

Chapter 10: An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

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I. Introduction

This chapter reports on legal outcomes for cases involving environmental contamination on real property. The approach was to identify a body of legal cases from publicly available written material, and abstract the articles to obtain information about the cases' outcomes. Next we attempted to contact plaintiffs' attorneys to fill in information gaps. From this core of cases with all the relevant information available, we extrapolated attorneys fees and expert witness expenses, and applied these factors to cases with partial information. This process enabled us to provide estimates of both total gross verdict and settlement per property (excluding nonproperty awards, before legal and expert expenses and including punitive damages, if any), and net award per property after legal fees and expert and other expenses, for various types of cases and litigation paths, e.g., class action lawsuits.

Our sample was drawn from the verdicts and settlements database, and included all articles written about toxic tort cases between 1991 and 2004.¹ While not an exhaustive list, it does include a robust cross-section of cases selected by the MEALEYS' staff writers to be of interest to practicing lawyers. This body of literature included 735 cases. A key word search of these cases revealed the following breakdown: 193 asbestos (26%); 89 oil (12%); 83 property (11%); 69 product defects (9%); 64 nuisance (9%); 29 mold (4%); 28 health problems (4%); and 24 polychlorinated biphenyl (PCB) (3%). No other key word generated more than 13 responses. Of these 735 cases, we deleted those cases that had no reference to property, leaving 166 legal cases that had reached a settlement or verdict.

From this list of property-related toxic tort cases, we developed a checklist of questions and factors required to analyze case outcomes. This in-

1. Our sincere thanks to MEALEYS publications (a LEXIS-NEXIS company) for allowing us the free use of their data services for this research.

When Bad Things Happen to Good Property

cluded case name, dates and venue, plaintiff and defense counsel, case disposition (including any appeals), number of plaintiffs and class status, and financial outcomes overall including punitive damages, if any. In addition, we obtained type of contamination, legal, expert, and other expenses, and other necessary details on subclass outcomes. We then systematically filled in available data from the MEALEYS' articles and a web search. At this point we had reasonably complete partial data on about 80 cases. Typically, missing data included legal fees and expert expenses.

We next attempted to contact plaintiffs' counsel to fill in the rest of the missing details. This required identification of the appropriate counsel from the aforementioned MEALEYS' articles, which often led to law firm and legal case websites. We were able to identify counsel in about 120 of the cases. Each attorney contact was e-mailed and called over the telephone at least three times. Eventually, we were successful in contacting counsel in about 25 cases, a response rate of about 15%. Thus, in only about 10 cases, we had complete data, including legal fees and expert expenses.

II. Filling in Missing Data

From these cases, and from patterns we were able to observe from the other cases for which we had partial data, we had about 50 verdicts and 40 settlements (some cases had both) from which to analyze gross property-related outcomes (awards before legal and expert expenses). Missing data usually included: (1) number of plaintiffs (which we were unable to estimate); and (2) details on the structure of the settlement or verdict. We estimated the property settlement (as opposed to a total award including medical monitoring, health-related awards, etc.), from the 50 or so available cases that had both figures, and assigned, as was typical of the cases with complete data, 85% of the total award to small cases, and 55% of the total award to larger, class action cases.

A. Legal Expenses

From about 40 cases, we were able to estimate average legal expenses. These figures were quite consistent, except where punitive damages were present. In our analysis, we applied a factor of 24% of verdict or settlement for class action cases and 38% for single-plaintiff cases (or those with smaller numbers), before punitive damages, where data are missing.

B. Expert Expenses

Since expert expense data were only available for about 10 cases, we relied upon this small sub sample, and also upon other information from this book. (See Alan Runyan's analysis on costs to try a case in Chapter 11.) For those

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

cases without expert expense data, we estimated expert witness expenses based on a sliding scale from a low of \$25,000 per plaintiff for leaking underground storage tank (LUSTs) cases, and \$275,000 per case for smaller numbers of plaintiffs, up to \$1 million for class action lawsuits. We then applied the same factors of 85% (the property share of total award) for smaller cases with under 10 plaintiffs, and 55% for expert expenses for class action and larger cases, to account for property-related expert expenses.

Results from this process were then applied to the larger sample to provide estimates of net awards per plaintiff. There were 10 cases containing complete data and another 68 cases where the data could be reasonably estimated based on the aforementioned calculations and details from the case. Of the 78 total cases discussed in this analysis, the natural break for separating cases into small and large was 10 plaintiffs. This cutoff resulted in 43 cases with fewer than 10 plaintiffs and 35 cases that had more than 10 plaintiffs. These results are reported below.

C. Shortcomings of This Analysis

From the sample/external validity side, we acknowledge that there are several potential case outcomes, based on how far along litigation progresses, and the fact that we did not capture cases equivalent to their presence in the litigation population. In other words, we were not able to control for when cases settled in the litigation process and compare the results to other cases settled at the same point in the proceedings. Ideally, this chapter would have attempted an exhaustive search of environmental contamination cases in the United States, filed, pending, and resolved, including selected settlements, with quantified outcomes for each category. However, since this is not feasible, we conducted a more limited analysis, based on the outcomes of known cases that have achieved verdicts or settlements in the past 10 years, according to MEALEYS. From earliest stages to latest, the hierarchy of cases (and its representation in our sample) is as follows:

1. Toxic tort cases could be developed, but not formally filed. Negotiations could take place outside court. (None of these cases were obtained.)
2. Cases were filed, but settled out of court prior to any other documents being filed with the court, e.g., expert reports, named witnesses, etc. (Only a few, if any, of these cases were obtained.)
3. Cases were filed, but settled during the discovery process before trial commences. Hearings before the court may be held, including class certification. (We were successful in getting a few, but not many of these cases.)
4. Cases were filed, and the case may have been put before a jury, but settled during trial. (An adequate number of these cases were acquired.)

When Bad Things Happen to Good Property

5. Cases were filed, heard, and went to trial, and the jury gave a verdict. (Our analysis is probably oversampled with these cases.)

6. Cases were filed, heard, and went to trial, and the jury gave a verdict, but were appealed. (These cases were easily obtained and reported.) The appeal court ruled on the case, either supporting it or overturning it, or the case was further appealed to the U.S. Supreme Court. (Again, our study is most likely oversampled with these cases.)

Informal discussions with various attorneys practicing toxic tort cases indicate that the vast majority of toxic tort property cases (well over two-thirds of all potential cases) settle, rather than go to trial. However, our sample contains about 60% trial cases of 28 settled cases and those 50 litigated at trial. Therefore, our sample is biased toward cases that have obtained a verdict, and away from those cases settled early in the process or outside the litigation process, e.g., voluntary mediation. Hence, we cannot generalize to the larger population of filed cases. Nevertheless, our results are useful as a stand-alone case study of the outcomes of toxic tort cases on property values.

With respect to internal validity issues, we have had to estimate data on the breakdown of nonproperty awards (primarily compensation for health issues, property remediation, connecting to public water, and medical monitoring). These issues are typically connected to property value claims, and may dominate them in some situations. While typically straightforward for those cases where data are available, we have not assumed any additional nonproperty awards where we had no information about the case. We prorated any expenses based on the property-total award ratio, if known, and also generated estimates of expert costs and legal fees in most cases. In addition, we had to deal with influential outliers, such as huge class action cases and those with punitive damages. We present results for both median and average outcomes, where appropriate. Therefore, the strongest part of our analysis is contained in the descriptive statistics of the various case outcomes. Although we have moderate confidence in the gross awards analysis, and less in the net awards section for this chapter, we feel the net analysis is useful in understanding patterns of outcomes.

Generally, the data we were able to collect is limited by the fact-intensive nature of litigation, making direct comparisons difficult in the absence of a full review of all the documents involved in the case. What is particularly problematic for this type of research is the unavailability of the acreage affected by each event and the number of plaintiffs per acre, or a similar unit to measure damages more consistently. As the following data will show, the difference between the median and mean for particular groups of contaminated properties is often dramatic, indicating that we were not able to control for these variations.

III. Results

We present our analysis of case outcomes in two groups. The first group includes results for cases with under 10 plaintiffs. The second group contains results for cases with 10 or more plaintiffs, typically class action cases. In the first section we cover descriptive statistics such as type of contamination, class status and number of plaintiffs, verdicts and settlements, appeals, and the U.S. state where the case took place. We then address average weighted gross case outcomes, such as total awards, property awards, and punitive damages, on a per-plaintiff (rather than per-case) basis. Where possible, we break out the outcomes by type of contamination. Finally, we report on average legal fees, expert expenses, and net weighted average outcomes for verdicts and settlements, for both the smaller and larger groups. For net verdict and net settlement award amounts, assume that legal and expert fees are deducted unless otherwise specified. Weighted averages are calculated by taking the total amount of the award for plaintiffs by case, by type of contamination, and dividing the total number of plaintiffs by type of contamination. We also provide an analysis by type of contamination, where data permit.

A. Descriptive Statistics

In this section we cover descriptive statistics, such as type of contamination, number of plaintiffs, etc. A total of 78 cases had sufficiently complete information and are used in this sample. Appendices A10-1 and A10-2 contain the case-by-case outcomes used in this chapter. Of these 78 cases, 43 cases (55%) had fewer than 10 plaintiffs, while 35 cases (45%) had 10 or more plaintiffs. In terms of cases by contamination type, oil spills were the most common (13 cases, or 17%), followed by other problems, such as a nuisance or electromagnetic fields (10 cases, or 13%), USTs and methyl tertiary butyl ethers (MTBEs) (8 cases, or 10%), landfills (7 cases, or 9%), mold and water (6 cases each, or 8%), and PCBs (5 cases, or 6%). Asbestos, heavy metals, insecticides/pesticides/herbicides, Superfund/hazardous waste sites, and trichloroethylenes (TCEs) had four cases for each type of contaminant (5%). Airborne contamination was the source of the remaining three cases (4%).

Table 10-1 contains smaller case descriptive statistics for the 43 cases with low plaintiff numbers that are typically not class action suits. Oil spills (21%), USTs and MTBEs (16%), and mold (14%) were the most frequent sources of contamination in these small cases. Eight of these cases (19%) occurred in Texas and five (12%) occurred in California. The average number of plaintiffs per case was 1.6, with 77% of cases having only one plaintiff. Only 9% of these cases were appealed, with the original verdict award amount upheld in each case. The average total verdict award amount per case was \$17,744,669 with a median of \$1.3 million. The difference between the two can be accounted for largely through the award of punitive damages.

When Bad Things Happen to Good Property

The average gross total settlement award amount per case was \$8,797,093, with a median of \$6.5 million. Here, the range is closer because punitive damages were not part of the settlement. Case outcomes ranged between \$10,175 for an oil spill in Pennsylvania with one plaintiff, to \$220 million for an oil spill in California with two plaintiffs. Twenty cases had awards below \$1 million, 10 cases were between \$1 million and \$5 million, and 13 cases had awards in excess of \$5 million.

Table 10-2 contains the larger case descriptive statistics for litigation with over 10 plaintiffs and class action suits. The most prevalent contamination category out of these 35 cases was other/nuisance/electromagnetic fields (17%), followed by PCBs (14%). Of the remaining cases, heavy metals, landfills, and oil spills each were 11%, while Superfund/hazardous waste sites and TCEs each were 9%, air and water each were 6%, and asbestos and LUSTs each had only one case (3%). Alabama and Texas each had four cases while California, Colorado, Kentucky, and Louisiana all had three cases apiece. The average number of plaintiffs per case was 4,888, with a range between 10 plaintiffs for a nuisance case in Washington with a verdict of \$92,000, to an air pollution case with 60,000 plaintiffs in California that was settled out of court for \$180 million. Of these, 27 cases were class actions, with only 3 cases that were not class actions, and another 5 cases where the information was not available. The average total verdict amount was \$121 million with a median of \$8.3 million. The average total settlement amount was \$67.2 million with a median of \$8 million. The three non-class action cases all had verdicts between \$8.3 million and \$210 million. One PCB case had a verdict award of zero dollars. While 11 cases had awards of \$5 million and below, another 8 cases had awards between \$5 million and \$10 million. Nine cases had total awards above \$100 million.

Out of the total number of cases, 12 occurred in Texas and 8 occurred in California, accounting for over 25% of the sample. These two states are also the two most populous states in the United States based on the 2000 Census. Of the 29 total class action lawsuits, only four cases were not settled out of court. The average settlement amount is roughly 50% of the verdict amount for both small and large cases. Contaminants with either obvious health effects (heavy metals, insecticides, PCBs, TCEs, water, and air) or physical effects (oil spills) have higher verdict and settlement values than do less obvious, often non-surface contaminants such as landfills, Superfund sites, and LUSTs.

B. Gross Case Outcomes

In this section we present financial outcomes for total awards, property awards, and punitive damages on a per-plaintiff (rather than per-case) basis. Both small case and large case samples are shown. Where possible, we break out the outcomes by type of contamination.

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

Table 10-3 contains property awards, punitive damages, and gross outcomes for cases with low plaintiff numbers. Because a majority of the small cases involve only one plaintiff, the only variation between the verdict amount and the gross verdict or gross settlement award per plaintiff are the fees discussed in the net case outcome section. Property awards averaged \$6,678,949 with a median value of \$194,560. These awards ranged from \$8,500 for an oil spill in Pennsylvania with one plaintiff, to \$45 million for an asbestos case with one plaintiff also in Pennsylvania. Of the 23 cases with property awards, 13 cases had awards below \$1 million and 5 cases had awards above \$10 million. Only eight cases had punitive damages ranging from \$35,625 for an oil spill in Oklahoma with one plaintiff, to \$200 million for an air pollution case in Texas.

The gross verdict award per plaintiff had a weighted average of \$9,334,694 and a median of \$5,206,185. An oil spill in Pennsylvania with one plaintiff had a gross verdict award of \$10,175. On the high end, an oil spill in California with two plaintiffs had a gross verdict award of \$91 million per plaintiff.

The gross settlement award per plaintiff had a weighted average of \$3.440 million and a median of \$3.352 million. The lowest gross settlement award of \$88,000 was for an UST/MTBE case in California with one plaintiff. An insecticide/pesticide/herbicide case also in California had the largest gross settlement of \$17.598 million for one plaintiff.

Table 10-4 contains property awards, punitive damages, and gross outcomes for large, mostly class action suits. Property awards ranged from zero for a PCB case in Kentucky with 54 plaintiffs, to \$22 million for a heavy metals case in Colorado with 567 plaintiffs. The average property award was \$5.114 million with a median of \$3.580 million for the 15 cases with property awards. Nine cases (26%) had punitive damages, with four of these cases resulting in punitive damages of zero dollars. These four cases (one each for an other/nuisance/electromagnetic field, PCB, oil spill, and air) indicate that the attorneys sued but did not succeed in obtaining any money for punitive damages. The other five cases ranged from \$850,000 for an other/nuisance/electromagnetic field case in Louisiana with 8,000 plaintiffs, to \$210 million for a PCB case in Kentucky with 52 plaintiffs.

Of the 10 cases that had verdicts, the average gross verdict per plaintiff had a weighted average of \$35,496 and a median of \$114,982. One case had a verdict award of zero dollars and four other cases had gross verdicts below \$10,000. Additionally, three cases had gross verdicts below \$200,000 and the two remaining cases had gross verdicts above \$3 million per plaintiff. The case with a gross verdict of zero occurred in Kentucky for a PCB class action case with 54 plaintiffs. In this case, the trial court's award was reversed on challenge under *Daubert v. Dow Pharmaceuticals, Inc.*² In

2. 509 U.S. 579, 23 ELR 20979 (1993).

When Bad Things Happen to Good Property

Texas, an UST/MTBE case with 13 plaintiffs had a gross verdict per plaintiff of \$6,423,077.

The gross settlement per plaintiff had an average of \$26,671, a weighted average of \$6,134, and a median of \$4,191. A majority of settlements (60%) resulted in per-plaintiff settlements of less than \$5,000. Only one settlement award (\$403,683 per plaintiff) for water contamination in California resulted in per-plaintiff damages over \$100,000, however, this case was not a class action. The smallest gross settlement amount was \$702 for a heavy metals case in Alabama with 2,689 plaintiffs.

The gross award per plaintiff is much higher in smaller cases than in large cases. Property awards in the small cases are larger, most likely due to the ability to pinpoint a certain property or properties sustaining damage. Both mold and asbestos are single-site contaminants that are detectable. For the large case sample, water, TCEs, and PCBs had the highest weighted gross settlements per plaintiff, while air pollution, oil spills, mold, and asbestos had the highest verdicts per plaintiff for the small case sample. This may be attributable in part by the mode which pollutants reach the contaminated property. There was no clear geographic pattern regarding which states had which cases and average level of settlements and verdicts.

C. Net Case Outcomes

In this section we report on average legal fees, expert expenses, on a per-case and per-plaintiff basis and net outcomes for verdicts and settlements, for both the smaller and larger case samples. We also provide an analysis by type of contamination, where data permit. We acknowledge that our assumptions on legal fees and expert expenses were impacted by whether or not the case resulted in punitive damages, and unless otherwise stated, impact the results.

Table 10-5 contains small case sample legal fees, expert fees, and net verdict and settlement outcomes per plaintiff. Where multiple cases per type of contamination existed, the largest average legal fees per case were for asbestos (\$9,154,995) and mold (\$3,435,413). The one small plaintiff air pollution case had legal fees of \$79.356 million but this verdict upon which the fees were based is unlikely to be representative of all air pollution cases. The average legal fees were \$3,452,285 with a median of \$200,000. The average expert fees (\$99,430 with a median of \$59,500) suggest that the greater amount of money spent on experts for small cases reflect the possibility of the case resulting in large verdicts or settlements.

For cases with a small number of plaintiffs with a net verdict award per plaintiff, the weighted average was \$5,682,686 and the median was \$344,437. Results ranged from \$1,600 for an other/nuisance/electromagnetic field case in Connecticut, to \$90,197,264 for an oil spill case in California.

For settled cases, the weighted average net settlement per plaintiff was \$3,094,372 with a median of \$2,011,105. Settled cases had a low of \$32,518

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

per plaintiff for an UST/MTBE case in California, to \$10,692,878 for an insecticide/pesticide/herbicide case also in California.

Table 10-6 contains large case sample legal fees, expert fees, and net verdict and settlement outcomes per plaintiff. The largest legal fees (\$36.720 million) were for the only LUST/MTBE case in the large sample, followed by water (\$31,882,613). The lowest legal fees were for Superfund/hazardous waste sites (\$859,888) and TCEs (\$925,676). Legal fee averages were \$9,729,437 with a median of \$1,252,477. Since a majority of expert fees were estimated by assumption, there was little variation. Twenty-seven cases had expert fees of \$550,000 with an average of \$459,200.

Of the 10 cases with a verdict, the average weighted verdict was \$23,727 with a median of \$94,496. The net verdict per plaintiff ranged from \$1 for a PCB case in Kentucky with 54 plaintiffs, to \$3,580,481 for an LUST/MTBE case in Texas with 13 plaintiffs.

Weighted average net settlement awards per plaintiff were \$4,576 with a median of \$2,906. For net settlement awards per plaintiff, the smallest settlement was \$352 for a heavy metals case in Ontario, Canada, with 3,046 plaintiffs, to a high of \$305,549 for a water pollution case in California involving 650 plaintiffs.

The fluctuation in the legal fees provides some interesting conclusions. For the small cases, legal fees were approximately 21% of the total award and 12% of the total award for large cases. On a per-case basis, the legal fees for small cases ranged from 1 to 77%, which may indicate expert fees combined as part of the overall legal fees. The variation for small case legal fees is expected since a majority of these cases went to trial. For large cases, the legal fees ranged from less than 1 to 48%. This percentage is interesting because several of the cases with the highest percentages were settled out of court. This fact indicates that legal fees are not dependent on the case going to trial, but more dependent on the contract between the lawyer and the client.

IV. Conclusion

Based on the available cases, several interesting conclusions can be made despite no clear and consistent trends and patterns existing among the legal data. The smaller cases are largely site-specific sources of contamination such as asbestos, mold, TCEs, UST/MTBEs, and localized oil spills. These smaller cases also have higher net and gross verdict and settlement awards per plaintiff. Court cases are also prevalent, with 86% of the cases in our sample going to trial, accounting for the varying costs of legal fees. Property awards also varied greatly and were not confined to any particular type of contamination.

Unlike the small plaintiff number cases, larger cases were settled 71% of the time. Only 2 cases out of 22 (9%) with more than 500 plaintiffs went to trial. Per-plaintiff verdict awards were below the average, weighted average,

When Bad Things Happen to Good Property

and median for the settlement awards per plaintiff. Property damages were highest for heavy metals cases. Punitive damages for these cases were awarded for other/nuisance/electromagnetic field cases, PCBs, and LUST/MTBEs. Cases with PCB as the source of contamination had the highest weighted net settlement awards per plaintiff. The next chapters present the toxic tort litigation from the plaintiffs and defense counsel perspectives. Unlike the earlier chapters, the two that follow are advocacy-oriented.

10-1 Small Case Descriptive Statistics				
Contamination Type	Number of Cases	Average Number of Plaintiffs per Case	Average Verdict Amount per Case	Average Settlement Amount per Case
Air	1	6.00	\$204,000,000	
Asbestos	3	3.33	\$ 25,366,667	
Insecticide/pesticide/herbicide	4	1.75	\$ 18,528,343	\$21,000,000
Landfill	3	1.00	\$ 209,000	
Mold	6	1.33	\$ 11,291,667	
Oil spill	9	1.67	\$ 27,869,978	\$ 6,000,000
Other/nuisance/electromagnetic fields (EMFs)	4	1.25	\$ 240,631	
Superfund/hazardous waste	1	1.00		\$ 194,560
TCE	1	2.00		\$18,500,000
UST/MTBE	7	1.00	\$ 775,204	\$ 88,000
Water	4	1.25	\$ 1,347,199	\$ 7,000,000
Average		1.60	\$ 17,744,669	\$ 8,797,093
Median		1.00	\$ 1,300,000	\$ 6,500,000

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

10-2 Large Case Descriptive Statistics				
Contamination Type	Number of Cases	Average Number of Plaintiffs per Case	Average Verdict Amount per Case	Average Settlement Amount per Case
Air	2	30,500		\$ 93,150,000
Asbestos	1	55	\$ 8,300,000	
Heavy metals	4	3,701	\$ 28,000,000	\$ 21,375,000
Landfill	4	3,304	\$ 4,080,204	\$ 7,166,667
Oil Spill	4	7,755		\$ 47,650,000
Other/nuisance/EMFs	6	2,874	\$217,935,500	\$ 33,500,000
PCB	5	5,229	\$142,666,667	\$321,850,000
Superfund/hazardous waste	3	2,134		\$ 6,333,333
TCE	3	117		\$ 5,166,667
UST/MTBE	1	13	\$102,000,000	
Water	2	415	\$131,000,000	\$168,500,000
Average		4,888	\$121,323,262	\$ 78,299,074
Median		2,874	\$ 8,300,000	\$ 8,000,000

When Bad Things Happen to Good Property

Table 10-3 Small Case Gross Outcomes by Contamination Type by Plaintiff						
Contamination Type	Number of Plaintiffs	Average Total Award	Property Award	Punitive Damages	Gross Verdict Award per Plaintiff Weighted	Gross Settlement Award per Plaintiff Weighted
Air	6	\$204,000,000	\$ 4,000,000	\$200,000,000	\$27,833,333	
Asbestos	10	\$ 25,366,667	\$ 35,300,000	\$ 3,700,000	\$ 7,373,650	
Insecticide/pesticide/herbicide	7	\$ 23,778,343	\$ 4,158,000	\$ 15,600,000	\$ 5,206,185	\$17,598,000
Landfill	3	\$ 209,000	\$ 59,000		\$ 146,538	
Mold	8	\$ 11,291,667	\$ 11,550,000		\$ 7,534,425	
Oil Spill	15	\$ 25,439,981	\$ 6,115,753	\$ 43,353,531	\$20,469,942	\$ 838,000
Other/nuisance/EMFs	5	\$ 240,631	\$ 100,000		\$ 169,562	
Superfund/hazardous waste	1	\$ 194,560	\$ 194,560			\$ 194,560
TCE	2	\$ 18,500,000	\$ 12,500,000			\$ 6,250,000
UST/MTBE	7	\$ 677,032	\$ 437,200		\$ 710,082	\$ 88,000
Water	5	\$ 3,097,199	\$ 1,300,000		\$ 968,997	\$ 5,866,000
Total	69	\$709,335,299	\$153,615,830	\$408,314,125	\$ 5,322,423	\$ 5,139,093
Average	1.6	\$ 16,496,170	\$ 6,678,949	\$102,078,531	\$ 9,334,694	\$ 3,439,547
Median	1	\$ 1,500,000	\$ 194,560	\$ 2,450,000	\$ 5,206,185	\$ 3,352,000

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

Table 10-4 Large Case Gross Outcomes by Contamination Type by Plaintiff

Contamination Type	Number of Cases	Number of Plaintiffs	Average Award	Average Total Award	Average Property Award	Average Punitive Damages	Gross Verdict Award per Plaintiff Weighted	Gross Settlement Award per Plaintiff Weighted
Air	2	61,000	\$ 93,150,000			\$ -	\$ 94,491	\$ 1,674
Asbestos	1	55	\$ 8,300,000	\$ 8,300,000	\$ 5,197,000		\$ 94,491	
Heavy metals	4	14,802	\$ 19,575,000	\$ 19,575,000	\$ 16,300,000			\$ 2,532
Landfill	4	13,214	\$ 34,115,102	\$ 34,115,102	\$ 2,800,000		\$ 1,733	\$ 5,830
Oil Spill	4	31,018	\$ 47,650,000	\$ 47,650,000	\$ 8,000,000	\$ -		\$ 3,484
Other/nuisance/EMFs	6	17,245	\$ 156,457,000	\$ 156,457,000	\$ 393,375	\$ 1,414,400	\$ 4,401	\$ 4,024
PCB	5	26,146	\$ 214,340,000	\$ 214,340,000	\$ 5,086,667	\$ 105,000,000	\$ 1,276,781	\$ 13,567
Superfund/hazardous waste	3	6,402	\$ 6,333,333	\$ 6,333,333	\$ 358,000			\$ 1,672
TCE	3	350	\$ 5,166,667	\$ 5,166,667	\$ 5,700,000			\$ 25,213
UST/MTBE	1	13	\$ 102,000,000	\$ 102,000,000	\$ 2,000,000	\$ 100,000,000	\$ 6,423,077	
Water	2	830	\$ 67,500,000					\$ 318,778
Total	35	171,075	\$ 2,881,902,408	\$ 2,881,902,408	\$ 76,710,500	\$ 317,072	\$ 780,048	\$ 376,775
Average		4,888	\$ 82,340,069	\$ 82,340,069	\$ 5,092,782	\$ 41,282,880	\$ 1,560,097	\$ 15,071
Median		1,000	\$ 8,000,000	\$ 8,000,000	\$ 3,580,000	\$ 850,000	\$ 94,491	\$ 4,024

When Bad Things Happen to Good Property

Table 10-5 Small Case Fees and Net Case Outcomes by Plaintiff									
Contamination Type	Number of Cases	Number of Plaintiffs	Average Total Award	Average Legal Fees	Average Expert Fees	Net Verdict Award per Plaintiff Weighted	Net Settlement Award per Plaintiff Weighted		
Air	1	6	\$ 204,000,000	\$ 79,356,000	\$ 850,000	\$ 14,465,667			
Asbestos	3	10	25,366,667	9,154,995	226,667	4,559,151			
Insecticide, Pesticide, Herbicide	4	7	23,778,343	2,328,048	103,063	4,803,425	\$ 10,692,878		
Landfill	3	3	209,000	75,019	59,500	47,267			
Mold	6	8	11,291,667	3,435,413	159,375	4,838,334			
Oil Spill	9	15	25,439,981	470,659	38,722	20,189,904	497,583		
Other/nuisance/EMFs	4	5	240,631	82,449	49,938	70,255			
Superfund/hazardous waste	1	1	194,560	75,684	59,500		59,376		
TCE	1	2	18,500,000	4,862,500	119,000		3,759,250		
UST/MTBE	7	7	677,032	168,963	21,250	497,414	32,518		
Water	4	5	3,097,199	1,165,218	80,750	550,621	3,524,626		
Average		1.6	16,496,170	3,542,285	99,430	5,558,004	2,067,783		
Median		1	1,500,000	200,000	59,500	4,559,151	2,011,105		

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

Table 10-6 Large Case Fees and Net Case Outcomes by Plaintiff							
Type of Contamination	Number of Cases	Number of Plaintiffs	Average Total Award	Average Legal Fees	Average Expert Fees	Net Verdict Award per Plaintiff Weighted	Net Settlement Award per Plaintiff Weighted
Air	2	61,000	\$ 93,150,000	\$ 12,302,134	\$550,000	\$ 61,719	\$ 1,253
Asbestos	1	55	\$ 8,300,000	\$ 1,252,477	\$550,000	\$ 61,719	\$ 1,986
Heavy metals	4	14,802	\$ 19,575,000	\$ 2,258,001	\$550,000	\$ 245	\$ 1,765
Landfill	4	13,214	\$ 34,115,102	\$ 4,514,584	\$550,000	\$ 3,374	\$ 2,580
Oil Spill	4	31,018	\$ 47,650,000	\$ 6,510,904	\$495,000	\$ 3,374	\$ 2,988
Other/nuisance/ EMFs	6	17,245	\$ 156,457,000	\$ 2,720,922	\$244,917	\$ 896,918	\$ 10,255
PCB	5	26,146	\$ 214,340,000	\$ 27,874,426	\$550,000	\$ 1,011	\$ 13,468
Superfund/ hazardous waste	3	6,402	\$ 6,333,333	\$ 859,888	\$550,000	\$ 3,580,481	\$ 241,224
TCE	3	350	\$ 5,166,667	\$ 925,676	\$444,583	\$ 599,805	\$ 3,471
UST/MTBE	1	13	\$ 102,000,000	\$ 36,720,000	\$233,750	\$ 61,719	\$ 2,283
Water	2	830	\$ 67,500,000	\$ 31,882,613	\$302,500	\$ 61,719	\$ 2,283
Average	4,888	\$ 82,340,069	\$ 9,729,437	\$ 459,200	\$ 599,805	\$ 3,471	\$ 2,283
Median	1,000	\$ 8,000,000	\$ 1,252,477	\$ 550,000	\$ 61,719	\$ 2,283	\$ 2,283

When Bad Things Happen to Good Property

Appendix A10-1 - Small Case Dataset

Contamination Type	State	Number of Plaintiffs	Class Action?	Verdict Amount	Verdict Amount if Appealed	Settlement Amount
Asbestos	PA	1	No	\$45,000,000	\$45,000,000	
Mold	CA	1	No	200,000		
Other/nuisance/EMFs	CT	1	No	100,000		
Mold	AZ	1	No	4,000,000		
Mold	TX	1	No	32,000,000		
Superfund/hazardous waste	RI	1	No			\$ 194,560
UST/MTBE	IL	1	No	1,850,000		
Water	TX	1	No			7,000,000
UST/MTBE	VA	1	No	50,000		
Insecticide/pesticide/herbicide	FL	1	No	2,000,000		
Water	TX	1	No	1,500,000		
Oil spill	TX	1	No	100,000	100,000	
Oil spill	CO	1	No	1,873,285		
UST/MTBE	PA	1	No	2,094,223		
Oil spill	PA	1	No	10,175		
UST/MTBE	CA	1	No			88,000
Insecticide/pesticide/herbicide	ID	1	No	3,113,370	3,113,370	
Landfill	SD	1	No	59,000		
UST/MTBE	OR	1	No	75,000		
Other/nuisance/EMFs	OH	1	No	50,000		
Oil spill	MA	1	No	335,000		
Other/nuisance/EMFs	NJ	1	No	762,524		
Oil spill	MN	1	No	25,743		
Landfill	GA	1	No	188,000	188,000	
UST/MTBE	OH	1	No	400,000		
Insecticide/pesticide/herbicide	CA	1	No			21,000,000
Landfill	WI	1	No	380,000		
Oil spill	TX	1	No	430,000		
UST/MTBE	NY	1	No	182,000		
Mold	CA	1	No	2,700,000		
Asbestos	NY	1	No	25,600,000		
Oil spill	OK	1	No	185,625		
Water	MA	1	No	1,300,000		
TCE	IL	2	NA			18,500,000
Mold	FL	2	No	17,300,000		
Water	WA	2	No	2,588,794		
Oil spill	CA	2	No	220,000,000		
Mold	FL	2	No	11,550,000		
Other/nuisance/EMFs	OH	2	No	50,000		
Insecticide/pesticide/herbicide	TX	4	No	69,000,000		
Oil spill	GA	6	NA			6,000,000
Air	TX	6	No	204,000,000		
Asbestos	TX	8	No	5,500,000		

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

Appendix A10-1 (continued)

Property Award	Punitive Damages	Legal Fees	Expert Fees	Gross Verdict Award per Plaintiff	Gross Settlement Award per Plaintiff	Net Verdict Award per Plaintiff	Net Settlement Award per Plaintiff
\$45,000,000		\$17,505,000	\$233,750	\$45,000,000		\$27,261,250	
		67,453	59,500	173,400		46,447	
100,000		38,900	59,500	100,000		1,600	
		1,349,052	212,500	3,468,000		1,906,448	
		10,792,416	233,750	27,744,000		16,717,834	
194,560		75,684	59,500		194,560		59,376
1,850,000	-	200,000	21,250	1,850,000		1,628,750	
		2,281,874	59,500		5,866,000		3,524,626
50,000		19,450	21,250	50,000		9,300	
200,000	1,200,000	77,800	59,500	1,178,000		1,040,700	
		505,895	59,500	1,300,500		735,106	
		33,726	21,250	86,700		31,724	
1,357,500	278,500	528,068	21,250	1,584,478		1,035,160	
		706,304	21,250	1,815,691		1,088,137	
8,500		3,307	21,250	8,500		1	
88,000		34,232	21,250		88,000		32,518
		1,050,025	59,500	2,699,292		1,589,767	
		19,899	59,500	51,153		1	
75,000		40,000	21,250	75,000		13,750	
		16,863	59,500	43,350		1	
150,000		58,350	21,250	150,000		70,400	
		257,171	59,500	661,108		344,437	
25,743		10,014	21,250	25,743		1	
59,000		77,000	59,500	59,000		1	
		134,905	21,250	346,800		190,645	
		6,845,622	59,500		17,598,000		10,692,878
		128,160	59,500	329,460		141,800	
100,000	100,000	27,209	59,500	181,500		94,791	
123,000		47,847	21,250	123,000		53,903	
		910,610	212,500	2,340,900		1,217,790	
25,600,000		9,958,400	212,500	25,600,000		15,429,100	
150,000	35,625	75,253	21,250	179,034		82,531	
1,300,000		1,000,000	85,000	1,300,000		215,000	
12,500,000	-	4,862,500	119,000		6,250,000		3,759,250
		3,000,000	119,000	7,499,550		5,940,000	
		873,104	119,000	1,122,242		626,190	
41,018,527	173,000,000	1,500,000	119,000	91,006,764		90,197,264	
11,550,000		4,492,950	119,000	5,775,000		3,469,025	
		16,863	21,250	21,675		2,618	
8,116,000	30,000,000	1,338,745	233,750	8,141,500		7,748,376	
		2,000,000	42,500		838,000		497,583
4,000,000	200,000,000	79,356,000	850,000	27,833,333		14,465,667	
	3,700,000	1,585	233,750	392,063		362,646	

When Bad Things Happen to Good Property

Appendix A10-2 - Large Case Dataset

Contamination Type	State	Number of Plaintiffs	Class Action?	Verdict Amount	Verdict Amount if Appealed	Settlement Amount
Other/nuisance/EMFs	WA	10	Yes	\$ 92,000		
Other/nuisance/EMFs	CO	12	NA	2,300,000		
UST/MTBE	TX	13	No	102,000,000		
TCE	WV	14	Yes			\$1,350,000
Other/nuisance/EMFs	GA	23	Yes	4,350,000	\$4,350,000	
PCB	KY	40	No	210,000,000		
PCB	KY	52	Yes	218,000,000		
PCB	KY	54	Yes	-	-	
Asbestos	MA	55	No	8,300,000		
Oil spill	IN	118	Yes			7,600,000
TCE	WI	150	NA			4,150,000
Water	NJ	180	NA			4,000,000
TCE	IL	186	Yes			10,000,000
Landfill	CO	514	Yes	1,460,408		
Heavy metals	CO	567	Yes	28,000,000		35,200,000
Water	CA	650	Yes	131,000,000		333,000,000
Other/nuisance/EMFs	IN	700	Yes			2,000,000
Air	SC	1000	Yes			6,300,000
Superfund/hazardous waste	FL	1402	Yes			6,000,000
Landfill	OH	1700	Yes	6,700,000		5,000,000
Oil spill	TX	1900	Yes			8,000,000
Superfund/hazardous waste	AL	2400	Yes			6,500,000
Superfund/hazardous waste	TN	2600	Yes			6,500,000
Heavy metals	AL	2689	Yes			5,000,000
Heavy metals	Ontario	3046	Yes			3,900,000
Landfill	CA	4000	Yes			113,500,000
PCB	AL	5000	Yes			43,700,000
Landfill	WA	7000	Yes			16,500,000
Other/nuisance/EMFs	LA	8000	Yes	865,000,000	-	
Other/nuisance/EMFs	TX	8500	Yes			65,000,000
Heavy metals	TX	8500	Yes			41,400,000
Oil spill	LA	12000	Yes			135,000,000
Oil spill	LA	17000	Yes			40,000,000
PCB	AL	21000	NA			600,000,000
Air	CA	60000	NA			180,000,000

An Analysis of Toxic Tort Property Cases Filed, and Their Outcomes

Appendix A10-2 (continued)

Property Award	Punitive Damages	Legal Fees	Expert Fees	Gross Verdict Award per Plaintiff	Gross Settlement Award per Plaintiff	Net Verdict Award per Plaintiff	Net Settlement Award per Plaintiff
\$ 30,000	\$ -	\$ 50,000	\$ 21,250	\$ 9,200		\$ 2,075	
100,000	1,872,000	38,900	59,500	135,473		127,273	
2,000,000	100,000,000	36,720,000	233,750	6,423,077		3,580,481	
		330,845	233,750		60,750		20,422
43,500	4,350,000	227,000	233,750	156,033		136,000	
7,560,000		1,821,960	550,000	189,000		129,701	
7,700,000	210,000,000	52,538,000	550,000	3,439,423		2,418,500	
-	-	-	550,000	-		1	
5,197,000		1,252,477	550,000	94,491		61,719	
	-	1,003,717	329,999		35,295		23,992
		548,082	550,000		15,161		7,841
		528,272	55,000		12,178		8,937
5,700,000		1,898,100	550,000		30,645		17,483
		214,695	550,000	1,733		245	
22,000,000		5,302,000	550,000		38,801		28,480
		63,236,954	550,000		403,683		305,549
1,400,000		337,400	55,500		2,000		1,439
	-	832,028	550,000		3,452		2,070
3,580,000		862,780	550,000		2,553		1,546
2,800,000		674,800	550,000		1,647		927
8,000,000		1,928,000	550,000		4,211		2,906
		858,442	550,000		1,484		897
		858,442	550,000		1,370		828
		660,340	550,000		1,019		569
		515,065	550,000		702		352
		14,989,718	555,000		15,550		11,665
		5,771,372	550,000		4,790		3,525
		2,179,122	550,000		1,292		902
	850,000	7,087,810	550,000	3,763		2,808	
		8,584,420	550,000		4,191		3,116
10,600,000		2,554,600	550,000		1,247		882
		17,829,180	550,000		6,165		4,633
		5,282,720	550,000		1,289		946
		79,240,800	550,000		15,657		11,858
		23,772,240	550,000		1,644		1,239