

The ILR Research Review

Featuring the latest of ILR's groundbreaking research on pressing legal issues

Volume 10
Issue

02

From the Top: The President's Perspective

Institutions cannot be taken for granted. At the time of this writing, Congress has narrowly avoided a government shutdown, which could have caused direct harm to millions of Americans and small businesses. Regardless of the policy questions involved, this chain of events is a reminder that even our most enduring institutions need constant maintenance and good faith participation to function correctly. As it is for Congress, so it goes also for the civil justice system.

This edition of the *ILR Research Review* highlights research on the interplay between the law, fundamental protections for Americans, and the health of our economy. The papers discussed here deal with the distorted role of punitive damages in achieving justice; the increasing misuse of consumer protection laws

to pursue policy goals; the twisting of the Americans with Disabilities Act to generate profits for lawyers; and the over-targeting of the trucking industry with lawsuits that threaten the integrity of our supply chain.

The actions of the plaintiffs' bar and, in the case of consumer protection laws, of certain state attorneys general, are spurring economic uncertainty and eroding the credibility of established protections for ordinary citizens. The papers in this *Review* discuss that dynamic, and recommend solutions for judges and policymakers to correct it.

Happy reading,

—Harold H. Kim

President, U.S. Chamber of Commerce
Institute for Legal Reform
Chief Legal Officer and Executive Vice
President, U.S. Chamber of Commerce



U.S. Chamber of Commerce
Institute for Legal Reform

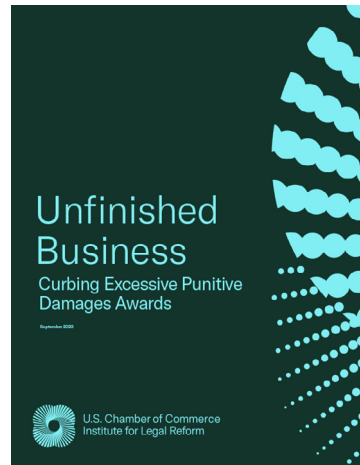
Punitive and Nuclear Verdicts

Unsurprisingly, punitive damages play a significant role in nuclear verdicts (jury verdicts worth \$10 million or more). ILR's 2022 study, *Nuclear Verdicts: Trends, Causes, and Solutions*, showed that between 2010 and 2019 about a quarter of all 1,376 nuclear verdicts in the study period involved punitive damages, as did eight of the nine verdicts worth over \$1 billion. While noneconomic compensatory damages increasingly drive nuclear verdicts, the possibility of punitive damages remains a critical x-factor that can unpredictably drive a \$10 million dollar verdict to \$50 million and beyond.

Litigation Center Weighs In

The U.S. Chamber of Commerce Litigation Center has filed amicus briefs in an array of recent cases dealing with the proper application of state consumer protection laws. Among these are cases dealing with questions of primary jurisdiction doctrine, the extent of safe harbor provisions and good faith defense under a state's consumer protection law, and the acceptability of common practices in the financial services industry. More information on these and other cases can be found in the Litigation Center's case database, at uschamber.com/cases/search.

Unfinished Business: Curbing Excessive Punitive Damages Awards



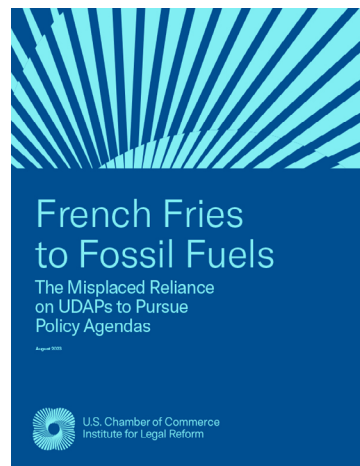
September 2023

Authors: Evan Tager, Miriam Nemetz, and Carmen Longoria-Green, Mayer Brown LLP

Once rare and relatively modest in amount, punitive damages awards are now an outsized and common feature in America's civil litigation landscape. Over the last half-century, punitive damages awards have become far more frequent and far larger, outstripping inflation and their original purpose of punishing and deterring repugnant conduct.

ILR's research explores the history of punitive damages awards, documents their upward trajectory since the 1970s, examines why excessive awards persist despite efforts to mitigate them, and offers solutions for legislators and courts to prevent excessive awards in the first place and reduce them when they occur. The reforms we recommend are intended to make the institution of punitive damages in the United States more fair, more predictable, and less arbitrary.

French Fries to Fossil Fuels: The Misplaced Reliance on UDAPs to Pursue Policy Agendas



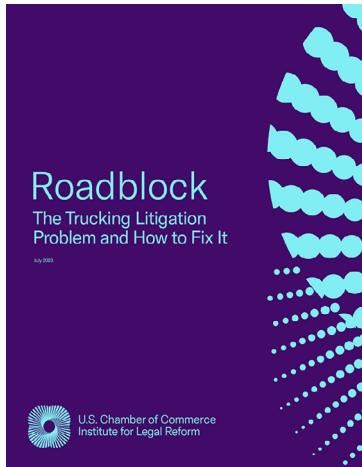
August 2023

Authors: Elbert Lin, Trevor Cox, Nick Drews, and Roger Gibboni, Hunton Andrews Kurth LLP

Unfair and Deceptive Acts and Practices laws (UDAPs) are among the most important legal tools that states have when it comes to protecting their consumers. Unfortunately, state attorneys general (AGs) and private litigants are increasingly harnessing UDAPs to pursue policy agendas. In so doing, these actors chill economic activity, offend due process rights, and ultimately divert resources away from the essential purpose of UDAP laws—protecting consumers.

ILR's research explores the history and function of UDAPs, and documents how in recent years state AGs and private litigants have used UDAPs to regulate business activities, pursue policy agendas, and/or punish politically disfavored activity—even if it is otherwise lawful. The paper concludes by proposing a set of primarily state legislative solutions to curb this trend.

Roadblock: The Trucking Litigation Problem and How to Fix It



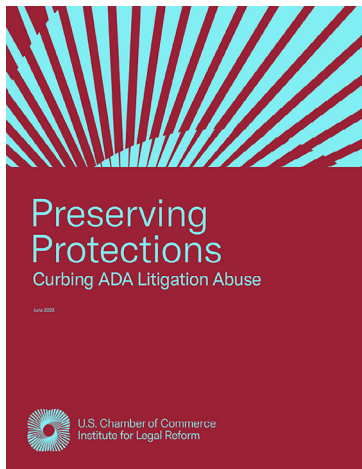
July 2023

Author: Prasad Sharma, Scopelitis, Garvin, Light, Hanson & Feary P.C.

American trucking firms are facing rapid lawsuit inflation, with the average size of verdicts over \$1 million against trucking firms increasing by 867 percent between 2010 and 2018. At the same time, between 2000 and 2020, the rate of fatal crashes involving a truck decreased from 2.23 to 1.47 per hundred million large truck miles traveled. In other words, even though trucking is getting safer, verdicts are getting bigger.

ILR's paper, which draws on original research and on statistics from the American Transportation Research Institute, among other sources, describes empirically the harsh and worsening litigation landscape for trucking firms in the United States. The paper then offers solutions for legislators and courts to curb excessive litigation costs, while ensuring that injured plaintiffs have a path to just and reasonable recompense.

Preserving Protections: Curbing ADA Litigation Abuse



June 2023

Authors: Mark A. Perry and Brian G. Liegel, Weil, Gotshal & Manges LLP

A small number of plaintiffs' firms are twisting the laudable goals of the Americans with Disabilities Act (ADA) to file thousands of boilerplate claims, many against small businesses, with the goal of extracting quick settlements.

ILR's research shows that between January 2009 and April 2023, a group of 18 plaintiffs' firms filed nearly 45,000 ADA cases—44 percent of total ADA filings in that time period. Similarly, between 2009 and 2022, more than 80 percent of ADA lawsuits were brought by "high-volume" plaintiffs—those who file at least eight cases a year.

After documenting this phenomenon, ILR's research recommends a series of complementary state and federal reforms to ensure that ADA litigation serves its original goal: protecting equal access, not fueling plaintiffs' lawyer profits.

Trucking Litigation Summit

The American Trucking Association's Litigation Center held its annual forum in July of 2023, soon after the release of this paper. The paper was featured prominently at the forum, where attendees included executives from a broad swathe of America's trucking and logistics firms. Discussions focused on surfacing practical insights for confronting the most urgent legal and public policy challenges facing trucking today.


Case in Point

A case recently argued before the U.S. Supreme Court promises to clarify one of the central issues discussed in this paper: the contested standard of pleading for individuals who claim to have Article III standing as a basis for filing a lawsuit under the ADA. *Acheson Hotels LLC v. Laufer*, for which the authors of *Preserving Protections* and the Litigation Center submitted multiple amicus briefs, has the potential to significantly reduce abusive ADA claims brought by uninjured "tester" plaintiffs. Of note, in July of this year, the plaintiff's attorney in *Acheson* was subjected to a disciplinary ruling in the U.S. District Court for the District of Maryland, related to his conduct in over 600 "tester" cases similar to the one at issue in *Acheson*.

 @legalreform

 facebook.com/instituteforlegalreform

 linkedin.com/company/instituteforlegalreform

 @usccllegalreform