of branch managers: 1
Number of supervisors: 8
Number of individual contributors: 31
Number of others: 1

The mean amount of compensation awarded for each situation, the median, variance, and standard deviation are shown in Table 6. A pictorial representation of each award in each of the five situations is depicted in a scatter diagram in Table 7.
Table 6. DESCRIPTIVE STATISTICS*

Sample/Variable | Subjects | Mean | Median | Variance | Std.Dev. |
--- | --- | --- | --- | --- | --- |
1. Single Plaintiff (n=9) | 3611.1111 | 2500.0000 | 1.124e+07 | 3352.0309 |
2. Small Aggregate (n=11) | 4636.3636 | 5000.0000 | 1.520e+07 | 3899.3006 |
3. Small Group (n=7) | 5714.2857 | 6000.0000 | 9.988e+06 | 3160.3948 |
4. Large Aggregate (n=8) | 4437.5000 | 3500.0000 | 1.260e+07 | 3550.0252 |
5. Large Group (n=9) | 4000.0000 | 5000.0000 | 8.812e+06 | 2968.5855 |

*amounts are in hundreds of dollars
Table 7. SCATTERGRAM OF AMOUNT FOR EACH SITUATION

<table>
<thead>
<tr>
<th>Amount</th>
<th>Situation 1</th>
<th>Situation 2</th>
<th>Situation 3</th>
<th>Situation 4</th>
<th>Situation 5</th>
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<td>800,000</td>
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</tbody>
</table>

x = Mean
Summary of Open-Ended Responses on Basis of Decision

The analysis of the answers to the open-ended question, "In your own words, please explain the reason(s) for your decision regarding the amount of money you indicated in the previous question," was conducted in concert with the data in population one. Each of the nine general categories described earlier which cover the specific answers given by subjects, including the number of percentage of respondents in each category, is presented in Table 8.

Delineation of Issues Within Each Category For Each Plaintiff Situation

Situation 1: Single Plaintiff

Forty-five percent of the subjects in the single plaintiff case gave responses in the BA category. The content of these answers cited factors such as the employee’s failure to wear his safety mask as well as his failure to show negligence on the part of the company. These indictments of the plaintiff were balanced by references to the company’s creating a health hazard and its failure to provide a mask proven to be effective and to obtain a release.

Thirty-three percent of the subjects provided responses in the CA category. These responses noted the
Table 8. FREQUENCY OF RESPONSES IN EACH CATEGORY BY OPEN-ENDED QUESTIONS

<table>
<thead>
<tr>
<th>Category</th>
<th>Single Aggregate</th>
<th>Small Group</th>
<th>Large Aggregate</th>
<th>Large Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>3 33%</td>
<td>2 18.3%</td>
<td>0</td>
<td>1 12.5%</td>
</tr>
<tr>
<td>EA</td>
<td>1 11%</td>
<td>1 9%</td>
<td>1 12.5%</td>
<td>1 12.5%</td>
</tr>
<tr>
<td>BA</td>
<td>4 45%</td>
<td>2 18.3%</td>
<td>1 12.5%</td>
<td>3 37.5%</td>
</tr>
<tr>
<td>EPP</td>
<td>0</td>
<td>1 9%</td>
<td>1 12.5%</td>
<td>0</td>
</tr>
<tr>
<td>EPD</td>
<td>0</td>
<td>1 9%</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>SC</td>
<td>0</td>
<td>1 9%</td>
<td>1 12.5%</td>
<td>0</td>
</tr>
<tr>
<td>CASC</td>
<td>1 11%</td>
<td>2 18.3%</td>
<td>2 25%</td>
<td>0</td>
</tr>
<tr>
<td>EASC</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3 37.5%</td>
</tr>
<tr>
<td>BASC</td>
<td>0</td>
<td>1</td>
<td>2 25%</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>9 100%</td>
<td>11 100%</td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>
Table 9. PRIMARY ISSUES WITHIN EACH CATEGORY OF OPEN-ENDED RESPONSES

<table>
<thead>
<tr>
<th>Situation</th>
<th>Category</th>
<th>Single Plaintiff</th>
<th>Small Aggregate</th>
<th>Small Group</th>
<th>Large Aggregate</th>
<th>Large Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA</td>
<td>Enforcement</td>
<td>Safety Enforce</td>
<td>Enforcement</td>
<td>Safety</td>
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</tr>
<tr>
<td></td>
<td>Production</td>
<td>ment Production</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>EA</td>
<td>Warning Compliance</td>
<td>Warning Risk</td>
<td>Risk taken</td>
<td>Enforce-</td>
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<td>ance</td>
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<tr>
<td>BA</td>
<td>Compliance/</td>
<td>Emphasis of hazard/</td>
<td>Awareness of</td>
<td>Safety</td>
<td>Both negli-</td>
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<tr>
<td></td>
<td>hazard equal fault</td>
<td>Negligence choice</td>
<td>Negligence</td>
<td>Equip-</td>
<td>gent</td>
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<tr>
<td></td>
<td>Equipment/</td>
<td>responsibility</td>
<td></td>
<td>monitor-</td>
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<td></td>
<td>Negligence</td>
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<td>Produc-</td>
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<tr>
<td>EPP</td>
<td>Effectiveness</td>
<td>Presence of the</td>
<td></td>
<td>Proof of</td>
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<td>of equipment</td>
<td>corporation</td>
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<td>non com-</td>
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<td>Limited life</td>
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<td>pliance</td>
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<td></td>
<td>Information</td>
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<td>EPD</td>
<td>Evidence for cause</td>
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<tr>
<td>SC</td>
<td>Reward comfort</td>
<td>Medical costs</td>
<td></td>
<td>Medical</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>costs</td>
<td></td>
<td>Living ex-</td>
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<td></td>
<td></td>
<td>penses</td>
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<td></td>
<td>Lost salary</td>
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<td>benefits</td>
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<td></td>
<td>family</td>
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</tbody>
</table>
Table 9. PRIMARY ISSUES WITHIN EACH CATEGORY OF OPEN-ENDED RESPONSES (Continued)

<table>
<thead>
<tr>
<th>Category</th>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASC</td>
<td>Production, exposure, enforce-ment-</td>
</tr>
<tr>
<td></td>
<td>Irresponsibility, disability, illness</td>
</tr>
<tr>
<td></td>
<td>pain and suffering</td>
</tr>
<tr>
<td></td>
<td>costs, life lost</td>
</tr>
<tr>
<td></td>
<td>earning power</td>
</tr>
<tr>
<td>EASC</td>
<td>Compliance</td>
</tr>
<tr>
<td></td>
<td>Medical compliance</td>
</tr>
<tr>
<td></td>
<td>costs, family</td>
</tr>
<tr>
<td>BASC</td>
<td>Exposure/Adherence</td>
</tr>
<tr>
<td></td>
<td>Medical compliance</td>
</tr>
<tr>
<td></td>
<td>Enforce-ment/Compliance:</td>
</tr>
<tr>
<td></td>
<td>accidental death</td>
</tr>
<tr>
<td></td>
<td>Equal negligence: damage</td>
</tr>
</tbody>
</table>
responsibility of the corporation to force compliance and accountability for the production of a hazard to employees. The remaining responses were equally distributed between the EA and the CASC categories.

The highest percentage of respondents attributed responsibility to both parties while the next highest number cited the corporation. There was not a majority in any one category. The following questions summarize the salient issues for respondents in situation one:

1. Is there equal negligence on the part of both parties due to the employee’s failure to wear the safety mask and the company’s creation of a health hazard?

2. Is the failure of the plaintiffs to show strict negligence on the part of the company balanced by the company’s failure to prove the mask as an effective safety device and to obtain a release from the plaintiffs?

The justifications given by the respondents in the single plaintiff situation in this population were strikingly similar to the single plaintiff responses in population one. They were primarily attributional in nature with the concomitant consideration of the need for compensation.

There was one maximum award of one million dollars based on attribution of responsibility to the company.
Likewise, only one respondent decided on a zero award. It too was justified on the basis of attribution of responsibility, but, to the employee.

Situation Two: Small Aggregate

An equal percentage of subjects gave responses in three different categories. Eighteen percent indicated reasons in the CA category, noting the company’s responsibility for safety and enforcement of regulations. Eighteen percent responded in the BA category, balancing employee negligence with the corporation’s failure to emphasize the health hazard. Another eighteen percent indicated reasons in the CASC category citing the irresponsible behavior of the company and its responsibility to protect employees yet acknowledging the need to compensate for pain and suffering, disability, medical expense, loss of life, earning power, and family security. The remaining responses were equally distributed with low frequency among the EA, EPP, EPD, SC and BASC categories.

The highest percentage of subjects identified factors pertaining to the responsibility of the corporation and the equal responsibility of both parties. There was no majority in any one of the major categories. The primary issues for these subjects may be summarized as follows:
1. How responsible was the corporation in providing for the safety of the employees and enforcing rules to ensure such safety?

2. Is there equal responsibility in the negligence of the company to effectively emphasize the health hazard?

3. Considering the corporation’s failure in areas of toxic exposure, protection, and enforcement, should the employees be compensated for the consequences of suffering, death, and financial strain?

4. Is there sufficient information regarding the equipment, the cause of illness, and the need for compensation?

Again, the respondents in this situation responded similarly to their counterparts in population one. While there were indeed some justifications in the attributional categories, there was a nod given to need. An equal number of reasons fell into the categories attributing responsibility to the parties involved and considering the necessity for compensation. The strict attribution of responsibility is mitigated by justifications citing costs and harm as the basis for monetary awards.

The four extreme awards were based on four different categorical reasons. The zero award givers cited reasons in the same categories as those in population one. One was on
attribution of responsibility to the employee, the other a positive evaluation of the corporation. Likewise, maximum award givers in this population mirrored the pattern of justifications given in the first population. Strict attribution and the need for compensation characterized the reasons for the award decision.

**Situation Three: Small Group**

Twenty-five percent of the respondents provided statements in the CASC category. These statements faulted the company for its failure to enforce compliance to rules but stated the need for compensation not only for medical expenses but for the illness itself and for future lost earnings.

Twenty-five percent of the respondents gave reasons in the BASC category. They cited the balance of the corporation's failed enforcement and the employee's failed compliance with the need to compensate for medical costs and accidental death. The remaining subjects' responses were evenly distributed among the EA, BA, EPP, and SC categories.

The highest percentages of subjects in the small group condition responded with reasons attributing responsibility to the corporation or to both the corporation and the employees citing also the need to provide remuneration for conditions associated with the illness. There was not a
majority in any of the major categories. The following questions summarize the primary issues within this body of responses:

1. Considering the corporation's failure to enforce rules, should the employees be compensated for medical expense and for the presence of illness and future lost earnings?
2. Given the equal negligence of the corporation in exposing the employees to the chemical and failing to enforce compliance and the negligence of employees in failing to heed safety rules, should the employees be paid for medical costs and death benefits?

Once again, the responses in this situation revealed a categorical similarity to those in population one. The employee appeared to be viewed as less responsible in the plaintiff entity depicted as a small group. Along with attribution, respondents cited conditions related to the illnesses as factors warranting compensation.

While there were only two extreme awards in the small group case, the categorized responses are exactly the same as those in population one. The zero award, as usual, was based on attribution of responsibility to the employee. The reason for the one million dollar award was non-attributional. The justification was a simple statement asserting that the workers deserved compensation.
Situation Four: Large Aggregate

Thirty-eight percent of the respondents made statements which fit into the BA category. Attributions of responsibility to the company were made regarding the use of and exposure of workers to a toxic substance, the failure to monitor the situation, and the lack of enforcement while employees were attributed with negligence in light of available safety masks.

Another thirty-eight percent of the subjects gave responses in the EASC category. The employees were attributed with failed compliance and the possibility of contributing to their illnesses in some other manner but compensation was viewed as justifiable for medical expenses, family stress, and as a good faith effort to help the employees. There was an even distribution of responses between two other categories, the CA and EA divisions.

The greatest percentages of subjects noted equal responsibility and employee responsibility along with the need to compensate as the basis for their decisions. There was not a majority in any major category. The predominant issues for subjects in the large aggregate context generate the following questions for deliberation:

1. Did the corporation enforce safety rules adequately?
2. Does the company's failure at strict monitoring, enforcement, and its exposure of employees to a toxic substance balance responsibility with the employees' negligence with regard to safety regulations?

3. Despite the employees' failure to comply with safety regulations and considering the uncertainty of the cancer's cause, should they, nevertheless, be compensated for medical expense, family stress, and as a show of good faith?

As in population one, the respondents in the large aggregate situation invoked shared responsibility and the need for compensation as the basis for awards. The justifications reflect a tendency toward attribution as well as a sentiment for conditions meriting compensation.

Unlike population one, though, there was only one extreme award. The reason given for the lone maximum award of one million dollars was an attribution of responsibility to the corporation. There were no zero awards.

**Situation Five: Large Group**

Thirty-three percent of the subjects gave answers in the SC category citing the need to compensate for medical expense, living expenses, loss of salary, and benefits. There was an equal distribution among the CA, EA, BA, EPP, and EPD, and EASC categories citing company responsibility.
for safety and enforcement, employee responsibility for compliance, equal negligence, need for proof that plaintiffs failed to comply, the lack of a monetary value for life, and the need for compensation even though individuals are obligated to comply with rules and regulations.

The highest percentage of subjects indicated that the existence of objects of compensation such as expenses and incurred losses was the basis for the award decision. There was not a clear majority in any one of the major categories. The salient issues that emerge from responses in the large group situation may be stated as follows:

1. Should the employees be compensated, regardless of fault, for their medical costs and incurred losses?
2. To what extent did the company fail in its enforcement of safety measures, the employees in their compliance to rules, and both parties in their shared responsibility?

The responses in the large group situation in this population appear at first to be categorically distinct. It is true that justifications in population one invoked attribution of responsibility as the basis for the award more clearly than in population two. Responses in this population primarily cite need as the justifications for the decisions. Interestingly, there were no zero awards. Yet, the lowest awards ($50,000-$100,000) did not reflect
attributional justifications either. One can only speculate as to whether a zero award giver would have been consistent with the previous trend. The single one million dollar award was based on the trend of attributing responsibility to the corporation demonstrated by large group respondents in population one.

The analysis of the responses on the open-ended question revealed that in none of the manipulated cases was there a majority of responses in any of the major categories. As in the data from population one, the distribution of responses revealed a categorical advantage for the plaintiff case. Combined percentages in the pro-plaintiff categories revealed that a majority of the subjects in each condition gave responses that favor the employee. The combined percentages with major categories collapsed into pro-plaintiff and pro-defendant divisions are presented below in Table 10.

As in population one, there was a distinct pro-plaintiff bias where awards were concerned. There were relatively few decisions not to award money. In fact, two situations contained results that had no zero awards. Whenever there were decisions not to award compensation, the reasons were categorically the same as those provided by respondents in population one. That is, employees were
attributed responsibility for their conditions and denied compensation.

The decisions made by respondents to award the maximum amount of one million dollars were justified in a manner strikingly similar to their counterparts in the first population. Attributions characterized these justifications in the single plaintiff cases and in the large group case.
Table 10. COMBINED PERCENTAGES OF SUBJECTS GIVING PRO-PLAINTIFF AND PRO-DEFENDANT RESPONSES

<table>
<thead>
<tr>
<th>Situation</th>
<th>Favored Party (Categories)</th>
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<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Defendant (EA, EPD)</td>
<td>11%</td>
<td>18%</td>
<td>13%</td>
<td>13%</td>
<td>22%</td>
</tr>
<tr>
<td></td>
<td>Plaintiff (CA, BA, EPP, SC, CASC, BASC)</td>
<td>89%</td>
<td>82%</td>
<td>87%</td>
<td>87%</td>
<td>78%</td>
</tr>
</tbody>
</table>
Post Hoc Analysis

A contingency table analysis or multiple-sample chi-square was conducted in order to examine the amount of awards with respect to each situation. Frequency of awards at levels of maximum, intermediate, and zero amounts were compared for each plaintiff entity (See Table 11). The results for population one indicated a general significant difference, $\chi^2 = 18.72$ with 8 degrees of freedom, $p < .025$. The specific data in situation three, the small group entity, indicate that subjects chose a disproportionate amount of money over zero awards compared to the other situations. Interestingly, this was the situation in which there were almost no exclusive attributional justifications to the plaintiff or defendant. The crosstab analysis for population two yielded no significant difference, $\chi^2 = 6.68$ with 8 degrees of freedom, $p > .50$. 
Table 11. DIFFERENCES IN FREQUENCY OF AWARDS
WITHIN EACH PLAINTIFF SITUATION

Population 1

<table>
<thead>
<tr>
<th>Amount</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O</td>
<td>5</td>
<td>6</td>
<td>3</td>
<td>7</td>
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<td>25</td>
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<tr>
<td>E</td>
<td>6.07</td>
<td>5.84</td>
<td>4.90</td>
<td>4.20</td>
<td>3.97</td>
<td></td>
</tr>
<tr>
<td><strong>Intermediate</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O</td>
<td>15</td>
<td>13</td>
<td>17</td>
<td>7</td>
<td>4</td>
<td>56</td>
</tr>
<tr>
<td>E</td>
<td>13.60</td>
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<td>10.99</td>
<td>9.42</td>
<td>8.90</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>O</td>
<td>6</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td>9</td>
<td>26</td>
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<tr>
<td>E</td>
<td>6.32</td>
<td>6.07</td>
<td>5.10</td>
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Population 2

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<th>Amount</th>
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<th>Row Total</th>
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<td>O</td>
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<td>3</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>O</td>
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<td>6</td>
<td>7</td>
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<td>E</td>
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<td>6.04</td>
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<td>2</td>
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<td>0</td>
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</tr>
<tr>
<td>E</td>
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<td>0.98</td>
<td>0.71</td>
<td>0.71</td>
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<td>8</td>
<td>8</td>
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</table>

Grand Total
CHAPTER VI

DISCUSSION AND CONCLUSIONS

The purpose of this study was to identify the amount of awards and decision justifications for various plaintiff entities in a toxic substance case. The initial research questions were (1) How much money will surrogate jurors award various plaintiff entities? and (2) What justifications will they give for the amount of money awarded? This chapter will discuss the results of the study, draw conclusions regarding the findings and speculate on implications for the future.

Amount of Compensation

The mean awards for the individual plaintiff in population one of $314,643.00 and in population two of $361,111.00 are both relatively near the midpoint of $500,000. The scattergrams (Table 2 and Table 7) depict the proximity of the mean to the mid-range as well as the wide variance in the amounts chosen by subjects in the various plaintiff situations. The average amount of the award in the multiple plaintiff cases remained near the mid point as well for both populations. The data support the conclusions of Kalven (1958) that damage awards reflect the tendency for extremes to come toward the middle. Subjects in this study did not engage in deliberation. Research can only speculate regarding how much higher or lower the figure would be as a
result of discussion. The pre-deliberation positions of the subjects in both populations indicate a balanced polarity. In population one, 25 of the 116 subjects awarded the plaintiff the full one million dollars while 26 chose the zero sum. In population two, the balance of extreme positions was also equally distributed. Seven respondents of 44 awarded the maximum amount and six awarded zero or less than $100,000. The data strongly suggest that these subjects would bring to deliberation a classic confrontation the result of which most likely would be approximately $500,000 as a compromise award unless, of course, the polarization resulted in the inability of the jurors to reach a unanimous or majority decision.

Responses on the Open-Ended Question

The hypothetical case which was presented to each of the subjects in the study struck a balance in terms of arguments presented for the plaintiff case and for the defense. It is reasonable to have anticipated dichotomous responses on the open-ended question. The scenario practically asked subjects to place blame on one or the other parties. No hypothesis was advanced regarding the outcome of the open-ended question, yet it seems likely that subjects' decisions would reflect the case summary, leading them to assignment of responsibility and attribution to
either the plaintiff, the defendant, or both. Yet, this likelihood was found only among those who decided on zero awards. In every case, the justifications for not giving the plaintiffs any money were categorically attributional in nature. This trend was consistent in both the populations. The classified responses linked to one million dollar awards were much more varied in terms of the nature of the justification. In fact, attribution of responsibility as the basis for the maximum award diminished noticeably in the justifications offered in response to collectivized plaintiffs in the small aggregate, small group, and large aggregate (See Table 12). Perhaps to a point (in this case, the large group), respondents see in the increased number of plaintiffs mitigating factors that expand the rationale for a million dollar award to include situational and conditional circumstance as the basis for the decision. It may also be that after a certain number, polarization occurs as a simplified impression management strategy. Respondents may find it easier to invoke attributions in single cases and in larger, cohesive plaintiff groups.

Regardless of the fact that the outcome of the award decision tends to suggest that the mid-point figure of $500,000 is an indication of subjects equally divided on the attribution of responsibility factor, the responses on the open-ended question depict an entirely different situation.
Table 12. FREQUENCIES OF CATEGORIZED JUSTIFICATIONS WITHIN EACH PLAINTIFF SITUATION

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<tr>
<th>Population 1</th>
<th>EPP</th>
<th>CA</th>
<th>CASC</th>
<th>SC</th>
<th>BASC</th>
<th>BA</th>
<th>EASC</th>
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</tr>
</tbody>
</table>
Despite the mid-range settlement in all situations and despite the dichotomy portrayed in the case, the statements made on the open-ended question indicate that the subjects in the study had predominantly pro-plaintiff rationales embodying a variety of issues.

To begin with, the major categories that emerged from the analysis of the responses encompass more than strict attribution to either or both of the parties involved. Out of nine major areas of classification, there were six types of responses that extended the basis of the decision to include situational factors. The benefit of a situational attribution is that ostensibly no particular party must be blamed for the circumstances. Situational attributions include the possibility that an event was no one's fault but rather, "it just happened." Such an attribution occurred in responses on the open-ended question. Subjects often reiterated the situation without placing blame on either party. For example, a typical statement of this type gave a brief narrative noting that the worker(s) became ill after being exposed to a toxic substance. Following the reiteration of the situation, certain conditions warranting need such as medical expenses or pain and suffering were frequently cited. Hence, major areas of responses other than attributional categories evolved. Examples include the
Evaluation Pro-Plaintiff, Evaluation Pro-Defendant, and Sufficient Compensation categories.

The evolution of categories covering responses which extended the focus of attribution demonstrated strong sentiment for the plaintiff. With the exception of Evaluation Pro-Defendant, all of the categories beyond pure attribution emerged as pro-plaintiff categories. While the sufficient compensation categories appear at face value to cover responses concentrating on the consequences, those consequences are entirely properties of the plaintiffs (medical expenses, illness, suffering, family loss, etc.)

What the subjects appear to be saying is that the basis for the decision transcends targeting objects of attribution. The decision includes the acknowledgment of conditional factors that cannot be ignored. The words of Linda Loman in Arthur Miller's classic play, *Death of a Salesman*, (Allison, Carr, and Eastman, 1986, p. 834) provide an apt analogy. Her lament for the pitiable Willy Loman was, "... attention must be paid." In a similar mode, subjects in this study assert that compensation must be paid to the employees regardless of where the fault lies. The plaintiff entity appears to make no difference in their assertions. The categorical advantage for the plaintiff is distributed across all of the five situations.
Consider the issues that recurred in the responses within the compensation categories: medical costs, the welfare of survivors, the pain and suffering associated with the illness, the inevitable funeral expenses, the lost salary, the loss of future earnings, the value of life, disability, etc. When these issues are taken with those delineated in the Company Attribution as well as the portion in the equal attribution category citing the corporation, the disproportionate advantage for the plaintiff case is quite clear.

The issues that favor the defense are relatively few (employee compliance, free choice, knowledge of the hazard, etc.). The construction of a balance sheet of existing issues favorable to each party would look as follows:

<table>
<thead>
<tr>
<th>Plaintiff</th>
<th>Defendant</th>
</tr>
</thead>
<tbody>
<tr>
<td>The failure of enforcement</td>
<td>Adequacy of the warning</td>
</tr>
<tr>
<td>Negative conditions of the work place</td>
<td>Lack of employee compliance</td>
</tr>
<tr>
<td>Inadequacy of Safety</td>
<td>Freedom of choice</td>
</tr>
<tr>
<td>Insufficiency of warning</td>
<td></td>
</tr>
<tr>
<td>Ineffectiveness of equipment</td>
<td></td>
</tr>
<tr>
<td>Use of hazardous material</td>
<td></td>
</tr>
<tr>
<td>Exploitation of workers</td>
<td></td>
</tr>
<tr>
<td>Illness of employees</td>
<td></td>
</tr>
<tr>
<td>Incurrence of medical expenses</td>
<td></td>
</tr>
</tbody>
</table>
The experience of pain
and suffering

The incurrence of funeral costs

Loss of benefits

The salient issues relative to the plaintiffs in the minds of subjects clearly outnumber those pertaining to the defendant. The preponderance of issues in the plaintiff list do not constitute in and of themselves pro-plaintiff evidence. It must be remembered that these are core issues from statements that were pro-plaintiff in both populations. Certainly, evidence for the defense could give any of the items a pro-defense slant but that was not the case in the responses given by subjects in the study. The advantage for the plaintiff case is particularly interesting when its implications for deliberation are considered.

Implications of the Study for Jury Deliberation

Very little is known about what jurors actually do during deliberation. Since law prohibits the observation of real juries in the process of decision making, researchers have had to rely on simulation or post trial interview methodologies. Penrod and Hastie (1980), provided a model for jury deliberation which begins with the ending of the trial and individual decisions made prior to deliberation. Simon (1983) addresses the importance of the pre-deliberation position of jurors:
on the experimental juries with which I was connected, we found that 67 percent of the jurors would have reached the same decision if there had never been a deliberation. When Zeisel and Broeder interviewed 2,500 jurors who had sat on real cases in Chicago and New York they found that in instances where there was an initial majority (on the first ballot) either for conviction or for acquittal, the jury in about nine out of ten cases decided in the direction of the initial majority. Only with extreme infrequency did the minority succeed in persuading the majority to change its mind during the deliberation. (p. 276)

The majority of the subjects in this study made pro-plaintiff decisions following the presentation of the case summary. The paucity of pro-defendant decisions is rather extreme. In population one, twenty-seven respondents out of 112 (24 percent) who indicated an amount, decided on a zero award. In population two, there were only three of the forty-four subjects who awarded a zero amount (7 percent). The justifications for zero awards were the only ones that consistently attributed responsibility to the plaintiffs.

The verbalized reasons for the award decision demonstrated that the majority of the subjects described issues which are supportive of the plaintiff case. It is reasonable to assume that a jury randomly selected from these subjects to engage in deliberation would enter the process with a majority of the initial decisions in favor of the plaintiff(s). The pro-defendant jurors would definitely be in the minority. Considering the overwhelming
preponderance of pro-plaintiff dispositions, dissent from the minority would most likely be difficult and, as Simon pointed out, persuading the majority would be exceptional. Small group theory has long supported the constraints placed on the minority dividing group interaction. A snowballing effect by a majority in a small group increasingly restricts dissent. A point is reached at which dissent by the minority seriously rankles the majority, so most groups move toward a defined majority rather than toward a defined minority (Cartwright and Zander, 1960). Since the defined majority in this study consists of pro-plaintiff prospective jurors, there would be a strong likelihood of a decision in favor of the plaintiff case.

Considering the strong advantage for the plaintiff in this study, one might wonder why the pre-deliberation decisions did not reveal more maximum awards by subjects. According to Hawkins (cited in Matlon, 1988), damage award determinations are the result of a greater willingness to negotiate and compromise than are guilty-not guilty verdict discussions, which tend to be more pointed and direct. Such willingness to negotiate corresponds to the findings of Saks and Hastie (1978) that "a simple arithmetic average is a good predictor of the award finally agreed upon." (p. 94) These conclusions do not explain initial decisions which among pro-plaintiff subjects did not reflect a high
frequency of maximum awards. Only twenty-two percent of the subjects in population one awarded a full $1 million while approximately sixteen percent gave a maximum award in population two.

A plausible explanation is provided by the responses on the open-ended question. The objects of the attribution of responsibility throughout the written statements is distributed among the plaintiffs, the corporation, and situational variables. Most of the respondents appear to recognize a variety of factors that could contribute to a condition associated with toxic substance exposure. The multiple contributing factors may invoke a sense of proportionate responsibility in the minds of subjects. Even among those who cite reasons favorable to the plaintiff case there was the expressed view that the full amount seemed "excessive" or that an amount less than $1 million seemed "appropriate." This type of response could be an indication that pro-plaintiff subjects were not willing to dismiss entirely the contributory negligence of the employee. The initial decisions may well reflect a "factoring in" of the employee's responsibility for his condition. Pro-plaintiff subjects in this study would likely be willing to negotiate the amount of the award thereby giving the pro-defendant minority a minimal degree of influence in arriving at a settlement. Nevertheless, the plaintiffs in this case would
not walk away empty handed. Assume that deliberation resulted in the compromise figure commensurate with the initial individual mid-range amount of $500,000. In those cases involving sixteen plaintiffs, the amount of the award was actually a total of eight million dollars.

The results of this study substantiate the impressions among legal practitioners that juries tend to award plaintiffs compensation in toxic substance trials. The outlook for corporate defendants is not a positive one. If the case depicted in this study were actually to be tried, the defense advocates would need to scour the available jury pool in order to find favorable jurors. The process of jury selection would be of utmost importance.

Implications of the Study for Voir Dire

Voir dire is the judicial term for the oral questioning of prospective jurors by judges and lawyers for the purpose of determining the juror's competency to serve (Matlon, 1988). As Taylor et al (1984) point out, the acquisition of information about jurors constitutes the ostensible purpose of voir dire. What is more interesting and meaningful to the advocate, however, is the ulterior purpose which would include the selection of the best possible jury. The best jury is one attitudinally favorable toward the advocate's side. As indicated earlier, the
jurors favorable to the defense in this study are rare specimens. Prospective jurors for the defense would include those subjects who indicated in their answers that individuals are responsible for both their own behavior and its consequences. The task of the advocate would be to find these individuals or to eliminate those who express the opposite view. In reality, the machinery of the judicial system in the form of challenges would have to be utilized to deselect those most attitudinally biased toward the plaintiff. Among the subjects in this study, defense advocates would have a large task in excusing pro-plaintiff jurors. A questioning strategy would need to be employed which would identify the most extreme attitudes in the pro-plaintiff categories. For instance, individuals whose attitudes coincide with the extreme attributions cited in the CA and EPP categories could perhaps be construed as biased enough to merit disqualification by the court for cause.

Since voir dire as an information seeking process has the potential to discover the attitudes, beliefs, and values held by prospective jurors and ultimately lead to the selection of the best jury, the taxonomy of issues presented earlier could be used as a basis for the development of an investigative strategy. First of all, the formulation of voir dire questions should be directed toward getting
prospective jurors to reveal any predispositions they have regarding corporations. The "typical" voir dire question pertinent to such disclosure would be asked in the following manner: "Do any of you have any belief or feeling for or against corporations that might prevent you from being a completely fair and impartial juror in this case?" (Feldhake, 1983, p. 244) The real value of such a question is minimal in helping either advocate obtain the level of information necessary to evaluate a potential juror. The reason for the question's limited value is that it is directed toward the entire venire. It is also a closed question. The socially desirable answer that will most likely be forthcoming is "no." If that is a truthful reply, then the advocate for a case such as the one in this study has theoretically identified a juror favorable to either side. Since the reply given before other members of the venire may in actuality not be the truth, vital information has not been discovered. Elwork, Sales, and Suggs (1981) identified sociopsychological forces that impede disclosure by jurors including peer pressure, social distance between the interviewer and prospective juror, and the authoritarian setting of the courtroom. Consider that the truthful answer to the question above is "yes." What is the likelihood that a prospective juror in a toxic substance case would volunteer attitudes such as those expressed in some of the
pro-plaintiff responses identified in this study? To what extent, for example, would individuals reveal that they view corporations as possessing total responsibility for the welfare of workers? How willingly would they admit during voir dire that injured parties must be compensated regardless of who is at fault? Such information is vital to the defense in selecting a desirable jury.

The existence of such attitudes lends support to the need for the attorney to be able to question prospective jurors individually. In a trial such as the one depicted in this study the defense needs to be able to ask open questions that would facilitate disclosure of some of the pro-plaintiff issues. For example:

1. What degree of responsibility does a corporation have in preventing mishaps?
2. Does the presence of illness, suffering, medical expenses or death mean the corporation is responsible?
3. How responsible are employees for their own safety?

Certain jurisdictions would require the submission of such questions to the court for approval and administration. Yet, the importance of asking such probative questions to each member of the venire, is paramount for the defense in attempting to select a jury that would otherwise be stacked in favor of the plaintiff.
The final implication for voir dire to be considered is the relevance of this study to persuasion. The persuasive dimension of voir dire has long been of interest to researchers. Blunk and Sales (1979) applied the results of the Yale Communication and Attitude Change Program to the process of persuasion during voir dire. One of the propositions advanced by their application was, "To the extent that counsel may present specific aspects of the case to the veniremen including facts about the defendant and judicially acceptable defenses, the anchoring and the committing approaches to immunization against persuasion, should serve as helpful voir dire techniques" (p. 51). McGaffey (1983) lent further support to this proposition by stating that additional research by communication theorists, "...would substantiate the importance of the jurors's making a public commitment to give the defendant a fair trial ... that it makes sense and is consistent with what we know to 'inoculate' the jury by forecasting both perceived weaknesses in one's case and strong arguments that may be presented by the opposition" (p. 268).

The basic arguments set forth by the case summary in this study attempted to bifurcate the attributions of responsibility to both sides. The respondents, however, went beyond those basic issues in their responses. Those data revealed what could be interpreted as basic weaknesses
and strong arguments for both sides. If advocates subscribe to the viability of inoculation during voir dire, they could develop an immunization strategy based on the salient issues identified by the respondents in this study. The defense could, for example, forecast the conditions that appear to merit compensation in the minds of individuals and call for a public commitment from each venireman not to allow the consequential factors to bias their judgment. Defense attorneys have long called for public commitment as anchors in criminal trials by asking jurors not to permit the arrest of a defendant to suggest guilt. Advocates in civil cases such as toxic substance torts could well benefit by using some anchor point for public commitment during voir dire. The results of this study could help in identifying just such a point around which to anchor members of the jury.

Discussion of the implications of this study have focused on the defense due to the seeming enormity of the plaintiff advantage. Certainly, the interpretation of these results has relevance for the plaintiff strategy as well. It is, however, impossible for a limited study such as this to account for all of the factors related to the decision-making process or to explicate all of the potential implications or influences.
Implications of the Study for Case Management

At the pragmatic level, the interest among legal practitioners is whether or not to consolidate cases. The regard at issue is obviously the consideration of awards. The results of this study suggest that litigants in a variety of plaintiff configurations are likely to receive awards. None of the justifications for the awards made by the respondents contained any explicit or implicit references to the size or ecology of the plaintiff entities. Thus, this study offers no evidence linking awards to single or multiple plaintiffs.

As previously stated, there was seemingly a trend in terms of justifications which invoked attributions of responsibility. Respondents in the single plaintiff case in both populations as well as in the large group case in population one provided responses that were categorically attributional. The tendency to base awards on attribution was less pronounced in the small and large aggregate cases and virtually absent in the small group situation in terms of maximum awards. Thus, plaintiff counsel whose cases are consolidated into small aggregates, small groups, and large aggregates may want to consider such entities when diverse causalities are relevant to case strategy. If strict attribution of responsibility is the case theme, then
parties may benefit from single trials or large consolidated trials where plaintiffs are perceived as a group.

A possible reason for attributional justifications in single trials may be the tendency noted earlier in the literature review for observers to hold individuals more responsible for behavior than collective persons. The diffusion of responsibility among joint actors may hold only to a point so that a perceived large group may preclude individuation. Thus, attorneys wishing to avoid perceptions of strict attribution may want to avoid single or large consolidated trials. The one clear message sent by respondents in this study is that defense counsel hoping for zero awards will perhaps find support in a case strategy grounded in strict attribution of responsibility. Intuitively, strict attribution seems understandable as a justification for those whose judgment offers no compensation for an employee who is suffering from toxic substance exposure. The natural alliance between a defense juror and counsel would seem to cling rather tenaciously to warrants that contain strict values and principles that hold individuals accountable for their behavior. If counsel plan defenses that will seek to persuade based on liability then it may be imperative to identify strict attributionists during jury selection.
Yet, it is interesting that the attribution of responsibility to the employee as a justification was not a consistent indicator of a zero award in this study. In some instances, respondents assigned responsibility to the plaintiffs but still awarded compensation and in every justification which combined the need for compensation with attribution of responsibility to the employee, some compensation was awarded.

An implication of the results for the defense is that even a case plan of attribution of responsibility to the plaintiff may be no guarantee of an outcome in favor of the defendant. It may not be necessary for plaintiff counsel to worry about attribution, particularly if harm, suffering, and expense are salient in the minds of jurors. Certainly, subjects in this study were responsive to the condition of a plaintiff regardless of how responsible he was for his injury. The regard that jurors such as these have for the victims seems to be critical to the decisions and case presentation in toxic substance litigation.

The attention paid by respondents to need in this study also suggests that defense counsel may want to be concerned with the judge’s instructions to the jury. If jurors are potentially persuaded by conditions they feel merit compensation, it would be advisable for counsel to prepare and recommend instructions that emphasize the
obligation of jury members to arrive at a decision based on issues of liability. Jury members may need to be reminded that the existence of harm and need alone is not sufficient for determining awards. It is during the judge's admonition that central points on which questions of liability should focus are clarified. Respondents in the small aggregate, small group, and large aggregate based their decisions for maximum awards primarily on plaintiff need for compensation. If such justifications were invoked during a toxic substance trial, the judges instructions to the jury could be the last opportunity to re-establish issues of responsibility prior to deliberation.

**Evaluation of the Study and Recommendations for Future Research**

The general advice advanced for researchers who conduct studies such as the current one is to exercise caution in generalizing from the findings. Such recommendation often questions the validity of using student populations and, particularly, intact groups. Certainly, the artificiality of the research context must guide the assertion of conclusions beyond the populations studied. Students engaged in the study during regularly scheduled class time. The professional population participated during
a regular departmental meeting. Neither of these atmospheres may have been optimal for this research.

The use of two distinctively different populations provided positive results regarding reliability of the study. The results were essentially the same for both groups of subjects. In other words, the decisions of students at the university and employees revealed strikingly similar patterns both in terms of awards and categorical justifications. More research needs to be done before valid generalizations beyond the studied populations can be made.

One of the strongest conclusions that could be made following the review of the literature was that the current information was far too incomplete even to formulate hypotheses regarding multiplicity in the courtroom. While this inquiry into consolidation and decision-making may not have brought forth a wealth of substantive conclusions, it has, perhaps, provided some direction for future investigation. More refinement in operationalizing the concepts of individual, aggregate, and group plaintiff entities is needed in order to theorize about perception variables. For example, such factors as perceived similarity, and perceived common behavior on the part of jurors in consolidated toxic substance cases should be studied more extensively. It may be useful in studies such as this to vary the order of questioning. Not all
deliberations may begin with a decision followed by reason
giving. Future research may want to consider asking
subjects to discuss data before making an award decision. A
great deal of the litigation research has been in the area
of criminal rather than civil action. The wisdom of
generalizing across the criminal/civil lines is
questionable. Factors affecting perception and behavior of
adjudicators may be quite different in a tort than in a
criminal case.

A final word about the direction of research relevant
to toxic tort litigation has to do with the predominance of
experimental methodologies. The merit of research in the
laboratory setting is well-established. In the area of
trial behavior, however, analogous contexts exacerbate the
familiar problem of external validity. Since the
deliberation room is inaccessible to researchers, they have
been forced to accept tentatively the conclusions of
behavioral research conducted in experimental settings.
There is an enormous amount of research that could be done
by practitioners using qualitative methodologies.
Communication scholars could effectively use observation and
participation techniques in order to analyze trial behavior
regarding conditions of multiplicity. Interviews with
participants could yield important information about jury
attitudes and behavior. Descriptive instruments which make
use of survey techniques in order to create real world research texts may get closer to the deliberation process than simulated methods. There appears to be a growth in cooperation between courts and researchers. Such co-operative efforts can only serve to open avenues for growth in the education and the legal system. Questions pertaining to litigation under conditions of multiplicity suggest the importance of comprehensive information for all parties involved in the judicial process. Trial under such conditions will call forth a reassessment of some of the major assumptions and value choices that have fashioned the legal system for years. Communication research can be instrumental in the reassessment process and place both the scholar and the practitioner at the forefront of identifying, evaluating, and debating the basic issues, values assumptions, trends, and implications inherent in the legal system.

The results of this study do provide some empirical basis for explaining fears expressed by agents of an industry under siege. The messages from respondents seems clear that they, perhaps as well as others within the society, intend to express compassion and a sense of justice by compensating those who have been injured as a result of exposure to toxic substance. The toxic tort may remind human beings of their vulnerability. It may stir emotions
moving adjudicators to incorporate not just principles of causation, responsibility, and fairness into their decision but to act on the belief that compensation itself is an inherent right for the injured. Further examination of decision justifications through laboratory case studies seems highly plausible as a means of validating juror beliefs and relating them to particular judgments. Thorough knowledge of judgments in simulated cases, such as those in this study, may have implications for decision making in comparable situations which occur routinely and frequently in the American judicial system.
1. What is your Age:________

2. Sex (check one) __________ Female

__________ Male

3. Academic classification (check one)

__________ Freshman

__________ Sophomore

__________ Junior

__________ Graduate

__________ Other (explain)
APPENDIX B

COVER PAGE OF CASE STUDY: POPULATION TWO
1. What is your age? _______

2. Sex (check one) _______ Female

   _______ Male

3. Years of service _______

4. Position __________________ (Branch manager, supervisor, individual contributor, etc.)

PLEASE TURN TO NEXT PAGE
APPENDIX C

MANIPULATED CASE: SITUATION 1, SINGLE PLAINTIFF
Directions:

The following is a brief summary of a current court trial. You are asked to read the information below very carefully. You will be asked to answer some questions regarding the case so please read the entire summary before moving to the next section.

A key factor in this case is a chemical substance known as panthenol sybilate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to this chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybilate for several years have died from a cancer that has been linked to the inhalation of the chemical’s toxic fumes.

This court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybilate. The corporation is the defendant in the case.

The suit is being brought against the corporation by John, a medically discharged employee. He had worked in one of the corporation’s manufacturing plants. He is the plaintiff in the case.

The plaintiff is very ill and his disease has been diagnosed by medical doctors as the type of cancer caused by inhaling the fumes from panthenol sybilate. For this reason, the plaintiff is seeking money from the corporation as compensation for his ill health. He is asking that the corporation pay him one million dollars. The plaintiff’s lawyer argues that the chemical panthenol sybilate is used in the manufacturing process and because the plaintiff worked in the manufacturing section, he inhaled the chemical’s toxic fumes and as a result contracted cancer.

The corporation’s lawyer argues that the plaintiff is responsible for his illness. Testimony by corporate officials reveals that the corporation was informed many years ago that there was some chance that inhaling the chemical’s fumes could cause health hazards and provided them with safety masks to wear in the manufacturing area.

Evidence in the case reveals that the plaintiff did not always heed the company’s safety regulations. Sometimes he wore his safety mask and sometimes he did not. The corporation claims that the plaintiff is responsible for his
illness because he did not wear a safety mask at all times even though the plant’s safety regulations required him to do so. In addition, the corporation argues that there are other known causes for the plaintiff’s type of cancer.
APPENDIX D

MANIPULATED CASE: SITUATION 2, SMALL AGGREGATE
Directions:

The following is a brief summary of a current court trial. You are asked to read the information below very carefully. You will be asked to answer some questions regarding the case so please read the entire summary before moving to the next section.

A key factor in this case is a chemical substance known as panthenol sybiliate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to this chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybilate for several years have died from a cancer that has been linked to the inhalation of the chemical’s toxic fumes.

This court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybilate. The corporation is the defendant in the case.

The suit is being brought against the corporation by 4 different medically discharged employees:

- John, technician, Seattle plant
- Bill, servicer, Miami plant
- Henry, inspector, New York plant
- Robert, operator, Chicago plant

Each of these employees worked in separate plants within the corporation. Until the trial they had never met. They had no prior social interaction nor were they organized prior to their appearance for trial. They are together as a result of the court’s decision to combine their cases for one trial. These former employees are the plaintiffs in the case.

The plaintiffs are very ill and their disease has been diagnosed by medical doctors as the type of cancer caused by inhaling the fumes from panthenol sybilate. For this reason, the plaintiffs are seeking money from the corporation as compensation for their ill health. Each plaintiff is asking that the corporation pay him an individual separate sum of one million dollars. The plaintiffs’ lawyer argues that the corporation is responsible for their exposure to the toxic fumes. Since the chemical panthenol sybilate is used in the manufacturing process and because the plaintiffs worked in the
manufacturing section, they inhaled the chemical's toxic fumes and as a result contracted cancer.

The corporation’s lawyer argues that the plaintiffs are responsible for their illnesses. Testimony by corporate officials reveals that the corporation was informed many years ago that there was some chance that inhaling the chemical’s fumes could cause health problems. For this reason, the corporation warned the employees of possible health hazards and provided them with safety masks to wear in the manufacturing area.

Evidence in the case reveals that the plaintiffs did not always heed the company’s safety regulations. Sometimes they wore their safety masks and sometimes they did not. The corporation claims that the plaintiffs are responsible for their illnesses because they did not wear their safety masks at all times even though the plant’s safety regulations required them to do so. In addition, the corporation argues that there are other known causes for the plaintiffs’ type of cancer.
APPENDIX E

MANIPULATED CASE: SITUATION 3, SMALL GROUP
Directions:

The following is a brief summary of a current court trial. You are asked to read the information below very carefully. You will be asked to answer some questions regarding the case so please read the entire summary before moving to the next section.

A key factor in this case is a chemical substance known as panthenol sybiliate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to this chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybiliate for several years have died from a cancer that has been linked to the inhalation of the chemical’s toxic fumes.

This court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybiliate. The corporation is the defendant in the case.

The suit is being brought against the corporation by a group of 4 medically discharged employees:

  John, plant technician     Henry, plant inspector
  Bill, plant servicer      Robert, plant operator

Each of these employees worked together in the same local manufacturing plant and in the same work area for at least 8 years before the trial. These plaintiffs are well acquainted, have had prior social interaction, and have organized prior to bringing suit. They are together as a result of the court’s decision to combine their cases for one trial. These former employees are the plaintiffs in the case.

The plaintiffs are very ill and their disease has been diagnosed by medical doctors as the type of cancer caused by inhaling the fumes from panthenol sybilate. For this reason, the plaintiffs are seeking money from the corporation as compensation for their ill health. Each plaintiff is asking that the corporation pay him an individual and separate sum of one million dollars. The plaintiffs’ lawyer argues that the corporation is responsible for their exposure to the toxic fumes. Since the chemical panthenol sybilate is used in the manufacturing process and because the plaintiffs worked in
the manufacturing section, they inhaled the chemical's toxic fumes and as a result contracted cancer.

The corporation's lawyer argues that the plaintiffs are responsible for their illnesses. Testimony by corporate officials reveals that the corporation was informed many years ago that there was some chance that inhaling the chemical's fumes could cause health problems. For this reason, the corporation warned the employees of possible health hazards and provided them with safety masks to wear in the manufacturing area.

Evidence in the case reveals that the plaintiffs did not always heed the company's safety regulations. Sometimes they wore their safety masks and sometimes they did not. The corporation claims that the plaintiffs are responsible for their illnesses because they did not wear their safety masks at all times even though the plant's safety regulations required them to do so. In addition, the corporation argues that there are other known causes for the plaintiffs' type of cancer.
APPENDIX F

MANIPULATED CASE: SITUATION 4, LARGE AGGREGATE
Directions:

The following is a brief summary of a current court trial. You are asked to read the information below very carefully. You will be asked to answer some questions regarding the case so please read the entire summary before moving to the next section.

A key factor in this case is a chemical substance known as panthenol sybiliate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to this chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybiliate for several years have died from a cancer that has been linked to the inhalation of the chemical's toxic fumes.

This court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybiliate. The corporation is the defendant in the case.

The suit is being brought against the corporation by 16 different medically discharged employees:

John, technician, Seattle plant  
Bill, servicer, Miami plant  
Henry, inspector, New York Plant  
Robert, operator, Chicago plant  
David, packer, Dallas plant  
George, loader, Los Angeles plant  
Greg, fitter, Kansas City plant  
Ronald, servicer, Houston plant  
Larry, plater, Iowa City plant  
Louis, tester, New Orleans plant  
Edward, operator, Louisville plant  
Norman, engineer, Oakland plant  
Jefferey, processor, Cleveland plant  
Gary, repairman, Richmond plant  
Allen, packer, Pittsburgh plant  
Scott, tooler, Portland plant

Each of these employees worked in separate plants within the corporation. Until the trial they had never met. They had no prior social interaction nor were they organized prior to their appearance for trial. They are together as a result of the court's decision to combine their cases for one trial. These former employees are the plaintiffs in the case.
The plaintiffs are very ill and their disease has been diagnosed by medical doctors as the type of cancer caused by inhaling the fumes from panthenol sybiliate. For this reason, the plaintiffs are seeking money from the corporation as compensation for their ill health. Each plaintiff is asking that the corporation pay him an individual and separate sum of one million dollars. The plaintiffs' lawyer argues that the corporation is responsible for their exposure to the toxic fumes. Since the chemical panthenol sybiliate is used in the manufacturing process and because the plaintiffs worked in the manufacturing section, they inhaled the chemical's toxic fumes and as a result contracted cancer.

The corporation's lawyer argues that the plaintiffs are responsible for their illnesses. Testimony by corporate officials reveals that the corporation was informed many years ago that there was some chance that inhaling the chemical's fumes could cause health problems. For the reason, the corporation warned the employees of possible health hazards and provided them with safety masks to wear in the manufacturing area.

Evidence in the case reveals that the plaintiffs did not always heed the company's safety regulations. Sometimes they wore their safety masks and sometimes they did not. The corporation claims that the plaintiffs are responsible for their illnesses because they did not wear their safety masks at all times even though the plant's safety regulations required them to do so. In addition, the corporation argues that there are other known causes for the plaintiffs' type of cancer.
APPENDIX G

MANIPULATED CASE: SITUATION 5, LARGE GROUP
Directions:

The following is a brief summary of a current court trial. You are asked to read the information below very carefully. You will be asked to answer some questions regarding the case so please read the entire summary before moving to the next section.

A key factor in this case is a chemical substance known as panthenol sybiliate. This chemical has been used for many years by industrial companies to make a variety of products. Recently, evidence was discovered by scientific researchers which showed that excessive exposure to this chemical may cause serious health problems in human beings. Some people who have been exposed to panthenol sybilate for several years have died from a cancer that has been linked to the inhalation of the chemical's toxic fumes.

This court trial involves a civil suit filed against National Industries, a large manufacturing corporation. The corporation operates numerous plants throughout the country. In the manufacturing process, the corporation has for many years used panthenol sybilate. The corporation is the defendant in the case.

The suit is being brought against the corporation by a group of 16 medically discharged employees:

John, plant technician
Bill, plant servicer
Henry, plant inspector
Robert, plant operator
David, plant packer
George, plant loader
Greg, plant fitter
Ronald, plant servicer
Larry, plant plater
Louis, plant tester
Edward, plant operator
Norman, plant engineer
Jefferey, plant processor
Gary, plant repairman
Allen, plant packer
Scott, plant tooler

Each of these employees worked together in the same local manufacturing plant and in the same work area for at least 8 years before the trial. These plaintiffs are well acquainted, have had prior social interaction, and have organized prior to bringing suit. They are together as a
result of the court’s decision to combine their cases for one trial. These former employees are the plaintiffs in the case.

The plaintiffs are very ill and their disease has been diagnosed by medical doctors as the type of cancer caused by inhaling the fumes from panthenol sybiliate. For this reason, the plaintiffs are seeking money from the corporation as compensation for their ill health. Each plaintiff is asking that the corporation pay him an individual and separate sum of one million dollars. The plaintiff’s lawyer argues that the corporation is responsible for their exposure to the toxic fumes. Since the chemical panthenol sybiliate is used in the manufacturing process and because the plaintiffs worked in the manufacturing section, they inhaled the chemical’s toxic fumes and as a result contracted cancer.

The corporations’ lawyer argues that the plaintiffs are responsible for their illnesses. Testimony by corporate officials reveals that the corporation was informed many years ago that there was some chance that inhaling the chemical’s fumes could cause health problems. For this reason, the corporation warned the employees of possible health hazards and provided them with safety masks to wear in the manufacturing area.

Evidence in the case reveals that the plaintiffs did not always heed the company’s safety regulations. Sometimes they wore their safety masks and sometimes they did not. The corporation claims that the plaintiffs are responsible for their illnesses because they did not wear their safety masks at all times even though the plant’s safety regulations required them to do so. In addition, the corporation argues that there are other known causes for the plaintiff’s type of cancer.
You are asked to act as a juror in this trial. Based on what you have read in the case summary, please answer the following questions. For some questions you are asked to write an answer in the blank provided. For others you are asked to place an X over the response that best represents your agreement with the statement. Answer each question in the order in which it appears and please do not turn back to previous pages.

1. How much money should each plaintiff receive? (Please write a dollar amount within a range of $0 to $1 million)

$______________________________
2. In your own words, please explain the reason(s) for your decision regarding the amount of money you indicated in the previous question.
APPENDIX I

MANIPULATION CHECK
Please answer the following questions by placing an X over the response that best represents your agreement with the statement. Please feel free to write comments about the questions and to explain your answers.

1. The company is responsible for the plaintiffs' illnesses.

<table>
<thead>
<tr>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Slightly Disagree</th>
<th>Neutral</th>
<th>Slightly Agree</th>
<th>Moderately Agree</th>
<th>Strongly Agree</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
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2. The plaintiffs are responsible for their illnesses.

<table>
<thead>
<tr>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Slightly Disagree</th>
<th>Neutral</th>
<th>Slightly Agree</th>
<th>Moderately Agree</th>
<th>Strongly Agree</th>
</tr>
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3. How many plaintiffs were bringing suit? ____________

4. The plaintiffs in the case were well acquainted.

<table>
<thead>
<tr>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Slightly Disagree</th>
<th>Neutral</th>
<th>Slightly Agree</th>
<th>Moderately Agree</th>
<th>Strongly Agree</th>
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</tbody>
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5. The plaintiffs in the case had formed an organized group prior to the trial.

<table>
<thead>
<tr>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Slightly Disagree</th>
<th>Neutral</th>
<th>Slightly Agree</th>
<th>Moderately Agree</th>
<th>Strongly Agree</th>
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APPENDIX J

COMPENDIUM OF RESPONSES OF SUBJECTS
Responses of Each Individual Subject Including Amount and General Categories

<table>
<thead>
<tr>
<th>CA</th>
<th>Company Attribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>EA</td>
<td>Employee Attribution</td>
</tr>
<tr>
<td>BA</td>
<td>Attribution to Both Company and Employee</td>
</tr>
<tr>
<td>EPP</td>
<td>Evaluation Pro-Plaintiff</td>
</tr>
<tr>
<td>EPD</td>
<td>Evaluation Pro-Defendant</td>
</tr>
<tr>
<td>SC</td>
<td>Sufficient Compensation</td>
</tr>
<tr>
<td>CASC</td>
<td>Company Attribution/Sufficient Compensation</td>
</tr>
<tr>
<td>BASC</td>
<td>Attribution to Both/Sufficient Compensation</td>
</tr>
<tr>
<td>EASC</td>
<td>Employee Attribution/Sufficient Compensation</td>
</tr>
</tbody>
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SITUATION 1: SINGLE PLAINTIFF

<table>
<thead>
<tr>
<th>CASE #</th>
<th>AMOUNT</th>
<th>CATEGORY</th>
<th>ANSWER</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>1,000,000</td>
<td>BA</td>
<td>I feel both are at fault reason being. 1. The company should have taken measures to correct any employee who doesn’t follow safety guidelines. 2. Plaintiff should have been more responsible toward his or her health.</td>
</tr>
<tr>
<td>002</td>
<td>1,000,000</td>
<td>EPP</td>
<td>The plaintiff’s illness is obviously caused from the chemical. After working in this environment for a long period of time, a safety mask is not sufficient. It will not prevent the chemical from entering into one’s body. Panthenol Sybiliate could also be taken in through our pores, it stays on the clothes therefore you could breathe this also. It’s the plant’s responsibility to provide a safer working environment. They owe him!</td>
</tr>
<tr>
<td>003</td>
<td>150,000</td>
<td>SC</td>
<td>I chose $150,000 because this would be a sufficient amount of money for John to get started. He could invest the money so it could be a basis for any remaining family members should he die. I don’t believe he should get 1 million dollars because that is selfish reason on his behalf. Besides, what is he going to do with the money when he is dead.</td>
</tr>
<tr>
<td>004</td>
<td>250,000</td>
<td>SC</td>
<td>It was just my best guess actually. I was trying to evaluate this man’s medical expenses and I think this figure would be adequate.</td>
</tr>
<tr>
<td>005</td>
<td>500,000</td>
<td>BA</td>
<td>John apparently contracted cancer at the place of his employment, yet they had warned him of possible danger involved and provided him a negligent in using the mask he should not receive the full amount. But, the company should have developed an alternate process by now with less hazards involved if they know of the danger. The company also should have enforced their safety regulations more, thus for their negligence is their position as employer should pay $500,000.</td>
</tr>
<tr>
<td>006</td>
<td>600,000</td>
<td>CA</td>
<td>The company should have enforced the rule of wearing the mask. $600,000 random (he asked for $1 million, probably expected $500,000).</td>
</tr>
<tr>
<td>007</td>
<td>0</td>
<td>EA</td>
<td>I believe the plaintiff should have the mask if he knew the rules. I think if he was not sure about the rule the company could help him with his medical bills but most likely it was his fault.</td>
</tr>
<tr>
<td>008</td>
<td>1,000,000</td>
<td>CA</td>
<td>Any corporation operating under such risky situations involving employees should be prepared to pay the consequences.</td>
</tr>
</tbody>
</table>

Any corporation operating under such risky situations involving employees should be prepared to pay the consequences.
The dependents should receive money to compensate for having to him die. The medical costs should be paid by the defendant company. Since the plaintiff did not wear the mask all the time (if that was proved), he did take a risk himself. Therefore, he shouldn't get the entire sum sued.

He should get enough money to cover family since he is unable to work anymore. I don't think he should get the complete amount of $1 million since he knew that the certain chemical was hazardous to the health of human beings.

The corporation is largely responsible for the employee's condition, yet not 100% responsible due to the safety measures partially ignored by the employee. Thus, the employee should receive only partial compensation.

If the company warned him that he should wear the mask, and he did not do so some of the time, I think the blame for cancer should fall on him. But he should still receive enough money to cover hospital expenses that will last until his death.

I believe the company is responsible. They knew the chemical caused cancer, yet they still kept using it. There was no mention of claimed the employee knew of the risk. Yet still chose to work there. Most people will work in dangerous jobs hoping nothing happens to them - if they need the money, for their family and bills - ed. (like G.M. here in ???) Because he didn't use the safety mask all the time maybe it was very uncomfortable - and restricted his work ability - therefore he caught hell from his boss.

There are thousands of substances, chemicals, etc. that can cause cancer. This particular chemical in question appears to be one of them. The employee was informed of the danger involved in working at the plant, thus thus knowing that a risk factor was involved. He did not wear his mask at all times, therefore this risk factor was no doubt increased considerably. The company, however, should have warned more effectively and clearly about the danger that existed. Thus, I feel that $600,000 is a reasonable sum to be paid to the employee.

The corporation may have provided safety masks but I doubt the reason for the masks was even explained, much less the effect of long term exposure to the chemical. Plus I generally go with the underdog on principle and have a biased suspicion of larger corporations that use hazardous chemicals.

The plaintiff was warned of the dangers involved with his job and took risks accordingly.

There was no proof that even if the employee had used their masks all the time that it would have prevented the cancer.

True, his being exposed to the fumes was the fault of the corporation. Plaintiff had free will, he wasn't forced to work there, but he was asked to always wear his safety which he did not. The plaintiff should receive partial compensation but not total.

Plaintiff should receive some compensation from the company for his illness but not the full $1 million because he did not heed warnings from the company to wear his safety mask at all times.
As a juror I would probably feel for the man but would have to go on side of the corporation if the testimony is true. Being warned to wear safety masks at all times and being told of the hazard, the gentleman took his health into his own hands.

The corporation should make a settlement with the plaintiff for $50,000 because they did not enforce their regulations on wearing the safety mask.

The company used and knew of the chemical's possibility of causing cancer so they provided masks. But John didn't always wear his mask. It seems to me that John didn't care. Or if he did he had a crazy way of showing it. He knew of the possible health hazards. Even though it's partly his fault the company should give him something out of loyalty.

The plaintiff should not receive any money if he was warned that when he took the job that there were possibilities that a health hazard could occur. He was also told to wear the mask at all times and he did not.

If the plaintiff was warned by National industries that inhaling these fumes might cause illness and yet he disregarded safety standards, then he does not deserve any compensation for his illness.

I would award the plaintiff $0. I came to this decision because of his failure to comply with safety regulations.

The plaintiff should not be held responsible for his illness for it the company previously knew that health hazards could be generated, they should not have taken the risk of losing worker. He should not have worked under such conditions. Life is more important than death and I believe it's the company's fault.

It seems to me that both parties in question are to blame for producing the chemical and the other for not wearing masks. To make things a little more equal, I think the plaintiffs should receive half of their desired amount.

The plaintiffs requested 1 million dollars because they seemed to think that would cover the damage and I feel the company should be restricted from using that chemical.

The workers were at fault for not wearing their masks, and like the corporation's lawyer added, other elements could have contributed to their illness. I feel however the workers should receive some kind of reimbursement for the risk they took. The case study didn't list if the workers were unionized or not. I am assuming they aren't. But, if they were I would not grant the plaintiffs one cent, for the fact that union workers are already paid too much anyway.

I chose this sum because the company was not totally responsible for the plaintiff's health problems. If it was true that the plaintiffs didn't wear safety masks at all times, they shouldn't receive the full sum.
The employees knew there was a health hazard but did not take the safety precautions. They were informed of risk but they also showed some contributory negligence in wearing the safety equipment.

For the information given, I assume that if the masks had have been worn all of the time it would have reduced the possibility of danger. Next, I will assume that the corporation made it of the exact type of danger that existed and that the employees had not sustained any health problems prior to the warning or safety regulations being imposed. If my assumptions are correct, I feel that the corporation has a duty to insure a safe work environment for its employees, which it did. I feel the employees neglected the regulations and their own health.

The corporation should have some sort of safety device that would have stopped the fumes from being admitted into the air, thus eliminating any danger to its employees.

Did not heed warnings and wear masks. Employees knew of hazards and took risks anyway.

Because the fault lies with both the defendant and plaintiffs.

I believe that the employee's illness is to blame on both them and the company.

The high cost of medical expenses and for benefits to the employees family.

If the plaintiffs had been warned of the chemical hazard, the choice was at least partially theirs. For this reason, they should not receive the full 1,000,000. The company also had responsibility to enforced their rules to protect employees, or end use of the chemical. More money may be needed for the costs of the plaintiffs' care, and the needs of the family.

If I was working on a tall building and refused to wear a safety restraint, who's fault should it be if I fell. The trial never points out that the cancer was caused by toxic fumes. The number of cases of cancer each year are so great that you could pick different people in different locales all with the same symptoms just out of coincidence. The corporation did inform the workers that they are working with toxic fumes and required them to wear safety masks.

In any dangerous job the risks are explained and agreed upon by the employees. These four men were given masks and other safety equipment, but failed to use them at times knowing the result of such a decision.

I feel negligence must be shown on the part of the company and I see none.

I thought a million dollars each would have been fair only if the workers hadn't been warned about the hazard. Since they had been warned and sometimes failed to heed safety regulations, they were partially at fault. Still, though, the company should have found a safe substitute for that panthenol stuff. $40,000 should help with medical and/or funeral expenses.

The money will be of some compensation. The employees did know of the work hazard yet the company is at some fault for not strictly enforcing the regulation.
The corporation obviously did not take all necessary means when dealing with a substance that was proven to cause cancer. The warning of possible health problems is not extensive enough. Even the requirement of masks does not seem to be the most efficient way in a modern technology society that tends to care less and less about the individual. $1,000,000 is a small price for someone's life or the agony of cancer and its effects of the and family.

I really don't know if it's enough, but, I think the company should pay for the hospital and other bills having to do with the men's illness. If the men knew that there was a with the chemical they should have took the necessary protection.

The million $ amount is always a high raw figure. However, the fact that these workers have cancer and are dying from it, is punishment enough for not wearing face masks all the time. Realistically speaking, I am sure there were times unforeseen circumstances at caused workers not to wear face masks. Due compensation minimum: 500,000 maximum due comp: 750,000.

The plaintiffs contracted their illness at work so, therefore, the corporation should be held accountable.

The corporation equipped the men with safety masks which weren't always worn thus making the plaintiffs partly responsible for their ill health so full payments should be excluded but the corporation did not fully test all chemicals used prior to the beginning manufacturing procedures so they were causing danger to earlier employees plus there is not proof that the masks prevented the cancer.

I feel that the company should provide some compensation, but since the plaintiff did not always adhere to the safety regulations, the amount should be lowered.

The plaintiffs were obviously unaware of the dangers in this chemical.

Big business needs to take responsibility for its actions. It is necessary to set a strong example when possible to motivate other business to follow guidelines and operating procedures outline by the government as appropriate. The company was responsible for seeing that all employees follow prescribed safety procedures.
I believe that they are entitled to some compensation, but $1 million is far too much. I think $100,000 would cover their medical expenses, and since they did not always obey safety regulations it is unfair for them to expect a sum that large.

The company is the party responsible for the safety of their masks. Yet each worker should have known they were warned. Thus, both are at equal fault, so compromise is needed and only half should be awarded - $500,000.

The corporation did advise their employees on the danger of their work (said they did). And seems like they did not heed the company's warnings. The chemicals were known to be dangerous and the plaintiffs sometimes did not use protective garments, which seems to me that they were careless to an extent.

Since the cause of the cancer was the chemical that the company was using, the company is responsible for the injuries. I understand that sometimes the employees did not wear their masks to protect themselves, and thus it may have been their fault they contracted cancer. The company is still responsible for at least the medical bills, plus a little bit more for the suffering of the employee. I picked $100,000 for the medical bills and some compensation because it wasn't said how much the medical bills totaled in the summary.

Due to the fact that the employees did not heed the safety regulations I reduced the award to half of what they wanted. I still gave them $500,000 because the company should have made sure they did use the safest methods.

If in the event that the plaintiffs did not use safety masks sometimes - even with prior warning - they bring fault on themselves. Yet, the should not have been using a chemical with harmful fumes.

I believe that if the four plaintiffs suffer from a cancer due to inhaling the panthenol sybilate they should be compensated for it. I suppose I just picked $650,000 because I felt that $1 million was a bit too much.

Because so far I do not know if wearing the mask would have prevented cancer. If, so and the men did not wear masks I would give them nothing.

The fact that the men all got cancer is partly their own fault and partly the fault of the company. The men should have worn their masks for protection. That is where their fault lies. But the company, knowing how dangerous the chemical is, should have tried to find and alternative chemical to use instead. I think the plaintiffs should receive half of the amount they are asking for, because they are halfway responsible for their condition.

The company should have enforced their own company policies regarding the use of the masks. All employees know of the possible health risk and should have at all times heeded the company's policies; but, the company is the responsible party due to the fact of the known health risk.

Hospital bills and cancer treatment is very expensive. The disease can impede the plaintiff's working ability thus making it impossible for them to obtain a steady income.
The company didn’t say how serious the illness was or would possibly be. Since the company knew how serious it could be they should have enforced a rule for safety equipment to be worn at all times.

My decision for not paying the plaintiffs any compensation money is based on their failure to follow the company’s regulations to wear the safety masks. If they had worn safety masks I would have opted to give them what they were asking 1 million.

Due to the fact that they were warned about the chemical, they should have right then. However, they probably needed the money and the company should have found another safety device instead of a mask. There would have been a leak and got on the employees skin. There $100,000 dollars is enough for each plaintiff.

The plaintiffs were all supposed to wear their safety masks at all times, since they didn’t it’s partially their fault. They should be granted only $50,000.00 half of what they asked because they failed to cooperate fully. The company is at fault also because they failed to stress the importance wearing the masks.

In the event of death of any one of the plaintiffs, I believe $50,000 would be adequate to support the remaining family. Since the plaintiffs were partly negligent by not wearing the masks, I believe that $10,000,000 would be inequitable - I assume the company has provided medical benefits for their employees - The company however, should be penalized to a degree by paying some expense because it should have had a more strict policy of enforcement of safety regulations due to the nature of the chemical it was producing.

Just because they have cancer doesn’t mean they (corporation) should make them a millionaire. I feel it was partially the employees part.

Damage to health of 4 individuals occurred due to presence of workers and chemical in same place at same time. Corporation gave minimal, yet some advise and warning and offered safety equipment to wear. (Odds are safety equipment was minimal would not protect 100%, that another story). Workers settlement involves funds to cover expense and future lost income due to ill health, without excessive corporate punishment.

Corporation should pay medical expenses since disease is apparently job-related, but should not pay damages since the employees failed to heed safety regulations.

How can you possibly put a price tag on a life? Even $1 million couldn’t possibly make up for the suffering and inevitable death these people face.

So many people pick one million dollars because they think that with that much money, they could have everything they ever wanted. The problem is that will never have good health again, or if they possibly can be through some kind of treatment, it will be both lengthy and painful. The amount I chose was enough to cover medical expenses, possibly funeral expenses, and their salary during the time they have missed.
Both parties were at fault but because of the illness from working at the job they should be awarded something.

I think the former workers should receive this amount because I think it justifies the seriousness of the illness as of yet there is no cure for cancer so this amount of money can contribute medical expenses needed for dealing with this disease.

The plaintiffs should have followed the corporation's rules by wearing their masks at all times if they intended to keep working at the corporation.

Because if the plaintiffs did not wear their safety masks at all times and did not heed the company's safety regulation, then they are the cause of their own illness.

First, the question seems to indicate that the defendant was guilty. But the plaintiffs were also guilty unless they could have possibly contracted cancer before factory issued safety masks. I feel a life is worth much more than a million $ and they should receive maximum amount because of all medical costs and damages to life.

Because the company, I feel is responsible for the health of its employees and especially seeing that this toxic chemical is present and the fumes are exposed to those workers. If the rule were stricter about wearing helmets maybe less amount of people would have been affected.

I wish people would take responsibility for their own lives to the furthest extent possible. Those employees should have worn the masks at all times when they were capable of inhaling the chemicals fumes.

Escalating medical costs and this involves people's lives.

Both parties in the suit were responsible for their illnesses so only half of the should be given to each plaintiff. The company is more responsible for the illness than the workers.

If the plaintiffs were warned before their exposure and failed to heed the warning - and went so far as not following property safety procedures then I fail to see how the corporation could be blamed; therefore, they owe the plaintiffs nothing.

The company provided safety gear for the employees to wear but did not make the gear mandatory. The plaintiffs still should have had enough sense to use the gear provided. The sum is an insult.

Safety regulations should have been enforced more strictly such as suspension for those who did not follow them. The company seemed to think that the regulations were as important as other job norms such as being on time. On the other hand, the plaintiffs did have some disregard for the regulations but had they known that they could be suspended they might have taken them more serious.

The company should do more than just tell them to wear the mask - They should enforce the rule for the employees safety as well as their own. They should not use the harmful chemical to begin with!

[No response]
095 1,000,000 EPP The employees - us - the large corporation concludes that each receive 1 million dollars due to the work condition where they inhaled phaserolene fume. They now have health problems which is diagnosed as cancer.

096 1,000,000 EPP The corporation is liable for the health of its employees regardless. If they would have enforced the safety regulations they wouldn't be in court. Also, if the corporation doesn't want a lot of adverse publicity they should settle promptly and courteously.

097 10,000 EPP The men involved in the case are ill, due to exposure to the chemical. They probably have health insurance to cover medical bills. $10,000.00 is not, in my opinion, too much or little to compensate them, as it pays the men and it is a not over generous sum to be awarded in court cases today. Whether or not they followed safety regulations may or may not even be relevant here, because there may be no way to really tell if the chemical and its effects can be halted by a mask.

098 32,500 BA I answered 32,500 dollars each based upon condition because of varied severity. Taking into consideration the fact that each employee was warned and provided safety equipment, I feel one million dollars each is to extreme. I feel they are entitled to compensation because the company was aware of health hazards and did not attempt to find an alternative chemical or process. What I propose is a compromise.

099 500,000 BA I think they should receive half the amount they asked for because, they didn't wear their masks like they were supposed too. I also think that the company should pay the plaintiffs something because they should have made sure that everyone wore their safety masks while working.

100 1,000,000 CA Plant should not have exposed its employees to the fumes in the first place. Granted, it told them to wear masks, but if it was serious about employee safety/health, it would enforce its own rules and make employees take advantage of all safety apparatus.

102 0 EPD A link is not enough. They may all smoke. Also, how many other employees contracted the disease. Sounds like they got together to get some easy money.

103 0 EA I thought the plaintiffs were themselves at fault for not wearing the masks. The company did have regulations to wear them and the employees did not obey them.

104 1,000,000 EPP It seems that the company was the one at major fault. Dangerous and health hazardous chemicals should not be used by large corporations. There are too many risks involved. The corporation is run by capitalists for the sole benefit of making bucks. This capitalism has come at the expense of others who were merely gears in a large machine. It is the least the company can do to compensate the workers who suffered for their capitalist bosses. Sixteen million dollars should be petty cash.

105 0 EA If these men knew of the danger and chose not to wear safety masks provided for them, it is their own fault. Obviously, they are in the minority or there would have been more employees coming against the corporation. After all, the place you work is a choice.
The problems that might arise from inhaling these fumes was explained to the employees. They were provided masks and it was mandatory that they wear them. I believe it was from their own stupidity that they acquired the illness and it should not be the company's fault. Therefore, I think the employees should receive nothing.

 Plaintiffs were warned and did not heed advise in protective clothing.

 National Industries had full knowledge of the detrimental effects of panthenol sybiliate and as employer over all employees who work for N.I. in any capacity, has the final responsibility in successfully enforcing its safety measures. N.I. should at all cost protect their employees or not let those employees work who do not follow safety rules or not manufacture harmful products if no safety measure can be continuously maintained.

 They should only receive the amount of their hospital bills because the company did warn of inhaling these fumes. The company provided them with masks and required them to wear them. It was their decision to take them off.

 The people knew the chemical was toxic. Why work at a plant which has the danger to kill you. Also, safety masks were provided.

 If the employees knew there were dangers in breathing the air at the plant, they should have obeyed regulations or get another job.

 Not enough evidence to show negligence on either plaintiffs or corporation's part.

 The fact is that the workers did not wear their safety masks at all times as previously indicated by the company at an earlier time but instead chose to themselves to this dangerous chemical. The mask may not have eliminated the problem all together but could have retarded its harmful process. Just think that if they disobey dangerous warning signs they all would be dead due to lack of discipline.

 Because although they did not wear their safety masks all the time. They still have cancer and are going to die and their survivors need at least something.

 $500,000 seems like a fair amount to cover medical bills and then some.

 SITUATION 1: SINGLE PLAINTIFF

 CASEE # | AMOUNT | CATEGORY | ANSWER
---------|--------|----------|-------------------
 200     | 250,000| BA       | John and Company were negligent, John failed to use mask regularly and Company failed to enforce or offer med. check ups (inferred). Poor health cannot be recovered in this case... award for med and retirement.
Employee did not always follow the safety regulations suggested by the company. Employee was warned that there was possible danger and could have sought another position (with this company or elsewhere, eventually). (Part of the reason) There could be other reasons for onset of the disease.

I assumed that the plaintiff was guilty of not wearing his mask at all times, but that he should be compensated for some of his medical bills. The company is guilty of being a health hazard to work for, but I realize the plaintiff could have chosen to work elsewhere.

It is the company's responsibility to ensure that its employees follow safety regulations. If they cannot force compliance then they are guilty of knowingly exposing employees to health hazards.

The company did not show wearing mask significantly decreases or eliminates danger. No release obtained by company. 250K should hand terminal illness expenses. Plaintiff did not show negligence on part of company.

Although the plaintiff was informed of the hazard and instructed to wear a mask, and although the plaintiff on occasion did not wear the mask, I contend that the defendant is solely responsible for (1) producing the hazardous by-product and (2) assuring that all employees wear the necessary safety equipment. Therefore, I hold the company liable.

First of all, I do not think the summary provided enough facts to determine a money award or any other decision. If forced to make a decision, as we were, I'd say the man deserved an award because the company apparently failed to make certain that employees wear the masks during work.

While the company did provide safety equipment and did require use of it, that equipment not possibly prevent all fumes from being inhaled.

Corporation is ultimately responsible for safety of its employees. Not wearing masks is not a sufficient defense.

Proof, beyond a reasonable doubt, has not been provided that the plaintiffs contracted cancer as a result of company exposure.

The company is responsible for insuring that medical and safety requirements are met by law. Employees who did not go by these rules should have been fired or disciplined - failure to do so constituted irresponsible behavior. Damages of 1 million seem reasonable assuming that) the individuals will not be able to work again and 2) the cost of medical treatment - a more reasonable settlement would be all medical expenses plus sums equal to the life in earning power of the men.
The corporation is responsible for enforcing safety rules and regulations with continuous and constant effort. Health of employees is a serious matter. The corporation must put employee health and safety ahead of profit motives.

Corporations should be responsible to the employees to do everything possible to protect their health and well being. It seems likely in this case that additional steps could and should have been taken beyond warnings and regulations. The award of 250,000 seems adequate to cover medical expenses and provide some measure of family security to the ill employees.

The plaintiffs were negligent. But company should help some because they may not have emphasized health hazards.

Plaintiff and Defendant are both at fault. One for having toxic chemical exposure. One for not adhering to safety rules. Company is also responsible for not issuing safety warnings for chemical being a carcinogenic. 500,000 could cover medical expense for employee.

Given the limited information, the workers deserve the full reward as compensation.

Plaintiffs were warned before starting job that inhaling fumes could cover health hazards. Told to wear masks. I believe this should be the award since I believe both corporation and employees have some responsibility.

Company was at fault for not enforcing safety regulations. The amount represents a sum normally associated with accidental death. The employees shared blame by not following company safety standards.

The one million seemed excessive and so I settle on damages of 1/2 million since there was evidence the employees had contributory negligence. I assigned them 50% of the damages and 50% to the company. That amount should sufficiently cover any medical costs incurred by the plaintiffs. Also, enough $ would also be available to make the plaintiffs lifestyle as comfortable as possible in their sick/dying days.

I would not award the full $1 million because the workers bear some responsibility since they continued at their jobs even after they became aware of the potential dangers. They did not always take the proper precautions by not wearing safety masks. However, the company bears a major responsibility since they did use the chemical and did not discharge the employees who were not following their safety policy. Thus they should give each plaintiff $600,000.

I believe it is the company's responsibility to make sure the workers are wearing the masks. Since the fumes from the company's chemical seems to have cause their illness the plaintiffs are entitled to compensation. The dollar amount given reflects that although the plaintiffs were negligent in not wearing masks, the company still needs to compensate them.
226 500,000 CASC Assuming guilt shown on behalf of the corporation, then the amount paid should replace future lost earnings, plus cover medical expenses.

227 1,000,000 EPP This is what was asked for and they had obviously determined this amount among themselves earlier. After all a human life has been lost as a result of the presence of the company, disregarding whose fault even.

228 0 EA The worker accepted the risk when he accepted the job. Therefore results or consequences of the risk are held to the risk taken.

====================================================================================================
SITUATION 4: LARGE AGGREGATE
====================================================================================================

229 750,000 BA In some cases, the employees were probably at fault for negligence in not wearing the masks; but the corporation should never expose such a dangerous substance in areas where strict adherence to safety rules is not enforced.

230 200,000 EASC This would be enough money to cover medical expenses (I think) and to give the family some compensation for stress, etc. related to the illness. Except for the testimony that the men did not always wear their safety masks, I would have awarded them much more.

232 500,000 EA If the plaintiffs have not taken responsibility for their own health, then some amount of money might be appropriate, but not the full amount. Would be interesting to see whether the people did not have cancer had worn safety masks.

233 100,000 BA Whereas the employees were guilty of negligence for not using their masks, so too the corporation should have been more demanding in the need to protect its employees from both fumes and themselves. In conclusion, the corporation should be partially responsible for not enforcing their own rules.

234 150,000 BA They had masks available to them, however, strict monitoring of the regulations is the responsibility of the corporation

235 1,000,000 CA The plaintiffs were exposed to a chemical of irreversible (I assume) consequences. If the cancer was caused by the substance then the company is responsible to enforce its regulations.

236 100,000 EASC 1) Uncertainty as to cause of ill health 2) failure to comply with safety regulation 3) nominal lump sum, plus standard benefit, should show good faith effort to help plaintiffs.

237 750,000 EASC Not sure they weren't somewhat to blame and feel that their productive years left and expected income for those years would be close to amount.

====================================================================================================
SITUATION 5: LARGE GROUP
====================================================================================================

238 350,000 EASC Some manufacturing processes are inherently dangerous. If there are reasonable safety precautions to be taken it is up to the individual to employ them. It is reasonable however to require additional salaries as a compensation for added risk. There is insufficient information as to years of service, but assuming health insurance, the sum should be reasonably compensatory.

239 50,000 EPD You can’t replace money for life but they were also asked to wear safety protection.
<table>
<thead>
<tr>
<th>Page</th>
<th>Amount</th>
<th>Code</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>240</td>
<td>500,000</td>
<td>EA</td>
<td>Sometimes they wore masks, sometimes not; therefore, corporation should be only 50% negligent.</td>
</tr>
<tr>
<td>241</td>
<td>100,000</td>
<td>SC</td>
<td>Enough to pay medical bills and to live on. (This would be in addition to social security, etc. and disability). Therefore, this $100,000 is not all that they would get.</td>
</tr>
<tr>
<td>242</td>
<td>1,000,000</td>
<td>CA</td>
<td>The defendants should be paid the full amount due to the following reasons: 1. The company was aware of the hazards when they allowed the employees to work in those areas (They had warned the employees) 2. The company should have made the work area “safe” for their employees. This may have been done by taking more precautions for their safety. 3. If the safety masks were sufficient precaution, the use of them should have been enforced.</td>
</tr>
<tr>
<td>243</td>
<td>100,000</td>
<td>EPP</td>
<td>There seems to be no proof that the plaintiffs did not adhere to the safety regulations, therefore, they should be entitled to some compensation.</td>
</tr>
<tr>
<td>244</td>
<td>500,000</td>
<td>BA</td>
<td>Both parties were negligent.</td>
</tr>
<tr>
<td>244</td>
<td>5500,000</td>
<td>SC</td>
<td>Guess this would be compensation approximately equivalent to loss of salary and benefits if working.</td>
</tr>
<tr>
<td>246</td>
<td>500,000</td>
<td>SC</td>
<td>The amount should be adequate to cover all medical expenses and provide for the family the person that is ill would normally provide.</td>
</tr>
</tbody>
</table>
APPENDIX K

DIAGRAMS OF REFERENCES
<table>
<thead>
<tr>
<th>CASE &amp; DATA CATEGORY</th>
<th>WARRANT [IMPLICIT]</th>
<th>CLAIM: THE PLAINTIFF(S) SHOULD RECEIVE...</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 BA (Company did not take corrective action)</td>
<td>Whenever both are at fault full compensation should be paid</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>(B)ACKING</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The plaintiff did not comply</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The company should have taken measures to correct ...</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plaintiff should have been more responsible ...</td>
<td></td>
</tr>
<tr>
<td>002 EPP (The plaintiff's illness is obviously caused from the chemical)</td>
<td>A plaintiff who has been exposed to a chemical at work should receive full compensation</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>(B) After working in this environment for a long period of time, a safety mask is not sufficient</td>
<td></td>
</tr>
<tr>
<td>003 SC (The plaintiff is very ill)</td>
<td>$150,000 would be a sufficient amount of money for John to get started</td>
<td>$150,000</td>
</tr>
<tr>
<td></td>
<td>(B) He could invest ... for remaining family. I don't believe he should get 1 million dollars ... What is he going to do with the money when he is dead?</td>
<td></td>
</tr>
<tr>
<td>004 SC (The plaintiff has medical expense)</td>
<td>The figure awarded should be adequate to cover medical expense</td>
<td>$250,000</td>
</tr>
<tr>
<td>005 BA (John apparently contracted cancer at the place of his employment. They had warned him.)</td>
<td>Shared negligence merits some but not full compensation</td>
<td>$500,000</td>
</tr>
<tr>
<td></td>
<td>(B) He was negligent in using the mask but the company should have developed an alternative ...</td>
<td></td>
</tr>
<tr>
<td>006 CA (The company did not enforce the rule of wearing the mask)</td>
<td>The company's failure to enforce the rule merits an award which reflects expectation</td>
<td>$600,000</td>
</tr>
<tr>
<td></td>
<td>(B) The company should have enforced ... He probably expected $500,000</td>
<td></td>
</tr>
<tr>
<td>007 EA (The plaintiff did not always use his mask)</td>
<td>The failure to comply with rules precludes an award</td>
<td>$0</td>
</tr>
<tr>
<td></td>
<td>(B) I believe the plaintiff should have used the mask ... (R)EBUTTAL If he was not sure about the rules the company could help him with his medical bills.</td>
<td></td>
</tr>
</tbody>
</table>

Most likely it was his fault.
Any corporation operating under such risky situations involving employees should be prepared to pay the consequences.

$1,000,000

[the presence of employee responsibility and misfortune does not merit the full amount]

$500,000

[The knowledge of risk combined with the need to cover medical expense justifies some compensation]

$300,000

[Ignoring safety measures precludes the awarding of 100% compensation even if the corporation is largely responsible for the employee's condition]

$200,000

(B) The employee should receive only partial compensation.

... I think the blame for cancer should fall on him. But he should still receive enough money to cover hospital expense ...

$150,000

[Failure of the company to seek an alternative makes it responsible for full compensation]

$1,000,000

600,000 is a reasonable sum to be paid to the employee [since both the company and the worker are at fault]

$600,000

[Suspicion of corporation/positive regard for the employee merits compensation]

$500,000

(B) I doubt the reason for the masks was even explained. ... I generally go with the underdog on principal

$0

[Knowledge of risk involved precludes compensation]

$50,000

(B) There was no proof that even if the employees had used their masks ... it would have prevented the cancer.
<p>| 021 | [The plaintiff was exposed to toxic fumes... had free will... did not always wear the safety mask] | [Combined faults merits partial compensation] | $ 250,000 |
| 022 | He did not heed warnings from the company... [The plaintiff is ill] | [The failure to heed warnings combined with the need for compensation for stress merits an award] | $ 250,000 |
| 023 | He was warned to wear safety masks... He was told of the hazard | [Knowledge of the risk precludes compensation] | $ 0 |
|     | &amp; (B) Being warned to wear safety masks... and being told of the hazard, the man took his health into his own hands. | (R) If the testimony is true | |
| 024 | The corporation did not enforce their regulations on wearing the safety masks | [Failure to enforce necessitates a settlement with the plaintiff for $50,000] | $ 50,000 |
| 026 | The company used and knew of the chemical's possibility of causing cancer... provided masks John didn't always wear his mask... knew of the possible health hazards | Even though it's partly his fault, the company should give him something out of loyalty | $ 500,000 |
| 027 | He was told to wear the mask at all times; health hazard could occur. | The plaintiff should not receive any money if he was warned that... a | $ 0 |
|     | &amp; (R) [Unless, he was not warned] | (R) [A victim who disregards safety standards does not deserve any compensation for illness] | |
| 028 | [The plaintiff was warned... disregarded safety standards] | [A request that covers damages should be honored] | $ 0 |
| 029 | He failed to comply with safety regulations | [The failure of a plaintiff to comply with safety standards justifies no award] | $ 0 |
| 030 | The company knew that health hazards could be generated | [Responsibility of the company necessitates full compensation] | $1,000,000 |
|     | &amp; (B) The company is at fault for placing a worker in a life threatening situation | |
| 031 | [One party produced the chemical. One party did not wear the safety mask] | [The contribution of both parties one half of the desired amount] | $ 500,000 |
| 032 | One million dollars is being requested by the plaintiffs to cover damages allegedly caused by the chemical. | [A request that covers damages should be honored] | $1,000,000 |</p>
<table>
<thead>
<tr>
<th>Page</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>033</td>
<td>The workers did not wear their masks. Other elements may cause their illnesses. The workers took a risk.</td>
</tr>
<tr>
<td>034</td>
<td>Plaintiffs did not wear masks at all times. If it was true that the plaintiffs didn't wear the safety masks at all times, they shouldn't receive the full sum.</td>
</tr>
<tr>
<td>035</td>
<td>The employees knew there was a health hazard but did not take the safety precautions. They were informed of the risk.</td>
</tr>
<tr>
<td>036</td>
<td>Masks were provided. The corporation warned of the danger.</td>
</tr>
<tr>
<td>037</td>
<td>[Fumes were dangerous to employee] Failure of company to install safety device justifies full compensation.</td>
</tr>
<tr>
<td>038</td>
<td>Employees knew of hazards and took risks. They did not heed warnings.</td>
</tr>
<tr>
<td>039</td>
<td>[Both the company and the employee contributed to the situation] Equal fault merits half of the requested amount.</td>
</tr>
<tr>
<td>040</td>
<td>[Both the company and the employee contributed to the situation]</td>
</tr>
<tr>
<td>041</td>
<td>[Employees have incurred medical expense] Medical expense and need for family support merits full amount.</td>
</tr>
<tr>
<td>042</td>
<td>Plaintiffs made free choice. Company did not enforce rules.</td>
</tr>
<tr>
<td>043</td>
<td>[There are other causes of cancer] The corporation did inform. They required them to wear safety masks.</td>
</tr>
<tr>
<td>044</td>
<td>These four men were given masks and other safety equipment but failed to use them at times.</td>
</tr>
<tr>
<td>045</td>
<td>(B) The men knew the results of the decision.</td>
</tr>
<tr>
<td>046</td>
<td>[Company took safety precautions]</td>
</tr>
<tr>
<td>047</td>
<td>[Company did not enforce rules]</td>
</tr>
</tbody>
</table>

Risks taking merits reimbursement: $50,000

(R) Unless they are unionized...

Knowledge of risk plus failure to take precautions constitutes contributing negligence and no compensation: $0

The lack of responsibility on the employees part precludes an award: $0

Failure of company to install safety device justifies full compensation: $1,000,000

Failure to heed warnings and taking risks in light of known dangers means no compensation deserved: $0

Equal fault merits half of the requested amount: $500,000

Shared responsibility merits some compensation: $200,000

Medical expense and need for family support merits full amount: $1,000,000

Shared responsibility plus incurred costs merits some compensation: $700,000

When there are other causes for the existing harm and the corporation has acted responsibly, no compensation is merited: $0

Failure to comply means no compensation: $0

If there is no negligence on the part of the company there should be no award: $0

Despite fault on the part of the employee, the need for compensation justifies an award: $40,000

[Shared responsibility and the need for compensation warrants an award]: $250,000
[The corporation was using a cancer causing substance ... provided a warning/mask.]
[Workers were warned but sometimes failed to heed]

[A warning may not be extensive enough, making the need for full compensation the responsibility of the company]

[The men are ill] [They knew there was danger]

[The men's responsibility coupled with the need to pay for expenses merits sufficient compensation]

The workers have cancer
They did not wear face masks at all times

The [presence of] illness is enough punishment for workers' negligence so some compensation is justifiable

The plaintiffs contracted their illness at work

The corporation equipped the men with safety masks which weren't always worn

The corporation's accountability for work-related illness merits some compensation

The partial responsibility of plaintiffs for their ill health precludes full compensation

The plant specified that the chemical could be hazardous and to wear safety masks
The employee did not always wear the masks
They were aware of the danger

Contributions of employees to their situation merits only enough compensation for their illness

The men are ill

Since the men are responsible for damaging their own health an amount of money to cover medical attention is sufficient

The men are ill

Illness justifies compensation to cover medical expenses and to help family members

The plaintiff did not always adhere to the safety regulations

The plaintiff's failure to adhere to safety regulations warrants compensation lower than the amount requested
(B) The company should provide some compensation

The chemical was dangerous

The presence of a dangerous chemical the severity of which may have been unrealized by the plaintiffs is justification for full compensation

The company did not see all employees follow prescribed safety procedures

Whenever an organization fails to enforce rules compensation can be awarded to set an example
(B) It is necessary to set a strong example when possible to motivate other businesses to follow guidelines and operating procedures ...
They did not always obey safety regulations

[If workers do not follow rules,]

I think $100,000 would cover the medical

(B) They are entitled to some compensation

Since they did not always obey safety regulations it is unfair for them to expect a sum that large

They are both at equal fault, so compromise is needed and only half should be awarded

The workers did not always wear their masks

They are entitled to some compensation

The corporation did not enforce safety regulations

The workers did not always wear their masks

Carelessness on the part of the employees precludes full compensation

The corporation did advise their employees on the danger of their work. They did not heed the company's warning

[Carelessness on the part of the employees precludes full compensation]

The cause of the cancer was the chemical

The employees did not wear their masks

[Shared responsibility and the presence of medical expense necessitates some compensation]

The employees did not heed the safety regulations

Due to the fact that the employees did not heed the safety regulations I reduced the award to half. . . . I still gave them $500,000 because the company should have made sure they did use the safest methods

The plaintiffs did not use safety masks . . . even with prior warning. The corporation was using a chemical with harmful fumes

[Shared responsibility merits some compensation]

The four plaintiffs suffer from cancer

[The presence of suffering justifies compensation below $1 million]

(B) I believe that if the four plaintiffs suffer from cancer. . . . they should be compensated. I suppose I just picked $650,000 because I felt $1 million was a bit too much

The men were given masks to wear

Because so far I do not know if wearing the mask would have prevented the cancer [so lack of such proof necessitates some compensation]

(R) If so and the men did not wear masks I would give them nothing

$250,000
The men all got cancer ... were suppose to wear masks. The company knew the chemical was dangerous.

[Shared responsibility merits compensation] (B) The plaintiffs should receive half of the amount ... because they are halfway responsible for their condition

$500,000

The company did not enforce their own policy. All 4 employees knew of the possible health risk and did not heed the company's policy.

[Compensation is merited whenever] the company is the responsible party due to the known health risk

$500,000

[The plaintiffs have cancer] (B) Hospital bills and cancer treatment are very expensive. The disease can impede the plaintiff's working ability thus making it impossible for them to obtain a steady income

$1,000,000

[The company did not enforce a rule] [The company's responsibility for the illness $700,000 necessitates compensation for the employee]

$0

My decision for not paying the plaintiffs any compensation money is based on their failure to follow the company regulations to wear the safety masks. I would have opted to give them what they were asking.

$700,000

They were warned about the chemical. (The company did not provide an alternative safety device)

[Shared responsibility merits minimal compensation for each plaintiff]

$100,000

The plaintiffs were supposed to wear their safety masks at all times. The company failed to stress the importance of wearing the masks.

[Shared responsibility merits compensation]

$50,000

The plaintiffs did not wear the masks. The company did not have a strict policy of enforcement.

[Shared responsibility and need justify an award] ... the plaintiffs were in part negligent by not wearing the masks. The company should be penalized to a degree by paying some expense ... I believe $50,000 would be adequate to support the remaining family.

$50,000

They have cancer

[A positive regard for defendant precludes full amount] (B) Just because they have cancer doesn't mean the corporation should make them a millionaire. I feel it was partially the employees fault.

$500,000
<table>
<thead>
<tr>
<th>ID</th>
<th>Statement</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>076</td>
<td>Damage to health of 4 individuals occurred Corporation gave advice, warning</td>
<td>$100,000</td>
</tr>
<tr>
<td>078</td>
<td>Disease is apparently job related Employees failed to heed safety regulations</td>
<td>$50,000</td>
</tr>
<tr>
<td>079</td>
<td>These people face suffering and inevitable death</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>080</td>
<td>[The plaintiffs are very ill]</td>
<td>$500,000</td>
</tr>
<tr>
<td>081</td>
<td>[The plaintiffs are ill from working on the job]</td>
<td>$500,000</td>
</tr>
<tr>
<td>082</td>
<td>[The illness is serious]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>083</td>
<td>[The corporation had rules for wearing safety masks]</td>
<td>$0</td>
</tr>
<tr>
<td>084</td>
<td>[The plaintiffs had safety masks]</td>
<td>$0</td>
</tr>
<tr>
<td>085</td>
<td>The factory issued safety masks [The plaintiffs have cancer]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>086</td>
<td>The toxic chemical is present and the fumes are exposed to these workers</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

[Shared responsibility means the corporation should pay for medical expense]
<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>087</td>
<td>EA [The employees had masks] [There were chemical fumes capable of being inhaled] [They did not wear masks at all times]</td>
<td>$0</td>
</tr>
<tr>
<td>088</td>
<td>SC [The plaintiffs are very ill] [Serious illness and likely escalating medical costs necessitate full compensation]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>089</td>
<td>BA [The plaintiffs are ill ... were negligent] [Whenever] both parties are responsible half of the amount should be given ...</td>
<td>$500,000</td>
</tr>
<tr>
<td>090</td>
<td>EA [The plaintiffs were warned ... failed to heed the warning]</td>
<td>$0</td>
</tr>
<tr>
<td>091</td>
<td>BA [The company provided safety gear but did not make the gear mandatory] [Failure of enforcement and compliance means that the amount requested is unreasonable]</td>
<td>$100</td>
</tr>
<tr>
<td>092</td>
<td>BA [Safety regulations existed] [Employees disregarded] [Shared responsibility merits compensation]</td>
<td>$750,000</td>
</tr>
<tr>
<td>093</td>
<td>CA [The company did not disregard the rules] [The failure of the company to do more than just tell them to wear the mask means full compensation]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>094</td>
<td>(no response) [A positive regard for plaintiffs justifies full award] (B) Each employee receives 1 million dollars due to the work condition The employee vs. the large corporation</td>
<td>$500,000</td>
</tr>
<tr>
<td>095</td>
<td>EPP [The workers were exposed to a toxic chemical ... have cancer]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>096</td>
<td>CA [The company did not enforce its safety regulations] [The liability of the corporation for the health of its employees warrants full compensation]</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>097</td>
<td>EPP [The men are ill ... even exposed to the chemical ... given masks ... did not follow safety regulations] [Uncertainty of effectiveness of masks makes non-compliance irrelevant and worthy of minimal compensation] (B) Whether or not they followed safety regulations may or may not be relevant here, because there may not be no way to really tell if the chemical and its effects can be halted by a mere mask 10,000 is not too much or too little</td>
<td>$10,000</td>
</tr>
<tr>
<td>098</td>
<td>BA [Each employee was warned and provided safety equipment. The company was aware of health hazards] [Mutual contribution merits a compromise award] (B) Taking into consideration that each employee was warned ... I feel they are entitled to compensation because the company was aware ... did not attempt to find an alternative.</td>
<td>$32,500</td>
</tr>
<tr>
<td>Case</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>099 BA</td>
<td>They didn't wear their masks like they supposed to</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>100 CA</td>
<td>The plant exposed employees to fumes told them to wear masks did not enforce</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>102 EPD</td>
<td>Employees have a disease</td>
<td>$ 0</td>
</tr>
<tr>
<td>103 EA</td>
<td>Plaintiff did not always wear masks . . . obey regulations</td>
<td>$ 0</td>
</tr>
<tr>
<td>104 EPP</td>
<td>Dangerous chemicals were used . . . risk involved . . . workers are suffering</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>105 EA</td>
<td>Men knew the danger . . . chose not to wear safety masks . . . are in a minority</td>
<td>$ 0</td>
</tr>
<tr>
<td>106 EA</td>
<td>Employees were warned . . . provided mandatory masks . . . are ill</td>
<td>$ 0</td>
</tr>
<tr>
<td>107 EA</td>
<td>Plaintiffs were warned . . . did not heed advice</td>
<td>$ 0</td>
</tr>
<tr>
<td>108 CA</td>
<td>National Industries had full knowledge of the detrimental effects . . . did not enforce safety measure</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>109 EASC</td>
<td>Company did warn them . . . provided them with masks . . . required them</td>
<td>$ 600,000</td>
</tr>
<tr>
<td>110 EA</td>
<td>The people knew the chemical was toxic Safety masks were provided</td>
<td>$ 0</td>
</tr>
<tr>
<td>111 EA</td>
<td>Employees knew the danger . . . did not obey regulations</td>
<td>$ 0</td>
</tr>
<tr>
<td>112</td>
<td>(No data cited)</td>
<td>The perception that not enough evidence to show negligence on either part justifies no award</td>
</tr>
<tr>
<td>113</td>
<td>Workers did not wear their safety masks at all times</td>
<td>Disobeying regulations is a basis for no award</td>
</tr>
<tr>
<td>114</td>
<td>They did not wear their safety masks all the time. . have cancer</td>
<td>Failed compliance along with need merits compensation</td>
</tr>
<tr>
<td>115</td>
<td>(Workers are ill)</td>
<td>Likely medical expense warrants a fair amount of compensation</td>
</tr>
</tbody>
</table>

---

**POPULATION TWO**

<p>| 200 | John failed to use mask regularly | Negligence of both parties merits compensation for medical expense and retirement |
| 201 | Employee did not always follow the safety regulations . . . was warned | Responsibility of the plaintiff precludes compensation |
| 202 | [Plaintiff] did not wear his mask at all times | Shared responsibility justifies compensation |
| 203 | Company did not force compliance | Failure to ensure safety merits payment of full amount |
| 204 | (No date cited) | Shared fault merits some compensation |
| 205 | The toxins are proven to cause this type of cancer. . plaintiff was exposed to them . . . did not wear the safety mask all the time. . [experienced pain and suffering] | The presence of both corporate liability and harm necessitates some compensation |
| 206 | [Company provided masks] | The lack of proof that masks work or that company was negligent merits partial compensation |</p>
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>207</td>
<td>Plaintiff was informed of hazard to wear mask... on occasion did not wear the mask</td>
<td>[Corporate responsibility justifies compensation] $750,000</td>
</tr>
<tr>
<td>208</td>
<td>[Company failed to enforce rule]</td>
<td>[Failure of enforcement means deserved award] $100,000</td>
</tr>
<tr>
<td>209</td>
<td>The company did provide safety equipment... required use of it</td>
<td>[Without proof that equipment could prevent harm, compensation is merited] $100,000</td>
</tr>
<tr>
<td>210</td>
<td>[The situation involved a hazard] [Plaintiff did not wear a mask]</td>
<td>[Failure of employees to wear a mask does not deliver corporation from responsibility to pay] $500,000</td>
</tr>
<tr>
<td>211</td>
<td>Plaintiffs contracted cancer</td>
<td>[Absence of proof hazard a reasonable doubt delivers the company from responsibility of paying] $0</td>
</tr>
<tr>
<td>212</td>
<td>[Employee did not comply with rules... are ill]</td>
<td>[The responsibility of the company for insuring compliance combined with medical and monetary need justifies full compensation] $1,000,000</td>
</tr>
<tr>
<td>213</td>
<td>[Corporation did not enforce safety rules]</td>
<td>[The failure of the corporation to enforce rules with continuous and constant effort and to protect the health of employees merits full compensation] $1,000,000</td>
</tr>
<tr>
<td>214</td>
<td>[The organization warned... had safety regulation] [The employees are ill]</td>
<td>[The condition of illness combined with the responsibility of the corporation to protect employees merits some compensation] $250,000</td>
</tr>
<tr>
<td>215</td>
<td>[The plaintiffs did not always wear masks] [The company used a hazardous chemical]</td>
<td>[The responsibility of both the employees and the company merits compensation] $250,000</td>
</tr>
<tr>
<td>216</td>
<td>[The company used a toxic chemical] [The employees did not adhere to safety rules] [The employees are ill]</td>
<td>[Whenever both parties are at fault resulting in medical expense compensation should be paid] $500,000</td>
</tr>
<tr>
<td>217</td>
<td>(No data cited)</td>
<td>[Whenever compensation is deserved the full amount should be given] $1,000,000</td>
</tr>
<tr>
<td>218</td>
<td>Plaintiffs were warned... told to wear masks</td>
<td>[The responsibility of the employees precludes any compensation] $0</td>
</tr>
<tr>
<td>Number</td>
<td>Event</td>
<td>Reason</td>
</tr>
<tr>
<td>--------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>219</td>
<td>Mutual responsibility is present</td>
<td>Whenever both corporation and employees have some responsibility some compensation is deserved</td>
</tr>
<tr>
<td>220</td>
<td>Company did not enforce safety regulations</td>
<td>The presence of joint responsibility and injury merits compensation</td>
</tr>
<tr>
<td>221</td>
<td>Mutual responsibility is present</td>
<td>The presence of damages merits half of the requested amount</td>
</tr>
<tr>
<td>222</td>
<td>The plaintiffs are very ill</td>
<td>The incurrence of cost warrants compensation</td>
</tr>
<tr>
<td>223</td>
<td>The workers were aware of the potential dangers...did not always take proper precautions</td>
<td>Shared responsibility merits some compensation</td>
</tr>
<tr>
<td>225</td>
<td>Company did not enforce the rules</td>
<td>The failure of the company to make sure workers are wearing masks and the need for compensation are reasons to compensate</td>
</tr>
<tr>
<td>226</td>
<td>Corporation has some responsibility</td>
<td>Responsibility of the corporation and the existence of need justify compensation</td>
</tr>
<tr>
<td>227</td>
<td>Plaintiffs have asked for 1 million</td>
<td>The likely thoughtfulness of the compensation merits honoring the request</td>
</tr>
<tr>
<td>228</td>
<td>Workers knew the risk involved</td>
<td>Acceptance of the risk means acceptance of consequences and no money</td>
</tr>
<tr>
<td>229</td>
<td>Employees did not wear the mask</td>
<td>Joint responsibility merits compensation</td>
</tr>
<tr>
<td>230</td>
<td>Plaintiffs are ill...did not always wear their safety masks</td>
<td>Even in light of worker responsibility, compensation is merited for need</td>
</tr>
<tr>
<td>232</td>
<td>The plaintiffs are in ill health...did not wear masks</td>
<td>If plaintiffs have not taken responsibility then the full amount is not appropriate</td>
</tr>
<tr>
<td>233</td>
<td>Employees did not always use masks</td>
<td>Joint responsibility merits some compensation</td>
</tr>
<tr>
<td>234</td>
<td>They had masks available to them</td>
<td>Joint responsibility merits some compensation</td>
</tr>
<tr>
<td>235</td>
<td>Plaintiffs were exposed to a chemical</td>
<td>Responsibility of the company merits full compensation</td>
</tr>
<tr>
<td>Page No.</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>236</td>
<td>[Plaintiffs are ill] • • • failed to comply</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>237</td>
<td>[Employees were responsible for wearing masks]</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>238</td>
<td>[Same manufacturing processes are dangerous] • • • Individuals did not take precautions • • • Risk was taken)</td>
<td>$ 350,000</td>
</tr>
<tr>
<td>239</td>
<td>They were asked to wear safety protection</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>240</td>
<td>Sometimes they wore masks, sometimes not</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>241</td>
<td>[Plaintiffs are disabled]</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>242</td>
<td>The company was aware of the hazard • • • use of safety masks was not enforced</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>243</td>
<td>[No proof that plaintiffs did not adhere to safety regulations]</td>
<td>$ 100,000</td>
</tr>
<tr>
<td>244</td>
<td>[Both parties were negligent]</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>245</td>
<td>[Plaintiffs are not working]</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>246</td>
<td>[The plaintiffs are ill]</td>
<td>$ 500,000</td>
</tr>
</tbody>
</table>
LIST OF REFERENCES


In re Air Crash Disaster at Denver, 486 F. Suppl. 241 (J.P.M.D.L. 1980).


