

EFFECTS OF PRODUCT RECALL AND THE
DEFENSE'S CLOSING ARGUMENT
ON DAMAGES AWARDED BY
SIMULATED JURIES

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Scope and Method of Study: This study shows the effects of product recall versus no recall and the defense's closing argument versus no closing argument on actual, punitive and total damages awarded by individual jurors and group juries. Additionally, individual jurors' attitudes are observed for each experimental treatment. The data are the written judgments of individual jurors and group juries. Subjects of the study were Oklahoma State University students enrolled in introductory business law classes in the Fall of 1980. A two-by-two analysis of variance is utilized to determine main effects and interactions. Correlation coefficients indicate the covariance between individual measures of damage awards and mean group awards. The t-tests show the significant differences between individual measures and mean group awards.

Findings and Conclusions: Lower total damages were awarded by both individuals and groups when the manufacturer had previously conducted a product recall than when no recall was made. The defense's closing argument, an attempt to minimize damage awards, was effective only if the manufacturer had conducted a recall. However, if no recall had been made, the closing argument caused larger total damage awards than if no argument was included. The combination of recall and argument was most effective in minimizing damage awards. The largest total damages were awarded when the manufacturer failed to recall, and yet included the closing argument.

Adviser's Approval

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CHAPTER I
SURVEY OF THE LITERATURE

Introduction

Products liability has become an increasing concern to business since the mid-1960s when court decisions began placing a greater burden of liability on manufacturers (Gray 1977 p 31). Whereas manufacturers were once liable only for injuries resulting from hidden, or latent, defects, now courts are awarding damages to consumers injured by even obvious defects (Gray 1977 p 32). This trend has resulted from the desire of the courts to transfer the cost of product-related injuries from the users to the producers, who are presumably in a better position to bear the risk or loss (Curran 1978 p 5, Igoe 1978b p 398, Gray 1977 p 33). This trend has also resulted in huge damage awards in products liability suits (Gray 1977 p 31, Curran 1978 p 5). Notwithstanding the courts' apparent success in shifting the financial burden of product-related injuries, the increasing risk of manufacturer liability has not only reduced management's control over its product decisions, but has also resulted in higher product prices for the consumers (Gray 1977 p 31, Mallor 1979 p 47). However, in recent years the courts have begun to recognize the delicate balance between product safety and affordable consumer goods (Mallor 1979 p 47). To understand the courts' attempts to

reach fair judgments, one must first review the various causes or types of products liability.

Products Liability

A manufacturer's products liability may result from one or more of the following:

- (1) A defective product design which causes injuries
(Curran 1978 pp 5,6),
- (2) Negligence in the construction and assembly of the product (Curran 1978 p 7), or
- (3) Lack of adequate warnings, labels, and instructions
(Curran 1978 p 9).

Product Design

The liability associated with a defective design is affected by a variety of factors such as the state-of-the-art knowledge at the time of the design, modification of the design after the defect is discovered, the overall record of defects and mishaps, and the feasibility of adopting an alternative design (Igoe 1978b p 398).

Most design-defect claims can be categorized into one of three areas. One claim is that the design has a latent, or concealed, danger (Curran 1978 p5). An example of this category is a vaporizer containing concealed hot water which may be easily spilled onto a child's body.

A second case is that the manufacturer was negligent by not designing the product with a safety device to protect the user (Curran 1978 p 5). The manufacturer must not only comply with relevant regulations and statutes, but must also take additional precautions where a reasonable man would find it necessary. Failure to provide such additional precautions will subject the manufacturer to a judgment of negligence according to laws of strict liability, particularly if the cost of the safety device would be nominal in comparison to the entire machine (Kansas Law Review, Greenstone 1978 pp 55, 56). Furthermore, liability cannot be avoided by "contending that no one had yet designed at the time of its manufacture a safety feature to protect users" (Curran 1978 p 10).

It is incumbent on the manufacturer to anticipate dangers of product use and to remove or minimize those dangers whenever feasible (Greenstone 1978 p 55). The manufacturer must not only anticipate mishaps resulting from hidden dangers, but must also attempt to minimize hazards resulting from obvious dangers (Curran 1978 pp 5, 6).

Consideration must also be given to the misuse of a product, whether foreseeable or unforeseeable. In a foreseeable misuse case, the manufacturer is duty-bound to provide proper safeguards to prevent a dangerous misuse of the product, whether deliberate or inadvertent. The manufacturer can claim contributory negligence in most unforeseeable misuse cases, e.g., use of a bottle to hammer a

nail (Greenstone 1978 p 56). However, even though the danger is obvious and understood, if the user was injured even by his own recklessness, the manufacturer can be held strictly liable if a safety device could have been installed to prevent the mishap (Gray 1978 p 32). For example, suppose a punchpress operator is injured by placing his hand close to some fast-moving parts of a punchpress. If a detection light could have been feasibly installed to sense the danger and shut off the machine, the manufacturer could be held liable for damages sustained by the operator, even though the operator should have realized the risk of his actions. Irwin Gray (1977 p 32) remarks "what has happened with the courts is that they have moved from protecting the innocent to protecting the unwary to protecting the foolish to protecting the daredevil risk taker."

The third aspect of design liability is the argument that the manufacturer was negligent in the use of inadequate or inferior materials for the products' intended or foreseeable use (Curran 1978 p 6). For example, if the steel used in a steel-belted radial tire was found to be of inferior quality, the manufacturer would be held liable for any injuries related to the inferior steel.

Construction and Assembly

A manufacturer's liability does not end with a carefully designed product, but can also result from workers' carelessness in the manufacturing process. The manufacturer

is legally responsible for any of its unsafe products which enter the stream of commerce, regardless of the reason for the defect (Curran 1978 p 7). For example, if an automobile company assembly worker failed to properly assemble a steering mechanism and his carelessness caused a consumer to be injured, the automobile company would be held liable for the accident, regardless of the company's good faith attempt to construct a safe car.

Warnings, Labels, and Instructions

The scope of products liability reaches beyond the defective design, construction, and assembly of products to include the manufacturer's duty to warn the consumer of potential dangers. A manufacturer's duty to warn has generally been decided on the basis of the following three factors:

- (1) "the likelihood of the accident,"
- (2) "the severity of resulting injury," and
- (3) "the feasibility of providing an effective warning"

(Kansas Law Review 1977 p 445).

The manufacturer assumes the duty to warn "when a product is likely to be dangerous for its intended use and yet the user is unlikely to realize the dangerous potential" (Kansas Law Review 1977 p 444). Failure to provide a good faith attempt to warn users of the dangerous condition of the product will cause the manufacturer to assume liability for any related injuries (Restatement of Torts 388C, p 300).

The courts distinguish between warning and directions for use. Whereas directions provide information as to the efficient use of the product, a warning will indicate potential dangers of departing from the directions. The severity of the warning must be commensurate with the severity of the potential danger (Kansas Law Review 1977 p 445). For example, a chain saw should contain a warning in large bold print which will sufficiently alert the user that misuse of the product may result in severe injuries. It is therefore necessary for the manufacturer to determine the appropriate effect of the warning on the mind of the average user (Kansas Law Review 1977 p 445). Instructions, directions, and warning must not only be placed in an accompanying catalog or manual, but must also be permanently affixed to the product.

In summary, the manufacturer is required to provide instructions and warnings to the user so he can understand, perceive, and appreciate the dangers involved in using the product. This liability also extends to the affirmative duty to offer appropriate warnings against the misuse of the product (Greenstone 1978 p 55).

Punitive Damages

Courts have used punitive damages for the last four thousand years to remedy various injustices (Igoe 1978b pp 396, 399). Although actual damages may compensate for many

of the plaintiff's tangible costs, several costs both to the plaintiff and to potential plaintiffs, can only be compensated by a punitive damage award. The courts have used punitive damages for several reasons. First, punitive damages serve to punish the defendant and to deter similar wrongdoing by the defendant and others in a similar position (Igoe 1978a p 50, Robinson & Kane 1979 p 35). For example, a manufacturer who knowingly produced and marketed a dangerous product with "complete indifference to or conscious disregard for the safety of others" may incur punitive damages (Igoe 1978b pp 395, 398). Punitive damages serve to place unscrupulous manufacturers in a considerably worse financial and competitive position than if they had not sacrificed safety (Robinson & Kane 1979 p 35). Punitive damages also serve to compensate the plaintiff for attorney's fees, court costs, and "other ineffable human qualities, such as human dignity," which are not fully compensated by compensatory damages (Igoe 1978a p 50). Again, this indicates the courts' attempts to place the financial liability on the manufacturer who is in a better position than the plaintiff to bear the burden (Igoe 1978b p 402).

An additional reason that the courts have awarded punitive damages has been to serve as an inducement for private citizens to enforce the laws by filing suit against manufacturers (Robinson & Kane 1979 p 35). Given the considerable costs of challenging a manufacturer, the courts have awarded punitive damages to induce injured citizens to

file suit, thereby balancing the negligent manufacturers' favorable odds against litigation.

The courts have established several precedents in awarding punitive damages. One such precedent is that punitive damages can only be awarded when actual damages are shown (Igo 1978b p 402), and when substantial evidence indicates a conscious disregard for consumer safety (Igoe 1978a p 53). Under such conditions §402A Restatement of Torts Second guarantees the plaintiff's right to punitive damages (Igoe 1978a p 53).

Another precedent set by the courts' majority rule is that punitive damage awards are to be based on the defendant's wealth (Igoe 1978a p 52). The defendant's wealth is considered to be important evidence in the jury's determination of the amount of punitive damages that would serve to deter and punish the defendant. However, due to liability insurance, the defendant's financial burden is often minimal, since the courts usually allow liability insurance companies to pay punitive damage awards (Igoe 1978a p 52).

Rule 411 of the Federal Rules of Evidence allows the plaintiff to include evidence of the defendant's liability insurance coverage "for purposes other than showing negligent wrongful misconduct." The courts generally inform the jury that their compensatory damages award will not damage the defendant's financial condition. This may have an effect on the jury's decision concerning the amount of punitive damages to be awarded (Igoe 1978a p 52).

Although the jury is responsible for determining the amount, if any, of punitive damages to be awarded, the courts are bound to see that such punitive damages are not excessive (Igoe 1978a p 52). Robinson and Kane (1979 p 36) stated that the following factors are considered in deciding whether a punitive damages award is excessive:

- (1) The defendants' wealth is an important factor. The punitive damage awards should be sufficiently large to deter similar misconduct but not so great as to bankrupt the defendant.
- (2) The defendant's ability to pass the costs to others must also be considered. If the defendant can distribute the costs of the punitive damages to such an extent that he is not put at a competitive disadvantage, the punitive damages are insufficient. Only by placing the manufacturer at a competitive disadvantage can punitive damages actually deter and punish.
- (3) Another important consideration is the profitability motive which led to the defendant's misconduct. Punitive damages awards should be much greater than the defendant's expected profit in cases where a profit motive is indicated.
- (4) The more outrageous the defendant's conduct, the greater the punitive damages that should be awarded to accomplish the punishment function.
- (5) A final consideration is "the defendant's amenability to reformation." "If the defendant is unrepentant,

refuses to acknowledge his responsibility, and seeks to cover up the facts prior to or during the lawsuit, that indicates an excessive concern with profits and reputation at the expense of public safety." However, a defendant's good faith attempt to remedy the problem should result in a lower punitive damages (Robinson and Kane 1979 p 36).

In summary, a jury may award punitive damages only if actual damages are awarded, if the plaintiff proves that the defendant was responsible for the injury, and if his actions were wanton, willful, or malicious (Igoe 1978b pp 395, 402). The plaintiff must also determine "that the line of causation runs unbroken to the original negligent actor" (Ramp 1979 p 89). Furthermore, several factors affect the appropriate amount of punitive damages to be awarded.

Jury Studies

A manufacturer may strengthen his defense in a products liability suit by utilizing information which affects the jury's decisions. It is important for the defendant (manufacturer) to understand the factors which affect jurors in determining punitive damages, as well as actual damages. Such jury related factors include (1) extra-evidential influences, and (2) the difference between individual jurors' decisions and the group jury decisions. Additionally, the manufacturer may be interested to know if results of simulated jury studies may be generalized to actual jury decision-making.

Extra-Evidential Influences

Mock jurors have been shown to be influenced by a variety of factors irrelevant to the legitimate evidence of a court case (Sonaike 1978 p 889, Gerbasi, et.al. 1975). For example, the defendant's physical and character attractiveness have been studied with respect to a court's leniency. Wilson and Donnerstein (1977) showed that although the defendant's character attractiveness did not influence judgments of guilty made by "real consequences subjects," it did for subjects who knew that their decision would not affect the defendant. However, character attractiveness did affect punishment recommendations "for both real and hypothetical consequences subjects." The term "real consequences" refers to the jurors' perceptions that their decisions will affect the actual, or "real," consequences for the plaintiff and defendant. Wilson and Donnerstein (1977) also found that the defendant's physical attractiveness had no influence on subjects' judgments of either punishment or guilt for either "real" or "hypothetical" consequences. Piehl's (1977) findings contradicted Wilson and Donnerstein's (1977) results by indicating a tendency toward leniency for an attractive offender.

Order and style of presentation during simulated court proceedings have also been investigated to determine any influence on mock jurors' decisions. Gerbasi, et.al. (1975 p 337) showed that while order of presentation had no effect

on final verdicts, the party presenting second, whether defense or prosecution, had a greater effect on the jury than did the party presenting first. Conley, et.al. (1978) also showed significant effects for the presentational style of the witness, formality of speech, and interrupting behavior. These studies indicate that order and style of presentation do affect juror's opinions.

Other extra-evidential factors such as punishment threatened, decision alternatives, and complexity of instructions have been shown to influence juror's decisions. Sonaike (1978 p 889) found that juries tend to be more lenient when the punishment threatened is excessive or when another equally guilty party was not charged. Gerbasi, et.al. (1975 p 334) showed that "systematic variations in the decision alternatives offered to jurors can result in predictable variations in jurors' verdicts." In addition, complicated instructions tend to accentuate jurors' biases (Gerbasi et.al. 1975 p 339).

Several studies have also been conducted to determine the effect of group discussion on individuals' decisions with respect to extra-evidential influences. Gerbasi et.al. (1975 p 334) found that group discussion lessened the jurors' biases of the defendant's status on the severity of prison sentences which individuals recommend. Asken (1978) also showed that group juries performed better than individuals in forming reasonable judgments. These results indicate the benefit of group jury decisions as opposed to individual juror decisions.

Individual-Group Decisions

Sonaike (1978) compared the means of individual and group damage awards. He found the mean of individual awards to be greater than the mean of group awards. However, his results failed to be significant at the .05 level. Sonaike explained this was probably the result of the large variance in group awards. He found that "the group awards tended to reflect the trend of predeliberation awards dominant within the respective groups." In addition, Sonaike showed "the median and mode of individual awards prior to deliberation proved to be much better predictors of the group awards than the simple average of predeliberation awards" (Sonaike 1978 p 907).

Sonaike's findings indicate that when the jurors' options are very limited, the groups adopt the majority opinion. An example of this is the jury's decision of whether to award actual damages. However, under conditions of nearly unlimited alternatives, groups tend to exercise more moderation, while still reflecting the majority opinion. Clearly, this finding has implications for the punitive damages awarded by the jury (Sonaike 1978 p 907).

Simulation versus Actual Jury Studies

Although the above-mentioned studies show significant effects, mock jury participants, under conditions of hypothetical consequences, may form different decisions from actual

jurors in a real situation. Certainly it would be helpful to know if "important" variables in decision-making under hypothetical conditions are applicable to actual jury decisions (Wilson and Donnerstein 1977).

Wilson and Donnerstein (1977) conducted three studies to determine "the effects of real versus hypothetical consequences on juridic decision-making." The researchers developed real consequences conditions by informing the subjects that they were to help decide the guilt or innocence of a student suspected of cheating on an exam and that their decision would affect the final decision. Subjects in the hypothetical consequences conditions were told that the researchers were interested in "learning how students in the role of jurors make decisions" (Wilson and Donnerstein 1977 p 179). All three studies showed the real consequences condition resulted in more guilty verdicts than in the hypothetical consequences condition. They also found that real consequences subjects made more logical judgments and were less affected by extra-evidential factors than the hypothetical condition subjects.

Wilson and Donnerstein (1977) and Gerbasi, et.al. (1975) have concluded that much of the current mock jury research may be misleading, and therefore of questionable value in real jury situations. Furthermore, they suggested that "more attention should be given in the future to the variable of real versus hypothetical consequences" (Wilson and Donnerstein 1977 p 175).

A variety of factors make it difficult to compare studies and generalize from results (Gerbasi et.al. 1975 p 324). Procedures vary considerably. For example, some studies use individual decision-making while others rely on group verdicts. Both independent and dependent variables differ widely from one study to the next in terms of content and measurement. Also, the experimental subjects are often not representative of the common jury pool (Gerbasi et.al. 1975 p 324).

All of these problems threaten the effective and valid application of the many juridic research findings. The answer to this dilemma may be to convince mock jurors that their decisions will impact on the actual final decision to be made.

Product Recall

The effect of a product recall on juridic damages awards is an important aspect of the products liability field.

An increase in the number of product recalls since the mid-1960s can be attributed to the following:

- (1) Manufacturers have responded to an increasing consumer activism (Ramp 1979 p 83).
- (2) Government agencies, in response to consumer outcries, have applied more pressure on manufacturers to recall defective products (Ramp 1979 p 87).

(3) Manufacturers are finding fewer defenses to products liability suits, which has prompted them to conduct product recalls to limit their potential liability (Ramp 1979 p 84).

Ramp (1979 p 85) stated that "the manufacturer of a defective product is required to do something more for the consumer's safety than warn him of a specific danger." Simply warning the purchaser of a defective product will not relieve the manufacturer of liability. The manufacturer must recall the defective products by offering to replace, repair, or refund, without substantial cost to the consumer (Ramp 1979 p 86).

The manufacturer's duty to recall is limited by two factors. First, the manufacturer must not only be aware of the risk, but must also decide if the risk represents an unreasonably dangerous condition. If a warning is sufficient to alert the consumer to the safe use of the product for its intended purpose then the manufacturer will not be liable. However, the manufacturer has the duty to recall if the danger is unavoidable, even by proper use of the product.

The second factor limiting the manufacturer's duty to recall is the time lapse from purchase to injury or the prolonged use of the product. Time is one of many factors considered in determining whether the chain of causation has been broken (Ramp 1979 p 86). Although the line of causation normally does not extend beyond the anticipated life of the product, determining the product's reasonable life may be difficult (Ramp 1979 p 87).

Certified letters are generally used to notify owners of a product recall. However, the manufacturer may encounter difficulty in obtaining complete mailing lists (Ramp 1979 p 93). Many manufacturers have used either warranty registration cards or product recall information cards to establish a complete mailing list.

Regardless of how the manufacturer conveys the recall, it must provide the consumer with an explicit understanding of the dangers involved for it to establish the consumer's "assumption of risk" as a defense. The consumer's personal characteristics must also be considered in determining how to cause him to understand and appreciate the significance of the risks involved in using the product (Ramp 1979 p 94).

Even a recall campaign may be insufficient to prevent a products liability suit if there is a lack of consumer cooperation. The recipient of a product recall notice may or may not decide to comply with the manufacturer's recall. In fact, usually only a small percentage of recalled products are ever remedied or returned (Ramp 1979 p 88). The consumer who does not comply with a recall campaign does not necessarily break the line of causation back to the manufacturer. However, as the defect becomes both more obvious and predictably risky, the manufacturer is increasingly relieved of liability for injuries (Journal of Air Law and Commerce 1980 p 91).

Another key factor in the product recall-liability issue is the importance of the product to the consumer. If

the recalled product is a necessity to the consumer, the manufacturer maintains liability for injuries even though the consumer failed to comply with the recall campaign. The manufacturer will be held liable for unreturned recalled products to the extent that the recall inconveniences the consumer and represents an economic loss (Ramp 1979 pp 92,94).

As evidenced, whether or not the manufacturer should be held liable in the event of the consumer's lack of recall compliance is still a volatile legal question which, according to Ramp (1979 p 88), "is the key to the impact of recall campaigns on products liability." Although a product recall campaign does not necessarily relieve the manufacturer of products liability, it may indicate a good faith attempt, thereby reducing the damages awarded (Journal of Air Law and Commerce 1980 p 91).

A product recall may not only minimize the corporation's liability, but also can increase customer loyalty (Journal of Air Law and Commerce 1980 p 93). Product recalls have also received greater public acceptance in the past several years (Alwork 1977).

Defense

In accordance with the adversary system of justice the defendant not only may, but also should, attempt to escape or prevent liability in any legal way possible. Although the manufacturer is exposed to greater products liability

than ever before, the burden of proof still remains with the plaintiff to prove that the product was defective or that the manufacturer was negligent in his duty to warn of dangers (Curran 1978 p 5). Additionally, the plaintiff must show that the product was the proximate cause of his injury and that the line of causation between the manufacturer and the plaintiff was unbroken (Ramp 1979 p 90). This should be the thrust of the defense (Gray 1977 p 32).

The manufacturer, in defending a products liability case, should not only show a good faith attempt to produce and market the products, but should also identify any carelessness on the part of the plaintiff or a third party which might absolve the defendant of liability (Curran 1978 p 8). A good faith attempt may be shown in delineating the precision and skill which went into the design and manufacture of the product. The manufacturer should also indicate the adequacy of instructions and warnings for safe use of its products (Curran 1978 p 8).

The defendant may be absolved of liability in any of the following conditions:

- (1) If the plaintiff disregarded obvious directions or warnings (Curran 1978 p 9),
- (2) The user discovered a product defect, was cognizant of the danger, and yet proceeded to voluntarily use the product (Ramp 1979 p 90, Greenstone 1978 p 55, Curran 1978 p 8),

- (3) The plaintiff's injury resulted from an unforeseeable use of the product (Curran 1978 p 8),
- (4) The plaintiff was injured due to a modification of the product, made after it left the seller's control (Curran 1978 p 8).

If the manufacturer was clearly responsible for the defective product, he should use recall as a good faith legal defense whenever possible (Ramp 1979 p 85). Although compliance with current standards and government regulations is an insufficient defense, it can also be used to show a good faith attempt on the manufacturer's part (Greenstone 1978 p 57).

The manufacturer may prevent or minimize punitive damages by doing the following in the court hearing:

- (1) The defendant should initiate a pronouncement of slightly unfavorable evidence early in the products liability hearing (Houlden 1977). This should only be done if the defendant was clearly responsible for the injury. An early pronouncement of unfavorable evidence indicates the defendant's repentance.
- (2) The defendant should persuade the jury that a good faith attempt was made to minimize any danger to the consumer and that the defect was not a result of either gross negligence or a profit motive (Robinson and Kane 1979 p 36).
- (3) Acknowledgement of responsibility and repentance should also minimize punitive damages (Robinson and Kane 1979 p 36).

(4) The manufacturer should indicate his disregard for profits and reputation with respect to the defective product (Robinson and Kane 1979 p 36).

Although the manufacturer can minimize his liability by using the defenses listed above, his best defense is to take a proactive prevention approach. By making a better product which is less dangerous, the manufacturer can prevent many potential liability suits (Gray 1977 p 32). The following is a list of ways for manufacturers and suppliers to reduce their exposure to liability:

First, top management, as well as the production employees, must support the effort to reduce exposure to products liability (Gray 1977 p 32, Curran 1978 p 10). Curran (1978 p 10) has suggested that manufacturers should establish a committee to review all new products prior to marketing and to evaluate older products with regard to current safety requirements. He also suggests that the manufacturer should identify any product problems and determine safer ways to design and produce goods. Gray (1977 p 32) warns against commercially marketing any new product before it has been thoroughly tested for safety. Any findings of unsafe products should receive immediate attention to alleviate the safety problems (Gray 1977 p 32).

In addition, quality control should be an integral aspect for each manufacture stage "from design and engineering of raw materials through the production of the finished product" (Curran 1978 p 11).

Records should be kept for the life of the product on virtually every aspect of manufacture and marketing. This will establish the reason for a particular design being accepted or rejected. Such information will be helpful in providing a good defense for the product design should any litigation arise.

Also, feedback from customers and sales personnel should be documented and recorded for future reference (Curran 1978 p 11).

Curran (1978 pp 12-15) also suggested the following:

- (1) Labeling and advertising should be carefully scrutinized by both legal and engineering experts before commercial use.
- (2) The manufacturer should develop a plan of action to handle claims and complaints.
- (3) The insured manufacturer should establish a specific agreement with the insurer in the event of a claim being filed (Curran 1978 pp 13-15).

CHAPTER II
THEORY/RESARCH DESIGN

The present study was undertaken to determine the amount of actual, punitive, and total damages which potential jurors would award the plaintiff in a civil products liability trial, given certain information concerning the presence or absence of both a product recall and a closing argument by the defense. In addition, jurors' attitudes under various conditions was investigated.

The recall condition was manipulated to determine the effects of a recall versus no recall on damages awarded by mock jurors. The recall condition was expected to result in lower damage awards than the no recall condition. This was expected because the product recall condition showed that the manufacturer had made a good faith attempt to recall all of the defective products prior to the injury of the plaintiff's daughter. The no product recall condition indicated the defendant's continued refusal to recall their product.

In addition to the recall variable, a closing defense argument was also manipulated to determine the effects on damages awarded. In the closing argument condition the defense attorney suggested that, based on the evidence of the case, no damage awards should be granted. He further pleaded with the jury to ignore the plaintiff's damage awards request and to establish their own damages awards, if they deemed damages necessary at all. The no argument

condition simply excluded the final defense attorney's plea from the proceedings.

The closing argument condition was manipulated to determine the effects of the presence or absence of the defense's closing arguments on damages awarded by mock jurors. The defense's closing arguments were expected to counteract the "anchor" effect of the plaintiff's damage request, thus decreasing the damages awarded by mock jurors. In the present study, the plaintiff's request for \$8,450,000 in total damages was expected to represent an "anchor," or reference point, for the jurors. The anchor effect refers to the influence that a starting point has on people's final decisions (Mowen and Ellis 1980 pp 87, 88). According to the anchor concept, jurors are more likely to award higher damages when the plaintiff requests larger damage awards. For example, theoretically a plaintiff's request for \$8,000,000 is more likely to cause jurors to award higher damages than if the plaintiff only requested \$5,000,000. The intended purpose of the closing argument was to break the anchor effect of the plaintiff's request, thus resulting in lower damages awarded by mock jurors.

Based on objective legal criteria, actual damages awarded by individuals or groups should be unaffected by either the recall or the argument variable. This is because actual damages should be awarded only on the basis of the plaintiff's loss due to injury and should be unaffected by either a good faith judgment or an anchor effect.

No significant difference would be expected between individual and group decisions in the recall or no recall condition. However, higher punitive and total damages would be expected in the no recall condition than if the defendant recalled the product. A main effect for product recall was expected for both individual and group decisions for punitive and total damages.

A main effect was expected for the closing argument conditions, with the inclusion of the closing argument predicted to cause a decrease in the punitive and total damage awards compared to the no closing argument condition. This was predicted for both individual and group sessions.

The argument-recall condition was predicted to have the lowest punitive damages for both individuals and groups. In the no recall-no argument condition punitive and total damages were expected to be significantly larger than in the other conditions for individuals and group decisions. No interactions between the two independent variables were expected. Although both individual and group awards were predicted to be larger than group awards for punitive damages (Sonaike 1978 p 904).

Total damages would be the sum of the actual and punitive damages awarded by the mock jurors and expected to resemble the effects found in punitive damage awards.

Operationalizing the Variables

Two independent variables were manipulated to determine main effects and interactions using a two-by-two analysis of variance. The four conditions are listed as follows:

- (1) recall-argument
- (2) no recall-argument
- (3) recall-no argument
- (4) no recall-no argument.

The dependent variables used to measure the effects of independent variable manipulations in both the individual and group conditions are:

- (1) actual damages,
- (2) punitive damages, and
- (3) total damages.

As prior studies have indicated, mock jurors are more likely to have favorable attitudes toward companies that recall defective products and have unfavorable attitudes toward those companies that refuse to recall. Each of the five attitude questions was expected to reveal more positive attitudes in the recall condition than in the no recall condition. No predictions were made for the effects of the closing argument versus the no closing argument condition on mock jurors' attitudes toward the defendant. In the individual juror condition, five dependent variables were measured to determine attitudinal effects of independent variable variations. They are as follows:

- (1) The certainty that the decision should go against the defendant,
- (2) The juror's perception of how concerned for consumer welfare the defendant is,
- (3) The juror's overall impression regarding the defendant,
- (4) Degree of danger associated with the product, and
- (5) The extent to which the defendant was responsible for the injuries to the victim.

The certainty question could be answered by the subjects indicating their level of certainty on a scale of 0% to 100%. The other four questions were to be answered on a Lickert scale from one to seven, with a one indicating the least favorable reaction and a seven indicating the most favorable reaction.

Sample

Participants in the study were 231 students recruited from introductory business law classes during the Fall semester, 1980, at Oklahoma State University. All subjects were given extra credit by their instructors for participating in the study. Volunteers were requested to choose a convenient time to participate in one of the scheduled sessions. Each session was scheduled for six participants and would be declared invalid if fewer than five volunteers were present. Volunteers were also requested not to sign up for a session for which their friend(s) had also volunteered.

Design

A simulated court case was devised to manipulate the two independent variables, i.e., recall and argument, in a realistic setting. In summary, the case involved charges that Smith Manufacturing Company was responsible for injuries sustained by the plaintiff's two-year-old daughter. The injuries were caused by the daughter tipping over a vaporizer during the night, resulting in third-degree burns over one-third of her body. The victim's father was suing Smith Manufacturing for producing a defectively designed vaporizer under the law of strict liability. The plaintiff's request was \$450,000 for actual damages and \$8,000,000 for punitive damages.

One of the four following conditions was administered in each session for individuals and the corresponding group:

- (1) Recall - Argument
- (2) Recall - No Argument
- (3) No Recall - Argument
- (4) No Recall - No Argument

All variables other than the independent variables were held constant in all sessions.

As soon as five or more individuals were present for the scheduled session, the graduate students who were helping conduct the experiments would separate friends and count

subjects as odd or even to randomly assign them to a condition. The instructions were then read to the mock jurors. The instructions informed the participants of the experiment's general intent and structure.

Following the brief introduction, participants viewed a slide show in which the subjects involved in the trial were identified. The purpose of the slide show was to simulate an actual court setting.

Each participant was then given a transcript of one of the four experimental condition's trial proceedings to read along with the corresponding audio tape. In addition, participants were provided with illustrations of a vaporizer and of the injured areas of the victim's body. The tape of the trial proceedings was started and the supervisor(s) of the session left the room. After the tape was finished the supervisors entered the room and collected all transcripts and illustrations. Each participant was given a questionnaire to complete without any discussion. Participants were only allowed a maximum of three minutes to complete the questionnaires. After the supervisor collected the individual questionnaires, he instructed the subjects to make a group decision within thirty minutes. Participants were encouraged to discuss the amount of actual, punitive, and total damages, if any, to award the plaintiffs. Each group was also encouraged to utilize the full thirty minutes to decide the amount of damages to award. One questionnaire was given to the group to indicate the damages awarded. The

supervisor(s) informed the group that they would be warned to conclude their decisions approximately five minutes prior to the deadline. The supervisors then left the room to allow the group to decide the damages they should award. After thirty minutes the supervisor(s) collected the group decisions, thanked the participants, and asked them not to discuss the trial until the next week. In some cases groups took either longer than thirty minutes or much less time. If the group had not decided within thirty minutes, the supervisor would pressure them into deciding within the next five minutes. The group decisions were collected at the end of the extra five minutes.

Statistical Procedures

All mock jury decisions were recorded and sorted into either group or individual decisions. Then, within each category, decisions were classified into the appropriate one of four treatments. A two-by-two analysis of variance was run on each dependent variable for both the individual and group decisions to determine any significant main effects or interactions among treatments for the recall or argument variable. In addition, correlation coefficients were determined between mean, median, and average of mean and median, and mean group scores, both for all conditions and for each separate condition. A t-test was used to determine significant effects for all conditions, both separate and combined, with respect to each measure of individual scores.

CHAPTER III
RESULTS AND ANALYSIS

Individual Decisions

Actual Damages

Actual damages were greatest in the no recall-argument condition (\bar{x} =\$412,845) and smallest in the recall-no argument condition (\bar{x} =\$361,017). A main effect ($F(3,277)=2.94, p<.09$) was observed for the recall condition. This indicates that mock jurors awarded smaller actual damage awards when the manufacturer recalled the defective product (\bar{x} =\$362,376) than when the manufacturer failed to recall (\bar{x} =\$398,158). Although jurors awarded higher damages when the defense attorney's final statement was included [\bar{x} (argument)=\$388,302 versus \bar{x} (no argument)=\$371,696], the difference failed to be significant ($F(3,227)=.64, p<.42$). However, the inclusion of the argument exacerbated the actual damage awards more in the no recall condition (\bar{x} =\$412,845) than in the recall condition (\bar{x} =\$363,759).

Although contrary to the author's expectations, the actual damages were affected by the recall condition. The low level of significance ($p<.09$) does, however, indicate that recall only partially affects the jurors' decisions of the actual damages to award. As predicted, the argument condition showed no significant effect on the actual damages

($p < .42$). In addition, no significant interaction was found ($F(3,227) = .43$, $p < .51$).

Punitive Damages

Punitive damages were greatest in the no recall-argument condition ($\bar{x} = \$2,981,896$) and least in the argument-recall condition ($\bar{x} = \$1,398,276$). The recall main effect ($F(3,227) = 7.66$, $p < .006$) indicated that recall had a significant impact on mock jurors' awards of punitive damages. A main effect for argument failed to be significant ($F(3,227) = 1.93$, $p < .17$). However, interaction between argument and recall was significant ($F(3,227) = 3.98$, $p < .05$). Individual mock jurors tended to award much greater damages in the no recall-argument condition ($\bar{x} = \$2,981,896$) than in the no recall-no argument condition ($\bar{x} = \$1,858,036$). Also, the recall-no argument condition resulted in greater punitive damages ($\bar{x} = \$1,603,559$) than the recall-argument condition ($\bar{x} = \$1,398,276$). This indicates that while the defense's closing argument minimized punitive damage awards in the recall treatment, they had a drastically opposite effect when the manufacturer failed to recall the defective product. The combination of no recall and argument apparently caused the individual mock jurors to find the defendant more deserving of punishment for both failure to recall and lack of concern for consumer welfare.

Total Damages

A main effect for recall was significant for total damages awarded ($F(3,227)=7.83, p<.006$). However, a main effect for argument failed to be significant ($F(3,227)=1.93, p<.17$). The argument-recall interaction showed significance ($F(3,227)=4.03, p<.05$). Total damages indicated slightly greater significance for both the recall effect and the argument-recall interaction than did punitive damages, and considerably more than actual damages.

The results (Table I) clearly indicate that mock jurors awarded significantly greater damages if the manufacturer failed to recall the defective product, particularly if the defense's closing arguments were included in the no recall condition. Also evident is the damages-minimizing effect of the defense's closing argument if the product had been recalled. Individual mock jurors evidently tend to polarize their damage awards depending on a combination of recall and closing argument. Whereas mock jurors awarded the largest damages in the no-recall argument condition, they awarded the lowest damages when the manufacturer recalled the product and the argument was included. Clearly, it was in the manufacturers' best interest to recall the product, in terms of minimizing damages.

Attitude Measures (Table III)Certainty

Individual mock jurors were significantly more certain that the decision should go against the defendant in the no recall than in the recall conditions ($F(3,224)=8.02, p<.005$). Neither argument ($F(3,224)=1.06, p<.30$), nor the interaction between argument and recall ($F(3,224)=.75, p<.39$), showed significance. However, the mock jurors were clearly influenced by the manufacturer's choice of recall ($\bar{x}=64.0\%$) versus no recall ($\bar{x}=74.9\%$). This indicates the dramatic effects that a product recall may have on minimizing damages in products liability suits.

Consumerism

Mock jurors indicated that recall had a main effect significance ($F(3,227)=95.94, p<.0001$) in determining their perceptions of the manufacturer's interest in consumer welfare. However, argument showed no main effect significance ($F(3,227)=.28, p<.60$). The argument-recall interaction was significant ($F(3,227)=4.18, p<.04$), reflecting the jurors' favorable perceptions of the defendant in the recall-argument condition ($\bar{x}=3.4$) and their unfavorable perceptions in the no recall-argument condition ($\bar{x}=5.5$). As evidenced earlier, the defense's closing argument has a polarizing effect on jurors' perceptions depending on the recall versus the no recall condition.

Impression

Recall showed significance ($F(3,227)=46.90, p<.0001$) for the mock jurors' overall impression of the manufacturer. Although the effect of the argument was in the same direction as in the previous dependent variables, the interaction between argument and recall lacked significance ($F(3,227)=1.27, p<.26$). The argument condition, although only slightly significant ($F(3,227)=2.58, p<.11$), showed a greater effect than for any other attitude variable. The defense's closing argument apparently negatively affected jurors' perceptions of the manufacturer's good faith.

Danger

Mock jurors perceived the vaporizer to be more dangerous when no recall was made than when the manufacturer recalled the vaporizer ($F(3,227)=2.99, p<.08$). No significant findings were discovered for either the interaction ($F(3,227)=.61, p<.44$) or the argument conditions ($F(3,227)=1.99, p<.16$). However, the no recall-argument condition again proved to provide the most unfavorable perceptions of the manufacturer ($\bar{x}=5.43$).

Responsibility

The jurors' perceptions of the extent to which the manufacturer was responsible for the injuries was significantly affected in the recall conditions ($F(3,227)=8.14,$

$p < .005$) and in the argument recall interaction ($F(3,227)=7.82$, $p < .005$). Whereas the effects of the recall on jurors' perceptions of responsibility is predictable, the significant effects of the interaction is somewhat surprising. The defense attorney's closing argument apparently caused mock jurors to perceive the manufacturer as unrepentant and irresponsible in the argument-no recall condition, whereas the recall-argument condition tended to cause jurors to perceive the manufacturer as making a good faith attempt. Main effects for the argument conditions lacked significance ($F(3,227)=1.16$, $p < .28$).

Group Decisions

Actual Damages

No significant effects were found for group actual damages, although main effects for argument ($F(3,36)=2.00$, $p < .16$) indicated some difference, with argument receiving greater damages ($\bar{x}=\$450,000$) than the no argument condition ($\bar{x}=\$420,000$). Both the recall and the recall-argument interaction lacked significance ($F(3,36)=0.00$, $p < .1.00$). Group actual damages ($\bar{x}=\$435,000$) were larger in every treatment than individual actual damage awards ($\bar{x}=\$380,100$).

Punitive Damages

A significant main effect was discovered in the recall conditions ($F(3,36)=17.24$, $p < .0002$) for punitive damages. Neither the argument ($F(3,36)=1.17$, $p < .29$) nor the interactions

($F(3,36)=1.28, p<.26$) were found to be significant. This was predicted since the manufacturer's recall indicates a good faith attempt and should therefore result in smaller, if any, punitive damages than if the manufacturer failed to recall.

In comparing the group to the individual awards of punitive damages, the polarizing effect of a group is evident. The group jury awarded larger punitive damages in the no recall condition ($\bar{x}=\$2,790,000$) than did the individual jurors ($\bar{x}=\$2,429,800$). However, in the recall condition, the group punitive damages ($\bar{x}=\$687,500$) were less than those of the individuals ($\bar{x}=\$1,738,750$). Overall, group punitive damages were less than individual punitive damages ($\bar{x}=\$1,960,400$).

Total Damages (Table II, Figure 1)

The total damages were nearly identical to punitive damages in terms of significant effects. A slight main effect was indicated for argument ($F(3,36)=1.26, p<.27$). Again, a significant main effect for recall was observed ($F(3,36)= 16.90, p<.0002$), and the argument-recall interaction failed to be significant ($F(3,36)=1.24, p<.27$).

Individual-Group Comparison

Correlation coefficients were used to compare individuals' mean, median, and average of mean and median total damage awards with mean group total damage awards. This was

done for all conditions, for each condition, and for the recall versus no recall conditions. Correlation analysis was utilized to measure the strength of association between variables. The larger the correlation coefficient, the greater is the between-variable covariance. Correlation coefficients were then tested for significance at or beyond the .05 level.

All Conditions

Correlation analysis was utilized to determine which measure of individual awards most significantly covaried with mean group awards for all conditions. As Table IV indicates, high correlations were found between the individuals' mean, median, average of mean and median, and the groups' mean total awards across all conditions. Although the average of the individuals' mean and median scores showed the highest correlation ($R=.8666$, $p<.005$), both the mean and the median were also highly correlated with group awards, ($R=.8213$, $p<.005$) and ($R=.8623$, $p<.005$), respectively.

Condition-by-Condition

Correlation analysis was used for each treatment to elucidate the effects of independent variable manipulations on covariance between measures of individuals' awards and mean group awards. Every condition except the recall-argument had high correlations between individual mean,

median, average of mean and median, and mean group total awards (Table V). Although the median showed the highest correlation for the recall-no argument treatment ($R=.9526$, $p<.005$), it had the lowest correlation in the recall-argument condition ($R=.2612$, $p<.20$). The low correlation for all measures in the recall-argument condition was probably the result of both the predicted anchor-breaking effects and the group discussions concerning the manufacturer's good faith attempt.

Recall-No Recall Conditions

Correlations for recall versus no recall were also determined to indicate how the recall variable affected covariance between measures of individuals' awards and mean group awards (Table VI). The mean showed the highest correlation in the no recall conditions ($R=.8922$, $p<.005$), although both the median and the average of the mean and median were also highly correlated with the group scores, ($R=.8524$, $p<.005$) and ($R=.7113$, $p<.005$), respectively. In the recall treatments the median indicated the highest correlation ($R=.7628$, $p<.005$) with both the average of the mean and median and the mean showing lower correlations, ($R=.7050$, $p<.005$) and ($R=.5355$, $p<.010$), respectively. Higher correlations were observed for no recall conditions as compared to recall conditions.

As indicated in Table VI, while individual damage awards exceeded group awards in recall conditions, just the

opposite effect was evidenced in the no recall conditions. All individual measures were significant at least to the .05 level, except the median measure in the recall condition ($p < .10$). These results suggest that group discussion significantly reduced total damage awards in the recall condition. However, the no recall condition significantly increased group damage awards above the level predicted by individual measures.

Total Damage Awards

All Conditions

The average of the mean and median individual scores was the best predictor of the actual mean group score, an underestimation of only \$503,763 (Table IV). The mean was the next closest predictor, but overestimated the group mean by \$166,766. The median, the poorest indicator of the mean group score, underestimated the group by \$1,175,000. The t-scores for the mean, median, and average of mean and median were 1.061, -1.509, and -.601, respectively. The respective significance levels were $p < .15$, $p < .10$, and $p < .25$. Although none of the individual measures showed significance at the .05 level, the median showed the greatest difference (Table IV).

Condition-by-Condition

Figure 1 shows the relationships between mean individual and group decisions for each condition. Individual mean

scores underestimate the group scores for the recall conditions but overestimate group scores for the no recall conditions. In other words, in recall conditions the group decisions were higher than the mean individual decisions, whereas in the no recall conditions the group decisions were lower. These results suggest that group discussion emphasized the recall variable, thus amplifying the effects of the recall and no recall conditions on mock jurors' damage awards.

A comparison of individual means for argument versus no argument indicated that the argument variable had less effect on group decision-making than did the recall variable. Whereas the recall variable influenced the direction of change for individual to group decisions, the argument variable only amplified the changes.

Mean total damage awards for both individual and group decisions were larger in the no recall condition and smaller in the recall condition, regardless of the argument treatment (Figures 1,3,4). Mean individual and group decisions were considerably larger when the argument condition was combined with the no recall condition ($S^2 = \$3,391,300$; $\$3,800,000$) than when combined with the recall condition ($S^2 = \$1,762,000$; $\$1,125,000$). However, group decisions showed a greater interaction of argument and recall variables than did individual decisions.

Whereas the no argument condition showed very little effect on individual decisions, it showed a considerable

effect on group decisions (Figures 1,3,4). Clearly, the combination of no argument and the recall variable caused group awards to vary more than predicted from the same condition individual scores.

Median individual scores underestimated group awards in every condition (Figure 2). Both the mean and the median individual scores were lower than group scores for the no recall condition. However, the direction of change from individual to group decisions was different for the mean and median when the recall was made. The lower mean individual-than-group score, as compared to the higher mean individual-than-group score, can be mostly attributed to a few extremely high individual scores which increased the mean. In comparing the mean and the median individual scores to the group awards the main effects were shown to be similar for both individual and group decisions. For example, from one treatment to the next, the direction of change in damage awards for individuals was parallel to the direction of change for the mean group decisions.

Mixed Conditions

Variances in mean individual scores (Figure 1) were much greater in mixed conditions, such as argument-no recall or no argument-recall ($S^2=12,093,150,000$; $12,945,660,000$) than in the other two conditions ($S^2=752,241,000$; $630,302,000$). This suggests that some individuals are considerably more influenced by the "mixed" manipulations

than others. Much smaller variances were observed for both recall-argument and no recall-no argument, where the conditions were more extreme.

CHAPTER IV
SUMMARY AND CONCLUSIONS

Individual Decisions

As expected, individual mock jurors awarded higher damages when no recall was made than when the manufacturer had recalled the products. However, contrary to expectations, no main effects for the argument variable were determined. Individual mock jurors awarded the highest damages in the no recall-argument condition, but the lowest damages in the recall-argument condition. These results indicate that, as expected, the defense's attempt to break the "anchor" was helpful when the manufacturer recalled the product. However, no predictions were made for the larger damage awards when the argument was combined with no recall rather than when no argument was included. Implications of these results are that defense attorneys in products liability suits should include an anchor-breaking argument if the manufacturer had previously recalled the products, but exclude the argument if no recall had been made.

The interaction of argument and recall variables was unpredicted, but seems logical in retrospect. The attempt to break the anchor effect of the plaintiff's request, combined with the lack of good faith attempt, i.e., no recall, evidently boomeranged to result in much larger damages. As indicated by Robinson and Kane (1979 p 36), punitive damages are likely to be larger when the defendant

fails to acknowledge responsibility and shows no repentance. Also the defense's closing arguments may have represented a profit motive to the individual mock jurors. Robinson and Kane (1979 p 36) warned against any actions by the defendant which might show a greater regard for profits than for consumer safety. The results of the no recall-argument condition support the conclusions of Robinson and Kane (1979 p 36).

Attitudes

As predicted, all five attitude measures indicated that individual mock jurors had more favorable attitudes toward the manufacturer who recalled than the one who failed to recall. Also as expected, main effects for argument did not significantly affect jurors' attitudes toward the manufacturer. However, the attitude variable most affected by the argument condition was the "overall impression" measure. The slight significance of the impression variable suggests that the argument variable might have augmented individual jurors' decisions. Significant interactions in the "consumerism" and "responsible" measures were unpredicted. The consumerism interaction suggests that individuals found the manufacturer to be more oriented toward consumer welfare in the recall-argument condition, yet lacking regard for consumer welfare in the no recall-argument treatment. This substantiates the disparity between punitive damage awards for the recall-argument and the no recall-argument treatments.

The significance of the interaction for the responsible variable is more difficult to explain. Apparently, when the defendant recalled the product and included the closing argument, individual jurors found the defendant less responsible for injuries. In addition, individual jurors apparently characterized the defendant as being much more responsible for the injuries when the argument was combined with no recall. These results suggest some of the underlying reasons for the higher damage awards in the no recall-argument than in the recall-argument treatments.

Group Decisions

Information concerning effects of recall and argument variables on group decisions is particularly relevant, since actual jury decisions are formed by a group jurors. The recall main effect significantly affected group total damage awards. As expected, the group awards were much larger for the manufacturer who did not recall than it was for the one who did recall the products. Although no significant main effects were found for the argument variable, a tendency was evidenced for groups to award larger damages in the no recall condition when the defendant included the closing argument than when the argument was excluded. The mean for the no recall-argument treatment ($\bar{x}=\$3,800,000$) was considerably larger than the no recall-no argument treatment ($\bar{x}=\$2,655,000$).

Damage awards in the recall condition were approximately equal regardless of the argument manipulation. No significant interaction was observed.

Implications for the group results are that manufacturers are less likely to receive large total damage awards if they recalled the product than if no recall was made. The defense's closing arguments are only likely to affect juries' decisions when no recall was made. Attempts in the defendant's closing argument to break the anchor effect may backfire and result in larger damages. This finding suggests that when the manufacturer fails to recall the product, no anchor-breaking effects should be attempted, at least in the closing argument.

Although the expected main effects for recall were substantiated by the results, none of the expected main effects for the argument variable were evidenced. In fact, an opposite effect was found in the no recall conditions for the argument variable.

Individual-Group Comparison

Mean, median and average of mean and median for individual jurors' total awards were compared to mean group awards, both for all conditions, and for each condition. In addition, a comparison on individual and group awards was made for the no recall versus the recall conditions.

Although all three measures of individual awards exceeded a correlation of 82 per cent across all conditions, the best

predictor for group awards was the average of the mean and median ($R=.866$). The median ($R=.862$), showing a higher correlation than the mean ($R=.821$), supported findings by Sonaike (1978 p 907) that the median is a better predictor of group awards.

While the mean measures of individual damage awards was larger than the group by \$166,766 (across all conditions), both the median and the average of the mean and median were lower, -\$1,175,000 and -\$503,763, respectively. The higher mean individual than mean group decisions may be explained by the averaging of a few extremely large individual decisions, which caused a considerable increase in the mean. This is evidenced by the comparatively large variance for the mean (Table IV). The median was lower than the group mean because the median is much less affected by extreme values, and thus excluded the influencing effects of those individuals who awarded the largest damages. The average of the mean and median was lower than the mean group decisions due to the median's much lower approximation of the group mean (Table IV).

In comparing measures of individual awards to mean group awards for each condition, high correlations were observed for most measures except in the recall-argument treatment (Table V). Low correlations in the recall-argument condition indicated that individuals' decisions did not significantly covary with mean group decisions in this condition. Apparently, under conditions of recall and

argument, mock jurors form damage award decisions differently than for other treatments. This could be the result of a synergistic influence of a group discussion in this particular treatment. In other words, under these conditions, perhaps the group discussion concerning the evidence (conditions) of the case had a greater influence on the final group decisions than did the other treatments. The manufacturer's good faith attempt to recall the product, combined with the closing argument, apparently caused the groups to mitigate their judgment of damage awards. The evidence indicates the powerful effects of combining recall with a closing argument to minimize damage awards.

The overall high correlations between individual measures and mean group awards support Sonaike's finding that group awards reflect predeliberation trends of individual mock jurors (1978 p 907). The analysis of the recall versus no recall (Table VI) showed that when the manufacturer recalled the product, all three measures of individual total damage awards were larger than the corresponding group total damage awards. That is, groups awarded significantly smaller damages than did individual jurors in the recall treatments. However, just the reverse was true for the no recall conditions. Therefore, Sonaike's results (1978 p 904), showing individual mean awards to be greater than group mean awards, appear to be conditional. The results of the present study supported Sonaike's findings regarding individual versus group damage awards only in the recall conditions, but not in the no

recall conditions. In terms of correlation between measures of individual scores and group scores, the no recall conditions showed overall higher correlations than did the recall conditions.

Although many statistically significant results have been shown, the question of external validity remains. How applicable are the results and conclusions? Do the relationships found in the research characterize real life civil products liability decision-making by jurors? Ethical considerations leave such questions unanswered since researchers cannot manipulate actual court hearings. Yet research such as conducted by Wilson and Donnerstein (1977) may at least provide more evidence to support the application of simulated jury studies to actual settings. Notwithstanding the external validity issue, mock jury research may still provide valuable information to participants of products liability suits.

Although the sample was not representative of a typical jury, the significant results of the present study may at least suggest some general recommendations. Products liability defendants should emphasize their product recall as being a good faith attempt to maintain consumer safety. In the instance where the defendant had recalled the product prior to litigation, the defense attorney may also minimize damage awards by presenting an anchor-breaking closing argument. However, if the defendant failed to recall, the results of this research suggest the defendant should not use an anchor-breaking attempt in the closing remarks.

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A P P E N D I X

TABLE I

ANALYSIS OF VARIANCE RESULTS FOR
INDIVIDUAL TOTAL DAMAGES

	F	p<____
Argument	1.93	.1661
Recall	7.83	.0056
Argument X Recall	4.03	.0459
Error 1512190057		
Degrees of Freedom 3,227		

TABLE II

ANALYSIS OF VARIANCE RESULTS FOR
GROUP TOTAL DAMAGES

	F	p<____
Argument	1.26	.2690
Recall	16.90	.0002
Argument X Recall	1.24	.2731
Error 94414500		
Degrees of Freedom 3,36		

TABLE III
ANALYSIS OF VARIANCE RESULTS FOR
ATTITUDE MEASURES

<u>Certainty</u>	F	p<__
Argument	1.06	.3040
Recall	8.02	.0051
Argument X Recall	.75	.3864
Error 186664		
Degrees of Freedom 3,224		
 <u>Consumerism</u>		
	F	p<__
Argument	.28	.5981
Recall	95.94	.0001
Argument X Recall	4.18	.0421
Error 394		
Degrees of Freedom 3,227		
 <u>Impression</u>		
	F	p<__
Argument	2.58	.1093
Recall	46.90	.0001
Argument X Recall	1.27	.2614
Error 354		
Degrees of Freedom 3,227		

Danger

	F	p<__
Argument	1.99	.1599
Recall	2.99	.0852
Argument X Recall	.61	.4363
Error 357		
Degrees of Freedom 3,227		

Responsibility

	F	p<__
Argument	1.16	.2836
Recall	8.14	.0047
Argument X Recall	7.82	.0056
Error 534		
Degrees of Freedom 3,227		

TABLE IV

RESULTS FOR INDIVIDUAL-GROUP COMPARISON
ACROSS ALL CONDITIONS

	Individual Measures		
	Mean	Median	Average of Both
t-score	1.061	-1.509	-.601
Significance	p<.15	p<.10	p<.25
Degrees of Freedom	39	39	39
Correlation (significance)	.8213 (p<.005)	.8623 (p<.005)	.8666 (p<.005)
Variance	6.66 x 10 ¹²	2.79 x 10 ¹²	2.17 x 10 ¹²
Standard Deviation	2,581,013	1,692,844	1,492,227
Measure of Total Damage Awards	\$2,341,766	\$1,000,000	\$1,671,237
	Individual Minus Group		
	Mean	Median	Average of Both
Group Mean = 2,175,000	\$166,766	-\$1,175,000	-\$503,763

TABLE V

CORRELATIONS AND T-TESTS FOR
INDIVIDUAL-GROUP COMPARISON
FOR EACH CONDITION

Condition	Correlation					
	Mean- Group	Signif- icance p<___	Median- Group	Signif- icance p<___	Avg \bar{X} & Med-Group	Signif- icance p<___
No Recall- No Argument	.91367	.005	.88410	.005	.91623	.005
Recall- No Argument	.56861	.05	.95260	.005	.82899	.005
No Recall- Argument	.86487	.005	.81145	.005	.84257	.005
Recall- Argument	.46618	n.s.*	.26121	n.s.	.39809	n.s.

*n.s.= Not Significant at .05 level

Condition	Significance				
	t-score		Level of Sig- nificance p		Degrees of Freedom
	\bar{x}	Median	\bar{x}	Median	
No Recall- No Argument	-1.695	-2.582	.10	.025	9
Recall- No Argument	2.433	.6720	.05	.25	9
No Recall- Argument	-.9668	-1.716	.25	.10	9
Recall- Argument	2.624	1.552	.025	.10	9

TABLE VI

RESULTS FOR INDIVIDUAL-GROUP COMPARISON
FOR RECALL VERSUS NO RECALL

Condition	Correlation					
	\bar{x} - Group	Signif- icance	Median- Group	Signif- icance	Avg \bar{x} & Signif- Med-Group	Signif- icance
No Recall	.8922	.005	.8524	.005	.7113	.005
Recall	.5355	.010	.7628	.005	.7050	.005

Condition	Significance						
	t-score			Level of Significance		Degrees of Freedom	
	\bar{x}	Median	Average	\bar{x}	Median	Average	
No Recall	-1.748	-2.957	-2.605	.05	.005	.01	19
Recall	3.556	1.567	2.238	.005	.10	.025	19

	No Argument	Argument
No Recall	\$2,241,000 (75,224,100) \$2,655,000	\$3,391,300 (1,20,931,500) \$3,800,000
Recall	\$1,975,600 (129,456,600) \$1,120,000	\$1,762,000 (63,030,200) \$1,125,000

Figure 1. Comparison by Condition for Mean Individual Awards to Mean Group Awards*

*Mean individual awards in upper left corners and mean group awards in lower right corners; Variances (S^2) in parentheses

	No Argument	Argument
No Recall	\$1,475,000 (821,555,000) \$2,655,000	\$2,425,000 (1,724,201,000) \$3,800,000
Recall	\$862,500 (150,701,000) \$1,120,000	\$762,500 (689,451,000) \$1,125,000

Figure 2. Comparison by Condition for Median Individual Awards to Median Group Awards*

*Variances are in parentheses

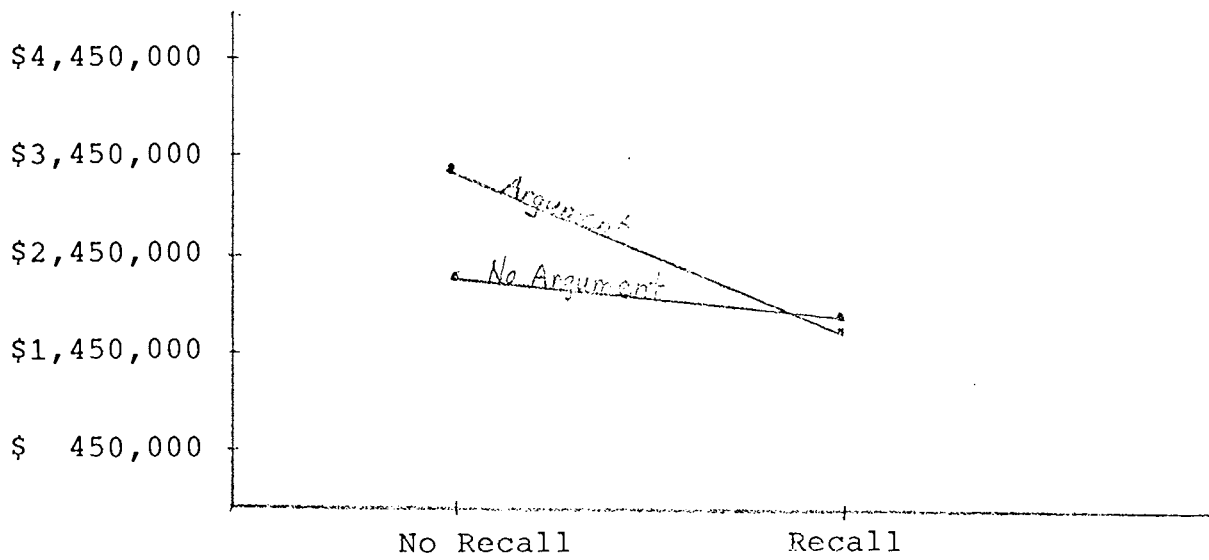


Figure 3. Recall-Argument Interaction for Mean Individual Total Damage Awards

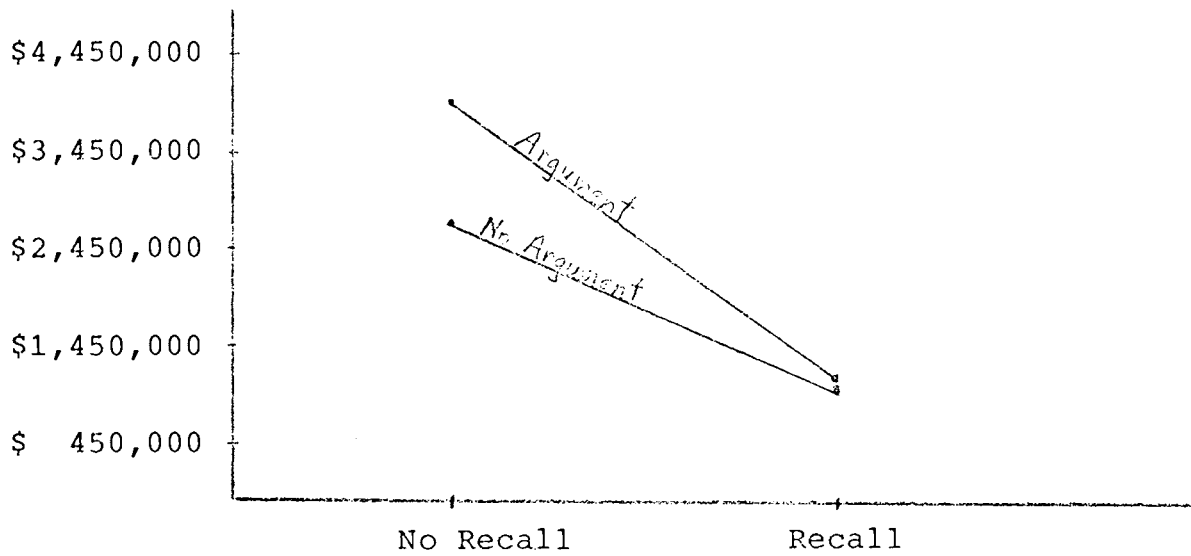


Figure 4. Recall-Argument Interaction for Mean Group Total Damage Awards

VITA

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