ABSTRACT

CASE STRATEGY FOR THE CIVIL DEFENDANT: THE EFFECTS OF INJURY SEVERITY AND REBUTTALS ON LIABILITY AND DAMAGES

by Matthew E. Groebe

The concurrent presentation of liability and damages evidence poses a challenge for the defense attorney: how much attention should be paid to each component? The defense attorney can counter the plaintiff’s damages recommendation with one of her own, or she can refuse to offer a rebuttal by claiming her client is not liable. The severity of the plaintiff’s injury complicates the issue, as more severe injuries generally lead to more liability verdicts. The present study examined the best strategies for a defense attorney when the plaintiff was both mildly and severely injured. There were no effects on liability verdicts, but more severely injured plaintiffs and higher rebuttals led to higher damages. With a mild injury the best strategy was to avoid a high rebuttal whereas with a severe injury the best strategy was to offer a low or moderate rebuttal. Providing a rebuttal did not hurt the defendant on liability.
CASE STRATEGY FOR THE CIVIL DEFENDANT: THE EFFECTS OF INJURY SEVERITY AND REBUTTALS ON LIABILITY AND DAMAGES

A Thesis

Submitted to the
Faculty of Miami University
in partial fulfillment of
the requirements for the degree of
Master of Arts
Department of Psychology
by
Matthew E. Groebe
Miami University
Oxford, Ohio
2010

Advisor Dr. Gary Stasser

Reader Dr. Susanne Abele

Reader Dr. Kurt Hugenberg
# CONTENTS

## INTRODUCTION
- Anchoring and Adjustment .................................................. 1
- Defense Award Recommendations .......................................... 2
- Severity of the Injury .............................................................. 4
- Fusion ................................................................................ 6
- The Present Study ............................................................... 8

## PILOT STUDY
- Method ................................................................. 10
  - Participants .............................................................. 10
  - Design and Materials ................................................ 10
  - Procedure ............................................................. 11
  - Results and Discussion .................................................. 11

## MAIN STUDY
- Method ................................................................. 12
  - Participants .............................................................. 12
  - Design and Materials ................................................ 12
  - Procedure ............................................................. 14
  - Results ........................................................................ 15
    - Liability Verdicts .................................................... 15
    - Damage Awards ..................................................... 16
    - Distribution of the Awards ....................................... 18
    - Fusion ........................................................................ 19
    - Juror Perceptions, Motivations, and Emotions .......... 20
    - Mediation ............................................................. 20
    - Moderation ............................................................ 22
  - Discussion .................................................................... 23
    - Liability ............................................................... 23
    - Damages .............................................................. 25
    - Fusion ........................................................................ 28
    - Limitations and Future Directions ......................... 29
    - Defense Strategy ...................................................... 31

## REFERENCES ................................................................. 33
TABLES

1. Ratings of the extent to which jurors considered fifteen different pieces of information when making liability and damages decisions…………………………………..35
FIGURES

1. Pilot study. Ratings of severity of the injury broken down by injury condition .......................... 37
2. Pilot study. Damage awards broken down by injury condition .................................................. 37
3. Pilot study. Liability ratings for if liability had not already been determined
   broken down by injury condition ......................................................................................... 38
4. Percentage of jurors finding for the plaintiff on a dichotomous liability verdict,
   broken down by injury condition and rebuttal amount ...................................................... 38
5. Continuous liability broken down by injury condition ......................................................... 39
6. Percentage of jurors finding for the plaintiff on a dichotomous liability
   verdict broken down by gender ......................................................................................... 39
7. Confidence in dichotomous liability verdict broken down by gender ................................. 40
8. Damage awards for pro-plaintiff jurors only broken down by injury
   condition and rebuttal amount ......................................................................................... 40
9. Expected loss damage awards taking all jurors into account, broken down
   by injury condition and rebuttal amount ............................................................................ 41
10. Distribution of the damage awards for the no rebuttal condition ........................................ 41
11. Distribution of the damage awards for the low rebuttal condition ....................................... 42
12. Distribution of the damage awards for the moderate rebuttal condition ............................... 42
13. Distribution of the damage awards for the high rebuttal condition ...................................... 43
14. Fusion item. Importance of the item “The defendant did not repair the sidewalk”
    to both the liability decision and the awards decision ...................................................... 43
15. Fusion item. Importance of the item “The plaintiff’s mental anguish”
    to both the liability decision and the awards decision ...................................................... 44
16. Sympathy for the plaintiff broken down by injury condition ............................................... 44
17. Desire to compensate the plaintiff broken down by injury condition ..................................... 45
18. A measure of general feelings towards the plaintiff broken down by injury condition ...... 45
19. A measure of general feelings towards the defendant broken down
    by the presence or absence of a specific rebuttal ............................................................. 46
20. Perception of a specific rebuttal as an admission of liability broken
    down by the presence or absence of a rebuttal and injury condition ............................... 46
21. Desire to compensate the plaintiff as a full mediator for the effect
    of injury severity on damage awards for pro-plaintiff jurors only .................................. 47
22. Sympathy for the plaintiff as a partial mediator for the effect
    of injury severity on damage awards for pro-plaintiff jurors only .................................. 48
23. Desire to compensate the plaintiff as a full mediator for the effect
    of gender on dichotomous liability verdicts ........................................................................ 49
24. General feelings towards the plaintiff as a full mediator for the
    effect of gender on dichotomous liability verdicts ............................................................. 50
In a typical case, a plaintiff sues a defendant for an injury that resulted from the defendant’s allegedly negligent actions. The civil jury has one, possibly two, decisions to make (Ellis, 2002). The first decision is whether the defendant is liable for the plaintiff’s injuries. If the jury determines that the defendant is liable they make a second decision concerning the amount of damages the defendant must pay to the plaintiff. There are two types of damages awards: compensatory and punitive. Compensatory damages are directed towards the plaintiff and include economic (i.e. medical costs and lost earnings) as well as non-economic (i.e. pain and suffering) damages. Punitive damages are rarely assessed and focus on punishing a defendant’s egregious behavior. The typical civil trial is in a unitary format in which jurors hear liability and damages evidence together before making their decisions.

The plaintiff’s attorney typically presents an *ad damnum* to the jury, which is a suggested dollar amount that should be awarded to the plaintiff to restore him to his baseline before the accident (Marti & Wissler, 2000). In order to maximize damages awarded, the plaintiff’s attorney typically asks for a fairly high suggested dollar amount. However, the attorney has to be careful not to make the suggestion too high, or else the request might backfire and jurors might lower their award. The *ad damnum* typically sets the ceiling for possible awards, as jurors tend to assume that the plaintiff asks for more than he expects to receive (Ellis, 2002).

Occasionally, the defendant’s attorney counters the plaintiff’s *ad damnum* with a rebuttal. The question is whether providing a specific rebuttal amount would serve as an effective counter-anchor to the plaintiff’s request or whether not giving a rebuttal and thereby refusing to legitimize the award of damages would minimize the damages award (Marti & Wissler, 2000). The jury might wonder why a supposedly innocent defendant would give a specific rebuttal instead of focusing on contesting liability. From this mixed message they might attribute this as an implicit assumption of liability (Ellis, 2002). However, if the defendant contests liability and does not give a rebuttal but is found liable anyway, then the jurors have not been given a counter-anchor to the plaintiff’s *ad damnum*, possibly resulting in a higher amount of damages. Thus, the main question for a defense attorney is, is arguing damages worth the risk?

Previous research (i.e. Ellis, 2002) has examined this question along with varying levels of strength of evidence against the defendant. The present research examines the risk of defense
rebuttals along with another important case factor – severity of the injury to the plaintiff. Although legally inappropriate, jurors may be affected by the severity of the injury when determining liability. These two factors – defendant rebuttal and severity of the plaintiff’s injuries – can interact in complex ways to affect the outcome of the trial. For instance, a high rebuttal when the plaintiff’s injuries are mild could make jurors more likely to believe that the defendant is liable than if no rebuttal were given. First, some background about the theory and empirical support behind the usage of damage award recommendations will be presented, followed by research on defense rebuttals. Then the impact of severity of the plaintiff’s injury on liability and damages will be discussed. A description of the current study will follow.

**Anchoring and Adjustment**

Tversky and Kahneman (1974) identified the anchoring and adjustment heuristic as a widespread cognitive tool that people use when trying to make a quantitative estimate in the face of uncertainty. When making a numerical estimate, judges attempt to use available information that is both applicable to and representative of the target judgment (Strack & Mussweiler, 1997). Information that is more applicable and representative to the target judgment is more likely to be used than less applicable and less relevant information. However, judges often have very little knowledge of the domain for the target judgment, leading them to make use of any salient number they are given, regardless of its applicability and representativeness. Thus, individuals’ numerical judgments can actually be influenced by an arbitrary or irrelevant number (Chapman & Bornstein, 1996). When making an unfamiliar judgment, individuals look for cues to help guide them in their judgment. Since they have little previous knowledge and experience to guide them in their judgment, any previous cue they were exposed to will be highly accessible and will serve as an anchor and thus have a large impact on final judgments.

Anchoring effects have been demonstrated in a wide variety of applied contexts, such as gambling, estimating real estate prices, and confidence intervals (Robbennolt & Studebaker, 1999). They are especially applicable to the determination of damage awards in a civil trial, something jurors find extremely difficult to do because of their lack of expertise and lack of guidance from the court (Greene & Bornstein, 2000). Given their uncertainty, jurors will often look for a salient numerical value to guide them. This number acts as an anchor that jurors use as a “jumping-off place” (Raitz, Greene, Goodman, & Loftus, 1990). Jurors then adjust their
damage award upward or downward until they reach their preferred award (Raitz et al., 1990; Ellis, 2002).

Despite the robust replications of the anchoring and adjustment heuristic, Markovsky (1988) has suggested that, in many different contexts, the heuristic is almost all anchoring and very little adjustment. In one of the few studies to examine the impact of multiple competing anchors, Raitz and his colleagues (1990) had mock jurors determine compensatory damages for a plaintiff after liability had already been determined. In one condition participants were presented only with economic testimony (including an *ad damnum*) from an expert representing the plaintiff. In the other condition participants were presented with economic testimony (including an *ad damnum* and rebuttal) from an expert representing each side. They found that in the two-expert condition the two modal awards were the exact recommendations of one of the experts. Therefore, they concluded that the anchoring and adjustment heuristic is almost all anchoring and only a little adjustment.

Interestingly, the mean award in the two-expert condition was not midway between the two anchors ($719,354 and $321,000). Instead, the mean award was $628,116, while the mean award in the plaintiff-only expert condition was $644,382. Although the mean award in the two-expert condition was in the predicted direction (i.e. lower due to a second, smaller anchor), it was not significantly different than the mean award in the plaintiff-only expert condition. Thus, the defendant’s rebuttal did not do much to reduce mean damage awards. However, the authors cautioned that this lack of difference could have been the result of an extremely low rebuttal by the defendant, which the jurors might have perceived as unfair. (Similar results were found by Greene, Downey, & Goodman-Delahunty, 1999a.) In sum, Raitz et al. (1990) found that when presented with competing anchors, the jurors tended to anchor on one of the recommendations instead of compromising between the two extremes. It is important to highlight here that the authors used economic experts for both sides to convey the recommendations. It is possible that the jurors simply trusted these experts and then adopted the figure of whichever expert they sided with.

These studies (Raitz et al., 1990; Greene et al., 1999a) are noteworthy in that they did find that the rebuttal lowered damage awards, but not by as much as expected. These examples provide evidence for the ubiquity and robustness of the anchoring and adjustment heuristic as applied in the courtroom, but they also support Markovsky’s (1988) assertion that people often
do not adjust too far away from an anchor. While these studies are valuable in that they are among the few that make use of competing anchors, it is important to highlight what was not examined. First, the specific amounts of the plaintiff’s *ad damnum* and the defendant’s rebuttal were not varied. Furthermore, liability was already determined so the researchers could not assess the impact of a defendant’s rebuttal (i.e. its absence or its presence with various levels) on liability verdicts. The preexistence of the liability verdict in the Raitz et al. (1990) study may have made jurors more likely to anchor on the plaintiff’s *ad damnum* than the defendant’s rebuttal because they believed the plaintiff was more credible since he had already won on liability.

Marti and Wissler (2000) also examined the impact of two competing anchors. Unlike Raitz et al. (1990), they varied the specific amounts of the recommendations, but liability had already been determined. Importantly though, they did not use economic experts and instead the recommendations were presented by the attorneys from both sides. The authors found that jurors tended to compromise and chose the midpoint between the two recommendations for their awards. Marti and Wissler (2000) explained this discrepancy by suggesting that the experts might be seen as more objective than attorneys and thus the jurors might be more likely to adopt their specific recommendations. Given the scarcity of literature regarding this issue, there is no definitive conclusion. Yet it is an intriguing question: when there are competing anchors, do jurors compromise between the two recommendations or do they anchor on only one of the recommendations?

*Defense Award Recommendations*

The majority of studies that have included only one anchor have manipulated amounts of the plaintiff’s *ad damnum* while omitting any monetary rebuttal by the defendant. The robust finding from these studies, after controlling for severity of the injury, is that the more the plaintiff asks for, the more he receives (Chapman & Bornstein, 1996; Hastie, Schkade, & Payne, 1999; Hinsz & Indahl, 1995; Malouff & Schutte, 1989). The only published study to have varied the levels of a defendant’s rebuttal was done by Marti and Wissler (2000), who varied amounts of both the plaintiff’s *ad damnum* and the defendant’s rebuttal for non-economic damages (i.e. pain and suffering) in two experiments. Participants were told that the defendant had already been found liable and assessed economic damages (i.e. medical expenses and lost wages). It was the task of the participants to award non-economic damages to the plaintiff. The authors
replicated the finding from previous studies for the effects of the amount of the plaintiff’s *ad damnum*, while reaching a similarly intuitive finding regarding the defense rebuttal: the less the defendant recommended, the less the plaintiff received.

Marti and Wissler (2000) were also interested in how jurors might react to extreme anchors. The authors predicted that jurors may react to an extremely low defense rebuttal by awarding more than they would have awarded had the recommendation been more moderate. This is known as a contrast effect, where jurors move their responses away from an anchor that appears unacceptable (Hinsz & Indahl, 1995). In their first study, no contrast effect was found when the defendant recommended $25,000 for a very serious injury, but they did find a contrast in their second study when they included a more extreme defense anchor of $0. Similar to what they found for extreme plaintiff recommendations, jurors contrasted their awards away from extreme defense recommendations. Therefore, the authors summarized that if an anchor was within the range of acceptable awards (i.e. a *latitude of acceptance*), it was assimilated to. If the anchor was outside of the range, jurors contrasted away from it. Although liability was already determined in this study, it is nonetheless important to note for the present study that an extremely low rebuttal can actually end up hurting the defendant, often leading to a higher damage award than a more moderate rebuttal.

The most similar existing study to the present study was a dissertation done by Ellis (2002). She varied the amount of the defense rebuttal but, unlike Marti and Wissler (2000), she kept the plaintiff’s *ad damnum* constant. She also manipulated the strength of evidence against the defendant. The primary dependent variables were liability and non-economic damages. She found that there was no difference in damage awards between the low rebuttal and the moderate rebuttal conditions, yet both conditions had lower mean damage awards than the no anchor condition. Taken together, these findings suggest that a small contrast effect may have occurred and jurors adjusted away more from the low anchor than the moderate anchor. However, a low rebuttal did not lead to higher damage awards than a moderate rebuttal so the low rebuttal did not end up hurting the defendant.

Ellis (2002) also measured perceptions of the rebuttal and found that roughly 18.9% of jurors saw it as an admission of liability. This suggests that giving a specific rebuttal can end up posing serious harm to the defendant, something that has occasionally been observed in applied settings (Ellis, personal communication, March 22, 2009). In addition, Schmid, Fiedler, Englich,
Ehrenberger, and Semin (1996) found that jurors gave higher guilt and severity of sentence ratings when the defendant used language that implied greater intentionality and causality. The question in the present study though is whether jurors see a specific rebuttal as a sign of admitting guilt. On the other hand, Ellis (2002) found that 7.5% of jurors (most of whom were in the specific rebuttal conditions) perceived a specific rebuttal as part of a well-prepared case. Thus, jurors may perceive a rebuttal as an admission of liability by the defendant, but they also may perceive it as caution in case the verdict does not go in the defendant's favor. 

**Severity of the Injury**

When determining liability, jurors are told to focus on the defendant’s actions (or inactions) leading up to the plaintiff’s injuries (Greene & Bornstein, 2003). The extent of the plaintiff’s injuries is legally not supposed to be factored into a determination of liability. In contrast, only the extent of the plaintiff’s injuries is supposed to be used in the assessment of compensatory damages. The defendant’s actions are not supposed to be factored into this decision. Despite these legal distinctions, it has consistently been found that, all else being equal, more severely injured plaintiffs receive more favorable liability verdicts (Bornstein, 1998; Greene, Johns, & Bowman, 1999b; Robbennolt, 2000). As dictated by law, more severely injured plaintiffs also tend to receive higher compensatory damage awards (Greene & Bornstein, 2003). Jurors generally follow the guidelines and use mostly liability evidence when making liability decisions and damages evidence when making damages decisions (Ellis, 2002). However, although jurors are generally good at compartmentalizing evidence that is legally appropriate to one decision while ignoring legally irrelevant evidence, they cannot always keep the two decisions separate (Greene et al., 1999b).

**Fusion**

Researchers have developed the term “fusion” to refer to jurors’ use of evidence that is not relevant to the decision they are making. The finding that more severely injured plaintiffs are more likely to win on liability than are more mildly injured plaintiffs is one instance of fusion. In an empirical test of fusion, Horowitz and Bordens (1990) varied the trial format presentation between the typical unitary trial (jurors hearing liability and damages evidence together) and a bifurcated trial (first hearing liability evidence only and then reaching a liability decision before hearing damages evidence) while keeping the evidence against the defendant constant. They found that in a unitary trial the plaintiff was more likely to win on liability,
although he was subsequently awarded less in damages than in a bifurcated trial. Juries assigned more responsibility to the defendant in the unitary trial, showing the impact that the plaintiff’s injuries can have on liability decisions. Greene et al. (1999b) also found that jurors perceived the defendant to be more negligent when the plaintiff’s injuries were severe than when they were mild.

There are a few different mechanisms that can help explain how jurors fuse liability and damages evidence together when making liability decisions. The hindsight bias (Fischhoff, 1975) has often been used to explain the influence of injury severity on liability judgments. The hindsight bias occurs when jurors are unable to ignore their outcome knowledge (the plaintiff was injured) when trying to reconstruct the defendant’s knowledge and state of mind leading up to the accident. Many studies (Kamin & Rachlinski, 1995; Greene et al., 1999b; Horowitz & Bordens, 1990; Harley, 2007; Smith & Greene, 2005) have found that jurors find it very difficult to put aside their knowledge of the outcome of the defendant’s actions when asked to judge the appropriateness of those actions. The result is a fusion of ex post (after the fact) outcome knowledge with the ex ante (before the fact) knowledge that the defendant had.

For example, Kamin and Rachlinski (1995) had some participants in foresight judge the necessity of a town hiring a bridge operator, while the rest of the participants in hindsight acted as jurors in a case where a plaintiff was suing the town for not hiring the operator when the river overflowed and caused property damage. Fifty-seven percent of hindsight participants thought it was negligent of the town not to hire a bridge operator. In contrast, only 24% of foresight participants said they would advise hiring an operator. These findings can help explain why outcome knowledge can often go against a defendant. Thus, jurors tend to focus on the negative outcomes allegedly due to the defendant’s behavior, which leads them to reason that the defendant should have foreseen the accident and therefore must be liable. Further, jurors are aware of how severe the injuries are, and with more severe injuries jurors are more likely to think the defendant was negligent in his behavior (Ellis, 2002).

Another process that could account for fusion is jurors’ desire to compensate the plaintiff for his injuries, especially if they are severe (Ellis, 2002). Bornstein (1998) had participants assess liability and damages for a plaintiff. In his first study, he found that jurors were more likely to find for the plaintiff on liability when his injuries were severe than mild. But in the second study when the opportunity to award damages was taken away, injury severity did not
affect liability verdicts. The difference in results between these two studies suggests that jurors were finding for a more severely injured plaintiff to compensate him for his injuries. Greene and her colleagues (1999b) indeed found that the desire to compensate the plaintiff for his injuries mediated the effect of injury severity on liability judgments.

Jurors may also get emotionally involved in the case and feel more sympathy towards a more severely injured plaintiff than a mildly injured plaintiff and experience more negative feelings towards a defendant accused of causing more severe injuries versus mild injuries (Bornstein, 1998). Chapman and Bornstein (1996) manipulated amounts of the plaintiff’s *ad damnum* and then assessed jurors’ perception of the litigants. They found that feelings for the defendant were more negative when there was a high *ad damnum*, implying stronger causal evidence that the defendant is liable than when there was a low *ad damnum*. In addition, feelings for the defendant mediated the relationship between *ad damnum* amount and compensation awards. Whatever the process that accounts for fusion, it appears that jurors are unable to totally separate liability and damages decisions.

**The Present Study**

The purpose of the present research was to examine how different levels of defendant rebuttals interact with the severity of the plaintiff’s injury to impact liability verdicts and damage awards. Although these variables have been examined individually, they have never been looked at together. Therefore, the present study examined an interaction that is legally applicable. In the attempt to partially replicate and extend Ellis’ (2002) work, mock jurors only awarded non-economic damages (i.e. pain and suffering). The present study also contributes to a surprisingly sparse literature on the impact of multiple competing anchors and theory underlying how people are impacted by more than one anchor. For instance, in which situations is one of the anchors discounted? In which situations does one take the midpoint between the two? The present study also attempts to find mediators (e.g. desire to compensate the plaintiff, feelings towards the litigants, etc.) that can explain fusion effects.

The important implications for case strategy will be evident in the interactions between injury severity and defense rebuttal. The defense attorney can decide how to argue damages based on the severity of the injury to the plaintiff. It was predicted that when the plaintiff’s injuries are severe, the defense attorney would do best to give a moderate rebuttal. Drawing on research conducted on fusion, the defendant is fairly likely to be found liable with a severely
injured plaintiff. Even though giving a rebuttal may be viewed as an admission of liability, it is not very risky in this situation because of the severe injury which greatly hurts the defendant’s chances on liability. Therefore, it might benefit the defendant to focus more energy on trying to keep the amount of damages awarded as low as possible. If the rebuttal is too low, there may be a contrast effect as found by Marti and Wissler (2000). If the rebuttal is too high, the attorney may be setting the floor too high and the subsequent damage awards may be excessive. With no rebuttal, jurors would have no counter-anchor to the plaintiff’s ad damnum if the defendant is found liable as might be expected from a severe injury and the damages awarded would subsequently be quite high.

It was predicted that when the injury to the plaintiff is mild, the defendant’s attorney would do best to give no rebuttal. Research conducted on fusion has found that the defendant is less likely to be found liable with a mildly injured plaintiff, so the defendant’s attorney should focus more energy on avoiding being found liable. Ellis (2002) found that when the strength of the evidence strongly favored the defendant, giving any rebuttal led to higher liability verdicts than when no rebuttal was given. The mild injury condition was similar to Ellis’ (2002) pro-defense evidence condition in that a mild injury is more favorable to the defendant than a severe injury. However, when the strength of the evidence favored the plaintiff, the presence or absence of a rebuttal had no effect on liability verdicts. A severe injury is similar to the pro-plaintiff evidence condition in that a severe injury is more likely to lead to a liability verdict in favor of the plaintiff.

In accordance with the extant literature, it was hypothesized that, due to fusion, there would be a main effect of injury severity on liability verdicts, such that more severely injured plaintiffs would be more likely to receive a favorable liability verdict. It was hypothesized that there would be a main effect of injury severity on damages because more severely injured plaintiffs should legally receive higher damages awards to compensate them for their injury. It was also hypothesized that there would be a main effect of rebuttal size on damages, with higher rebuttals leading to higher damage awards because the higher the defense attorney sets the floor for possible awards, the higher the final awards would be. The absence of a rebuttal should lead to higher damages than low or moderate rebuttals because of the lack of a counter-anchor to the plaintiff’s anchor. Ellis (2002) found no difference between the low and moderate rebuttal levels collapsed across conditions. Jurors may be unlikely to contrast away from a low rebuttal in the
mild injury condition because jurors should feel less antipathy toward the defendant, so a low rebuttal would not be appear as extreme as with a more severe injury. In keeping with Ellis’ (2002) finding, it was not hypothesized that there will be any difference between low and moderate rebuttals overall. Finally, jurors may perceive any specific rebuttal as an admission of liability (Ellis, personal communication, March 22, 2009). Therefore, only the lack of a rebuttal should lead to lower liability verdicts, while the three levels of rebuttals should lead to similar percentages of liability verdicts.

Pilot Study

Method

Participants

Sixty-one undergraduates (34 women and 27 men) from the Psychology research participant pool at Miami University were recruited to take part in the pilot study in exchange for partial fulfillment of a course credit. The average age was 19.05 years.

Design and Materials

The purpose of the pilot study was to ensure that the mock jurors perceived differences in the severity of the injuries to the plaintiff. Two different between-subjects conditions (mild and severe) were created that varied in the severity of the injury to the plaintiff.

The pilot materials were adapted from Ellis (2002). Her materials involved a “slip and fall” tort case based on an actual case filed and tried in Arizona (Ireland v. Marquez, 1999). Ellis (2002) used three different liability evidence versions: pro-plaintiff, balanced, and pro-defendant. The balanced version was used in the present study to avoid an extreme case that might lead to basement or ceiling effects on liability verdicts. In the summary, a 62 year-old man (the plaintiff) and his wife walked down a sidewalk. The man tripped and injured himself. (Under Arizona law, property owners are responsible for maintaining the condition of the sidewalk in front of their property and can be liable for any injuries that occur if the sidewalk is not in a reasonably safe condition.) The plaintiff sued the owner of the property, claiming that the owner did not maintain the sidewalk in a reasonably safe condition and that the owner (the defendant) should compensate him for physical and psychological injuries as a result of the fall. The defendant claimed he was not liable because the sidewalk was reasonably safe and that the plaintiff was careless when walking.
For the pilot study, Ellis’ (2002) materials were trimmed to mostly just include information about the extent of the injuries to the plaintiff. In both conditions (mild and severe) the defendant had already been found liable for the injuries to the plaintiff and it was up to the juror to decide how much to award in non-economic damages to the plaintiff. Values in thousand dollar increments from $0 to $100,000 were provided to avoid large outlier awards. Jurors were also asked how severe they thought the injuries were as well as how liable they thought the defendant was (both on a 1-7 scale). There were also manipulation check questions to ensure juror comprehension.

In the mild injury condition, the plaintiff fell on the sidewalk, breaking his glasses and cutting his forehead. He received several stitches and had on-and-off migraines for about a month. In the severe injury condition, the plaintiff fell on the sidewalk, causing him to become blind in his right eye. He also developed short-term memory impairments that greatly disrupted his everyday life and caused him to miss a lot of work. The transcripts for both conditions discussed how, while injured, he could not perform many of his daily activities. The transcripts also described how much money the plaintiff lost while recovering because of lost work. Jurors received jury instructions as to how to properly award damages at the end of the testimony. No recommendations for damages were made from either side.

Procedure

Participants signed up for the study through an online recruitment site that explained that the study would be on “juror decision making”. Participants came into the study in groups ranging from one to eight participants. Each participant completed the study individually. Upon arrival, participants were informed that they would be reading a short transcript and would then have to make a series of judgments. The transcript, verdict form, and manipulation check questions were all stapled together. After finishing, the participants were thanked and debriefed. The pilot study lasted around 20 minutes.

Results and Discussion

The purpose of the pilot study was to ensure that participants perceived differences between the mild and severe injuries to the plaintiff. Participants were asked how severe they perceived the injury to the plaintiff on a 1-7 Likert scale. Participants in the mild injury condition (M=3.10, SD=1.04) perceived the injury to be less severe than participants in the severe injury condition (M=5.47, SD=1.07), t(59) = -8.74, p<.001 (see Figure 1). Participants
were also asked how much they would award to the plaintiff in non-economic damages, with values provided as guidance in thousand dollar increments from $0 to $100,000. Legally, more severely injured plaintiffs should receive more money in damages than less severely injured plaintiffs, which was what was found (all awards are in thousands of dollars). Participants in the mild injury condition ($M=6.16$, $SD=5.89$) received less money in non-economic damages than participants in the severe injury condition ($M=26.13$, $SD=24.75$), $t(59) = -4.37$, $p<.001$ (see Figure 2).

To get an early look at whether injury severity impacted judgments of liability, participants were asked on a 1-7 Likert scale how liable they would have found the defendant if they had been making the liability decision (liability had already been determined). The classic finding is that more severely injured plaintiffs are more likely to win on liability than more mildly injured plaintiffs. However, as seen in Figure 3 there was no difference in liability between the mild ($M=3.71$, $SD=1.81$) and severe injuries ($M=3.77$, $SD=1.79$), $t(59) = -.12$, $ns$. This was somewhat surprising because it was contrary to the usual finding. It suggested that the participants were applying the correct evidence to make a hypothetical liability decision even though the jury instructions for the pilot study did not stress that injury severity should not be taken into account in a liability decision. In all, the pilot study demonstrated that participants perceived the severe injury to be more severe than the mild injury.

Main Study

Method

Participants

One hundred and seventy-nine undergraduates (87 women and 92 men) from the Psychology research participant pool were recruited to take part in the main study in exchange for partial fulfillment of a course credit. The average age was 19.08 years.

Design and Materials

Two independent variables were manipulated in the study: 1) the severity of the plaintiff’s injury, and 2) the defendant’s rebuttal. There was a 2 (injury severity: mild or severe) X 4 (defense rebuttal: none, low, moderate, or high) experimental design. Each condition had between 21-24 participants.

The liability evidence against the defendant was held constant throughout conditions by holding liability testimony from witnesses and litigants as well as the plaintiff’s exhibit constant.
The plaintiff’s exhibit was a photograph of the cracked sidewalk that caused the plaintiff to fall. Furthermore, the plaintiff’s *ad damnum* was also held constant throughout conditions. The plaintiff’s testimony regarding his injuries was varied throughout conditions to depict a severe or a mild injury as confirmed in pilot testing. The defendant’s recommendation for non-economic damages (economic damages were already agreed upon by the two sides although the defendant still contested liability) were manipulated in the defense attorney’s closing arguments.

A problem was identified with the design that had to be addressed. Specifically, according to tort law, a severely injured plaintiff should receive more in damages than a mildly injured plaintiff, holding liability information constant. Therefore, a high rebuttal when the plaintiff is severely injured should be higher than a high rebuttal when the plaintiff is mildly injured (the same would go for low and moderate rebuttals). But it was necessary to the study to compare across conditions as if a high rebuttal for the severe injury was the same as a high rebuttal for the mild injury. To remedy this problem, participants were informed that the case actually happened in Switzerland, which uses the Swiss Franc. Damage awards were also presented in Swiss Francs. This procedure was used because this currency would be unfamiliar to the participants, so they would not be suspicious when the rebuttal for the mildly injured plaintiff was so high.

In all of the conditions the plaintiff’s *ad damnum* was set at 50,000 Swiss Francs. In the low rebuttal conditions the defendant’s rebuttal was set at 3,000 Swiss Francs. In the moderate rebuttal conditions the defendant’s rebuttal was set at 12,000 Swiss Francs. In the high rebuttal conditions the defendant’s rebuttal was set at 25,000 Swiss Francs. In all of the specific rebuttal conditions (low, moderate, and high) the defendant’s attorney said she did not believe that her client was liable but that she cannot always predict how jurors will decide and so she was just being cautious by giving a rebuttal. In the no rebuttal conditions the defendant’s attorney said that she did not believe her client was liable and therefore was not going to discuss damages.

The transcript included roughly thirteen pages of a brief overview, opening statements, witness testimony, closing arguments with award recommendations, jury instructions, and a photograph of the plaintiff’s exhibit. As an example, the full version of the transcript for the mild injury condition with the moderate rebuttal can be found in Appendix A.

To assess the effects of the independent variable manipulations on liability verdicts, participants were asked to decide liability on a dichotomous scale as well as on several
continuous items rating the plaintiff’s and the defendant’s liability for the accident. Greene et al. (1999b) found effects of injury severity only on more sensitive, continuous variables and not on a dichotomous option. Examples include “To what extent did James Johnson’s actions cause Thomas Marks’s injuries” (1-7 scale) and “To what extent did Thomas Marks take precautions while walking” (1-7 scale). Participants who found against the defendant on dichotomous liability were asked to award non-economic damages to the plaintiff.

To test for fusion, participants were asked the extent to which they considered nineteen different items when making decisions on liability and damages. Some of these items were appropriate for a liability decision (i.e. James Johnson did not repair the sidewalk), whereas others were appropriate for a damages decision (Thomas Marks’ inability to take care of his wife). To test for possible mediators for the effects of the independent variables on the dependent variables, participants were asked several questions regarding their feelings towards both the plaintiff and the defendant. Participants were also asked about their desire to compensate the plaintiff for his injuries as well as the extent to which they view a rebuttal as an admission of liability. The Global Just World Scale (Lipkus, 1991) was administered after the main dependent variables for exploratory analysis to see whether belief in a just world is a moderator for the effects of injury severity on liability judgments and damage awards. It could be that those more likely to believe in a just world are more motivated to find the defendant liable or award the plaintiff higher damage awards when the plaintiff’s injuries are severe to reestablish justice. There were also several items serving as manipulation checks to ensure participant comprehension and attention to the material. Most of the dependent measures were adapted from Ellis (2002) and are listed in Appendix B.

Procedure

As in the pilot study, participants signed up for the study through an online recruitment site that explained that the study would be on “juror decision making”. Participants came into the study in groups ranging from one to eight participants. Each participant completed the study individually. Upon arrival, participants were informed that they would be reading a transcript and would then have to make a series of judgments. After granting consent, participants were seated and given a packet containing the following forms: 1) a demographic information questionnaire; 2) a transcript of a “slip and fall” tort trial; 3) a verdict form; 4) a post-trial questionnaire; and 5) a manipulation check. Participants were allowed to refer back to the trial
summary when filling out the verdict form but were instructed not to refer back to the trial summary when filling out the post-trial questionnaire and manipulation check. Upon completion of the dependent measures, participants were thanked and debriefed. The entire experiment lasted around forty minutes.

Results

Liability Verdicts

Throughout conditions, eighty-five jurors (47.5%) found for the plaintiff on liability, whereas the remaining ninety-four jurors (52.5%) found for the defendant. Contrary to previous research on fusion, there was no effect of injury severity on liability, $\chi^2(1, N=179) = .271, ns$ (see Figure 4). Thus, more severely injured plaintiffs were not more likely to win on liability. There was also no effect of rebuttal amount on liability, $\chi^2(3, N=179) = 1.071, ns$ (see Figure 4). When broken down into no rebuttal compared to specific rebuttal (low, moderate, and high rebuttal conditions), there was no effect of specific rebuttal on liability, $\chi^2(1, N=179) = .317, ns$ (see Figure 4). Interestingly though, although far from significant the results were in the direction that providing a specific rebuttal tended to help the defendant on liability as compared to not providing a rebuttal. Of the one hundred and thirty-four jurors who were in the specific rebuttal conditions, seventy-two (53.7%) found for the defendant on liability, whereas sixty-two (46.3%) found for the plaintiff. On the other hand, the jurors in the no rebuttal conditions were split almost evenly (twenty-three found for the plaintiff and twenty-two found for the defendant). Finally, as seen in Figure 4 the interaction between injury severity and rebuttal on liability was not significant, $\chi^2(3, N=179) = 3.33, ns$.

Liability was also examined on a continuous 1-7 Likert scale along with the dichotomous yes/no scale as occasionally continuous measures have been found to be more sensitive than dichotomous measures on liability. Three continuous liability items (“To what extent was the defendant negligent?”, “To what extent did the defendant’s actions cause the plaintiff’s injuries?”, and “How strong do you think the evidence is that the defendant’s failure to repair the sidewalk was the cause of the plaintiff’s injuries?”) were combined into one continuous liability measure (Cronbach’s alpha = 0.842). Although trending towards significance and in the expected direction (more liable in the severe injury condition), there was not a main effect of injury severity on the continuous measure of liability, $F(1, 170) = 3.16, p = .077$ (see Figure 5). The main effect of rebuttal amount and the main effect of specific rebuttal, along with the
interaction between injury severity and rebuttal amount, were not significant on continuous liability. Thus, from the liability verdict data there was no evidence of fusion.

An unanticipated result emerged regarding the effect of gender on liability. Males were more pro-defendant than females (59.8% compared to 44.8% finding for the defendant). This result was significant, \( \chi^2(1, N=179) = 4.01, p<.05 \) (see Figure 6). On a Likert scale of 1-7, males \( (M = 5.70, SD = 0.81) \) were also more confident in their liability decisions than were females \( (M = 5.30, SD = 0.85) \), \( t(175) = 3.21, p<.01 \) (see Figure 7). There were no effects of race or political affiliation on liability.

**Damage Awards**

Jurors who found for the plaintiff were asked to make non-economic damage awards. Legally, more severely injured plaintiffs should receive higher damage awards to compensate them for their injuries. (Note: all damage awards are in thousands and are in Swiss Franc currency.) As seen in Figure 8, jurors in the severe injury condition \( (M = 23.11, SD = 14.98) \) awarded more to the plaintiff than jurors in the mild injury condition \( (M = 11.96, SD = 10.90) \), \( F(1, 77) = 13.25, p<.001 \). It was also predicted that there would be a main effect of rebuttal amount on damage awards with higher rebuttals leading to higher damage awards. Jurors in the high rebuttal condition awarded the highest damage awards \( (M = 26.53, SD = 10.95) \), followed by jurors in the no rebuttal condition \( (M = 19.71, SD = 16.40) \), then jurors in the moderate rebuttal condition \( (M = 14.68, SD = 10.56) \), and jurors in the low rebuttal condition \( (M = 9.76, SD = 12.84) \) awarded the least in damages. Therefore, there was a main effect of rebuttal amount on damages, \( F(3, 77) = 6.13, p=.001 \) (see Figure 8). Contrast analyses were performed to test for significant differences between rebuttal conditions collapsed across injury levels (see Figure 8 for all contrasts). There was a significant difference between damage awards when no rebuttal was given and when a low rebuttal was given, \( t(81) = 2.53, p<.05 \). There was a significant difference between damage awards when a low rebuttal was given and when a high rebuttal was given, \( t(81) = -4.01, p<.001 \). There was also a significant difference between damage awards when a moderate rebuttal was given and when a high rebuttal was given, \( t(81) = -2.89, p<.01 \). None of the other contrasts for rebuttal amount across injury levels were significant.

There was an interaction between injury severity and rebuttal amount on damages, \( F(3, 77) = 2.81, p<.05 \) (see Figure 8). Also, although male jurors tended to be more pro-defendant in terms of liability, there were no gender differences in damage awards for those jurors who found
for the plaintiff. Males ($M = 16.40, SD = 14.65$) did not award a different amount of damages than females ($M = 18.06, SD = 13.79$), $t(83) = -0.53, ns$.

Contrast analyses were also performed to test for significant differences between rebuttal conditions within a given injury level. This was the most logical way since a defense attorney would first evaluate the severity of the plaintiff’s injury before determining what type of rebuttal (if any) to give. Within the mild injury level, there was a significant difference between damage awards when a low rebuttal was given ($M = 5.77, SD = 7.50$) and when a high rebuttal was given ($M = 26.25, SD = 12.46$), $t(77) = 3.90, p<.001$. There was a significant difference between damage awards when no rebuttal was given ($M = 8.94, SD = 7.74$) and when a high rebuttal was given, $t(77) = 3.19, p<.01$. There was also a significant difference between damage awards when a moderate rebuttal was given ($M = 11.89, SD = 6.80$) and when a high rebuttal was given, $t(77) = 2.69, p<.01$. There were no significant differences between the no, low, and moderate rebuttal conditions when the plaintiff was mildly injured.

Within the severe injury level, there was a significant difference between damage awards when no rebuttal was given ($M = 29.58, SD = 16.16$) and when a low rebuttal was given ($M = 16.25, SD = 17.22$), $t(77) = 2.50, p<.05$. There was also a significant difference between damage awards when no rebuttal was given and when a moderate rebuttal was given ($M = 17.73, SD = 13.21$), $t(77) = 2.43, p<.05$. There were no other significant differences between the rebuttal conditions when the plaintiff was severely injured.

Although jurors who found for the defendant were not asked to provide damage awards, it is still useful from the perspective of a defense attorney to take these pro-defense jurors’ damage awards (i.e. $0$) into account and examine the outcome in terms of expected loss. Such an analysis would factor in liability outcomes along with likely damage awards. Although there were no main effects or interactions on liability, at least a cursory look into expected losses could be useful. There was a main effect of injury severity on expected loss damage awards, such that jurors in the severe injury condition ($M = 10.52, SD = 15.32$) awarded more than jurors in the mild injury condition ($M = 5.91, SD = 9.70$), $F(1, 171) = 6.13, p<.05$ (see Figure 9). The main effect of rebuttal amount was trending towards significance, $F(3, 171) = 2.20, p = .09$ (see Figure 9). The main effect of specific rebuttal on expected loss was not significant, $F(1, 175) = 1.42, ns$ (see Figure 9). The interaction between injury severity and rebuttal amount on expected loss was not significant, $F(3, 171) = 1.62, ns$ (see Figure 9). Finally, there was a significant interaction
between injury severity and specific rebuttal on expected loss, $F(1, 175) = 4.85, p<.05$ (see Figure 9). In particular, a specific rebuttal led to lower expected losses for the defense when the injury was severe but higher expected losses when the injury was mild.

**Distribution of the Awards**

As typical for juror awards, the awards tended to be positively skewed. In the no recommendation condition in which the only anchor was the plaintiff’s *ad damnum* of 50,000 Francs, the mean damage award was 19,710 Francs ($SD = 16,402$ Francs), the mode was 20,000 Francs, and the range was 0-50,000 Francs (see Figure 10). In the low recommendation condition in which the two anchors were the plaintiff’s *ad damnum* of 50,000 Francs and the defendant’s rebuttal of 3,000 Francs, the mean damage award was 9,760 Francs ($SD = 12,836$ Francs), the mode was 3,000 Francs, and the range was 0-50,000 Francs (see Figure 11). In the moderate recommendation condition in which the two anchors were the plaintiff’s *ad damnum* of 50,000 Francs and the defendant’s rebuttal of 12,000 Francs, the mean damage award was 14,680 Francs ($SD = 10,555$ Francs), the mode was 10,000 Francs, and the range was 0-35,000 Francs (see Figure 12). In the high recommendation condition in which the two anchors were the plaintiff’s *ad damnum* of 50,000 Francs and the defendant’s rebuttal of 25,000 Francs, the mean damage award was 26,530 Francs ($SD = 10,952$ Francs), the mode was 25,000 Francs, and the range was 0-40,000 Francs (see Figure 13).

As evidenced in the award distributions, there were large anchoring effects. As the defendant’s rebuttal increased, so did damage awards. In the no rebuttal condition, the average damage award was relatively close to the midpoint between 0 Francs and the plaintiff’s *ad damnum* of 50,000 Francs. Interestingly, many of the awards in the specific rebuttal conditions were anchored around the defendant’s rebuttal instead of the plaintiff’s *ad damnum*. Most jurors did not use the two anchors as a floor and ceiling and then choose the midpoint. Instead many of these particular jurors found for the plaintiff on liability but then anchored on the defendant’s rebuttal.

**Fusion**

Jurors were asked to what extent (1-7 Likert scale) they considered nineteen different factors when making their liability decision. Some factors (i.e. “The defendant did not repair the sidewalk”) were appropriate to consider in a liability decision, whereas other factors (i.e. “The plaintiff’s reduced quality of family life”) were appropriate to consider in a damages decision.
Jurors were also asked to what extent they considered the same nineteen factors when making their damages decision. In this way, it could be examined to what extent the jurors applied the correct information to the correct decision. Inappropriate usage of information, such as using a damages-related factor when making the liability decision, would indicate legally inappropriate fusion on the part of the jurors.

Similar to Ellis (2002), the jurors were generally quite good at applying the correct information to the correct decision. Repeated-measures analyses were conducted to test for differences in the usage of the various factors in both the liability and awards decisions. There were six factors that were clearly appropriate when making a liability decision. For all of them, the jurors significantly considered each factor to a greater extent when making their liability decision than when making their awards decision. For example, the jurors considered the factor “The defendant did not repair the sidewalk” to a greater extent when making their liability decision than when making their awards decision ($M = 5.55$ compared to $M = 4.33$), $F(1, 169) = 67.78$, $p < .001$ (see Figure 14). There were nine factors that were clearly appropriate when making a non-economic damages decision. For eight of them, the jurors significantly considered each factor to a greater extent when making their awards decision than when making their liability decision. For example, the jurors considered the factor “The plaintiff’s mental anguish” to a greater extent when making their awards decision than when making their liability decision ($M = 4.21$ compared to $M = 3.40$), $F(1, 169) = 37.80$, $p < .001$ (see Figure 15). In all, the jurors exhibited restraint and knowledge of how and when to apply the appropriate information in their decisions. See Table 1 for a complete list of the fifteen factors that clearly fit into one of the decisions and their assigned relative importance.

**Juror Perceptions, Motivations, and Emotions**

Jurors were asked several questions that tapped into their motivations, perceptions, and emotions. A few noteworthy findings are described below. Replicating past findings, jurors felt more sympathy for a severely injured plaintiff ($M = 4.61$, $SD = 1.57$) than for a mildly injured plaintiff ($M = 3.22$, $SD = 1.51$), $F(1, 171) = 35.07$, $p < .001$ (see Figure 16). However, jurors felt the same amount of sympathy towards the defendant regardless of whether the plaintiff was mildly or severely injured. Also replicating past findings, jurors felt a stronger desire to compensate the plaintiff for his injuries when his injuries were severe ($M = 3.90$, $SD = 1.49$) than when his injuries were mild ($M = 2.79$, $SD = 1.42$), $F(1, 171) = 25.61$, $p < .001$ (see Figure 17).
Jurors were asked about their feelings towards both the plaintiff and the defendant. Specifically, jurors were asked on a 1-7 scale how good, dishonest (reverse scored), greedy (reverse scored), trustworthy, believable, and generous each litigant was. Due to the fairly high reliability among the six items for each litigant, the items were combined together to get a general feeling towards each litigant (Cronbach’s alpha = .772 for the plaintiff; Cronbach’s alpha = .779 for the defendant). As seen in Figure 18, jurors had more positive feelings towards the severely injured plaintiff \( (M = 25.91, SD = 5.41) \) than towards the mildly injured plaintiff \( (M = 22.94, SD = 5.22) \), \( F(1, 170) = 14.22, p<.001 \). Despite the discrepancy in feelings towards the plaintiff depending on his injury, as stated above the jurors did not let injury severity impact their liability decisions. Although the severity of the injury to the plaintiff did not impact how the jurors felt towards the defendant, the presence or absence of a specific rebuttal did have an impact on how the jurors felt towards the defendant. As seen in Figure 19, jurors felt more positively towards the defendant when he gave a specific rebuttal \( (M = 27.25, SD = 4.90) \) than when the defendant did not give a rebuttal \( (M = 25.47, SD = 4.19) \), \( F(1, 175) = 4.77, p<.05 \).

Jurors were also asked “Assume that the defendant had given a specific monetary rebuttal to counter the plaintiff’s suggestion for an appropriate amount of non-economic damages. To what extent would you view this as an admission of liability?” There was a main effect of specific rebuttal, in which jurors who were in the no rebuttal condition \( (M = 4.22, SD = 1.74) \) were more likely to say that a specific rebuttal was an admission of liability than were those jurors in the specific rebuttal conditions \( (M = 3.54, SD = 1.49) \) who had already been exposed to a specific rebuttal, \( F(1, 175) = 6.68, p=.011 \) (see Figure 20). There was also a significant interaction in which jurors in the severe injury condition with no specific rebuttal \( (M = 4.50, SD = 1.54) \) thought it much more likely that a specific rebuttal would be an admission of liability than the jurors in the severe injury condition with a specific rebuttal \( (M = 3.28, SD = 1.46) \), whereas the jurors in the mild injury condition with no specific rebuttal \( (M = 3.96, SD = 1.92) \) and the mild injury condition with a specific rebuttal \( (M = 3.80, SD = 1.48) \) were more similar in how they perceived a specific rebuttal, \( F(1, 175) = 4.03, p<.05 \) (see Figure 20). Thus, it appears that providing a specific rebuttal may actually help the defendant, especially when the plaintiff is severely injured.

Mediation

20
As there was a main effect of injury severity on damage awards for pro-plaintiff jurors, mediation tests were conducted to identify possible mediators for the effect of injury severity on damage awards. A Baron and Kenny mediation analysis was done to examine the desire to compensate the plaintiff as a mediator. First, a regression analysis demonstrated that injury severity was a significant predictor of damage awards ($\beta = 11.16$, $t = 3.95$, $p < .001$). Second, injury severity was found to be a significant predictor of desire to compensate the plaintiff for his injuries ($\beta = 1.60$, $t = 5.85$, $p < .001$). Third, desire to compensate the plaintiff was a significant predictor of damage awards ($\beta = 4.92$, $t = 5.52$, $p < .001$). Finally, when both injury severity and desire to compensate the plaintiff were included in the model, desire to compensate the plaintiff was still a significant predictor of damages ($\beta = 4.07$, $t = 3.87$, $p < .001$) whereas injury severity was no longer a significant predictor ($\beta = 4.65$, $t = 1.50$, ns) (see Figure 21). A Sobel test also confirmed desire to compensate the plaintiff as a full mediator for the effect of injury severity on damages ($Z = 4.01$, $p < .001$). Therefore, with a more severely injured plaintiff jurors felt a higher desire to compensate him for his injuries. This in turn led to higher damage awards.

A mediation analysis was also conducted to test for sympathy for the plaintiff as a mediator for the effect of injury severity on damages. As stated above, injury severity was first found to be a significant predictor of damage awards ($\beta = 11.16$, $t = 3.95$, $p < .001$). Second, injury severity significantly predicted sympathy for the plaintiff ($\beta = 1.35$, $t = 4.40$, $p < .001$). Third, sympathy for the plaintiff significantly predicted damage awards ($\beta = 2.66$, $t = 2.80$, $p < .01$). Finally, when both injury severity and sympathy for the plaintiff were included in the model, sympathy for the plaintiff was no longer a significant predictor of damage awards ($\beta = 1.35$, $t = 1.34$, ns), whereas injury severity remained a significant predictor ($\beta = 9.34$, $t = 2.99$, $p < .01$) (see Figure 22). A Sobel test showed sympathy for the plaintiff to be a partial mediator for the effect of injury severity on damage awards ($Z = 2.36$, $p < .05$). Thus, more severely injured plaintiffs inspired more sympathy from the jurors, which led to higher damage awards. Mediation analyses were also conducted to test whether general feelings towards the plaintiff and general feelings towards the defendant were mediators for the effect of injury severity on damages. Neither was found to be a significant mediator.

As reported above, there was a surprising main effect of gender on liability verdict, such that females tended to be more pro-plaintiff than males. Analyses were conducted to test for possible mediators for this effect. Again, desire to compensate the plaintiff was found to be a
mediator. First, gender significantly predicted liability verdict ($\beta = -.60$, Wald $t = 3.98$, $p<.05$).
Second, gender predicted desire to compensate the plaintiff ($\beta = .51$, $t = 2.22$, $p<.05$). Third, desire to compensate the plaintiff predicted liability verdict ($\beta = -.50$, Wald $t = 21.02$, $p<.001$). Finally, when both gender and desire to compensate the plaintiff were included in the model, desire to compensate the plaintiff was still a significant predictor of liability verdict ($\beta = -.48$, Wald $t = 19.23$, $p<.001$), whereas gender was no longer a significant predictor of liability verdict ($\beta = -.42$, Wald $t = 1.69$, ns) (see Figure 23). A Sobel test also confirmed desire to compensate the plaintiff as a full mediator for the effect of gender on liability verdict ($Z = 2.21$, $p<.05$). Thus, it appears that female jurors felt a stronger desire to compensate the plaintiff than male jurors and they acted on this desire by finding for the plaintiff on liability.

The measure of general feelings towards the plaintiff was also tested as a potential mediator for the effect of gender on liability verdict. As reported above, gender significantly predicted liability verdict ($\beta = -.60$, Wald $t = 3.98$, $p<.05$). Second, gender predicted general feelings towards the plaintiff ($\beta = 2.01$, $t = 2.47$, $p<.05$). Third, general feelings towards the plaintiff predicted liability verdict ($\beta = -.12$, Wald $t = 14.12$, $p<.001$). Finally, when both gender and general feelings towards the plaintiff were included in the model, general feelings towards the plaintiff was still a significant predictor of liability verdict ($\beta = -.11$, Wald $t = 12.53$, $p<.001$), whereas gender was no longer a significant predictor of liability verdict ($\beta = -.41$, Wald $t = 1.69$, ns) (see Figure 24). A Sobel test also confirmed that the measure of general feelings towards the plaintiff was a full mediator for the effect of gender on liability verdict ($Z = 2.43$, $p<.05$). It seems that female jurors felt more positively towards the plaintiff than did male jurors, and these positive feelings translated into more pro-plaintiff verdicts. Sympathy towards the plaintiff, general feelings towards the defendant, and perception of a specific rebuttal as an admission of liability were not found to be mediators for the effect of gender on liability verdicts.

As reported above, there was a main effect of rebuttal amount on damages for pro-plaintiff jurors. However, no meditational analyses could be performed as rebuttal amount was not found to be a significant predictor of damage awards ($\beta = 2.10$, $t = 1.52$, ns).

Moderation

The Global Just World Scale (Lipkus, 1991) was administered as an exploratory measure after the main dependent variables to examine whether Belief in a Just World was a moderator for the effect of injury severity on both liability verdicts and non-economic damage awards.
There were seven items on the scale. Due to the decent internal reliability of the seven items (Cronbach’s alpha = .722), all the items were combined to create a composite Belief in a Just World score. Belief in a Just World was not found to be a moderator for the effect of injury severity on damage awards ($\beta = .09, t = .29, ns$). Belief in a Just World was also not found to be a moderator for the effect of injury severity on liability verdicts ($\beta = -.05, Wald t = 2.59, ns$). Therefore, it appears that those who had a higher belief in a just world were not more likely to find for the plaintiff on liability or to award him higher damage awards.

Discussion

Liability

The often reported finding that more severely injured plaintiffs are more likely to win on liability was not replicated. Instead, the severity of the injury had no impact on liability verdicts. Although this finding was the opposite of what was anticipated, this is exactly how the law dictates that jurors should act. Yet the null result is puzzling. It is worth mentioning that the present study used a between-subjects design, so the jurors were not exposed to both injury levels before making their liability decisions, which would have probably led to significantly more liability verdicts in favor of the severely injured plaintiff over the mildly injured plaintiff. As stated above, the transcript for this case was adapted from the balanced evidence version of Ellis (2002). She reported that 57.5% of the jurors in this balanced evidence condition found for the plaintiff on liability. By comparison, only 47.5% of the jurors in the present study found for the plaintiff on liability.

There are four possible explanations for this discrepancy. First, Ellis (2002) used a community sample of participants in her study. The college-age sample in the present study was likely more adept at understanding the jury instructions, which expressly stated that the severity of the injury should not be taken into account when deciding liability. Second, the plaintiff in the transcript was an elderly man. The transcript detailed how he tripped over the sidewalk and injured himself, affecting many other aspects of his life. Perhaps the college-age sample had a difficult time envisioning such an accident and empathizing with the plaintiff and thus had little sympathy for him. Greene and Bornstein (2003) report that similarity of the jurors to the litigants is one of the few variables that may have some predictive validity as to how jurors may decide. Third, Ellis (2002) was conducted in the context of a courthouse, which could have affected the jurors in a different way than the jurors in the present study. Perhaps the courthouse
jurers were more likely to find for the plaintiff because different norms were evoked, namely that of helping the victim which might have been more salient in the courthouse. And fourth, it is possible that the jurors in the present study did not quite understand the burden of proof in a civil case. In a criminal case, which is much more widely known by the general public, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. However, in a civil case the standard is much more liberal. Instead the plaintiff must prove that it is more likely than not (i.e. above 50%) that the defendant is liable for the plaintiff’s injuries. Indeed, in the manipulation check only 20.7% of the jurors identified the correct burden of proof in a civil case. The rest of the jurors thought that there was a more conservative burden of proof in a civil case. This could explain the somewhat slight bias towards finding for the defendant on liability in this sample. Whatever the explanation, it is encouraging that the jurors in this sample were not affected by injury severity when determining their liability verdicts. Pinpointing the exact reason for this finding could be extremely helpful for civil defense attorneys.

It was also predicted based on personal communication with Ellis that jurors would perceive a specific rebuttal (regardless of size) by the defendant as an admission of liability. This would lead to more liability verdicts against the defendant when he gave a rebuttal than when he abstained from giving a rebuttal. This hypothesis was not supported. In fact, although far from significant the data seemed to be in the direction that giving a rebuttal actually helped the defendant on liability, especially when the injury to the plaintiff was severe. As mentioned above, the jurors had more positive feelings towards the defendant when he provided a rebuttal than when he declined to discuss damages, again especially in the severe injury condition. Perhaps the jurors liked the fact that the defendant was accepting some responsibility and at least taking the time to address the issue of damages. It certainly did not hurt the defendant to discuss damages. In fact, an examination of damage awards may suggest that discussing damages actually helped the defendant because the presence of a lower counter-anchor gave jurors an alternative number to anchor on when making their damages award, thereby reducing awards.

Finally, it is worth discussing the surprising finding that men were more pro-defendant (at least in terms of liability verdicts) than were women. In their review of factors that offer some predictive validity of how jurors may decide, Greene and Bornstein (2003) report that gender, along with other demographic factors such as age, race, and political affiliation, are poor predictors of how a juror will act. Instead, personality variables such as authoritarianism as well
as case-specific attitudes like one’s opinion toward tort reform, tend to be much more valid predictors. (As mentioned earlier, similarity to the litigants may be slightly predictive as well.) Therefore, given the lack of support for demographic factors as being predictive of jurors’ decisions, the present finding is intriguing. Upon closer examination of the case materials, there is nothing to suggest that women would be more inclined to find for the plaintiff. Unlike a rape case or some other sexual assault case, a slip-and-fall case is gender-neutral. The plaintiff was a male, albeit an elderly male. Perhaps the female jurors emphasized with the plaintiff’s wife, who was also negatively impacted by the accident. Mediation analyses suggest that female jurors felt a stronger desire to compensate the plaintiff for his injuries and also had better overall feelings towards the plaintiff. These emotions led to pro-plaintiff liability verdicts. The reason for these feelings is not easily apparent, but the present study does offer some tentative support that gender may at least be a useful characteristic to consider when selecting a jury.

**Damages**

As predicted, there was a main effect of injury severity on damages. The jurors correctly followed legal guidelines and awarded more money to the more severely injured plaintiff. Not only did this replicate past findings, but it also suggests that the jurors were paying close attention to the transcripts.

An inspection of the mediators for the effect of injury severity on damages also hints at what is motivating jurors to award more money to a severely injured plaintiff. Bornstein (1998) found that feelings towards the plaintiff and defendant as well as the desire to compensate the plaintiff were mediators for the effect of injury severity on liability verdicts. He reasoned that with more severely injured plaintiffs, jurors feel more positively towards the plaintiff and more negatively towards the defendant and they have a stronger desire to compensate the plaintiff for his injuries. This in turn leads to more pro-plaintiff liability verdicts. Although the present study did not find any main effects on liability, it did find a main effect of injury severity on damages, which was mediated by desire to compensate the plaintiff (full mediator) and by sympathy for the plaintiff (partial mediator). Therefore, it appears that for the jurors who found for the plaintiff on liability, they felt more sympathy for the severely injured plaintiff and a stronger desire to compensate him for his injuries, which is what drove the high damage awards. Interestingly, although injury severity had some impact on feelings towards the plaintiff, it had no effect on feelings towards the defendant, as Bornstein (1998) found. This implies that most of
the jurors did not see the defendant as too liable for the negative outcome to the plaintiff. This suggests that the accident was difficult for the college-age mock jurors to empathize with.

There was also a main effect of rebuttal amount on damages. Jurors in the high rebuttal condition awarded the highest amount of damages, followed by jurors in the no rebuttal condition, then jurors in the moderate rebuttal condition, and then jurors in the low rebuttal condition. This main effect is important because it suggests that the specific amount that defendants provide for their rebuttal can be crucial in terms of final damage awards. Even though the recommendations from both litigants were made in an unfamiliar currency (Swiss Francs), the jurors still internalized these figures and used them as guides for making their final awards.

A look at the distribution of awards for the pro-plaintiff jurors in the different rebuttal amount conditions tells an interesting story. In the no rebuttal condition in which the only anchor was the plaintiff’s *ad damnum* of 50,000 Francs, jurors indeed used 0 and 50,000 as a floor and ceiling. But the jurors did not really anchor on the plaintiff’s recommendation. Instead most jurors anchored on 0 and awarded a relatively low award, or else they compromised and awarded something in between 0 and 50,000. Thus, although all these jurors found for the plaintiff on liability, they did not anchor on his recommendation. The low, moderate, and high rebuttal conditions tell a similar story. In these conditions, several jurors used the two recommendations as a floor and ceiling and then chose the midpoint between the two as their award. But most of the jurors anchored on the defendant’s recommendation, either choosing the exact same number as the defendant’s rebuttal or else adjusting slightly before reaching their preferred award.

This is an important finding due to the scarcity of anchoring and adjustment literature involving competing anchors. It appears that most jurors are not inclined to do a simple average of the two anchors. Instead, the anchor that they believe to be more credible may have a larger impact on their final damage award. Jurors may anchor on this anchor instead of choosing the midpoint between the two anchors. This pattern of results is similar to Raitz et al. (1990), in which most jurors tended to favor the recommendation of one expert over the other instead of splitting the difference between the two recommendations. This study differs from the Raitz et al. (1990) study in that the recommendations came from attorneys instead of economic experts, but nonetheless the jurors seemed to side with the defense attorney’s recommendation. Perhaps
the reason for this picture of the distribution of the awards among pro-plaintiff jurors is that they might not have been totally sold on the plaintiff’s case. In a sense, they compromised. They found for the plaintiff on liability, but then used the defendant’s rebuttal as an anchor when making their damage awards. This is similar to how a jury may find for the plaintiff on liability to appease the pro-plaintiff jurors but then keep the damages award low to appease the pro-defendant jurors. In the context of the current study, perhaps even the pro-plaintiff jurors did not think that the plaintiff had a legitimate case, so they awarded him some money but not as much as he requested.

The interaction for the effect of injury severity and rebuttal amount on damages along with follow-up contrasts offers an insight into which rebuttal amounts are the best options for the defendant to go with. With a mildly injured plaintiff, the only rebuttal that seemed to hurt the defendant was a high rebuttal. By setting the floor high, the defendant ensured that damage awards would be higher. Damage awards remained lower with the low and moderate rebuttals. Surprisingly, in the no rebuttal condition for the mild injury in which the jurors were only exposed to one anchor, damage awards remained low. Perhaps the jurors wanted to award the plaintiff some money but felt that his request of 50,000 Swiss Francs was excessive for such a mild injury. Therefore, they did not come too close to the plaintiff’s ad damnum. With a severely injured plaintiff, the best strategy for the defendant seemed to be to go with the low or moderate rebuttal. There was no real contrast effect for the low rebuttal. Instead jurors treated it much the same as a moderate rebuttal. On the other hand, a high rebuttal and particularly no rebuttal were particularly damaging to the defendant when the plaintiff was severely injured. It is possible that jurors were more receptive to the plaintiff’s ad damnum when his injuries were severe than when they were mild. This led to higher damage awards in the no rebuttal condition when the plaintiff was severely injured than when he was mildly injured.

The expected loss comparison taking into account both liability verdicts and damage awards tell a similar story as the pro-plaintiff juror only damage award picture. The only difference is that the effects are somewhat muted as there were no significant effects on liability to report. For the mildly injured plaintiff, all rebuttal amounts (none, low, moderate, and high) led to similar expected losses, although the trends remained in the same direction as with the pro-plaintiff jurors only. For the severely injured plaintiff, the worst strategy seemed to be to not provide a rebuttal. Although it did not lead to significantly higher liability verdicts, it still
resulted in higher damage awards, perhaps because jurors were more willing to consider the plaintiff’s *ad damnum* when he was severely injured and there was only one anchor provided.

*Fusion*

Given the often-reported finding that injury severity impacts liability verdicts (i.e. Bornstein, 1998; Greene, Johns, & Bowman, 1999b; Robbennolt, 2000), jurors showed surprising awareness of which information was appropriate to a liability decision and which information was appropriate to an awards decision. For fourteen of the fifteen fusion items that could be easily classified as either a liability item or a non-economic awards item, jurors considered it to a significantly greater extent in the appropriate decision. This mimicked the results of Ellis (2002), in which the jurors were generally good at recognizing which information was appropriate to each decision and compartmentalizing those decisions.

Although the pattern of considering liability information to a greater extent in a liability decision and considering awards information to a greater extent in an awards decision is encouraging, it does not tell the whole story. While the results show that jurors considered the correct information more than the incorrect information, the results still suggest that they did consider the inappropriate information to a large extent. An example can illustrate this point: take the item “The defendant did not repair the sidewalk”. This item is appropriate to consider in a liability decision. The ideal scenario free of fusion would be a mean response of around seven (considered to a great deal) for the liability decision and a mean response of around one (did not consider at all) for the awards decision. This would suggest that that particular item was fully considered in one's liability decision and not at all in the awards decision. However, a look at the actual results shows this not to be the case. The mean for the liability decision was 5.55 and the mean for the awards decision was 4.33. This shows that although the jurors did not consider this particular item to as great of an extent in their awards decision as in their liability decision, they were still taking it into account in their awards decision to a large extent because the mean was past the midpoint of the scale. In fact, all items of information were considered to some extent for each decision. The lowest mean response was still well above a three on a 1-7 Likert scale.

Perhaps the reason for this pattern of results is because the jurors simply did not want to admit that they failed to consider information from the transcript when making their decisions. The juror instructions at the end of the transcript detailed how they were only supposed to use
liability information for a liability decision and awards information for an awards decision. The jurors did seem to understand that rule to some extent, as evidenced by their correct self-reported consideration and application of the information and the absence of a main effect of injury severity on liability. However, there was still some self-reported evidence of fusion since the jurors apparently still considered inappropriate information in their decision.

Although the self-reported fusion results suggest that there was a fair amount of fusion occurring, it did not happen where it matters most: injury severity impacting liability verdicts. As mentioned earlier, the classic finding is that more severely injured plaintiffs are more likely to win on liability (i.e. Bornstein, 1998; Greene, Johns, & Bowman, 1999b; Robbennolt, 2000). However, the present study did not replicate this result. The severely injured plaintiff was no more likely to win on liability than the mildly injured plaintiff. This encouraging result (at least for the defense) could be attributed to a variety of factors. But one that offers some promise is that the jury instructions stressed the proper application of information to the various decisions. To reduce fusion, the defense attorney should repeatedly emphasize these instructions as much as possible to the jurors.

Limitations and Future Directions

There are a few limitations of the current study to note. First, the currency of the recommendations and damage awards was reported in Swiss Francs, which was unfamiliar to the jurors. The reason for this was that for purposes of comparison across conditions, it was desired that the low, moderate, and high rebuttals all be the same amount. But the problem is that more severely injured plaintiffs should receive more in damages than more mildly injured plaintiffs and thus a high rebuttal for a severely injured plaintiff should be higher than a high rebuttal for a mildly injured plaintiff. The way to circumvent this problem was to create all of the recommendations in a currency the jurors were unfamiliar with so they did not realize, for example, that the low recommendation, while maybe appropriate for a mild injury, was far too low for a severe injury. As reported above, there was no real contrast effect with the low rebuttal. Jurors did not inflate the damage award after hearing a low rebuttal. Instead jurors did discount the low rebuttal to some extent and there was no difference in awards between the low and moderate rebuttal conditions. While one could take this as evidence that a very low rebuttal does not hurt the defendant, one must also be cautious. Since it was not known exactly how low
the jurors perceived the low rebuttal to be, it is not certain that a low rebuttal is always the safe route to go with.

The second limitation to the study was the nature of the case. The mock jurors used were all young adults and thus probably had a difficult time empathizing with the elderly plaintiff after he fell and injured himself. To many of the jurors, the injuries to the plaintiff might have seemed excessive for merely tripping on a crack in the sidewalk. Also, many of the mock jurors are used to sidewalks in the area being in poor condition and are accustomed to simply avoiding the cracks. This transcript was based off of an actual case, but of course in an actual trial a community sample of jurors would be used instead of an entirely college-age sample. A future direction could be to use an accident that is more accessible and plausible to a college-age population of jurors. This would lead to a higher sense of personal involvement with the case, which might imply more attention paid to the materials and a stricter following of the juror instructions.

A third limitation was the medium used to convey the case to the jurors. A far more ecologically valid approach would be to immerse the jurors in an actual trial in which they could see all of the litigants and other major players in the trial. As this is often not feasible, transcripts were used. Most studies that use transcripts for their study materials use transcripts that are a couple of pages long and that highlight the main points of the case. This likely leads to stronger main effects. However, the transcript is the present study was roughly thirteen pages and was much more detailed than the typical transcript-based study. While this could possibly explain the lack of main effects, it is at the same time quite useful because a long and boring transcript is more ecologically valid than a brief summary transcript common to many other studies. In an actual trial, the severity of the plaintiff's injuries and the defendant's recommendation amount will be among the many pieces of information that the jurors are exposed to. So the lack of major results in the present study may more closely resemble the patterns from actual trials than many empirical studies would suggest.

A final limitation is that this was a juror study, not a jury study. There was no opportunity for the jurors to deliberate and reach a group decision. The decision to use a juror study is actually quite ecologically valid as most lawsuits do not go to trial and are settled by judges, arbitrators, or mediators (Greene & Bornstein, 2003). So often it is a single person who makes the decisions. But of course many cases do go to a jury trial, and Smith and Greene
(2005) suggest that juries may come to different outcomes than jurors because in a jury one gets to hear arguments other than their own and consider new information. Also, juries can help correct for inappropriate usage of information, which could reduce the amount of fusion. On the other hand, juries like all other groups are prone to group polarization. Therefore, any initial tendencies, good or bad, can actually be exacerbated in a deliberation. An interesting future direction might be to examine this study in the context of a deliberating jury and see how the results differ.

Defense Strategy

One of the primary aims of this paper was to offer advice to civil defense attorneys so they can get the best possible outcome for their clients. Clearly, the best outcome is to avoid being found liable altogether. Such an outcome would eliminate any fear of exorbitant damages. The issue at hand is whether the defense attorney should focus entirely on contesting liability and avoid any talk of damages or else try to mitigate damages by offering a lower rebuttal. A big fear for a defense attorney is that a specific rebuttal in response to the plaintiff’s ad damnum may be viewed as an implicit admission of liability. On the other hand, if the defendant is found liable anyways, then damage awards may be quite high if she has not offered a lower rebuttal for jurors to anchor on.

The data presented here suggest that jurors do not necessarily see a rebuttal by the defense as an admission of liability. In the transcript the defense attorney stressed that she did not believe her client was liable but that she could not always predict how jurors would decide so she would discuss damages in case she did not receive a favorable outcome. Perhaps jurors saw this as part of a well-prepared case and concluded that the defense attorney was just covering her bases. And the result was, particularly when they had been exposed to a specific rebuttal and had heard the rationale for providing one, jurors did not tend to see a rebuttal as an admission of liability. In fact, providing a rebuttal actually made the defendant more well-liked by the jurors than when the defendant focused all of her energy on contesting liability and abstained from discussing damages. It is likely though, that the justification for providing the rebuttal is crucial for it to be effective in not negatively affecting liability verdicts.

Kagel (2010) reports similar conclusions from her experiences as a trial consultant. She argues that by ceding the issue of damages, defense attorneys are giving the sole perspective on damages to the plaintiff’s attorney. And she reports that although many defense attorneys fear
that jurors will take a damages discussion as an admission of liability, most jurors do not perceive it as such. One of the benefits of a damages discussion that she points out is that it gives jurors an alternative figure to consider if they feel uncomfortable with the high recommendation provided by the plaintiff’s attorney. Also, if the jury appreciates the defendant’s discussion on damages, they may be more receptive to her argument on liability, potentially strengthening the defendant’s chances of winning on liability.

The results also lend strong support to the anchoring and adjustment heuristic. In some cases there was purely anchoring as many of the final awards were the exact figure provided by one of the attorneys, and in other cases there was some adjustment from that anchor as mock jurors slightly adjusted upwards or downwards from an anchor. Overall, it was found that the higher the rebuttal, the higher the damage awards tended to be. Surprisingly, there was no real contrast effect with the low rebuttal in that it did not lead to higher awards than a moderate rebuttal, but this must be interpreted cautiously because the recommendations were in a foreign currency and the jurors might not have perceived the rebuttal to be as low as intended. But as a general rule the defendant should avoid a high rebuttal at all costs and instead opt for a low or moderate rebuttal.

Finally, the desire to compensate the plaintiff and sympathy for the plaintiff seemed to be factors driving up damage awards. Since jurors, especially female jurors in this case, tended to be driven by positive feelings towards the plaintiff, the defense attorney would do well to reduce those feelings. This could be done by drawing attention to the plaintiff’s carelessness leading up to the accident, depersonalizing the plaintiff, or tactfully minimizing the accident’s impact on the plaintiff’s life. With a less sympathetic plaintiff, jurors would likely have less desire to award him high damages.
References


Table 1. Ratings of the extent to which jurors considered fifteen different pieces of information when making liability and damages decisions.\textsuperscript{1,2}

<table>
<thead>
<tr>
<th>Information</th>
<th>Consideration given when making liability decision\textsuperscript{3}</th>
<th>Consideration given when making damages decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability-Relevant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The defendant did not repair the sidewalk</td>
<td>5.55\textsuperscript{a}</td>
<td>4.33\textsuperscript{b}</td>
</tr>
<tr>
<td>The crack in the sidewalk started seven years ago, three years after the defendant bought the house</td>
<td>4.69\textsuperscript{a}</td>
<td>4.01\textsuperscript{b}</td>
</tr>
<tr>
<td>The defendant knew he was responsible for maintaining a reasonably safe sidewalk</td>
<td>5.61\textsuperscript{a}</td>
<td>4.88\textsuperscript{b}</td>
</tr>
<tr>
<td>The size of the crack in the sidewalk</td>
<td>5.49\textsuperscript{a}</td>
<td>4.70\textsuperscript{b}</td>
</tr>
<tr>
<td>The plaintiff’s behavior when walking down the sidewalk</td>
<td>4.67\textsuperscript{a}</td>
<td>4.23\textsuperscript{b}</td>
</tr>
<tr>
<td>The number of people who had tripped over the crack in the sidewalk before the plaintiff did</td>
<td>5.03\textsuperscript{a}</td>
<td>4.53\textsuperscript{b}</td>
</tr>
<tr>
<td>Damages-Relevant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The plaintiff’s physical discomfort</td>
<td>3.80\textsuperscript{a}</td>
<td>4.36\textsuperscript{b}</td>
</tr>
<tr>
<td>The plaintiff’s mental anguish</td>
<td>3.40\textsuperscript{a}</td>
<td>4.21\textsuperscript{b}</td>
</tr>
</tbody>
</table>
The plaintiff’s reduced quality of family life 3.66<sup>a</sup> 4.27<sup>b</sup>

The severity of the plaintiff’s injuries 4.48<sup>a</sup> 4.53<sup>a</sup>

The plaintiff’s inability to take care of his wife 3.65<sup>a</sup> 4.15<sup>b</sup>

Any possible lasting impact of the plaintiff’s injuries 4.10<sup>a</sup> 4.44<sup>b</sup> *

To compensate the plaintiff for his non-economic loss 3.44<sup>a</sup> 4.25<sup>b</sup>

Amount the plaintiff recommended for non-economic damage award 3.72<sup>a</sup> 3.99<sup>b</sup> #

Amount the defendant recommended for non-economic damage award 3.81<sup>a</sup> 4.11<sup>b</sup> $

---

1 All differences significant at \( p < .001 \) unless otherwise noted
2 Four pieces of information that did not neatly fit into either a liability decision or a non-economic damages decision are excluded
3 1 = Not at all 7 = A great deal
* \( p = .004 \) # \( p = .036 \) $ \( p = .021 \)
Figure 1. Pilot study. Ratings of severity of the injury broken down by injury condition. 1-7 Likert scale. ±1 standard error bars included.

Figure 2. Pilot study. Damage awards broken down by injury condition. All awards are in thousands and are in U.S. currency. ±1 standard error bars included.
Figure 3. Pilot study. Liability ratings for if liability had not already been determined broken down by injury condition. 1-7 Likert scale. ±1 standard error bars included.

Figure 4. Percentage of jurors finding for the plaintiff on a dichotomous liability verdict, broken down by injury condition and rebuttal amount.
Figure 5. Continuous liability broken down by injury condition. Note: Three 1-7 Likert scale items were combined to obtain one continuous measure of liability. Higher numbers indicate greater liability. ±1 standard error bars included.

Figure 6. Percentage of jurors finding for the plaintiff on a dichotomous liability verdict broken down by gender.
Figure 7. Confidence in dichotomous liability verdict broken down by gender. 1-7 Likert scale. ±1 standard error bars included.

Figure 8. Damage awards for pro-plaintiff jurors only broken down by injury condition and rebuttal amount. All awards are in thousands and are in Swiss Francs. ±1 standard error bars included.
Figure 9. Expected loss damage awards taking all jurors into account, broken down by injury condition and rebuttal amount. All awards are in thousands and are in Swiss Francs. ±1 standard error bars included.

Figure 10. Distribution of the damage awards for the no rebuttal condition. All awards are in thousands and are in Swiss Francs. The only anchor provided in this condition was the plaintiff’s *ad damnum* of 50,000.
Figure 11. Distribution of the damage awards for the low rebuttal condition. All awards are in thousands and are in Swiss Francs. The anchors provided in this condition were the plaintiff’s *ad damnum* of 50,000 and the defendant’s rebuttal of 3,000.

Figure 12. Distribution of the damage awards for the moderate rebuttal condition. All awards are in thousands and are in Swiss Francs. The anchors provided in this condition were the plaintiff’s *ad damnum* of 50,000 and the defendant’s rebuttal of 12,000.
Figure 13. Distribution of the damage awards for the high rebuttal condition. All awards are in thousands and are in Swiss Francs. The anchors provided in this condition were the plaintiff’s *ad damnum* of 50,000 and the defendant’s rebuttal of 25,000.

Figure 14. Fusion item. Importance of the item “The defendant did not repair the sidewalk” to both the liability decision and the awards decision. 1-7 Likert scale. ±1 standard error bars included.
Figure 15. Fusion item. Importance of the item “The plaintiff’s mental anguish” to both the liability decision and the awards decision. 1-7 Likert scale. ±1 standard error bars included.

Figure 16. Sympathy for the plaintiff broken down by injury condition. 1-7 Likert scale. ±1 standard error bars included.
Figure 17. Desire to compensate the plaintiff broken down by injury condition. 1-7 Likert scale. ±1 standard error bars included.

Figure 18. A measure of general feelings towards the plaintiff broken down by injury condition. Note: Six 1-7 Likert scales were combined to get one aggregate measure of overall feelings towards the plaintiff. ±1 standard error bars included.
Figure 19. A measure of general feelings towards the defendant broken down by the presence or absence of a specific rebuttal. Note: Six 1-7 Likert scales were combined to get one aggregate measure of overall feelings towards the defendant. ±1 standard error bars included.

Figure 20. Perception of a specific rebuttal as an admission of liability broken down by the presence or absence of a rebuttal and injury condition. 1-7 Likert scale. ±1 standard error bars included.
Figure 21. Desire to compensate the plaintiff as a full mediator for the effect of injury severity on damage awards for pro-plaintiff jurors only. When the mediator is included, injury severity is no longer a significant predictor of damage awards.
Figure 22. Sympathy for the plaintiff as a partial mediator for the effect of injury severity on damage awards for pro-plaintiff jurors only. When the mediator is included, the influence of injury severity on damage awards is reduced.
Figure 23. Desire to compensate the plaintiff as a full mediator for the effect of gender on dichotomous liability verdicts. When the mediator is included, gender is no longer a significant predictor of liability verdicts.
Figure 24. General feelings towards the plaintiff as a full mediator for the effect of gender on dichotomous liability verdicts. When the mediator is included, gender is no longer a significant predictor of liability verdicts.
Appendix A – Trial Summary

1. Gender: Male Female (please circle one)

2. Age: ______________

3. How do you classify your ethnic or racial identity? (check all that apply)
   ________ African-American/Black
   ________ Asian/Pacific Islander
   ________ Hispanic/Latin(a)(o)
   ________ Native-American
   ________ Caucasian/White
   ________ Other

4. How do you see yourself politically? (circle the number that best represents yourself)
   Very liberal 1 2 3 4 5 6 7 Very conservative

5. Major: (please circle one)
   Psychology Economics Political Science Communication
   Natural Sciences English Education Other
   Undeclared

Trial Summary

In the following few pages, you will read a summary of a civil trial based off of an actual case in which one person (called the “plaintiff”) is suing another person (called the “defendant”). In this case, Thomas Marks (the plaintiff) tripped and fell over a crack in the sidewalk in front of James Johnson’s house. Mr. Marks is claiming that he was injured in the fall and that Mr. Johnson is liable for his injuries because Mr. Johnson did not take appropriate care of the sidewalk in front of his house,
and that the condition of the sidewalk was unreasonably dangerous. Mr. Marks is seeking money to compensate him for his injuries. Mr. Johnson claims that the condition of the sidewalk was not unreasonably dangerous and that he is not liable for Mr. Marks’s injuries.

First you will read a summary of opening statements, in which Mr. Marks’s and Mr. Johnson’s attorneys give brief summaries of the evidence they will present. Then you will read a summary of the testimony of the witnesses who testified for each side. Each witness was examined (that is, questioned) by his attorney, and then cross-examined by the opposing attorney. After the witnesses’ testimony, you will read a summary of the attorneys’ closing arguments, in which they summarize the evidence they have presented. Finally, you will read a summary of the judge’s instructions on how to reach a decision in this case. You will then answer a series of questions about the case. Note that this case happened in Switzerland, which uses a different currency, the Swiss Franc. Therefore, all currency figures will be presented in Swiss Francs and you will be asked to award non-economic damages in Swiss Francs as well. As a mock juror, it is your duty to read the trial summary carefully and take your time when answering the questions. A summary of the evidence and jury instructions from the trial follow.

Marks v. Johnson

The people involved in this trial are:
Thomas Marks- The plaintiff
Michael Phillips- Thomas Marks’s attorney
James Johnson- The defendant
Amanda Dillon- James Johnson’s attorney
Sarah O’Connell- Neighbor

Opening Statements

Plaintiff’s opening statement: Mr. Michael Phillips, who is the attorney for Thomas Marks (the plaintiff), says that Tom Marks and his wife Mary were walking down the sidewalk in their neighborhood four years ago, enjoying the spring afternoon, when all of a sudden he tripped over something on the sidewalk and fell. When Tom looked at the sidewalk to see what he had tripped over, he saw this huge uneven section of the sidewalk, where one part was much higher than the other. He had caught his foot on the raised section of the sidewalk and tripped
and fell. In the fall, Tom landed on his face, causing his glasses to break and cut his forehead, which started bleeding. He got up and put his handkerchief over the cut and he and his wife slowly walked back to their house. Mary called an ambulance and the ambulance took them to the emergency room. The doctor there told him that he needed stitches. Tom received 6 stitches on his forehead where the cut was. Tom was a little dizzy after the fall and at the hospital. His ears were ringing. The doctor wanted to keep him for one day and night to make sure the injury to his head wasn’t more severe. The cracked sidewalk is in front of a house owned by Mr. James Johnson. As the judge will instruct you, in Switzerland a property owner is legally responsible for the condition of the sidewalk that is directly next to his or her property. Further, if the sidewalk is in an unreasonably dangerous condition, the property owner is liable for any injuries caused by the dangerous sidewalk. Mr. Johnson was responsible for the sidewalk in front of his house, so Tom is claiming that Mr. Johnson is liable for Tom’s medical expenses and lost wages when he couldn’t work, as well as for the pain and suffering Tom has gone through over the past four years.

Defendant’s opening statement: Ms. Amanda Dillon, who is the attorney representing the defendant Mr. James Johnson, states that there’s a lot of agreement in this case. Both sides agree that Mr. Marks fell on the sidewalk in front of Jim’s house, they both agree that Mr. Marks’ injuries were because of that fall, and they will both agree that the medical treatment and bills for treatment Mr. Marks received after the fall were necessary and reasonable. What the plaintiff and Jim disagree about is the condition of the sidewalk. The sidewalk in front of Jim’s house was reasonably safe, not dangerous. The crack in the sidewalk was barely noticeable, and many people walked over it each day without tripping. The plaintiff wasn’t looking where he was walking. The judge will tell you that the law requires property owners to take reasonable care of their property, and keep it reasonably safe. It doesn’t say they need to keep it perfect, just reasonable. The sidewalk was reasonably safe; it was not unreasonably dangerous. It was a small crack, like those you see all over the city and county. Jim denies being liable for the plaintiff’s injuries that were caused by his own clumsiness, and on a sidewalk that was reasonably safe.

Witness Testimony

The plaintiff’s case: The plaintiff, Mr. Tom Marks, is the first witness to testify. Mr. Marks is 62, and is a skilled carpenter. Tom says that about four years ago, on March 21 of 2005, he and his wife Mary were taking a walk on a Sunday afternoon. Mary had just had knee surgery
and was supposed to do a little bit of walking each day, and stay off her feet for the rest of the day. They were going for their walk, and were about two blocks from their house when all of a sudden Tom tripped and fell. He didn’t have time to brace himself with his hand or arm, and just fell on his face on the sidewalk. His glasses broke and the cracked frame cut his forehead, which started bleeding. He got up and put his handkerchief over the cut and he and his wife slowly walked back to their house. Mary called an ambulance and the ambulance took them to the emergency room. The doctor there told him that he needed 6 stitches. Tom was very dizzy after the fall and at the hospital. His ears were ringing. The doctor wanted to keep him for a day to make sure the injury to his head wasn’t more severe. Tom testifies that after he got out of the hospital, he asked a neighbor to drive him back to where he had fallen. Tom saw a very deep crack in the sidewalk, and took a picture of it (which is attached as Plaintiff’s Exhibit 1). He says that he must have caught his shoe on the raised section of the sidewalk. His neighbor told him that James Johnson owned the house that the sidewalk was in front of.

Tom testifies that he had the stitches in for a few days, and they have left a small scar on his forehead. He had never had to stay in the hospital before, and he was lonely and scared because his wife couldn’t stay with him because of her knee. When he got home from the hospital, he was still slightly dizzy. He couldn’t take care of his wife, and they had to eat frozen dinners because neither of them could stand long enough to make meals. He also says that he had dizziness and migraine headaches on and off for about a month after the accident. The migraines would last anywhere from a few hours to a day. Tom testifies that the migraines have gone away. Tom testifies that he had never fallen on a sidewalk before, and now he is afraid to walk around the neighborhood. He and Mary used to go hiking and camping often during the spring, summer, and fall, and now they can’t because he’s afraid he’ll fall far away from help. The headaches he had after the fall meant that he couldn’t go in the sun, so he wasn’t able to take care of the vegetable garden in his yard and everything in it died. After Mary’s knee healed, he and Mary couldn’t do a lot of things they liked to do because he was scared to go far from home. He also had to miss a family reunion that was the weekend after he fell. Also, for that first month after the accident he was afraid to drive because of the dizziness, and Mary couldn’t drive because of her knee, so he had to take public transportation to work every day, which made him miss a fair amount of work in that month right after the accident. In addition, to be able to work as a carpenter he had to be able to drive from carpentry job to carpentry job, so he couldn’t work
much during that first month after the accident. He lost 8,675 Swiss Francs by not being able to work, and had 2,985 Swiss Francs in medical expenses for the hospital stay, doctor visits, and pain medication.

During cross-examination by Ms. Amanda Dillon, who is Mr. Johnson’s attorney, Tom states that the dizziness has gone away and he only got migraines for that first month after the accident.

After Mr. Marks’ testimony, his case is complete and the defense has an opportunity to present witnesses.

The defendant’s case: James Johnson testifies for the defense. James testifies that he had lived in his house next to the sidewalk where the plaintiff tripped for 10 years when the accident occurred. The crack had been in the sidewalk for almost seven years when the accident took place. His insurance agent told him that the sidewalk had to be reasonably safe, and that he was responsible for fixing the sidewalk if it ever became dangerous. He has never seen or heard of anyone else tripping over the crack in the sidewalk in front of his house, and a lot of people walk along that sidewalk. He believes that the crack in the sidewalk is very small, and is in no way unreasonably dangerous. He believes that the sidewalk is reasonably safe, and that although it’s not perfect, and there is the small crack there, it’s definitely safe. He didn’t think it would be a problem for anyone. He thinks that the plaintiff fell because he wasn’t watching where he was going and was clumsy, not because the sidewalk was dangerous, because it wasn’t.

While being cross-examined by Mr. Marks’ attorney, James admits that he doesn’t really know that many people in his neighborhood, and that if someone other than Tom had tripped over the crack in the sidewalk he might not have known about it. He can’t estimate how many people walk along that section of sidewalk with the crack; he doesn’t sit at the window and watch people walking by. James admits that the crack started about seven years ago and has gotten worse and worse over the years and he never did anything to fix the crack in the sidewalk.

The second witness to testify for the defendant is Sarah O’Connell. In her direct examination, Sarah testifies that she lives across the street from the defendant, Mr. Johnson. She designs computer software and works out of her house. Her office is in a den in the front of the house, with a window facing the street. When she is working she often looks out of the window. From her window, she has a clear view of the front of Mr. Johnson’s house, and the sidewalk
with the crack in it. She testifies that the crack is fully three inches deep. Ms. O'Connell testifies that she sees lots of people walking down the street, and she has only seen a few trip over the crack in the sidewalk in front of Mr. Johnson’s house. She estimates that she sees roughly 20 people a week walk on that section of the sidewalk, and just a few have ever fallen and they didn’t appear to have hurt themselves. She says that most people see the crack and step over it.

During cross-examination, Ms. O'Connell testifies that she has walked on the sidewalk in front of Mr. Johnson’s house and has never tripped over the crack because she knows it’s there and watches out for it. She also admits that she did call Mr. Johnson and recommend to him that he fix the sidewalk to keep more people from tripping over it. She also admits that the crack in Mr. Johnson’s sidewalk has gotten worse over time.

The judge tells the jury that now that both sides have presented their evidence, they will give their closing arguments. First the plaintiff will give his closing argument, then the defense will give hers, and then the plaintiff will get to give an additional closing argument in rebuttal to the defendant’s closing argument. The judge says that before closing arguments, he must tell the jury about a stipulation between the parties. A stipulation is something that both parties agree on, and therefore no more evidence needs to presented about it. In this case, both parties have stipulated that the plaintiff’s medical expenses have totaled 2,985 Swiss Francs, and that is why no doctor was called to testify about the plaintiff’s medical treatment. Both parties agree that the plaintiff’s injuries, and lost wages because of those injuries, were caused by the plaintiff’s fall, but they disagree over whether or not the defendant was negligent. The judge says that it’s important that the jurors understand that the fact that both parties are stipulating to the plaintiff’s injuries and lost wages does not mean that the defendant is agreeing to pay those expenses or is admitting that he is liable for the plaintiff’s injuries. The defendant is only agreeing that the injuries and lost wages were caused by the plaintiff’s fall, but the defendant believes he is not responsible for the plaintiff’s fall and therefore not responsible for the plaintiff’s injuries.

Closing Arguments

Plaintiff’s closing argument: Mr. Phillips says that Mr. Marks was just walking along with his wife, enjoying the Sunday spring afternoon, when their lives were changed by one crack in the sidewalk. Tom tripped over a dangerous crack, hit his head on the cement, broke his glasses, and cut his forehead. He had to spend a day and night in the hospital to make sure there
wasn’t a more serious head injury. He got dizzy and had migraines for the first month after the accident, and couldn’t work because of it. No one here is disagreeing with that; Tom fell, he was injured, and he couldn’t work much in that first month after the accident because of those injuries. Mr. Phillips says that what you, the jurors, have to decide is who is at fault for Tom’s accident. As the evidence has shown, the defendant, Mr. Johnson, is at fault. He didn’t properly maintain the sidewalk in front of his house. He knew there was a crack, and that the crack was growing – and he didn’t do anything about it. The judge will tell you that in Switzerland property owners are legally responsible for making sure sidewalks directly next to their property are reasonably safe, and they are liable for damages to those injured by an unreasonably dangerous sidewalk. The photo Tom took of the sidewalk is clear enough - the sidewalk was dangerous. The crack was large, large enough to make a man trip and seriously injure himself. The defendant knew a lot of people walk along that sidewalk, and that there was a crack in the sidewalk. It was just a matter of time before someone hurt himself, but the defendant did nothing about it, even though he knew he was legally responsible for maintaining the sidewalk in a safe condition.

After he was hurt, Tom couldn’t take care of his wife after her knee surgery although she needed assistance. Tom felt like he couldn’t do his duty as a husband because he was hurt and laid up in bed as well. After he and his wife were better, they couldn’t go hiking or camping any more because Tom was afraid he’d fall again and not be near a hospital. He couldn’t take care of his garden for a month because he couldn’t go out in the sun. Tom couldn’t do many of the normal things he liked to do before the accident. All because of a crack in the sidewalk. If the defendant had only taken a few minutes one day to fix the crack, none of this would have happened and Tom wouldn’t be in court. Mr. Johnson should compensate Mr. Marks for all of the pain, suffering, and anxiety his negligence caused, as well as for his medical bills and lost wages. Mr. Johnson was negligent in his care of the sidewalk, he should have better maintained the sidewalk, the condition of the sidewalk was unreasonably dangerous, and Mr. Johnson is surely liable for Tom’s injuries. As the judge explained, both parties have agreed on the amount of Tom’s medical expenses and lost wages. You must decide how much would adequately compensate Tom for all of the pain and suffering he has experienced and will experience in the future. Mr. Phillips says that 50,000 Swiss Francs will adequately compensate Tom for the pain and suffering for the injuries that Mr. Johnson caused.
Defendant’s closing argument: Ms. Dillon argues that Mr. Johnson did not cause Mr. Marks’ injuries; the plaintiff’s fall was not his fault. First, Ms. Dillon says if the plaintiff can’t take care of himself while walking around, Jim shouldn’t be responsible for it. Second, and most importantly, the sidewalk was reasonably safe. Swiss law doesn’t say the sidewalk has to be perfect, totally free of flaws. Just reasonably safe. Nothing is perfect, not the streets the city maintains, not every sidewalk in the city. But they are reasonably safe, just like the sidewalk in front of Jim’s house. A crack in the sidewalk that is three inches large is not dangerous. It is like most other sidewalks in the city. And the law the judge will read to you says that just because someone fell over the sidewalk does not automatically make it dangerous. For the jury to find Jim liable, it can’t be just because someone fell; that’s not enough. The sidewalk has to be unreasonably dangerous. It wasn’t. It was reasonably safe. Third, hundreds of people have walked over that same crack in the last 10 years, and no one has ever tripped over it before. Ms. Dillon says that for the three reasons she just laid out, Jim is not liable for the plaintiff’s injuries. Ms. Dillon says she believes you will agree with her and return a verdict in Jim’s favor, but she’s found that she cannot always accurately predict what jurors will do. Sometimes they disagree with her, and she has to be prepared for that. So just in case you do find in favor of the plaintiff and find that Jim is responsible for this accident and the plaintiff’s injuries, she must discuss damages with you so she can tell you what a fair damage award should be. She says she would not be doing a good job for her client if she did not discuss damages with you, though, again, Jim is not responsible for the plaintiff’s injuries. She believes that what the plaintiff is asking for, for pain and suffering, is ridiculously high, and that 12,000 Swiss Francs would more than adequately compensate the plaintiff for his pain and suffering, if you find for the plaintiff.

Plaintiff’s rebuttal closing argument: In response, Mr. Marks’ attorney says that Mr. Marks was walking as most of us do when the accident took place. You don’t keep your eyes on the ground looking for possible gaps in a paved sidewalk. When you’re walking with someone, you occasionally look at that person as you’re talking. That’s what Tom did. Every now and then he looked at his wife. Tom regularly walked in other parts of the neighborhood without falling. He regularly wore walking sneakers as he did on the very day of the accident. But this time there
was something unusual about the condition of this particular stretch of sidewalk that made him fall – the three-inch crack in the sidewalk. Mr. Johnson was responsible for maintaining his sidewalk in a safe condition and he simply didn’t do it so Tom ended up suffering because of Mr. Johnson’s neglect.

Jury Instructions

The judge says: It is your duty to determine the facts only from the evidence presented in court, and to follow the law whether you agree with it or not. You may not speculate, or be influenced by sympathy or prejudice. You are to decide the case by applying the law to the facts. You are to decide the credibility and weight to be given to any evidence presented in court, whether it be direct or circumstantial. What the lawyers say in their opening statements and closing arguments is not evidence, but may help in understanding the law and evidence. You must regard any stipulated or agreed upon fact as having been proved.

The burden of proof means persuasion. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. Thomas Marks, the plaintiff, has the burden of proof to prove that his claims are more likely true than not true.

Thomas Marks claims that James Johnson was at fault. Fault is negligence that is a cause of injury. Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. Negligence is the failure to act as a reasonably careful person would act under the circumstances. Before you can find James Johnson at fault, you must find that James Johnson’s negligence was a cause of Thomas Marks’s injury. Negligence causes an injury if it helps produce the injury, and if the injury would not have happened without the negligence.

Thomas Marks must prove:

(1) James Johnson was at fault
(2) Thomas Marks was injured
(3) Thomas Marks’s damages

All owners of property abutting and fronting upon any street in Switzerland are required to keep the sidewalk immediately abutting their property in good order and repair. Each such owner shall be
liable for damages to the person or property of others caused by his failure to repair and keep in reasonably safe condition all such sidewalks.

James Johnson is required to use reasonable care to warn of or remedy a dangerous condition of which James Johnson has notice. Thomas Marks claims that James Johnson had notice of the dangerous condition that caused harm to Thomas Marks. James Johnson had notice of the dangerous condition if the jury finds any of the following:

(1) James Johnson created the dangerous condition;
(2) James Johnson actually knew of the dangerous condition; or
(3) The dangerous condition existed for a sufficient length of time that James Johnson, in the exercise of reasonable care, should have known of it.

If you find that James Johnson had notice of the dangerous condition and failed to use reasonable care to prevent harm under the circumstances, then James Johnson was negligent.

The mere occurrence of a fall on a sidewalk is insufficient to prove James Johnson’s negligence. A pedestrian has the duty to exercise ordinary care to avoid injury. This includes the duty to exercise ordinary care to observe and appreciate danger or threatened danger.

One of the tests used in determining whether a condition is unreasonably dangerous is whether it is open and obvious. If people who are likely to encounter a condition may be expected to take perfectly good care of themselves without further precautions, then the condition is not unreasonably dangerous because the likelihood of harm is slight. Of course, the bare fact that a condition is open and obvious does not necessarily mean that it is not unreasonably dangerous. The open and obvious condition is merely a factor to be taken into consideration in determining whether the condition was unreasonably dangerous.

If you find that James Johnson is not at fault, then the verdict must be for the defendant, James Johnson. When deciding whether the defendant is at fault, you should only consider the behavior of the defendant. You should not take the extent of injuries to the plaintiff into consideration. If you find that James Johnson was at fault, then he is liable to Thomas Marks and the verdict must be for the plaintiff, Thomas Marks. If you find for Thomas Marks, then you must determine the full amount of Thomas Marks’s damages. Thomas Marks’s medical expenses and lost wages have been stipulated to by both parties. That means that both parties agree that Thomas Marks’s injuries were caused by the accident, and both sides have agreed upon the amount of the medical expenses, lost earnings, and property damage associated with those
injuries. Thomas Marks and James Johnson do not agree on the cause of the accident. Thomas Marks claims that James Johnson’s negligence caused the accident, which in turn caused his injuries. James Johnson claims that he was not negligent. Though he agrees Thomas Marks’s expenses and damages were caused by the accident, James Johnson claims that he should not have to pay for something that he is not liable for.

If you find James Johnson liable for Thomas Marks’s injuries, you will not have to decide how much to award for medical expenses, lost wages, and property damage. You will only have to decide how much to award Thomas Marks for non-economic damages that have been proved by Thomas Marks. When deciding non-economic damages, you should only take into account the extent of injuries to the plaintiff. You should not take into consideration the behavior of the defendant. A man of Thomas Marks’s age can be expected to live an additional 17.5 years. As a reminder, the plaintiff has recommended 50,000 Swiss Francs as an appropriate non-economic damages award and the defendant, while still maintaining he is not liable, claims that 12,000 Swiss Francs is a more appropriate non-economic damages award.

Non-economic damages are a monetary award intended to compensate Thomas Marks for:

(1) The nature, extent, and duration of the injury;

(2) The pain, discomfort, suffering, and anxiety already experienced and can be expected to be experienced in the future, and;

(3) Loss of love, care, affection, companionship, and other pleasures of the marital relationship.
Appendix B – Dependent Measures

Verdict Form

1. Please indicate your verdict in this case. Do you favor a verdict for the plaintiff, Thomas Marks, or for the defendant, James Johnson? (Please circle one response)

   Thomas Marks                                James Johnson
   (Plaintiff)                                       (Defendant)

2. If your verdict is for the plaintiff, please indicate the amount, if anything, you would award to Thomas Marks for non-economic damages (that is, for pain and suffering). (Do not include in this award any amount for medical expenses, or lost wages.) Remember that your non-economic damage award will be in Swiss Francs. Answer this only if you found in favor of the plaintiff.

   ________________________________ Swiss Francs

3. How confident do you feel that your verdict is the correct one? (Circle one number to reflect your feelings)

   Not at all           1            2            3            4            5            6            7            Completely confident
Post-trial questionnaire

PLEASE DO NOT REFER BACK TO THE TRIAL SUMMARY TO HELP YOU ANSWER ANY OF THE FOLLOWING QUESTIONS.

In the following questions, you are being asked for your own impressions of the case. Please circle the number that best corresponds to your response.

1. To what extent was James Johnson (the defendant) negligent?

Not at all 1 2 3 4 5 6 7 Extremely Negligent

2. To what extent did James Johnson’s actions cause Thomas Marks’s injuries?

Not at all 1 2 3 4 5 6 7 Very much

3. How strong do you think the evidence is that James Johnson’s failure to repair the sidewalk was the cause of Thomas Marks’s injuries?

Not at all 1 2 3 4 5 6 7 Extremely Strong

4. To what extent did Thomas Marks take precautions while walking?

Not at all 1 2 3 4 5 6 7 To a great extent

5. To what extent did James Johnson take precautions to ensure a reasonably safe sidewalk?

Not at all 1 2 3 4 5 6 7 To a great extent
6. How much sympathy do you feel for Thomas Marks (the plaintiff)?

None 1 2 3 4 5 6 7 Very much

7. How much sympathy do you feel for James Johnson (the defendant)?

None 1 2 3 4 5 6 7 Very much

8. [for low, moderate, and high conditions] To what extent do you view a rebuttal by the defendant (a specific monetary figure countering the plaintiff’s suggestion for general damages) as an admission of liability?

Not at all 1 2 3 4 5 6 7 To a great extent

8. [for no rebuttal condition] Assume that the defendant had given a specific monetary rebuttal to counter the plaintiff’s suggestion for an appropriate amount of general damages. To what extent would you view this as an admission of liability?

Not at all 1 2 3 4 5 6 7 To a great extent

9. How much do you desire to compensate the plaintiff for his suffering?

Not at all 1 2 3 4 5 6 7 To a great extent

The following questions ask you about what you considered in rendering your verdicts and damage award. Please circle the number that best corresponds to your response.

1. Which of the following did you consider when you were deciding whether or not James Johnson was liable for Thomas Marks’s injuries?
a. James Johnson did not repair the sidewalk
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

b. The crack in the sidewalk started seven years ago, three years after James Johnson bought the house
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

c. James Johnson knew he was responsible for maintaining a reasonably safe sidewalk
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

d. The size of the crack in the sidewalk
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

e. Thomas Marks’ behavior while walking down the sidewalk
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

f. Thomas Marks was 62 years old when he fell
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

g. The number of people who had tripped over the crack in the sidewalk before Thomas Marks did
Did not consider 1 2 3 4 5 6 7 Considered
at all a great deal

66
h. Thomas Marks’s physical discomfort
Did not consider at all

i. Thomas Marks’s need to undergo extensive medical treatment
Did not consider at all

j. Thomas Marks’s mental anguish
Did not consider at all

k. Thomas Marks’s reduced quality of family life
Did not consider at all

l. The severity of Thomas Marks’s injuries
Did not consider at all

m. Thomas Marks’s inability to take care of his wife
Did not consider at all

n. Thomas Marks’s injuries that will last for the rest of his life
Did not consider at all

o. To compensate (that is, pay back) Thomas Marks for his economic loss (that is, lost wages and medical expenses)
p. To compensate (that is, pay back) Thomas Marks for his noneconomic loss (that is, pain and suffering)

Did not consider at all

Considered a great deal

q. The plaintiff and defendant’s stipulation to the amount of plaintiff’s damages for medical expenses and lost wages

Did not consider at all

Considered a great deal

r. The amount the plaintiff recommended for the general damage award

Did not consider at all

Considered a great deal

s. The amount the defendant recommended for the general damage award

Did not consider at all

Considered a great deal

2. Which of the following did you consider in deciding how much to award for general damages (that is, pain and suffering)?

a. James Johnson did not repair the sidewalk

Did not consider at all

Considered a great deal

b. The crack in the sidewalk started seven years ago, three years after James Johnson bought the house
c. James Johnson knew he was responsible for maintaining a reasonably safe sidewalk
   Did not consider at all
   Considered a great deal

d. The size of the crack in the sidewalk
   Did not consider at all
   Considered a great deal

e. Thomas Marks’ behavior while walking down the sidewalk
   Did not consider at all
   Considered a great deal

f. Thomas Marks was 62 years old when he fell
   Did not consider at all
   Considered a great deal

g. The number of people who had tripped over the crack in the sidewalk before Thomas Marks did
   Did not consider at all
   Considered a great deal

h. Thomas Marks’s physical discomfort
   Did not consider at all
   Considered a great deal

i. Thomas Marks’s need to undergo extensive medical treatment
   Did not consider at all
   Considered a great deal
j. Thomas Marks’s mental anguish
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

k. Thomas Marks’s reduced quality of family life
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

l. The severity of Thomas Marks’s injuries
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

m. Thomas Marks’s inability to take care of his wife
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

n. Thomas Marks’s injuries that will last for the rest of his life
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

o. To compensate (that is, pay back) Thomas Marks for his economic loss (that is, lost wages and medical expenses)
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all

p. To compensate (that is, pay back) Thomas Marks for his noneconomic loss (that is, pain and suffering)
Did not consider 1 2 3 4 5 6 7 Considered a great deal at all
q. The plaintiff and defendant’s stipulation to the amount of plaintiff’s damages for medical expenses and lost wages
Did not consider 1 2 3 4 5 6 7 Considered a great deal
at all

r. The amount the plaintiff recommended for the general damage award
Did not consider 1 2 3 4 5 6 7 Considered a great deal
at all

s. The amount the defendant recommended for the general damage award
Did not consider 1 2 3 4 5 6 7 Considered a great deal
at all

3. Here are some words that might be used to describe the plaintiff, Thomas Marks. For each, please circle the number that comes closest to describing your feelings about the plaintiff.

Good 1 2 3 4 5 6 7 Bad

Dishonest 1 2 3 4 5 6 7 Honest

Very greedy 1 2 3 4 5 6 7 Not at all greedy

Trustworthy 1 2 3 4 5 6 7 Untrustworthy

Believable 1 2 3 4 5 6 7 Not believable

Generous 1 2 3 4 5 6 7 Not at all generous

4. Here are some words that might be used to describe the defendant, James Johnson. For each, please circle the number that comes closest to describing your feelings about the defendant.
For each of the following questions below, please indicate which answer best describes the evidence and instructions presented in the trial:

1. According to Sarah O’Connell, how deep was the crack in the sidewalk?
   a. One inch
   b. Two inches
   c. Three inches
   d. Six inches

2. According to James Johnson, how long has the crack been in the sidewalk?
   a. For about 7 years
   b. For about 4 years
   c. For about 7 months
   d. Since before he bought the house

3. In the accident, Thomas Marks:
   a. Cut his forehead
b. Knocked out his front teeth  
c. Lost most of the vision in his right eye  
d. Broke his hand

4. “Negligence”:
   a. Is the failure to use reasonable care  
   b. The failure to act as a reasonably careful person would under the circumstances  
   c. Can consist of action or inaction  
   d. All of the above

5. In order to win a civil case, the plaintiff must prove his case by what standard?
   a. More likely true than not true  
   b. Clear and convincing evidence  
   c. Beyond a reasonable doubt  
   d. All of the above

6. According to the judge’s instructions, the jury can find James Johnson liable for damages only if the plaintiff proves that:
   a. James Johnson was at fault  
   b. Thomas Marks was at fault  
   c. Thomas Marks’s injuries were caused by the fall  
   d. a & c

7. Which of the following cannot be considered when deciding how much to award for general damages:
   a. The medical expenses  
   b. The nature, extent, and duration of the injury  
   c. The pain, discomfort, suffering, and anxiety already experienced  
   d. Loss of love, care, affection, companionship, and other pleasures of the marital relationship
8. What amount, if any, did the plaintiff recommend for general damages?
   a. No amount was recommended
   b. $500 / $14,000 / $21,000
   c. $7,447
   d. $100,000

9. What amount, if any, did the defendant recommend for general damages?
   a. No amount was recommended
   b. $500 / $14,000 / $21,000
   c. $7,447
   d. $100,000

10. The severity of the injuries to the plaintiff should not be taken into account when deciding whether the defendant was negligent in causing the accident. Only the actions or inactions by the defendant should be taken into account in the negligence decision.
    a. True
    b. False

For the following questions, please circle the number that you agree with.

1. I feel that people get what they are entitled to have.

   Agree  1  2  3  4  5  6  Disagree

2. I feel that a person’s efforts are noticed and rewarded.

   Agree  1  2  3  4  5  6  Disagree

3. I feel that people earn the rewards and punishments they get.
4. I feel that people who meet with misfortune have brought it on themselves.

5. I feel that people get what they deserve.

6. I feel that rewards and punishments are fairly given.

7. I basically feel that the world is a fair place.

PLEASE GO BACK THROUGH THE QUESTIONNAIRE AND CHECK THAT YOU DID NOT SKIP ANY QUESTIONS.

THANK YOU VERY MUCH FOR YOUR PARTICIPATION.